Barelal Vs. State

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Court : Madhya Pradesh

Decided On : Aug-31-1959

Reported in : AIR1960MP102

Judge : A.H. Khan and ;Shivdayal Shrivastava, JJ.

Acts : Indian Penal Code (IPC), 1860 - Sections 84 and 299; Evidence Act, 1872 - Sections 105; Code of Criminal Procedure (CrPC) , 1898 - Sections 164, 208, 252 and 286

Appeal No. : Criminal Appeal No. 34 of 1958

Appellant : Barelal

Respondent : State

Advocate for Def. : Bajpai, Dy. Govt. Adv.

Advocate for Pet/Ap. : J.P. Shrivastava, Adv.

Disposition : Appeal dismissed

Judgement :

Khan, J.

1. The accused Barelal s/o. Tunda, resident of 'Stanwada has been convicted under Section 302 I. P. C. and sentenced to life imprisonment. Against his

conviction and sentence, the accused has filed this appeal.

2. The prosecution story shortly stated is that in the night of 13th July, 1957, the neighbours of the accused (Ratiram P. W. 2 and Patiram P. W. 3) heard a hue and cry of the wife of the accused. And when they reached the house of the accused, they saw him throw his daughter named Gyaso aged about 2 years across the wall. Thereafter the accused lifted the body of his daughter and began to run away. He was pursued and caught and kept in the village till the Police arrived. The young daughter as a result of the fall sustained injuries, and died.

3. A report of this incident was made by Panchoo Chowkidar of village Stanwada at Police Station, Shivpuri in which the accused was named. The Sub-Inspector Police went to the village and found the child (Mst. Gyaso) lying dead in the Pator of the accused with injury marks on her head, ear, neck, back and chest and he also saw blood coming out of the ear.

4. Ratiram P. W. 2 and Patiram P. W. 3 are witnesses, who live near the house of the accused. They have stated that on hearing the shouts of the wife of the accused, they went to the house and saw the accused throwing his daughter outside his house across the wall. They have also stated that after throwing away the child in this manner, he tried to run away with the body of the child. The accused was chased over-powered and caught. He was kept there till the Police arrived.

5. Shyamlal P. W. 4 is the Patel of the village Stanwada. He reached the spot after the accused had been caught. He sent the Chowkidar of the village for lodging the report.

6. Ramjilal P. W. 5 is one of the persons who gave a chase to the accused and caught him. He has said that the accused was running with the child in his lap and after a chase given to him, they caught him, snatched the child from him, but they found the child dead.

7. From the deposition of Dr. Warang P. W. 8 it appears that the child had five external marks of injuries, and, that on performing the post-mortem examination

he found fracture of the parietal bone, fracture of the fourth, fifth and sixth ribs and he also found that pleaura was torn near the fifth rib on the right side. (The Doctor has stated that the child died as a result of the shock of injuries to the brain and chest. He further stated that the fracture of the parietal bone would cause death by itself and so also the fracture of ribs with injuries to lung.)

8. The accused had made a confession, but he retracted it in the committing Court. Before the Committing Magistrate, while denying the commission of the offence, he tried to explain away the injuries sustained by the child by saying that he was giving the child to his wife, when the child fell down and died. But before the Sessions Court he has given a different story. He has said that he was on the roof of his Pator (house) and the child whom he was holding in his lap slipped out and fell from the roof on a Chabutara below and died in consequence. Along with these statements the accused has also taken the plea that on the date of incident he was insane and that he might have thrown the child when his mind was in an unsound condition.

9. The accused has examined in defence Ramjilal D.W. 1, who is his brother. He has stated that the child had fallen down from the cot and died. The second defence witness is Mst. Menhda, the wife of the accused. She has stated that while she was trying to take the child from the accused, it fell down and died. From the two divergent statements which the accused has made in his examination under Section 342 and the conflict in the statements of D. W. 1 and D. W. 2, it is apparent that the defence story that the child died as a mere accident cannot be believed and has been rightly rejected by the learned trial Court.

10. We have now to examine the plea of the accused with regard to the unsoundness of his mind. The accused wants to get the benefit of Section 84 of the I. P. C. which runs thus:

'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 that is either wrong or contrary to law.'

11. A perusal of this Section would show that it is not every person, who is mentally diseased, ipso facto, is exempted from criminal responsibility. Any person who seeks the benefit of Section 84 I. P. C. must prove that at the time of committing the act he was labouring under such defect of reason as not to know the nature and quality of the act he was doing. I do not find any evidence on record to establish the fact that at the time of throwing the child the accused was of unsound mind. There is no doubt some evidence on record (see the statement of Ramjilal P. W. 5) that about a couple of months before this incident, the accused betrayed signs of insanity and he used to abuse the villagers generally. But thereafter he became alright. His brother, D. W. 1 has also said that his brother (accused) gets fits of insanity, that he becomes insane for a few days and then he has lucid intervals. This sort of evidence will not help the accused. There is no medical evidence to establish the fact that at the time of the commission of the act, the accused was of unsound mind. The plea of insanity looses much of its force in view of what Ramjilal P. W. 5 has stated. He has deposed that the accused suspected the fidelity of his wife, and used to say that the child was not his. In the circumstances of the case it is possible for the accused to feign insanity and commit the act which he did. Any way, there is no evidence on record to show that at the time of commission of the offence he was incapable of knowing the nature of the act. He is, therefore, not entitled to the benefit of Section 84 of the Indian Penal Code.

12. On a review of the entire evidence, I am of the opinion that the accused has been rightly convicted.

13. For reasons stated above the appeal is disallowed.

Shiv Dayal, J.

14. A person is presumed to be responsible for his acts and the natural consequence thereof unless he affirmatively proves that he is entitled to exemption from criminal liability. One of the exceptions is provided in Section 84 of the Penal Code. In order that benefit may be given to an accused under this section, it is not sufficient to show that he was of unsound mind before the

commission of the crime or that he became so afterwards. It must be established by the defence that, firstly, he was incapable of knowing the nature of his act or that he was doing what was either wrong or contrary to law and, secondly that such unsoundness of mind existed 'at the time of doing' the act. If either of these two elements is not positively proved, no benefit can be given tinder Section 84.

15. It is settled law that a distinction must be drawn between legal insanity and medical insanity. Whatever may be the controversy about the McNaughten rules, Section 84 of the Indian Penal Code is very clear and it requires that degree of infirmity of the mind which renders a person incapable of knowing the nature of his act. Whatever may be the nature of insanity or delusion, so long as unsoundness of mind is not such as to render him incapable of knowing the nature of his act or incapable of knowing that he is doing what is either wrong or contrary to law, he cannot be excused. It appears from the evidence produced in this case that the accused laboured under a delusion as to unchastity of his wife and to the illegitimacy of the unfortunate child whom he killed. He used to brood over the unfaithfulness of his wife. There is no evidence to establish that at the time when he threw the child across the wall he was incapacitated because of his unsoundness of mind and did not know what he was doing. It is not every impairment of mental faculties for which benefit can be given under Section 84. Moreover, after throwing her on the other side of the wall and on his wife's raising alarm and people running for help, he tried to run away with the child. For all these reasons it must be held that neither of the two ingredients required under Section 84 is proved.

16. As to the question whether the offence committed by the appellant is punishable under Section 302 or Section 304 of the Penal Code, there is considerable force in the contention of the learned counsel that ordinarily if a child of two years is thrown across a wall five feet high death will not be the immanent result.

17. The prosecution was too careless to show the distance from the wall where the child fell because of the throw. That was very material in order to determine the intention and knowledge of the accused, within the meaning of Section 300, I. P.

C. If a child of two years is merely dropped across a wall 3 cubits high, it would be too much to say that in all probability it would cause death or that death would be the imminent result. The learned trial Judge has been in error in not applying his mind to this important issue and disposing it of in a single sentence.

18. However, when I look into the medical evidence I find that she sustained injuries on the right parietal region, the left occipital region the left side of the leg, the right ear, the right chest, fractures of fourth, fifth and sixth ribs of the right side, and also fracture of the parietal bone.

19. Dr. Warang stated that the death resulted because of the fracture of the parietal bone and the fracture of the ribs with injury to lungs and each of them was sufficient to cause death. This indicates one of two things; either she was thrown with great force or she was first lashed in the courtyard and then she was thrown across the wall. Therefore, I am also of the opinion that the accused committed an offence under Section 302 of the Penal Code.

20. Before I part with this case, I am constrained to make two more observations. Serious notice must be taken of the fact that the accused was brought before a Magistrate for recording confession after 17 days of his arrest. The investigating officer Bala Prasad P.W. 7 stated before the trial Judge that the accused had admitted his guilt as soon as he was arrested. It is not known why this long delay was caused. The Investigating Officer should have afforded at least some explanation. That was the minimum. But he conveniently kept silent about it in his statement before the trial Judge.

21. Then, it fills me with uneasiness when I notice that pronouncements of the Supreme Court are disregarded by those in charge of prosecution. Their Lordships have observed more than once that it is the duty of the prosecution to produce material witnesses. The Privy Council had also made similar observations. In Narain v. State of Punjab, AIR 1959 SC 484, it is laid down :

'It is not that the prosecution is bound to call all witnesses who may have seen the occurrence and so duplicate the evidence. But apart from this, the prosecution should call all material witnesses and if a material witness has been deliberately or

unfairly kept back, then a serious reflection is cast on the propriety of the trial itself and the validity of the conviction resulting from it may be open to challenge.'

'The test whether a witness is material for the present purpose is not whether he would have given evidence in support of the defence. The test is whether he is a witness essential to the unfolding of the narrative on which the prosecution is based. Whether a witness is so essential or not would depend on whether the evidence led disclosed that he was so situated that he would have been able to give evidence of the facts on which the prosecution relied.

22. Here, the mother of the poor child was besides the accused the only other inmate of the house. The prosecution must have regarded her as the most material witness. The prosecution must have known that she had first hand information not only of the occurrence, to which she was an eye-witness, but also as to the cause of the atrocious act. But the prosecution did not produce here as its witness and no explanation of this flagrant omission was brought on the record. The prosecution must thank the defence for examining her as its witness, otherwise the consequence of the omission would perhaps have been far-reaching.

23. In result, I agree that this appeal must be dismissed.