

Krushna Singh Vs. the State

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Court : Orissa

Decided On : Jan-27-1971

Reported in : 37(1971)CLT321; 1971CriLJ1497

Judge : S.K. Ray and; S. Acharya, JJ.

Appellant : Krushna Singh

Respondent : The State

Judgement :

ORDER

S. Acharya, J.

1. The appellant stands convicted Under Section 302, Indian Penal Code and has been sentenced thereunder to undergo rigorous imprisonment for life.

2. The prosecution case, in short, is that on the afternoon of 17th February, 1966, Puma Ram (P.W. 13) the appellant, accused Kangali Ram, and one Jogi Ram played cards for sometime and thereafter went to a liquor shop and. all of them took liquor there. After drinking liquor when P.W. 13, the appellant, and Kangali Ram were returning on Jae village road and were in front of the house of P. Ws. 5 and 6, Purna Ram (P.W. 13) demanded from the said Kangali Ram his 8 annas which he had paid in excess for the price of liquor consumed by all of them. Thereupon, both the accused Kangali Ram and Krushna Singh the appellant,

pressed P.W. 13 down on the ground, and when P.W. 13 raised a hulla P. Ws. 11 and 12 immediately came to the spot. Accused Kangali Ram then gave a fist blow on the nose of P.W. 13 at that place as a result of which blood came out through P.W. 13's nose. P. Ws. 11 and 12 separated them and thereafter accused Kangali left that place. In the meantime, Krushna Ram the deceased, father of P.W. 13, arrived at the spot and when he was wiping out the blood on the face of P.W. 13 and enquired about the incident, accused-appellant Krushna Singh came with the bahangi, M.O. I. and with the same dealt a blow nearabout the left ear of P.W. 13's father, as a result of which he fell down on the ground with a bleeding injury and became unconscious. P, W. 11 brought a cot from the house of P.W. 12 and they all removed the injured to P.W. 12's house. The injured died soon thereafter. P.W. 13 lodged the F.I.R. at the police station on the next day. After investigation and commitment proceeding the appellant stood his trial for a charge Under Section 302, Indian Penal Code and the other accused Kangali Ram was charged Under Section 323, Indian Penal Code and both were convicted of their respective charges. The accused Kangali Ram as it appears, did not appeal against his conviction Under Section 323, Indian Penal Code. We are, therefore, not concerned with his case.

3. Both the accused pleaded not guilty to the charges. The appellant took the plea that he did not assault Krushna Rnm and that he did not produce the bamboo bahangi M.O. I. before P.W. 14 the Sub-Inspector of Police.

4. The Assistant Surgeon attached to the Baripada Hospital who conducted the post mortem examination on the dead body of Krushna Ram at 8 a.m. on 19th February, 1966 found the following external injuries:

1. One lacerated wound 1 1/2' x 1/4' x 1/2' over left side of scalp, left external ear cutting the pina of left external ear obliquely, nature of the injury grievous ante-mortem.

2. An area of contusion with half inch to 1/4' width all round the lacerated wound.

Underlying injury No. 1 there was intracranial bleeding of the menigial vessels resulting in clot and staining of meningeal. He opined that injury No. 1 was inflicted

by an edged blunt weapon like a bahangi with sufficient force so that it could tear the pina of the external left ear. He also opined that if a stroke was given with a bahangi of the size of M.O. I. it was sufficient to cause death in the ordinary course of nature. On the above medical evidence, it is evident that the deceased Krushna Ram died as a result of a fatal blow on his head and there is no doubt that his death was homicidal.

5. P. Ws. 5, 6, 8, 11, 12 and 13 are the six eye-witnesses to the occurrence. P. Ws. 1 and 9 speak about the extra judicial confession alleged to have been made by the appellant. As the said confessional statement was allegedly made before the villagers including P. Ws. 1 and 9 and the Constables who were guarding the dead body, we would accept the contention of Mr. Singh, the appellant's counsel, that the same could be said to have been made to the police and accordingly should not be taken into Consideration. The court below did not at all refer to the said confessional statement in the impugned judgment.

6. P.W. 13 is the son of the deceased. He has narrated the entire incident from beginning to end. He stated all that happened in the liquor shop, and he narrated the incident pro-', per as it happened on the village road) leading to the assault on the deceased by1 Krushna Singh. Regarding the incident on the village road he stated that when he (P.W. 13) was pressed down on the ground by the appellant and accused Kangali, he raised a hulla and P. Ws. 11 and 13 came out to the spot and separated them. The accused Kangali gave him a fist blow on his nose as a result of which blood came out through his nostrils. After a while when his father, the deceased, came to the spot and wiped out the blood from the face of P.W. 13 and enquired about the incident, the appellant came there with the bahngi M.O. I. by making a 'kulkul' sound (the sound produced by striking the fingers against the mouth) and on his father's protest, the appellant dealt a blow near the left ear of his father. His father foil down on the village road with bleeding injuries and became unconscious. P.W. 11 brought a cot from the nearby house of P.W. 12 and they removed P.W. 13's father to P.W. 12's house where P.W. 13's father died after some time. He identified M.O. I to be the bamboo Bahangi with which the appellant gave a blow on his father's head. He lodged F.I.R. Ext. 6, next day at the police Station. His evidence was challenged as untrustworthy of credit as there are

slight variations between his evidence in court and his statement in the F.I.R. While he stated in the F.I.R. that-

when my father was separating me in a bending posture Krushna Singh gave a bahangi blow on his left ear.

In Court he stated that-

In the meantime my father arrived. He wiped out blood from my face and asked me about the incident. Accused Krushna came with a bahangi while he was making 'kulkul' sound. On my father's protest, he dealt a bahangi blow near the left ear of my father.

I do not see much of a material discrepancy in the aforesaid two statements of P.W. 13. Moreover, it must be remembered that P.W. 13 by the time of lodging the F.I.R. had lost his father in the incident and he was injured himself. He was naturally perplexed and mentally unnerved and depressed at the time when he reported the matter at the police station, and it was not expected of him to narrate the entire incident in correct minute details. The testimony of this witness cannot be brushed aside merely because of such minor variations, as his evidence, otherwise on all material particulars, gets suitable corroboration from the evidence of other eye-witnesses, and from the injuries as found on the person of the deceased by the doctor P. W, 7. P. Ws. 5 and 6 are respectively the wife and son of Purna Behera in front of whose house the occurrence took place. They came out on hearing the hulla of Purna Ram. P.W. 5 stated that on hearing the hulla on the village path in front of her house she came out and saw accused Kangali and Krushna catching hold of Purna Ram and pressing him on the ground. She also stated that the deceased Krushna Ram arrived there and when he enquired from the accused persons as to why they were fighting with each other, accused Krushna Singh came with a bahangi and gave a blow with the same on the head of the deceased Krushna Ram, as a result of which he fell down on the ground with bleeding injuries. She also stated that P. Ws. 11 and 12 carried the injured Krushna Ram to the house of P.W. 12. She also stated that P.W. 6, her son saw the occurrence.

'P.W. 6 was a boy aged 16 years, but he was a student of Class VI at the time when he was examined in Court, and on the assessment made by the Court below he had attained sufficient maturity of understanding. He corroborates P.W. 5 and P.W. 13 in material particulars. P. Ws. 11 and 12 arrived at the spot at the time of occurrence. The house of P.W. 12 is at a short distance from the place of occurrence. P.W. 8 was working in his threshing floor about 15 to 20 cubits away from the place of occurrence and when he heard some noise he came out of the threshing floor to the adjoining village road and therefrom he saw the last part of the occurrence, and he testified to the effect that when the deceased Krushna Ram was wiping out the face of his son (P.W. 13) the appellant Krushna Singh came there with a bahangi and gave a blow on the head of Krushna Ram near the left ear, as a result of which the deceased fell down with bleeding injury on the spot.

7. On a thorough perusal of the testimony of the eye-witnesses, we find that they corroborate each other on material particulars with regard to the incident proper. There are some minor variations and discrepancies in their evidence here and there and such discrepancies are bound to occur in human testimony especially when one is examined after a long lapse of time. On going through the evidence of the above-mentioned witnesses, we are satisfied that such minor variations and discrepancies do not affect the intrinsic merit of their evidence. There is nothing to show that P. Ws. 5, 6 and 8 were interested in the prosecution party or were in any way inimically disposed towards the accused so as to implicate him in a grungy offence like murder. On their evidence, considered along with the evidence of P.W. 7 the doctor, it is established beyond all reasonable doubt that it was the appellant who gave a blow which fell on the head of the deceased with the bahangi M.O. I. causing injury No. 1 on the deceased as a result of which he died after some time.

8. Mr. Singh Deo, learned Counsel appearing for the appellant, at last contended that having regard to the provisions of Section 86, Indian Penal Code and because of the total absence of any motive or premeditation to kill in this case, and the fact that the appellant was heavily drunk at the time of occurrence, the offence committed by the appellant, if at all, would fall only Under Section 304. Part II,

Indian Penal Code and not Under Section 302, Indian Penal Code of which he has been convicted. Mr. Singh Deo in support of his above contention cited the decision in Basudev v. State of Penu, (: 1956 CriLJ919) wherein their Lordships in considering; the application of Section 86, Indian Penal Code to a case of voluntary drunkenness, laid, down as follows:-

(4) It is no doubt true that while the first part of the section speaks of intent or knowledge the latter part deals only with knowledge and a certain element of doubt in interpretation may possibly be felt by reason of this omission. If in voluntary drunkenness knowledge is to be presumed in the same manner as if there was no drunkenness, what about those cases where mens rea is required?

Are we to place intent on the same footing and, if so, why has the section omitted intent in its latter part? This is not the first time that the question comes up for consideration. It has been discussed at length in many decisions and the result may be briefly summarised as follows:-

(5) So far as knowledge is concerned, we must attribute to the intoxicated man the same knowledge as if he was quite sober. But so far as intent or intention is concerned, we must gather it from the attending general circumstances of the case paying due regard to the degree of intoxication. Was the man beside his mind altogether for the time being?

If so, it would not be possible to fix him with the requisite intention. But if he had gone so deep in drinking, and from the facts it could be found that he knew what he was about, we can apply the rule that a man is presumed to intend the natural consequences of his act or acts.

(6) Of course, we have to distinguish between motive, intention and knowledge. Motive is something which prompts a man to form an intention and knowledge is an awareness of the consequences of the act. In many cases, intention and knowledge merge into each other and mean the same thing more or less and intention can be presumed from knowledge. The demarcating line between knowledge and intention is no doubt thin, but it is not difficult to perceive that they connote different things. Even in English decisions, the three ideas are used

interchangeably and this has led to a certain amount of confusion.'

In the present case, it is proved that the appellant was intoxicated. Therefore, on the above view of the provisions of Section 86, it is important to consider if because of the intoxication the accused was rendered entirely incapable of forming the intent required for the first three clauses of Section 300. If the accused was intoxicated to the extent that he was beside his mind, it would not be possible to fix him with the requisite intention. Examining the facts and circumstances of this case, on the basis of the law as laid down above by the Supreme Court we find that the prosecution has not established any motive for the crime which could have prompted the appellant to form an intention to kill the deceased. There is absolutely nothing to suggest that there was any enmity between the appellant and the deceased or his son P.W. 13. The prosecution evidence, that P.W. 13 and the appellant played cards and took liquor just sometime before the occurrence suggests that they were on friendly terms with each other. The incident of pressing down P.W. 13 on the ground arose almost out of thin air. It is the consistent case of all the eye-witnesses that when the deceased came to the spot and was looking after the injuries sustained by P.W. 13 and enquired about the incident, the appellant came running to the spot by making a 'kukul' sound (sound created by striking the fingers, against the mouth) and without any rhyme or reason dealt one blow on the deceased with the bahangi M.O. I. which fell on his head as a result of which the latter sustained a bleeding injury and died after some time.

The doctor P.W. 7 opined that death was due to shock and internal haemorrhage, and he did not definitely state that the injury inflicted was sufficient in the ordinary course of nature to cause death. P.W. 5 had stated before the police that at the time of the occurrence the appellant was heavily intoxicated. On all the above facts and the attendant general circumstances and the peculiar conduct of the appellant it can be said that the appellant at the time of occurrence was beside his mind, and on the basis of the law laid down by the Basudev's case, the requisite intention under the first three clauses of Section 300, Indian Penal Code cannot be attributed to the appellant. But all the same, in such a case of voluntary drunkenness knowledge has to be presumed against the appellant in the same manner as if there was no drunkenness. By attributing the requisite knowledge to

the appellant and on the facts and circumstances and the doctor's evidence, the act of the appellant, causing the death of the deceased, comes only Under Section 304, Part II, Indian Penal Code, as the said act can legally be presumed to have been done with the knowledge that it was likely to cause death of the appellant, and was without any intention to cause death or to cause such bodily injury as was likely to cause death. Accordingly, the conviction of the appellant Under Section 302, Indian Penal Code cannot stand but he is liable to be convicted Under Section 304, Part II, Indian Penal Code.

9. In the result, therefore, while setting aside the conviction and the sentence of the appellant Under Section 302, Indian Penal Code he is hereby convicted Under Section 304, Part II, Indian Penal Code and sentenced thereunder to undergo rigorous imprisonment for 10 years.

10. The appeal is accordingly partly allowed.

S.K. Ray, J.

11. I agree.

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