

Kusa Majhi Vs. the State

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Court : Orissa

Decided On : Jan-30-1985

Reported in : 1985CriLJ1460

Judge : B.K. Behera and ;D.P. Mohapatra, JJ.

Appellant : Kusa Majhi

Respondent : The State

Advocate for Pet/Ap. : Mr. Misra

Judgement :

B.K. Behera, J.

1. The appellant stands convicted under Section 302 of the Indian Penal Code ('the Code', for short) and sentenced thereunder to undergo imprisonment for life by the trial court after accepting the case of the prosecution that on June 16, 1979, the appellant killed his mother by dealing blows by means of an axe (M. O. I) on her shoulder which caused internal injuries and resulted in her death. It is not necessary for us to go into the facts of the case in details as at the hearing of this appeal, Mr. Misra, appearing for the appellant, has not assailed the finding that the appellant did assault his mother to death by dealing blows by means of M. O. I and indeed, the finding cannot be assailed in view of the clear, cogent and acceptable evidence of the wife of the appellant examined for the prosecution as P. W. 6 who

was a natural and competent witness and had snatched away M.O.I. from the hands of the appellant to prevent further assault and the extra judicial confession made by the appellant before P. Ws. 3 to 5 which would read well and had rightly been accepted by the trial court. Mr. Misra has, however, raised two contentions, viz., (i) that the appellant's act would be covered by the exception provided in Section 84 of the Code and (ii) even if it be held that the exception had no application, the appellant, in the circumstances of the case, could be convicted under Section 304 Part I of the Code in which case, the sentence passed against him should be reduced to the period already undergone as the appellant has been in custody and has undergone the sentence for more than five and a half years. Mr. Panigrahi, the learned Additional Government Advocate, has repelled the contention raised on behalf of the appellant with regard to his insanity at the time of the occurrence, but has candidly and fairly submitted that regard being had to the circumstances in which the unfortunate incident occurred and the seats of assault by means of M. O. I on the shoulder which resulted in internal injuries to some vital organs and in the absence of specific evidence from the side of the doctor that the injuries were sufficient in the ordinary course of nature to cause death, the contention raised by Mr. Misra with regard to the nature of the offence is not without substance. He has left the matter of sentence to the discretion of this Court.

2. Section 84 of the Code reads : .

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.

Some settled principles of law in this regard may be kept in mind. The crucial point of time at which unsoundness of mind should be established is the time when the crime is actually committed and the burden of proving this lies on the accused. An accused person is not, however, to prove his case beyond reasonable doubt and it is sufficient if his plea of insanity is established by preponderance of probabilities as in a civil case. Such a plea can be established from the circumstances which preceded, attended and followed the crime. It must, however, be kept in mind that

the court is concerned with legal insanity and not with medical insanity. Law presumes that every person of the age of discretion knows the consequences of his act. The defence of insanity cannot be accepted upon arguments derived merely from the character of the crime. To constitute an exception to criminal liability, insanity must be such as to disable an accused person from knowing the character of the criminal act committed by him.

3. In the instant case, no specific plea of insanity had been raised by the appellant at the trial. On the other hand, the appellant had stated that previously his mind was not working properly, but that he had become all right and he had been doing his work. No materials had been brought out by the defence in the prosecution evidence in this regard and no such plea could be spelt out of the evidence on record. The defence had brought out in the cross-examination of witnesses, to which reference had been made by the trial court, that prior to the occurrence, the appellant was moody, had not been doing work at home and was indulging in incoherent talks for which he had been treated for some time. It was also in evidence that at times, the appellant used to talk to himself and this habit of his had continued up to the date of occurrence. From these facts, it could not be assumed that the appellant was insane at the time the occurrence took place. If the appellant had any mental depression, it could not be equated with legal insanity.

4. On the day of occurrence, just prior to his killing his mother, the appellant was asked by his mother to go with the villagers for catching fish and he refused. Thereafter his mother took exception and told him that he would have his livelihood only if his father earned for him. At this, the appellant went inside, brought out M. O. I and dealt some blows on his mother which resulted in her death. Sometime thereafter, when the villagers came, the appellant made coherent statements and clearly admitted to have killed his mother. There was nothing to show that thereafter the appellant had behaved as an insane man would do. No such behaviour was exhibited in the course of investigation or during the trial. Some doctors had examined him while he was in the jail and found no sign of insanity. The plea of insanity was raised by the learned defence counsel at the trial, but was negatived by the learned trial Judge for justifiable reasons in the

judgment which need not be repeated. In view of the principles of law referred to above with regard to the concept and proof of insanity, it must be said that no such plea had been borne out on the evidence on record.

5. For the aforesaid reasons, we are not prepared to accept the contention raised by the learned Counsel for the appellant that the act of the appellant would come within the purview of Section 84 of the Code.

6. We would next come to .the nature of the offence committed by the appellant. After the deceased took the appellant to task for not going for fishing with the co-villagers, the appellant went inside the house, brought out an axe and dealt some blows on the deceased. There had been no pre-plan or premeditation. The blows had been dealt by him by M. O. I on the shoulder portion and not on the neck or head. In the circumstances in which the appellant had dealt the blows, it would appear that on the spur of the moment and incensed by anger, the appellant brought out the axe and dealt some blows which unfortunately resulted in the death of his mother. It would not be appropriate in this case to apply any of the four clauses of Section 300 of the Code. In our view, it would be reasonable, legal and proper to say that by his act, the appellant had intended to cause bodily injury likely to cause the death of the deceased. Nothing graver could be attributed to the appellant. In our view, the contention raised on behalf of the appellant in this regard shall prevail and the concession made by the learned Additional Government Advocate is fair and well-founded.

7. In the result, the appeal is allowed in part. The order of conviction passed against the appellant under Section 302 of the Indian Penal Code and the sentence passed against him thereunder are set aside and in lieu thereof, the appellant is convicted under Section 304 part I of the I. P. C. and is sentenced thereunder to undergo imprisonment for the period already undergone by him which, in our view, would meet the ends of justice. The appellant be set at liberty forthwith.

D.P. Mohapatra, J.

8. I agree.

