

Rintu Das Vs. State of Assam

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Court : Guwahati

Decided On : Jul-31-2007

Judge : Aftab Hussain Saikia and T. Nandakumar Singh, JJ.

Appellant : Rintu Das

Respondent : State of Assam

Disposition : Appeal allowed

Prior history : Aftab Hussain Saikia, J. 1. Heard Mrs. R. Borbora, learned Amicus Curiae and also Mr. P.C. Gayon, learned P.P., Assam. 2. This criminal jail appeal has been preferred by the appellant from jail challenging his conviction under Section 302 IPC and resultant sentence to life imprisonment passed by the learned Sessions Judge, Hailakandi by his order dated 12.9.2001 in Sessions Case No. 17/1999. 3. The prosecution case is in a short compass as emerged from the ejahar lodged on 31.3.98 by one Raja

Judgement :

Aftab Hussain Saikia, J.

1. Heard Mrs. R. Borbora, learned Amicus Curiae and also Mr. P.C. Gayon, learned P.P., Assam.

2. This criminal jail appeal has been preferred by the appellant from jail challenging his conviction under Section 302 IPC and resultant sentence to life imprisonment passed by the learned Sessions Judge, Hailakandi by his order dated 12.9.2001 in Sessions Case No. 17/1999.

3. The prosecution case is in a short compass as emerged from the ejahar lodged on 31.3.98 by one Rajani Das, father of the accused/appellant P.W.-4 with the Katilicherra Police Station is that on 31.3.98 at about 4.30 p.m. when the local residents and P. W. 4 had assembled in the house of Shankar Das, P.W.-1 to discuss about his family problem, they heard outcries and on going there he found that his son Rintu Das, the appellant killed his wife Champa aged about 19 years by hitting her in the head with a spade.

4. On the basis of such information lodged with the Police, the investigation ensued. The appellant was arrested by the police on the day of occurrence itself and on completion of investigation, the police submitted charge sheet against the accused appellant under Section 302 IPC.

5. The learned Magistrate, on receipt of such charge sheet so submitted by the police, committed the case to the Court of learned Sessions Judge, Hailakandi as the case was being exclusively triable by the Court of Sessions.

6. During the trial, the prosecution examined as many as 7 witnesses including the Doctor P.W.-6 who conducted the autopsy and the Investigating Officer (for short, the I.O.) P.W. 7. The prosecution also examined the seizure list and Inquest Report as Exhibits 2 and 3 respectively.

7. The appellant also examined under Section 313 Cr.P.C.

8. Having considered the police report and also upon hearing the learned Counsel for the parties, the learned Sessions Judge, Hailakandi framed charge against the accused-appellant under the above section of law. The charge was read over to the accused/appellant to which he pleaded not guilty and claimed to be tried.

9. On proper appreciation of the material evidence on record both oral and documentary so produced by the prosecution as well as upon hearing the learned

Counsel for the parties, the learned Sessions Judge found the accused-appellant guilty of the offence under Section 302 IPC and consequently he was sentenced as indicated above. Hence this appeal from jail.

10. Assailing the impugned conviction and sentence, Mrs. R. Borbora, learned Amicus Curiae at the very outset has strenuously argued that the conviction and sentence so imposed upon the accused-appellant by the learned Sessions Judge suffer from illegality and perversity inasmuch as the testimony of the witnesses so examined did get not proper appreciation and consideration of the trial Court though all of them explicitly and pin pointedly deposed that at the time of commission of offence the appellant was a mad man. Even the plea of insanity so raised by the appellant was brushed aside by the learned trial Court straightly without considering the relevant law in this regard particularly, the provision of law laid down under Section 84 IPC which provides for protection of an offence which is done by a person by reason of unsoundness of mind. Further it is forcefully argued that the procedure prescribed under Sections 329 and 331 Cr.P.C. for trial of person of unsound mind was not followed and complied with by the learned Sessions Judge during the trial which provides specific provisions of procedure in case of a person of unsound mind facing trial before the Court and resumption of inquiry or trial when the person ceases to be of unsound mind respectively. Further it has been forcefully argued that non compliance of relevant law on this point vitiates the entire criminal proceeding initiated against the appellant. Under such circumstances, it is a fit case, according to the learned Amicus Curiae, where the accused-appellant deserves acquittal of the charge under Section 302 IPC.

11. Per contra, Mr. Gayon, learned P.P., Assam in support of the conviction and sentence has strenuously argued that there is ample evidence to rope in the appellant under Section 302 IPC and as such, the learned Sessions Judge was absolutely justified and correct in convicting the accused-appellant, as mentioned above. According to him all the evidence particularly, P.Ws 1 and 2 being the eye witnesses and P.W. 6 the Doctor, the case so projected by the prosecution was proved beyond all reasonable doubt.

12. We have given our thoughtful consideration to the rival contentions so placed on record by the learned Counsel for the parties including the learned Amicus Curiae and also meticulously scanned the entire evidence on records so examined by the prosecution.

13. P.W.-1, Shankar Das in his deposition testified that while on the eventful day they were holding a meeting in his house at the call of appellant's father i.e. P.W.-4 along with other villagers namely P.W.-3 Prabhas Das, they heard a shout of female voice from the house of the accused-appellant and immediately they rushed to the place of occurrence and they saw that the accused with a spade in his hand chasing after his wife Champa by hitting her on the head. Then father of the accused, P.W.-4 went there and sentenced away the spade from the hand of the accused. After that when Rajani Das P.W.-4 tried to hit the accused with the spade, they rescued them. Later on the accused was tied up with rope and brought to his house. The wife of the accused sustained grievous injury on her head and died out of the said injury. This witness wrote the ejahar on request of P.W.-4, the father of the appellant. On cross-examination, this witness deposed that the appellant was mentally unsound for 2/3 months before the occurrence. He was at Tezpur for a long time. He also denied the suggestion that he did not state before the police that after his arrival the accused chased his wife and inflicted spade blow.

14. P. W.-2, Jhunu Das, another independent witness, also corroborating with the deposition of P.W.-1 deposed that they gathered in the meeting called by P.W.-4 in the house of P.W.-1. They heard the shout from the house of Rajani Das. On their arrival she saw Champa, wife of the accused lying dead in an injured condition and when the accused-appellant tried to flee towards the road, one of the persons present there caught the appellant and police was immediately informed. In cross-examination she was categorical in stating that the father of the appellant called the meeting in order to find out ways and means with the help of the neighbours to control his son who had gone mad. The incident took place while they were discussing the matter to hand over the appellant to police and the occurrence took place before any step could be taken in this regard. The accused did this act as a mad person. She also deposed that prior to such act did never

assault his wife earlier.

15. P.W.-3, Prabhash Das, another independent witness, narrated the same story as mentioned by P.Ws.-1 and 2 and stated that after coming to the house of the appellant on hearing shout from the meeting, they saw Rajani P.W.-4 snatched away a spade from the hand of the accused and the wife of the accused was lying dead in the injury. Later on accused was tied with a rope as per direction of P.W.-4. On cross-examination also he reinforced and corroborated the depositions of P.1 and P.W.-2 stating that the main purpose of calling meeting for the madness of the son of the accused-appellant of P.W.-4. This witness denied the suggestion that he did not state before the police that appellant had scolded Shanker Das P.W.-1 suspecting his relation with the accused wife.

16. P.W.-4, Rajani Das, the father of the appellant/informant corroborated the evidence of those witnesses as mentioned above. On cross-examination he testified that his son appellant had gone mad at the time of occurrence. He had been treated for long period. According to him he committed incident due to madness. He tried to control him for which reason that meeting was called for.

17. P.W.-5 Premraj Goala also narrated the same story as discussed above.

18. It would be worthwhile to note herein that at no point of time any of the witnesses was ever declared by the prosecution as hostile.

19. Medical evidence as per deposition of P.W.-6 Dr. Asit Mohan Sarma who conducted the postmortem examination of the dead body of deceased Champa Das speaks of following injuries.

(1) One incised wound over the right parietal region of the scalp 4 c.m. x 1 c.m x 6 c.m. with fracture parietal bone.

2) One incised over occipital region of the scalp 3 c.m. x 1 c.m. x into bone depth with fracture at occipital bone.

3) One incised wound over the mid Frontal region of the scalp-4 c.m. x 1 c.m. into bone depth with fracture over the frontal bone.

4) One incised wound over the left parietal region of the scalp with fracture of the parietal bone 4 c.m. x 1 c.m. x bone depth.

20. Dr. P. W.-6 opined that the death was due to shock and haemorrhage from all these injuries which were of grievous in nature and caused by sharp weapon.

21. P.W.-7 Nikhil Chandra Deb, I.O. who conducted the investigation and on completion of same submitted charge sheet narrated that he, having taken up the investigation, visited the place of occurrence and held inquest over the dead body. He also seized the spade Exhibit-2.

22. The appellant in his statement recorded under Section 313 Cr.P.C. stated that he did not know what he did on that day and asked for release as he recovered.

23. Having meticulously scanned the evidence of the witnesses it is manifestly and apparently would go to show that the appellant was basically suffering from mental illness as all the witnesses in their deposition in unison stated that the appellant had gone mad. Interestingly, there is nothing in the evidence on record to show that the main purpose of holding the meeting was to discuss the illicit relationship between Shankar P.W.-1 with Champa (deceased) as recorded by the learned Sessions Judge in his judgment in paragraph-12. In this regard it is seen that only a suggestion was put to P.W.-3 Prabhash as reflected from the cross-examination of that witness wherein in the last sentence, as already mentioned above, this witness denied the suggestion that he did not tell that the accused had scolded Shankar and that apart there is no whisper that the reason for killing of his wife was the illicit relationship between Shankar and his wife.

24. Now coming to the plea of insanity so raised by the learned Amicus Curiae who has categorically contended that at the time of commission of such offence the appellant was a mentally sick person, shockingly it appears from perusal of the order sheet of the trial Court dated 7.4.99, that when the accused was produced from custody, the learned Sessions Judge observed in his said order that from his irrelevant talk and gesture and posture he appeared to be not fit to stand trial and accordingly, he directed the jail authority to arrange for treatment of the accused-appellant by any psychiatrist of Silchar Medical College and to furnish a report to

the effect that whether the accused might be able to stand trial attaining any lucidity by this time. The order dated 16.6.99 reflected that the learned Sessions Judge on perusal of the medical report so submitted before him found the opinion of the Doctor that he was not mentally fit to stand trial and accordingly the learned Judge advised that the treatment should be continued from time to time medical check up. Even the mental position of the appellant was also came into consideration by the learned trial Court as reflected vide order dated 1.2.2000. However, for the reasons best known to the learned Judge, once he came to know that the appellant was not mentally fit to stand for such trial, failed to proceed with the procedure of law as prescribed under Section 329 and 331 Cr.P.C.

25. For the sake of convenience Sections 329 and 331 Cr.P.C. may be extracted as under:

329. Procedure in case of person of unsound mind tried before Court--(1) If at the trial of any person before a Magistrate or Court of Session, it appears to the Magistrate or Court that such person is of unsound mind and consequently incapable of making his defence, the Magistrate or Court shall, in the first instance, try the fact of such unsoundness and incapacity, and if the Magistrate or Court, after considering such medical and other evidence as may be produced before him or it, is satisfied of the fact, he or it shall record a finding to that effect and shall postpone further proceedings in the case.

(2) The trial of the fact of the unsoundness of mind and incapacity of the accused shall be deemed to be part of his trial before the Magistrate or Court,

331. Resumption of inquiry or trial (1) Whenever an inquiry or a trial is postponed under Section 328 or 329, the Magistrate or Court, as the case may be, may at any time after the person concerned has ceased to be of unsound mind, resume the inquiry or trial and require the accused to appear or be brought before such Magistrate or.

(2) When the accused has been released under Section 330, and the sureties for his appearance produce him to the officer whom the Magistrate or Court appoints in this behalf, the certificate of such officer that the accused is capable of making

his defence shall be receivable in evidence.

26. A conjoint reading of the above provisions of law would go to show that when the learned Judge is of the view that the accused is a man of unsound mind and consequently incapable of making his defence, after considering the medical report in this regard he, should postpone the further proceeding of the case and the trial will start as soon as he is found to be capable of making his defence.

27. Nonetheless, in the instant case, it would appear on careful analysis of the entire records, that the learned Judge complied with the provisions of Sections 329 and 331 Cr.P.C. In view of the above, we are disinclined to accept the submission made by Mrs. Borbora that the provisions of law as prescribed under Sections 329/331 Cr.P.C. were not complied with. But the basic aspect as to whether the accused was a person of unsound mind at the time of commission of offence was not at all considered by the learned Judge. Had the considered the said factual situation, the appellant would have, according to our opinion, get the benefit of Section 84 IPC.

28. As already discussed above that all the witnesses deposed that the appellant was suffering from madness at the time of occurrence and that part was totally ignored and overlooked by the learned Judge. His finding was simply confined only to the premises that during the trial the accused was whether a man of unsound mind and the appellant was sent to the L.G.B. Institute of Mental Health, Tezpur for treatment. It is seen that having been received certificate issued by the competent authority from the concerned Institute at Tezpur, his trial was resumed. But nowhere in the finding it was recorded that an attempt was to find out that at time of commission of the act of alleged offence the appellant was a person of his unsoundness of mind.

29. The law on this point has already been settled the year 1964 itself by a decision of the Apex Court in the case of Dahyabha Chhaganbhai Thakkar v. State of Gujarat reported in : 1964 CriLJ472 wherein in paragraph 9 it was observed as follows:

9. 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 unsoundness 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 S. 84 of the Indian Penal Code can only be established from the circumstances which preceded, attended and followed the crime.

30. The ratio of the above judicial authority was reiterated by a Division Bench of this Court in a case of Dharmeswar Pradhani v. State of Assam reported in 2003 (1) GLT 192 : 2003 CrL. L.J. 733. In paragraph 10 this Court while deliberately upon the question of Insanity, opined as under:

10. Insanity, indeed, is a legal defence available to an accused to claim immunity from the penal consequences in a criminal trial provided under S. 84 of the Indian Penal Code. The provision of Section 84, IPC contemplates that by reason of unsoundness of mind one becomes incapable of knowing the nature and consequences of the act, he does or becomes mentally handicapped of knowing what he is doing could legitimately claim the immunity under the said provision. The plea of insanity or unsoundness of mind per se does not allow the accused to avail the benefit of Section 84 of the Indian Penal Code unless it is proved that at the relevant time of the commission of offence he was suffering from such a degree of unsoundness of mind rendering him incapable of knowing the nature for the act. Mere feeble mindedness, emotional imbalance or uncontrollable anger or eccentricity cannot lawfully provide any relief to be claimed under the aforesaid provision, unless it is proved from the evidence of course, by preponderance of probabilities, that at the relevant time or soon before the commission of offence the accused suffered from such degree of insanity which made him incapable of knowing the consequences of the act, he did. But, unfortunately in the present case nothing of the sort is available from the evidence. Some vague statements are available in the depositions of some of the witnesses to the effect that in the past, sometime they found the appellant suffering with mental insanity and while he was so suffering he used to cut goats etc. But, unless the symptoms of insanity

has its proximity with the commission of crime it would be very difficult to allow legal immunity in favour of the accused-appellant.

31. For the sake of convenience it would be proper and necessary to quote Section 84 of the IPC which run as under:

84. Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.

32. In the instant case, having regard to the proposition of law on the point of insanity as propounded in the abovementioned two cases and taking into consideration the entire evidence in its entirety as well as upon hearing the learned Counsel for the parties, this Court has no reason to disbelieve that the appellant was not suffering from any mental disorder at the time of commission of offence as all the important witnesses examined by the prosecution corroborated with their categorical deposition that the appellant was mad. It is proved from the evidence, of course, by preponderance of probabilities, that at the relevant time or soon before the commission of offence, the appellant suffered from such degree of insanity which made him incapable of knowing the consequences of the act, he did. Accordingly, we are of the firm opinion that the accused-appellant is entitled get protection under Section 84 IPC and we have, therefore, no hesitation to hold that the appellant deserves acquittal. It is ordered accordingly.

33. Appellant be set at liberty forthwith if he is not otherwise connected with any other criminal case.

34. Before parting with the record, we would like to put on record our appreciation to Mrs. R. Borbora, the learned appointed Amicus Curiae for her help and assistance rendered to arrive at a decision in this jail appeal aforesaid and accordingly, we are of the view that she is entitled to get her professional fee as fixed by this Court vide order dated 15.2.2002.

35. Appeal stands allowed.

Send down the L.C.R. immediately.

