
(1973) 39 CLT 1289

Orissa High Court

Case No: Criminal Appeal No. 64 of 1971

Makra Singh

APPELLANT

Vs

The State

RESPONDENT

Date of Decision: Oct. 22, 1973

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) â€” Section 288, 342, 470, 471, 474#Penal Code, 1860 (IPC) â€” Section 302, 84

Citation: (1973) 39 CLT 1289

Hon'ble Judges: S. Acharya, J; B.K. Patra, J

Bench: Division Bench

Advocate: D.S. Misra, for the Appellant; A. Mohanty, for Government Advocate, for the Respondent

Final Decision: Allowed

Judgement

S. Acharya, J

1. The Appellant stands convicted u/s 302, Indian Penal Code, and has been sentenced thereunder to undergo R.I. for life.

2. The prosecution case in short is that on the date of occurrence (14-8-1962) the accused returned from the river after bath and asked his wife,

deceased Sombari, to give him some food. Sombari, who at that time was sweeping the floor for husking paddy, delayed in giving food to her

husband, as a result of which the accused suddenly got infuriated and pulled out a wooden pole (M.O. I) from the thatch of his house and dealt a

blow on the head of Sombari, who, on receiving the blow, fell down on the ground. The accused then picked up a spade (M.O. II) lying near

On the above evidence of p.w. 3 there is absolutely no doubt that the death of the deceased was homicidal.

The learned Counsel appearing for the Appellant did not at all challenge this aspect of the matter.

6. P.w. 1, as stated above, is the brother of the accused who, on receiving information from p.w. 2, came to the house of the accused and very

soon thereafter went to the police station and lodged the F.I.R. (Ext. 3). In his examination-in-chief he stated that p.w. 2 came to his house and

informed him that the wife of the accused had been killed and that p.w. 2 did not tell him as to who killed the wife of the accused. He was declared

hostile, and on being cross-examined by the prosecution he admitted that he had reported at the police station that p.w. 2 intimated him that the

accused had killed his wife by severing her head from her trunk. He identified M.O. II to be the spade lying at the place of occurrence stained with

human blood. In his cross-examination by the defence he again admitted that p.w. 2 had reported to him that the accused being insane killed his

wife. From all that has been elicited from him in cross-examination and from his previous statement in the F.I.R. (admitted to have been read over

and explained to him) to the effect that p.w. 2 had informed him that it was the accused who killed his wife it is evident that his statement in his

examination-in-chief that Ladu (p.w. 2) did not tell him as to who killed the wife of the accused is false. By stating as aforesaid in his examination-

in-chief, p.w. 1, the brother of the accused, made only a belated attempt to save his brother. From his deposition read as a whole it is quite clear

that on receiving information from P.w. 2 that it was the accused who killed his own wife he (p.w. 1) came to the house of the accused and

thereafter went to the police station and lodged the F.I.R. (Ext. 3) in this case. P.w. 2 was working as a labourer of the accused at the relevant

time. Sombari, the deceased, was the daughter of the maternal uncle of this witness. In the Sessions Court he stated that he was not present in the

house of the accused when the occurrence took place. On his above statement in the Sessions Court he was declared hostile, and being cross-

examined by the prosecution he stated to have seen the occurrence and narrated in detail the manner in which the accused assaulted and killed his

wife. He stated that the accused at first assaulted his wife by means of a Bada Khunti (wooden pole) and when the deceased fell down on the

ground, the accused picked up a spade lying nearby and dealt two blows on the deceased and severed her head from her body. On seeing this he

(p.w. 2) went to the house of p.w. 1, the brother of the accused, and informed him and the village Chowkidar all about the occurrence. He

identified the Bada Khunti (M.O. I) and the spade (M.O. II), the two weapons with which the accused assaulted and killed the deceased. He also

admitted that at the time of the occurrence he was attending to the house-hold work of the accused. On being cross-examined by the defence he

again resiled from all the above mentioned statements made by him in his cross-examination by the prosecution, and again stated that he had been

to graze the cattle of the accused at the time of the occurrence and when he returned with the cattle to the house of the accused, he found that the

wife of the accused was lying dead with her head severed from the body. He then found the accused sitting at the top of three cots placed one

upon the other. His statement in the committing Court has been brought on record u/s 288, Code of Criminal Procedure. In that Court he had

stated that at about 3 p.m. on the date of occurrence while he was taking rest in the house of the accused after taking his meal, Sombari, the wife

of the accused was cleaning the Dhenkisal. At that time the accused returned from the river after bath and asked for food from the deceased. As

the deceased did not supply any food to the accused immediately as demanded by him, there was a quarrel between the deceased and the

accused, as a result of which the accused got infuriated and took a Bada Khunti (wooden pole) from the thatch of his house and assaulted the

deceased on her head with that Bada Khunti as a result of which the deceased fell down on the ground. Soon thereafter the accused picked up the

spade, which was near about that place, and dealt blows with it on the neck of the deceased, as a result of which the head of the deceased was

completely severed from her body and the deceased died. Thereafter the accused arranged three cots one upon the other and sat on the topmost

cot. On being cross-examined by the defence in the committing Court he consistently stuck to his above-mentioned statement in his examination-

in-chief. He also stated that very soon after the occurrence he informed p.w. 1 all about the occurrence. His statement in the committing Court,

brought on record u/s 288, Code of Criminal Procedure, is substantive evidence in this case. His above-mentioned statement in cross-examination

in the Sessions Court by the prosecution is without reference to his statement u/s 288, Code of Criminal Procedure. That statement corroborates

his statement in the committing Court in all material particulars. His statement in the committing Court that he informed all about the occurrence to

p.w. 1 also gets corroboration from the evidence of p.w. 1 as stated above. P.w.s. 1, 2 and 4, who came to the scene of occurrence very soon

after the occurrence, and p.w. 5, the son of the accused, state that when they came to the scene of occurrence they found that the head of the

deceased was lying severed from the body. Their evidence lends support to the evidence of p.w. 2. Accordingly we are satisfied that his statement

in the committing Court is true and can be safely relied upon, and that his statement in cross-examination by the defence in the Sessions Court that

on being threatened by the police he deposed in the committing Court that he was present in the house of the accused when the occurrence took

place, is false and made with a view to save the accused from the penalty of law.

7. P.w. 6 took charge of the investigation of the case on 29-8-1962 from Sri G.B. Mohapatra. who immediately on receipt of the F.I.R. on 14-8-

1962 at 7 p.m. started investigation into the case on 15-8-1962 at 6 a.m. It is evident from the deposition of p.w. 6 that the Dhoti (M. O. IV) won

by the accused was seized as per Ext. 8 by Shri Mohapatra. the first Investigating Officer in this case, in the presence of witnesses. The aforesaid

spade (M.O. II), its handle (M.O. III) and the Dhوتي (M.O. IV) were all found by the Serologist to have been stained with human blood.

The accused in his Section 342 statement does not furnish any cogent explanation for the presence of human blood on the above-mentioned

articles, especially on the Dhوتي worn by him. The statement of p.w. 2 that the accused severed the head of the deceased with the spade (M.O. II)

gets corroboration from the presence of human blood in that spade.

8. On the evidence discussed above we are satisfied beyond reasonable doubt that it was the accused who killed the deceased.

9. Mr. Misra, the learned Counsel for the Appellant, urged that there was sufficient material on record to show that the accused was of unsound

mind at the time he committed the offence and that he did not have the requisite conjunctive faculty to know the nature of the act committed by him

and as such his case was fully covered by Section 84. Indian Penal Code, and so he could not be punished for the act committed by him. The

determination of the condition of the mind of the accused and his conjunctive faculty at the time of the commission of the offence are questions of

fact and are to be determined on the facts and circumstances disclosed by the evidence on record in each case. It has been laid down in

Dahyabhai Chhaganbhai Thakker Vs. State of Gujarat, , that:

When a plea of legal insanity is set up, the Court has to consider, whether at the time of commission of the offence the accused, by reason of

unsoundness of mind, was incapable of knowing the nature of the act or that he was doing what was either wrong or contrary to law. The crucial

point of time for ascertaining the state of mind of the accused is the time when the offence was committed. Whether the accused was in such a state

of mind as to be entitled to the benefit of Section 84 of the Indian Penal Code can only be established from the circumstances which preceded,

attended and followed the crime.

It has been held by a Division Bench of the Delhi High Court in Shanti Devi Vs. The State, , that it is difficult to prove the precise state of the

offender's mind at the time of the commission of the offence, but some indication thereof is often furnished by the conduct of the offender while

committing it, or immediately after the commission of the offence. Though, for the purpose of Section 84, it is the state of mind of the offender at

the time of committing the offence which is relevant, antecedent and subsequent state of mind and conduct of the offender become relevant only for

the purpose of showing what the state of his mind was at the time when the act was committed.

Where a plea of legal insanity is set up, it is most material to consider the circumstances which have preceded, attended and followed the crime;

whether there was deliberation and preparation for the act; whether it was done in a manner which showed desire to conceal; whether after the

crime, the offender showed consciousness of guilt and made efforts to avoid detection.

Again, in order to find whether the accused was by reason of unsoundness of mind incapable of knowing the nature of the act, the Court may take

into consideration the circumstantial evidence consisting of the previous history of (he accused and his subsequent conduct in the surrounding

circumstances including absence of motive. Generally a case in which the sanity of the accused is called in question, motivation for the crime with

which he is charged assumes unusual importance because if a serious crime like murder is committed by a man who has absolutely no rational

motive to commit it, the plea of unsoundness of mind can be more easily established than in other cases.

We are in complete agreement with the views expressed in the above-mentioned decisions.

10. In the present case p.w. 2 has testified to the fact that the accused was occasionally suffering from mental disorder. At times he was working

and at times he was sitting idle without any rhyme or reason. He has also testified to the fact that on the date of occurrence in the morning the

accused was talking incoherently and was abusing people at random. P.w. 1 the younger brother of the accused, has also testified to the fact that

the accused was somewhat crack and that immediately after the occurrence when p.w. 1 asked the accused regarding the occurrence he replied

that the spade had done all the mischief.

Moreover, as is evidence from the prosecution evidence, the accused at first assaulted the deceased with a wooden pole and after she fell down

on the ground with a severe injury on her head, the accused picked up the spade lying nearby and severed the head from the trunk of the

deceased. Such an act cannot ordinarily be attributed to the failure of immediate supply of food by the deceased. There is no convincing evidence

of any previous ill feeling between the husband and the wife. On the evidence on record we are distinctly of the opinion that the aforesaid failure to

supply food cannot be the cause, reason or the motive for committing a heinous act of the aforesaid nature.

Soon after killing the deceased in the manner aforesaid the accused arranged three cots one upon the other and quietly sat at the topmost cot. He

did not make any attempt to run away from the place or to avoid detection or arrest. Villagers came inside the house of the accused and saw the

ghastly murder committed in that house. Some of them have stated that they were alarmed and horrified at the sight of the ghastly murder and so

they immediately came away from that place. But significantly the accused was sitting silently in that unusual manner close to the place of

occurrence and appeared to be absolutely unconcerned and unaffected about all that had happened there and the consequences thereof.

11. When the case was taken up in the Sessions Court, the State defence lawyer filed an application on 2-3-1963 before that Court stating that

the accused was an insane person and was not in a fit condition to give necessary instruction to his lawyer. By the said petition it was prayed that

the accused should be kept under medical observation at least for a month. On the aforesaid petition the learned Sessions Judge asked some

questions to the accused and found that he was not giving rational answers to his questions and was behaving like, a mad man. Accordingly he

adjourned the case for an enquiry into the alleged insanity of the accused and summoned the Civil Surgeon, the Superintendent of Jail to appear in

Court and give his opinion about the mental condition of the accused. On 1-4-1963 the Civil Surgeon sent a report to that Court stating therein

that the accused was mentally and intellectually unsound. The Civil Surgeon was examined as a court witness on 16-4-1963 and proved his report

Ext. A. He deposed that the accused was under his observation since 18-3-1963 and that he found him mentally and intellectually unsound and

was not capable of understanding the proceedings of the Court. He was apathetic and in a state of terror while lying in bed. His conversation did

not flow easily and his replies to questions suggested blockage of thoughts. He appeared to be emotionally depressed, and at times he was also

having delusions and hallucinations. He could not ascertain the place where he was and also the date or the time of the day. He was also having

clouding of consciousness and his general intelligence had been affected. In his cross-examination by the Public Prosecutor he stated that the

accused not only suffered from melancholia, but also delusion and hallucinations and that he did not understand questions put to him properly. The

Sessions Judge himself put some questions to the accused and found that he was not able to understand the questions put to him and did not give

rational and intelligible replies to the same and behaved like a mad man. On the above-mentioned opinion of the Civil Surgeon and observing the

demeanour and behaviour of the accused in Court, the Sessions Judge was satisfied that the accused was of unsound mind and incapable of

making his defence. He, therefore, postponed further proceedings of the trial and directed the detention of the accused in jail until further orders

and sent a report about the mental condition of the accused to the State Government. Thereafter the accused was sent to the Mental Hospital at

Kankey and after treatment there he was sent back to the Baripada Jail and was produced in Court on 6-10-1964. The Sessions Judge on being

satisfied that the accused at that time was in sound state of mind ordered the trial to proceed.

12. There is no evidence on record that there was any ill feeling or previous quarrel between the accused and his wife, the deceased, due to which

the accused would have gone to the extent of murdering the deceased by severing her head from the body. None of the prosecution witnesses has

deposed in the Sessions Court that the accused had quarrel with the deceased just prior to the assault on the deceased by the accused. P.w. 2 of

course stated in his deposition in the committing Court that a quarrel took place between the accused and the deceased because the deceased did

not immediately supply food to the accused as demanded by him. He in the sessions Court did not corroborate his said statement in the committing

Court. P.w. 5, the son of the deceased, did not state anywhere that his father and mother had a quarrel between themselves just prior to the

occurrence. Even in his alleged statement to the police, he had merely stated that his father, the accused, having come back home assaulted his

mother at first with a piece of wood and thereafter when she fell down, he cut her head by means of a spade and severed her head from her body.

Thus there is no convincing evidence of a quarrel between the accused and the deceased, just prior to the assault on the deceased, on any account

whatsoever. Even if it is held that there was a quarrel between the accused and the deceased for the non-supply of food as demanded by the

accused, it would be futile to hold that such a quarrel over such a trifling matter would motivate a mature and sane man to hack to death his

defenceless wife. Absence of any motive for the crime in the facts and circumstances of this case assumes immense importance, as a serious crime

of this nature is very seldom committed by a sane man without having absolutely any rational motive to commit the same.

13. There is moreover no evidence of any deliberation or preparation for the crime; there is nothing on record to show that the act was done in a manner which showed any desire to conceal the offence; the offender did not show any consciousness of guilt, did not make any effort to avoid detection; and as stated above there is no previous history of any ill feeling between the deceased and the accused which could have prompted the accused to commit such a heinous crime in the aforesaid manner. The subsequent conduct of the accused immediately after the occurrence, as stated above, shows that he was completely unperturbed and indifferent to all that had happened and the consequences thereof.

True it is that when a plea of legal insanity is set up, the Court has to consider whether at the time of the commission of the offence the accused by reason of unsoundness of mind was incapable of knowing the nature of the act or that he was doing what was either wrong or contrary to law. It is difficult to prove the precise state of the offender's mind at the time of the commission of the offence. In order to enable the accused to take shelter under the provisions of Section 84, Indian Penal Code it is not necessary for him to prove beyond all reasonable doubt that his unsoundness of mind was of such a nature that he was not able to know the nature of the act or that all that he was doing was either wrong or contrary to law. In the Full Bench decision of the Rangoon High Court reported in *Narayan Raut Vs. Emperor*, , it was been observed:

Put shortly, the test is not whether the accused has proved all reasonable doubt that he comes within any exception to Indian Penal Code, but whether in setting up his defence he has established a reasonable doubt in the case for the prosecution and has thereby earned his right to an acquittal.

The aforesaid view of the Full Bench was followed by the majority of the Judges in the Full Bench decision of the Allahabad High Court reported in *Parbhoo and Others Vs. Emperor*, . It has been held by the Patna High Court in *Narayan Raut v. Emperors*, that when the accused pleads the

right of private defence it is not necessary that he must prove beyond reasonable doubt the existence of the circumstances on which the right is

founded. The accused need merely make out a prima facie case. In other words, it is sufficient if he satisfies the Court of the probability of what he

is called upon to establish. This topic has been elaborately dealt with in the Division Bench decision of this Court reported in Nitai Naik Vs. The

State, . The Hon"ble Judges of this Court dealing with the aforesaid case accepted with approval the above-mentioned views expressed in all the

aforesaid decisions.

14. The premises, the manner in which the occurrence took place, the nature of the injuries inflicted by the accused, the duration of the attack, the

miniacle fury with which the attack was delivered, considered along with the evidence of unsoundness of the accused"s mind just prior to the

occurrence, his subsequent conduct and his mental condition at the beginning of the trial, as stated above, due to which he had to be sent to the

Kankey Mental Hospital for treatment, coupled with the absence of any motive or provocation to commit such an offence are all indications that

the accused was acting under some insane impulses at the time when he committed the offence. On the aforesaid materials and significant features

relevant for consideration of a matter of this nature, a prima facie case u/s 84, Indian Penal Code is made out in favour of the accused, and it

appears probable that the defence version is true. On that account he is liable to be acquitted of the charge framed against him.

15. In the result, therefore, the conviction of the accused u/s 302, Indian Penal Code and the sentence passed thereunder are set aside and he is

acquitted of the same. But on our finding that the accused committed the act, we would, as provided u/s 470, Code of Criminal Procedure, direct

the Sessions Judge, Mayurbhanj-keonjhar to pass necessary orders u/s 471, Code of Criminal Procedure for the detention of the accused in safe

custody and to report the action taken in this connection to the State Government as provided in the said section. The State Government thereafter

may pass necessary orders as it deems fit u/s 474, Code of Criminal Procedure.

16. The appeal is accordingly allowed with the directions made above.

B.K. Patra, J.

17. I agree.