

Abdul Latif Vs. the State of Assam

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Court : Guwahati

Decided On : Apr-09-1981

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

Appellant : Abdul Latif

Respondent : The State of Assam

Judgement :

K. Lahiri, J.

1. This is a criminal appeal from jail. The appellant stands convicted under Section 302, Indian Penal Code, for causing culpable homicide amounting to murder of a child aged about 5 years and sentenced to imprisonment for life and to pay a fine of Rupees 2,000/- in default, to suffer further prison term for another two years. The indigent accused must thank his star for the potent free legal aids provided to him.

2. The prosecution case is that on 17-12-1977 Rehana Begam, aged about 5 years was found missing. There was a lot of frantic search for the missing child. At last, they inquired of the accused, who was 'lunatic', the whereabouts of the child. Thus confronted by P. W. 9 Ali Ahmed, father of the child, the accused declared that he had sent the child to God. It is alleged that he made similar statements to others that he had deposited the child into a pond. Consequent upon his statement the dead body of the girl was recovered from a nearby tank. P. W. 9, Ali Ahmed,

father of the child, lodged the Ejahar wherein he made a positive statement that the accused Abdul Latin a lunatic, threw his daughter Rehana into the pond, and, her dead body was recovered therefrom. The police investigated the case, arrested the accused, submitted charge-sheet under Section 302, I.P.C. The accused stood his trial before the Court of Sessions. During the course of trial as many as 11 witnesses were examined in support of the prosecution case. No defence witness was examined. The learned Sessions Judge convicted and sentenced the accused as alluded above.

3. The following indubitable facts glean from the prosecution evidence:

- (i) That the accused was portrayed as 'a lunatic'¹ in the First Information Report;
- (ii) When the act of causing the death was attributed to a mentally deranged person, naturally, the prosecution was incapable to uncover any terrestrial 'motive' of the accused. It had to rest upon 'a motiveless case';
- (iii) P. W. Sayea Ali, affirmed on oath that the accused 'was mad at the time of the occurrence. When his head became off he did not know anything', The statements be out that- (a) the accused was deranged at the time of the occurrence, and (b) the accused had period when he was mad, bereft of reason or incapable of knowing the nature of his acts;
- (iv) P. W. 5 Nasib AH not only confirmed that the accused was mad but revealed that 'he took meal and slept well,' an eerie conduct of a human being. It established that the accused was oblivious of the upshot of his act which resulted in the death of a young colleen.

4. The trial Judge did not scrutinise the aforesaid features. He dismissed the defence plea under Section 84 of the Indian Penal Code. 'The learned Judge conceded that it that the common case of the parties that the accused was mad. However, the learned Judge missed that it was the positive case of the prosecution that the accused was 'mad at the time of the occurrence' (vide P. W. 3). The learned Judge also omitted to note the affirmative statement of P. W. 3 that when the accused had such spell of epileptic seizure, 'he did not know

anything'. The learned Judge also passed over the significant fact that the prosecution unfolded its case in the Ejahar depicting the accused as 'an insane' person. The learned Judge also skipped over the strange utterance of the accused that he had sent the child to God and the eerie comportment of the accused that he took a hearty meal and slept like a log. Instead the learned Judge laid much emphasis on the statement of the accused during trial where he stated that he had thrown the child into the pond but at the same time, failed to explain the reason for the act. The reason for rejecting the defence plea was that no material was placed before him that the accused had similar spell of epileptic seizure and as the accused admitted that he had thrown the child into pond, the learned Judge assumed that the accused had the knowledge that the child was sure to die as a result of his act. The conclusions reached by the learned Judge was due to fatal omissions to take into consideration the telling factors. It is apparent that the learned Judge omitted, to note (i) that the accused was described as 'an insane' in the ejahar, (ii) that P. W. 3 admitted that when the accused had periods during which he was mad and when he had such periods he was incapacitated to realize the nature of his acts or, in other words his faculties of ratiocination failed to apprehend what he was doing. These are past conduct of the accused. The attending conduct may be recounted. He was having such fits so he was described as an insane in the ejahar. That apart, his non-chalant eerie statement, as if nothing did happen when he muttered to P. W. 8 that he had sent the child to God is cognate indeed. Apparently he was oblivious of the consequences and took his meal and had a sound sleep. These are the conduct of a person whose cognitive faculties were completely impaired. They are pointers to show that the accused was incapable of knowing the nature of the act or that he did something what was wrong or contrary to law. These factor? and their impacts were completely brushed aside by the learned Judge. We are constrained to hold that these are sufficient to establish legal insanity on the facts and circumstances to the present case.

5. Mr. S.A. Laskar, learned Public Prosecutor submits that the hurden of insanity rests entirely upon the accused and he points out the provisions of Section 106 of the Evidence Act. We are constrained to hold that in the instant case the accused has discharged the burden. But, it appears to us an anathema as to how the

burden of insanity rests entirely on the insane. How is it possible for an insane to prove insanity? If a person suffers from mental derangements at a particular point of time how can we expect him 'to play back' or 'reproduce' his mental reactions of his brain cells that by reason of un-soundness of his mind he was incapable of knowing the nature of the act or he was incapable of knowing that he was doing something what was wrong or contrary to law? How an insane, a poor or ignorant person, can prove his mental faculties just alluded? 'Justice' should be dispensed 'according to law' and not by evolving a 'theory of justice' divorced from law. It is never the function of the Court. But is it justice to demand proof of insanity from a person just recovered from mental derangements, and to demand of him to establish his mental faculties at the crucial time? It is not impossible to prove the requisites of Section 84, I.P.C. by having the accused examined by a Psychiatrist. But it will be not proof beyond reasonable doubt. It is well-nigh impossible for a recovered deranged to establish the elements of Section 84. It may be established only by preponderance of probabilities on the basis of some features gleaned from the conduct of the accused which point to a reasonable doubt that he had acted under circumstances set forth in Section 84. We feel that under such circumstances he is entitled to the benefit of doubt. But Section 106 of the Evidence Act appears to be somewhat harsh, in so far as proof of insanity is concerned, more so when the accused is an indigent and/or socially and economically handicapped person. However, we are to dispense justice according to law. Only the sufferer can speak about the darkness or void of his mental faculties at the relevant time and surely nobody can enter inside his brain cells, scrutinise the functioning, come out of it and support his case. A Psychiatrist may be of some help. However, in our poor India, to ask a poor Indian to get an opinion of a Psychiatrist is perhaps asking for the Moon. When a person, due to mental disease, becomes incapable of knowing the nature of the act or what he did was wrong or contrary to law can be only verbalised by the person that he had 'no recollection' or 'hazy recollection' or 'blank recollection' that he did something. When the mental faculties collapse so much so that they incapacitate the power of 'knowing the nature of the act.' or that he did something which was either wrong or contrary to law it is well-nigh impossible to prove the elements by direct evidence. We were slightly taken aback to note the law touching 'the burden of proof on a

handicapped person'. Is the burden exclusively on an insane and/or his relatives? Is the law so unreasonable, harsh and unjust? When these questions troubled us we found to our satisfaction that there is a soothing or harmonious provision. Law cannot be so harsh, illogical or unjust. We turned to Section 6 of the Indian Penal Code and find the following:-

6. Definitions in the Code to be understood subject to exception. Throughout this Code every definition of an offence, every penal provision and every illustration of every such definition or penal provision, shall be understood subject to the exceptions contained in the chapter entitled 'General Exceptions' though those exceptions are not repeated in such definition penal provision or illustration.

The proper position of the Section should have been somewhere in Chapter IV itself or in some other prominent place as it is a very wholesome and healthy provision which, is overlooked more often than not, Throughout the Code every definition of an offence every penal provision and every illustration must be understood as subject to 'the exceptions contained in the Chapter entitled 'General Exceptions' though those exceptions are not repeated in such definition, penal provision or illustration. Therefore, whenever a case comes before the criminal court it is the duty of the court to consider whether the case is covered by any of the exceptions. Section 6 is an extraordinary provision which obligates the court to consider whether a case is covered by an exception or not. Section 6. I.P.C. carves out or stands in the nature of a proviso to Section 100 of the Indian Evidence Act and imposes an obligation on the court as well to consider the cases of exceptions on its own in so far as it relates to burden of proving legal insanity as the essential element of 'Special Knowledge' envisaged in Sec, 106 of the Evidence Act is always impaired due to mental derangement. All 'offences' under the Penal Code are subject to or governed by Section 6 of 'The Code'. We tarry, take note of some salient provisions of the Criminal Procedure Code, 1973. Chapter XII of 'the Code'¹ commands the police officers to submit ejahars and other papers before a Magistrate forthwith, during the course of investigation. The provisions enjoin that not only the body of the accused but also the relevant records must be sent to the Magistrate. There is a positive object behind it in so far as the cases of 'exceptions' are concerned. If the Magistrate finds the accused to

be insane or finds symptoms of insanity having a look at him or on perusal of the records he is obligated to take some affirmative actions. What is the nature of the action under such circumstances? The answer is simple, to send him to a medical expert. This is how a poor indigent insane, whose 'neck is inside the noose', might be saved to a great extent. In the case in hand, there is no material to show that anything of the sort was done by the Magistrate when the accused-lunatic was produced before him. There is no explanation by the prosecution as to why the accused was not medically examined when he was pictured as an insane in the first information report, As such, the assumption is that the prosecution admitted the position that the appellant was an insane at the time of the occurrence and continued with its case with that backdrop. In such cases, in our opinion, in Order to bring home an offence against an accused the burden is on the prosecution to establish that the accused had feigned madness. Be that as it may, at least in the instant case, the prosecution case proceeded from the very first day till the close of the case that the appellant was an insane at the time of the, occurrence. This factor as well strongly supports the appellant's case under Section 84 I.P.C.

6. In *Ratanlal v. State of Madhya Pradesh* : 1971 CriLJ654 , the Supreme Court has clearly ruled that the accused can establish his case under Section 84, I.P.C, on preponderance of probabilities grounded on circumstantial evidence or circumstances. The burden or obligation is not onerous. It can be discharged by establishing circumstances which preceded, attended and followed 'the act'. In the instant case it has been proved that (i) the accused was a confirmed insane (vide *ejahar*); (ii) not only he was deranged at the time but he committed 'the act' without knowing the consequences. These have been well Established by cogent and reliable evidence emanating from the witnesses for the prosecution. As such, in the instant case the accused has fully discharged the Mihten by establishing circumstances which preceded 'the incident. He has clearly proved that he was mad at the that of the incident vide evidence of P. W. 3 motive for the crime was conspicuously absent as the perpetrator of the offence was 'an insane'. That the accused 'was very strange in his mantote1' was reflected from his strange statement that he had sent the child to God. We are confirmed that the accused had discharged his burden about his un-moodiness of mind at the crucial time by establishing the attending circumstances. What was the conduct of the accused

immediately following the commission of the incident? The accused was nonchalant, oblivious of what had happened, took his square meal and slept like a log. Are these the conduct of a sane person, after killing a small child? Therefore, we are of the firm opinion that the accused had discharged the burden that at the crucial point of time he was suffering : from unsoundness of mind from the circumstances which ' preceded,' attended and followed the crime. There is no explanation of the prosecution why the indigent person was not properly looked after, sent to a medical expert to have him thoroughly examined. Was it because he is an indigent? We are of the opinion that in such cases the State, the police as well as the Magistrate should be up and doing and take immediate action to send the accused for medical examination so that he might establish his plea emanating from expert's quarter. This is the minimum that one can expect from the State and Judiciary.

7. For the foregoing reasons, we hold that the accused, at the crucial point of time, was unsound in mind and was incapable of knowing the nature of the act or that he was doing what was either wrong or contrary to law. Accordingly, we set aside the conviction and sentences. However, we have accepted the plea of insanity, allowed the appeal and acquitted the appellant. But, the provision of Section 334, Cr.P.C. disables us to direct release of the accused forthwith, the accused shall be kept detained in safe custody in the jail until the concerned Civil Surgeon certifies that he is fit enough to live in the society and is no longer a security hazard to others. The jail authority shall comply with the provision of the Indian Lunacy Act, 1912 and the rules framed thereunder. However the accused may be delivered to any relative or friend if such an application is made by any such relative or friend but he shall be so released only on his giving security to the satisfaction of the Chief Judicial Magistrate, Cachar, at Silchar. The State to take steps to inform the relative forthwith.

B.L. Hansaria, J.

8. I agree.