

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL APPEAL NO. 1909 OF 2000

Dharmpal S/o Rammilan Gond, R/o Village Mendra, PS- Pondi,
District - Koriya

... Appellant

Versus

State of Madhya Pradesh (now C.G.), through S.H.O. Khadgawan,
District - Koriya

... Respondent

For Appellant	: Mr. Rajesh Jain, Advocate.
For Respondent-State	: Mr. Ravindra Agrawal, Panel Lawyer.

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Judgement on Board

Per NAVIN SINHA, C.J.

01/07/2015

1. The sole Appellant stands convicted under Section 302 IPC to life imprisonment with fine of Rs.200/-, in the event of failure to pay the fine, he was required to undergo three months further simple imprisonment, as ordered on 11.7.2000, by the Additional Sessions Judge, Manendragarh, District Koriya, in Sessions Trial no. 407 of 1996.

2. The deceased Belsia Bai is alleged to have been done to death by the Appellant on 27.5.1996 at about 8:00 a.m. in the fields of Baldev Gond, after snatching the "*tangia*" that the deceased was carrying and assaulting her with the same. Merg, Exhibit P-1, was lodged by PW-1 Hari Singh, the son of the deceased, who was an eye-witness to the assault. The post-mortem, Exhibit P-6, was

conducted by PW-5, Dr. P.K. Rohan, who found the following injuries on the person of the deceased:-

- (i) The left forearm deformed at wrist; both bones of wrist broken at the distal 1/3rd. Injury ante-mortem in nature.
- (ii) Incised wound size 5cm x 1^{1/2}cm bone deep present at the left side back of lower chest below scapula.
- (iii) Abrasion size 3cm x 2cm over the right elbow.
- (iv) Lacerated wound left side of occipital region above ear size 3cm x 4cm blood clot present. Bone deep injury. Ante-mortem in nature.
- (v) Lacerated wound right temporal region with depression size 4cm x 5cm bone deep with blood clots and dirty bloodstains, dirty fluid coming out. Ante-mortem in nature.

In the opinion of the Doctor, the cause of death was shock due to massive internal hemorrhage caused by multiple fractures of skull and limb with laceration of brain, homicidal in nature and the time elapsed since the death was 24 hours.

3. Learned Counsel for the Appellant submitted that there are contradictions in the evidence of PW-1 Hari Singh, son of the deceased, and PW-2 Shiv Kumar, the grandson of the deceased. The former stated that PW-2, Shiv Kumar, informed him of the assault after which he ran to the place of occurrence, while PW-2 stated that he shouted after which PW-1 came running and PW-2 then went home. If PW-2 shouted and went home, the evidence of PW-1 that he was called by the former is contradictory. Both of them therefore cannot be considered as reliable eye-witnesses to sustain conviction.

4. The three eye-witnesses, PW-1 Hari Singh, PW-2 Shiv Kumar and PW-3 Sundari Bai, daughter of the deceased, are all related to each other and to the deceased. If the assault took place in an open

field there had to be independent witnesses available. In absence of any independent witnesses forthcoming, the assault having taken place at 8:00 a.m., in a public field, it shall not be safe to rely upon the related and interested witnesses only for conviction. The "*tangia*" has not been recovered on any confession of the Appellant but from the place of occurrence. The presence of any blood on it in the FSL report is inconsequential for the guilt of the Appellant. The clothes of the Appellant alleged to have bloodstains have not been seized from his person but were lying on the ground in the fields as deposed by PW-4 Main Prasad, the seizure marked Exhibit P-4. Therefore, even if in the FSL report, Exhibit P-8, any blood has been found on it or the serologist report confirms it is human blood, Exhibit P-9, it is all inconsequential to link it with the guilt of the Appellant. It was further submitted that the Appellant had no motive or intention to kill. He suffered from insanity, a defence also taken under Section 313 Cr.P.C. During the course of trial he was sent for medical examination and on 7.10.1996, the Medical Specialist, District Hospital, Ambikapur had opined that he was of unsound mind requiring further investigation.

5. Learned Counsel for the State submitted that the prosecution evidence is convincing and reliable. PW-1 Hari Singh, PW-2 Shiv Kumar and PW-3 Sundari Bai are related to the deceased but that alone cannot be a ground to discard their evidence. They are speaking the truth. If the eye-witnesses are reliable, the facts that the "*tangia*" or the clothes were found in the field and not recovered from the person of the Appellant or on his confession are irrelevant. The

contradiction alleged between the evidence of PW-1 Hari Singh and PW-2 Shiv Kumar is trivial and inconsequential, if it can be called a contradiction. There is no cogent medical evidence available with regard to insanity. The conviction calls for no interference.

6. We have considered the submissions on behalf of the parties and perused the evidence on record also.

7. PW-1 Hari Singh, PW-2 Shiv Kumar and PW-3 Sundari Bai, are the son, grandson and daughter of the deceased. In our opinion, there would be no one more interested in ensuring that the real culprit who assaulted the deceased is brought to book rather than to implicate another falsely and let go the real assailant. No motive has been ascribed by the Appellant why the relatives of the deceased were falsely implicating him. It is true that the assault took place in an open field at 8:00 a.m., there could have been independent witnesses. But, it was not an invariable rule that an evidence of related eye-witness may not be relied upon and independent corroboration must be sought by way of independent witnesses irrespective of all circumstances. Many a times, independent witnesses do not come forward for various reasons and it is only the family members who come to depose.

8. We do not find any contradiction between the evidence of PW-1 Hari Singh and PW-2 Shiv Kumar. PW-2 Shiv Kumar, a minor, aged about 11 years, deposed that he was travelling with his grandmother, the deceased. The Appellant snatched the "*tangia*" from his grandmother and assaulted her repeatedly. On his raising an alarm, PW-1 Hari Singh, PW-3 Sundari Bai and others came running. PW-2,

a minor, was alarmed having witnessed the assault, he then went home. This is to us a normal human conduct considering that he was only eleven years old. PW-1 Hari Singh deposed that PW-2 Shiv Kumar came and informed him and he then went to the spot. The contradiction sought to be urged on behalf of the Appellant is very trivial in nature as it is always possible that on the alarm raised by PW-2 Shiv Kumar when he started to shout, PW-1 Hari Singh may have come running. That part of their evidence that they eye witnessed the assault is convincing and reliable. PW-1 Hari Singh further states that the Appellant tried to run and first hid under a bridge after which he ran to the house of Shivraj Singh to hide himself.

9. PW-3 Sundari Bai, the daughter of the deceased, has likewise stated having eye witnessed the assault. In cross-examination of the three witnesses, nothing was put to them to suggest that they were not actually eye-witnesses to the assault and the credibility of their examination-in-chief was not demolished. The only defence sought to be taken by the Appellant was of insanity.

10. If the evidence of PW-1 Hari Singh, PW-2 Shiv Kumar and PW-3 Sundari Bai, as eye-witness, is convincing and reliable, one need not seek corroboration from the FSL report with regard to blood on the "*tangia*", if the clothes picked up from the ground were actually of the Appellant or the serologist report that it was human blood.

11. The place of assault stands established from the inquest report, Exhibit P-2, as the fields of Baldev Gond where the body of the deceased was lying. The bloodstained sample of earth was

seized from the place of occurrence, Exhibit P-5, has confirmed the presence of blood in it in the FSL report, Exhibit P-8.

12. The absence or presence of a motive cannot be a conclusive factor by itself for conviction or exoneration. The fact that the Appellant contends absence of motive cannot give him the benefit of exoneration to hold that he was not the assailant. The question of intention has to be gathered from all surrounding circumstances such as the weapon of assault and the nature and manner of assault. In the facts of the present case, considering the assault made repeatedly with a "*tangia*", apparent from the post-mortem report, the intention of the Appellant to kill is apparent. In his defence under Section 313 Cr.P.C. also he did not deny the occurrence but sought to take a plea of insanity. In his bail application before this Court he urged that he had gone for mental treatment to Gwalior Hospital but no evidence in support of the same has been brought on record.

13. During trial, the Appellant was sent to the Medical Specialist, District Hospital Ambikapur, Surguja, whose report dated 7.10.1996 is as follows:-

- (i) Disassociation of ideas.
- (ii) Over talkative and talks irrelevant.
- (iii) Orientation and time and place is not proper.

Opining that the mental condition was not sound and hence he needed psychiatrist treatment.

14. In our opinion, the nature of evidence available on record does not suggest that he was suffering from a level of insanity where he was not aware of his actions so as to not know the consequences of his actions, incapable of having normal human thinking and

behaviour to derive advantage under Section 84 of the Indian Penal Code. If the Appellant took it as a defence, under Section 105 of the Evidence Act it was for him to lead appropriate evidence in support of the same.

15. In AIR 1972 SC 2443 (Sheralli Wali Mohammed v. State of Maharashtra) it was observed that the law presumes that every person is sane unless the contrary is proved. To accept a defence of insanity merely upon arguments would be a dangerous proposition.

16. In (2011) 11 SCC 495 (Surendra Mishra v. State of Jharkhand) a distinction was drawn between legal insanity and medical insanity and that it was not mere any mental illness which would suffice as a defence under Section 84 IPC observing as follows:-

“11. In our opinion, an accused who seeks exoneration from liability of an act under Section 84 of the Penal Code is to prove legal insanity and not medical insanity. Expression “unsoundness of mind” has not been defined in the Penal Code and it has mainly been treated as equivalent to insanity. But the term “insanity” carries different meaning in different contexts and describes varying degrees of mental disorder. Every person who is suffering from mental disease is not ipso facto exempted from criminal liability. The mere fact that the accused is conceited, odd, irascible and his brain is not quite all right, or that the physical and mental ailments from which he suffered had rendered his intellect weak and affected his emotions or indulges in certain unusual acts, or had fits of insanity at short intervals or that he was subject to epileptic fits and there was abnormal behaviour or the behaviour is queer, are not sufficient to attract the application of Section 84 of the Penal Code.

18. We are of the opinion that the appellant though suffered from certain mental instability even before and after the incident but from that one cannot infer on a balance of preponderance of probabilities that the appellant at the time of the commission of the offence did not know the nature of his act; that it was either wrong or contrary to law. In our opinion, the plea of the appellant does not come within the exception contemplated under Section 84 of the Penal Code.”

Applying the aforesaid test, considering the medical assessment of the Appellant, the repeated nature of assault made by him, followed by his conduct in running away thereafter, attempting to hide under the bridge, realising he was being chased and running inside the house of another to hide, the absence of any material placed even in the appeal to persuade us to call for additional evidence, we are not convinced that the defence of insanity is a credible defence.

17. In conclusion, we find no reason to interfere with the conviction of the Appellant. The Appeal is dismissed. The Appellant is directed to surrender forthwith and/or be taken into custody for serving out the remaining period of his sentence.

Sd/-
(Navin Sinha)
Chief Justice

Sd/-
(P. Sam Koshy)
Judge