State of Assam Vs. Inush Ali

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Court : Guwahati

Decided On : Sep-30-1981

Judge : K. Lahiri and B.L. Hansaria, JJ.

Appellant : State of Assam

Respondent : inush Ali

Judgement :

Hansaria, J.

1. The occurrence which had taken place on 6-9-1977 at about 7 P. M. in the house of Gobinda Paul, P, W. 2, and which had seen the death of Nowel at the hand of Inush, accused, is not in dispute. What really calls for our decision is as to whether the offence would attract the mischief of Section 302, or would come down to Section 304 IPC

2. Let the skeletal facts be noted. Both Inush and Nowel were working as ploughmen of P.W. 2. On the date of occurrence at about 7 P. M., P.W. 1 was told by his mother that Nowel was being chased by somebody. The first impression was that perhaps some dacoit was doing so. A hue and cry was raised. On going inside the house of Nowel, he was found lying on the ground with injury on his abdomen. On being asked, Nowel said that he had been stabbed by Inush with a dagger, whereafter the latter had fled away. Inush came back next morning and on being asked by P. Ws. 3 and 5, he admitted that he had assaulted Nowel as there

was some quarrel between them, and Nowel had said that he would assault Inush. The matter was brought to the notice of police on the same night and next day morning, the police went to the scene, arrested the accused and seized a small dagger containing some bloodstains on being produced by the accused. The accused was forwarded to the Court on 8-9-1977 when his confession was also recorded which has not been retracted by the accused.

3. The defence version in the confession as well as in his examination Under Section 313 Cr.P.C. is that on the date of the occurrence at about 6 P. M. Inush had a quarrel with Nowel when the latter had slapped the former. As per the confessional statement, Nowel had then came out with a dao also to cut the accused. The matter subsided thereafter and both took meals. After having done so, the accused suspected that he may be assaulted again. So he got himself armed with a dagger of Nowel and as soon as the latter came out after taking meals, the dagger was thrust inside Nowel's stomach The accused hide himself in the nearby jute field for the night and on the next day he surrendered and produced the dagger also. Thus, there is no dispute about Inush having assaulted Nowel with a dagger. P.W. 9, who had done the autopsy had found an oblique stab wound in the right ileac fosse l' lateral to the mid point of umbilicus which was 2' x 3/4' x 4' in size. There is nothing to doubt about the assault of Nowel by Inush, which had ultimately seen the death of Nowel. The learned trial Court has convicted the accused Under Section 302 and sentenced him to imprisonment for life. He has referred the matter to this Court under Rule 16 of the Rules for the Administration of Justice and Police in the Sibsagar, Now-gong and Mikir Hills Tracts, 1937.

4. Shri Pathak, who has assisted the Court as Amicus Curiae on behalf of the accused, has submitted that the death was caused by gnash under soms irresistible impulse inasmuch as he had developed a fear psychosis that Nowel would kill him and so to protect himself he could not resist stabbing of Nowel. A Division Bench of this Court in Siddheswari v. State of Assam, 1981 Cri LJ 1005, had an occasion to discuss as to when defence of impulsive insanity could be available to an accused. As pointed out therein (at p. 1008):

The mental impulse which had led to the commission of the crime has to be irresistible, and not only unresisted, to regard the same as 'impulsive insanity'. The mere fact that it was committed on a sudden impulse is not sufficient in this context.

It is difficult for us to hold on the facts of this case that the offence had been committed by Inush under any impulsive insanity, as what we know from his confessional statement as well as what is stated before the Court is about a quarrel which had taken place a few hours before the occurrence. We do not think if on the basis of this lone quarrel it can be held that what Inush had done was irresistible. We, therefore, rule out the applicability of Section 84 of the Penal Code to protect the accused.

5. The alternative submission was that Inush had apprehended reasonable danger to his life and limb which had led him to assault Nowel, which would attract Exception 2 to Section 300 of the Penal Code, according to learned Counsel, Shri Pathak has referred to the evidence of P.W. 3 who admitted that Inush had told him that Nowel had quarrelled with him (i. e. Inush) and had further stated that he would be assaulted which had led him to stab Nowel. P.W. 5 has also deposed about a similar statements by Inush. We do not however think that the mere fact that Nowel had quarrelled with Inush a few hours before the occurrence and had then slapped Inush was at all sufficient to raise a reasonable apprehension in the mind of Inush that he had some danger to his person at the hand of Nowel. Though in the confessional statement something was also slated about Nowel coming out with a dao when the two had quarrelled, this we find missing in the statement of the accused Under Section 313 Cr, P. Q A petty quarrel between two persons cannot confer a right to take away the life of the one who had quarrelled. Had something been done by Inush in grave and sudden provocation while deprived of the power of self-control, the matter would have been different. It would be stretching the law almost to a breaking point to allow the right of self-defence in cases like the present. For Exception 2 to get attracted, the action in private defence has to be in 'good faith.' It cannot be used as a pretence. The apprehension which permits a person to act in self-defence must be reasonable, it cannot be a freak and flitting apprehension of a timid, suspicious, immature and

hyper-sensitive mind, in which case self-defence would become socially destructive - almost an engine of oppression and weapon of wreaking vengeance. Prom the facts as before us me are not if a position to hold that Inush had any reasonable apprehension of attack at the hand of Nowel, A 'mild quarrel' which had taken place between the two a little before the occurrence as put in the confessional statement is too weak a peaty to bear the weight of attack in self-defence.

6. In view of the above, we, do not think if we can make available the benefit of Exception 2 to the accused.

7. The result is that the conviction and sentence are upheld and the reference is accepted.

Lahiri, J.

8. In Siddheswari v. State of Assam, 1981 Cri LJ 1005, my learned brother, Hansaria J., has broken a new ground applying the rule of 'impulsive insanity' in Section 84 IPC The driving force generated makes me to offer a few words. I have avoided the expression 'irresistible impulse' and substituted it with 'driving force' as I might be misunderstood in the medical world. The expression 'irresistible impulse' according to the Medical Dictionary, generally means as impulse to commit unlawful or criminal act.

9. Impulse means a sudden pushing or driving force, sudden, often unreasoning, determination to perform some act, and 'irresistible impulse' is a compulsion to act in a way that one knows as wrong. This is what we get in Stedman’s Medical Dictionary, Black explains irresistible impulse thus ;

Used chiefly in criminal law, this term means an impulse to commit an unlawful or criminal act which cannot be resisted or overcome by the patient because insanity or mental disease has destroyed the freedom of his will and his power of self-control and of choice as to his actions.

(Black's Law Dictionary, Revised Fourth Edition,

10. There is a difference between pathological and legal insanity. The distinction between the medical and legal idea of insanity has been best articulated by Ray who is quoted by Ordronaux and again Withies Backer ;

Insanity in medicine has to do with a prolonged departure of the individual from his natural mental state arising from bodily disease insanity in law covers nothing more than the relation of the person and the particular act which is the subject of judicial investigation. The legal problem must resolve itself into the inquiry, whether there was mental capacity and moral freedom to do or abstain from doing the particular act.

11. The plea is that the appellant was suffering from delusion that the deceased would kill him and for the sake of his precious life he could not resist killing Nowel. But delusion is not the substance but the evidence of insanity. The term is sometimes loosely used as synonymous with insanity. However, the presence of an, 'insane delusion,'1 is the only recognised test of insanity, except in amentia and imbecility and where there is no frenzy or raving madness. 'Insane delusion' is a set belief in the mind of the patient on the existence of a fact which has no objective existence but is purely the figment of his imagination and which is so extravagant that no sane person would believe it under the circumstances of the case, the belief being so unchangeable that the patient is incapable of being permanently disabused or set at right about his mistaken belief. The characteristic which distinguishes 'insane delusion' from other 'mistaken belief is that it is not a product of the reason but of the imagination, i. e. not a mistake of fact induced by deception, fraud or insufficient evidence; the conception of perverted imagination, having no basis whatsoever in reason or evidence. In 'insane delusion' the idea or belief springs spontaneously from a 'diseased or perverted mind'1 without external element. It is distinguishable from the belief which is grounded on prejudice or aversion. Psychiatrists say that a man may know the nature and quality of an act, may even know that it is wrong and yet performs it under an 'impulse' that is 'almost quite uncontrollable'. In Kopscm (19251 19 Cr App Rep. 50 CCA; 14 Digest (Repl.) 63 it was urged that a person labouring under an impulse which he could not control was not criminally responsible for his acts. The theory was summarily dismissed by Lord Hewart CJ with an observation:

fantastic theory ...which if it were to become part of our criminal law, would be merely subversive.

12. In England Judges continued to oppose the admissibility of such a defence on the ground of the difficulty or impossibility of distinguishing impulse which proves irresistible because of' motives of greed, jealousy, revenge, etc. It has been said the harder the impulse is to resist, the greater for the need for: deterrent. Canadian Judge, Ridle J. quipped:

If you cannot resist an impulse in any other way, we will hang a rope in, front of your eyes, and perhaps that1 will help.' Creiohton (1909) 14 Can Crim Cas 349.

English, Canadian and Australian laws do not recognise irresistible pulse even as a symptom from which a jury might be asked to deduce insanity within the meaning of the Rule. Attorney General for Southern Australia v. Brown (1960) AC 432:1960) 1 All ER 734(PC) is a decision from Australia.. It was observed therein that if medical evidence were tendered in a partir cular case that the uncontrollable impulse, to which the accused in that case had allegedly been subject, was a symptom that he did not know his act was wrong, it would be open to the jury to act on that evidence. Therefore, a partial defence of irresistible impulse has been admitted into the law through the new defence styled as 'diminished responsibility'. Almost from the moment of their formulation it was subject to vigorous criticism primarily by doctors and also by lawyers, who wanted a broader outlook not to exclude persons who ought not to be held responsible. In 1923 a Committee under the Chairmanship of Lord Atkin recommended that the prisoner' should not be held responsible -

when the act is committed under impulse in substance deprived of any power to which the prisoner was by mental disease in substance deprived of any power to resist.

The recommendation was, however, not implemented. In 1953 the Royal Commission on Capital Punishment made a far-reaching proposal. The recommendation was to leave to the jury to determine-

whether at the time of the act the accused was suffering from disease of the mind (or mental deficiency) to such a degree that he ought not to be held responsible.

Thus, it recommended that it was not necessary to have a rule of law denning the relation of insanity to criminal responsibility. The Homicide Act, 1967, Section 2. introduced into the law a new defence to murder as 'diminished responsibility' which entitles the accused not to be acquitted altogether, but to be found guilty only of manslaughter, if it is a case of culpable homicide amounting to murder. The burden of proof is on the prisoner and the standard of proof required is not beyond reasonable doubt but n a balance of probabilities. But the effect of introduction does not appear to be favourable for the accused, as in most cases on proof of 'diminished responsibilities' the accused obtain 'hospital order'. At least the proportion of persons committed for trial for murder, who escaped conviction on the grounds of their mental abnormalities has remained much the same since the Homicide Act, as it was before. A Committee has, however, recently been appointed under the Chairmanship of lord Butler to examine the law of mental abnormality. However, I have not come across the report. But, there is a class of defenders in support of the rules like Lord Devlin, who has cogently put in defence of the rule in his observation which I quote:

As it is a matter of theory, I think there is something logical it may be astringently logical, but it is logical in selecting as the test of responsibility to the law, reason and reason alone. It is reason which makes a man responsible to the law. It is reason which gives him sovereignty over animate and inanimate things. It is what distinguishes him from the animals, which emotional disorder does not; it is what, makes him man; it is what makes him subject to the law. So it is fitting that nothing other than a defect of reason should give complete absolution.

('Mental Abnormality and the Criminal Law', in Changing Legal Objectives (Ed. R. St. Mac Donald, Toronto, 1963 ul at 85).

13. 'Irresistible impulse' is perhaps a defence Under Section 84 IPC when on account of such impulse the accused is incapable of knowing the nature of the act he is doing and what he is doing was either wrong or contrary to law. Such impulse or abnormal urge to perform certain activity due to mental disease might

be covered by Section 84 IPC Section 85 envisages creation of force of impulse by reason of intoxication when the doer at the time of doing it is by reason of intoxication incapable of knowing the nature of the act or that he is doing what is either wrong or contrary to law; provided that the thing which intoxicated him was administered to him without his knowledge or against his will. This is another form whereby irresistible impulse is created by intoxicant which destroys the reasoning faculty of the taker. However, application of the defence need be considered if the appellant has made out a prima facie case of irresistible impulse.

14. In the instant case the petitioner claims that he was suffering from 'delusion'. Delusion is the evidence of insanity. To establish 'insane delusion' the first element required to be proved is the existence of a fixed belief in the mind of the accused about the existence of fact which has no objective existence that it was purely a figment of his imagination. Secondly, the belief was so firmly fixed in the mind of the patient that he was incurable or that it was not possible to disabuse him. The. appellant was labouring under the belief that he could be killed by the deceased. He does not say that it was a figment of his imagination. His mental faculty was quite rational. There is no existence of any disabled mind in the instant case. He had an apprehension and he could have remedied it if it were true, by taking help from these in charge of law and order. There is no material that his mind was diseased or he was mentally deranged. Therefore, the appellants had no delusion nor is there any material to show that he was incapable of knowing the nature of his action that what he was doing was wrong or contrary to law.

15. I would observe that if such defence is to become a part of our legal system, it would be subversive to life and property. I entirely agree that the action of the appellant was not due to any 'irresistible impulse'. The defence story does not reach even the fringe of the 'expanded principles of burden of proof ruled in 1981 Cri LJ 1205(Gau) Abdul Latif v. State of Assam.

16. I entirely agree with my learned brother that there is no merit in the appeal and as such the conviction and sentences must be upheld and the reference is to be accepted.