

**L.MOHAPATRA, J & B.K.PATEL,J.**

JCRA NO. 188 OF 2000 (Dt.31.10.2011)

**HIRAN RANA**

... ..Appellant.

.Vrs.

**STATE OF ORISSA**

.....Respondent.

**PENAL CODE, 1860 (ACT NO. 45 OF 1860) – S.84.**

For Appellant - M/s. Arunendra Mohanty.

For Respondent – Sri Sangram Das,  
Addl. Standing Counsel

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**L.MOHAPATRA, J.** The appellant having been convicted for commission of offence under Section 302 of I.P.C. and sentenced to undergo imprisonment for life by the learned Addl. District & Sessions Judge, Nuapada in S.C No.5/9 of 99-2000 has preferred this appeal against the said order of conviction and sentence.

2. The case of the prosecution is that on 07.10.1998 at about 12.00 P.M the informant-P.W.1 was sitting with his relatives-P.Ws.2 and 3 on his verandah when the deceased went inside the room of the appellant carrying some oil in a small pot. Sometimes thereafter all the above three witnesses heard a noise 'MARIGALI A BUA NAHIN BACHENA'. Identifying the said voice to be that of the deceased, all of them went near to the door of the room, which was bolted from inside. Thereafter, the appellant, who is the son of P.W.1, came out of the room holding an axe stained with blood and confessed to have killed his wife. The said axe was snatched away by the above three witnesses and P.W.1 noticed that inside the room his daughter-in-law was lying dead with bleeding injuries. Thereafter they tied the appellant with the help of other relatives and a report was submitted before Dharambandha Out Post by P.W.1, on the basis of which, a case was registered in Nuapada Police Station for commission of offence under Section 302 of I.P.C. On completion of investigation, charge sheet was submitted for commission of the said offence.

3. The prosecution in order to prove the charge examined nine witnesses. Out of whom P.W.1 is the father of the appellant and the informant in the case. P.Ws.2 and 3 are relatives of P.W.1, who were sitting with P.W.1 on the date of occurrence on the verandah. P.Ws.4 and 6 are the seizure witnesses and P.W.5 is the Doctor, who had conducted the postmortem examination. P.W.7 is a post occurrence witness and P.W.8 is the Investigating Officer.

The plea of the defence was that he was insane at the time of commission of offence.

4. Relying on the evidence of P.Ws.1, 2 and 3 coupled with the evidence of P.Ws.5 and 7, learned Addl. District & Sessions Judge found the appellant guilty of the charge and convicted him thereunder.

5. Mr. Mohanty, learned counsel appearing for the appellant drew attention of the Court to the evidence of P.Ws.1, 2, 3 and the evidence of P.W.8-Investigating Officer to substantiate his argument that the appellant on the date of occurrence was of unsound mind and therefore, he is entitled to the benefit under Section 84 of the I.P.C.

6. Mr. Das, learned Addl. Standing Counsel for the State on the other hand submitted that the question as to whether the appellant was insane on the date of occurrence or not is to be proved by the appellant, who takes such plea and no evidence was adduced on his behalf to prove that he was of unsound mind on the date of occurrence.

7. After carefully scrutinizing the evidence of the witnesses examined on behalf of the prosecution, we find that P.W.1 is the father of the appellant and is also the informant in the case. P.Ws.2 and 3 are related to P.W.1. All the above three witnesses have stated in their deposition that on the date of occurrence when all of them were sitting on the verandah of P.W.1, they saw the deceased going inside the room of the appellant with some oil in a pot. Sometimes thereafter they heard the noise of the deceased and when they went near the door of the room where the appellant was staying, they found the door closed. The appellant thereafter, came out of the room with an axe in his hand and all the three witnesses noticed blood on the said axe. Thereafter they caught hold of the appellant and tied him in a rope. In cross-examination all the three witnesses have stated that 15 days prior to the date of occurrence as well as on the date of occurrence the appellant had developed insanity. P.W.1 in cross-examination has categorically stated that for the last 15 days from the date of occurrence the appellant had developed insanity as a result of which he was neither taking food nor taking his sleep and was wandering here and there by shouting. Local treatment was given to cure the appellant. He has further stated that in his family, his father had developed insanity and the elder brother of his father had also developed insanity.

P.W.2 in cross-examination also stated that when the appellant came out of the room, he was completely insane by that time. He also stated that the uncle of the appellant, his elder brother, grandfather and elder brother of grandfather were all of unsound mind during their life time.

P.W.3 in cross-examination also stated that he had a discussion with P.W.1 with regard to treatment of the appellant and on the date of occurrence the appellant was completely mad. Though P.W.8, a post occurrence witness has stated that after marriage of the deceased, the appellant was having visiting terms to his house and he was completely a normal man. Such a statement having not been made by him before the Investigating Officer at the time of investigation, no reliance can be placed on the said witness with regard to mental condition of the appellant at the time of occurrence.

8. From the evidence of P.Ws.1, 2, 3 and 8, it is clear that some days prior to the occurrence and on the date of occurrence the appellant had developed insanity and his behaviour was abnormal. From the conduct of the appellant immediately after the occurrence, we also find that he did not resist snatching of the axe from his hand by P.W.1 and also did not try to run away from the place. He also did not make any attempt to conceal the weapon of offence. From all these materials available on record, we are

convinced that the appellant some days prior to the occurrence and on the date of occurrence had developed insanity and accordingly even though it is accepted that he committed murder of the deceased by means of the axe, he is entitled to the benefit under Section 84 of the I.P.C.

9. For the reasons stated above, we allow the appeal and set aside the impugned judgment dated 04.5.2000 passed by the learned Addl. District & Sessions Judge, Nuapada in S.C No.5/9 of 99-2000 convicting the appellant for commission of offence under Section 302 of I.P.C. The appellant is acquitted of the charge.

10. It is stated by learned counsel for the appellant that the appellant is in custody till date and has served more than 14 years of imprisonment. We, therefore, direct that the appellant be released forthwith, unless his detention is required in any other case.

11. Before his release the Jail Authority is directed to get the appellant-Hiran Rana examined in a Government Hospital with regard to his mental condition and if certified, he may be allowed to move free. If the insanity of the appellant still continues then he shall be referred to a Mental Asylum for treatment.

Appeal allowed.