Kusnu Murari Vs. the State

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Court : Guwahati

Decided On : Feb-26-1971

Judge : M.C. Pathak and D.M. Sen, JJ.

Appellant : Kusnu Murari

Respondent : The State

Judgement :

M.C. Pathak, J.

1. The appellant has preferred this appeal against the order of conviction and sentence of life imprisonment Under Section 302, Penal Code passed by the learned Sessions Judge, Lakhimpur.

2. The oase for the prosecution was that Srimati Sukurmoni was the wife of accused Kusnu Murari. On 9.7.67 at about mid-night the accused assaulted his wife with an iron rod. Alarm being raised, P.Ws. Ganeah Prasad Singh, Dwarika Prasad and Satrughna Tanti came and found the accused assaulting his wife. They caught hold of the accused, snatched away the iron rod from his hand and tied him and thereafter the line Chowkidar was informed, who in turn informed the garden authorities.

3. The first information report was lodged by Haran Chandra Bhattacharjee, Head Clerk of Bisakupi Tea Garden, Police registered a case Under Section 302, Penal

Code and after investigation submitted charge-sheet Under Section 302, Penal Code. The learned Magistrate committed the accused to the Court of Session to stand his trial under S 302, Penal Code. Before the Sessions Court: also the accused was charged Under Section 302 Penal Code.

4. The defence case was that the accused was insane at the time of occurrence and that he did not know what he did.

5. The prosecution examined nine witnesses and tendered the evidence of the doctor who held the post mortem examination The defence did not examine any witness. Since the accused pleaded insanity, the learned Sessions Judge examined the jail doctor as Court witness.

6. P.W. 2 Ganeeh Prasad Singh stated that on hearing hulla at about 12 P. M. at night on the date of occurrence he woke up, came out of his house and saw that the accused was assaulting his wife with an inn rod outside the house by the side of the fencing. His house is adjacent to the house of the accused. As it was dark outside, he brought a lamp from inside and saw the accused assaulting. P. W- 2, Dwarika Prasad and Satrughna then caught hold of the accused, bound him to a post and then called some people of the line and sent the injured to the hospital. Being questioned the accused did not say anything P.W. 2 identified material Ext. 1, the iron rod.

7. P.W. 3 Dwarika Prasad stated that his house was by the side of that of the accused. On the night of occurrence on hearing cries of the children from the house of the accused, he got up and came there and found that the accused was assaulting his wife with an iron rod by the side of the fencing. He could not dare to go near him alone, so he called P.W. 2 and P.W. 4 Satrughna Tanti and all of them caught hold of the aroused and snatched away the iron rod. There wa? injury over the body of Sukurmoni. The injured was then Bent to the hospital. He identified the iron rod which is material Ext. 1.

8. P.W. 4 Satrughna Tanti corroborated the evidence of P.W. 2 and P.W. 3.

9. P.W. 2 and 3 are found to be eye wit-neBSes to the occurrence and P. V). 4 arrived at the place of occurrence when P.W. 2 and 3 were snatching the iron rod from the band of the accused.

10. From the evidence of P.W. 8, the City Inspectors of Police it is found that was found dead in Bisakupi Garden Hospital. The evidence on record shows that after Sukurmoni was assaulted by the accused, she was taken to the garden hospital where he expired.

11. From the evidence of Dr. D. N. Bhuyan (P, W. 1 before the committing Court), who held the post mortem examination, the following injuries were found on the body of Sukurmoni:

(1) Stitched wound situated on both frontal region of the scalp, starting 4' above and 4' above right ear going transversely.

(2) Stitched wound 4' long, situated at the right temporal region and right parietal region of the scalp starting 2|' behind and f' above right ear, going obliquely.

(3) Stitched wound 3', situated in the right occipital region of the scalp just lateral to middle line and in lower part going longitudinally.

(4) stitched wound 3' long situated in the fight occipital region of the scalp starting from the middle of the region going obliquely.

(5) Stitched wound - multiple-margin - ill-defined, situated on posterior parts of both parietal regions of the skull.

In the opinion of the doctor the injuries were ante mortem and Sukurmoni died of shook and haemorrhage due to the injuries which were sufficient to cause death of a person in the ordinary course of nature.

12. On consideration of the evidence of P.Ws. 2, 3, 4 and 8 and Dr. D. N. Bhuyan it is quite clear that Sukurmoni was assaulted by the accused with an iron rod causing five grievous injuries on her person, as a result of which she expired.

13. The accused pleaded insanity and there, fore the main question to be determined in this case is whether the accused was insane at the time of causing injuries to Sukurmoni and the case comes within the scope of Section 84, Indian Penal Code, which reads as follows: -

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.

Section 105 of the Indian Evidence Act reads as follows:-

105. Burden of proving that case of accused comes with in exceptions-When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code, or within any special exception or proviso contained in any other part of the same code in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.

Illustrations.

(a) A, accused of murder, alleges that, by reason of unsoundness of mind, ,he did not know the nature of the act

The burden of proof is on A.

* *

The above provisions of law came up for consideration in Bhikari v. State of Uttar Pradesh : 1966 CriLJ63 , wherein the Supreme Court has observed as follows:-

The learned Counsel, however, relies on a decision of this Court in Dayabhai Chhagan-bhai Tbakkar v. State of Gujarat : 1964 CriLJ472 , and contends that h is for the prosecution to establish the necessary mensrea of the accused and that even though the accused may not have taken the plea of insanity or led any evidence to show that be was insane when he committed an offence of which intention is an ingredient the prosecution must satisfy the Court that the accused had the requisite intention. There is no doubt that the burden of proving an offence

is always on the prosecution and that it never shifts. It would, therefore, be correct to say that intention, when it is an essential ingredient of an offence, has also to be established by the prosecution But the state of mind of a person can ordinarily only be inferred from circumstances. Thus if a person deliberately strikes another with a deadly weapon, which according to the common experience of mankind is likely to cause an injury and sometimes even a fatal injury depending upon the quality of the weapon and the pan of the body on which it is struck it would be reasonable to infer that; what the accused did was accompanied by the intention to cause a kind of injury which in fact resulted from the act. In such a case the prosecution must be deemed to have discharged the burden which rested upon it to f establish an essential ingredient of the offence, namely the intention of the accused inflicting a blow with a deadly weapon Section 84 of the Indian Penal Code can no doubt be invoked by a person for nullifying the evidence adduced by the prosecution by establishing that he was at the relevant time incapable of knowing the nature of the act or that what he was doing was either wrong or contrary to law. Now it is not for the prosecution to establish that a person who strikes another with a deadly weapon was incapable of knowing the nature of the act or of knowing that what he was doing was either wrong or contrary to law. Every one is presumed to know the natural consequences of his act. Similarly every one is also presumed to know the law. These are not foots which the prosecution has to establish. It is for this reason that Section 105 of the Evidence Act places upon the accused person the burden of proving the exception upon which he relies.

* * * *

Undoubtedly it is for the prosecution to prove beyond reasonable doubt that the accused had committed the offence with requisite mensrea. Once that is done a presumption that the accused was Bane when he committed the offence would arise. This presumption is rebuttable and he can rebut it either by leading evidence or by relying upon the prosecution evidence itself. If upon the evidence adduced in the case whether by the prosecution or by the accused a reasonable doubt is created in the mind of the Court as regards one or more of the ingredients of the offence including mensrea of the accused he would be entitled to be acquitted. This is very different from saying that the prosecution must also establish the amity

of the accused at the time of commission of the offence despite what has been expressly provided for in 8. 105 of the Evidence Act.

In the instant case the accused is found to have caused as many as five serious injuries on different parts of the head of the deceased With an iron rod. The death of the injured is proved to be in consequence of these injuries. In the circumstances the prosecution must be deemed to have discharged the bur-den of proving the mensrea of the accused in the instant case. In his statements Under Section 342, Criminal P.C. the accused stated that he did not know what he did at the time and he was insane. He also stated that after polios oaught hold of him he was pushed an injection in jail and he had been cured Thus it is found that in the instant case the accused has pleaded insanity at the time of commission of the offence. The burden of proof of this plea is undoubtedly on the accused as laid down in law. Of course this burden of proof may not be so stringent as the burden of proof on the prosecution in a criminal case. If by defense evidence or from the prosecution evidence itself the accused is able to raise a reasonable doubt as to his insanity (sanity?) at the time of commission of the offence, the accused may be entitled to the benefit of Section 84, Penal Code. In the instant case no evidence has been adduced by the defence. The accused stated in his examination Under Section 342, Criminal P.C. that he did not know who caused the death of his wife and that he was insane. He further added that an injection was administered to him in jail and he was cured. This shows that at the time of trial he was not insane. His plea is that he was insane at the time of commission of the offence, but when he wag taken to jail an injection was administered to him and he got cured.

14. In view of the plea of insanity raised by the accused, the learned Sessions Judge called the doctor of the Dibrugarh jail as a Court witness. Dr. Dandeswar Dutta, Court witness No. l, stated that he had been serving for eight years in charge of medical division of Dibrugarh Jail. On 10th July, 1967 Kusnu Murari of Bieakupi Tea Garden was admitted in jail. He did not find any mental disease of the accused. nor did the accused tell him anything about that That in the whole period of his stay in jail he did not see any abnormal work of the accused and it was not necessary to keep observation. The doctor was not cross, examined by any party. It was not even suggested to the doctor that any injection was

administered to the accused in jail and he got cured. On a consideration of the evidence of C. W. 1 it is found that there is no truth in the statement of the accused that an injection was administered to him in jail and he was cured. The occurrence took place at about mid-night of 9th July 1987 and the accused was arrested next day on 10th July, 1967 and it appears from the evidence of 0. W. 1 that the accused was admitted in the jail on the same date, It is therefore quite clear that no injection was administered to the accused in the jail or after the occurrence. So his statement that be was cured of his insanity on account of an injection having been administered to him in the jail is found to be false. There is no evidence nor any circumstance elicited from the cross, examination of the P.Ws. and C. W. to show that the accused was found to be insane or behaved like an abnormal person after the occurrence. The evidence of C. W. 1 goes to show that the accused was found sane and normal on 10th July 198'' and during the period he was in jail.

15. Let us now examine whether the accused was insane at the time of ocJurrenoe or at any time prior to that. We have already noticed that no evidence was adduoed by the defence. Hence we have to examine the prosecution evidence in this regard. In crosp-examination, P.W. 2 denied the suggestion that the accused was insane before. He how-ever stated that the wife of the accused, that is, the deceased told before that the accused was abnormal (' Murar thik naail'). P.W. 3 in cross-examination denied the suggestion that the accused was insane. He stated that the accused's wife did not tell him anything. To a question from the court P.W. 3 stated that for about two or three months before the occurrence the accused did not work in the garden but his wife was working and he did not know why he did not work. P.W. 4 stated in cross-examination that the name of the accused was struck off from the garden, but the witness did not know the reason there. for. He did not talk much with the accused. He did not know that the accused was insane, but other people said that he was- insane. P.W. 5 also stated in cross examination that he did not know whether the accused was insane P. W- 6 stated in cross-examination that he did not know whether the accused was insane but some others said that he was insane. P.W. 2's house is adjacent to the house of the accused. P.W. 2 is a neighbour who came to the place of occurrence on hearing the cries raised by the children of the accused. P. W 4's house is about

twenty nals from the house of the accused P.W. 6 lives at a distance of four houses from the house of the accused.

All these P.Ws. live in the same line and they are neighbours of the accused. None of these P.W.s stated that the accused was in. sane and they denied the suggestion of defense in this respect. Even P.W. 2 who stated that the wife of the accused told him before that the accused was abnormal denied the defence suggestion that the accused was insane before. The words used by P.W. 2 in Aasa. meae are as follows:-'Eito katha satya nahay je asamir agar para murar gandagol asil Agate tar ghainieke kaisil je tar murar thik nasil.' (It is not true that the accused was mentally abnormal from before Previously his wife said that; he wag mentally not quite sound). This statement elicited from P W, 2 in cross-examination in my opinion does not go to show that the accused was insane prior to the occurrence, No circumstances have been elicited by cross-examination of the pro-sedition witnesses that at any time before the date of occurrence the accused behaved in a manner from which an inference may be drawn that he must have some kind of mental derangement. No such behavior of the accused prior to the occurrence was suggested to the P.W.s. The only circumstances that has been brought out in cross-examination is that a few months before, the name of the accused was struck off from the roll of the labourers in the tea garden. Nobody has stated why his name was struck off. P.W. 4 also stated that his name was also struck off from the garden. Therefore from the fact that the name of the accused was struck off from the roll of the tea garden, it cannot be reasonably inferred that his name was struck off because he was insane.

No circumstance has been elicited from the prosecution witnesses that the accused behaved like an abnormal person prior', to the date of occurrence, The accused stated that when be was taken to the jail the next clay he was cured of his insanity by pulsing an injection. This statement is however belied by the evidence of court witness No. 1 the doctor of the jail. It is thus found that there is no evidence on record to show that the accused was insane prior to the date of occurrence or after the date of occurrence. Though P.Ws. was a neighbour of the accuser), he categorically stated that he did not know that the accused was insane, He simply stated that the wife of the accused staled before that the

accused was abnormal. The other P. Was were also neighbours but they denied the suggestion that the accused was insane, though they stated that some people said that the accused was insane. Nobody has stated that the accused was insane at the time of the occurrence or that the accused behaved at the time of occurrence or immediately before or after the occurrence, in a manner which would at least raise a reasonable doubt that the accused night have been insane at the time of occurrence. The P. Ws found the accused striking his wife with an iron rod on the head repeatedly So they caught hold of him and tied him and produced before the police.

The circumstances and the evidence on record do not create any reasonable doubt that the accused might be insane at the time of the occurrence The insanity or abnormal condition of the mind of a man may be inferred from his outward behavior in his day to day life. There is nothing on record to show that the accused behaved like an insane person or even behaved generally in an abnormal manner at the time of occurrence or before or after the time of occurrence, which maybe considered as sufficient to discharge the burden of the accused contemplated Under Section 105, Indian Evidence Act. The evidence on record is not sufficient to raise any reasonable doubt as to the sanity or normal condition of mind of the accused at the time of occurrence and the defence has failed to discharge the burden as contemplated Under Section 105 of the Indian Evidence Act. In the circumstances I hold that the learned Sessions Judge has convicted and sentenced the accused rightly. The conviction and sentence passed by the learned Sessions Judge are, therefore, affirmed and the appeal stands dismissed.

D.M. Sen, J.

16. I agree.