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**Daljit Kaur Vs. State**

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**SooperKanoon Citation** : sooperkanoon.com/526116

**Court** : Orissa

**Decided On :** Feb-14-1968

**Reported in** : AIR1968Ori125; 34(1968)CLT324; 1968CriLJ1090

**Judge** : A. Misra, J.

**Acts** : Code of Criminal Procedure (CrPC) , 1898 - Sections 469, 470 and 471

**Appeal No.** : Criminal Revn. No. 8 of 1968

**Appellant** : Daljit Kaur

**Respondent** : State

**Advocate for Def.** : Standing Counsel

**Advocate for Pet/Ap.** : Ranjit Mohanty, Adv.

**Disposition** : Revision dismissed

**Judgement** :
ORDER

**A. Misra, J.**

1. This revision is against an order of the Judicial Magistrate, First Class, Bhubaneswar committing the petitioner to the Court of Sessions to stand her trial for an offence under Section 302 I. P. C. Prosecution case, in short, is that on 18-

6-65, petitioner took the baby of her elder sister to fondle her and all of a sudden entered inside the room, bolted the door and inflicted multiple injuries on the body of the baby with a chopping knife as a result of which the child ultimately succumbed.

2. At the commencement of the committal proceeding a petition was filed under section 464 Cr. P. C. for postponment of the committal enquiry on the ground that being insane she was incapable of making her defence. After receipt of report from the competent medical authority, committal proceeding was resumed by the learned Magistrate. During committal enquiry the father and the sister of the petitioner were examined and they stated that petitioner suffers from fits which holds out for y couple of hours or more, during which period, she cannot understand anything. Apart from their evidence, there is also evidence of medical experts that petitioner is a chronic sufferer having epileptic fits every now and then. Despite the evidence that petitioner was of unsound mind at the time of commission of the alleged offence, the learned Magistrate has committed her to stand her trial before the sessions under Section 302 IPC.

3. The main contention advanced for the petitioner is that the learned Magistrate having found as a fact that petitioner was of unsound mind at the time of occurrence should not have relied on Section 469 Cr. P. C. and committed the petitioner. It contended that when petitioner is found to have been of unsound mind at the time of commission of the offence, she cannot be said to have committed any offence, and as such, the committal is bad. Reliance has been placed on two decisions of Supreme Court reported in Vadilal Panchal v. Datta-traya, AIR 1960 SC 1113 and AIR 1962 SC 1195, Bipat Gope v State of Bihar. Both the decisions are not strictly relevant to the point at issue. In the former case it was held that where a Magistrate directs an enquiry, under Section 202 Cr. P C. and receives a report from the enquiring officer supporting a plea of exercise of right of self defence, it is open to him to hold this plea to be correct and that it is not obligatory on the Magistrate as a matter of law to issue process in such a case and leave theperson complained against to establish his plea of sell defence. The latter decision related to the scope of section 209, Cr. P. C. and it was held that whatever may be the reason for the difference in language between Sections 207

A and 209, Cr. P. C., the test for discharging the accused must in a large way be the same in both the sections. Relying on these decisions, it is urged that when it is within the competence of the committing magistrate to take note of the exceptions and discharge the petitioner under Section 203 or 209, Cr. P. C., the same principle will also apply to a case where the Magistrate finds that the accused was insane at the time of commission of the alleged crime. As against this, learned Standing Counsel relies on a decision of the Mysore High Court reported in State of Mysore v. Seetharam, AIR 1964 Mys 50. This case seems to be directly on the point. It was held there that in the case of insanity, the committing Magistrate is concerned with the condition of the mind of the accused at the time of enquiry only and not at the time of alleged commission of the offence, it was further held that even assuming that on a perusal of the documents and consideration of the evidence the Magistrate was inclined to view that by reason of unsoundness of mind at the time the act was committed, the accused was incapable of knowing that the act was wrong or contrary to law, yet he has to commit the accused to take his trial before the court of session as required u/s. 469, Cr. P. C. This view appears to be correct in the light of the provisions contained in Chapter 34 of the Code of Criminal Procedure which is a special chapter providing the procedure regulating the trial of lunatics. Section 469 lays down that if the Magistrate finds that the accused is sane at the time of enquiry or trial but was insane at the time of commission of offence, he must proceed with the case, and if need be, commit him. It is contended by learned counsel for petitioner that the words 'if the accused ought to be committed' would mean that such commitment can be made only where the Magistrate is of the view that at the time of commission of offence the act will not come within one of the exceptions. Section 84. I. P. C. lays down 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. It is argued that when under this provision the act of petitioner in view of the finding of unsoundness at the time of commission of the alleged offence, in law, will not amount to an, offence the learned Magistrate was not competent to make the commitment. This contention is not in consonance with the language of section 469, Cr. P. C. which provides a special procedure for trial of lunatics The

legislature have made special provision in respect of trial of lunatics, and though inany particular case the act of the accused may come within one of the Exceptions which may ultimately entitle him to acquittal, the acquittal must be the result of the trial as provided. Sections 470 and 471, Cr. P. C. make the position very clear. Under Section 470, if a person is acquitted on the ground that at the time he is alleged to have committed the offence, he was, by reason of unsoundness of mind, incapable of knowing the nature of the act alleged as constituting an offence, etc., the finding shall state specifically whether he committed the act or not. Thus, this section apart from unsound-ness requires a finding as to whether the accused committed the act or not. Under Section 471. when the finding is that the accused committed the alleged act, though he may be acquitted, the court is to follow a particular procedure. Therefore, in the case of lunatics, the only point to be considered is whether at the time of trial he is in a position to defend himself, that is to say, he is sane. If that is so, the trial must proceed as provided under sections 469, 470 and 471, Cr. P C.

4. In the result, I find no merit in thisrevision which is accordingly dismissed.

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