

**HIGH COURT OF MEGHALAYA**  
**AT SHILLONG**

CrI.A.No.23/2019

Date of order: 23.08.2022

Shri Breminstar Myllem Vs. State of Meghalaya

**Coram:**

**Hon'ble Mr. Justice Sanjib Banerjee, Chief Justice**  
**Hon'ble Mr. Justice W. Diengdoh, Judge**

**Appearance:**

For the Appellant : Mr. A. Khan, Legal Aid Counsel  
For the Respondent : Mr. K. Khan, PP with  
Mr. R. Gurung, GA

i) Whether approved for reporting in Law journals etc.: Yes

ii) Whether approved for publication in press: Yes/No

**JUDGMENT: (per the Hon'ble, the Chief Justice) (Oral)**

Some alarming facts have come to light in course of the present criminal appeal and the matter requires the urgent attention of all concerned.

2. The appellant, who is represented by the Legal Aid Counsel, has been convicted under Section 302 of the Penal Code for triple murder but sentenced only to 14 years' imprisonment. If the conviction were to be upheld, the sentence has to be enhanced in accordance with law since the punishment in this case could only have been death sentence or life imprisonment.

3. It, however, appears, pursuant to considerable industry on the part of Counsel representing the appellant, that the appellant may be of unsound mind and it should have occurred to any reasonable person that the appellant may have been of unsound mind since he was accused of committing triple murder of his parents and a sibling.

4. Indeed, upon learned Public Prosecutor being requested to look into the matter and assist the Court, several documents which are on record have been referred to which reveal that the trial could not have taken place as there was a firm medical opinion that the appellant herein was unfit to stand trial and required treatment. Despite such medical status report of March 7, 2012 issued by the Senior Medical and Health Officer, Psychiatrist, Meghalaya Institute of Mental Health and Neurological Sciences, Shillong being forwarded to the trial court by the Superintendent of District Jail, Shillong under cover of a letter dated March 14, 2012, the trial court proceeded to record the statement of the appellant without referring to his mental condition or the medical opinion forwarded to the court.

5. The first information report in this case was lodged on August 2, 2011 and the appellant was arrested on August 3, 2011. Pursuant to the initial observation in course of the appellant's medical examination, the

appellant was admitted in MIMHANS on September 20, 2011 and his medical status report of March 7, 2012, referred to above, clearly indicated that the appellant was psychotic, he had no insight of his own illness and was unfit to stand trial as he required long-term treatment to prevent further deterioration.

6. Even in the usual course, the combined impugned order of conviction and sentence of September 15, 2014 cannot be sustained as it does not resemble the outcome of any meaningful or reasonable process of adjudication or indicate the remotest application of mind.

7. The impugned order has been passed by a Judge in a District Council Court authorised by the Governor to take up heinous offences involving harsh punishment as long as the matter was between a tribal and another. Though the Sixth Schedule to the Constitution dispenses with the application of the letter of the Code of Criminal Procedure, yet fundamental rules of justice need to be followed, particularly in course of a criminal trial and high authorities instruct that even if a confession is made by an accused of sound mind, the conviction should not be founded simply on the admission; but should be seen as corroborative material if the evidence otherwise indicates the high likelihood of the commission of the offence by the accused.

8. In this case, despite the trial court being informed of the mental condition of the appellant herein, the trial court proceeded to pass the order of conviction spread over a little in excess of one page where the principal paragraphs that stand out are the following:

“Ld Prosecution ... argued that on the basis of the admission of the accused person of the offence committed by him, no further evidence is required to be taken up and hence, prayed the court to convict the accused person into life imprisonment.

“(Name withheld), legal aid counsel who is also present in court argued that she has got no objection for conviction of the accused person. However, she prayed the court that the quantum of punishment should be reduced to 12 years.”

9. Without reference to the applicable law and the relevant provision of the Penal Code, the trial court proceeded on its ipse dixit to convict the appellant and sentence him to 14 years' simple imprisonment, including the period already spent in detention.

10. As rightly pointed out on behalf of the State by learned Public Prosecutor that Section 329 of the Code of Criminal Procedure provides a mechanism in case of a person of unsound mind being tried before any court. The detailed procedure requires the court to assess, upon obtaining expert medical report, the mental condition of the accused and to not proceed with the trial till such time that the accused is found fit to stand trial so as to be able to make out his defence.

11. Merely because the Sixth Schedule to the Constitution does not require the letter of the Code to be adhered to does not imply that common sense and all fundamental cannons of justice have to be thrown to the wind by the District Council Court, surprisingly authorised to deal with such a serious matter when it is obvious that the Judge concerned lacks basic sense of justice and is completely bereft of domain knowledge on the subject.

12. The State would do well to consider the quality and ability of Judges manning District Council Courts before conferring authority on them to deal with serious matters.

13. Since the trial in this case could not have been undertaken in the wake of the medical report of March 7, 2012 and the District Council Court conducting the trial completely overlooked or deliberately ignored the same, the entire process is set at naught and the judgment of conviction and the consequent sentence are set aside.

14. The matter is remanded to the trial court to be dealt with in accordance with law, particularly keeping in mind the requirements of Section 329 of the Code. The trial court will not resume the trial in accordance with Section 331 of the Code or the spirit thereof, till such time an expert opinion is rendered in accordance with law as to the

appellant herein being fit to stand trial. In any event, even if the appellant is found fit to stand trial and repeats the confession or admission made earlier, the trial court must look into the evidence and use the confession as another piece of evidence and not the sole material to convict the appellant. Further, the trial court must be mindful of the statutory mandate as to sentencing and not arbitrarily invent a form of punishment for a particular offence which is unknown to law.

15. Let a copy of this judgment be reached to the Law Secretary of the State for future steps to be taken cautiously before conferring authority on District Council Courts or Judges ill-equipped to administer justice in accordance with the basic tenets of law.

16. In view of the spirit of Section 330 of the Code, the appellant is entitled to be released and admitted for treatment at a proper medical facility run by the State pending further orders of the trial court.

17. CrI.A.No.23 of 2019 is disposed of.

18. The other aspect that this matter brings to the fore is the poor legal assistance rendered to those who may not be able to afford lawyers' fees. It is the duty of the State to ensure that an accused gets adequate legal assistance to set up his defence even if the accused is not able to afford a lawyer to represent him. Thanks to the Legal Services Authorities Act,

1987 and the apparatus set up thereunder, there is now a system of legal aid counsel being provided at the High Courts and also at the district court level. However, busy lawyers are not inclined to do pro bono work and fees have shot through the roof as the once noble profession is now a business that cares little for morals and scruples as long as the moolah rolls in. Thus, inexperienced and briefless Advocates queue up to be appointed as legal aid counsel to make the little by way of fees that come with such appointment. Since the pay may not be attractive or even adequate, matters are often treated in a cavalier manner only to log the fees without rendering any assistance or quality assistance to the needy litigant.

19. The submission made before the trial court by legal aid counsel representing the accused and as set out in the extract quoted above was alarming. There is no room to plead for reduction of a sentence for murder – here, triple murder, no less – since the only possible punishments are the death penalty or life imprisonment. Yet an absurd prayer was made. Further, legal aid counsel ought to have required the full evidence to be looked into instead of recklessly condemning the de facto client to conviction without caring to look into the papers that spelt out loud and clear that the accused was unfit to stand for trial.

20. The State Legal Services Authority should take note of this and ensure that appointments as legal aid counsel are not made on extraneous considerations or merely because an application has been made therefor. Till such time that the legal education system is strengthened and burgeoning cattle-shed law colleges are arrested from unleashing completely untrained personnel to be qualified to obtain license for practice, even as the statutory watchdog plays the fiddle, a strict vigil must be maintained on the appointment of legal aid counsel so that the colossal disservice that was done to the appellant in this case, instead of rendering any assistance, is not repeated. The only silver lining here is the quality of assistance rendered to the appellant by legal aid counsel in the High Court.

21. Let a copy of this judgment be also forwarded to the State Legal Services Authority to guard against reckless appointments and to start a process of appraising the quality of assistance rendered before the next appointment is handed out to an applicant.

**(W. Diengdoh)**  
**Judge**

**(Sanjib Banerjee)**  
**Chief Justice**

Meghalaya  
23.08.2022  
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