

(1959) 10 MP CK 0019
In the Madhya Pradesh High Court
Case No : Criminal Appeal No. 573 of 1958

Jethuram Sukhra Nagbanshi

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 15-10-1959

Acts Referred:

Penal Code, 1860 (IPC) — Section 85

Citation : AIR 1960 MP 242 : (1960) CriLJ 1093(1) : (1960) JLJ 652 : (1960) 5 MPLJ 615

Hon'ble Judges : T.P. Naik, J;K.L. Pandey, J

Bench : Division Bench

Advocate : N.N. Pande, for the Appellant; R.J. Bhawe, A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

Naik, J.

The appellant (accused) Jethuram has been convicted by the Second Additional Sessions Judge, Bilaspur, u/s 302 of the Indian Penal Code for committing the murder of Mst. Bundkunwar on 11th May, 1958, and sentenced to imprisonment for life.

It is not disputed that Mst. Bundkunwar is dead and that she died of homicidal violence. Dr. Dube (P.W. 7), who performed the post-mortem examination, found the following injuries on the person of the deceased:

"(1) An incised wound 2" x 1/2", spindle shape, on the left side of the chest, 3 1/2" above the nipple at the 10 o'clock angle. 2nd and 3rd ribs cut. Pleura and lung also cut. Blood clot present. Straight in direction.

(2) An incised wound 2" x 1/4" x 1/4", transverse in direction, on the upper 1/3rd of the right side of the back.

(3) An incised wound 1" x 1/2" x 1/4" just above injury No. (2), transverse in direction.

(4) An incised wound 3 1/2" x 1/4" on the front part of the head on the left side, just above the middle part of the eyebrow. Vertical in direction. Slightly bone cut.

(5) An incised wound 2" x 1/4" x bone deep on the left side of the head, 2 1/2" above the ear. Left ear 1" cut. Oblique in direction.

(6) An incised wound 4" x 1/4" x bone deep on the occipital region, on the left side. Bone cut. Membranes also slightly cut.

(7) A lacerated wound, 1" x 1/2" on the left side of the head, behind the left ear on the occipital region. Transverse in direction.

(8) A lacerated wound 1" x 1/2" on the occipital region, on the left side. Just above injury No. (7)."

On dissection, the scalp, skull and membranes were found to be cut and the brain was found to be congested. In the opinion of the doctor, all the injuries were ante mortem and death was due to shock as a result of the injuries inflicted on the chest and head,

The assault was witnessed by Sidhia (P.W. 2), Bidhia (P.W. 3) and Goverdhan (P.W. 4). Their evidence, which has been accepted by the learned Additional Sessions Judge and which we find no reason to discard, establishes that it was the appellant who was responsible for inflicting the injuries found on the person of the deceased.

The learned counsel for the appellant vehemently pressed to us the contention that the facts of the case warranted the application of Section 85 of the Indian Penal Code; and as the appellant had been administered a heavy doze of liquor against his will, he could not be held liable for the offence of which he has been convicted.

Section 85 of the Indian Penal Code reads as follows :

"Nothing is an offence which is done by a person who, at the time of doing it, is, by reason of intoxication, incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law :

Provided that the thing which intoxicated him was administered to him without his knowledge or against his will."

The section lays down the principle of English law formulated by Baron Parke in Pearson's case, (1835) 168 ER 1108, in the words :

"Voluntary drunkenness is no excuse for crime. If a party be made drunk by stratagem, or the fraud of another, he is not responsible." The case law as it developed did not define what voluntary drunkenness meant except in a negative way. According to I Hales Pleas of the Crnwp. page 32, the protection can only be claimed by a person who had been made drunk through stratagem Or the fraud of another or through ignorance, or coercion practised by his friend or foe, as if a person be drugged by his enemies or given to eat or drink such a thing as causes

frenzy or his unskilful physician gives him to drink, in all of which cases the person intoxicated may be said not to have been a free agent and therefore not responsible for the consequences of his act. In the first English report on drunken homicide which affirmed volition as its rationale it was said :

"But where a man breaks the words of the law by involuntary ignorance, there he shall not be excused. As if a person that is drunk kills another, this shall be felony, and he shall be hanged for it, and yet he did it through ignorance, for when he was drunk he had no understanding nor memory; but inasmuch as that ignorance was occasioned by his own act and folly, and he might have avoided it, he shall not be privileged thereby. And Aristotle says, that such a man deserves double punishment, because he has doubly offended, viz. in being drunk to the evil example of others, and in committing the crime of homicide. And this act is said to be done ignoranter, for that he is the cause of his own ignorance : and so the diversity appears between a thing done ex ignorantia, and ignoranter. And therefore, as I said, where the words of a law are broken to avoid a greater inconvenience, or by necessity, or compulsion, or involuntary ignorance, in all these cases the law itself is not broken."

(Reniger v. Fogossa 1550 75 ALL ER 1 . Also see 8 Holdsworth, History of English Law (1937) 441).

It is this negative concept that is emphasized in the Indian Penal Code. Therefore, in order to bring a case within the section, the thing which intoxicated the person should have been administered to him "without his knowledge" "or "against his will". The expression "without his knowledge" presents no difficulty. It simply means "in ignorance of the fact that what is being administered to him is or contains or is mixed with an intoxicant." Consequently, where the intoxicant is administered to the accused by stratagem or fraud of another, as when mixed with his food or drink, and given to him in confidence, he is excused.

The connotation of the expression "against his will" is equally clear as a little reflection shall show. "Will" is the faculty of our minds which guides or controls our actions. So where the mind goes with the act it can be said that a person had acted in accordance with his will. The classical definition of an "act" for legal purposes is by Holmes in his *The Common Law* at page 54, wherein he purports to say : "it is a muscular contraction that results from an operation of the will".

In the context in which the word "will" has been used in the section, the muscular movement constituting the act must be compelled by the immediate force of the unfettered will i.e. by free will, as opposed to a threat of force acting on the mind. In the latter case, it cannot be said that the act was dictated by the free will. So if someone seizes my hand and by superior force compels me to strike another, there, is no act on my part. (Hale P. C. i. 434). Similarly if by threat he compels me to strike another, the act done may be mine but having been performed in duress it cannot be said to have been performed of my free will as my mind did not go with the act and consequently it is an act performed

"against my will".

Thus an act which is against the "will" must be an act which the performer performed not out of his own conscious volition but on compulsion by some outside agency by overpowering or paralysing his will by overt physical acts. Moral persuasion acting as an incentive has never been considered as an adequate excuse nor imposition on young, inexperienced or weak minds by calculating adults of superior strength of mind or will. On this view if friends or relatives persuade a person to drink a little more than he can reasonably digest, he cannot complain that he was made to drink against his will.

The act of drinking was his own act for which the immediate force was his own free will. The act of persuasion could not and did not make the act of drinking the act of anybody else than the doer's. But if a person were put in fear of immediate physical danger and then made to drink, the act cannot be said to be his. Similarly, when he is bound hand and foot and then the intoxicant is literally "poured down his throat, the mere reflex act of swallowing cannot make the drinking of the intoxicant his own act performed out of his own free will. Thus where a boy of sixteen was admitted to a gaming house, where the proprietor plied him with whiskey in order to cheat him in the play, and the boy drunk to the point of admitted "temporary insanity", in a fight killed the calloused operator, it was held that "involuntary intoxication is a very rare thing and can never exist where the person intoxicated knows what he is drinking, and drinks the intoxicant voluntarily, and without being made to do so by force or coercion," *Perryman v. State* 12 OCA 500. So again where a person took liquor presented by a physician (presumably with the knowledge that it was liquor), the Court in *Johnson v. Commonwealth* 115 SE 673 was unwilling to entertain the plea that the accused drank to obtain relief from an acute pain. (Both the aforesaid cases have been taken from 57 Harvard Law Review, p. 1055).

Bearing the aforesaid principles in mind, we shall now examine the facts of the instant case to determine if the appellant could take advantage of the provisions of Section 85 I. P. C.

In the instant case, in his statement u/s 342 of the Code of Criminal Procedure, the appellant stated:

^^dV/kksjke eS o esjk cki cktkj esa x;s Fks rc esjs cki us eq>s idM+ fy;k o eq>s bUny us tcju "kjkC fiyk;k] esjs dks fQj ogka ls vkrs oDr vk/ks jkLrs esa u"kk vkus yxk ckn esa D;k gqvk eSa ugha tkurk] eSa u"ks esa csgks"k jgkA**

Some support for the plea is derived from the evidence of Indal (C. W. 1), who in his deposition says :

^^rc eqyfte tsBww ds cki us eqyfte tsBw ls iwNk fd rw Hkh ih ys rsjs cnu dk nnZ Bhd gks tk;xkA bl ij eqyfte tsBw cksyk fd eSa rks ugha fi?axk D;ksafd eSa ekr tk? axkA eq>s u"kk vk tk;sxk fQj eqyfte tsBw dk cki cksyk fd rsjs gkFk esa nnZ gks jgk gS bl fy;s rw "kjkC D;ksa ugha ihrk bl ij eqyfte tsBw dk cki cksyk dSls ugha

fi;sxk rsjs dks rks nokbZ ds fy;s "kjkC fiyk jgs gSA rsjh ih<+k Bhd gks tk;sxhA ,slk dgdj eqyfte tsBw ds cki us eq>s "kjkC [kjhnuS ds fy;s 1? vkuk iSlS fn;kA fQj eSus pkj vkus dh "kjkC tsBw ds fy;s ml nqdku ls [kjhN dj fxykl esa yk;k og "kjkC eSus tsBw dks nh rks eqyfte tsBw cksyk fd eSa rks ugha ihrk tsBw dk gkFk idM+k vkSj dgk fd dSlS ugha fi;sxkA blDs ckn eSus "kjkC dk fxykl eqyfte tsBw ds eqag dks yxk;kA rc eqyfte tsBw us mlesa dk vk/kk "kjkC ih fy;k vkSj vk/kk "kjkC ugha ugha dJds eqag es ls myV fn;kA

dV?kksjk xkao esa dh "kjkC nqdku ij gedks uudh feyk vkSj ogka ls ge pkjks lkFk lkFk vius xkao tkus ds fy;s fudys ?xokg vUnktu 3 cts dk le; cryk dj dgrk gS fd bruk le; gks x;k Fkk?A

ge pkjks gekjs xkao d ckgj tks vejS;k gS vkSj tks Nqjhokys tehankj dh gS ogka ge pkjksa Bgjs ogka eqyfte tsBw ds cki ds ikl tks "kjkC dh cksry Fkh mlesa ls eSa] uudh vkSj eqyfte tsBw dk cki lq[kjk ,sls rhuksa "kjkC ihrs jgsA vkSj tsBw ogka cSBk jgkA rc tsBw ds cki us tsBw dks iwNk fd rsjk gkFk dk nnZ dSlk gS rc eqyfte cksyk fd esjs gkFk dk nnZ vHkh Bhd ugha gqvk gSA rc eqyfte tsBw dk cki cksyk fd ys nokbZ vkSj ih ysA fQj tsBw cksyk fd eS rks ugha ihrk rc mldk cki cksyk dSlS ugha ihrkA rc fQj tsBw ds cki us eqyfte tsBw dks ge rhuks ds ckn tks "kjkC cph Fkh og lc "kjkC fiyk nhA rc tsBw us dqN "kjkC fi;k vkSj dqN ugha fi;kA**

This is the best evidence in favour of the accused, because the other evidence on record does not go even so far. But even so, we are of opinion that the drinking of liquor by the accused at the persuasion of his father to alleviate his pain cannot be said to be administration of liquor to him "against his will."

Adverting to this topic, Baron Alderson in *Rex v. Meakin* (1836) 173 ALL ER 131, said:

"If a man chooses to get drunk, it is his own voluntary act : it is very different from a madness which is not caused by any act of the person. That voluntary species of madness which it is in a party's power to abstain from, he must answer for. However, with regard to the intention, drunkenness may perhaps be adverted to according to the nature of the instrument used. If a man uses a stick, you would not infer a malicious intent so strongly against him if drunk, when he made an intemperate use of it, as you would if he had used a different kind of weapon; but where a dangerous instrument is used, which, if used, must produce grievous bodily harm, drunkenness can have no effect on the consideration of the malicious intent of the party."

IN the instant case, the accused used an axe for inflicting six of the injuries and a stick for the other two. Out of the axe injuries, four were on the head. The lathi injuries were also on the head. We are, therefore, of opinion that even though the accused might have been drunk to a certain extent, he could not, under the circumstances, claim any benefit under the provisions of Section 85 of the Indian Penal Code.

The conviction of the appellant is thus proper and it is upheld. The sentence awarded is also proper. The appeal is accordingly dismissed.