NAGPUR HIGH COURT

Chirangi

Vs

State (Nagpur)

(Hemeon and Sen, JJ.)

Criminal Appeal No. 326 of 1951. D/d. 19.2.1952

JUDGMENT

Hemeon, J.

1. Chirangi, Lohar, 45 years, a widower, his unmarried daughter, only son Ghudsai, 12 years, and nephew Khotla (P. W. 2) lived together at Idnar, Narayanpur tahsil, Bastar district. Their relations were cordial, and Ghudsat was attentive and considerate to his father who had an abscess in his leg for some time prior to the 3rd April 1951. During that afternoon, while Khotla was working in his field, Chirangi took an axe and went with Ghudsai to a nearby hillock, known as Budra Meta, in order to gather 'siadi' leaves. When Khotla returned to his house in the evening, Ghudsai was not there and he found Chirangi asleep with the blood-stained axe beside him. Chirangi woke up at midnight, and when Khotla questioned him concerning his son's whereabouts he replied :

> "I had become insane. I have killed my son in Budra Meta. It occurred to me that a tiger had come to me. I then dealt blows with the axe."

2. On the following morning, Chirangi repeated this version to the mukaddam Bandi (P. W. 3). Ghudsai's corpse was found on hillock, and Chirangi told the 'kotwar' Aitu (P. W. 1) that he had killed his son by mistake for a tiger, that two of his sons tad died from insanity and that he himself was insane. The autopsy showed that Ghudsai had incised wounds on the right temple, neck and left humerus with a comminuted fracture of the right temporal bone. Chirangi had two superficial abrasions on the front of the shoulders and a superficial abrasion ½" X ½" on the outer part of the left eyebrow which could have been caused by a fall or contact with a hard and rough object.

3. Chirangi in examination explained that he had sustained these injuries by falling on a stone and that because of madness he did not know what had happened at the hillock. In defense, he added he had 'bona fide' mistaken his son for a magic tiger and was incapable of knowing the

nature of his act. There was nothing to show that he was insane before or after the occurrence; and it was clear that he was devoted to his son. Dr. Palsodkar, when asked whether there could have been in the circumstances a fit of temporary insanity stated :

> "I assume that there was no symptom of epilepsy in this case. Without excitement, such temporary insanity should not ordinarily come."

4. The four assessors were of the unanimous opinion that Chirangi had actually mistaken his son for a tiger and that his fall may have resulted in temporary insanity. The trial Judge was however of the view that there was no mistake of fact, that even if there were it was not in good faith and that Chirangi was not insane at the relevant time. He convicted and sentenced him to transportation for life under Section 302 of the Indian Penal Code for Ghudsai's murder.

5. There was, as we have pointed out, nothing to show that the appellant was insane before or after the occurrence; and it was not even suggested that he was eccentric or queer. There was also no allegation that his forbears were mentally afflicted; and in this unusual case we are confronted with the position that he suddenly killed his son to whom he was devoted and who was devoted to him, because he thought that he was a tiger. The 4 gentlemen, who sat as assessors at the trial, belong to the somewhat primitive tract in question; and they were of the unanimous opinion that he was not liable for the murder of his son and that he was entitled to the benefit of the provisions of both Section 79 and Section 84 of the Indian Penal Code. They considered that he had acted under a 'bona fide' mistake of fact in a fit of temporary insanity which had been occasioned by his fall.

6. We invited Dr. K.C. Dube, M. B. B. S. (Bombay) and D. P. M. (London), who is Superintendent of Mental Hospital, Nagpur, and has specialised in psychiatry for 11 years, to read the record and to examine him. After he had done so, we examined Dr. Dube; and his testimony showed that it was possible for Chirangi, who was suffering from bilateral cataract prior to the relevant date, to have because of this disability mistaken 'bona fide' his son for a tiger. Dr. Dube also opined that the abscess in his leg would have produced a temperature which might well have been responsible after the fall for a temporary delirium which might have created a secondary delusion to magnify the image created by the defect in vision. Chirangi in all probability, he added, suffered from cardie-vascular disease which would have resulted in temporary confusion; and the injury to his eyebrow could have caused a state of concussion during which he might have inflicted the injuries on his son without being conscious of his actions. No symptoms of psychosis or insanity were present when Dr. Dube examined him on the 11th February 1952, i.e., about 10 months after the occurrence.

7. The evidence of Dr. Dube showed clearly enough that Chirangi's fall combined with his existing physical ailments could have produced a state of mind in which he in good faith thought that the object of his attack was a tiger and was not his son. The appellant's conduct after the

occurrence was in consonance with that estimate, and it was manifest that he had had no intention of doing wrong or of committing any offence. In '*Waryam Singh v. Emperor*[1]', a Division Bench, acting under Section 79 of the Indian Penal Code, held that an accused who killed a man with several blows from a stick was not liable under Section 302, Section 304 or Section 304A 'ibid' because he believed in good faith at the time of the attack that the object of his assault was not a living human being but a ghost or some object other than a living human being. The
Division Bench made it clear that the ground for their opinion was that 'mens rea' or an intention to do wrong or to commit an offence did not exist in the case and that the object of culpable homicide could only be a living human being.

8. This view was followed in '*Bonda Kui v. Emperor*[2]', a case in which a woman, in the middle of the night, saw a form, apparently human, dancing in a state of complete nudity with a broomstick tied on one side and a torn mat around the waist. The woman, taking the form to be that of an evil spirit or a thing which consumes human beings, removed her own clothes and with repeated blows by a hatchet felled the thing to the ground. Examination showed, however, that she had killed a human being who was the wife of her husband's brother. The conviction and sentence of the accused woman under Section 304 of the Indian Penal Code were set aside, on the ground that she was fully protected by the provisions of Section 79 'ibid', inasmuch as the statements made by her from time to time, which constituted the only evidence in the case, demonstrated conclusively that she thought that she was, by a mistake of fact, justified in killing the deceased whom she did not consider to be a human being, but a thing which devoured human beings.

9. We are in respectful agreement with these two rulings the facts in which are largely "in parr materia' with those in the poignant case before us. It is abundantly clear that if Chirangi had for a single moment thought that the object of his attack was his son, he would have desisted forthwith. There was no reason of any kind why he should have attacked him and, as shown, they were mutually devoted. In short, all that happened was that the appellant in a moment of delusion had considered that his target was a tiger and he accordingly assailed it with his axe. He thought that by reason of a mistake of fact he was justified in destroying the deceased whom he did not regard to be a human being but who, as he thought, was a dangerous animal. He was in the circumstances protected by the provisions of Section 79 of the Indian Penal Code which lays it down that nothing is an offence which is done by any person who by reason of a mistake of fact and not by reason of a mistake of law in good faith believes himself to be justified by law in doing it.

10. The conviction and sentence are accordingly set aside and the appellant Chirangi shall be set at liberty forthwith.
Conviction set aside.

Cases Referred.

[1] AIR 1926 Lah 554
[2] AIR 1943 Pat 64