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Court : Madhya Pradesh

Decided On : Jan-31-1956

Reported in : 1956CriLJ1291

Judge : Mathur, J.C.

Appellant : Choteylal

Respondent : State

Judgement :

Mathur, J.C.

1. This judgment governs Criminal Appeal No. 2 of 1956 and Cr. Jail Appeal No. 3 of 1956 both by Choteylal, against his conviction of an offence under Section 302, I.P.C., for committing murder of his only son Purshottam, aged six years. The first appeal was presented through a counsel, while the other was received from the jail recently.

2. The fact that Purshottam died at the hands of the appellant is not challenged. But the only point urged before me is that at the time the offence was committed, the appellant was, by reasons of unsoundness of mind, incapable of knowing the nature of the act, or that what he was doing was either wrong or contrary to law.

The appellant thus seeks protection under the general exception contained in Section 84, I.P.C. The appellant would, therefore, be deemed to have been rightly

convicted, unless he was entitled to the benefit of Section 84, I.P.C. and consequently deserved acquittal, even though the death of his son was caused by him,

3. In this connection two points will require consideration. The first is a pure Question of law as to what extent the burden of proving the existence of circumstances contained in Section 84, I. P, C. lies upon the appellant; and the second one is a question of fact as to whether there existed a possibility of the existence of the circumstances mentioned in the above section.

4. There was some controversy in the interpretation of Section 105, Evidence Act as to the extent of the burden of proof which lay upon an accused person to establish the existence of circumstances to bring his case within any of the general exceptions in the Indian Penal Code. But this controversy appears to have been set at rest by the decision of the various High Courts by giving an interpretation more favourable to the accused.

One view was that the burden on the accused Under Section 105, Evidence Act, lay to the same extent as lies on the prosecution to prove the charge against him. In other words, the accused was to prove the existence of the circumstances beyond the possibility of any doubt. This view appears to have been taken in 'Baswantrao Bajirao v. Emperor' AIR 1949 Nag 66 (A).

But the same High Court took a contrary view in another subseauent decision reported in 'Holia Budhoo v. Emperor' AIR 1949 Nag 163 (B). In deciding this latter case, the Nagpur High Court, followed the full Bench decision of the Allahabad and the Rangoon High Court, in 'Parbhoo v. Emperor' AIR 1941 All 402 (FB) (C), 'Emperor v. TJ Damapala' AIR 1937 Rang 83 (D). The Patna High Court followed these decisions in 'Kamalasingh v. The State' : AIR1955 Pat209 .

A similar view was taken by the Chief Court of Sind in 'Waroo v. Emperor' AIR 1948 Sind 40 (F). This other view taken by the Nagpur, Allahabad, Rangoon, Patna and Sind High Courts is that the burden to prove the existence of the circumstances to bring a case within any of the exceptions technically lies upon the accused person, as laid down in Section 105, Evidence Act, but the burden

has not to be discharged in the same manner as by the prosecution in proving a charge against the accused.

The prosecution has to establish its case beyond any reasonable doubt and for establishing the charge it was to depend upon the evidence led by it and not by taking advantage of any isolated statement of the accused or of the defence witnesses. In other words, the prosecution has to stand on its own legs in proving the charge. But an accused person can discharge the onus which lay upon him either by himself leading evidence or by merely placing reliance upon the admissions of the prosecution witnesses or on the circumstances of the case proving or indicating in the affirmative the existence of such circumstances.

On consideration of all such evidence or circumstances, the burden would be discharged if the accused is able to establish the defence beyond any doubt. But even if the evidence or the circumstances do not reach that mark to prove the exception beyond doubt, the accused would still be entitled to the benefit of the exception, if he satisfies the Court that there exists a reasonable possibility of the existence of the circumstances to bring the case within the exceptions.

In other words, the duty of the accused Under Section 105. Evidence Act, is to introduce such evidence, either by himself leading evidence or by cross-examining the witnesses, as will displace the presumption of the absence of circumstances bringing the case within an exception and will suffice to satisfy the Court that such circumstances may have existed and if the Court, on a review of the evidence, is left in a reasonable doubt whether the circumstances bringing the case within general exceptions exist or not, the accused would be entitled to be acquitted or can be convicted only of the minor offence, if as a result of the exception the offence committed is such.

5. The law is thus virtually settled and I am also inclined to follow this opinion which appears to be in consonance not only with Section 105, Evidence Act, but with Sections 101 and 102 of the Act which precede Section 105. The evidence existing on the record will, therefore, have to be considered from this legal aspect and it will have to be determined whether the case of the appellant comes within the four corners of Section 84, I.P.C. or not.

6. There is not much dispute on the facts of the case, though it was urged on behalf of the State that the prosecution witnesses were favourably inclined towards the appellant and had consequently made certain admissions, even though such may not have been the facts. When most of the prosecution witnesses made a statement favourable to the accused, it would be wrong to discard their statement on a mere supposition that they may be helping the accused.

The circumstances of the present case are, in my opinion, quite strong to indicate that the act of the appellant was very unnatural and in these circumstances it will not be safe to discard the evidence of the prosecution witnesses simply on a general observation made by the trial Court or by a general argument being put forward on behalf of the prosecution. There has generally to be some explanation for an abnormal conduct of a party.

It is true that it is not necessary for the prosecution to lead clear and cogent evidence on the motive of the commission of the offence or to explain any abnormality in, the conduct of an accused person; but at the same time, when the prosecution witnesses make certain statements to explain the abnormality of an accused person's conduct, such a statement should be taken into consideration and not disregarded on flimsy grounds. In any case, if the prosecution thought that the prosecution witnesses had been won over or were trying to help the accused, evidence should have been led in order to satisfy the Court that the witnesses were making an incorrect statement with the intention referred to above. I would, therefore, take into consideration the various admissions made by the witnesses.

7. If the prosecution evidence is read as a whole, it will be clear that prior to the commission of the present offence, the appellant had at two occasions behaved like an insane person. He had at one occasion moved about in the public in a naked condition and at another, jumped into a well while naked. The prosecution witnesses also say that at two occasions the eyes of the appellant were red and he had vacant looks. These admissions would show that in the past the accused had temporary attacks of insanity which did not last long. On the day of the resent occurrence there was a fire in the thrashing floor of the appellant whereafter he

killed his own son. The weapon used was not very sharp which a person having the intention to commit the offence would have ordinarily used. The offence was committed in broad day-light, at an open place which people could easily frequent, & not inside the house, at night or in a jungle. Even though there was no one at the thrashing floor, the appellant made no attempt to run away. Instead, he proceeded to his house with the head of his son. hanging from his hand. This was a very abnormal conduct. In case the appellant knew or understood the nature of the act being done by him, he would not have behaved in such an abnormal manner. If his relations with his son or with his wife were strained, it could be that he committed the murder in a fit of anger and was taking the head to produce it before the mother by way of revenge or to torture her. But the prosecution witnesses admit that all the three were on good terms, & had never quarreled with one another. The deceased was a young boy aged six years and he could not have caused any kind of provocation to his father. The absence of a motive can be no ground to throw out the prosecution story but in a case of the present nature, the absence of the motive can be used as one of the circumstances proving the insanity of the accused as contemplated by Section 84, I.P.C.

8. The only evidence which can be said to be against the appellant is the statement of a Hakim, who examined him on the next day, and also the fact that he volunteered to accompany the villagers to the police station. Where people have temporary fits of insanity making them incapable to understand their act, they regain their normal senses after some time. On seeing the result of a particular act done by them, they do gather that the act was committed by them, but if these signs are removed, they would be in no position to explain their act and conduct.

In the present case the dead body of Purshottam was there and the head was either in the hand of the appellant or was at his house. There were also blood-stains on his clothes. In these circumstances the appellant could say that 'Whatever had happened', or that he did not know why and in what circumstances he did the act. He could also volunteer to go to the police station. Such a subsequent conduct in my opinion, can neither prove nor disprove the state of insanity. Similarly, the examination of the appellant by a 'Hakim' on the next day can be of no help.

9. If the prosecution evidence is read as a whole, it cannot be said that the appellant has proved beyond doubt that at the time of the commission of the offence he was, by reason of unsoundness, incapable of knowing the nature of the act or that what he was doing was either wrong or contrary to law.

But there does exist a reasonable doubt in my mind indicating that there is a reasonable possibility of the existence of circumstances enumerated in Section 84, I.P.C. The benefit of this reasonable doubt would go to the appellant. I am, therefore, of opinion that by virtue of Section 84, I.P.C. the appellant was not entitled to conviction, even though he had himself killed his son.

10. For reasons given above, the appeals are hereby allowed and Choteylal is acquitted of the charge under Section 302, I.P.C. But it is further ordered under Section 471, Cr. P.C. that he should be detained in the Central Jail or in a Mental Hospital for proper treatment and supervision till he shows no sign of insanity for a period of four years or such further period as the medical officers consider proper. Keeping in mind that the appellant is a criminal lunatic, is a danger to the society and should not be released unless he is safe and no longer capable of committing a criminal act without himself knowing the nature of the act done by him.

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