

Paramananda Patra Vs. State

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Court : Orissa

Decided On : Jan-24-1969

Reported in : AIR1969Ori222; 35(1969)CLT261; 1969CriLJ1147

Judge : G.K. Misra and ;S.K. Ray, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 84

Appeal No. : Criminal Appeal No. 154 of 1967

Appellant : Paramananda Patra

Respondent : State

Advocate for Def. : Standing Counsel

Advocate for Pet/Ap. : B.N. Mohanty, Adv.

Disposition : Appeal dismissed

Judgement :

G.K. Misra, J.

1. The appellant has been convicted under Section 302 I. P. C. and sentenced to imprisonment for life. He has also been convicted under Section 333, I. P. C. and sentenced to E. I. for 2 years. The sentences are to run concurrently.

2. The prosecution case may be stated in short. On 9-2-66 at about 11 A.M. the deceased was going in the company of his father (P. W. 11) to the Zilla Parishad Office at Bhawanipatna to file an application for the post of a teacher. While they were going on the jail road, the father suggested that they should have Darshan of the Goddess Kali before filing the application. They proceeded towards the Kali temple which was at a distance of about 1.1/2 furlongs from the jail road towards the north. The temple is situated on a hillock. The deceased was going ahead and P. W. 11 was behind at a distance of 30 to 40 cubits. When the deceased reached the gate of the temple, the accused suddenly came out with an axe in his hand and gave a blow on the former's neck. When the deceased fell down, he gave further blows and severed the head from the trunk. He placed the head near the doors of the temple which were closed. Being challenged by P. W. 11, the accused chased him with the blood stained Tangi. He ran on the road brandishing his weapon and shouting 'Victory to Kali' and 'Dustaku Marenga, Santhaku Palenga'. He wanted to attack whoever came on his way and caused injuries to a woman named Mithila and Reserve Inspector of Police (P. W. 14). He became violent and could not be caught hold of. He fell down while he was running and was caught hold of. The accused denied the charge and also took the plea of insanity. The learned Sessions Judge, on a thorough analysis of the materials on record, came to the conclusion that the death of the deceased was homicidal, that the accused killed the deceased, and that the plea of insanity was untenable.

3. The findings that the death was homicidal and that the accused killed the deceased are not rightly assailed before us. The body was severed from the head. P. W. 11 himself saw the accused killing the deceased. P. Ws. 12 and 13 are also eye-witnesses. It is therefore not necessary to discuss the evidence in detail.

4. The only question for consideration is whether the accused was insane at the time he committed the murder. Law on the point is well settled and has been recently discussed in Criminal Appeal No. 157 of 1966, Sarka Gundusa v. State : (AIR 1969 Ori 102). It was held therein that any and every type of insanity recognised in medical science is not legal insanity. Every minor mental aberration is not insanity. There can be no legal insanity unless the cognitive faculty of mind is destroyed as a result of unsoundness of mind to such an extent as to render

the accused Incapable of knowing the nature of the act or that what he is doing is wrong or contrary to law. The burden of proof of insanity is on the accused. Mere possibilities cannot however be sufficient to discharge the onus. It is not easy to lay down the tests as to how insanity within the ambit of Section 84 I. P. C. is to be established. Insanity at the time of the commission of the act is to be established. If on the evidence it is found that the accused had guilty consciousness, the plea of insanity must be rejected. In so judging, the antecedent and subsequent states of the mind of the accused are relevant to judge the state of his mind at the time of the commission of the offence.

5. On a close analysis of the materials on record, the following features exist in this case. They are:

(i) The accused was serving as a watchman in the settlement office at Bhawani-patna for about 5 years. On the date of occurrence he was on duty during the day time.

(ii) The Head Clerk of the settlement office (P. W. 6) states that on the date of occurrence the accused had noted his attendance in the attendance register and had put his signature thereon.

(iii) There is no evidence that at any stage prior to the date of occurrence the accused showed any sign of insanity.

(iv) P. W. 3 deposed that immediately before the occurrence the accused talked with him like a sane man, and that he found absolutely no abnormality in his mental condition.

(v) P. W. 5 stated that at about 9 A. M. on the date of occurrence the accused told him that he was suffering from fever and was unable to talk.

(vi) P. W. 24, the A. S. I., before whom the accused was produced, deposed that he did not mark any abnormal behaviour in the accused after the occurrence,

(vii) The Doctor (P. W. 22) examined the accused on the date of occurrence and put him a number of questions, to which the latter gave rational replies. The Doctor

found that the accused was mentally sound and there was absolutely no symptom of lunacy or unbalanced behaviour.

(viii) It is in the evidence of P. Ws. 1, 4, 15 and 16 that when the accused was disarmed of his axe, with which he was trying to attack everybody, the accused attempted to escape from the custody of the police and other persons assembling there.

The aforesaid facts establish beyond reasonable doubt that immediately before the occurrence the accused was in a sound state of mind and showed no symptom of insanity, and not even any unbalanced behaviour. He also did not show any symptom of insanity subsequent to his apprehension. He was quite sane and gave rational answers to the questions put. He also had guilty consciousness inasmuch as he tried to escape from custody. His antecedent and subsequent conducts and mental condition furnish the clue that he was quite sane even at the time of the commission of the murder. The accused does not even take a plea that he had any hallucination at the time of the commission of the murder.

6. Mr. Mohanty lays great stress on two features, namely, (1) that while the accused ran amuck he was shouting 'Victory to Kali' and 'Dustaku Marenga, Santhaku Palenga', and (2) that he wanted to assault anybody who came on his way. These two features are not inconsistent with the guilty consciousness. Immediately after the accused committed the murder in broad day light in the presence of P. W. 11 who made a hulla, the accused must have been aroused to his senses. The act of indiscriminate attack on whoever came on his way was to escape from any arrest by the members of the public. His shouting in the aforesaid manner is also consistent with a show that he killed the deceased to propitiate Goddess Kali. These two features are equivocal and are as much consistent with a show of innocence and attempt to escape as with existence of a hallucination. The particular feature that the accused attempted to escape from custody when overpowered, evinces his guilty consciousness, and the other circumstances discussed indicate that he had no insanity at the time of the commission of the murder.

7. Mr. Mohanty places strong reliance on AIR 1928 Cal 238, Karma Urang v. Emperor and AIR 1964 SC 1563, Dahyabhai v. State of Gujarat. No exception can be taken to the principles laid down in the aforesaid two decisions. Even in the Supreme Court decision the plea of insanity was rejected after discussion of the particular facts of that case. In the Calcutta case the plea of insanity was accepted as the evidence indicated that the accused had no reactions which a normal person would have. The facts of that case are that the accused cut off his father's head with a Dao in the morning. He picked up the head, wrapped it in something and was proceeding along the road to Silchar Court. When the matter was reported to the Thana, constables overtook the accused who was walking quite in an ordinary way. He was asked to come to the Thana. The accused quietly came to the Thana and narrated the story to the Assistant Sub Inspector. He said that he had a dream wherein Goddess Kali appeared to him and told him that either he would have to kill his father or he would kill him. The dream contained the further element that his father was descendant to the Goddess Kali. He was under observation of the Civil Surgeon for a considerable time. The Civil Surgeon was of opinion that the appellant had definite delusion, and that he was insane and could not distinguish right from wrong. After his arrest, the appellant was taken to his house where his father's body lay, and he had no reactions. He was excited when he was not allowed to take the head to Silchar Court. Chief Justice Rankin observed in that case that under Section 84 I. P. C. it must be shown that the man had no knowledge of the nature and quality of his act. A very common way of applying that test is to ask, in the circumstances, whether the man would have committed the act if a policeman had been at his elbow. From the fact that the accused showed no reactions when he was overtaken by the police or brought to the Thana or to the place where the dead body of the father was lying, his Lordship held that the plea of insanity was established. The facts of the Calcutta case are clearly distinguishable and can render no help to the appellant here.

8. On the aforesaid discussion, we are satisfied that the plea of insanity has not been established. The appeal fails and is dismissed,

S.K. Ray, J.

9. I agree.

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