

Banember Mallick Vs. the State

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Court : Orissa

Decided On : Apr-11-1991

Reported in : 1992CriLJ1856

Judge : A.K. Padhi and ;A. Pasayat, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302

Appeal No. : Cri. Appeal No. 1 of 1986

Appellant : Banember Mallick

Respondent : The State

Advocate for Def. : N.K. Jone, Addl. Government Adv.

Advocate for Pet/Ap. : P.K. Dhal, ;O. Nayak, ;R. Sahu and ;A.K. Acharya, Advs.

Disposition : Appeal dismissed

Judgement :

1. Love is blind, asserts the appellant and contends that un-recruited love causes loss of control over feelings. The appellant, a young person faced trial for allegedly causing death of one Keshab Mallick, whom he believed to be the person responsible for the breaking of his relationship with one Kuni.

2. The prosecution case briefly stated, is that on 5-6-1984 near about noon, the deceased was found running towards Johalgada and the accused-appellant was chasing him in a cycle. The deceased while running was shouting for help. The deceased in his attempt to escape, desperately tried all possible sources, changed his way and ran to a paddy field in village Anantapur and the appellant throwing his cycle, chased him holding a knife in his hand. The deceased asked for help from one Dillip Kumar Samantercy (P.W. 9) and in spite of attempts of P.W. 9 to save him from the appellant, several stab injuries were inflicted and the deceased succumbed. The appellant was then caught hold of by P. Ws. 4, 8 and 9 and some of the villagers. On being questioned, the appellant stated that the deceased was the cause for breaking of his relationship with Kuni and therefore, he had done away with the deceased.

3. The defence case is a denial of the prosecution version. While accepting that the deceased was more or less responsible for breaking of the relationship, it was pleaded that at the proposal of the deceased, the appellant was coming to the house of one Dibakar Samantrey of village Anantapur on 5-6-1984 for settlement of the dispute relating to Kuni; on the way suddenly without any rhyme or reason the deceased caught hold of the neck of the appellant and stabbed him on his left arm and on his forehead with a knife, and the appellant tried to protect himself; but both of them rolled over and while struggling both of them received injuries from the knife held by the deceased, and the appellant snatched away the knife from the hand of the deceased and ran towards the road.

4. In order to further the case of the prosecution, fifteen witnesses were examined of whom P.Ws. 4, 9, 10 and 11 are said to be the occurrence witnesses; while the appellant in support of his version examined five witnesses. The learned Addl. Sessions Judge on evaluation of the evidence came to hold that the prosecution has established its case beyond a shadow of doubt, and thereafter having found the appellant guilty, convicted him Under Section 302 of the Indian Penal Code (in short the 'IPC') and sentenced him to undergo rigorous imprisonment for life.

5. The learned counsel for the appellant has characterised the conclusions to be unreasonable, and submitted that the learned trial Judge has lost sight of the fact

that even if the prosecution version as indicated is accepted to be true, it is apparent that a sudden provocation was given to the deceased for which he lost control over his moorings, and on a spur of the moment he inflicted injuries as ascribed to him. It has also been submitted that life is not logic, and if a young person suddenly comes face to face with a man, who is responsible for breaking relations with his beloved, it is bound to result in loss of control over the feelings and, therefore, the offence, if any, would be covered by Section 302, Part-II, and not Section 302, IPC as held by the learned Additional Sessions Judge. The learned Additional Government Advocate, however, submits that the evidence on record established the guilt of the appellant beyond a shadow of doubt, He has specifically referred to the evidence of P.Ws. .4, 8, 9, 10 and 11, their disinterestedness and the factum of an extra judicial confession before them admitting the assaults in the manner described by the prosecution. We shall presently refer to some of the decisions cited by the learned counsel for the appellant. He has placed strong reliance on two decisions of the apex Court reported in AIR 1956 SC 116 : 1956 Cri LJ 291, Willie (William) Slaney v. State of Madhya Pradesh and (1983) 1 Crimes 41 : 1982 Cri LJ 1945 (SC) Munna, Vijay Kant v. State of Rajasthan. According to him the ratio laid down to these cases squarely apply in view of the fact that because the appellant is of young age, and injuries were not sufficient in the normal course to cause death. He has also placed reliance on AIR 1987 SC 1151 : 1987 Cri LJ 987, Gurdip Singh v. State of Punjab to urge that what is material is the intention and nature of injury, and merely because it had resulted in death, it would not be proper to conclude that death was expected resultant from the assaults. In our view, the facts involved are entirely different. In the first case, the deceased lived for ten days, and there was one injury. In the second case, there was also single injury. What was the intention of the assailant at the time of assault would depend on several factors, and there is no hard and fast rule to have any universal application. In the instant case, we find there were five injuries, one on the chest, and four at the back side. A sudden provocation is one which as the expression itself shows emerges from an unexpected act, results in loss of control over one's feelings, It rules out premeditation or careful thinking. The sequence as given leading to the assaults has left no doubt in our mind to show that it has no link with any sudden

provocation. It was a calculated move, in the nature of a show of bravado. Reference to the evidence of D.Ws shows that it does not really throw any light on the occurrence, and on the contrary, as rightly held by the learned Addl. Sessions Judge, evidence of D.Ws. 1, 2 and 3 is highly improbable, and has little credibility. The evidence of D.W. 4, the person who is supposed to be the background of all unfortunate incident is not relevant. It has been contended by the learned counsel for the appellant by indicating that in view of the subsequent marriage, it was but natural she was trying to avoid disrepute. Nothing much turns on her evidence and, therefore, the learned trial Judge has rightly discarded it. Similarly, the evidence of D.W. 5 is of little consequence so far as the question which falls for determination in the present appeal. We have not found any infirmity in the process of reasoning indicated by the learned Addl. Sessions Judge in his conclusion that the assailant was the author of the crime, and it was a case Under Section 302, IPC. Therefore, we are in agreement with the conclusions arrived at by the learned Addl. Sessions Judge and uphold the conclusions and sentence.

6. The Criminal Appeal is accordingly dismissed.

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