

Sudhu Kumbhar Vs. the King

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Court : Orissa

Decided On : Apr-18-1949

Reported in : AIR1951Ori354

Judge : Jagannadhadas and ;Narasimham, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 86, 300 and 304; [Evidence Act, 1872](#) - Sections 105

Appeal No. : Cri. Appeal No. 39 of 1948

Appellant : Sudhu Kumbhar

Respondent : The King

Advocate for Def. : Adv. General

Advocate for Pet/Ap. : B.K. Pal, Adv.

Disposition : Appeal dismissed

Judgement :

Narasimham, J.

1. Applt. Sudbu Kumbhar was convicted for the murder of his own father Pahalu Kumbhar & sentenced to transportation for life by the Ses. J. of Sundergarh, Sambalpur.

2. The offence was said to have been committed on 31-8-1947 in village Hamirpur P S, Eaghunathpali in Gangpur State. That day was a day of festivity for the villagers being the Rakhi Purnima & it appears that most of the males of the village including the applt. & his father Pahalu took considerable quantities of rice beer (Handia). At about noon Pahalu after performing the usual worship & taking Khichiri meals lay down for rest on the verandah of one of the rooms of his house. The females went to neighbouring-houses for taking their food. Just then the applt returned from somewhere, went inside the kitchen & finding (sic) to why no food or drink was kept for him. Thereupon Pahalu rebuked him for being a glutton (Ranka). This remark was said to have so much enraged the applt that he ran towards his father, dragged him from the verandah to the courtyard & attempted to throttle him by pressing his neck, His elder brother Budhu (P. W. 1) immediately ran to the spot & separated the two. But the father Pahalu was also so much enraged at this conduct of the applt. that he wanted to assault him & rushed towards him, But Budhu again intervened & separated the two. Then the father returned to the court-yard & the applt. went away & Budhu (p. w, 1) thinking that nothing farther would, happen returned to the cow-shed in front of the house & lay on his cot. Soon afterwards he heard beating sound & a cry raised by his father. He ran to the court yard & found his father lying with a bleeding injury on his face & the applt. running away. Immediately an alarm was raised & Pahalu's brother Ajit Kumbhar (p. w. 2) came running there. An attempt was made to give first-aid to Pahalu but it was unsuccessful, In the meantime a search was made for the applt & he was found in a ditch close to river Koil which flows by the side of the village. He was immediately taken into custody & he admitted the crime before the villagers. He was found to be heavily drunk at the time of his arrest. In due course F. I. R. was lodged in the police station at about 7 p. m. that day & the case was investigated by the S. I. Sri Kheradhar Naik (p. w. 7). Pahalu's corpse was also brought to the thana & the S. I. sent it to the Medical Officer for post mortem examination. A thickened woollen mat (Kunchi) (ex. 1) 4'-10' long & 6 1/2' girth stained with some blood was also produced before the S. I. This mat was recovered from a place close to the place where Pahalu fell.

3. The post-mortem examination on the corpse of Pahalu was made by Dr. S. C. Naik (p. w. 8) on the next day. He found a lacerated wound 1 1/4' x 1/2' bone deep

on the middle part of the vault of the scalp. Another lacerated wound $\frac{3}{4}$ ' x $\frac{1}{3}$ ' skin deep was found on the right temporal area of the head. The frontal & both the parietal bones were found to be smashed like a cocoanut shell. The membranes of the brain were torn. The brain was also severely lacerated & a portion of the brainmatter protruded through the sites of the fractures. The stomach contained some undigested food with smell of liquor. Death was caused by shock & heart-failure resulting from the injury to the skull & the brain. A log of wood like Ex. 1 might have caused the injury on the head. The second lacerated injury on the head which was skin-deep might have been caused by a blow or a fall on the ground.

4. From the nature of the injuries found on the head of Pahalu Kumbhar there can be no doubt that his assailant gave him a terrific blow on the head in consequence of which the skull got fractured like a cocoanut shell and the unfortunate man died. Ordinarily the only inference that can be made is that the person who gave such a blow on the head either intended to cause Pahalu's death or else intended to cause such bodily injury as would be sufficient in the ordinary course of nature to cause death.

5. So far as the identity of the assailant is concerned there is undoubtedly no eye-witness. The applt's brother Budhu (P. W. 1) is a witness to the incidents that took place immediately before & immediately after the giving of the blow. (His Lordship reviewed his evidence & proceeded). There seems to be absolutely no reason to disbelieve the evidence of Budhu in its essentials. Though this witness did not actually see the giving of blow on the head of his father, from the facts as deposed to by him the only reasonable inference is that it was the applt. who gave the fatal blow. His conduct in quarrelling with his father & attempting to throttle him & his subsequent conduct in running away from the spot when Budhu came there on hearing the cry leave no room for doubt as to his participation in the attack on his father.

6. The prosecution led evidence to prove the extra-judicial confession made by the applt. when he was arrested soon afterwards while concealing himself in a ditch close to the river Koil. This confession has been proved by his own father's brother

(P. W. 2), & by other villagers, namely, Sana Kumbhar (p. w. 3), Gama Kumbhar (p. w. 4) & Bbuju Kisan (p. W. 6). I would not however attach much importance to the extra judicial confession. But the accused's statement under Schedule 42, Cr. P. C before the committing Mag. incriminates him beyond any doubt. In that statement which was taken as evidence under Schedule 87, Cr. P. C. he admitted that he gave one blow on the head of his father with the wooden post (Ex. 1) & that he was drunk at that time. There seems to be absolutely no reason for not believing this statement. Doubtless in the Ses. Ct. he has resiled from it & stated that as he was drunk at that time he did not know what happened. But I see no reason to reject the statement made before the committing Mag.

7. The next question for consideration is as to where from the applt. seized the wooden post (Ex. 1). It was not in his hand during his first struggle with his father & he must have picked it up during the short interval between Budhn's premature retirement to the con-shed after separating the two, & his return to the spot on hearing the cry of the father. The log (Ex. 1) was identified, by a neighbour named Biswanath Kumbhar (p. w. 5) to be one of the posts of his fence near his gate. He noticed the post missing from his fence when he went to the spot soon after the commission of the crime. From the sketch map (ex. 5) it appears that the place from where the post was removed was about 32 cubits south-west of the post. From these facts the only reasonable inference that can be drawn is that the applt. pulled out the post from the fencing, ran back to the court-yard & gave the fatal blow on the head of his father.

8. That the applt. was then in a drunken condition admits of no doubt whatsoever. Apart from his own statement there is the evidence of his brother p.w. 1 & p.w. 5 to show that at about 10 a. m. that day the applt. & other persons of the village had taken Handia after performing their usual Puja to the diety. The applt's uncle p. w. 2 also stated that when the applt. was arrested he was found to be heavily drunk. It is thus well proved that in a drunken condition the applt. picked up a quarrel with his father, pulled out a big wooden post (Ex. 1) from a place about 32 cubits from the place of the quarrel & gave a terrific blow & thereby smashed the skull of his father & killed him.

9. The main question for consideration in this case is whether drunkenness is a sufficient ground for reducing the offence to one under Schedule 04, I, P.C. On behalf of the applt. Ms. Pal relied on Schedule 6, I. P. C. & urged that though the necessary guilty knowledge may be inferred against the applt. by virtue of that section, guilty intention cannot be so inferred & that consequently all that can be said in the circumstances of the case is that the applt. knew that his act was likely to cause death. This would reduce the offence to one Under Section 304, I. P. C.

10. Section 86, I. P. C. says :

'Where an act done is not an offence unless done with a particular knowledge or intent, a person who does the act in a state of intoxication shall be liable to be dealt with as if he had the same knowledge as he would have had if he had not been intoxicant.'

Here there is no question of the intoxicant being administered to the applt. without his knowledge or against his will & consequently-it is unnecessary to discuss the remaining part of that section. The omission of any reference to 'intent' in the second part of the section as quoted above though it is expressly referred to in the first part, has caused some difficulty & has been the subject of several judicial decisions. I would however, with respect, agree with the observations in *J. M. v. Emperor*, 11 Cr. L. J. 659 : (8 I. C. 469 U. B.) & *In re Mandru Gadaba*, 98 Mad. 479 : (A. I. R. (3) 1916 Mad. 489 : 16 Cr. L. J. 627) to the effect that the omission was deliberate. The result is that though by virtue of the said section a Ct. may presume guilty knowledge, the Ct. cannot presume guilty intention in judging the nature of the offence committed by a drunken person. But the guilty intention which is the ingredient of several offences in the Penal Code is obviously not capable of direct proof & is generally inferred from the proved facts & circumstances of each case. There is the general presumption that every man intended the natural consequences of his act & as pointed out by Ayling J. in *re Mandru Gadaba*, 38 Mad. 479 : (a, I. B. (3) 1916 Mad. 489 : 16 cr. L. J. 627) :

'If the accused knew what the natural consequences of his act were, he must be presumed to have intended to (sic)

In other words, intention, may ordinarily be inferred from knowledge & if guilty knowledge can be presumed by virtue of Schedule 6, I. P. C., it necessarily follows that guilty intention may also be reasonably inferred unless there are some other facts & circumstances to repel such an inference.

11. Section 86, I. P.C. was fully considered by a F. B. of the Chief Ct. of Lower Burma in the case reported in *Nga Tun Baw v. Emperor*, 13 Cr. L. J. 864 : (6 L. B. R. 100) which was followed in *Naga Sein Gale v. Emperor*, 12 Rang, 445: (A. I. R. (12) 1934 Rang, 361). There is also a Madras decision reported in *Public Prosecutor v. Budipiti Devasihamanni*, 55 M. L. J. 228 : (A.I.R. (15) 1928 Mad. 196 : 29 Cr. L. J. 69) following an earlier Madras decision reported in *re Mandru Gadaba*, 28 Mad. 479 : (A. I. R. (3) 1916 Mad. 469 : 16 Cr. L. J. 627). The same question came up for decision before the Calcutta H. C. in *Manindra Lal v. Emperor*, 41 C. W. N. 1187 : (A. I. R. (24) 1937 Cal. 432 : 38 Cr. L. J. 868). The Patna H. C. also considered the question in two decisions reported in *Jhiktu Bhogta v. Emperor*, 23 P. L. T. 763 : (A. I. R. (29) 1942 Pat. 417 : 43 Cr. L. J. 644) and *Dilmohammad v. Emperor*, 23 P.L.T. 725 : (A.I.R (29) 1942 Pat. 420 : 43 Cr. L. J. 883). The English law on the subject has been authoritatively laid down in the decision of the House of Lords in *Director of Public Prosecutions v. Beard*, (1920) A. C. 479 : (89 L. J. K. B. 437). According to Lord Birkenhead L. C.:

'The evidence of drunkenness which renders the accused incapable of forming the specific intent essential to constitute the crime should be taken into consideration with other facts proved in order to determine whether or not he had thin intent.

The evidence of drunkenness falling short of proved incapacity in the accused to form the intent necessary to constitute the crime, & merely establishing that his mind was affected by drink so that he more readily gave way to some violent passion, does not rebut the presumption that a man intends the natural consequences of his acts.'

This principle of English law has been applied in construing Schedule 6, I. P. C. See *Bishan Singh v. Emperor*, A. I. R. (16) 1929 Lah. 687 : (30 Cr. L. J. 662), *Bishan v. Emperor*, 33 Cr. L. J. 378 : A. I. R. (19) 1982 Lah. 244) and *Nga Sein Gale v. Emperor*, 12 Rang. 445:. (A.I.R. (21) 1934 Rang. 361).

12. It seems to be thus well established that where a drunken person commits an offence, there will be no presumption of guilty intention under Schedule 6, I. P. C., & such intention must be proved like any other fact in issue. But the Ct. may, after presuming the necessary guilty knowledge from that section on the assumption that he committed the act while in a sober condition, infer the guilty intention also if the other proved facts & circumstances justify the same. There may be different degrees of intoxication & if the evidence merely shows that the accused more readily gave way to violent passion because of his drunken condition it may be reasonably inferred that he (sic) the natural consequences of his acts. If, however, the evidence shows that he was in such a state of intoxication as to be incapable of forming the specific intent, drunkenness may be ground for altering the nature of the offence.

13. In this case, however, the evidence on record does not justify the conclusion that the applt. was in such a state of intoxication as to be incapable of forming the specific intent essential to constitute the offence of murder. He came home, demanded food & drink, then quarrelled with his father, dragged him down & tried to throttle him. At that time he had no weapon in his hand. When his brother intervened & separated the two his father tried to assault him but his brother again intervened. Then the applt. ran to a place about 32 cubits away, pulled out a heavy wooden post (ex. 1) which had been fixed to a fence & gave a terrific blow on the head of his father & ran away. These acts indicate much deliberation on his part & they are incompatible with the alternative theory that due to his intoxicated condition he was incapable of forming the specific intent necessary for the commission of the crime. On the contrary this case comes within the second proposition of Lord Birkenhead L. C. i. e., the applt's mind was so much affected by drink that he more readily gave way to violent passion in consequence of the taunting word 'glutton' used by his father. When he gave such a blow he intended to cause such an injury as was sufficient in the ordinary course of nature to cause death & his action would come within clause '3rdly' of Section 300, I. P. C.

14. It also appears, for the reasons fully discussed in *Dilmahmad v. Emperor*, 23 P. L. t. 725: (A. I. R. (29) 1942 Pat, 420 : 43 Or. L. J. 883), that the applt's act also comes within clause '2ndly' of Schedule 00, I. P. C., That clause refers both to

intention & knowledge & an intention to cause bodily injury to a person may be sufficient to constitute murder under that clause if the offender knows that such an injury is likely to cause the death of the person to whom harm is caused. In the present case it cannot be said that the applt was in such a state of intoxication as to be incapable of forming any intent at all. When he gave the blow on the head of his father he intended to cause him an injury. As to his knowledge about the effect of such an injury on his father a presumption may be made by virtue of Section 86, I. P. C. on the assumption that he committed the act as a sober person Any sober man would surely have known that the giving of such a blow with a thick wooden post on the head of an old man of 55 years was likely to cause his death. Therefore the applt was guilty of murder under clause '2ndly' of Schedule 00, I. P. C.

15. None of the Exceptions to Schedule 00, I. P. C. applies to the facts of the present case & the applt. was rightly convicted under Section 302, I. P. C. His drunkenness & the absence of premeditation were sufficient to justify the imposition of the lesser penalty.

16. I would therefore affirm the conviction & sentence passed on applt. Sudhu Kumbhar & dismiss his appeal.

Jagannadhadas J.

17. I agree with my learned brother that the conviction & the sentence passed on the applt. should be confirmed.

18. On the evidence in this case, it is clear that though the applt. was drunk, he deliberately intended causing bodily injury to the deceased. The deceased was assaulted with the wooden post, Ex. I, which has been identified by p. w. 5 as one of the posts of his fence near his gate. The place wherefrom the post must have been removed was about 32 cubits away from the spot where the deceased fell down. The act of the applt. in running up to the place 32 cubits away, pulling down a post from the fence & beating the deceased with it, cannot but be held to be intentional & the intention must have been at least to inflict bodily injury. The actual injury inflicted was a very severe one as appears from the evidence of the

Doctor, p. w. 8, & was one which would necessarily have caused death. It may or may not be that in his state of drunkenness, the accused knew that the injury would result in death. But it is just at this point that the presumption Under Section 86, I. P. C. comes in & that knowledge must be imputed to the accused. There is no doubt that if the accused intentionally caused bodily injury & knew that the bodily injury was such as was likely to cause the death of the person injured, the case would be covered by the second clause of Section 300. It is contended that in view of the fact that the instrument used was only a wooden pole & not any weapon like a sharp knife the requisite intent cannot be ascribed to the assailant & that he would be guilty only Under Section 304, I. P. C., for culpable homicide not amounting to murder. But in this case having regard to the fact that the pole used was a stout & strong one of 6 1/2' in girth & 10' in length, as appears from the seizure list, ex. 2 & in view of the fact that the bones of the brain were found smashed like a coconut shell, the fact that the weapon used was a wooden one, does not negative the requisite intent.

19. The only hesitation that I felt in this case was due to the fact that there is complete lack of evidence as to what exactly happened at the point of time when the fatal blow was dealt on the deceased. But in the circumstances & on the evidence there can of course be no reasonable doubt that the assailant was the applicant, & that the weapon used Ex. 1. It is possible, however, that the blow may have been given on account of grave & sudden provocation offered afresh by the deceased or on account of circumstances which impelled the accused to act in self defence. The evidence of P. w. 1, with reference to the previous stage of the quarrel indicates that after he separated the deceased & the accused the deceased became aggressive & attempted to catch hold of the accused & that he had to intervene a second time to get the accused released from the hold of the deceased. He also says that the accused went out of the courtyard towards the village lane while his father was standing there. It is therefore not altogether unlikely that something else in the nature of fresh provocation or aggression on the part of the deceased happened which gave rise to the second stage of the occurrence leading to the fatal blow. What exactly happened, however, can only be a matter of bare conjecture & there are no sufficient circumstances to enable us to come to any definite conclusion as to what exactly happened. According to the

terms of Schedule 05 Evidence Act , the Ct. must presume the absence of circumstances bringing a case within any of the general exceptions or special exceptions or provisos. There is no scope for the accused being given the benefit of doubt as to the existence of such circumstances.

20. The case raises the question as to the exact scope of Section 86, I. P. C. It is unnecessary to discuss the matter at length as my learned brother has dealt with the same. I accept the view taken in *Dilmahomed v. Emperor*, 21 Pat. 250 : A. I. R. (29) 1942 Pat. 420 : (43 Cr. L. J. 833); *Manindralal v. Emperor*, 41 C. w. N. 1187 : (A. I. R. (24) 1937 Cal. 432 : 38 cr. L. J. 868) & *Ngatun Baw v. Emperor*, 13 Cr. L. 3. 864 : (6 L. B. R. 100 F. B), that under Section 86, a presumption arises only in respect of knowledge but not in respect of intent. In such cases the usual inference that a person is presumed to intend the natural consequences of his act where he knowingly does an act which normally produces such consequences, does not necessarily follow from this statutorily presumed knowledge. The requisite intent is to be gathered from all the circumstances of the case & not on the basis of the mere presumed knowledge.

21. We must acknowledge the help given to us in this case by Mr. Pal who has appeared *amicus curiae*.