Netrananda Behara Vs. the State

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Court : Orissa

Decided On : Jul-04-1968

Reported in : AIR1968Ori229; 1968CriLJ1626

Judge : G.K. Misra and ;B.K. Patra, JJ.

Acts : Indian Penal Code (IPC), 1860 - Sections 84 and 302

Appeal No. : Criminal Appeal No. 66 of 1966

Appellant : Netrananda Behara

Respondent : The State

Advocate for Def. : Government Adv.

Advocate for Pet/Ap. : G.B. Acharya, Adv.

Disposition : Appeal dismissed

Judgement :

ATRA, J.

1. The appellant was tried on a charge under Section 302, I. P. C., on the allegation that he committed murder of his wife Musa Dei at about 4 p.m. on the 16th December, 1964 by striking her on the head with the blunt side of an axe (M.O. I) and sentenced to imprisonment for life. The appellant married Musa Dei

about 4 to 6 years before the date of occurrence. They had no issues and there is also no evidence of the existence of any ill-feeling between the husband and the wife. The only other inmate of the house, namely, the mother of the appellant, was admittedly absent from home on the date of occurrence. At the time of the occurrence, P.W. 4 had gone to throw refuse in her manure pit which is very near to the house of the appellant and while there she heard Musa Dei crying 'Bapalo, Marigali. P. W. 4 immediately went and informed Kanchan Dei, P.W. 7, the sister of the appellant, whose house is about 100 yards off from that of the appellant. She immediately went to the appellant's house and found Musa Dei lying in the courtyard and the appellant was standing there with an axe in his hand. She ran away out of fear and cried out that Netra (appellant) had killed his wife.

On hearing this P.Ws. 2 and 3 who were working then in the nearby blacksmithy came running to the house of the appellant one after the other. P.W. 2 saw Musa lying in the courtyard in a pool of blood and the appellant standing in his khalla bari which is near to his no use holding an axe in his hand. P.W. 3 says that when he went to the spot he found the accused sitting in his 'danda duar' holding in his hand the handle (M.O. II) of the axe. The accused told him that he had killed the deceased. While he was trying to run away, P.W. 3 with the help of one Bali Padhan caught him and tied his hands and legs with a piece of cloth and detained him there till the police came. Information about the occurrence was lodged at the police station by P.W. 1 at 4-45 p.m. of the date of occurrence and Sri S. C. Das (P.W. 8), the A.S.I., who was in charge of the, police station at that time and who recorded the F.I.R. immediately proceeded to the spot, and held inquest over the dead body. P.W. 8 says that the accused made a statement before him which led to the discovery of the axe, M.O. I, from near a manure pit, in the bari of the appellant.

The dead body was sent for post-mortem examination and the Medical Officer (P.W. 5) found two lacerated wounds and an incised lacerated wound on the right parietal region of the deceased. On dissection he found fracture of right parietal and right temporal bones. The duramater was covered with bright red blood with few clots and lacerated in two places through which brain matter was protruding. The injuries were ante mortem in nature, and in the opinion of the doctor the death

was due to shock and haemorrhage as a result of the external and internal injuries sustained on the person of the deceased. The doctor was of opinion that the injuries could have been caused by the blunt side of the axe (M.O. I) and were sufficient in the ordinary course of nature to cause death. He denied the suggestion made to him that such multiple injuries could be expected by a fall over a stony surface.

2. The above are the facts established in this case and the question for consideration is whether on the basis thereof it an be held beyond reasonable doubt that it is the appellant who must have committed the murder. Admittedly there is no eyewitnesses to the occurrence. But nothing has been elicited in the cross-examination of any of the witnesses to show that any of them had any motive to depose falsely against the appellant. As stated before, besides the appellant and his wife there was no other person in the house when the occurrence took place. P.W. 4 heard Musa crying 'Bapalo, marigali' and she immediately went and informed the appellant's sister P.W., 7 about it. P.W. 7 immediately came to the spot and found the deceased lying in the courtyard and the accused standing there holding an axe. P.Ws. 1 to 3 who came immediately afterwards one followed by the, other saw Musa lying dead in a pool of Mood and the accused was there with the axe which on chemical examination was found stained with blood. It is not the case of the accused that any other person had killed his wife. In these circumstances the learned Sessions Judge was right in relying on the unimpeachable circumstantial evidence which leads to the conclusion that the accused must have killed his wife.

3. It is argued on behalf of the appellant that the appellant was insane at the time the occurrence took place and that, therefore, his case is covered by Section 84, I.P.C In support of this contention emphasis was laid on the total absence of any motive for the accused to commit the crime and also on the fact that the accused was insane for some time before the date of occurrence. So far as the second contention is concerned, there is evidence to show that the accused had fits of insanity some time before the occurrence took place. P.W, 1 had deposed that the accused had developed madness a year before the date of occurrence. But he asserts that he was not mad by about the time the occurrence took place. P.W 2

says that for about a year the accused turned mad and his father-in-law had taken him to Cuttack for treatment and he was cured, and after return from Cuttack he was attending to his normal work. He says that during his madness he was assaulting his family members, but not outsiders He was not sure whether at the time of occurrence the appellant was mad. P.W. 4 deposed that the accused had once developed insanity. P.W. 6, a co-villager of the accused, had stated that the accused was mad for 3 to 4 years, with lucid intervals. To the same effect is also the evidence of P.W. 7, sister of the accused, who says that the accused was mad previously and had recovered. But she made a further statement that at the time of occurrence she saw symptoms of madness in him.

The Circle Inspector of Police (P.W. 11) who took charge of the investigation on the day following the occurrence and examined the accused on that day found the accused normal and he had no reason to suspect that there was anything abnormal about him. The crucial point for consideration is not whether the accused was insane prior to the date of occurrence but whether at the time the offence was committed he was labouring under such a defect of reason as not to know the nature of the act he was doing or even if he knew it, he did not know that it was wrong and contrary to law. In coming to this conclusion the relevant circumstances like the behaviour of the accused before and after commission of the offence may be taken into consideration. P.W. 3 has deposed, and we see no reason to disbelieve his testimony, that when he came to the spot the accused had already thrown the blade of the axe somewhere and was holding only the handle and that he tried to run away. This attempt to run away on the part of the accused indicates that he was conscious of the crime he had committed which is inconsistent with the theory that at the time of committing the crime the accused was labouring under sum a defect of reason as not to know the nature and quality of the act he was doing or, if he did know it, that he did not know that it was wrong or contrary to law. No doubt P.W. 7, sister of the accused, has made the statement that the accused was mad at that time. But on account of the fact that she is closely related to the accused and as such anxious to save his brother from danger, it will not be safe to accept her uncorroborated testimony on this point.

It is true that there is complete absence of evidence regarding the existence of any motive on the part of the accused to kill his wife. As indicated before the accused and the deceased were the only inmates in the house when the occurrence took place. We do not know what transpired between them before the accused dealt the fatal blow on the deceased. In these circumstances, the mere absence of any apparent motive on the part of the accused to kill his wife cannot establish the defence case that the accused was mad at the time he committed the offence.

4. In the result, we uphold the conviction and sentence passed on the appellant and dismiss the appeal.

G. K. Misra, J.

5. I agree.