

Basanti Vs. State

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Court : Orissa

Decided On : Apr-14-1988

Reported in : 1989CriLJ415

Judge : G.B. Patnaik and ;L. Rath, JJ.

Appellant : Basanti

Respondent : State

Judgement :

L. Rath, J.

1. The conviction of the appellant under Sections 302 and 309, I.P.C. and sentence to imprisonment for life and simple imprisonment for one year respectively For having murdered her two children, a son and a daughter, and for her attempt to commit suicide has occasioned this appeal from the jail. Both the sentences have been directed to run concurrently.

2. Briefly stated, the charge against the appellant is that sometime before the dawn of 26-11-1981 she went to the sugarcane field of her husband (P. W. 6) with her son and daughter aged 4 years and 2 months respectively and jumped into the well in a pre-planned manner while holding the two children. As a result, both the children died of drowning whereas she herself, while drowning, caught hold of the root of a tree inside the well and remained suspended with her foot touching the

water and producing 'Chab Chab' sound which attracted the attention of some of the witnesses making them think that a bear which had come into the ripe sugarcane field might have fallen inside the well. P. W. 2 who was sleeping in the sugarcane field nearby raised hulla and other villagers including P. Ws. 3, 8 and 10 came there and on ascertaining her identity, P. Ws. 3 and 8 pulled her out. On being brought out, she volunteered that as her mind was not alright, she had thrown both the children inside the well and that she herself had jumped inside it. She also requested the witnesses to bring out the two children. Hearing the hulla, the appellant's husband (P. W. 6) and his family came near the site and took the appellant home. P. W. 9 entered inside the well and brought out the boy who was already dead. Later on at about 10 or 11 a.m. the body of the girl was brought out by P. W. 9 with the help of a grapnel. An information being lodged by P. W. 1, younger brother of P. W. 6, the husband of the appellant, in the police station, inquest was held over the dead bodies and after completion of investigation charge-sheet was submitted under both the sections against the appellant.

3. The post-mortem examination was conducted by P. W. 4 on the body of the girl while P. W. 5 conducted the post-mortem examination of the boy. Both the doctors consistently opined that their death was on account of asphyxia due to drowning. Such evidence has not been challenged and hence it can safely be concluded that their death was homicidal.

4. The defence of the appellant was one of denial with the version that while she was trying to pull water from the well with the help of a Tenda to clear herself after easing, leaving her two children near the well, she slipped and fell inside it and since the son while holding the baby sister was peeping inside the well to find out what had happened to his mother, both fell inside the well and were drowned.

5. There is admittedly no eye-witness to the occurrence. Nobody had seen the appellant jumping into the well with the two children.

6. The learned Sessions Judge in finding the appellant guilty of the charges has, besides relying upon the extra-judicial confession made by her as deposed to by P. Ws. 2, 3, 8 and 10 that she had jumped into the well her mind being not alright, also has relied upon the circumstances- (a) of her being rescued from the well

along with the children; (b) that there was no necessity for her to go near the well in the sugarcane field situate at a distance of 1/4 mile from the home, in the last part of that deep winter night with the two children unless she had a pre-plan of jumping into the well and that it was not a place for answering the call of nature as revealed in the evidence, and (c) that prior to the occurrence she had been remaining in a morose condition since she had been advised by her family not to take opium and she was having a blank look at her mother-in-law (P. W. 7) and was complaining pain in her legs and hands.

7. The evidence regarding the appellant having been rescued from the well in a drenched and shivering condition and the recovery of the two bodies from the well is most consistent and overwhelming as revealed from the statements of P. Ws. 1, 2, 3, 8 and 10. It is not worthwhile to discuss such evidence at length since no exception can be found to the analysis of evidence of the learned Sessions Judge on the point. Mr. N. C. Pati, the learned Counsel appearing for the appellant, however, urged that such evidence by itself does not lead to the conclusion that the appellant had jumped into the well along with her two children and that such conclusion of the learned Sessions Judge is exclusively based upon the confession of the appellant which is not credible. It is his submission that if the confession is discarded, then there is absolutely no evidence to link the appellant with the drowning of the two children, or her attempt to commit suicide.

8. The evidence of P. Ws. 2,3,8 and 10 is assailed urging that they are close relations of the husband (P. W. 6) of the appellant and that they are not persons in whom she could have any reason to confide and that their very presence at the spot was improbable. So far as P. W. 8 is concerned, he is admittedly the uncle (Mouza) of P. W. 6. The challenge to his credibility is on the ground that though his house is not nearer to the well and as is disclosed from the evidence of P. W. 1 there were residential houses within 50 cubits from the sugarcane field, none came from such, nearby houses to the spot hearing the hulla of P. W. 2 and further that it is against the normal human conduct to have left the place without trying to rescue the children from the well as was admitted by P. W. 8. The fact of P. W. 8 being the uncle of P. W. 6 is in no way a discrediting factor against him. He also likewise stands in the same relation to the appellant and the defence

suggestion that P. W. 6 was trying to send the appellant to the gallows or to get her convicted so as to be able to take a second wife does not appear to have any basis at all. The attack made otherwise on his evidence is also hardly such so as to raise any doubt as to his bona fides. Similarly the challenge to the evidence of P. Ws. 2 and 3 on the basis of they being agnates of P. W. 8 has no substance. It is also not correct that these witnesses were not such persons in whom the appellant could not have reposed confidence to make a confession. It is not the case of the prosecution that any specific confession was made only to these witnesses. The witnesses were her co-villagers and they knew her well and were also either her near or distant relations. Besides the witnesses, others of the village had also assembled at the spot. It is the consistent evidence that after being brought out from the well, she made the voluntary Statement of having jumped in to it along with her two children since her mind was not working properly. This was not the making of a confession before any particular witness but a voluntary statement made by her to the gathering and such fact is only deposed to by the witnesses. There is nothing in their evidence to warrant discarding of the confession as being tainted in any manner since it appears both credible and free from coercion and hence can rightly be relied upon to bring home the charge against the appellant.

9. Mr. Pati has next raised the plea of legal insanity of the appellant to avoid the charge and has submitted that she was mentally deranged and due to insanity had no conscious control of her actions for which no finding of guilt can be recorded against her. To canvass such a contention reliance has been placed on the evidence of P. Ws. 1, 6 and 7, i.e. the brother-in-law, the husband and the mother-in-law of the appellant and on the evidence of P. W. 9. Besides, it has also been contended that the very fact that the appellant murdered her two minor children apparently without any motive would itself be conclusive to show that she was not in control of her mental faculties.

10. The legal position as regards a plea of insanity as a defence against criminal prosecution is too well settled. A mere insanity as is known in the medical science is not sufficient to dismiss a charge of criminal prosecution unless the insanity alleged is one which is shown to have been suffered at the time of commission of

the offence. It is necessary for the court to reach the conclusion that at the time the offending act was committed the accused was deprived of his cognitive faculties to such extent that he was not capable of distinguishing between the right and the wrong or the legal and the illegal so that he could not be held responsible for his own actions. The onus to prove such a mental state is on the person charged with the crime even though the nature of the proof required is different from that required of the prosecution, inasmuch as while in the case of the latter the requirement is proof beyond the reasonable doubts, in the case of the former it is only preponderance of probabilities. An exhaustive discussion on the subject was made in a decision of this Court in (1986) 1 Orissa LR 536 : 1987 Cri LJ 618 Shama Tudu v. State bringing out the essential features of the principles underlying the section and it is not necessary to reiterate the same here.

11. The statements of P. W. 1, relied upon to press the plea, is to the effect that after the delivery of her second child the appellant was suffering from a type of ailment of having burning sensation throughout her body (JALAPODA BATA) of which she was treated by a village quack, but since then she had been losing her mental balance at times. The husband and mother-in-law of the appellant had heard that she had been addicted to opium and they had been advising her about three months prior to the occurrence not to fall prey to it and that after such prohibition, the appellant was sitting in a morose condition and was not enthusiastically doing household work. She had been watering plants even during the rains though being herself drenched in the process and on being questioned, was not giving any reply and was also replying that unless watered the plants would die. A further example, cited by the witness, was that during hail-storms the appellant would remain inside the room and would be continuously telling for months that if the hail-storm would continue for an hour then all the members of the family would die. Such condition continued till she fell into the well. This very witness however replied, to a court question, that the appellant was able to understand everything during their talk in the house and again stated that at times she was not able to understand the discussions made in the house and even further thereafter stated that she was understanding everything well and was doing good work in the house by the time she fell into the well. She was also having excellent relationship with her husband and her mother-in-law as also the rest of

the family members. From such statements there could be absolutely no conclusion that at the time of commission of the act she had lost her power of discretion and judgment so as not to be responsible for her action. P. W. 6 is her husband whose evidence is completely against any plea of insanity being to the effect that her mind was always alright and she was behaving alright before the death of the children. He also contradicted his brother P. W. 1 by saying that it is not true that the appellant was watering plants either during rains or immediately after rains or that she was replying that unless watered during rains the plants would die and that it was also not a fact that during hail-storms she would hide herself in a corner of the house and that it was not true that there was any mental i derangement of her at any time. The j statement of P. W. 7, the mother-in-law of l the appellant, relied upon by Mr. Pati, is to i the effect that the appellant was loitering here and there in the Sahi and elsewhere and was coming home at her sweet will and was taking food when called, that since three to four months prior to the occurrence her mind was not alright as that of a normal man, but she was not mad though she was having a blank look at her whenever she told the appellant anything during the last three to four months. This evidence by itself also does not show that the appellant had completely lost her power of understanding or had no capacity for judgment of the right or wrong and good or bad at the time the occurrence took place. P. W. 9 also does not speak anything more except that since last two to three months prior to the occurrence the appellant was in a morose condition and used to say that she was not feeling well mentally.

12. Any plea of insanity having been responsible for the act of the appellant is completely belied by the evidence of P. Ws. 2, 3, 8 and 10 who have consistently stated that on being rescued from the well the appellant had voluntarily stated that as her mind was not alright, she had thrown both her children into the well and had herself jumped inside it and that she also requested others to bring out the children from the well. It is the evidence of P. W. 2 that the appellant was in her full senses when she was brought outside the well. The fact would show the appellant being conscious of her act as not proper was offering an explanation of having resorted to the same because of her mental infirmity. A person who has the judgment to weigh his own actions and being conscious of their illegality is able to offer an exculpatory explanation, can certainly not be said to be suffering from any

legal insanity so as to keep such actions outside the purview of penal provisions. Mr. Pati relied upon : AIR1968 Delhi177 Mst Shanti Dev v. State to urge that where a mother murders her own children without any motive for the same, the act itself is intrinsic evidence of insanity. The decision itself is not an authority for the proposition so widely stated. Only absence of motive is not sufficient by itself to uphold a plea of insanity and their Lordships of the Delhi High Court were merely of the view that though lack of motive may not be a ground to sustain the plea of insanity under Section 84, I.P.C., yet the various circumstances disclosed by the evidence in that case taken along with the absence of any motive whatever, established the plea of insanity. Absence of motive is only a factor which may be worthwhile to consider but however by itself it would never be conclusive of the fact. The question was considered in AIR 1968 Orissa 223 : 1968 Cri LJ 1626 Netranand Behera v. State where such a contention was repelled. (1973) 39 Cut LT 1289 Makra Singh v. State which also relied upon the Delhi decision (supra) did not accept any such proposition but only emphasised that absence of any motive for the crime in the facts and circumstances of the case assume immense importance.

13. Besides the plea of insanity in the instant case is also otherwise misconceived. A distinction must be made between a case where a mother puts to death her own off springs and another where she attempts to put an end to her own life as also of the children. Even an argument that the former evidences a case of insanity would not be available to the latter. Such an act on the contrary would have its origin in some pre-conceived design and preparation and would be the outcome only of the execution of such plan, a fact which would rule out any plea of insanity.

14. In the result I do not find any merit in this appeal and dismiss the same.

G.B. Patnaik, J.

15. I agree.