

Anjan Das Vs. State of Assam

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Court : Guwahati

Decided On : Mar-21-2007

Judge : A.H. Saikia and H.N. Sarma, JJ.

Appellant : Anjan Das

Respondent : State of Assam

Disposition : Appeal dismissed

Judgement :

A.H. Saikia, J.

1. The conviction of the appellant under Section 302 IPC and subsequent sentence to rigorous imprisonment for life with a fine of Rs. 2000.00 in default for another 3 months rigorous imprisonment handed down by the learned Sessions Judge, Hailakandi on 24.07.2001 in Sessions Case No. 82 of 2000 is the subject matter of challenge in this criminal appeal so preferred by the appellant from jail.

2. The prosecution case in brief as unfolded by the F.I.R. lodged by P.W. 1 Digendra Ch. Das with the Officer-in-Charge, Lala Police Station on 31.07.2000, is that at about 11 a.m. on last Sunday i.e., 30.07.2000 when the informant was ploughing his land his wife late Prabhasini Das, deceased, was the only person at home. Suddenly the appellant came to his house and hacked his wife in her neck, hands and abdomen with sharp weapon. Immediately a commotion was raised in

the area and the neighbouring people started gathering there. Having been informed, the P.W. 1 Digendra Ch. Das came home and found bleeding from the injuries inflicted upon the person of his wife could not stop. Though injured wife was taken to hospital, she died on her way to hospital. It was also reported in the FIR that the appellant and the P.W.-I were related to each other being maternal uncle and nephew respectively. The appellant sometime back had about of madness. He was also cured of that madness after being administered herbal medicines. It was also alleged that due to that madness appellant killed the deceased. It was also reported that the appellant and deceased were living in joint family and there was no enmity between themselves.

3. The police started investigation after registering a case being Lala Police Station Case No. 144 of 2000 on the basis of the above F.I.R. so lodged by the P.W. 1. Several witnesses were examined by the police and one big hand dao was also seized from the possession of the appellant from his dwelling house as per ext. 4 (seizure list).

4. Having found prima facie case against the appellant the police after completion of the investigation filed charge-sheet against him under Section 302 IPC.

5. The offence being triable extensively by the Court of Sessions, the learned Chief Judicial Magistrate by his order dated 04.12.2000 committed the case to the Court of Sessions for trial.

6. During trial the prosecution examined as many as 8 witness including P.W.5, Dr. K. Jaman Choudhury who conducted the autopsy on the dead body of the deceased Prabhasini Das and P.W.7, the Investigating Officer (I.O), Mukabbir Ali Laskar. The prosecution also examined the relevant documents by exhibiting those as exhibits primarily the Ext.-1 Ejahar, Ext.-2 Postmortem report, Ext.-3 Sketch map, Ext.-4 the Seizure list and Ext.-5 Inquest Report.

7. The learned Sessions Judge having carefully appreciated the testimony of the material evidences on record both oral and documentary and also upon consideration of the hearing of the learned Counsel representing the rival parties, found the appellant guilty of offence of murder of the deceased Prabhasini Das

and accordingly convicted and sentenced him as mentioned above. Hence this appeal from jail.

8. We have heard Ms Mamoni Dutta, the learned Counsel on being appointed Amicus Curiae as Ms. Rita Borbora who was earlier appointed Amicus Curiae was found to be absent at the time of hearing. Also heard Mr. D. Das, learned P.P. Assam.

We have appreciated thoroughly the testimony of the witnesses i.e., P. Ws. 1, 2, 3, 4, 5, 6, 7 and 8. We have also examined the statements of the accused persons recorded under Section 313 Cr.P.C. On meticulous scrutiny of the deposition of the witnesses above mentioned, particularly P.W. 1, the informant, P.W. 2, son of the deceased, P.W. 3, the eye witness and P.W. 4 the daughter of the deceased, it is noticed that all those witnesses in unison deposed that the deceased Prabhasini Das told them that she was assaulted by the appellant and such examination of chief of the witnesses were not dislodged by the prosecution on cross-examination. It has also come on the evidence of P.W. 1 the husband of the deceased that there were multiple injuries found in the person of the deceased as this P.W. saw blows and cut injuries in his wife's hand and two cut injuries in her neck and also cut injuries in her abdomen. The other witnesses as stated above found the deceased injured and bleeding condition. In other words the deceased was found to have had multiple injuries so narrated by P.W. 1 with the full corroboration of the medical evidence of the doctor, P.W. 5 who while conducting the post mortem on the body of the deceased Prabhasini Das, found the following injuries:

(1) Incised wound of seize 10 cm x 6 cm x 8 cm over the back of the neck running transversely and passing between 2nd and 3rd cervical vertebrae cutting the spinal chord at the level of the 2nd and 3rd cervical vertebrae.

(2) Incised wound of seize 12 cm x 6 cm x 4 cm over the back at the level of the 8th thoracic verticular severing the muscles and exposing the 7th and 8th thoracic ribs on the right side.

- (3) Incised wound of size 19 cm x 6 cm x 6 1/2 cm running transversely over the upper right buttock.
- (4) Incised wound of size 7 cm x 4 cm x 6 cm over the lower right buttock.
- (5) Incised wound of size 16 cm x 6 cm x 7 cm running obliquely over the back of the right thigh exposing and cutting the posterior portion of the right femur.
- (6) Incised wound of size 6 x 3 x 4 cm over the dorsal of the right wrist severing the lower ends of the radius of the ulna bone.
- (7) Incised wound of size 12x6x6 cm. Running obliquely over the right lower arm cutting half the breadth of right humerus bone.
- (8) Incised wound of size 6 x 6 x 4 cm over the right shoulder running transversely over the posterior of the right clavicle.
- (9) Incised wound of size 6 x 5 x 4 cm over the upper right scapular region running transversely.
- (10) Incised wound of size 8 x 6 x 4 cm over the left lower arm running obliquely exposing the bone not cutting it.

The doctor in his opinion deposed that the death was due to haemorrhage caused by multiple incised wound injuries and those injuries were antemortem in nature. He further testified that those injuries were sufficient to cause death.

9. It is therefore seen that the deceased died due to those multiple injuries caused by sharp weapons. Now question that is to be answered herein is that as to whether the appellant inflicted those injuries so as to cause death of the deceased. As already stated the testimony of P.Ws. 1, 2 and 4 pointedly accused the appellant for killing the deceased being their wife, mother respectively. Since the deceased during her injured condition clearly stated to them that it was the appellant who assaulted her with dao, the evidence of these witnesses, having found to be corroborative and consistent, can be accepted to be reliable.

10. At this stage, Ms. Dutta, learned Amicus Curiae has taken the plea of insanity of the appellant at the time of commission of offence. Referring to the FIR she has forcefully submitted that the P.W.I, husband of the deceased himself specifically mentioned that the appellant was the nephew and he had sufferance of mental disorder for which he had to take medicine. He had to be administered herbal medicine. She has also invited our attention to the examination of the appellant recorded under Section 313 Cr.P.C. wherein the appellant was categorical by stating that at the relevant time of occurrence the appellant was under the bout of madness. According to her, all the five questions put to the appellant were answered by him claiming that he did not know if anything happened as he was under the bout of madness. In view of the above factual position it is contended on behalf of the appellant that at the time of commission of such offence the appellant was a person of unsound mind and accordingly he must get protection of Section 84 IPC.

11. For the sake of convenience it would be essential and apposite to refer the Section 84 IPC which reads as under:

Act of a person of unsound mind: 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.

12. It is a settled law that the plea of burden of proof of the insanity is always on the accused/appellant as it is a general presumption of law that every person is sane unless it is proved to be insane. In the instant case, on thorough scrutiny of the materials available on record including the close analysis of deposition of witnesses, we do not find any whisper as regards insanity of the appellant starting from the point of framing charge till the conclusion of the trial. Even there was no mention anywhere that appellant was suffering from mental disorder when charge was framed. Rather at the time of framing of charge the appellant pleaded not guilty and claimed to be tried. He at no point of time told the Court or took the plea of insanity. Even no single witness so produced by the prosecution was ever cross-examined on this plea of insanity. Records do not reveal that any

documentary proof of unsound mind of the appellant had been placed before the Court. Importantly jail doctor did not opine at any point of time regarding insanity of the appellant.

13. In view of the above, we are not in a position to accept the submission advanced on behalf of the appellant that he was suffering from insanity and he was a mad man at the time of commission of offence.

14. The Supreme Court in a case of Sheralli Wali Mohammed v. State of Maharashtra reported In : 1972 CriLJ1523 observed that to establish that the acts were done were not offences under Section 84 of the Indian Penal Code, it must be proved clearly that, at the time of the commission of the acts, the appellant, by reason of unsoundness of mind, was incapable of either knowing the nature of the act or that the acts were either morally wrong or contrary to law. It must come on evidence to show that at the time of commission of offence appellant was labouring under any such incapacity for which the general burden of proof that an accused person was in a sound state of mind was upon the prosecution.

15. In another case reported in 2001 (2) GLT 36 : 2001 Cri. Law Journal 2656 (Gopal Bhowmik v. State of Tripura) the Division Bench of this Court, while dealing with the question of the plea of insanity, in paragraphs 16,18 and 19 specifically held that from the evidence on record both of the prosecution and defence it was revealed that just preceding to and/or subsequent to the incident anybody noticed any unusual movement, unmannerly behaviour, of the appellant, either in his physical movement or in his conversation. Mere feeble-mindedness, mere frenzy, emotional imbalance or uncontrollable anger or eccentricity did not offer any relief to be claimed under the provision of Section 84 IPC. It was further observed that there was no documentary evidence nor was there any convincing parole evidence suggesting any inference to be drawn that relevant time the appellant was suffering from such mental disorder/insanity depriving his capability of knowing the nature and consequence of act he had done.

16. In a recent case the Division Bench of this Court in a case of Pulu Mura v. State of Assam reported in 2004 (1) GLT 415 : 2004 Cri Law Journal 458 had the occasion to discuss the scope of Section 84 of IPC as regards the taking of plea of

insanity in a case of murder. In paragraphs 11, 12 and 13 while discussing the proposition of law settled down time and again by the Apex Court, the five guided principles of plea of insanity had been underlined which are as follows:

1. The Court shall presume absence of insanity.
2. Burden of proof of insanity is on the accused though it is no that heavy as that of the prosecution to prove an offence.
3. Every minor mental aberration is not insanity and unless the cognitive faculty of mind is destroyed as a result of unsoundness to such an extent as to render one incapable of knowing the nature of his act.
4. The accused must suffer from legal insanity and no merely medical insanity.
5. The crucial point on which the unsoundness of mind has to be proved is the time when the crime is actually committed.

17. In *Pulu Mura's* case (*supra*) in paragraph 14 it was noticed that there was nothing on record to show that the accused was unsound mind at the time of incident and consequently from the materials available on record it was held the accused was not really unsound and within the meaning of Section 84 IPC.

18. Having closely considered the factual situation to decide the plea of insanity and also in view of the proposition of law propounded in the above mentioned judicial authorities we are of the considered view that the appellant herein failed to prove the burden of insanity and also found that there was no materials on record to show that he lost his mental state at the time of commission of offence. In view of the above, we have no hesitation to hold that the appellant was not a person of unsound mind to attract the provision of law laid down under Section 84 IPC and as such he is not entitled to get the benefit of the said provision.

19. In view of what has been discussed, observed and stated above, we fully agree with the finding arrived at by the learned Court below and accordingly the conviction and sentence as already noticed above are hereby upheld and confirmed. In the result this appeal fails and stand dismissed. Sent down the LCR

forhwith.

20. Before parting with the judgment, we would like to put on record our appreciation to Miss M. Dutta, learned amicus curiae for extending her valuable assistance in deciding this jail appeal and accordingly we are of the view that she shall be entitled to her professional fee @ Rs. 2500.00.

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