

Prabhunath Vs. State

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Court : Allahabad

Decided On : May-03-1957

Reported in : AIR1957All667; 1957CriLJ1056

Judge : Roy and ;Sahai, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 84, 85, 86, 302 and 307

Appeal No. : Criminal Appeal No. 320 of 1955

Appellant : Prabhunath

Respondent : State

Advocate for Def. : Sri Rama, Deputy Govt. Adv.

Advocate for Pet/Ap. : S.N. Mulla, Adv.

Disposition : Appeal dismissed

Judgement :

Roy, J.

1. The appellant Prabhu Nath was a Police Constable. In March '1954, he was stationed at Shamshabad police station in the district of Farrukhabad. On the 14th of March, 1954, he had been out on patrol duty along with two other Constables by name Ramdeo and Rati Ram. Rati Ram acted as the Naik of that patrol party. The

patrol party had been equipped with two muskets and certain rounds of cartridges. One of these muskets was with Prabhu Nath and the other was with Ramdeo. It was alleged on behalf of the prosecution that some time before midday on that date the three Constables took liquor in a village known as Asgharpur and became intoxicated. Prabhu Nath proceeded in the direction of village Suthenri. The other two constables went in another direction. It is said that whilst under the influence of drink Prabhu Nath threatened to shoot some persons who were sitting in a wayside field. Those men naturally got scared and ran away. Prabhu Nath went ahead and met certain other persons who were coming from a neighbouring village. He had conversation with them. He shot at one of them, namely. Ajudhi who died on the spot. He also shot at another man Ram Lal and inflicted injuries on him. He later on proceeded towards an arhar field where he shot at a scarecrow. He took shelter in that field and was finally arrested by some villagers who had been attracted to the spot on hearing the alarm. Ram Chandar the Pradhan of village Suthenri. who was one of the men whom the appellant had threatened in the field, proceeded to the police station on his cycle and lodged a report at 4.30 p.m. on the same day. The Sub-Inspector arrived shortly after the occurrence and took the accused into custody along with his musket and cartridges which had been seized by the village people. After dispatching the dead body of Ajudhi to Fatehgarh for post-mortem examination and forwarding Ram LAL to the hospital for treatment, the Sub-Inspector conducted investigation and as a result of investigation that followed the appellant was charged with offences punishable under Sections 302 and 307, I. P. C. and he has been sentenced to life imprisonment under Section 302 and to seven years' rigorous imprisonment under Section 307, I. P. C. the sentences to run concurrently. He had appealed against his conviction and sentence.

2. The fact that the appellant shot at Ajudhi and Ram Lal killing the former at the spot and causing gunshot injuries to the latter is not at all disputed before us. These factors were clearly and cogently proved by the eye-witnesses and also by the medical evidence on the record. That evidence has not at all been challenged before us and we do not therefore propose dealing with it in detail except for the limited purpose of seeing whether that evidence justified the attraction of Sections 85 and 86 of the I. P. C. to the aid of the appellant in assessing his guilt or

innocence. It has been contended on behalf of the appellant that the act done by him was not an offence because the appellant at the time of doing it was, by reason of intoxication, incapable of knowing the nature of the act or that he was doing either what was wrong or contrary to law, inasmuch as the liquor was administered to him without his knowledge or against his will. Prabhu Nath's contention was that he had been forced by Rati Ram and Ramdeo to take wine; that he refused in the beginning and told them that as a Brahmin wine had been tabooed for him; that upon his refusal they said that instead of wine 'sharbat' should be given to him; that he tested the liquid and found it bitter; that he drank the same and felt giddy and that when he asked them what it was that they had given him for drink, they left him there and they went away and he followed them and he lost senses and he does not know what happened later on. The evidence on behalf of the prosecution on the question of the taking of liquor consisted of the testimony of Madan Lal P. W. 16 who while passing by the side of the house of Ram Din in village Asgharpur, where he also resides, saw the three Constables drinking liquor. Madan Lal was called to the place by Prabhu Nath and he stayed there for a short while. According to Madan Lal, Prabhu Nath was telling Rati Ram Constable that he will not take more wine, but Rati Ram was forcing him to take more by forcing; he explained that he meant that Rati Ram was repeatedly asking Prabhu Nath to take more. Faqirey P. W. 10 was produced in support of Madan Lal. Faqirey stated that, Rati Ram Constable offered liquor to Prabhu Nath; that both of them partook of the same; that Prabhu Nath at first refused to take the liquor, but Rati Ram insisted that he will have to take it as he was in his company and that thereupon Prabhu Nath agreed to his request;

Faqirey was treated as a hostile witness for the prosecution. Even if the evidence of Faqirey is accepted as a whole, we are of opinion that the action of the appellant will not protect him under Sections 85 and 86 of the Indian Penal Code. We might in this connection refer also to the evidence of Soney Lal P. W. 9. According to him, he saw all the three Constables dead drunk and he found Prabhu Nath behaving like a mad man after midday, and he further found him almost in a state of stupor abusing the other two Constables and the other two Constables abusing him. Soney Lal stated that the Constables did not agree to this suggestion that they may rest a while. He further stated that Prabhu Nath

asked him to count up the cartridges that were with him to see if their number was complete and, upon counting, he found that nothing was missing. Soney Lal saw the three Constables off up to the door of the Chowkidar.

3. The subsequent events were testified to by the other witnesses for the prosecution. Ram Chandra P. W. 1 was working on his field at about 2.30 or 3 p. m along with his father Gappu Lal P. W. 2 and Rajjab alias Rajju P. W. 3; and Khem Karan P. W. 15 was working on his neighbouring field. The appellant went over the field of Ram Chandra. He was smelling of wine and was talking incoherently and he asked Rani Chandar to accompany him. Ram Chandar refused to go as he had to look after his own work. The appellant went two or three fields ahead, walked back and levelled his gun towards Ram Chandar. Ram Chandar and others bolted away and took cover in the adjoining arhar field.

At that moment Ram Lal P. W. 6, his aunt Smt. Salrita P. W. 7 along with his daughter Balro had been returning from village Bachlaiya where they had gone to procure some medicine. Another batch of persons consisting of Ram Swarup P. W. 8, Het Ram, Ajudhi deceased and Mool Chand P. W. 25 were also returning from village Bachlaiya. When they were between village Sutehnri and Kaluapur the appellant accosted Mool Chand and Ram Swamp and asked them where they resided. Ram swamp told the appellant that he was a resident of Hasanpur.

After that these persons had hardly gone a few steps when the appellant fired one shot killing Ajudhi at the spot and another shot hitting Ram Lal P. W. 6. The appellant then proceeded to an arhar field near-by and fired a third shot at a scarecrow. Alarm was raised and people in the neighbourhood got alerted. After a short while the appellant came out of the arhar field into the open and fell down almost senseless. He was caught hold of by Noor Mohammad P. W. 5, and Pearey P. W. 4. seized the gun from his hand. The appellant was then brought to the place where Ram Lal was lying injured. When being apprehended, he made no struggle to get himself freed. As has been stated by Noor Mohammad, the appellant was very much under the influence or drink at that time, so much so that he was not in a position to recognise men and when he was asked why he had shot at two persons, he denied that he did so.

4. The report of the occurrence, as we have already said, was made at police station Sham-shabad on the same date at 4.30 p. m. by Ram Chandar P. W. 1 who proceeded there on a cycle and covered a distance of five miles. The report which was made without any delay whatsoever was taken down by Head Constable Onkar Singh P. W. 19. Onkar Singh proceeded with Ram Chandar for the scene of occurrence. On the way they picked up Sub-Inspector Girish Chandar the Section 6 of police station Shamshabad who was at Pasiapur. When they reached the place of occurrence they found the dead and the injured at the spot.

They also found the accused under arrest. The musket, the spent-up-cartridges and the live cartridges were taken possession of by them. Sub-Inspector Girish Chandar, as has been stated by him. found the accused drunk and talking incoherently. Sub-Inspector Girish Chandar carried on the investigation of the case till the 15th of March. 1954, on which date he handed over the investigation to Circle Inspector Ahmad Husain P. W. 22 under the orders of the Superintendent of Police. Circle Inspector Ahmad Husain in his statement made before the Sessions Judge on the 15th of December, 1954, stated that he examined Rati Ram and Ramdeo Constables on the 17th of March. 1954.

These two persons were not examined as witnesses in the case. In order to clear up certain ambiguities, we examined these two Constables as also Circle Inspector Ahmad Husain and Sub-Inspector Girish Chandar in this Court and we also examined Prabhu Nath appellant bearing upon the statement given by these witnesses. Rati Ram and Ramdeo Constables refuted the contention that on the day of the occurrence when they were on patrol duty along with the appellant they in. dueled in drink or that they forced the appellant to take wine. According to them the bottle of wine was with the accused and the accused took the contents himself holding out to them that it was some medicine. The denial on the part of these two Constables that all the three partook of wine was obviously due to an effort on their part to save their own skins.

Indeed, it seems that they did partake and witnesses of the locality proved it, and there is no reason to doubt their testimony. Rati Ram and Ramdeo it appears got over the effect of drink rather early. They reached the Thana almost

simultaneously with Ram Chandar and they reported their arrival there. It appears to us that an effort was made on the Part of the officials at the Thana to save these two men from responsibility and that was why they were shown as detailed to guard duty at the Thana, Rati Ram from 6 p. m. to 9 p. m. and Ramdeo from 9 p. m. to 12 p. m.

Both the Constables were put off duty from the Thana and made to report themselves at the Police Lines, Fatehgarh. They went to the Police Lines on the 16th of March, 1954, and they remained there thereafter. Rati Ram stated that the Circle Inspector took his statement at the Police Lines twenty or twenty-five days after the occurrence. According to him Circle Inspector Ahmad Husain did not contact him at the Thana on the 15th of March, 1954. Rati Ram admitted that departmentally he was charged for 'neglect of duty' and for having taken liquor on that date along with the other two Constables and that he has been dismissed from service.

Ramdeo Constable stated that on the 14th of March, 1954, he and Rati Ram reached the Thana at 5 p. m., that Circle Inspector Ahmad Husain went to the Thana when he was there, but he did not examine him on that day and that the Circle Inspector examined him twenty or twenty-one days later. He too admitted that he has been demoted in connection with the present matter for neglect of duty and for indulging in wine. The statement of these two witnesses was in conflict with the statement of Circle Inspector Ahmad Husain which he had made before the Sessions Judge on the 15th of December, 1954, when he had said that he examined Rati Ram and Ramdeo on the 17th of March, 1954, that is three days after the occurrence.

We looked into the case diary and found that the Circle Inspector examined these two witnesses on the 8th of April, 1954. We therefore examine Circle Inspector Ahmad Husain as a witness in this Court to explain this discrepancy and he stated that his earlier statement was wrong and based upon certain misconception of facts and that he really examined Rati Ram and Ramdeo on the 8th of April, 1954.

Circle Inspector Ahmad Husain offered the lame excuse that although he was at the headquarters for the whole of that period and although he knew that Rati Ram

and Ramdeo were at the Police Lines at Fatehgarh, he postponed examining them because he was 'busy in the investigation of other cases.' No amount, of engagement in other cases should have stood in the way of the Circle Inspector who was specially deputed by the Superintendent of Police to investigate into the matter so as to prevent him from examining these two important witnesses who were necessary to unfold the prosecution story till the 8th of April, 1954.

Circle Inspector Ahmad Husain showed extreme remissness of duty and it was, indeed, very indiscreet on his part to have postponed the examination of these two important witnesses for twenty-one days. Sub-Inspector Girish Chandar also failed in his duty to examine the two Constables on the 14th and the 15th of March, 1954, although they were both available to him and were handy. The impression is irresistible that Circle Inspector Ahmad Husain and the officials of police station Shamshabad had a soft corner for the delinquents and they did not attach the same gravity and importance to the matter which it really deserved.

5. Voluntary drunkenness is no excuse for the commission of a crime, if the statement of Prabhu Nath were to be accepted, he knew it full well at the time when the drink was offered to him by Rati Ram that it was wine. The statement that he gave before the Committing Magistrate was to the effect that he refused to drink that wine; that Rati Ram then told him that he will force him to take it; that Prabhu Nath then replied that he would be forcing him to an unlawful thing; that thereupon Rati Ram said that as he was the person in charge of the patrol party, Prabhu Nath was bound to obey him and that thereupon Rati Ram caught hold of his hand, put the glass into his mouth and forced him to drink the contents.

In this Court the appellant gave a somewhat different statement. According to this statement he had been forced by Rati Ram and Ramdeo to take wine; he refused in the beginning and he told them that as a Brahman he was not in a position to take wine; when that refusal was given they said, according to him, that instead of wine sharbat should be given to him and they brought some liquid which had the smell of lemon in it and it tasted bitter and he drank it and felt giddy whereupon he asked them as to what it was that they had given him for drink; and then they left him there and went away and he followed them and he lost his senses and he did

not know what happened later on.

The case which he wanted to make out in this Court was that he was made to drink through stratagem or the fraud of the other two Constables without his knowledge or against his will. This was not the case which he had set out for himself in the court below where as we have already said, his contention was to the effect that he was made to drink knowing full well that what had been given him was wine and that he was forced to do so by Rati Ram alone who forcibly poured it down his throat by catching hold of his hand and putting the glass into his mouth telling him that he has to obey him as he was in charge of the patrol party.

That case was not put to any of the witnesses for the prosecution. Nor was the plea of stratagem advanced by him in this Court supported by any evidence. It is true, as has been testified to By one of the prosecution witnesses, that certain amount of persuasion had been put by Rati Ram over the appellant in order to take more of liquor; but a persuasion of that sort will not reduce the matter to a position that the thing which intoxicated the appellant was administered to him without his knowledge or against his will or through stratagem. There can be no doubt whatsoever that the drunkenness of the appellant on that date was voluntary and it would afford him no excuse for the commission of the present crime.

6. Drunkenness makes no difference to the knowledge with which a man is credited; and if a man knew what the natural consequences of his acts were, he must be presumed to have intended to cause them. Section 35 of the Indian Penal Code deals with the question of the knowledge possessed by an accused person at the time he commits the offence and leaves quite open the Question of intention. On the question as to how far drunkenness is an excuse for a crime, the proper test is that laid down in the case of *Director of Public Prosecutions v. Beard*, (1920) A. C. 479 (A). In that case a prisoner ravished a girl of thirteen years of age and in aid of the act of rape he Placed his hand upon her mouth to stop her from screaming, at the same time pressing his thumb over her throat with the result that shedied of suffocation.

Drunkenness was pleaded as a defence. Bailhache. J. directed the jury that the defence of drunkenness could only prevail if the accused by reason of it did not

know what he was doing or did not know that he was doing wrong. The jury brought in a verdict of murder and the man was sentenced to death. The court of Criminal Appeal (Earl of Reading C. J., Lord Coleridge and Sankey J) quashed this conviction on the ground of misdirection following the decision in *Rex v. Meade*. (1909) 1 KB 895 (B), which established that the presumption that a man intended the natural consequences of his acts might be rebutted in the case of drunkenness by showing that his mind was so affected by the drink that he had taken that he was incapable of knowing that what he was doing was dangerous.

The conviction was therefore reduced to manslaughter. The Crown preferred an appeal to the House of Lords and it was heard by a Bench consisting of Lord Chancellor Lord Birkenhead, Earl of Reading C. J. Viscount Haldane, Lord Dunedin. Lord Atkinson, Lord Sumner, Lord Buckmaster and Lord Phillimore. The Lord Chancellor delivered the judgment of the Court. He examined the earlier authority in a lengthy judgment and reached the conclusion that *Rex v. Meade* (B) (referred to above) cited the law rather too broadly though on the facts there proved, the decision was right. They held that the position

'that a person charged with a crime of violence may show in order to rebut the presumption that he intended the natural consequences of his acts, that he was so drunk that he was incapable of knowing that what he was doing was dangerous. ...',

which is what is said in *Meade's* case, was not a correct proposition of law. The decision of the House of Lords was noticed by the Supreme Court in *Basdev v. State of Pepsu*, 1056 All LJ 666: ((S) AIR 1956 SC 488) (C), and it was stated that the House of Lords laid down three rules :--

1. that insanity whether produced by drunkenness or otherwise is a defence to the crime charged:
2. that evidence of drunkenness which renders the accused incapable of forming the Specific intent essential to constitute the crime should be taken into consideration with the other facts proved in order to determine whether or not he had this intent: and

3. that evidence Of drunkenness falling short of a Proved incapacity in the accused to form the intent necessary to constitute the crime and merely establishing that his mind was affected by drink so that he more readily gave way to some violent passion does not rebut the presumption that a man intends the natural consequences of his acts.

7. Their Lordships Of the Supreme Court, quoting from page 63 of Russell on Crime, 10th. edition, observed :--

'There is a distinction, however, between the defence of insanity in the true sense caused by excessive drunkenness and the defence of drunkenness which produces a condition such that the drunken man's mind becomes incapable of forming a specific intention. If actual insanity in fact supervenes as the result of alcoholic excess it furnishes as complete an answer to a criminal charge as insanity induced by any other cause. But in cases falling short of insanity, evidence of drunkenness which renders the accused incapable of forming the specific intent essential to constitute the crime should be taken into consideration with the other facts proved in order to determine whether or not he had this intent, but evidence of drunkenness which, falls short of proving such incapacity and merely establishes that the mind of the accused was so affected by drink that he more readily gave way to some violent passion does not rebut the presumption that a man intends the natural consequences of his acts.'

8. In the present case the evidence discloses that insanity did not supervene as the result of alcoholic excess. Although the accused was under the influence of drink, he was not so much under its influence that his mind was so obscured by the drink that there was incapacity in him to form the required intention as stated, nor can it be said that he was incapable of knowing the nature of the act or that he was doing what was either wrong or contrary to law. The thing that was administered to him and which intoxicated him was not administered without his knowledge or against his will; and voluntary drunkenness can therefore offer no excuse for the commission of the crime. All that the evidence shows at the most is that at times he staggered and was incoherent in his talk, but the same evidence shows that he was also capable of moving himself independently and talking

coherently as well.

The law presumes that the accused intended the natural and probable consequences of his acts. In other words, he intended to inflict bodily injury to the deceased and the bodily injury intended to be inflicted was sufficient in the ordinary course of nature to cause death. We are therefore of opinion that Sections 85 and 86 of the Indian Penal Code afford no defence to the appellant in the present case and that the appellant has been rightly convicted under Sections 302 and 307, I. P. C. There is no force in this appeal and it is accordingly dismissed.

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