

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl.A.No.16/2022 with
Crl.M.C.No.67/2022

Date of Order: 11.07.2023

Tara Miah Vs. State of Meghalaya

Coram:

Hon'ble Mr. Justice Sanjib Banerjee, Chief Justice
Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Appellant : Mr. S.P. Mahanta, Legal Aid Counsel with
Mr. M. Lyngdoh, Adv
Mr. D. Dkhar, Adv

For the Respondent : Mr. N.D. Chullai, AAG with
Mr. A.H. Kharwanlang, Addl.Sr.GA

i) Whether approved for reporting in Law journals etc.: Yes

ii) Whether approved for publication in press: Yes/No

JUDGMENT: (per the Hon'ble, the Chief Justice) (Oral)

This is quite an open and shut case except that considerable time has been wasted on a wild goose chase that was eminently avoidable. The distraction has to be dealt with before dealing with the merits of the matter.

2. It appears that in the midst of the trial, the mother of the appellant herein produced some prescriptions claiming to have been issued by a psychiatrist who had treated the appellant. However, the trial

judge recorded in his order of March 20, 2019 that the accused in the dock did not show any sign of mental disorder as he interacted normally and without any sign of mental disturbance.

3. The judge also went on to record that the medical test report of the accused pertained to his liver functioning and though a psychiatrist's prescription of September, 2018 had been produced, the trial court deemed it expedient that a specialist examine the appellant herein after recording that the appellant's mother claimed that since the appellant was released on bail in 2018, the appellant seemed mentally disturbed and "went roaming here and there hence, he was not found at home for which he was rearrested."

4. Accordingly, by the order of March 20, 2019, the trial court directed the Superintendent of Tura jail to send the accused to a psychiatrist in Tura hospital for check-up and examination of the mental status of the accused and to submit a report in such regard by April 3, 2019.

5. The Superintendent of the District Jail, Tura complied with the direction and had the appellant examined at Tura Civil Hospital. A report in such regard was placed before the Chief Judicial Magistrate, Ampati which was taken up by the court on March 29, 2019. The order passed by the CJM on such date recorded exactly as follows:

“Seen also the reason of referral filed by Smt. Chuontie Shira, Clinical Psychologist, Tura Civil Hospital, wherein, it is reported that the accused has no presence of cognitive impairment and mental illness.

“It is also reported that he has the ability to reason out and understand abstract concept including morality and that he has also ability to analyses the consequence of action and lastly, it is also reported that he has low impulse control. Seen also the administration of Psychiatric evaluation...”

6. Accordingly, the matter was directed to be put up before the Sessions Judge on April 3, 2019 as earlier directed by the Sessions Judge in the order of March 20, 2019.

7. On April 3, 2019, the trial court took notice of the medical report pertaining to the appellant herein as furnished by the clinical psychologist in Tura Civil Hospital. Upon recording the findings of the specialist, the trial court required the trial to proceed in right earnest. It is evident that the specialist at the Tura Civil Hospital had found nothing wrong with the appellant and the trial court duly accepted such report.

8. Following the evidence being recorded of the witnesses at the trial, the appellant herein was examined under Section 313 of the Code of Criminal Procedure, 1973. The evidence of each of the witnesses was summarised and the key points therein brought out by the trial court for the appellant to comment thereon. It is interesting to notice the appellant's response to the questions put to him by the trial court.

9. The trial court summarised the evidence of the FIR-maker, who was the father-in-law of the victim and who claimed to have been an eye-

witness to the incident. Upon the trial court seeking the appellant's response to the evidence adduced by PW-1, the appellant claimed that at the time of the incident he was young and was apparently playing with the deceased as the deceased was a friend of the appellant. He went on to add that he saw five persons quarreling and they were his brother, mother, the complainant, the complainant's wife and the deceased. He asserted that the victim was his nephew but even though he said that he was present at the place of occurrence, he claimed that he was not aware as to who assaulted the victim or stabbed the victim. He denied that he had assaulted the victim and insisted that he had no quarrel with the victim as the victim was his friend.

10. Interestingly, however, there appears to be a change of tack on the part of the appellant in his response to the second question. Such second question also pertained to the evidence of PW-1 and the assertion by such witness that the appellant's mother and brother were also present at the place of occurrence. The appellant responded to such question by asserting his innocence before claiming that the complainant dragged him to the police station "because that time I was of unsound mind..." In response to the subsequent questions, the appellant had little to say and did not attempt to suggest his innocence, as he had done in response to the first question, but maintained that he was mentally ill at the relevant point

of time. Finally, upon the trial court enquiring of the appellant whether he would call any witness, he clearly responded in the negative.

11. On a reading of the appellant's examination and his response to the questions put to him by the trial court after the witnesses had been examined, it does not appear that the responses were incoherent or unsound. After the initial attempt by the appellant to plead innocence, the appellant resorted to plan B: that he was mentally unwell at the time of the incident. However, the appellant admitted to have been present at the place of occurrence and it is apparent that the appellant was a witness to the incident and the appellant corroborated that at least the appellant's mother and brother along with the wife of the victim and the parents of the victim were there or thereabouts at the place of occurrence.

12. It is elementary that for a person to be proceeded against for the commission of a grievous offence as in the present case, the court must be satisfied that he had committed the offence consciously and that he was fit to stand trial for the commission of such act. Thus, an accused has to be found both to have been in good mental capacity at the time of the commission of the offence and in sufficiently good mental state to be able to stand trial for his action.

13. No evidence was adduced on behalf of the appellant in support of the somewhat irregular suggestion by the appellant's mother at the beginning of the trial that the appellant was of unsound mind. If the

appellant was of unsound mind at the time of the commission of the offence, it had to be demonstrated. No attempt in such regard was made on behalf of the appellant. Following the trial court's direction to have the appellant clinically examined, the appellant was found to be in good mental shape by the clinical psychologist attached to the Tura Civil Hospital.

14. Quite needlessly, much is sought to be made by legal aid Counsel of the fact that the trial court had required a psychiatrist to examine the appellant but it was a clinical psychologist who had conducted the examination. No attempt, however, is made to indicate that a clinical psychologist cannot assess the mental condition or fitness of a person. Indeed, it is a clinical psychologist who is the appropriate person to assess the mental state or condition of a person. In any event, the report furnished by the clinical psychologist indicated appropriate tests having been conducted and, the trial court, upon due satisfaction in such regard, proceeded with the trial.

15. Further, and more importantly, it is said that the judges' eyes and the judges' assessment are probably the best and, in such regard, the trial court recorded that the accused in the dock showed no signs of mental imbalance or disorder and appeared to be perfectly oriented and responsive.

16. At the initial stage of the present appeal, since a ground of mental instability or insanity of the convict was taken, this Court deemed it proper to have the appellant examined. The appellant has been examined both at the Meghalaya Institute of Mental Health and Neurological Sciences and at the North Eastern Indira Gandhi Regional Institute of Health and Medical Sciences and the reports clearly indicate that the appellant is responsive, aware and conscious. The entire exercise, including the charade by the appellant in course of his examination under Section 313 of the Code was a diversion to scuttle the proceedings and gain undue advantage by resorting to a needless trick.

17. There never was, nor is now, any merit in the assertion by or on behalf of the appellant as to his mental capacity. No evidence was adduced as to the appellant's mental capacity at the time of the incident. Both at the time of the trial and at the time of this appeal, the appellant's mental condition has been assessed by experts and the appellant was found fit to stand trial and in perfect mental state as of now, at least for the purpose of the present proceedings.

18. As to the merits, there appears to be very little to assess or adjudicate. The first information report was lodged on September 17, 2010 by the father-in-law of the victim at the Monabari Police Station in the West Garo Hills claiming that in course of a quarrel involving several

persons, the appellant became ferocious and stabbed the victim with a knife which caused the death of the victim.

19. In course of his deposition in court, the father-in-law of the victim as PW-1 asserted that the incident took place at around 6:30 pm when he was at home with his wife when the appellant came to the witness' house, started a quarrel with the victim and assaulted the victim with a knife. In his cross-examination, the father-in-law of the victim reiterated that he had witnessed the incident and it happened in the presence of the mother and a brother of the appellant between 6 and 6:30 pm when it was not completely dark. For good measure, he repeated that he saw the appellant striking the victim with a knife which the appellant had drawn from his waist.

20. The wife of the victim was examined as PW-3. She claimed that she was sitting in the verandah of the house when the appellant came and started a quarrel with her deceased husband. According to the wife, the quarrel pertained to a land dispute. The witness claimed that she saw the accused with the knife stabbing the witness' husband. In her cross-examination, she repeated that she was present when the incident took place just outside the victim's house. She also claimed that the appellant's mother and a brother were present at the place of occurrence and repeated that she had seen the appellant actually stabbing her husband with a knife.

21. The mother of the victim was examined as PW-4. She claimed that the incident took place right outside her house and she saw the appellant assaulting the victim with a knife. However, in her cross-examination, after saying that the appellant's mother and an elder brother were also present at the place of occurrence, she claimed that she was inside the house and when she heard a scream, she claimed that she came out and saw the victim lying on the ground and the appellant holding the knife in his hand.

22. The investigating officer referred to a dagger measuring about 11½ inches which was the murder weapon. The relevant knife was exhibited in court. According to the investigating officer, the complainant and the complainant's daughter were the eye-witnesses to the incident.

23. The doctor who conducted the post-mortem study was next examined as PW-7 and he described the external injuries that would be consistent with a person trying to ward off a knife brandished by a right handed person. The medical examiner referred to the abdominal injuries received by the victim and was of the opinion that the victim died due to haemorrhage of the abdominal organs and the shock following the assault. Such medical practitioner indicated that he had conducted the post-mortem examination at 3:15 pm on September 18, 2010 and his opinion at the relevant point of time was that the victim had died of ante-mortem

injuries inflicted on the victim some 24 to 26 hours prior to the post-mortem examination.

24. On the basis of the evidence before the trial court, there was little discussion which was necessary. The trial court reproduced the material parts of the deposition of the witnesses and found that there was nothing brought to detract from the eye-witnesses' accounts and the corroboration of the injuries and the cause of death by the post-mortem examination.

25. By the judgment and order impugned dated February 12, 2020, the trial court sentenced the appellant to life imprisonment upon appreciating that for an offence committed under Section 302 of the Penal Code, 1860 no lesser sentence than life imprisonment could be awarded, if the maximum sentence of death penalty was found to be inappropriate. Indeed, the manner in which the trial was conducted and the reasons furnished in the judgment and order impugned are found to be satisfactory. This was not one of the rarest of rare cases which would warrant the capital punishment to be imposed.

26. Accordingly, CrI.A.No.16 of 2022 is dismissed by upholding the judgment of conviction of February 12, 2020 and finding that an appropriate punishment of rigorous imprisonment for life has been awarded, together with a fine of Rs.5000/-. As indicated earlier, the minor

distraction of the appellant being of unsound mind does not warrant much attention particularly in the light of the expert opinions obtained recently.

27. CrI.M.C.No.67 of 2022 is disposed of.

28. Let an authenticated copy of this judgment and order be immediately made available to the appellant free of cost.

(W. Diengdoh)
Judge

(Sanjib Banerjee)
Chief Justice

Meghalaya
11.07.2023
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