

State of Bihar Vs. Chini Sah

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Court : Patna

Decided On : May-24-2002

Judge : R.N. Prasad and B.N.P. Singh, JJ.

Appeal No. : Death Reference No. 6 of 2002 and Criminal Appeal (DB) No. 515 of 2000

Appellant : State of Biharchini Sah

Respondent : Chini Sahstate of Bihar

Prior history : B.N.P. Singh, J. 1. This refers to Death Reference No. 6 of 2000 sent to this Court for confirmation of sentence and also Cr. Appeal No. 515 of 2000, preferred by the convict-'appellant raising a question of defence of insanity for an offence of matricide under Section 302 of the Indian Penal Code and also questioning the legality and validity of the order of conviction and capital sentence, as recorded against him by the learned 12th Additional District & Sessions Judge, Saran, Chapra, in Ses

Judgement :

B.N.P. Singh, J.

1. This refers to Death Reference No. 6 of 2000 sent to this Court for confirmation of sentence and also Cr. Appeal No. 515 of 2000, preferred by the convict-'appellant raising a question of defence of insanity for an offence of matricide

under Section 302 of the Indian Penal Code and also questioning the legality and validity of the order of conviction and capital sentence, as recorded against him by the learned 12th Additional District & Sessions Judge, Saran, Chapra, in Sessions Trial No. 318 of 1993. Gravamen of the charges against the appellant was about chopping off both the hands and head of his mother, pursuant to which, he was apprehended by the Police and also the public while carrying the cut parts of the body, of his mother, kept in a gunny bag. The appellant allegedly confessed his guilt before the Police and public, pursuant to which, prosecution was launched against him and the trial eventually commenced for consideration of his guilt. In the midst of trial, the appellant raised the plea of insanity. A medical board under the direction of the trial Court was constituted which found the appellant mentally abnormal and a psychiatric patient. He had also advised to refer the appellant to Mental Hospital, Ranchi, for further treatment and in view of finding of the Board, the trial was kept in abeyance for some period. Thereafter, the appellant was sent to Mental Hospital, Ranchi and on his return, he was produced in Court from Jail custody. Thereafter, statement of the appellant was recorded and eventually trial terminated after examination of the defence witnesses and the trial Court in its considered opinion, recorded verdict of guilt under Section 302 IPC against the appellant and sentenced him to death.

2. This proposition of law has been consistently crystallised in catena of decisions of the Court that, as enjoined under Section 329 of the Code of Criminal Procedure (Cr.P.C.), once a plea of insanity is raised by the accused, it must be determined by recording evidence adduced in support and rebuttal thereof and the finding, one way or the other, must be recorded, and without holding due inquiry and recording a finding thereon, framing of charges and commencement of the trial was violative of mandatory provisions of Section 329 Cr.P.C. There are other aspects of the matter which needs to be taken notice of that when a plea of insanity is set up, firstly, the Court has to consider whether at the time of commission of offence, the accused, by reason of madness of mind, was incapable of knowing the nature of act that he was doing what was either wrong or contrary to law. As was held in a case reported in BLJR 1977 Cri.L.J. 1765 Sarju Marandi and Ors. v. State of Bihar, distinction between incapacity at the time of doing the act charged and incapacity at the time of trial is apparent. While both are

induced by unsoundness of mind, the former is substantive which excludes the offender under Section 84, IPC, the latter only affects the procedure and merely postpones the trial, which must be resumed when incapacity, disappears on a future date. As a preliminary condition to the applicability of Section 465 Cr.P.C, it must appear to the Court, before which an accused is brought, that he is of unsound mind and consequently incapable of making his defence. If no abnormality is disclosed, the Court should proceed with the trial and no action under Sections 464 and 465 Cr.P.C. is called for.

3. However, certain orders passed by the Court in the midst of trial and required to be taken notice of. When the accused was put in dock for framing of charge, it appears from the order dated 19th June, 1993, passed by the Court below that though several times, questions were put to the appellant as to whether he had committed the offence, as charged against him but he kept silence and did not utter a word. The Court noticed that the appellant was a bit mentally upset and hence directed the jail authority to take care of this fact and to keep him in seclusion to avoid any violence against other prisoners on his part. In the meantime, he was directed to be produced before the Civil Surgeon, Chapra, for his medical examination and on receipt of report, the procedure of trial was to be adopted. A letter was received from the District Jail, Chapra thereafter, in which the Court was moved to allow the appellant to be sent to Mansik Chikitsalaya, Kanke (Ranchi) for psychotherapy. The record bears testimony to the fact that pursuant to the direction of the Court, the appellant was sent to Mental Hospital, Ranchi. From the order dated 6th December, 1993, of the Court below, it seems that the appellant had come back from the Mental Hospital and hence the Court directed 'proceedings of the case be initiated which had been hampered on account of accused remaining in Arogyashala'. Thereafter, on 22nd January, 1994, charges were framed against the accused and the trial eventually commenced. Some witnesses thereafter were examined in Court including the doctor. It seems from the order dated 14th February, 1996 that a letter purported to be that of the appellant was received from the Jail Superintendent, Chapra. When the appellant was produced before the Court on 28th February, 1996, for recording his statement, as enjoined under Section 313 Cr.P.C., the Court made following observations about demeanour of the appellant:

(2) In the dock Chini Sah's face is expressionless and his gaze is vacant. In answering questions put to him he appeared to be in a disordered state of mind, incongruous in his answer and displayed symptoms which did not conform to the normal standards of behaviour. In other words Chini Sah appears to be demented. In such a situation it would not be proper to proceed with his examination under Section 313, Cr.P.C. till a certificate of fitness is given by an authorised doctor: Accordingly, the examination of the accused is deferred awaiting a certificate from an authorised doctor pronouncing him to be in a fit and normal condition of mind.

(3) Accordingly, the Jail Superintendent, Chapra, is directed to produce accused Chini Sah before the Civil Surgeon-cum-C.M.O., Chapra, Saran, for his medical examination and report on his mental condition and submit a report to this Court.

(4) It seems that the proceeding was adjourned repeatedly awaiting receipt of report from Jail Superintendent, Chapra, about the finding recorded by the medical board which was to be constituted under the instructions of the Court. The Court again recorded a finding in the order, dated 29th March, 1996, in the following manner:

Accused Chini Sah has been produced from custody. Letter No. 1108, dated 26.3.1996 of the Civil Surgeon-cum-C.M.O. annexing the opinion of the Medical Board in pursuance of order dated 28.2.1996 has been put up.

It appears from the opinion of the Medical Board dated 26.3.1996 that under trial prisoner Chini Sah is mentally abnormal and a psychotric patient. He has also been referred to Ranchi Mansik Arogyashala, Kanke, for further treatment. It appears from the opinion sheet that Chini Sah has a history of earlier having been treated at the aforesaid Arogyashala between the period 15.7.1988 and 14.12.1993 under D. No. 91103771 and is taking Valium-5. This finds support from the case records.

In that view of the matter, let the Jail Superintendent, Chapra, take suitable and immediate steps for transferring undertrial prisoner Chini Sah to the Mansik Arogyashala (Mental Hospital) Kanke, Ranchi for examination and treatment with intimation to this Court.

In the peculiar nature of the case and in view of the undertrial having been found mentally abnormal and a psychotric patient, his trial is kept in abeyance. Put up on 30.4.1996.

5. It would appear from the order dated 30.4.1996 that accused Chini Sah was sent to Ranchi and consequently he was not produced in Court on 28.6.1996 when the proceeding was adjourned to that date. However, on 1.8.1996 he was produced from Jail custody when the Court adjourned the proceeding for recording evidence. It seems from the order dated 17th October, 1996 of the Court below that by letter No. 1661 dated 27.9.1996 and 1772 dated 14.10.1996, the Jail Superintendent, Chapra, sought permission from Court to send the undertrial prisoner Chini Sah to the Psychiatry Department of Patna Medical College Hospital for specialised treatment. Further proceedings of the Court would show that the accused was thereafter sent to Mental Hospital, Ranchi for treatment. After the accused was produced from Jail custody in Court on 11.12.1996, again the proceeding was adjourned for evidence. It was on 21st February, 1997 that a petition was filed by the Additional P.P. with a prayer to call for a report from the Jail doctor or Superintendent of Jail, Chapra, regarding mental fitness of accused Chini Sah and accordingly, a report was sought from the Jail doctor but it would appear that without awaiting the report, the proceeding was again adjourned for recording statement of the accused which was eventually recorded on 24th November, 1997, pursuant to which the defence witness was also examined on behalf of the appellant. The defence witness brought on record an application for treatment of the appellant at Mental Hospital, Ranchi, which was marked Exhibit-A and the inquiry report was marked Exhibit-8. The evidence of the defence was closed and pursuant thereto, it would appear from the order dated 9th June, 1999, passed by the Court below, that again a prayer had been made by the Superintendent, District Jail, Chapra, for sending the accused Chini Sah to Mental Hospital, Ranchi. The order passed by the Court below, thereafter shows that the appellant was again sent to Mental Hospital, Kanke and even when he came back from Mental Hospital, Ranchi, and was produced in Court, no report appears to have been placed on the record and the Court began to hear the counsels on argument. The trial Court eventually on 29.8.2000, as aforesaid, passed the verdict of guilt awarding capital punishment against the appellant.

6. We have reproduced the order passed on different dates by the Court below in the proceeding simply to demonstrate that repeatedly the point of insanity had been set up in the midst of trial by the appellant. Once the appellant was examined by the Medical Board on 26.3.1996 he was found mentally abnormal and a psychiatric patient when trial was kept in abeyance. Both at the time of framing of the charge and also recording of statement, the appellant wore a vacant look and his face was noticed expressionless in answering the questions put to him. He appeared to be in disordered state of mind, incongruous in his answer and displayed symptoms, which did not conform to the normal standards of behaviour. While framing charge, the learned Additional Sessions Judge too felt that, the appellant was a bit mentally upset. In the backdrop of these sequence of events that transpired during trial, the Additional Sessions Judge was required firstly, to determine as to whether the appellant was insane at the time when he allegedly committed the offence and secondly, before recommencement of trial, when it was postponed, the Court was required to hold an inquiry to render an explicit finding as to whether the appellant was capable to make defence. Though some letters, which are Exhibits-A and B were placed on the record by the appellant, the Court did not render a finding about fitness of the accused to defend himself at trial which betrays lack of sensitiveness on the part of the trial Judge to the issues which he was required to determine.

7. We are conscious of the fact that the prosecution was launched on 16th August, 1991 and the trial terminated on 29th August, 2000. Since then about 10 years have elapsed. We would have been rather reluctant to remand the case to the trial Court for holding an inquiry on both the counts and record a finding thereon in view of protracted prosecution of the appellant for about 10 years, but since capital punishment has been recorded by the Court below, which requires serious consideration of the Court for its confirmation, we direct the trial Court/successor Court to hold an inquiry and record additional evidence on both the counts about insanity Of the appellant at the time when the offence was allegedly committed by him and also his capacity to defend at trial when such plea was raised in the midst of trial. Additional evidence taken by the Court of Sessions shall be certified by the Court to this Court so that this Court shall thereupon proceed to dispose of the appeal. The accused or his Pleader shall have the right to be present when the

additional evidence is taken. Taking of evidence under Section 391 Cr.P.C. shall be subject to the provisions of Chapter XXIII, as if it were an inquiry. However, the evidences placed on the record shall continue to be good evidence. The trial Court, shortly on conclusion of inquiry, shall remit to this Court the additional evidence recorded in pursuance of the direction of this Court along with lower Court records. Let the lower Court records be sent down at once. The inquiry to be completed within three months of the receipt of this order and the matter should be placed for hearing soon thereafter before an appropriate Bench.

R.N. Prasad, J.

I agree.

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