

Ulla Mahapatra Vs. the King

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Court : Orissa

Decided On : Apr-24-1950

Reported in : AIR1950Ori261; 16(1950)CLT102

Judge : Jagannadhadas and ;Panigrahi, JJ.

Acts : [Evidence Act, 1872](#) - Sections 118; [Indian Penal Code \(IPC\), 1860](#) - Sections 83 and 300; [Reformatory Schools Act, 1897](#) - Sections 8

Appeal No. : Criminal Appeal No. 94 of 1949

Appellant : Ulla Mahapatra

Respondent : The King

Advocate for Def. : Government Adv.

Advocate for Pet/Ap. : P.V.B. Rao and ;S.C. Patnaik, Adv.

Judgement :

Panigrahi, J.

1. The appellant, Ulla Mahapatra, is a boy of about twelve years of age. He has been convicted of an offence under Section 302, Penal Code for causing the death of a Dandasi boy named Ranka Naik and has been sentenced to transportation for life.

2. The case for the prosecution is that on the afternoon of 20th April 1949, the appellant Ulla was getting palm fruits plucked from a tree standing on his land. Another boy named Khallia had been engaged to cut the fruits. The appellant was gathering the fruits from the ground and carrying them to his cow-shed in a basket and he was being assisted in this work by two other boys, Bhagawan and Prahlad, It is said that Khallia got down from the tree after cutting down all the fruits from it and was eating a fruit that had fallen on the ground. At that time the deceased boy, Ranka, arrived at the spot, on his way home after a bath, accompanied by another boy friend named Nakula of the village. Ranka picked up a fruit from the ground whereupon the appellant protested and demanded its price. Ranka thereafter threw the fruit and is said to have remarked that he would cut the appellant to pieces if ever he went to the Tope for plucking palm-fruits. At this the appellant got excited and told the deceased that he would not allow him to do so, as he himself would cut Ranka to bits then and there. So saying, the appellant, true to his word, struck Ranka with a kathi on the left side of his chest, just below the collar bone. The deceased fell down and died on the spot. Khallia immediately went to the village and gave out what had happened and the Karji took down a statement from him. The Sub-Inspector of Police who happened to be in the adjoining village arrived on the spot at 5 p. m., on hearing about the occurrence, on the same day. The post-mortem was held on the body of the deceased at about 8 p. m, and the corpse was sent to the hospital at Purushottampur. A vigorous search was made for the appellant and the kathi with which he is alleged to have killed Ranka (M. O. II) but the appellant could not be traced nor could the weapon be recovered. The appellant, however, surrendered himself at the Police Station the next day.

3. The plea of the appellant was that the death of Ranka was brought about by an accident. According to his defence, Khallia dropped his knife (with which he had been cutting fruits) from the tree just, as he was about to get down and as Ranka was looking up, the knife of Khallia fell on his collar bone and caused the fatal injury.

4. The prosecution examined five eye-witnesses, all children, said to have been present at the occurrence, and they all unanimously support the prosecution version regarding how the death of Ranka was caused, [After stating the evidence

of these witnesses his Lordship proceeded :]

5. Learned counsel for the appellant has very severely criticised the evidence of these witnesses and asks us to reject their testimony as they are all children and can be easily made to repeat a story put into their minds. The learned Sessions Judge was satisfied that P. W. 1 the youngest of them was intelligent enough to understand the nature of the evidence she was giving and was impressed with her evidence as being true. P. Ws. 3, 4 and 5 are over 12 years of age and they have been examined and cross-examined at great length. We have ourselves gone through the evidence carefully and we are left with the impression that they are not speaking to a made-up story, as has been suggested against them, on behalf of the appellant.

6. But by far the strongest corroboration of the evidence of these witnesses comes from the evidence of P. W. 6 the doctor. [After stating the evidence of the doctor, his Lordship proceeded :] The wound according to him, therefore, must be the result of a violent blow with the weapon and not merely the result of its fall from a height. Having regard to this opinion of the doctor, I am satisfied that the version given by the witnesses P. Ws. 1 to 5 appears to be the correct one and that Ranka died as a result of a blow given by the appellant with a kathi like M. O. II.

7. Another circumstance that corroborates the evidence of these witnesses is the fact that the dead body of the deceased Ranka was found at a distance of about 40 feet from the tree. The deceased received the injury when he was at a distance of about 36 feet from the foot of the tree; after receiving the injury, it is said, he moved to a distance of 12 feet. The spot where the dead body was lying is marked '3' in the spot map and measures 48 feet from the tree. This accords with the evidence of P. Ws, 1 to 5 regarding the manner in which the deceased was assaulted and later fell down, after moving back a little distance. It is true that children of tender age, generally speaking, are not to be regarded as trustworthy witnesses since they can easily repeat glibly a story put into their mind and do not possess the discretion to distinguish between what they have seen and what they have heard. As a matter of prudence, therefore, Courts are generally chary of putting absolute reliance on the evidence of a solitary child witness and look for

corroboration of the same from other circumstances in the case. The circumstances of this case, however, are such that no reasonable doubt can be entertained regarding the trustworthiness of these witnesses. The occurrence took place in broad daylight, and immediately after the occurrence the children gave out in the village what had happened. They were examined by the Sub-Inspector of Police (P. W. 17) that very evening before any story could be fabricated. These witnesses are all drawn from different classes and come from different streets of the village, and all of them happened to be at or near the scene of occurrence-by accident. And it has not even been suggested that anybody was particularly interested in bringing the appellant to trouble by falsely implicating him and by putting a made-up story into the mouths of these witnesses. We have, accordingly, no hesitation in accepting the prosecution version as an unvarnished representation of the true facts.

8. Mr. P. V. B. Rao, learned counsel for the appellant, strenuously urged that even if the prosecution version were to be accepted, the offence would be one of culpable homicide not amounting to murder as the appellant did not know the nature and the consequences of what he was doing, owing to his tender age and immaturity of understanding. Reliance was placed on the rule of law enunciated in Section 83, Penal Code which lays down that nothing is an offence which is done by a child above seven years of age and under twelve who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion, We are satisfied from the medical evidence that the appellant is over eleven and below twelve years of age. But that is all that can be said in favour of the appellant. The manner in which he has answered questions put to him by the Court in what appears to be a fairly lengthy examination leaves the impression on my mind that the appellant is an extraordinarily precocious child. He gave out his age as 14 years and pleaded that as the village was divided into two factions he had been falsely implicated in this case. He gives very minute details of what he did after his return from his padar lands, prior to the occurrence, how he went to Sanya Farida and later to Khallia, and how he bargained for wages. He also tries to explain away every little detail of the evidence against him and says that his kathi had been taken away by his father and that the basket was in the cow-shed and that he had asked Bhagawan to fetch it for him. He denies

that Banka was returning from his bath and says that Banka accompanied him (the appellant) while he was returning from Khallia's house and that, at Khallia's invitation, Banka came to the spot to help pick up the fruits. The appellant, however, admits that after the occurrence he went away to his padar and returned home late in the night. The answers that he gave to the questions put to him by the learned Sessions Judge appear to disclose an acute and intelligent mind and he can by no means be regarded as suffering from any immaturity of understanding. The words alleged to have been uttered by him to the effect: 'I shall cut you to bits now' show that he realized the nature and consequences of what he was going to do. What Section 83, Penal Code contemplates is that the child should know the natural and physical consequences of his conduct. When the appellant picked up his knife and advanced towards the deceased with a threatening gesture, saying that he would cut him to bite, and did actually cut him, his entire action can only lead to one inference, namely, that he did what he intended to do and that he knew all the time that a blow inflicted with a kathi would effectuate his intention.

9. Another argument that was argued at some length on behalf of the appellant is that the offence, even if proved, is one of culpable homicide not amounting to murder as the Act of the appellant falls within either Exception 1 or Exception 4 to Section 300, Penal Code. Under Exception 1, culpable homicide is not murder if the offender, while deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation. All that has been proved in this case is that the deceased orally threatened the appellant that he would cut him to pieces if ever he went to the tope sometime in the future to cut palm fruits. According to the evidence, the deceased did no more than pick up a fruit. Can it be said, in the circumstances, that his words alone would amount to sufficient provocation within the meaning of Exception 1 to Section 300, Penal Code so as to reduce offence of murder to one of culpable homicide? Whether or not there is provocation in a particular case is essentially a question of fact. There can be no universal rule as to what may amount to provocation. It has been repeatedly held in England that words alone can never, in law, amount to sufficient provocation so as to reduce the offence of murder into one of culpable homicide when the act is done with intent to kill. The test, in all such cases, is firstly whether

the accused was subjected to such provocation as to cause a reasonable man to do what he did, and secondly whether the provocation was such that it influenced him so to act. If, on the facts, it appears that a reasonable man might be so rendered subject to passion as to lead him to violence, with fatal results, and that he was, in fact, under the stress of such provocation, it will then be a question of law whether the doctrine will not apply. But mere verbal provocation, even if it be threats or gestures or by the use of abusive and insulting language, cannot induce a reasonable person to commit an act of violence. The case of provocation caused by physical attack is, on the other hand, different as the instinct of self-defence will be roused and the provocation may be both grave and sudden. In such a case the question is one of degree rather than of kind. Whether the physical attack was of such a degree as to deprive the victim of it of his power of self-control will depend upon the nature of the injury, the nature of the weapon used, and the actual injury caused. But hard words never break bones and the law expects a reasonable person to endure abuse without resorting to fatal violence. As has been observed by Viscount Simon in *Holmes v. Director of Public Prosecutions*, 1946 A. C. 588: (1946-2 ALL E. R. 124),

'the law has to reconcile respect for the sanctity of human life with recognition of the effect of provocation on human frailty.'

There may be circumstances which may merely predispose to a violent act but these are not enough to bring the offender within the Exception referred to above. The provocation must be an act or series of acts which, by their very nature, would induce sudden and temporary loss of self-control in a reasonable man, so that it can be said that he is no longer master of his mind. But mere threat, which may induce a desire for revenge, cannot constitute provocation. Moreover the mode of resentment must bear some proper and reasonable relation to the provocation given. Words may be met by words and fists by fists. But the law will certainly not give any protection to a person who whips out a revolver and shoots because he is abused, even if it be in the foulest language. The explanation to Exception a leaves no room for doubt and it is always a question of fact whether the provocation in a particular case was grave and sudden enough to prevent the offence from amounting to murder. 10. We were also considerably impressed by

the able argument addressed by Mr. Rao, based on Exception 4 to Section 300, Penal Code. This exception reduces the offence of murder to culpable homicide if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel. It emerges from the evidence in this case that the deceased was returning from his bath with a kathi in hand. That kathi was removed from the spot by the deceased's sister and was later removed by the Sub-Inspector of Police. I was therefore inclined during arguments to accept the view of the learned counsel for the appellant, that the appellant did not take any undue advantage over the deceased when he used his knife. Unfortunately, however, there is an entire lacuna in the evidence as to whether the deceased made any use of his knife before he was assaulted by the appellant. It may be that the appellant was not bold enough to put the question straight to the child witnesses as to whether the deceased did not brandish his knife before the appellant or make any threatening gesture with it. On the evidence, therefore, as it stands, we are led to hold that the deceased made no use of his weapon though he was carrying it; and accordingly we find it difficult to accede to the contention that there was any fight between the deceased and the appellant prior to the occurrence, such as would bring the appellant's act within Exception 4 to Section 300, Penal Code.

11. Having regard to all the circumstances and the evidence in this case, we accept the findings of the learned Sessions Judge who has very carefully analysed the evidence and assessed it and come to the conclusion that the appellant is guilty under Section 302, Penal Code. We uphold the conviction and maintain the sentence passed on him. In view, however, of the tender age of the appellant, we do not think it proper that he should serve the sentence of transportation for life in a jail which will only make him a hardened criminal and mar his future life. We have, therefore, arrive at the conclusion that the proper action to be taken in this case would be to recommend the detention of the appellant in a reformatory school, under Section 8, Reformatory Schools Act VIII [8] of 1897).

12. The order of the Court shall, therefore, be that the appellant, instead of undergoing the sentence of transportation for life, shall be sent to a reformatory school and be there detained for a period of five years. The Registrar shall accordingly report this case to the Provincial Government for necessary action.

Jagannadhadas, J.

13. I agree that in the circumstances of this case and on the evidence the appellant must be held guilty under Section 302, Penal Code and that the conviction and sentence by the Sessions Judge must be upheld.

14. I agree also that this is a case in which in exercise of our powers under Section 8, Reformatory Schools Act, the appellant, instead of having to undergo the sentence of transportation should be sent to a reformatory school for a period of five years. It is not disputed before us that the appellant is a 'youthful offender' as defined. He is none the less so, though Section 302, Penal Code is also punishable with death. It is enough to satisfy the definition of 'youthful offender' in the Act if the offence of which he is convicted is also punishable with transportation. The age of the boy has been certified on expert examination and we accept it as between 11 and 12 by 4th June 1949, the date on which the expert, P. W. 6, gave the certificate, EX. 4.