Wx vs.state

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Court : Delhi

Decided On : Mar-23-2018

Appellant : Wx

Respondent : State

Advocate for Def. : Ms. Radhika Kolluru

Advocate for Pet/Ap. : Mr. Ajay Verma, Ms. Sudha Reddy, Ms. Katyayni

Judgement :

$~ * IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL.A.999/2016 WX .....Appellant Reserved on:

12. h March, 2018 Decided on:

23. d March, 2018 Through: Mr. Ajay Verma with Ms Sudha Reddy and Ms Katyayni, Advocates. versus STATE ....Respondent Through: Ms Radhika Kolluru, APP for the State CORAM: JUSTICE S. MURALIDHAR JUSTICE I.S. MEHTA

JUDGMENT
Dr. S. Muralidhar, J.: Introduction 1. This appeal is directed against the judgment dated 20th May, 2016 passed by the learned Additional Sessions Judge (ASJ), Fast Track Court, Shahdara District in Sessions Case No.2/2011 arising out of an FIR No.311/2010 registered at Police Station (PS) Madhu Vihar convicting the Appellant for the offence punishable under Section 302 of the Indian Penal Code

(IPC). The appeal is also directed against the impugned order on sentence dated 28th May, 2016 whereby the Appellant was sentenced to imprisonment for life with a fine of Rs.25,000/- and in default of payment of fine to undergo Crl.A. 999 /2016 Page 1 of 16 simple imprisonment for three months.

2. The Appellant was charged with having murdered her eight year old nephew (the deceased) between 3.30 and 5 pm on 12th September, 2010 on the roof of an apartment complex in IP Extension, Delhi within the jurisdiction of PS Madhu Vihar.

3. It must be noted at the outset that the trial court has, in the impugned judgment, rejected the Appellants defence under Section 84 IPC, viz., that at the time that the crime was committed, she was incapable of knowing the nature of the act. However, when the present appeal was heard by this Court, the Appellant filed Crl. MA No.16490/2016 under Section 391 read with Section 482 of the Code of Criminal Procedure (Cr PC) for leading further evidence. The Appellant in this application placed reliance on the record of HMA No.422/2011 which was a petition filed in the Family Court by her husband (DW-3) seeking dissolution of her marriage with him. In that divorce petition, the records of the treatment received by the Appellant for her mental condition were filed. The Appellant also sought to rely upon the pleadings in GP No.13/2011 which was a guardianship petition filed by her seeking the custody of her two children. This was dismissed on 7th August, 2010 on account of her mental condition. Before this Court, the State filed a status report confirming that the Appellant had been receiving treatment in various hospitals for her mental illness. In the trial court in the present case, one of her treating doctors was examined as PW-22 to prove the treatment received by the Appellant.

4. By an order dated 29th November 2016 this Court allowed the Appellants Crl.A. 999 /2016 Page 2 of 16 application Crl M A No.16490 of 2016 and directed as follows: 7 Be that as it may, it cannot be denied that the mental capacity and condition of the appellant on the date and time of commission of the offence is an extremely relevant factor. The complete evidence in record thereto could not be placed by the appellant before the trial court. In view of the above, we are inclined

to favourably consider this application. It is, therefore, directed as follows: (i) The appellant is permitted to lead the evidence of the treatment received by her and prescriptions as well as the evidence of the matrimonial case filed against her by her husband in HMA No.422/2011. (ii) The appellant shall place certified copies of the judicial records which are sought to be proved or produced in GP No.13/2011 and HMA No.422/2011 before the trial court within eight weeks from today. List of witnesses shall also be filed before the trial court within the same period. (iii) The appellant shall be produced before the trial court for fixing a date for recording of evidence and appropriate directions' for summoning witnesses and records. (iv) The trial court shall record the evidence of the appellant in order to enable her to prove and establish the aforesaid facts. (v) The evidence shall be completed within a period of two months from the date of receipt of the aforesaid documents to be filed by the appellant. (vi) The record of the trial court shall be returned to the trial court to enable the above proceedings. Thereafter, the record of the case along with the additional evidence shall be returned to this court for consideration along with the appeal. 5. Pursuant to the above order, additional evidence was led and the transcript Crl.A. 999 /2016 Page 3 of 16 of such additional evidence has been sent to this Court. This time around, the husband of the Appellant was examined as DW-3. Further, the three doctors who had treated the Appellant had been examined as DWs 4, 5 and 6.

6. The record of treatment, which has been exhibited in the trial Court, also now forms part of the trial Court record. Background facts 7. The Appellant was married to DW-3 on 12th September, 2002. Two sons have been born to them - one in June, 2003 and the other in May, 2006. It was an arranged marriage. It has now emerged in the evidence of the psychiatrist at the Ganga Ram Hospital (GRH) in Delhi (DW-4) that there are records from 11th January, 2010 onwards to show that the Appellant was receiving treatment for depression. DW-4 himself examined the patient on 15th March, 2010.

8. In the GRH records, for the date 11th February 2010, there is a noting that there was a suicidal attempt by the Appellant one month ago. Further, it was noted suicidal thoughts have increased and wants to kill her children. Another doctor who examined the Appellant on 14th January, 2010 (DW-5) clearly stated that she

came with the alleged history of depressive psychosis. He proved the prescriptions given by him (Ex.DW3/X2) prescribing her tablets for the said symptoms.

9. Then there is the discharge summary written by another doctor at the GRH [proved by Appellants husband (DW-3), who brought to the Court the Crl.A. 999 /2016 Page 4 of 16 originals thereof]. where the diagnosis noted was acute depression, hypothyroidism urinary tract infection. The date of admission was given as 31st March, 2010 and the date of discharge as 4th April, 2010. The case summary was that she was admitted as an emergency case as she attempted suicide twice. The investigations revealed gross hypothyroidism and urinary tract infection. The mental examination revealed acute depression, psychomotor retardation and suicidal ideas. She was treated with anti- depression medication. She was discharged on request as she did not want to stay in the hospital. Her condition at the time of discharge was stated to be improved.

10. It appears that Appellants husband (DW-3) gave two complaints against her to the police on 22nd May, 2010 (Ex.DW3/X4) and 5th June, 2010 (Ex.DW3/X5). In this, he referred in detail to the instances of the troubled marriage and to a relatively recent instance of 8th May, 2010 where he and his parents and family members were threatened. In these complaints, he also referred to the fact that the Appellant was being treated for mental depression.

11. DW-3 also produced before the Court the complete record of the treatment received by the Appellant at the Institute of Human Behaviour and Allied Sciences (IHBAS) in Delhi. In terms of an order dated 23rd September, 2010 passed by the Family Court, she was admitted to IHBAS on 25th September, 2010. The communication addressed to the learned ASJ, Fast Track Court, East on 17th March, 2011 by IHBAS states that she was diagnosed to be suffering from severe depressive episode without psychotic Crl.A. 999 /2016 Page 5 of 16 symptoms with hypothyroidism. She had been put on treatment and had shown improvement in her clinical condition. It was stated that the patient was planned for discharge in the next week. It is not necessary to refer in detail to the exhaustive, nearly 400 page treatment record of the Appellant at IHBAS. Suffice it to say that she was an inpatient at IHBAS for almost one year. It has come in the evidence of Director,

IHBAS, who was examined as DW-6 that the Appellant remained admitted there till 25th August, 2011.

12. Since soon after the incident in the present case, the Appellant was admitted to IHBAS, the trial in the present case was put on hold. It was only on 9th March, 2011 that the Medical Board at IHBAS opined that the Appellant was fit to stand trial. In his cross-examination by the APP, DW-6 stated that on the date she was admitted to IHBAS, the Appellant was in a depressed mood and had negative thoughts.

13. It is, therefore, plain from all of the above evidence which has now been brought on record pursuant to the orders passed by the Court that prior to the occurrence on 12th September 2010, the Appellant was already receiving treatment for her depression. It is in this background that the facts that unfolded that led to the present case have to be discussed.

14. In view of the sensitive nature of this case, and the context, the Court has anonymised the Appellant with the letters WX and has avoided the reference to names of even the witnesses. The version of the prosecution witnesses 15. The Appellants brother (PW-5) was examined in the present trial on 16th Crl.A. 999 /2016 Page 6 of 16 August, 2011. It was his son who was murdered by the Appellant. He stated that for the past two years, the Appellant was being harassed by her in-laws. For the last nine months prior to the death of his son, the Appellant was residing with PW-5. He clearly stated, she was undergoing depression. He mentioned that his cousin brother-in-law had gone to meet the Appellant at IHBAS days after the death of the son of PW5.

16. It has come in the evidence of PW-5 that the Appellants two sons were not residing with her but were with her husband. A lot of efforts were made by the Appellants brother (PW-5) to get the Appellant to meet her children at her in-laws house, but they did not allow the Appellant to meet her sons. He stated, It is correct that because of this reason WX had lost her mental balance and she was under depression. He confirmed that twice, the Appellant had left her matrimonial house on account of harassment by her in-laws. On 13th April 2010, the Appellant left her matrimonial house and went to Jaipur. PW-5 further stated, It is correct that

she was so mentally depressed that even she used to be not aware where she had gone. 17. PW-5 admitted that the Appellant used to love the nephew whom she murdered very much. He also confirmed that in July and August, 2010, the Appellant had received treatment from a psychiatrist at both the GRH and the Max Balaji Hospital.

18. On 12th September 2010, it was the marriage anniversary of the Appellant. PW-5 was in his office. At the time he had left the home for office at 10 am, the Appellant was sleeping. At about 4.45 pm on 12th September 2010, PW-5 received a telephonic call from his wife (who was Crl.A. 999 /2016 Page 7 of 16 examined as PW-10) stating that the Appellant and his son (deceased) were not present in the house.

19. The wife of PW-5, examined as PW-10, has also stated in her cross-examination that it was correct that the Appellant was affectionate to the deceased and used to help him in his studies also. She also confirmed that her behaviour was normal with my husband and me.

20. It is through this witness (PW-10) that it has emerged that at 3.30 pm on 12th September, 2010 it was raining and the Appellant asked PW-10 whether she could take the deceased to the terrace on the 7th floor for a walk. PW-10 initially asked her to ask PW-5 or the Appellants elder brother and also not to go alone. When the Appellant asked again to go with the deceased, while granting such permission, PW-10 asked her to return early. When neither returned till 5 pm, PW-10 contacted her jethani (sister-in-law), who resided in a different flat in the same building, on the intercom and informed her that the Appellant had taken the deceased to the terrace and had not returned. Thereafter, PW-10, her jethani and her jethanis son Karan (PW-1) started searching for the Appellant and the deceased but could not find them.

21. The son of the Appellants jethani was examined as PW-1. He was studying in the 12th class. PW-1 stated that he, his mother and PW-10 searched for the deceased at the park, swings and other places but could not find him anywhere. The police reached there around 5 pm whilst the search continued. He stated that when they reached the terrace of the first block where PW-10 was staying, they

found the dead body of the deceased. The police accompanied by PW-1 then rushed him to the Max Hospital at Crl.A. 999 /2016 Page 8 of 16 Patparganj.

22. As regards what happened at PS Madhu Vihar, the deposition of the Investigating Officer (IO) (PW-21) reveals that the duty officer there received information under DD No.24A (Ex.PW7/A) that the Appellant had appeared at PS Krishna Nagar and told the police there that she had committed the murder of the deceased. Head Constable (HC) (PW-4) who was the duty officer at PS Krishna Nagar confirmed that the Appellant had come to the PS at 4.45 pm. Initially, she did not say anything, but when lady constable (PW-18) was called, the Appellant confessed to her about having killed her nephew by strangulation on the roof of the apartment at Patparganj. Since the apartment complex on the roof of which the murder took place is within the jurisdiction of PS Madhu Vihar, the Station House Officer (SHO) of PS Krishna Nagar contacted his counterpart at PS Madhu Vihar and upon receiving a telephonic confirmation that the information was correct, the Appellant was sent with PWs 4 and 18 at 6.55 pm to PS Madhu Vihar.

23. This is, therefore, a case where the Appellant has herself walked in to the PS and has not denied the occurrence. Impugned judgment of the trial Court 24. Before the trial Court, two defence witnesses were examined i.e. DW-1 who brought the record of the Appellant at IHBAS and Ms. Kiran DW-2, Assistant Superintendent, Tihar Jail who brought the latest medical report of the treatment received by the Appellant at the Central Jail No.6. Crl.A. 999 /2016 Page 9 of 16 25. The trial Court noted in paragraph 19 of the impugned judgment that although the defence counsel for the Appellant in the trial Court did mention about the mental illness of the accused at the relevant time, but during oral arguments, it was orally stated that he is not pressing that argument. It is not understood how the counsel for the Appellant in the trial Court did not press that argument. It requires to be noted that he was a legal aid counsel.

26. Yet the trial Court examined and rejected the argument holding that merely because there is no motive for the accused to commit the crime cannot be a reason to invoke Section 84 of IPC. The trial Court concluded that since the Appellant had insisted that PW-10 allow her to take the deceased to the terrace

which was a secluded place and which was obviously done to hide the crime, she knew the consequence of her act and she cannot claim that she was incapable of understanding as to what she was doing. It was also stated the very fact that she carried a knife up to the place of crime reveals that she had pre planned the crime. Analysis 27. The trial Court did not have the advantage of the entire record of the treatment of the Appellant. She was receiving such treatment long before the fateful incident that occurred on 12th September, 2010. She was admitted for an entire year as an inpatient at IHBAS from 25th September, 2010 till 25th August, 2011. She was suffering from severe depressive episodes. The treatment record of the GRH Hospital shows that she had attempted suicide and was having suicidal thoughts as well as thoughts of killing her own Crl.A. 999 /2016 Page 10 of 16 children.

28. It is unfortunate that in the trial itself, at the first instance, the prosecution did not think it important to examine the husband of the Appellant as a witness. He was ultimately examined as DW-3 only after orders were passed by this Court in the application filed by the Appellant. DW-3 had with him the complete record of the treatment received by the Appellant. Had the factual position been brought before the trial Court, it might have substantiated the Appellants plea under Section 84 IPC.

29. It is urged by learned APP that the record now produced by the Appellant and led in evidence pursuant to the order of this Court, would have to show that for the purposes of Section 84 IPC she was, at the time when the crime was committed, incapable of knowing the nature of the act or that what she was doing was either wrong or not according to law.

30. In this context, reference must be made to the following observations of this Court in Radhey Shyam v State ILR2010 Suppl.(2) Delhi 475 as under: 38. It would be virtually impossible to lead direct evidence of what was the exact mental condition of the accused at the time of the commission of the crime. Thus, law permits evidence to be led wherefrom the trier of the facts can form an opinion regarding the mental status of the accused at the time when the crime was committed. Thus, evidence which can be led can be characterized as of inferential

insanity..... This evidence, common sense tells us would be the immediately preceding and immediately succeeding conduct of the accused as also the contemporaneous conduct of the accused.

39. Thus, with reference to the past medical evidence or the medical Crl.A. 999 /2016 Page 11 of 16 history of the accused as the backdrop, the duty of the Court is to evaluate the conduct of the accused before, at the time of and soon after the crime and then return a finding of fact, whether the accused was of such unsound mind that by reason of unsoundness he was incapable of knowing the nature of the act done or incapable of knowing that the act was wrong or contrary to law xxx 46. Thus, a fair trial would require that if there is available proof before the Judge that the accused was suffering from a psychiatric or psychological disorder i.e. there was a history of insanity, it is the duty of the Court to require the investigator to subject the accused to a medical examination and place the evidence before the Court as observed in the decision reported as AIR 2009 SC97Sidhapal Kamala Yadav vs. State of Maharashtra. 31. Also, the record of the treatment received by the Appellant shortly prior to the offence and her conduct at the time or immediately afterwards, also by evidence of her mental condition could have been produced. In this context, the following observations of the Supreme Court in Sidhapal Kamala Yadav v State of Maharashtra (2009) 1 SCC124are relevant: The onus of providing unsoundness of mind is on the accused. But where during the investigation previous history of insanity is revealed, it is the duty of an honest investigator to subject the accused to a medical examination and place that evidence before the Court and if this is not done, it creates a serious infirmity in the prosecution case and the benefit of doubt has to be given to the accused. The onus, however, has to be discharged by producing evidence as to the conduct of the accused shortly prior to the offence and his conduct at the time or immediately afterwards, also by evidence of his mental condition and other relevant factors. 32. The Appellant should be held to have discharged the burden placed on her under Section 84 of the IPC by producing the record of the treatment she was receiving for her mental condition prior to the occurrence. What Crl.A. 999 /2016 Page 12 of 16 precisely the mental condition of the Appellant was at the time of the occurrence may never be known. As explained by the Supreme Court, the term insanity itself has no precise definition.

33. It was explained in Hari Singh Gond v. State of Madhya Pradesh (2008) 16 SCC109as under: ...But the term 'insanity' itself has no precise definition. It is a term used to describe varying degrees of mental disorder. So, every person, who is mentally diseased, is not ipso facto exempted from criminal responsibility. A distinction is to be made between legal insanity and medical insanity. A court is concerned with legal insanity, and not with medical insanity."

34. Again in Shrikant Anandrao Bhosale v. State of Maharashtra (2002) 7 SCC748 the Supreme Court explained as under: it is the totality of the circumstances seen in the light of the evidence on record which would prove that the Appellant in that case was suffering from the said condition. It was added:

"The unsoundness of mind before and after the incident is a relevant fact."

35. Recently, this Court in X v. State of Delhi 246 (2018) DLT204(DB), after examining the extant case law and medical literature, accepted the plea of the Appellant in that case with reference to Section 84 IPC.

36. Consequently, this Court is of the considered view that in light of the evidence that has emerged pursuant to the orders passed by this Court, the plea of the Appellant with reference to Section 84 IPC must be accepted and she should get the benefit of the defence relatable to Section 84 IPC. Resultantly, accepting the plea of the Appellant under Section 84 IPC, she is acquitted of the offence under Section 302 IPC. The impugned judgment Crl.A. 999 /2016 Page 13 of 16 and the consequent order on sentence of the trial Court is accordingly set aside. Consequential orders 37. The next question that arises is what are the consequential orders that are required to be passed?. As rightly pointed out by the learned APP, there is a requirement under Section 334 Cr PC that when such a plea is accepted, the findings shall state specifically whether he committed the act or not. In the present case, there can be no doubt that it is the Appellant who committed the act but the Appellant, was for reason of unsoundness of mind, incapable of knowing the nature of the act or that it was contrary to law.

38. Section 335 Cr PC states that where the Court finds that but for the incapacity found, the act of the Appellant would have constituted an offence, then the Court

should do either of the following things: (a) order such person to be detained in safe custody in such place and manner as the Magistrate or Court thinks fit; or (b) order such person to be delivered to any relative or friend of such person. 39. In the present case, an affidavit was filed even at the stage of the pendency of the present appeal by Mr. Suresh Kapoor, an uncle of the Appellant, who furnished a surety for the interim suspension granted to the Appellant by the order dated 17th November, 2017. This was to enable the Appellant to file a joint petition for the second motion in the decree of divorce. Crl.A. 999 /2016 Page 14 of 16 40. Pursuant to that order, the earlier settlement arrived at between the Appellant and her husband at the Delhi High Court Mediation & Conciliation Centre (DHCMCC) on 17th March, 2017 was implemented and this was noted by the Court in its order dated 12th March, 2018.

41. Mr. Amit Verma, learned counsel appearing for the Appellant in the present case, states that the aforementioned uncle of the Appellant would come forward to give security to the satisfaction of the learned trial Court in terms of Section 335 (1) (b) read with Section 335 (b) Cr PC.

42. It is accordingly directed that if an application to that effect is made by the relative of the Appellant under Section 335(3) Cr PC for the delivery of the Appellant to such relative, as envisaged by Section 335 (1) (b) Cr PC, the trial Court will pass appropriate orders directing that the Appellant should be delivered to such relative and in terms of Section 335(4) Cr PC the relative will also report to the State Government, the action taken under Section 335 (1) Cr PC.

43. Consequently, the Appellant stands acquitted in the manner indicated. Her consequent release will be subject to the orders of the trial Court in terms of the Section 335 Cr PC, as directed hereinbefore.

44. The appeal is accordingly allowed and the impugned judgment and the order on sentence of the trial Court are hereby set aside. The Appellant will satisfy the requirement of Section 437A Cr PC to the satisfaction of the trial Crl.A. 999 /2016 Page 15 of 16 Court. The trial Court record be returned forthwith along with a certified copy of this judgment.

45. The appeal is disposed of in above terms. S. MURALIDHAR, J.

I.S. MEHTA, J.