

Butu @ Madhua Oram Vs. State

LegalCrystal Citation : legalcrystal.com/533008

Court : Orissa

Decided On : Aug-27-1985

Reported in : 1985(II)OLR398

Judge : D. Pathak, C.J. and ; S.C. Mohapatra, J.

Acts : [Evidence Act, 1872](#) - Sections 105; [Indian Penal Code \(IPC\), 1860](#) - Sections 84

Appeal No. : Jail Criminal Appeal No. 63 of 1982.

Appellant : Butu @ Madhua Oram

Respondent : State

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

Advocate for Pet/Ap. : K.C. Mohanti, Adv.

Disposition : Appeal allowed

Judgement :

S.C. Mohapatra, J.

1. This is an appeal from jail. The High Court Legal Aid and Advice Committee has engaged Mr. K.C. Mohanti, Advocate, for representing the appellant. The appellant has been convicted under Section 302, Indian Penal Code, 1860 (in short I. P. C.) and sentenced to undergo imprisonment for life. He has also been convicted under Section 324,I.P.C. but no separate sentence has been awarded on that Count.

2. Appellant is a resident of Kolhapada of village Mirgamunda. On 25.6. 1980, at about 1 p. m. he was seen naked with a Tangia in hand entering into the house of P. W. 12 in the same pada. He assaulted the deceased Koyili Dei wife of P. W. 12 on her head by the sharp side of the Tangia causing fatal injuries. On protest by P. W. 12, the appellant also assaulted him on his face below the nose. Coming out of the house, when the appellant was proceeding towards the tank of the village, he saw one Abhimanyu going on a cycle. Stating Abhimanyu to kill him, the appellant chased him when Abhimanyu gave speed to his cycle to escape. The appellant threw the Tangia aiming at him which caused injury on the left ear of Abhimanyu. Some of the villagers who were near the tank rushed towards the appellant and brought him under control.

3. On the basis of the first information report lodged by P. W. 3 at Sadar Police Station, P. W. 10 reached the village. He sent the injured Koyili and her husband P. W. 12 to hospital for treatment. The appellant was arrested. Next day on 26. 6. 1980, P.

W. 10 received information that Koyilt expired in the hospital. The dead body was despatched to Burla where P. W. 4, the Associate Professor of Forensic Medicine conducted the autopsy and found the head injuries caused by a sharp cutting weapon like axe. In his opinion, the injuries were ante-mortem and sufficient in ordinary course of nature to cause death.

4. From the ocular evidence of P. W. 12 corroborated by the post mortem report and the evidence of P. Ws. 9 and 11 who reached the spot immediately after the assault, it is clear that the appellant caused the injuries on Koyili resulting her death and also on P. W. 12. The finding of the learned Sessions Judge in this regard is unassailable. We are satisfied that the appellant was the author of the injuries.

5. Mr. K. C. Mohanti, the learned counsel has very forcefully submitted that the appellant by reason of unsoundness of mind was incapable of knowing the nature of his act and that he was doing that is wrong and contrary to law and accordingly, he has not committed any offence to be convicted and sentenced with is a provision under Section 84, I.P.C, Mr. Mohanti has assailed the finding of the learned Sessions Judge that no proof whatsoever is adduced on the side of the accused as regards the insanity.

6. It is true that in view of Sec, 105 of the Evidence Act, burden 'lies on the accused to prove his plea of insanity at the time of occurrence. As has been held by this Court consistently, the accused is not called upon to prove the ingredients of Section 84 I.P.C., beyond reasonable doubt in order to get an acquittal. It will be sufficient if the materials on record lead to an inference that the requirements of Section 84 I.P.C. may reasonably be probable. See ILR 1957 Cut. 408 (Nitai Naik v. State), ILR 1962 Cut. 806 (State v. Durga Charan Barik), ILR 1969 Cut. 930 (Saraka Gundusa v. State), ILR 1970 Cut. 146 (Paramananda Patra v. State), 37 (1971) CLT 565 (Renta alias Shaukar Majhi alias Sundar Majhi v. The State), 39(1973) CLT 322 (Sakru Sa v. The State of Orissa), 47(1979) CLT 197 (Madga alias Lusa alias Chandramohan Majhi v. The State) and 53 (1982) CLT 232 (Surya Prasad Rout v. State of Orissa). In a recent decision of this Court reported in 1984(1) OLR 142 (Khageswar Pujari v. The State of Orissa) considering the effect of Section 6, IPC, it has been succinctly held :

'Sec. 84, IPC, casts the burden on the accused to adduce evidence and prove that at the time of the occurrence his mental condition was such that he did not know what he was doing in such a case, a duty is also cast on the Court itself to find out from the materials on record, viz., the conduct of the accused, as to whether any doubt arises in the mind of the Court that at the time of the occurrence the accused was not in a fit mental condition to have the requisite mens rea for the commission of the offence...'

'..Sec. 6, IPC, curves out or stands in the nature of a proviso to Section 106 of the Indian Evidence Act and imposes an obligation on the Court as well as to consider the case of exceptions on its own in so far as it relates to the burden of proving legal insanity as the essential element of special knowledge as envisaged in Section 106 of the Evidence Act. If the case of the appellant comes within the purview of Section 84, I. P. C., which is one of the provisions in Chapter IV of the General Exception of the Indian Penal Code, the Court is to give due consideration and find out as to whether at the time of the occurrence the appellant had any mental disability so as to know what he was doing...'

7. The facts of each particular case must of necessity present themselves with endless variety and with every shade of difference in each case. Therefore, the onerous duty of the Court is to be discharged with, care and caution. From the materials available on record whether produced by the prosecution or defence, the Court is to draw inference on the cognitive mental faculty of the accused at the time of commission of the offence keeping in mind that medical insanity is different from legal insanity. For this purpose, the history of the accused in the past, his conduct during occurrence and thereafter, are to be examined. As has been put by the Supreme Court in A. I. R. 1964 S. C. 1563 (Dayabbai Chhaganbhai Thakkar v. State of Gujarat).

'Whether the accused was in such a state of mind as to be entitled to the benefit of Section 84 of the Indian Penal Code can only be established from the circumstances which preceded, attended and followed the crime.

8. Absence of motive though not sine qua non, is a relevant factor for consideration. In this case, P. W. 12 has stated that he was not in bad terms with the accused. No other motive has been attributed by the prosecution for the ghastly act of the appellant. P, W. 9 Tirtha Oram is a good relation of the appellant. He stated that Paika (P. W. 12) had no ill-feeling with the appsllants. From the evidence of this witness it is clear that two days prior to the occurrence, the appellant took his wife and children to a Dangar and detained them there throughout the day without food. On the date of occurrence the accused, a man aged 40 years, came naked with a tangia in the broad day light. This is the evidence of all the witnesses of the village. Apart from injury Koyili (deceased) and P. W. 12, he also chased and injured one Abhimanyu who was only a passerby. He did not try to escape or hide the weapon of offence. P. W. 7 stated 'Sankar Purohit proceeded towards the appellant with a lathi and asked the accused to throw away the tangia. The accused did the same.' This is a clear indication that the mental condition of the appellant was such that he was incapable of knowing the nature of the act or that he was going anything either wrong or contrary to law. The Investigating Officer was also doubtful of his mental condition. He requested the Sub-divisional Judicial Magistrate for examination of the appellant by the Chief District Medical Officer. Of course, the report was not received. However, on the careful analysis of the evidence of the prosecution, we find that the plea of insanity as raised in the trial and also by Mr. Mohanti in this Court is reasonably probable. Accordingly, the appellant is entitled to acquittal.

9. In the result, the appeal is allowed and the conviction and sentence being set aside, appellant is acquitted. He cannot, however, be set at liberty in view of Section 334 and 335, Cr. P. C. The appellant shall be detained in safe custody in jail till the Chief District Medical Officer concerned certifies that he is fit enough to live in the society without being a security hazard. While the appellant remains in jail custody, the provisions of the Lunacy Act, L912, shall be complied with. The appellant may, however, be handed over to his relatives or friends on proper security being furnished to the satisfaction of the Sub-divisional Judicial Magistrate, Sadar. The State shall take necessary steps to inform this order to the relatives of the appellant.

D. Pathak, C.J.

10. I agree.