
(1941) 12 PAT CK 0003
In the Patna High Court

Dilmohammad @ Muslim Sheikh

APPELLANT

Vs

Emperor

RESPONDENT

Date of Decision : 08-12-1941

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 304

Citation : AIR 1942 Patna 420

Hon'ble Judges : Varma, J;Rowland, J

Bench : Full Bench

Judgement

Rowland, J.—The appellant Dilmohammad alias Muslim Sheikh (aged 35 years) has been convicted of murder of Hari Moira and has been sentenced to transportation for life u/s 302, Penal Code. The trial was held with the aid of four assessors of whom two thought that accused was guilty u/s 302 while two thought that he was guilty u/s 304 of the Code.

2. The occurrence took place on the evening of 29th September 1940, not far from Madhukunda liquor shop. The prisoner and Chhedi Goala had bought a bottle of liquor in that shop and had drunk some of the contents, but the evidence is not clear whether they had consumed the whole. They had left the shop and another party had come into the shop to drink. They were Fakir (P.W. 8), Sobha Manjhi (P.W. 4) and Hari Moira the deceased. At a little distance outside were Sushila (P.W. 1), who was a concubine of Hari Moira, and Kutri (P.W. 2), wife of Fakir, and with them Kutri's three years old daughter, Seba, whom Sushila was holding in her arms. The women were accosted by Chhedi who pulled at the sari of Sushila. She cried out and thereupon the appellant Dilmohammad stabbed her with a knife inflicting injuries both on her and on the child. Hearing the outcry Fakir, Sobha Manjhi and Hari Moira came out to protest whereupon the appellant stabbed in quick succession, first Hari Moira, then Fakir and then Sobha. These persons then ran back towards the liquor shop. From it Khedar Miyan (P.W. 13) the manager of the shop came out with a lantern, asking what had happened. He was told by Hari that "this man (pointing to accused

Dilmohammad) has stabbed me." Dilmohammad fled away, and Khedar sent Chanda (P.W. 12) a peon of the shop to bring a doctor. On the way Chanda informed three chaukidars whom he met at the railway station as to what had happened. These chaukidars are Abinash Bauri (P.W. 5), Mahesh Bauri (P.W. 6) and Jugal Bauri (P.W. 7). The doctor, Babu Jagat Joy Mazumdar came too late: Hari Moira was dead by the time he arrived. The assistant station master, Babu Kalipada Saha and a coal merchant Babu Sucheshwar Rao also came to the place. As they were still on their way to the liquor shop they met some persons coming towards the station and along with them was the appellant. The chaukidars arrested him. When they came near the liquor shop the appellant escaped but was pursued and rearrested. At that time he was struck with lathis and received some injuries. A knife was taken from him which was subsequently sent for chemical examination and found to be stained with blood, but the Bouroe of the blood could not be proved in consequence of its disintegration.

3. The prosecution have examined as witnesses Sushila and Kutri who describe how they were accosted by Chhedi and how Dilmohammad stabbed Sushila and the child. The child was aged only about three years and was too young to be examined. Fakir and Sobha Manjhi have been examined to prove how on hearing the alarm they came out to protest and that Dilmohammad stabbed Hari and both these two witnesses. Khedar Mian the manager of the shop proves how hearing the alarm he came out. He proves that Hari told him that he had been stabbed by this accused; and the subsequent phases are described by this witness, by the peon Chanda, by the chaukidars Abinash, Mahesh and Jugal and by the doctor and the assistant station master.

4. The accused was a stranger to the principal witnesses and there is no suggestion that he could have been falsely implicated in consequence of enmity. There is no reason whatever to doubt the clear evidence that he inflicted the injuries which caused the death of Hari Moira as well as the injuries on Fakir, Sobha Manjhi, SuBhila and Seba.

5. Hari Moira had a stab wound 4" deep vertically downward from the right clavicle entering and puncturing the right lung. This wound was the cause of death, and the medical opinion is that such a wound was sufficient in the ordinary course of nature to cause death, Fakir Kewat had a stab wound on the epigastric region entering the skin and muscle. Sobha had a skin deep cut wound on the back of the right shoulder. Sushila had a cut wound skin deep on the outside of the upper half of the left arm. The child Seba Dasi had a cut wound outside the right arm entering the skin and muscle.

6. The only question which can arise is whether in the circumstances of this case the conviction of the appellant ought to be u/s 802 or Section 304, Penal Code. He has said in his statement that he knew nothing as to what was alleged against him because on that evening he was dead drunk. The witnesses for the prosecution have not given clear evidence as to whether he was in a wholly drunken state, but there is the evidence that he and his companion had taken a

whole bottle of country spirit. The conduct of the accused also does not appear to have been quite the conduct of a sober man. We may take it that he was in an intoxicated condition. The intoxication being due to his own voluntary act there is, of course, no question of the appellant getting the benefit of Section 85, Penal Code. But we shall have to consider the effect of Section 86, because knowledge or intent is one of the ingredients of the offence of murder. Section 86 deals with cases where an act done is not an offence unless done with a particular knowledge or intent, and we may notice that there may be cases in which a particular knowledge is an ingredient, and there may be other cases in which a particular intent is an ingredient, the two are not necessarily always identical. The section says that "a person who does the act in a state of intoxication shall be liable to be dealt with as if he had the same knowledge as he would have had if he had not been intoxicated". It is noticeable that the section does not say that he shall be liable to be dealt with as if he had the same intention as might have been presumed if he had not been intoxicated. This section was considered in the Madras High Court in *In re: Mandru Gadaba* AIR 1916 Mad. 489 . Ayling, J. said, "The nature of the wounds and of the weapon used are such that a sober man would undoubtedly be presumed to know that the wounds were likely to prove fatal. Section 86, Penal Code, makes it clear that ordinary drunkenness makes no difference to the knowledge with which a man is credited. If the accused knew what the natural consequences of his act were, he must be presumed to have intended to cause them". But Tyabji J. regarded the matter from a slightly different point of view saying, "It is true that Section 86, Penal Code, lays down that in certain cases an intoxicated person shall be liable to be dealt with "as if he had the same knowledge as he would have had if he had not been intoxicated". But it does not provide that the intoxicated person shall be dealt with as if he had the same intent. It seems to me that the word "intent" was advisedly omitted as "knowledge" and "intent" are both referred to in the earlier portion of the section. On the other hand, it must be noted that Section 86 expressly deals with cases where an act is done with a particular knowledge or intent. It may therefore be (as was contended by the Public Prosecutor) that Section 86 implies that intent should be inferred from knowledge though knowledge alone is expressly imputed to the intoxicated person." Tyabji J., however, did not express, any definite opinion on this aspect of the case, i.e., whether a criminal intent was the necessary inference to be drawn from the knowledge which Section 86 imputes to an accused person. In the Calcutta High Court in *Manindra Lal Das Vs. Emperor*, the distinction between knowledge and intention is more clearly drawn. In this case the Sessions Judge had charged the jury thus: "If an act is done in a state of intoxication and that intoxication is voluntarily incurred, he is equally liable before the law as if he had done that act in a state of sobriety". Henderson J., with whom Derbyshire C.J., agreed, said "that direction is entirely inadequate as a statement of the law on the point. The learned Judge should have told the jury that, as far as knowledge was concerned, it must be taken that the accused had the same knowledge as he would have had if he had not been intoxicated. There is, however, no such

presumption with regard to intention. The learned Judge should then have directed the jury that, if they were satisfied that he was intoxicated at the time, they should take that fact and the other facts into consideration in determining whether they were satisfied that the intention alleged by the prosecution had been made out. That statement of the law substantially agrees with the analysis of the section which I have given earlier in this judgment. We have, then to apply the law to the facts of the case before us. The first question is, what actual intention is proved I have described the injury found on Hari Moira and the injuries on the other persons whom the appellant stabbed. This much is certain that each one of these injuries was inflicted with the intention of causing bodily injury: be the assailant drunk or sober, there can be no doubt of that. We are to consider particularly the injury on Hari. Had the accused been sober, the nature of this injury, a penetrating wound directed at the chest and in the direction of the lungs and heart, might well have led us to infer that the intention of his assailant was to cause death itself, and that would have led to the conclusion that the act amounted to murder within para. 1 of Section 300; but in the case of a drunken man it seems doubtful whether a deliberate intent of causing death was formulated in his mind. Let the accused have the benefit of that doubt.

7. The offence of murder, however, is not limited to cases falling within para. 1 of Section 300. By para. 2, an act done with the intention of causing bodily injury is murder "if it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused." Illustration (b) shows that this clause includes within the definition of murder the case where the injury might not have been enough to kill a healthy person but where A the assailant knew Z to have such a disease that the blow was likely to cause the death of Z. The language of the clause, however, is not limited to the case where Z is a sick man; it is enough if A knew that the injury was likely to cause Z's death. Applying this to the case before us, with what knowledge is Dil Mohammad to be credited? Any sober man must surely have known that the knife wound he was inflicting was likely to cause the death of Hari. The effect of Section 86 is that it will not avail him to say that in consequence of intoxication he had not fully realised that fact; he is still liable to be dealt with as if he had that same knowledge ; that is to say, for murder. Under para. 3 of Section 300, culpable homicide amounts to murder "if the act is done with the intention of causing bodily injury to any person and the bodily Injury intended to be inflicted is sufficient in the ordinary course of nature to cause death". Illustration (c) runs thus: "A intentionally gives Z a sword-cut or club-wound sufficient to cause the death of a man in the ordinary course of nature. Z dies in consequence. Here A is guilty of murder, although he may not have intended to cause Z's death". Applying this to the case before us, what injury did Dil Mohammad intentionally inflict? and was it sufficient in the ordinary course of nature to cause death? The injury was a stab wound penetrating the chest to the depth of 4" right into the lung; and it was sufficient in the ordinary course of nature to cause death. That being so, the offence would amount to

murder within Clause (3) of section 300.

8. It has been suggested by the learned Assistant Government Advocate that the act also fell within Clause (4) of a 300, but as it clearly falls within Clause (2) and (3) I do not think it necessary to examine Clause (4) in detail. In the result I am fully satisfied that the offence of this appellant amounted to murder and that we ought to affirm the conviction and sentence and dismiss the appeal.

Varma, J.

I agree.