
(1983) 09 OHC CK 0009
In the Orissa High Court

Sundar Bairagi

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 29-09-1983

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 309, 84

Citation : (1984) CriLJ 124

Hon'ble Judges : R.C. Patnaik, J;P.K. Mohanty, J

Bench : Division Bench

Judgement

P.K. Mohanty, J.—The appellant was tried for an offence u/s 302. I.P.C. for having caused the death of his wife Bhagabati and also for an offence u/s 309. I.P.C. for attempting to commit suicide. He was found guilty of both the offences and sentenced to undergo imprisonment for life for the offence u/s 302. I.P.C. and simple imprisonment for six months for the offence u/s 309. I.P.C. Both the sentences were directed to run concurrently.

2. Prosecution case may be briefly stated as follows:

On the night of 7th January. 1979 the appellant with his wife and two children - a son aged four years and a daughter aged six months - was sleeping in his house. One Purendar Tarasia a leper was taking shelter on the outer verandah of the house of the appellant. Some time before dawn the said Purandar Tarasia raised a cry that the children of the appellant were crying and that something unusual had happened in his house. The cry raised by Purandar attracted the attention of P.Ws. 1 and 2. the neighbours of the appellant. They came near the house of the appellant and found that the entrance door of the house was bolted from inside. They called the appellant and asked him to open the door, but he threatened to kill any one who entered his house. Other villagers also came there and the local Sarpanch was sent for. When the appellant did not open the door despite repeated request one Khagapati Rout broke open the door and brought out the son of the appellant who was behind the door. By the focus of torch light the people present could see the appellant and his wife lying on the floor of one

room in a pool of blood. Out of fear nobody dared to enter the room. The Sarpanch (P.W. 3) closed the door from outside and reported the matter at the Police Station. The Police Officer (P.W. 11) visited the spot on 8th January, 1979 at 9-30 a.m. and found the appellant's wife lying dead and the appellant present there with several marks of injuries on his person. He also found a knife sticking to an injury on the head of the appellant. He sent the appellant for medical examination, despatched the dead body of the wife of the appellant for post-mortem examination, and seized the bloodstained articles from the room where the dead body was lying. The appellant was taken to custody after he was discharged from the hospital on 26-3-79. In due course he was charge-sheeted under Sections 302 and 309. I.P.C.

3. At the trial, the appellant denied the occurrence and pleaded innocence.

4. The trial Court came to the conclusion that it was the appellant who caused the death of his wife and that he attempted to commit suicide. Accordingly it convicted and sentenced the appellant as aforesaid.

5. The conviction and the sentences are assailed in this appeal as being contrary to law and facts.

6. That the death of the deceased was homicidal is clearly established by the medical evidence. No objection has been raised on this ground. Hence we need not discuss this aspect of the case.

7. Mr. I.C. Dash, the learned Counsel appearing *amicus curiae* to defend the appellant raised two contentions before us:

(1) That there was no evidence to show that it was the appellant who caused the death of his wife and injuries on his own person, and

(2) that even if it was the appellant who cause the injuries he was not in a sound state of mind at the time he committed the act.

8. There is no direct evidence of any eye-witnesses to the occurrence. Prosecution case rests on circumstantial evidence. P.Ws. 1 and 2 who are neighbours of the appellant gave evidence that some time before dawn purandar Tarasia who used to take shelter on the outer verandah of the house of the appellant raised a cry that the children of the appellant were crying and that something unusual had happened in his house. Hearing his cry they rushed to the spot and found that the entrance door was bolted from inside. They called the appellant and asked him to open the door but he threatened to kill them if they entered his house. After arrival of the Sarpanch (P. W. 3) the entrance door of the house was forcibly opened and the son of the appellant was brought out. P. Ws. 1 to 3 stated to have seen by focusing their torchlights that the appellant and his wife were lying on the floor of the house in a pool of blood and that the intestine of the deceased had come out. Out of fear they did not enter into the room. The Sarpanch bolted the room from outside and others guarded the house. After arrival of the Police the room was opened and it was found that the

wife of the appellant was lying dead and the appellant was sitting there with injuries on his person and a knife sticking to one of the injuries on his head. On medical examination, the following injuries were found on the person of the appellant:

(1) One penetrating wound over the head measuring 1" x 1/4" x 1" piercing the skull partially for a depth of 1/8" of an inch.

(2) Multiple incised wounds over the scalp and right ear.

(3) One incised wound over the root of the penis partially cutting the penis on the dorsal aspect.

9. The doctor (P. W. 9) conducted operation to remove the knife that was sticking to the injury on the head of the appellant.

10. The only conclusion possible on the basis of the evidence of the above witnesses is that it was the appellant who caused the death of his wife and inflicted injuries on his own person. We, therefore agree with the trial Court that it was the appellant who committed acts which caused the death of his wife and injuries on his own person.

11. The only point that was seriously argued before us was that the appellant was insane at the time when he committed the aforesaid acts and that he is entitled to the benefit of Section 84, I. P. C.

12. When a plea of legal insanity is set up, the Court has to consider whether at the time of commission of the offence the accused, by reason of un-soundness of mind, was incapable of knowing the nature of the act or that he was doing what was either wrong or contrary to law. The crucial point of time for ascertaining the state of mind of the accused is the time when the offence was committed. Whether the accused was in such a state of mind as to be entitled to the benefit of Section 84 of the I.P.C. can only be established from the circumstances which preceded, attended or followed the crime vide *Dahyabhai Chhaganbhai Thakker Vs. State of Gujarat*, .

13. It appears from the evidence of P.Ws. 1. 2 and 3 that the father of the appellant was ,a mad man and the brother of the appellant was a half mad man. For about four or five years the appellant was found moving like a mad man. He was not particular about his food and after moving throughout the whole day he used to return home in the evening. This evidence did not appeal to the trial Court and it did not place any reliance upon it.

14. The appellant killed his wife without any rational motive. He made no efforts to escape from the scene or to conceal anything. He showed no feeling of remorse or repentance for what he had done. After having killed his wife he remained completely unmindful of what happened. In short, he did not exhibit any feeling or reaction whatever. These circumstances, to our minds, are indicative of the fact that at the time when the appellant killed his wife he was

mentally incapable of knowing what he was doing. Another circumstance which indicates unsound-ness of mind of the appellant is that he inflicted injuries on his own person and attempted to cut his own penis. It is difficult to believe that a man in his senses would cut his penis. Absence of motive, no doubt, standing by itself is not proof of insanity. But the evidence about the conduct and behaviour of the appellant coupled with the lack of motive and the fact that some time before the occurrence he was found to be behaving like a mad man makes the defence plea highly probable.

15. We find that the appellant caused the death of his wife and inflicted injuries on his own person. But his acts were saved by Section 84. I.P.C. from constituting an offence.

16. In the result, the appeal is allowed and the appellant is acquitted of the offences under Sections 302 and 309, I.P.C. He is directed to. be set at liberty forthwith.

R.C. Patnaik, J.

18. I agree.