

Paramanda Mallick Vs. the State

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Court : Orissa

Decided On : Feb-05-2002

Reported in : 93(2002)CLT225

Judge : P.C. Nayak and ;P.K. Patra, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 383; [Indian Penal Code \(IPC\), 1860](#) - Sections 84, 302, 307 and 313

Appeal No. : Jail Criminal Appeal No. 439 of 1994

Appellant : Paramanda Mallick

Respondent : The State

Advocate for Def. : R.N. Acharya, Addl. Govt. Adv.

Advocate for Pet/Ap. : A.P. Ray, Adv.

Disposition : Appeal dismissed

Judgement :

P. K. Patra, J.

1. This is an appeal against the judgment dated 16.11.1994 passed by Shri P. B. Patnaik, Additional Sessions Judge, Jajpur, in Sessions Trial No. 50/9 of 1994 convicting the appellant (hereinafter referred to as 'the accused') under Sections

302 and 307 of the Indian Penal Code (hereinafter referred to as 'IPC') and sentencing him to undergo rigorous imprisonment for life and rigorous imprisonment for seven years respectively directing that both the sentences will run concurrently.

2. The facts leading to this appeal are as follows :

On 12.9.1993 at about 5.30 a.m. the accused all of a sudden attacked deceased Pitambar Mallick by means of a 'Katari' and severed his head from the trunk, seeing which, P.W. 3 (wife of deceased Pitambar) reported the matter to P.W. 1 (younger brother of deceased Pitambar). When P.W. 1 opened the door to see as to what had happened, he found the accused chasing P.W. 3 with the bloodstained 'Katari' and hence both P.Ws. 1 and 3 went inside the house and closed the door. After a while, when P.W. 1 tried to open the door to see what had happened, the accused who was standing at the door, attempted to give a blow with the 'Katari' on P.W. 1, as a result of which the little finger and ring finger of the right hand of P.W. 1 were injured. Then, after some time, when P.W. 1 opened the door, he found the accused inflicting blows on deceased Kailash alias Kalandi Mallick (brother-in-law of P.W. 1) by means of the same 'Katari' and severed his head from the trunk. Seeing this, P.W. 1 raised hulla when the accused rushed towards him and dealt a blow with that Katari on the right shoulder of P.W. 1, as a result of which he sustained injury with profuse bleeding. P.W. 1 could muster courage to catch hold of the right hand of the deceased after a scuffle between them. Hearing the hulla raised by P.W. 1, two neighbours, namely, Dinabandhu Mallik and Tikam Mallick, reached the spot and seeing them, the accused tried to run away, but could be apprehended. While running away, the accused threw the 'Katari' near a bush. It is alleged that due to previous grudge, the accused extinguished the light of life of the two persons, namely, Pitambar and Kaitash alias Kafandi. The informant went to Dharmasala P.S. and orally reported the occurrence to P.W. 9, an S.I. of the said P.S. who was in charge of the O.I.C. during his absence. P.W. 9 reduced the oral report of P.W. 1 to writing and registered the case and took up investigation. During the investigation, he visited the spot, examined witnesses, held inquest over the deadbodies of both the deceased persons and sent the same for post-mortem examination and sent P.W.

1 for medical examination. He also seized the blood-stained earth and sample earth from both the spots, seized the wearing apparels of the deceased persons after the post-mortem examination, arrested the accused and seized the weapon of offence (Katari) (M.O.I) on information given by the accused while in custody. He sent M.O.I., the wearing apparels of the deceased persons, blood-stained earth and sample earth as also lock of hairs of the accused for chemical examination. After completion of investigation, P.W. 9 submitted chargesheet under Sections 302 and 307 IPC against the accused who stood his trial.

The accused pleaded not guilty to the charge and his plea was one of denial.

3. Prosecution examined ten witnesses in support of its case, whereas the defence examined none. P.Ws. 1 and 2 are the younger brothers of deceased Pitambar, P.W. 3 is the widow of deceased Pitambar and P.W. 4 is the widow of deceased Kailash alias Kalandi who were eye-witnesses to the occurrence. P.W. 5 is a neighbour who rushed to the spot and apprehended the accused. P.W. 6 is a witness to the seizure. P.W. 7 is the medical officer who conducted the post-mortem examination over the deadbodies of the deceased persons, P.W. 8 is the police constable who was a witness to seizure, P.W. 9 is the investigating officer and P.W. 10 is another medical officer who medically examined the informant (P.W. 1).

4. Placing reliance on the medical evidence as well as the ocular testimony of the prosecution witnesses, the learned Addl. Sessions Judge found the accused guilty and convicted him under Section 302 and 307 IPC.

5. Mr. Roy, learned counsel for the accused, and Mr. Acharya, learned Addl. Govt. Advocate, were heard at length.

6. While Mr. Roy strenuously urged for setting aside the impugned judgment on the ground that the conviction is based on improper and incorrect appreciation of evidence and that the accused should have been given the benefit of Section 84 IPC since he committed the acts due to unsoundness of mind and was not capable of knowing the nature of the acts, Mr. Acharya vehemently refuted the contention of Mr. Roy and supported the impugned Judgment contending that the

conviction has been based on proper appreciation of evidence on record, that the plea of lunacy cannot be available to the accused in this appeal since he had not pleaded the same during the trial. The rival contentions require careful consideration.

7. From the statement of the medical officer (P.W. 7) who conducted the post-mortem examination over the deadbodies of the deceased persons, it is evident that death of both the deceased persons was homicidal. She conducted the post-mortem examination over the deadbody of Kailash alias Kalandi Mallik on 13.9.1993 and the head having been severed from the body, she received the deadbody in that condition. Besides finding the head completely severed from the trunk at the neck, P.W. 7 found six cut injuries on or around the neck of the deceased, three on his shoulder and one on left index finger. She has opined that all the injuries found on the deadbody were ante-mortem in nature and might have been caused by sharp cutting weapon and that death was homicidal. She submitted the injury report in respect of deceased Kailash alias Kalandi as per Ext. 11. On being asked by the I.O. to examine the Katari (M.O.I.) and to give her opinion as to whether the injuries found on the deadbody could have been caused by that weapon, P.W. 7 has given her opinion in the affirmative.

P.W. 7 also conducted the post-mortem examination over the deadbody of deceased Pitambar Mallik which she received in similar condition like that of deceased Kailash alias Kalandi Mallik, i.e. head having been completely severed from the trunk. Besides finding the head having been completely severed from the body, she also found five severe cut injuries on the deadbody on the base of head besides other injuries. She has also opined that all the injuries found on the deadbody were ante-mortem in nature and might have been caused by sharp cutting weapon and that death was homicidal. She submitted the injury report in respect of deceased Pitambar Mallik as per Ext. 12. Similarly, on being asked by the I.O. to examine the Katari (M.O.I.) and to give her opinion as to whether the injuries found on the deadbody could have been caused by that weapon, P.W. 7 has given her opinion in the affirmative.

8. P.W. 10 is the doctor who has stated to have examined P.W. 1 on 12.9.1993 on police requisition (Ext. 15) and to have issued the injury report (Ext. 15/1). He has stated to have found one incised wound on the tip of right shoulder of the size 3 1/2' x 1/2' x 1/2' and another incised wound on the base of right finger of the sizes 3/4' x 1/4' x 1/4' on his body. He has further found another incised wound on the right ring finger of the size 1/2' x 1/4' x 1/4' and has opined that all the injuries might have been caused by a cutting instrument.

9. The informant (P.W. 1) has corroborated the F.I.R. (Ext. 1) and has vividly described the occurrence. P.W. 2 has stated to have seen the occurrence after the accused severed the head of deceased Pitambar from his trunk and has vividly stated as to how the accused chased the second deceased Kailash alias Kalandi and attacked him by means of the Katari (M.O. I) and severed his head from the trunk. He has also stated that the accused was apprehended by him and others while he was running away. P.W. 3 has stated that on the date of occurrence early in the morning when her husband deceased Pitambar went to the village lane to tether the bullocks, he was attacked by accused by means of a Katari, seeing which she raised hulla and sought the help of P.W. 1 telling him that deceased Pitambar had been killed by the accused. She has also stated that the accused chased her and she took shelter in the house of P.W. 1 by closing the door from inside and has further corroborated P.W. 1 regarding rest part of the occurrence. P.W. 4 has stated that her husband deceased Kailash ran towards the house of deceased Pitambar hearing the hulla raised by P.W. 3 and on the way the accused attacked him by means of a Katari and dealt five to six blows resulting in severance of his head from the trunk. She has also stated regarding assault on P.W. 1 by the accused. P.W. 5 has stated to have rushed to the spot and to have apprehended the accused while he was running away after severing the heads of the two deceased persons, Pitambar and Kailash alias Kalandi.

10. The statements of these five witnesses are consistent with each other and with the medical evidence on record and there is no infirmity or incongruity in them so as to discredit them and to discard their testimony from consideration, notwithstanding the fact that they are close relations of the deceased persons. Their statements cannot be said to be tainted with interestedness, in as much as

their presence at the spot of occurrence was not unusual or unexpected and they were not chance Witnesses to the occurrence.

11. Mechanical rejection of evidence on the ground of interestedness would invariably lead to failure of justice and it is well known that close relatives of a murdered person are most reluctant to spare the real assailant and to falsely involve another person in place of the assailant. Therefore, reliance placed on statements of P.Ws. 1, 2, 3, 4 and 5 by the learned Addl. Session Judge cannot be said to be erroneous.

12. The next point for consideration is whether the accused would be entitled to the benefit of Section 84 IPC which provides that nothing is an offence which is done by a person, who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of act, or that he is doing what is either wrong or contrary to law. In order to attract the provision of Section 84 IPC, it is necessary to establish :

(1) that the accused was of unsound mind;

(2) that at the time of commission of the crime, he was of unsound mind; and

(3) that as a result thereof, he was incapable of understanding the nature of acts committed or that he was doing a wrongful act.

It is well settled that the crucial point of time for determining the insanity is the time when the offence is committed and the circumstances which preceded, attended and followed the crime are to be considered. The burden of proof in this respect is on the accused and he can discharge it by oral evidence, documentary evidence of presumption or admission or from the evidence of the prosecution witnesses. It is also well settled that the pleas of insanity cannot be entertained, if it is neither raised at the trial, nor evident from the record and that when the plea of insanity has not been established, the accused cannot be given the benefit of Section 84 IPC. In the present case, the accused did not take the plea of insanity during the trial, nor did he behave like an insane person either in the court of the committing Magistrate or in the Court of Session. Even in his statement under Section 313 Cr

PC, the accused has not stated that he committed the acts in an unsound mind, without knowing the consequences of his acts. From the evidence on record led by the prosecution, no doubt can be created in the mind regarding soundness of the mind of the accused. His conduct in waiting near the door of P.W. 1 to assault him after he had severed the head of deceased Pitambar from his trunk would indicate that he was waiting there to extinguish the light of lives of P.Ws. 1 and 3 also who had witnessed the first occurrence. P.W. 1 has also in his evidence stated that the accused had no mental problem prior to or at the time of the occurrence. The said conduct of the accused definitely points towards the soundness of his mind. In the FIR (Ext. 1) it has been stated that due to previous grudge, the accused committed the murders of the two persons and the same has been corroborated by the prosecution witnesses.

13. Though the learned Addl. Sessions Judge has observed that there are no sufficient materials on record to establish the mensrea of the accused, the FIR (Ext. 1) and the statements of the prosecution witnesses clearly establish the mensrea of the accused. Therefore, all the circumstances lead to one conclusion that the accused was not an insane and had acted like a sane man with some motive. Hence the accused will not be entitled to the benefit of Section 84 IPC. Consequently the impugned judgment dated 16.11.1994 passed by the Addl. Sessions Judge, Jajpur in S.T.No. 50/9 of 1994 convicting the accused under Sections 302 and 307 IPC and sentencing him to undergo rigorous imprisonment for life and rigorous imprisonment for seven years respectively with direction that the sentences would run concurrently cannot be interfered with and is bound to be upheld and the appeal must fail.

14. In the result, the Jail Criminal Appeal is dismissed being devoid of merit. The impugned judgment dated 16.11.1994 passed by Shri P. B. Patnaik, Addl. Sessions Judge, Jajpur in Sessions Trial No. 50/9 of 1994 is confirmed.

P. C. Naik, J.

15. I agree.

16. Appeal dismissed.

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