

Shama Tudu Vs. State

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Court : Orissa

Decided On : Apr-04-1986

Reported in : 61(1986)CLT649; 1986(I)OLR536

Judge : B.K. Behera and ;G.B. Pattnaik, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 84 and 302; [Evidence Act, 1872](#) - Sections 105; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 156 and 157

Appeal No. : Jail Criminal Appeal No. 55 of 1982

Appellant : Shama Tudu

Respondent : State

Advocate for Def. : A. Rath, Addl. Standing Counsel

Advocate for Pet/Ap. : D.S. Nanda, Adv.

Disposition : Appeal allowed

Judgement :

B.K. Behera, J.

1. The appellant stands convicted under Section 302 of the Indian Penal Code (for short, 'the Code') and sentenced to undergo imprisonment for life for commission of the murders of his wife Maina and his son Juja under painful circumstances

during the night of August 30/31, 1980, without any motive and for no rhyme or reason, by means of a Barsi (M. O. I.) and a Katari (M O II) while he had temporarily gone to the house of his father-in-law with his wife and child for taking new maize. The actual commission of murders had not been witnessed by any one. There was however, the evidence clearly indicating that the appellant and the two deceased persons were the sole occupants of a room in the house of the appellant's parents-in-law during the fateful night and during the night, the groaning sound of the deceased lady and the sounds of assault had been heard from inside the house and the appellant was later seen sitting outside the house wearing a Lungi (M.O III) besmeared with blood and M Os. I and ii stained with blood lying near him. These articles, on chemical and serological tests, contained human blood. On a consideration of the evidence, the learned trial Judge has found that the appellant was the killer of the two deceased persons. This finding is well-founded and cannot be assailed.

2. At the trial, a plea of insanity was raised and it was contended that the acts of the appellant would come within the purview of Section 84 of the Code but this plea was negatived by the learned trial Judge for the reasons recorded in the judgment. The learned counsel appearing for the appellant has invited our attention to the relevant evidence and has contended that there could be no doubt from the evidence that the appellant was insane at the time of the commission of the case and therefore, his acts would be excepted under Section 84 of the Code, It has been contended on behalf of the State that the evidence would not warrant a conclusion that at the crucial point of time of murders, the appellant was incapable of knowing the nature of the act owing to insanity.

3. Some well-settled principles of law relating to the scope and applicability of Section 84 of the Code may be kept in mind. Section 84 of the Code provides :

'Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.'

Section 84 lays down the legal test of responsibility in cases of alleged unsoundness of mind. It is by this test, as distinguished from the medical test, that

the criminality of an act is to be determined. This provision is in substance the same as that laid down in the answers of the Judges to the questions put to them by the House of Lords in M Naughten's case.

4. Section 84 of the Code provides that a man who is, by reason of unsoundness of mind, prevented from controlling his own conduct and deprived of the power of passing a rational judgment on the moral character of the act he did, cannot legally be responsible for the act. Whether the want of capacity is temporary or permanent, natural or supervening, whether it arises from disease or exists from the time of birth. It is included in the expression 'unsoundness of mind' Unsoundness of mind, to make a man irresponsible, must reach that degree which is described in the latter part of the exception contained in Section 84 It is not every person suffering from mental disease who can avoid responsibility for a crime by invoking the plea of insanity. There is a distinction between 'medical insanity' and 'legal insanity' and the Court is only concerned with the legal and not with the medical view of the question. A person whose cognitive faculties are not so impaired as to make it impossible for him to know the nature of his act or that he was doing what was wrong or contrary to law is not exempted from criminal responsibility.

5. A person cannot be said to be insane where all that is established is that he is moody, irritable and conceited and may be said to have been peculiar, but at no time did he suffer from insanity of such nature or degree as to preclude him from knowing the nature of his acts or to obscure the distinction between right and wrong. Want of any motive for the doing of an act cannot, by itself, be taken as evidence of maniacal tendency. Where it is proved that the accused has committed multiple murders while suffering from mental derangement of some sort and it is found that there is (i) absence of any motive, (ii) absence of secrecy, (iii) want of pre-arrangement and (iv) want of accomplices, it would be reasonable to hold that the circumstances are sufficient to support the inference that the accused suffered from unsoundness of mind.

6. When a plea of insanity is raised, the Court is to consider as to whether the accused has established that at the time of committing the act, he was of unsound

mind. If he does not succeed, the plea fails. If he was of Unsound mind, the question is as to whether he has established that the unsoundness of mind was of such a degree and nature to satisfy one of the tests laid down in Section 84. In all cases where legal insanity is set up as a defence, it is very material to consider the circumstances which have preceded, attended and followed the crime, viz., (i) whether there were deliberation and preparation for the act, (ii) whether it was done in a manner which showed a desire for concealment, (iii) whether, after the crime, the offender showed consciousness of guilt and made efforts to avoid detection and (iv) whether after his arrest, he offered false excuses or made false statements. Evidence as to the accused's conduct before and after upto the time of trial is admissible as presumptive evidence of his mental condition when the act was committed. The absence of motive for a crime, when corroborated by independent evidence of the accused's previous insanity, is not without weight.

7. The law presumes every person of the age of discretion to be sane unless the contrary is proved. It would be dangerous to admit a defence of insanity upon arguments merely derived from the character of 'the crime. Under Section 105 of the Evidence Act, the burden is on the accused to prove that he committed the act in a moment of insanity, i. e., he did not know the nature and quality of his act or that his act was wrong or contrary to law.

8. In AIR 1964 S. C. 1563 Dahyabhai Chhaganbhai Thakkar v. State of Gujarat, the legal position with regard to the burden of proof in the context of the plea of insanity has been stated by the Supreme Court in the following proposition :

(i) The prosecution must prove beyond reasonable doubt that the accused had committed the offence with the requisite mens rea and the burden of proving that always rests upon the prosecution from the beginning to the end of the trial.

(ii) There is a rebuttable presumption that the accused was not insane, when he committed the crime, in the sense laid down in Section 84, the accused may rebut it by placing before the Court all the relevant evidence, oral documentary and circumstantial, but the burden of proof upon him is no higher than that which rests upon a party in civil proceedings.

(iii) Even if the accused is not able to establish conclusively that he was insane at the time he committed the offence, the evidence placed before the Court by the accused or by the prosecution may raise a reasonable doubt in the mind of the Court as regards one or more of the ingredients of the offence, including mens rea of the accused and in that case, the Court would be entitled to acquit the accused on the ground that the general burden resting on the prosecution has not been discharged.

The same principles have been reiterated and re-emphasised in AIR 1966 S. C. 1 : 1966 Cri. L. J. 63 : Bhikari v. State of Uttar Pradesh, AIR 1971 S. C. 778 : 1971 Cri. L. J. 654 : Ratan Lal v. State of Madhya Pradesh, AIR 1972 S. C. 2343 : 1972 Cri. L. J. 1523 : Sheralli Walli Mohammed . State of Maharashtra and AIR 1974 S. C. 216: 1974 Cri. L. J. 305 : Oyami Ayatu v. State of Madhya Pradesh. If at the time of the commission of the offence, the accused knew the nature of the act he was committing, he cannot be absolved of the responsibility for the grave offence of murder, even if at a later stage, he became insane. (See AIR 1977 S. C. 608 : 1977 Cri. L. J. 376 : Amrit Bhushan Gupta v. Union of India and others) The ceremonial beheading by the father and his relations of a four year old boy to propitiate some blood-thirsty deity does not by itself show or prove insanity, as held in 1981 S. C. C. (Criminal) 516 : (1981) 2 S. C. C 508 : Paras Ram and others v. State of Punjab.

9. Although there is no burden cast on the prosecution to establish negatively that the accused was not of unsound mind when he committed the acts of violence resulting in the death of a person murdered, where the accused has a previous history of mental disease or lunacy and it is revealed during the course of investigation that the accused had such previous history of mental disease or lunacy, fairness of investigation does require probing into this aspect with an unbiased approach, particularly when the accused himself cannot, in the very nature of things, assist in unravelling the necessary facts being in custody and being mentally imbalanced. It becomes obligatory on the part of the investigating agency, particularly when the accused is apprehended at about the time of the commission of the offence or shortly thereafter, to subject the accused to medical examination, to ensure that the accused was, in fact, a person of ordinary state of

mind. If that is done, it necessarily rules out the possibility of the accused having committed the acts of violence attributed to him on account of mental disease or lunacy. The prosecution must place all the cards and materials that could possibly be had. The failure to subject the accused to medical examination immediately and to place all the evidence that could be available may have, depending on facts and circumstances of the case, a Serious consequence on the prosecution case when such a plea of insanity is raised by the accused at the trial, as that may give rise to doubt whether the act of violence had been committed with the requisite intention to commit a particular offence and any such failure on the part of the prosecution to collect the evidence and place before the Court on the mental aspect of the accused, creates serious infirmity in the case of the prosecution and consequently the benefit of doubt will have to be given to the accused.

10. Some recent decisions of this Court in cases of murders in which the plea of insanity had been raised have come to our notice. On the/acts and circumstances of the particular cases, the plea of insanity had been accepted in 1983 Cri. L. J. 1385 : 1983 C. L. R. (Criminal) 108 Mitu Khadia v. State of Orissa, 1984 Cri. L. J. 1108 : 1984(1) O. L. R. 142 Khageswar Pujari v. State of Orissa, 1984 Cri. L. J. 124 Sundar Bairagi v. The State and 1985 (II) O. L R. 398 Butu @ Madhu Oram v. State and the plea was negatived in 1982 Cri. L J. 2158:54(1982) C. L, T. 195 Nakul Chandra Aich @ Kathi v. State of Orissa and 59 (1985) C. L. T. 203 : 1985 (I) Crimes 520 Kusa Majhi v. State.

11. We would now proceed to judge the plea of insanity raised in the appeal before us keeping in mind the aforesaid well-settled principles of law.

12. As has been testified by the Investigating Officer (P. W. 9), he had arrested the appellant on August 31, 1980, that is on the day following the night of occurrence. He had noted that the appellant showed signs of insanity. For this reason, he felt the necessity of sending the appellant for medical examination. According to him, he examined the co-villagers and relations of the appellant, but none of them has been cited as a witness in the charge-sheet The evidence of co-villagers, relations, friends and neighbours of an accused is of great weight in judging the plea of insanity and it was not fair on the part of the investigating

agency and later by the prosecutor to have withheld such evidence from the Court. This would cast a serious reflection on the fairness of the trial.

13. The Investigating Officer received the report of the Psychiatrist (P. W. 10.) on September 2, 1980, but did not choose to issue any requisition for the examination of the appellant by any doctor or for keeping him under further observation.

14. In order to establish his plea, the appellant has examined the Ward Member of his village (D. W. 1), his cousin brother (D. W. 2) and his father (D. W. 3). The evidence of these persons would be of immense weight while accepting or rejecting the plea of insanity. As would appear from their evidence and in particular, that of D. Ws. 1 and 3, who had personal knowledge about the mental condition of the appellant, the latter had married about six years prior to the occurrence and had developed lunacy for about four years past. During the time he was afflicted with temporary insanity, he had been threatening to kill persons with stone and sword and had been tearing up his clothes and was being tied down by persons. The appellant had been worshipping Manisa Kali and had developed insanity. He was not in a position to understand or remember matters of recent past. Some months prior to the occurrence, the appellant had developed insanity which had been noticed by D. W. 1. According to D. W. 3, when he went to the house of the appellant's father-in-law, where the occurrence had taken place the appellant was in a state of insanity and had been tied to a pole.

15. It would clearly appear from the evidence of P. Ws. 5 to 7 that prior to the actual occurrence, the appellant had been threatening to kill persons at random for which even his father-in law and the inmates of his house had gone away to the house of another person P. W. 5 had noticed, on going to the spot during the night of occurrence, that the appellant had been wearing the Lungi (M. O. III) profusely soaked in blood and M. Os. I and II stained with blood w?re lying nearby where were lying the dead bodies, of two fowls and inside the house, the appeilants wife and son were lying dead in a pool of blood. His evidence and that of the other two witnesses, namely, P. Ws. 6 and 7, with regard to an extrajudicial confession said to have been made by the appellant that he had killed his wife and child was not clear and consistent and in the state in which the appellant had been placed and

regard being had to his conduct preceding attending and following the commission of the crime, the appellant could not have blurted out a statement that he had killed. The exact words used by the appellant and as to who had asked him as to what had happened had not been clearly brought out from the evidence. Being deprived of his power of reason, having made no concealment and having shown no sign of repentance, the appellant could not have made a confessional statement before some of the co-villagers of his father-in-law and there was absence of any evidence that they were the persons in whom he could repose confidence. It could be that this theory of extrajudicial confession had been introduced to rule out a plea of insanity-It would be seen from the evidence of P. Ws. 5 to 7 that during the night of occurrence, the appellant had been shouting that he would kill, cut and eat. The evidence coming from the side of the prosecution would undoubtedly show that the appellant had made no attempt for concealment nor had he resorted to false statements and had, on the other hand, been sitting openly outside the house with a Lungi (M.O. III) smeared with blood and with two weapons of offeree (M. Os. I and II) soaked in blood lying near him. The appellant had been seen dealing strokes on the ground and on the threshold by means of the Barsi he was holding. In the morning the appellant saluted all and he was hugging and saluting and uttering something to himself. He had twisted and crushed to death two fowls whose dead bodies were lying near him. It would be seen from the evidence of P. W. 7 that if 'Thakurani' appears, sacrifices of fowls are made and the 'Diasi' runs hither and thither and orders materials to be brought. The defence had successfully brought out by its evidence and through the prosecution evidence that the appellant at the relevant time had been worshipping a Goddess and had turned out to be a 'Diasi'.

16. What is very important in the context is the evidence of Psychiatrist (P. W. 10). He had examined the appellant on September 1, 1980, without any of the family members of the appellant being present who could give the history of the appellant. His report is Ext. 16. As noticed by him, the appellant had been muttering to himself, was irresponsive and had been uttering one word or two words. His mood was inappropriate and thought and content of the appellant were found to be disordered and not goal-directed and the appellant had been afflicted by delusion of prosecution which meant that he said that he had enemies. There was

presence of hallucination which meant that he had heard some voice of external powers and had seen individual powers. The appellant could not remember past events like the date of birth and age of the child although he could recall recent events. His attention and concentration were poor. If a watch was shown to him and he was asked about five minutes thereafter as to what had been shown to him, the appellant would not recollect. The appellant's insight and judgment were poor, as noticed by P. W. 10. From the observations made by him, P. W. 10 had come to the following conclusions :

'From the aforesaid facts, my inference was that the patient showed psychotic features. Such type of persons can know that he is killing a human being but he cannot feel. If any body pretends to be an insane man, he can show the aforesaid features and therefore to distinguish a pretending man from a real psychotic patient, several sessions for examination and observation are necessary. That is why I have noted in my report that further constant observation for his behavioural disorder was necessary to come to a definite finding as to the real psychotic condition of the patient.'

P. W. 10 is not able to say without collecting the family and personal history of the appellant as to whether he was possessed of psychotic features prior to his examination. He has been positive in his assertion in his cross-examination that he did not mark any feigning on the part of the appellant although he did apply the test in this regard. According to this witness, the appellant did not have any sense of feeling and in the absence of the power of reason, hallucination would persist whereunder a person may commit suicide or murder, as he would be obeying that impulse which the hallucination directs. If under hallucination a person thinks a man to be a tiger, he may kill the man thinking that he had been killing a tiger. A man under hallucination is unable to comprehend his own work, as testified by P. W. 10. This witness has stated in his cross-examination :

'Hallucination means a false belief without external semblance. Visual hallucination means seeing something which does not exist, like tiger, ghost, snake, etc. Hallucination is not the cause of delusion. A man under hallucination, conducts himself under the erroneous belief. Hallucination occurs in insanity. So also

delusion. Delusion is firm and false belief which cannot be corrected by any reasoning, which is not amenable to any treatment in that case, the man is having abnormal mind.'

Although P. W. 10 had noted in his report that further constant observation of the appellant's behavioural disorder was necessary, no step had been taken in this regard and the appellant was not kept under medical treatment for further observation nor was he sent for further conservation by P. W. 10.

17. It would be worthwhile to keep note of an unfortunate case of murders by a person of his wife and his eldest son resulting from delusion or hallucination reported in AIR 1960 Gujarat 1 : 1960 Cri. L.J. 1200 Kanbi Kurji Duba v. State. In that case, the accused was suffering from a delusion or hallucination that he was a pure-blooded Suryavanshi and Arjun of the Mahabharat. On the day of the incident, nothing had happened to provoke the accused. His relations with his wife and his eldest son were by no means unfriendly or uncordial. Still he brutally killed his wife and eldest son. Immediately after killing them, he addressed the Sarpanch of the village as 'Bhishma Pitamaha' and told that he had killed 'Bhangdi' (meaning thereby his wife) and 'Karna' (meaning thereby his son). The accused did not conceal the blood stained crowbar and the chorna on his person and showed no feeling of remorse or repentance for what he had done. It was held that these circumstances indicated that though the accused was conscious of the nature of the act committed by him, he was not in a position to appreciate and realise that his acts were wrong or contrary to law and he was entitled to the benefit of Sec, 84 of the Code.

18. In the instant case, without any motive, the appellant, who had been suffering from insanity on some occasions prior to the occurrence, had killed his own wife and his only son. There had been no quarrels between the appellant on the one hand and his wife on the other. The appellant had been dealing blows by means of M. O. I. on the ground and at the threshold. He had knocked down and twisted and killed two fowls whose dead bodies were lying on the spot. He had been muttering to himself and he was shouting out that he would kill, cut and eat. The appellant had made no attempt to conceal the commission of the offence. On the other

hand, he had been sitting outside with a Lungi (M. O. III) smeared heavily with blood with the blood stained Barsi and Katari (M. Os. I and II) lying near him. He saluted the people who came near him and he had been laughing and saluting. The appellant had also been uttering something to himself. The Investigating Officer had himself noticed signs of insanity for which he felt the necessity of medical examination of the appellant. The evidence of P. W. 10 would give a clear indication that at the time of examination, the appellant was in a state of delusion and hallucination and he was incapable of feeling anything. No steps had been taken thereafter for further observation and medical treatment. The evidence of the three witnesses examined for the defence and the statements made by three witnesses for the prosecution, namely, P. Ws. 5 to 7, would support the plea of insanity raised on behalf of the appellant. The appellant's conduct preceding, attending and following the occurrence would lead one to a reasonable conclusion that at time of commission of the offence of double murder, the appellant was insane and by reason of unsoundness of his mind, he was incapable of knowing the nature of the act or that what he was doing was either wrong or contrary to law. It was not a case of mere medical insanity, but one of legal insanity. There had been no deliberation and preparation for the act. The acts committed by the appellant did not indicate that the appellant had shown a desire for concealment. No effort had been made by the appellant to avoid detection. The appellant had neither offered false excuses nor made false statements after his arrest. The prosecution has failed to establish that the appellant had committed the offence with the requisite mens rea. There is no material that during the trial or thereafter, the appellant has exhibited signs of insanity, but the evidence would clearly point to the conclusion that the acts complained of had been committed when the appellant was not in a position to understand the nature of his act owing to insanity at the crucial point of time, as would be clear from his conduct during the night of occurrence, on the day following and also on the day of observation by the Psychiatrist (P. W. 10). The facts, evidence and circumstances indicated above would clearly make out a case of insanity provided in Section 84 of the Code.

19. For the aforesaid reasons, we are not at one with the trial Court which has rejected the plea of insanity. In our view, the case would clearly come within the purview of Section 84 of the Code and the appellant was entitled to an acquittal.

20. In the result, the appeal succeeds and is allowed. The order of conviction passed against the appellant under Section 302 of the Indian Penal Code and the sentence passed against him are set aside. The appellant be set at liberty forthwith.

G.B. Pattnaik, J.

21. I agree.

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