

A

## BAIJU ALIAS BHAROSA

v.

## STATE OF MADHYA PRADESH

January 19, 1978

[S. MURTAZA FAZAL ALI AND P. N. SHINGHAL, JJ.]

B

*Evidence Act, (Act I of 1872), 1872—Ss. 110, 114 illustration (a)—Recent and unexplained possession of goods—Presumptive evidence against the accused not only of theft, but of the charge of murder as well—Value of circumstantial evidence.*

C

The appellant, on the pretext of and promise to beget a child to the family of the deceased Ramdayal by sorcery, and after winning confidence committed murders of Ramdayal, his wife Smt. Fulkunwar, his mother Smt. Bhagwanti and his nephew Rambakas, on the night of January 20, 1975 and also stole of various articles which were recovered from the appellants' residence soon after. The trial court convicted him of offences u/s 394 and u/s 302 I.P.C. for committing the robbery and each of the four murders and sentenced him to death. On appeal the High Court of Madhya Pradesh confirmed the conviction and the sentence.

Dismissing the appeals by special leave the Court

D

HELD : 1. The question whether a presumption should be drawn under illustration (a) of Section 114 of the Evidence Act is a matter which depends on the evidence and the circumstances of each case. Thus the nature of the stolen article, the manner of its acquisition by the owner, the nature of the evidence about its identification, the manner in which it was dealt with by the appellant, the place and the circumstances of its recovery, the length of the intervening period, the ability or otherwise of the appellant to explain his possession, are factors which have to be taken into consideration in arriving at a decision. [600 E-G]

2. Recent and unexplained possession of stolen articles may well be taken to be presumptive evidence of the charge of murder. [600 B-C]

E

The prosecution succeeded in proving beyond any doubt that the commission of the murders and the robbery formed part of one transaction and the recent and unexplained possession of the stolen property by the appellant justified the presumption that it was he and no one else, who had committed the murders and the robbery. The appellant was given an opportunity to explain his possession, as well as his conduct in decoying Smt. Lakhpatiya and the other persons who died at his hand, but he was unable to do so. [600 D-E]

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*Wasim Khan v. State of Uttar Pradesh*, [1956] S.C.R. 191; *Abisher v. State of Uttar Pradesh*, [1974] 4 S.C.C. 254 followed.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 128 and 129 of 1977.

G

Appeals by Special Leave from the Judgment and Order dated 17-9-76 of the High Court of Madhya Pradesh in Criminal Appeals Nos. 477 and 488 of 1976 and Criminal Reference Nos. 5 and 6 of 1976.

P. C. Bhartari for the Appellant in CrI. A. No. 128/77.

R. K. Jain, Amicus Curiae, for the Appellant in CrI. A. 129/77.

I. N. Shroff for Respondent in both the appeals.

H

The Judgment of the Court was delivered by

SHINGHAL J. Ramdayal (deceased) son of Ranglal (P.W. 2) lived in his house at village Gauripur, district Sarguja, with his two

wives Smt. Fulkunwar (deceased) and Smt. Lakhpatiya (P.W. 1), his father Ranglal, his mother Smt. Bhagwanti (Deceased) and his nephew Rambakas (deceased). Although Ramdayal married twice, he did not have a child and he and his family were keenly interested in his having a child somehow. It is alleged that in the month of Kuar appellant Baiju alias Bharosa gave out that he had been sent by one Niranjan Gauntia and introduced himself to the family as a sorcerer or wizard who could bring about the birth of a child in the family with his extraordinary powers. He visited the family several times and practised sorcery. In those days Smt. Fulkunwar was suffering from small-pox and the appellant therefore went away saying that he would return after her recovery. He went there again in the month of Kartik of his own accord and practised sorcery in Ramdayal's house for two nights. He went to Ramdayal's house again in the month of Aghan and practised sorcery. He had a well of Ramdayal's house dug in and took out a piece of bone which, according to him, was an evil omen and prevented the birth of a child. He started taking Ramdayal and his wives to an adjoining "nala" at mid night on the pretext of driving away the evil spirit. In this way, it is alleged, the appellant gained the confidence of the entire family and went and stayed at Ramdayal's house in month of Paus from January 11, 1975 to January 19, 1975. He demanded cloth and some articles for performing sorcery, but that was resented by Smt. Lakhpatiya.

It is further alleged that on January 19, 1975 the appellant asked Smt. Lakhpatiya to go to the house of her parents, without her ornaments and money, and promised that he would reach there and perform some ritual to drive away the evil spirit from her. At the same time he prevented Ramdayal, on false pretext, from accompanying her to the house of her parents. Smt. Lakhpatiya therefore went to the house of her parents at village Narainpur with her father-in-law Ranglal (P.W. 2) on January 20, 1975. The appellant, in the mean time, persuaded Ramdayal to go with him to an adjoining "nala" for performing some religious rites, killed him there and threw his dead body in the "nala". He then went back to Ramdayal's house, took Smt. Fulkunwar to another place in the same "nala", killed her there and threw her dead body also in the "nala". It has further been alleged that the appellant went to the house of Ramdayal and killed his mother Smt. Bhagwanti and his nephew Rambakas while they were sleeping there. He ransacked the house, broke open the boxes and took away a number of articles including a transistor, a watch, a bicycle, a torch, two "addhis" gold, clothes, ornaments.

On the following morning, i.e. on the morning of January 21, 1975, Ramdayal's neighbours, including his nephew Jai Ram (P.W. 4), became suspicious because of the unusual calm prevailing in his house and peeped inside. They saw the dead bodies of Smt. Bhagwanti and Rambakas with blood all around. They also found open boxes and articles lying there. Jai Ram therefore went to police station Prem Nagar where he lodged report Ex.P. 38 before Head Constable Jagannath (P.W. 24). The Head Constable went to village Gauripur the same day, saw the dead bodies of Smt. Bhagwanti and Rambakas inside

- A Ramdayal's house and the broken boxes and articles lying all around. He also found that a stone was lying near the dead body of Rambakas and a piece of wood was lying over the head of Smt. Bhagwanti. He searched for Ramdayal and Smt. Fulkunwar but could not find them. Inquest reports were prepared in respect of the dead bodies and they were sent for post-mortem examination. The dead body of Smt. Fulkunwar was found on January 22, 1975 and the Head Constable
- B prepared its inquest report. Sub-Inspector P. K. Singh reached village Gauripur on January 22, 1975 at about 6 p.m. and started the investigation. He prepared what has been called "a dehati nalish" Ex. P. 32 on January 22, 1975 at 6.30 p.m. and also prepared seizure memorandum of several articles which were lying in Ramdayal's house. He made a search for Ramdayal and found his dead body lying in the water of the "nala", under a block of wood, on January
- C 23, 1975. An inquest report was prepared and several articles like rice, thread and match box which were also found lying on the "nala" were taken by the Investigating Officer in his custody. Another "dehati nalish" Ex. p. 32A was prepared on January 26, 1975. The Investigating Officer also found receipt Ex. P. 29 of the sale of a watch to Ramdayal and took it into his possession on January 26, 1975. One shoe (article 'U') and thereafter the other shoe (article 'U1')
- D were found near the river on January 27, 1975 and were taken in police custody. Ramdayal's licence for the transistor was also taken over by the investigating officer.

- The appellant was arrested on January 28, 1975. It has been alleged that he gave the information which was recorded in a memorandum (Ex. P. 21/P. 21A) in respect of certain articles which he
- E undertook to recover from his house and that several articles including a transistor (article 'L'), a watch (article 'Chha'), two gold "addhis" (article 'Cha'), a torch (article 'Ka') and several "sarees", blouses, petticoat, bed-sheets, "dhotis", bush shirt, blanket, "thali" etc. were thus recovered during the course of the investigation. The Police also went to the shop of Nirmal Kumar (P.W. 13) and recovered the
- F voucher for the sale of the transistor to Ramdayal as also Nirmal Kumar's register evidencing the sale. It has further been alleged that in pursuance of the interrogation on January 31, 1975 as per memorandum (Ex. P. 12/P. 12A) the Police recovered some silver ornaments from goldsmith Goverdhan (P.W. 7) of village Surajpur. The recovered articles were put up for identification and the memoranda in that respect have also been placed on the record. Smt. Lakhpatiya
- G and Ranglal are said to have correctly identified the transistor, watch and gold "addhis" etc. as belonging to the deceased Ramdayal.

- Separate charge sheets were put up by the police against the appellant for each of the four murders. The Sessions Judge took notice of the fact that the murders and the robbery were committed in the same transaction, and although he was of the opinion that there was no
- H difficulty in holding one trial of all the offences, he thought it "safe" to consolidate only two murder charges in one trial. There was therefore one trial for the murders of Ramdayal and his wife Smt. Fulkunwar and another for the murders of Smt. Bhagwanti and Rambakas. Two

separate judgments were accordingly delivered in the two cases on April 30, 1976, convicting the appellant under section 302 I.P.C. for each of the four murders. He was also convicted under section 394 for the offence of robbery in the trial relating to the murder of Ramdayal and Smt. Fulkunwar. The learned Sessions Judge considered the question of sentence thereafter, and took the view that as the murders were pre-planned, and were committed with the sole object of theft, and that the appellant had gained the confidence of Ramdayal and his family members by systematic manoeuvres for his personal benefit even though he and his family members had done no harm to him, he deserved the sentence of death. For the offence under section 394 I.P.C. he sentenced him to rigorous imprisonment for 5 years. When the matter went up before the High Court on appeals by the accused and on reference by the trial court, the High Court dismissed the appeals, upheld the conviction of the appellant on all the counts and confirmed the death sentence by its judgments dated September 17, 1976.

It was not disputed before us that the case of the prosecution all through was that the appellant committed one series of acts which were so connected together as to form the same transaction and that he could be charged with and tried at one trial for all the four offences of murder and the offence of robbery. The learned counsel in fact addressed their arguments jointly in the two appeals before us and referred mainly to the record of Criminal Appeal No. 129 of 1977. Their arguments were common to both the appeals and were addressed with reference to the same set of evidence. No useful purpose will therefore be served by giving separate judgments in the two appeals, and we shall dispose them of by this common judgment as suggested by learned counsel.

It has been argued that an error was committed by the trial Court as well as the High Court in mistaking the "dehati nalish" (Ex.P. 32) dated January 22, 1975 and the other "dehati nalish" (Ex. P. 32A) dated January 26, 1975 as the first information reports, and that they were wrongly read in evidence as reports under section 154 of the Code of Criminal Procedure. It has also been urged in this connection that when it was the case of the prosecution that Jai Ram (P.W. 4) and several other villagers had seen the dead bodies of Smt. Bhagwanti and Rambakas on the morning of January 21, 1975 and Jai Ram had gone and lodged the report at police station Prem Nagar the same day, there was no justification for withholding that report and treating the aforesaid village complaints as the first information reports. The argument appeared to be of some consequence at first sight because Jai Ram's report did not form part of the paper books of this Court, but Mr. I. N. Shroff was able to retrieve Jai Ram's report Ex. P. 38 to Head Constable Jagannath dated January 21, 1975, from the original record. As has been stated, Jai Ram had stated in that report how he and other villagers grew suspicious, peeped into the house of Ramdayal and found the dead bodies of Ramdayal's mother and of a boy (Rambakas) lying there, with blood all around and the household articles scattered all over. Learned counsel for the appellant thereupon gave up the arguments which they advanced on the basis

**A** of the non-production of the first information report. It cannot, all the same, be doubted that the two so called "dehati nalish" could not have been read in evidence as first information reports and we have therefore left them out of consideration. That does not however affect the merits of the case because the prosecution has been able to produce other satisfactory evidence to establish the guilt of the appellant in respect of the offences for which he has been convicted.

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It has next been argued that when the Police knew of the murders and the robbery on January 21, 1975 on Jai Ram's report Ex. P. 38 and, when it was also the case of the prosecution that Smt. Lakhpatiya returned to her house on Tuesday (i.e. on the night of January 21, 1975) on learning of the murders of her mother-in-law and the nephew and the suspicious conduct of the appellant, there was no reason why the Police should not have searched his house at the earliest possible opportunity when sufficient particulars had been obtained from Smt. Lakhpatiya for the purpose of identifying him. It has therefore been urged that there was no justification for delaying the search until after his arrest on January 28, 1975. On these premises it has been argued that the articles which were recovered from the house of the appellant on January 28, 1975, had been planted by the police and their recovery should not have been taken into consideration against him. There is however no reason to think that the courts below have erred in placing reliance on the recovery of the various articles from the house of the appellant on January 28, 1975. As has been stated, he was arrested on January 28, 1975, and even though the allegation that the recovery of the articles was made at his instance has been disbelieved by the two courts, we find that the appellant's wife Smt. Isuni (P.W. 10) produced those articles from the house of her husband as alleged by the prosecution. In fact she has categorically stated that those articles, including the transistor, the watch, the gold "addhis" and the torch did not belong to her house and were brought by the appellant and were kept there. It is also significant that the appellant has not ventured to suggest in his statements that his wife was inimical towards him or was anxious to implicate him falsely. A reading of his statement shows, on the other hand, that he believed that his wife was anxious to save him somehow. There is therefore no merit in the argument that the recovery of the articles which was made from the house of the appellant on January 28, 1975 was not genuine and that the articles were "planted" by the Police.

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An ancillary argument has been advanced that the recovery of the articles could not be said to be incriminating as they were not satisfactorily identified and that their recovery did not connect the appellant with the crime. We have gone through the evidence on the record and we find that the theft of the transistor was brought to the notice of the police authorities on January 22, 1975 by Smt. Lakhpatiya after she reached her house, and it has been established by memorandum Ex. P. 3/3A that Investigating Officer P. K. Singh seized a 'Hindi' receipt dated September 13, 1974, written by Nirmal Kumar in respect of licence No. 15 of transistor RL 517/OOB/631422 on January 26, 1975 from the house of the deceased Ramdayal. The same trans-

istor was thereafter found in the house of the appellant on January 28, 1975, and its license dated October 1, 1974 in Ramdayal's name was also taken in police custody. The statement of Nirmal Kumar shows that the transistor was sold by him to Ramdayal and he was able to produce his receipt book evidencing the sale. Moreover Smt. Lakhpatiya (P.W. 1) identified the transistor as belonging to her husband. The recovery of the transistor from the house of the appellant was therefore a material circumstance which went to establish that the stolen property was recovered from his house soon after the commission of the crime.

It will be recalled that a wrist watch was also recovered from the house of the appellant on January 28, 1975. Investigating Officer P. K. Singh recovered a receipt dated August 4, 1974 evidencing the sale of the watch by Mohammad Awesh Karmi (P.W. 14) to the deceased Ramdayal. Mohammad Awesh Karmi has proved the sale of the watch to Ramdayal and the watch has also been identified by Smt. Lakhpatiya in the trial court. Its recovery is therefore another circumstance which goes to connect the appellant with the crime.

As has been stated, several other articles were also recovered from the house of the appellant which he and his wife did not claim to be their property. It will be sufficient to mention that two gold "addhis" and a torch were two of the other articles which were recovered during the course of the investigation. The recoveries have been proved by Atmaram (P.W. 11) and Smt. Lakhpatiya has identified them during the course of the trial. Smt. Isuni (wife of the appellant) has proved that those articles were also brought to her house by the appellant and did not belong to her or her husband. The recovery of the articles also therefore bears on the guilt of the appellant and has rightly been taken into consideration against him.

It has also been argued that although there was no direct evidence to prove that the appellant committed any of the four murders or the offence of robbery for which he was tried and convicted, and the case against him depended entirely on circumstantial evidence, the trial court and the High Court committed an error of law in thinking that the evidence was sufficient to prove his guilt. The precise argument which has been advanced in this connection is that even though it could be said that there was satisfactory evidence to prove that the appellant committed theft of the various articles including the transistor, the wrist watch, the gold "addhis" and the torch which were recovered from his house, that could not justify the conclusion that the murders were also committed by him. It has been urged that it would not have been possible for any one person to have committed as many as four murders single-handed.

We find that the High Court has made a mention of the circumstantial evidence which led it to conclude that the murders were committed by the appellant, including the evidence bearing on his repeated visits to the house of the deceased, his promise to beget a child to the family by sorcery, his winning their confidence to the extent of persuading them to do whatever he liked, his ruse to get rid of Smt. Lakhpatiya by sending her to her parents' house at Narainpur after leaving

A her husband and her ornaments behind on promise of meeting her there on January 21, 1975, his failure to fulfil that promise, the death of Smt. Lakhpatiya's husband Ramdayal and his other wife Smt. Fulkunwar at the "nala" where the appellant used to take them and Smt. Lakhpatiya on the pretext of practising sorcery, the death of Ramdayal's mother Smt. Bhagwanti and his nephew Rambakas in the house the same night, the ransacking of the house and the commission of theft of several articles of Ramdayal including the transistor, the watch, the gold "addhis", the torch and ornaments etc, and the recovery of those articles either from the house of the appellant or at his instance. His counsel have not been able to point out how it could be said that any part of this circumstantial evidence has been misread or that any error of law has been committed in taking the view that it was quite sufficient to prove the guilt of the appellant. As has been held by this Court in *Wasim Khan v. The State of Uttar Pradesh*,<sup>(1)</sup> recent and unexplained possession of stolen articles can well be taken to be presumptive evidence of the charge of murder as well. A similar view has been taken in *Alisher v. State of Uttar Pradesh*.<sup>(2)</sup>

D As has been stated, the prosecution has succeeded in proving beyond any doubt that the commission of the murders and the robbery formed part of one transaction, and the recent and unexplained possession of the stolen property by the appellant justified the presumption that it was he, and no one else, who had committed the murders and the robbery. It will be recalled that the offences were committed on the night intervening January 20 and 21, 1975, and the stolen property was recovered from the house of the appellant or at his instance on January 28, 1975. The appellant was given an opportunity to explain his possession, as well as his conduct in decoying Smt. Lakhpatiya and the other persons who died at his hand, but he was unable to do so. The question whether a presumption should be drawn under illustration (a) of section 114 of the Evidence Act is a matter which depends on the evidence and the circumstances of each case. Thus the nature of the stolen article, the manner of its acquisition by the owner, the nature of the evidence about its identification, the manner in which it was dealt with by the appellant, the place and the circumstances of its recovery, the length of the intervening period, the ability or otherwise of the appellant to explain his possession, are factors which have to be taken into consideration in arriving at a decision. We have made a mention of the facts and circumstances bearing on these points and we have no doubt that there was ample justification for reaching the inevitable conclusion that it was the appellant and no one else who had committed the four murders and the robbery. In the face of the overwhelming evidence on which reliance has been placed by the High Court, it is futile to argue that the murders could not have been committed by a single person. As has been stated, there is satisfactory evidence on the record to show that the dead bodies of Ramdayal and Smt. Fulkunwar

(1) [1956] S.C.R. 191.

(2) [1974] 4 S.C.C. 254.

were found at two different places near the "nala" so that it cannot be said that they were murdered together. As regards Smt. Bhagwanti and Rambakas, the evidence on the record shows that they were murdered while they were asleep in the house, and there is no reason why a single person could not have committed their murders also.

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As there is no force in the arguments which have been advanced before us, the appeals fail and are dismissed.

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S.R.

*Appeals dismissed.*