

## State of Madhya Pradesh Vs Budhram Kunkuram Satnami

**Court:** Madhya Pradesh High Court

**Date of Decision:** May 9, 1995

**Acts Referred:** Criminal Procedure Code, 1973 (CrPC) â€” Section 273  
Penal Code, 1860 (IPC) â€” Section 302

**Citation:** (1996) JLJ 80 : (1995) 40 MPLJ 906 : (1995) MPLJ 906

**Hon'ble Judges:** P.N.S. Chauhan, J; D.K. Jain, J

**Bench:** Division Bench

**Advocate:** Dilip Naik, Dy. Advocate General, for the Appellant; S.C. Datt, for the Respondent

**Final Decision:** Allowed

### Judgement

P.N.S. Chouhan, J.

This judgment shall dispose of Cri. A. No. 431/95, Budhram v. State as well.

Additional Sessions Judge, Sakti of Bilaspur Sessions Division, vide judgment, dated 10-3-1995, passed in S. T. No. 41/94 has held Budhram

son of Kunkuram Satnami aged 28 years, resident of Basti Baradwar, P. S. Baradwar, District Bilaspur guilty u/s 302, Indian Penal Code and

sentenced him to death. Cri. Ref. No. 3/95 is reference u/s 366 of the Code of Criminal Procedure made by him for confirmation of the aforesaid

sentence of death. Cr. A. No. 431/95 is the appeal preferred by the condemned man.

The prosecution case is that Kunkuram first married Heerabai. She gave birth to a daughter Urmila and a son Budhram (the appellant). When

Budhram was 3 years" old and his sister Urmila 5 years" old, Kunkuram deserted his wife and children and left towards Allahabad with another

woman Ravibai. During the absence of Kunkuram his wife Heerabai reared the children and married them. She was living with Budhram in a house

constructed on the ancestral lands recorded in the name of Raghuvar, her father-in-law. She was also cultivating the lands recorded in the name of

Raghuvar. In or about 1990-91 Kunkuram returned back to the village Basti Baradwar along with his second wife Ravibai and children begotten

by her, namely, Shankarlal, Chatua, Nankua, Jugantabai and Muliyaibai. On his return Kunkuram took possession of large part of the house in

which Heerabai and Budhram were living. Kunkuram also took in possession live stock and also agricultural land and started treating Heerabai

with cruelty. He created a situation in which Budhram was forced to leave the house. In or about September, 1993 Budhram was blessed with a

daughter but soon thereafter she died. In the course of funeral functions Kunkuram, Ravibai and their children did not participate. All this bred in

Budhram the animal's urge of retribution. The allegation is that in the night intervening 25th and 26th November, 1993, Budhram committed the

murder of his father Kunkuram, step-mother Ravibai and all their five children aforementioned. On 26-11-1993, after day break, Budhram

changed his clothes and set out for the police station. On the way he met village Kotwar Patel Das and confessed to him that he had committed the

murder of his father, step mother, step brother and step sisters. Patel Das then took Budhram to the Police Station, Basti Baradwar and lodged the

first information report, Ex.P.17. Exs.P-18, P-19, P-20, P-21, P-22, P-23 and P-24 are the Marg intimation recorded in the police station relating

to the aforesaid murders. Crime was registered and investigation taken up. Exs.P-26 to P-32 are the inquest proceedings held on the seven dead

bodies. All these dead bodies were sent for post mortem examination to the doctor along with requisitions, Exs.P- 52 to P-58. Dr. J. Singh

(P.W.9) performed autopsy on the dead bodies of Ravibai, Nankua, Shankarlal and Muliyaibai. His reports are Exs.P-8 to P-11 respectively. Dr.

J. C. Meshram (P.W.12) conducted autopsy on the dead bodies of Kunkuram, Chatua and Ku. Jugunta vide reports Exs.P-40 to P-42

respectively. The doctors confirmed that all these deaths were homicidal caused by sharp edged weapon. In case of Ravibai, Shankarlal and

Jugunta the trechea was found severed. During the course of investigation the Gandasa was recovered at the instance of appellant and was seized

vide Ex.P-38. When the trial commenced the accused was not defended by a lawyer. Opportunity was afforded to him to engage a lawyer as he

had made a request to the Court in that behalf. Ultimately he engaged a lawyer. During the course of the trial on a number of occasions the

accused was not produced before the Court and the trial had to be adjourned. On 31-1-1995 the story was repeated and the appellant/accused

was not produced before the Court. On that date Bhogilal (P.W.14), Urmilabai (P.W.15), Kamlabai (P.W.16), Kiranbai (P.W.17) Nandram

(P.W.18), Awadhesh Kumar (P.W.19) and Investigating Officer C. P. Jhariya (P.W.20) were present. The learned counsel representing the

accused informed the Court that he had no objection if the witnesses in attendance were examined and, accordingly, the learned Judge recorded

the evidence of all these witnesses in absence of the accused. Ultimately, the matter ended in conviction based mainly on the testimony of P.W.10

Kotwar Patel Das who testified to the extra-judicial confession made by the accused to him.

Shri S. C. Datt, Senior Advocate, appearing for the appellant, argued that the trial must be held to be vitiated for violation of Section 273 of the

Code of Criminal Procedure. His submission is that the mandate of law in this behalf is that all the evidence against an accused must be recorded in

his presence, barring the exceptions expressly provided in Code or in any other law for the time being in force. u/s 273 of the Code the accused

has a right to request the Court for exempting him from personal appearance and if such request is accepted and the personal attendance of the

accused is dispensed with then only evidence may be recorded in presence of the pleader representing the accused. In the instant case, contends

the learned counsel, no such request was ever made for dispensing with the attendance of the accused on 31-1-1995. Therefore, the pleader

representing the accused had no authority to inform the Court that he will have no objection if evidence is recorded in absence of the accused. In

such circumstances, recording of evidence of Bhogilal, Urmilabai, Kamlabai, Kiranbai, Nandram, Awadhesh Kumar and the Investigating Officer

in absence of the accused had resulted in violation of Section 273 of the Code of Criminal Procedure and the same has vitiated the trial. Reliance

was placed on Daryav Singh v. State of M. P., Cri. A. No. 345/88 decided on 5-5-1988, decided by this Court on 5-5-1988. Photostat copy of

the said judgment has been filed today. In somewhat similar situation in the case of Daryav Singh, evidence of one prosecution witness was

recorded on 12-12-1987 when the accused was not produced and the counsel had requested the court to examine the witness on the back of the

accused. This was held to be in violation of Section 273 and the case was remanded back to the trial Court for recording the evidence of said

witness Rajkumar in presence of the accused and for redeciding the case after examining the appellant u/s 313 of the Code of Criminal Procedure

in the light of the evidence of Rajkumar and after affording opportunity to accused to lead evidence in defence, if any. In that case also Daryav

Singh was sentenced to death and the Court was hearing the reference u/s 366 of the Code of Criminal Procedure as also the appeal presented by

the accused. The learned Deputy Advocate General has no reply to the above argument.

It is a matter of grave concern that a man facing trial on charge of having committed seven murders and ultimately found guilty and sentenced to

death has to wait for the outcome of his fate longer than necessary but in the facts and circumstances of the case it cannot be helped. The infirmity

pointed out above goes to the root of the matter and the case must be remanded back for re-trial. It is equally a matter of concern that in such

important trials the accused person is not produced before the trial Judge from jail on some pretext or the other. This clearly amounts to

obstructing the course of justice and the constitutional process. The time has come when this Court is to take stock of the situation and try to

evolve remedial measures. With this aim in view a copy of this judgment be placed before the Hon"ble the Chief Justice for being discussed in the

next full Court meeting.

In result, we set aside the reference and allow the appeal aforesaid. Appellant's conviction and sentence of death aforesaid are hereby set aside.

The case is ordered to be sent back immediately to the trial Judge for recording the evidence of Bhogilal, Urmilabai, Kamlabai, Kiranbai,

Nandram, Awadhesh Kumar and Investigation Officer C. P. Jhariya (P.Ws. 14 to 20 respectively) afresh in presence of the appellant who should

be given full opportunity to cross-examine them. Thereafter the statement of the appellant u/s 313, Criminal Procedure Code should be re-

recorded and if he wants to adduce evidence in defence the same should be recorded. The case should then be decided afresh. Considering the

agony in such situation of a man who has been condemned to death, we accept that the learned trial Judge will do everything within his power to

expedite the trial and conclude it within a month from receipt of record by him.