

Vishwanatha and anr. Vs. State of Karnataka and anr.

Vishwanatha and anr. Vs. State of Karnataka and anr.

SooperKanoon Citation : sooperkanoon.com/387908

Court : Karnataka

Decided On : Dec-17-2003

Reported in : ILR2004KAR2828

Judge : S.R. Bannurmath and ;Mohan Shantanagoudar, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 318, 329, 330 and 331; India Penal Code (IPC), 1860 - Sections 84

Appeal No. : Crl.A. No. 494/2003 c/w and Crl.R.C. No. 5/2003

Appellant : Vishwanatha and anr.

Respondent : State of Karnataka and anr.

Advocate for Def. : H.C. Chandra Mouli, SPP and ;B. Anand, Amicus Curiae

Advocate for Pet/Ap. : B. Anand, Amicus Curiae

Judgement :

S.R. Bannurmath, J.

1. These two appeals arise from the common judgment dated 27.11.2002 passed by the learned Sessions Judge, Uttarakannada, Karwar in S.C. No. 55 of 2002 (original S.C NO. 8 of 1979), finding the accused guilty of the offences punishable Under Section 302 & 326 I.P.C and sentencing him to life imprisonment for the

offence Under Section 302 I.P.C., and simple imprisonment of three years for the offence under Section 326 of I.P.C. It is to be noted here itself that though the offence took place in the year 1979, because of the unsoundness mind, deaf and dumb handicap of the accused, he was kept under observation in Mental Institute almost for a period of 22 years and only after the doctor's certificate that the accused is in a fit condition to face the trial, the trial took place in the year 2002. Even though the Trial Judge did not give emphasis to the plea of guilt admitted by the accused at the time of framing and hearing of the charge, nevertheless the Court proceeded to record the evidence of the prosecution. However, at the stage of recording 313 Cr. P. C. statement, again the Trial Court noticed the possible inability of the accused understanding the proceedings. After finding the accused guilty and sentencing him, under the provision of Section-318 of Cr. P.C., has referred the case to this Court. Similarly, being aggrieved by the judgment of conviction and sentence passed by the Trial Court, the accused has preferred jail appeal. Hence, as the question of law to be considered and the evidence to be appreciated in both the cases being common, both the cases have been taken up together for consideration.

2. As the accused has filed the appeal as an indigent person through jail, we requested Sri B. Anand, learned Advocate to assist the Court as Amicus Curiae on behalf of the accused both in the reference case as well as in the appeal filed by the accused. Sri H.S. Chandra Mouli, learned SPP, has appeared for the State in both cases. We have heard both the counsels in detail and perused the material on record.

3. The case of the prosecution stated in brief is as follows:

The accused Vishwanath and the deceased Ashok were the sons of Sheshagiri Nayak (C.W.6) and all are residents of Uppinapattana (Pancha), Kumata Taluk, Karwar district. According to the prosecution, on 27.04.1979 at about 2.30 p.m. when the accused was plucking the Guava fruits from the tree in front of his house in the open yard, the deceased Ashok objected for his plucking of raw fruits and immediately getting enraged by the same, it is alleged that, accused assaulted his brother Ashok with a sickle that he was carrying with him and further, when C.W.6

Sheshagiri Nayak, the father and C.W. 1 Krishna Panduranga Shanbagh (wrongly mentioned in the charge sheet as Lakshmana Panduranga Shanbagh) came to the rescue of the deceased, they too were seriously assaulted by the accused causing grievous injuries on them. Immediately thereafter, said Krishna Panduranga Shanbagh went to the police station and lodged his oral complaint before the Station House Officer T.M. Byadagi, the then P.S.I., of Kumata Police Station. The oral statement of said Krishna Panduranga is reduced in writing and treating the same as complaint, the S.H.O. registered case in crime No. 53 of 1979 for the offence under Section 302, 326 of I.P.C. against the accused and took up the investigation. During the course of investigation, it is alleged that the accused has led the investigation team to the place where he had hidden the weapon used for committal of offence and the same was recovered, After recording the statement of witnesses and drawing necessary mahazars like, spot mahazar, recovery mahazar, the dead body of the deceased is subjected to the autopsy. After completion of investigation and on receipt of the necessary reports, charge sheet is filed against the accused for the aforesaid offence.

4. It is at the stage of committal, as the order sheet discloses, to be precise, on 14.08.1979 the Trial Court noticed that the accused is not able to speak and hear properly and observed that he goes on talking endlessly by himself, and felt the necessity of referring the accused for clinical examination by the District Surgeon Karwar and accordingly ordered so and called for report. As the order sheet dated 10.09.1979 discloses that on that day, the District Surgeon, Civil Hospital, Karwar, after examining the accused, felt the necessity of referring the accused to Mental Hospital at Dharwad for examination by a Psychiatrist, and accordingly the Court directed the accused to be produced before the Psychiatrist in Mental Hospital at Dharwad for examination and opinion. It is to be noted that by his report dated 16.10.1979, the Superintendent Mental Hospital Dharwad reported thus:

'....He is partially orientated to time place and person and his talk is irrelevant and meaningless. His mother tongue is a mixture of several languages, which nobody could interpret properly. His attention is poor and concentration is also poor. His talk is stereotyped. He has thought disorder in plenty. He appears in addition a mentally retarded person. He has no affect whether he is hallucinated or deluded

cannot be assessed as he is a defective and can understand the instructions. He is not knowing that he is ill. He just goes on telling that his own parents ill-treat him at home and injure him physically most of the time. He is suffering from mental retardation with schizophrenic features (Piff schizophrenia).'

As such, the District Surgeon, Civil Hospital, Karwar has opined that the accused is suffering from mental retardation, as well as is a schizophrenic. As such, on receipt of the said report, the learned trial Judge found that the accused is unable to understand the trial and remanded the accused to the custody of the Mental Hospital for further treatment and directed to submit his improvement report. Since the report of the mental hospital stood unaltered thereafter, the learned Sessions Judge has proceeded to hold enquiry as is mandatory under Chapter XXV of Cr.P. C. and on being prima facie satisfied that the accused is of un-sound mind passed order under Section 329 of Cr. P.C. Accordingly, the learned Sessions Judge stayed the trial for the initial period of two months and remanded the accused to the custody of the Surgeon, Mental Hospital, Dharwad for further treatment. Unfortunately till 2002, the condition of the accused did not improve as could be seen from the various orders passed by the learned Sessions Judge on 30.05.1980, 02.01.1982, 24.11.2000 and 20.05.2002. It is on 20.05.2002, it appears to us, the Trial Court lost track of the case. Eventhough by the report dated 04.12.2001, the Medical Officer of the Mental Hospital at Dharwad had still opined that though the health condition of the accused is improving, but, still not in a fit condition to withstand the trial, nevertheless the Trial Court not only remanded the accused to the judicial custody, but proceeded with the trial by examining prosecution witnesses and ultimately, by the impugned judgment, after finding the accused guilty of the offence under Section 302 and 326 of I.P.C. and after imposing the sentence has referred the case to this Court under Section 318 of Cr.P.C.

5. At the outset, it is to be noted that reference under Section 318 of Cr.P.C., is improper and illegal. The provision of Section 318 of Cr. P.C. can be invoked only if the Court finds that the accused is unable to understand the proceedings for any reasons other than unsound mind. In the present case, as the disability of the accused to withstand the trial was on two counts, viz., he being a deaf and dumb

as well as suffering from mental disorder namely, being schizophrenic. Only on the first count viz. the accused is deaf and dumb, the Court below could not have referred the case to this Court under Section 318 of Cr.P.C. and that too after passing the order of sentence. Basically, even if the Trial Judge is of the opinion that any accused though not of unsound mind cannot understand the proceedings, the Court may proceed with trial and if such trial results in conviction, the Trial Court is required immediately to report the circumstances of the case and forward the same to this Court for passing appropriate order. This means that immediately after arriving at the finding of conviction, without passing any sentence, the Trial Judge is required to refer the case under Section 318 of Cr.P.C. Hence, in our view, the action of the Trial Judge in referring the case under Section 318 of Cr. P.C. after imposing sentence appears to be erroneous. Even otherwise, as per Section-318 of Cr. P.C. it is only when there is a disability on the part of the accused for understanding the proceedings for any reasons other than unsoundness of mind, the Court can proceed with the trial as per Section-318 of Cr.P.C. But if the Court finds that the accused is also suffering from unsoundness of mind and as such cannot understand the proceedings, the only course left to the Court is to act under the provisions of Chapter XXV of Cr.P.C.

6. It is to be noted that though at the initial stage the Trial Court has rightly taken steps under Section 329 and 330 of Cr. P. C. and subjected the accused for treatment in the Mental Hospital at Dharwad, adjourned the trial from time to time so as to evaluate the health condition and capability of the accused to withstand the trial. Unfortunately, even after the doctor's report that the mental condition of the accused remained unaltered even in 2002, possibly thinking that the case is pending too long on his file, has proceeded with recording of the evidence. This action of the Trial Judge, in our view is totally illegal one as the accused was suffering from unsoundness of mind, prima facie as per the various reports of the Mental Hospital at Dharwad referred to above, the only proper course left to the Trial Judge was to follow the procedure under Chapter-XXV of Cr. P. C. and in the present case, the trial Court ought to have proceeded with the trial only after- the accused ceased to be of unsoundness of mind as per Section 331 of Cr.P.C., or otherwise, cannot pass orders under Section 330 of Cr. P.C. and await for improvement of condition of the accused. Hence, at the outset, we have to note

that the entire trial of the accused stands vitiated as the same has been conducted while the accused was of unsoundness of mind and was unable to understand the proceedings.

7. But our concern does not end here itself. In order to find out the latest condition of the accused as to his mental health, we had directed the accused being taken to NIMHANS, Bangalore for the evaluation and assessment. After observing the accused for about eight days, Doctor C.R. Chandrashekar, Professor & Head, Deputy Medical Superintendent, Department of Psychiatry, NIMHANS., Bangalore has submitted his written report, as well as, in fact, was present in the Court at the request of this Court to give his oral assessment also. According to the doctor, the accused is a symptomatic and even though he is capable of taking care of himself in day- today matters, but has bilateral profound deafness with poor speech communication ability. The doctor also reported that the accused suffers from schizophrenia and he requires to be in a sheltered care and on regular medication. The doctor also submitted before us that the accused is suffering from paranoid schizophrenia since long and in spite of some improvements shown, chances of revival of the same is writ large. According to the learned doctor C.R. Chandrashekar, who is professor and head, department of Psychiatry of NIMHANS, on his personal examination of the accused and assessment for a period of more than a week opined that chances of improvements in immediate future is very bleak. The doctor also clearly opined before us that though at outward look, the accused may appear to be a proper mind because of his physical as well mental disability, he will not be able to understand the proceedings as well as withstand the trial. We have made this exercise only because once the Court finds the trial of the accused stands vitiated because of the illegality committed by the Trial Court in the procedure, the only course open normally to this Court is to remand the accused for fresh trial. It is to be noted that as per the Psychiatry report as well as earlier reports regarding the mental health condition of the accused right from the year 1979, the year of incident till date indicate that all along the accused suffering from not only physically but mental illness also and is incapable of understanding the proceedings. As such, even if we remand the accused for fresh trial, the Trial Judge has to still wait for the improvement of mental condition of the accused and only if there is improvement

in the mental condition of the accused making him understandable of the proceedings, then only the Trial Court can proceed with the trial. It is to be noted that though the incident has taken place as long back in the year 1979, the accused has been in the Mental Hospital almost for a period of 24 years by way of custody. On consideration of the report submitted by the Doctor C.R. Chandrashekar, we are not sure how much further time is required for his improvement in the mind. As the doctor C.R. Chandrashekar has opined that chances of the accused's improvement in his mental health condition nearby future is very bleak, as the accused is already more than 60 years of age and as there is enough material by way medical evidence as well as the evidence of close relatives of the accused and the deceased themselves, we have to look into the evidence and the judgment of the Trial Court from another angle.

8. From the medical reports of past and present as well as the evidence of P.W. 1, the eye witness who is none other the brother of the accused and the deceased Ashok, the flimsy ground for which the alleged assault by the accused on his brother (deceased) as well as father and uncle prima facie indicate that it is an act of insane person. No doubt it is true that in our jurisprudence, following the well-settled principles of the House of Lords in the case of Reg v. M'Naughten, though there can be no insanity, it is only unsoundness of mind which materially impairs the cognitive faculties of the mind that can form a ground for exemption from criminal responsibility, and the nature and the extent of the unsoundness of mind required being such as would make the offender incapable of knowing the nature of the act, or that he is doing what is wrong or contrary to law. The insanity fact is not only the cognitive faculties of the mind which guides our actions but also our emotions, still there is a difference in legal insanity and clinical insanity and as the basic principle is that every person is innocent till proved guilty is also to be applied in the case of insanity to say that every person is sane only till he is proved to be insane. Under our jurisprudence, the burden of proof of insanity is on the accused himself. The law requires that the accused has to rebut the presumption but the burden on the accused cannot be equated with the burden of proof on the prosecution and cannot be rated higher than the burden on a party to a civil proceeding/ litigation. It is well-settled principle that the accused need not prove his case to the hilt and even if by preponderance of probabilities by bringing out

the circumstances in cross-examination or relying upon the evidence itself can rebut the presumption. As long back as in the year 1899, in the case of *QUEEN EMPRESS v. SOMIR BOWRA @ SOMIR BABA* , ILR CAL Vol.-27 1900 the High Court of Calcutta has observed thus:

'An accused person, who had been for some time confined in a lunatic asylum, was tried and committed to the Sessions by a Deputy Magistrate on a charge of murder. The accused was deaf and dumb, and could not be made to understand the proceedings, which had been taken.

On the proceedings being forwarded to the High Court under Section-341 of the Code of Criminal Procedure it was held, that the law does not contemplate that the Sessions trial should necessarily take place. That it is discretional with the High Court on a commitment made to order the Sessions trial to be held, and the High Court must consider whether any benefit would be likely to result especially to the accused by such trial.

The High Court in this case having come to the conclusion that no benefit would be likely to result to the accused by his being tried by the Court of Session, found that the accused was guilty of the alleged murder, but that he was by reason of unsoundness of mind not responsible for his action, and directed him to be kept in the District Jail to await the order of Government.'

The facts and circumstances in the present case are almost similar and parallel as in the case of Somir Bowra's case and in our view, the observations apply to the present case on all four corners also. 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. The criminal law, therefore, does not use the term 'insanity' but 'unsoundness of mind'. As such, we have made an attempt on our part itself with the assistance of the learned State Public Prosecutor as well as the Amicus Curiae as to whether the case of the accused falls under exception namely Section-84 of I.P.C. In our view, as observed in various pronouncements, the presumption of sanity can be rebutted by the accused either by producing oral or documentary evidence or evidence in circumstantial nature also and he may

discharge such burden by establishing reasonable probable case. Keeping in mind these principles, we have to consider the evidence available on record in the case on hand.

9. In the present case, except P.W. 1 the brother of the accused and the deceased, we have no other evidence of direct eyewitnesses who speak about the motive, conduct or even the mental and physical health condition of the accused. However, what is relevant for our purpose is the evidence of P.W. 1 himself. In his examination-in-chief itself, P. W. 1 gives certain indications as to the health condition both physically and mentally on the part of the accused. P.W. 1 has stated that the accused is deaf and dumb not by birth but after attaining the age of six years and due to his physical defects, he was always angry with others and was working alone. This admission on the part of P.W. 1 (brother of accused & deceased) as well as the positive medical evidence right from the date of arrest of the accused in the year 1979 till date i.e. almost for a quarter of century conclusively and clearly indicates that the accused not only suffers from physical disability of being Deaf and Dumb but also is suffering from paranoid schizophrenia. As observed by the Bombay High Court in the case of GOVIND RAMACHANDRA JADHAV v. THE STATE OF MAHARASHTRA , 1996 CRI.L.J. 4186 and by the Kerala High Court in the case of KUTTAPPAN v. STATE OF KERALA, 1986 CRI.L.J.271 this Court is required to consider whether the accused in the case on hand suffering from unsoundness of mind and paranoid schizophrenia at the crucial time of commission of offence so as to have the benefit of Section 84 of I.P.C. The High Courts, in the aforesaid decisions, have further observed that for the purpose of establishment of these aspects regarding state of mind, the Courts have to take into consideration the status of mind of the accused both before and after the commission of the act and the Court is required to pay due regard to the circumstances which preceded, attended and followed the act. In the present case, as we have already discussed, the evidence of P.W. 1 who is none other than the brother of the accused and the deceased coupled with the medical evidence clearly indicate the possibility of both physical and mental disability on the part of the accused even much prior to the incident right from the age of six years which is still continuing as per our latest findings in consultation with the Psychiatrist of NIMHANS hospital, Bangalore. The fact that the accused

got annoyed mainly because his brother stopped him from plucking Guava fruits for the reason that they being required appears to us the 'Paranoid Schizophrenia' of the accused which made him to assault his brother as well as his father and uncle in the process when they tried to defend the deceased Ashok.

10. No doubt, there is an evidence led by the prosecution in regard to the alleged conduct of the accused subsequently in the form of an extra judicial confession said to have been made by the accused before P.W. 2, the hotel owner as well as the evidence of P.W.3 a Boat man in whose boat, the accused alleged to have traveled to cross the road and went to the hotel of P.W.2 to contend that accused was of sound mind or was knowing fully well what he had done and is doing. On perusal of the evidence of P.W.2, we find that apart from improbability on the part of the accused making an extra judicial confession before P.W.2 because of both physical and mental handicap, which is figment of imagination on the part of investigating agency. This can be seen from the discrepancies or contradictory nature of evidence of these two witnesses. According to P.W. 2, after coming to his hotel, the accused drunk some water and made extra judicial confession of having assaulted some one with sickle. Further, P.W.2 states that he advised the accused to drop the sickle in his hand and accordingly, while going away the accused threw the sickle near the jack fruit tree behind the hotel. This part of the evidence has been falsified by the prosecution itself. It is the specific case of the prosecution that after apprehension of the accused, the accused alleged to have made the voluntary statement or even led the police to a place leading to the discovery of the weapon M.O. 1, the sickle which was brought out by the accused and seized from the house of the accused himself. It is also to be noted that there was absolutely no reason for the accused to confess before P.W.2. Similarly, we find it rather difficult to accept the evidence of P.W.3, a Fisherman to remember after a lapse of 23 years as to the fact of accused travelling in his boat that too carrying a blood stained sickle in his hand and as well as going to the hotel of P.W. 2. If evidence of P.Ws. 2 & 3 is kept aside, absolutely we find no evidence as to the immediate or subsequent to the conduct of the accused. On the other hand, on the face of the positive evidence not only of the doctor of Mental Hospital at Dharwad as well as now assessed report of Doctor C.R. Chandrashekar, Psychiatrist of NIMHANS hospital Bangalore, in over view, the act committed by

the accused clearly or at least prima facie indicate that it was committed while he was of unsoundness of mind. Consequently, we hold that in the instant case by preponderance of probability it has been established that the accused was mentally unsound even at the time of commission of the act and he was incapable of knowing the nature of acts and or that what he was doing was either wrong or contrary to law and as such, in our considered view, the Judgment of conviction passed by the learned Sessions Judge is liable to be set aside and accordingly, the same is set aside.

11. Before concluding, as from the records it is found that there is no person to help or lookafter the accused either in his day- today affairs or even to lookafter both in the house or by getting him admitted to any mental hospital for further treatment, it becomes the duty of the Court to make an alternative arrangement in this regard as per Section-335 of Cr.P.C. In this regard, we place on record our appreciation and gratitude to Doctor C.R. Chandrashekar, Professor and Head, Deputy Medical Superintendent, Department of Psychiatry, NIMHANS, Bangalore, who has after spending his good and valuable time came up with the suggestion that the accused can be kept in a Government organization called as 'Social Service Complex', Hosur road, Bangalore which is just situated next to NIMHANS hospital and is in fact convenient for him from time to time to evaluate the health condition of the accused and it is also helpful for the authority to bring the accused to NIMHANS hospital. We accept this offer to help the accused.

12. In the result and for the reasons stated above, the Criminal Appeal No. 494 of 2003 filed by the accused is allowed. The Judgment of conviction and sentence passed by the learned Sessions Judge Uttara Kannada, Karwar in S.C. No. 55 of 2002 (Original S.C. NO. 8 of 1979) is set aside. The accused stands acquitted of both the charges i.e., for the offences punishable Under Section 302 & 326 of I.P.C. Consequently and for the reasons noted already, the Criminal Reference case No. 05 of 2003 does not survives for consideration,

13. Apart from the acquittal of the accused, we here by direct the State Government to get Sri Vishwanath S/o. Sheshagiri Nayak admitted in the 'Social Service Complex' Hosur Road Bangalore for his further treatment as long as he

does not overcome from his mental disability.

We place on record our appreciation for the efforts made by the learned Amicus Curiae Sri B. Anand in this regard and as a token, direct the office to pay honorarium of Rs. 3,000/- to be paid to him. In view of the acquittal of the accused and the direction issued by this Court on 16.12.2003, the accused, who is now under treatment with NIMHANS hospital shall be sent to the 'Social Service Complex', Hosur Road, Bangalore and this fact may be intimated to the Central Prison Authorities at Belgaum as well as the concerned officer of the 'Social Service Complex', Hosur road, Bangalore for its -implementation.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com