

Ramdayal Pando Vs. State of Chhattisgarh

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Court : Chhattisgarh

Decided On : Feb-25-2009

Reported in : 2009CriLJ3893

Judge : Rajeev Gupta, C.J. and; Sunil Kumar Sinha, J.

Appellant : Ramdayal Pando

Respondent : State of Chhattisgarh

Disposition : Appeal dismissed

Judgement :

Sunil Kumar Sinha, J.

1. Appellant Ramdayal Pando stands convicted Under Sections 302 and 307 IPC and sentenced to undergo imprisonment for life and R. I. for 7 years respectively by the Fifth Additional Sessions Judge, (F. T. C), Surajpur, District Surguja in Sessions Trial No. 291/2000 on 19-7-2002.

2. The case of the prosecution is that on 4-6-2000 at about 12 noon, Umashankar (since deceased) and his brother Sunderlal (PW-6) were preparing to go to forest. Salikram (PW-7) was also there. Umashankar and Sunderlal said that let them take their meals first. When they were entering in their house, the appellant came there, snatched the sickle from the hands of Salikram and started causing injury to

Sunderlal (PW-6). This was intervened by deceased Umashankar. He gave one hammer blow on the back of the appellant, on which, the appellant left Sunderlal (PW-6) and attacked on the deceased and caused injury to his neck. The deceased died instantaneously.

3. The matter was reported by Ramdin (PW-1), on which, the First Information report (Ex. P-1) dated 4-6-2000 was registered. Sickle was seized on the same day under Ex. P-2 as it was produced in the police station by the complainant. The Investigating Officer reached to the scene of occurrence on 5-6-2000, prepared inquest (Ex. P/4) on the body of the deceased and seized plain soil and blood stained soil from the place of occurrence under Ex. P/6. Articles belonging to the deceased were also seized under Ex. P/7 and some clothes were seized under Ex. P/5. The dead body of the deceased was sent for its post-mortem to Primary Health Centre, Chandni (Biharpur) under Ex. P/8-A, where the post mortem examination was conducted by Dr. A. M. Siddiqui (PW-8), who prepared his report Ex. P/8. He noticed 4 incised wounds on the body of the deceased. One was on the right side of the cheek, size 6 cm; other was on the left side of the cheek, size 7 cm; the 3rd was on the middle portion of neck, size 7 cm x 3 cm x 4 cm and 4th was also on the anterior surface of upper portion of the neck, size 5 cm x 3cm x 4cm. The trachea was opened, the tissues under the injuries were also cut and it had damaged the blood vessels. The Autopsy Surgeon opined that the cause of death was haemorrhagic shock as a result of excessive bleeding and asphyxia as a result of filling of air passage with blood and it was homicidal in nature.

4. Injured, Sunderlal (PW-6), was also sent for his examination under Ex. P/13-A and was examined by Dr. J. Ekka (PW-9), who prepared his report Ex. P/13. According to the injury report, he noticed one incised wound, size 2 1/2 inch x 1/2 inch x 1/2 inch on the upper left portion of neck.

5. In further investigation, site plans were prepared under Ex. P/15 and P/16. The seized articles were sent for their chemical examination to Forensic Science Laboratory, Sagar under Ex. P/20, from where, a report dated 3-8-2000 was received. According to the F. S. L. report, blood stains were found on all the articles except the plain soil.

6. After completion of usual investigation, the charge-sheet was filed in the Court of Judicial Magistrate, First Class, Surajpur, who in turn, committed the matter to the concerned Sessions Court, from where, it was received on transfer by the Fifth Additional Sessions Judge (F. T. C.) Surajpur, Surguja, who conducted the trial and convicted and sentenced the accused /appellant as aforementioned.

7. Shri Abhay Tiwari, learned Counsel appearing on behalf of the appellant, has neither disputed the homicidal death of the deceased nor the involvement of the appellant in crime in question. He has only argued that the appellant was a person of unsound mind, therefore, he was entitled to get benefit of Section 84 IPC.

8. On the other hand, Shri Praveen Das, learned Dy. Govt. Advocate appearing on behalf of the State, has opposed these arguments supporting the judgment and order passed by the Sessions Court.

9. We have heard the learned Counsel for the parties at length and have also perused the record of the Sessions case.

10. Section 84 of IPC provides that '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 crucial point of time at which unsoundness of mind should be established is the time when the crime is actually committed. The burden of proving unsoundness of mind at the relevant time lies on the accused in order to seek the exemption provided in Section 84. This burden is based on Section 105 of the Evidence Act which envisages that '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, 1860 or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.'

11. In the matter of Dahyabhai v. State of Gujarat : 1964 (7) SCR 361 : 1964 (2) Cri LJ 472, the Apex Court held that 'The prosecution, in a case of homicide shall prove beyond reasonable doubt that the accused caused death with the requisite

intention described in Section 299 of the Indian Penal Code. This general burden never shifts and it always rests on the prosecution. But, under Section 105 of Evidence Act the burden of proving the existence of circumstances bringing the case within the said exception lies on the accused, and the Court shall presume the absence of such circumstances. The accused has to rebut the presumption that such circumstances did not exist, by placing material before the Court sufficient to make it consider the existence of such circumstances so probable that a prudent man would act upon them. The accused has to satisfy the standard of a 'prudent man'. If the material placed before the Court, such as, oral and documentary evidence, presumptions, admissions or even the prosecution evidence, satisfies the test of 'prudent man' the accused will have discharged his burden.'

12. In the matter of Hari Singh Gond v. State of M.P. : AIR 2009 SC 31 : 2009 Cri LJ 346, the Apex Court held that 'The standard to be applied for deciding applicability of Section 84 is whether according to the ordinary standard, adopted by reasonable men, the act was right or wrong. The mere fact that an accused is conceited, odd irascible and his brain is not quite all right, or that the physical and mental ailments from which he suffered had rendered his intellect Weak and had affected his emotions and will, or that he had committed certain unusual acts, in the past or that he was liable to recurring fits of insanity at short intervals, or that he was subject to getting epileptic fits but there was nothing abnormal in his behaviour, or that his behaviour was queer, cannot be sufficient to attract the application of this Section. It was held on facts of case that Section 84 had no application.'

13. Again in the matter of Siddhapal Kamala Yadav v. State of Maharashtra : AIR 2009 SC 97 : 2009 Cri LJ 372, it was held by the Apex Court that 'The onus of proving unsoundness of mind is on the accused. But where during the investigation previous history of insanity is revealed, it is the duty of an honest investigator to subject the accused to a medical examination and place the evidence before the Court and if this is not done, it creates a serious infirmity in the prosecution case and the benefit of doubt has to be given to the accused. The onus, however, has to be discharged by producing evidence as to the conduct of

the accused shortly prior to the offence and his conduct at the time or immediately afterwards, also by evidence of his mental condition and other relevant factors. The burden of proof, however, is not so onerous as that upon the prosecution to prove that the accused committed the act with which he is charged. The burden on the accused is no higher than that resting upon a plaintiff or a defendant in a civil proceeding.'

14. In view of the above, if the defence of unsoundness of mind was taken by the appellant, it was incumbent upon him to prove such factor. If we find out the records of investigation, it does not appear that the Investigating Officer was ever told about the alleged insanity of the appellant. The appellant has not been medically examined in this case. Though, during the course of trial, it comes in the cross examination of PW-4, Ram Kumar, PW-5, Ramesh Kumar and PW-6, Sunderlal, in one line, that the appellant had become mad but that casual statement without the instances is of no benefit to the appellant. When the burden was on the appellant, the defence should have discharged it by quoting instances and by bringing on record, the earlier medical evidence etc. Even no efforts were made during the entire period of trial to get the appellant medically examined so that an opinion may have been obtained regarding alleged unsoundness of mind which defence the appellant had halfheartedly taken at the trial. There is no observation of the Sessions Court in this regard. Even in the statement of the appellant, recorded Under Section 313 Cr. P. C, nothing has been observed nor the answers to the questions put to him are given in such a manner, on which, the Court may have proceed in that line. In this regard, one Ramprasad Choubey has been examined as DW-1. He deposed that he had seen the appellant suffering from insanity and has also deposed that when the police came to village and tried to arrest the appellant, he was caught with the help of 30-40 persons. According to him, this was all on account of unsoundness of his mind. We have scrutinized the evidence of this witness in light of the evidence of investigating Officer, Asstt. Sub-Inspector R. B. Pandey (PW-13), who has not quoted any such instance and has strongly denied the suggestion that when he had arrested the appellant, the appellant was not keeping good mental condition. He has specifically denied that the appellant was arrested with the help of 15-20 persons. Therefore, the evidence of defence witness does not appear to be reliable.

15. It is in this state of affairs, the Sessions Judge had rejected the arguments advanced by the defence counsel that the appellant was a person of unsound mind and has denied to extend the benefit of Section 84 IPC.

16. We do not find any reason to take a different view, than the one which has been taken by the learned Sessions Judge.

17. The conviction of the appellant is based upon cogent, clinching and reliable evidence.

18. The appeal has no merit, the same deserves to be dismissed and is accordingly dismissed.

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