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Nitai Naik Vs. the State

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Court : Orissa

Decided On : Mar-22-1957

Reported in : AIR1957Ori168; 23(1957)CLT203; 1957CriLJ875

Judge : Mohapatra and ;Das, JJ.

Acts : Indian Penal Code (IPC), 1860 - Sections 40 and 84; Evidence Act, 1872 - Sections 105

Appeal No. : Criminal Appeal No. 90 of 1955

Appellant : Nitai Naik

Respondent : The State

Advocate for Def. : G.B. Mohanty, Adv.

Advocate for Pet/Ap. : G. Rath, Adv.

Judgement :

Mohapatra, J.

1. The appellant Nitai Naik has been convicted under Section 302 of the Indian Penal Code and has been sentenced to imprisonment for life for having intentionally caused the death of one Nagai Bewa by assaulting her with a bamboo lathi on 18th of July. 1954 in the afternoon in village Paktia 111 the district of

Mayurbhanj. The deceased was residing in the house of her daughter's daughter Duli Dei (P. W. 8) in the same village. The accused also belongs to the same village.

But, some time after his marriage which took place nearly two years prior to the incident, he went away from the village and lived with his father-in-law in another village. He, however, returned on 16th of July, 1954 to the village Paktia and complained of reeling of head. He wanted some medicine from the deceased, who had some reputation in the locality as a quack. On 17th of July. 1954 he approached the deceased in the house of P. W. 8 for medicine and on the next day also, that is. the date of occurrence, he again approached the deceased for medicine.

The deceased refused to give any more medicine saying that she cannot cure the disease of the accused. The accused then demanded the deceased to leave him in the house of his maternal 'uncle and the deceased also refused. Thereupon, the accused caught hold for her, dragged her to the outskirts of the village and beat her to death with a bamboo thenga. Prosecution story is that the deceased died at the spot near the kendu leaf depot on the outskirts of the village. P, W. 1, the Choukidar and son of the deceased who was living separate from the deceased returned home at about sunset and the first information was lodged by p. W. 1 at about 4 P. M. on 19th of July, 1954.

The dead body was sent to the Doctor, who held the post-mortem examination on 21st of July, 1954. the dead body having been highly decomposed. The Doctor, however, found two external Injuries on the dead body: (i) the left ear was torn i e. the Pinna and one inch above its attachment was torn and (ii) a huge opening on the left side of the mouth and cheek but the tissues and muscles were so much decomposed that no definite opinion could be given as regards the nature of the injuries i. e. whether lacerated or incised.

He also found the following internal injuries: (i) The left mandible was fractured at its angle in entire and (ii) There was separation of the tempero-parietal suture on the left side of the skull with several fracture lines radiating along the outer table of both bones. There was dark liquified blood about 4 ozs. in the skull, separating the

left side of the brain from the skull (extra dural). Membranes were getting decomposed but were found in tact. Brain had been liquified.

The Doctor was of opinion that death was due to shock and haemorrhage as a result of the above injuries to the skull. The injuries were ante-mor-tem. The fracture to the skull and the fracture of the mandible could have been produced with lathi blows.

2. The accused having shown signs of un-soundness of mind was kept under observation on several occasions. His trial before the Additional Sessions Judge had commenced in January, 1955, but. the learned Additional Sessions Judge was of opinion that he was unable to take up his defence, stopped the trial and sent the accused to be kept under observation. Thereafter, for the second time when the Doctor opined that he was free to take up his defence, the present sessions trial commenced wherein he has been found guilty under Section 302 of the Indian Penal Code and sentenced to life imprisonment. Against this judgment of Shri A. R. Guru, Sessions Judge, Mayurbhanj dated the 30th of June, 1955 the present appeal has been filed.

3. The learned Sessions Judge relies upon the evidence of three witnesses examined in the case to come to a finding that in fact the accused had dealt a lathi blow on the vital part of the deceased on account of which she died. The witnesses are P. Ws. 5. 6 and 7. P. W. 5 Bhagaban Sethi cultivates the lands of P. W. 7 who has extensive landed property and is a Padhan of the village. He also takes his food in the house of P. W. 7. After finishing his food in the house of P. W. 7 while he was returning to the fields for work he saw the accused Nitai assaulting the deceased Nagai with a thenga. He saw the deceased falling to the ground as a result of the assault and further, he stated that on seeing this he called Paramananda Naik (P. W. 6) who had come to the house of P. W. 7. When Paramananda came running, the accused left the place with the thenga on seeing Paramananda. He and Paramananda then approached the deceased and found her bleeding from mouth, nose and ear.

They found Nagai dead. P. W. 6 Paramananda is the maternal uncle of the accused. He very substantially corroborates the statement of P. W. 5. His

evidence is almost direct even though he has not seen the accused having dealt a lathi blow on the deceased. He was in the house of P. W, .7 at the time of occurrence as he had been to the nephew of P. W. 7 for borrowing some paddy, while he was lying on a cot and P. W. 7 was taking his food P. W. 5 proceeded towards his field. P. W. 5 shouted saying that Nitai was assaulting some old woman.

He went and P. W. 5 pointed out the occurrence. He found Nitai, the accused was running towards the Bihar border and going ahead P. W. 5 and he himself saw Nagai dead and that she was bleeding from mouth, nose and ear. Indeed, there was some suggestion and the learned Sessions Judge also had found that the father of accused had given some lands to the witnesses and on the death of the father of the accused, the accused was demanding back the lands.

But, after a thorough discussion of the evidence of these two witnesses, the learned Sessions Judge has relied upon their statements and we do not find any reason whatsoever to differ after going through the entire evidence of these witnesses. P. W. 7 after finishing his food came to the spot. Indeed he came after P. W. 6 had reached the place of occurrence. Both P. Ws. 5 and 6 told him that Nitai, the accused ran away after Killing Nagai.

He also went to the place where the dead body was lying and found blood coming out from her mouth and nose. He could identify the dead body as of Nagai Bewa. About the first part of the prosecution story regarding the demand of medicine, we have the evidence of two witnesses viz., P. Ws. 3 and 6. Both of them state that in fact there was demand by the accused for medicine on the date of occurrence and the old woman refused to give any medicine.

Thereafter, the accused came with a request that the old woman should reach him in the house of his maternal uncle. That request also was bluntlv refused. Thereafter, she was dragged to the outskirts of the village. Indeed, they did not follow the accused and the deceased, but about the occurrence, we have the evidence of the three oilier witnesses. The Doctor's evidence which I have reproduced above substantially corroborates the prosecution story. We have, in consideration of the above evidence, no hesitation in agreeing with the learned

Sessions Judge that in fact the accused with the help of a bamboo stick inflicted the injury on the body oi the deceased on the date of occurrer on account of which she died on the spot.

4. But. there remains a further question to be, decided in the present case, it was also argued at length before the learned Sessions Judge. That is, whether the accused can claim shelter under the provisions of Section 84 of the Indian Penal Code which runs as follows :--

'84. 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.'

In considering the evidence, we have to give our attention as to the state of mind of the accused at the time of occurrence and further, whether his unsoundness of mind was of such a nature that he was incapable of knowing the nature of the act or that he was doing anything either wrong or contrary to law. Indeed, the accused has not examined any witness on his behalf. But, in cross-examination sufficient materials have come out from the evidence of important witnesses on behalf of prosecution whom we characterise as witnesses of truth and on whose evidence also we have come to the finding that the incident has been proved. P. W. 3. the grand-son of the deceased states :

'I stated in this court when examined last that accused developed brain disorder after his marriage. He remained at times moody and at times, would roam about taking the name of God and sometimes he would go out and would not return home and would not leave any information about the place of his going out.'

P. W. 6. the maternal uncle of the accused statesas follows: . -

'At Paktia he did not reside in any house and was wandering hither and thither. He was roaming in the fields and village lanes. If any one offered any food he took it but never asked for it. He was always uttering 'Bhagaban, Bhagaban'. He did not take bath. He used to sleep on the verandah of somebody. He roamed like that on the previous Saturday to the day of occurrence. The old woman pave out that she

would cure the madness of the accused.'

It is important to note in the evidence of this witness, who is certainly competent to speak about the state of mind of the accused that the accused would not ask for food and would take only when offered and that he would not take bath. He was also wandering at random hither and thither. The village Padhan (P. W. 7) states :

'When the accused returned to my village from his father-in-law's house, he was roaming about uttering 'Ramnani'. He did not talk properly meaning he was talking incoherently.'

It is further the consistent story of all the witnesses examined on behalf of the prosecution that the accused complained of reeling of head on account of which he asked for medicine from Nagai. We may add also that this is an incident which appears to be not supported by any proof of a motive for murder. The learned Sessions Judge, has been constrained to find after discussing the evidence :

'So. while it will be quite right to hold that there is absence of proof of a motive, it will not be proper to hold that the crime was motiveless',

It is difficult to understand what exactly the finding means. Indeed, for the purpose of proving the offence or the incident itself, when there is direct evidence motive pales into insignificance but in the matter of the plea of insanity, absence of motive is a great circumstance which is always taken into consideration. I may quote here a passage appearing at page 22 top of Vol. 9 of Halsbury's Laws of England, Second Edition :

'The mere fact that an act or omission is without apparent motive is not by itself sufficient to establish insanity: But if there is other evidence of insanity, such a fact may be of importance as helping to prove insanity.'

5. Mr. G. B. Mohanty, appearing on behalf of the State relies upon a decision of the Patna High Court in the case of Emperor v. Gedka Goala, AIR 1937 Pat 363 (A) to develop his argument that where there is a mere possibility that the accused may have been insane at the time of commission of the act of murder it is not sufficient to bring the case within the language of Section 84 of the Indian Penal

Code. It was laid down in that case

'It is only unsoundness of mind which materially impairs the cognitive faculties of the mind that can form a ground of exemption from criminal responsibility, the nature and the extent of the unsoundness of mind required being such ss would make the offender incapable of knowing the nature of the act. or that he is doing what is wrong or contrary to law. But where there is a mere possibility that an accused may have been insane at the time of commission of the act of murder, then in the absence of proof in the affirmative of the kind of insanity referred to in Section 84 of the Indian Penal Code, the presumption 3s that the accused is responsible for his act.'

The finding in that case was to the effect that so far as the nature of the act was concerned, the accused not only was capable of knowing it bat did know it as well as any sane man. The accused was therefore conscious of the nature of the act and their Lordships were of the opinion that the accused must therefore be presumed to have been conscious of its criminality. In my opinion, this finding turned the table entirely as against the accused. The accused had made confession in tha case and the confession showed that the accused had a clear recollection of what he had done, Mr. Mohanty also relied upon a previous decision of the same High Court in the case of John Dowlat Moon v. Emperor AIR 1928 Pat 363 (B).

Their Lordships decided that in considering the plea of insanity the antecedents and the subsequent conduct of the man are no doubt relevant to show what was the state of the mind of the accused at the time the act was committed, but the state of the mind at the time of doing the act is the chief thins to be taken into consideration. Where the evidence given did not go to the length of showing that the accused could not be conscious of the nature of the act he was doing at the time of occurrence but only proved that the accused was in a bewildered state of mind a day or two before the day of the occurrence, the case did not come within the purview of Section 84 of the Indian Penal Code.

There is no dispute over the proposition in a case of insanity, the Judge should focus his attention on the state of the mind of the accused at the time of the

occurrence mainly even though the antecedents and the subsequent conduct are no doubt relevant. This case also was decided on its own facts. The evidence in the case was not sufficient to show that the accused could not be conscious or the nature of the act he was doing at the time of the occurrence.

On the contrary, the only inference deducible from the facts w;is that the accused was in a bewildered state of the mind a day or two before the day of occurrence. The above two decisions do not give us any guidance whatsoever jn respect of the problem that confronts us- That is, what is the standard of proof necessary for an accused to take shelter under the Provisions of Section 84 of the Indian Penal Code. Is it exactly the same standard of proof that is necessary on behalf of the prosecution to prove the guilt of the accused beyond all reasonable doubt.

Can it be said that in order that the accused mav be acquitted on the ground that he is able to make out a case under Section 84 I. P. C he must prove beyond all reasonable doubts that the unsoundness of mind that he suffered from was of such a nature that he was not able to know the nature of the act. or that it was contrary to law or wrong? The question came up before the Pull Bench of two High Courts. We will first of all refer to the Pull Bench decision of the Rangoon High Court in the case of Emperor v. U. Damapala AIR 1937 Rang 83 (C). Before discussing- the decision, it will be pertinent to quote the provisions of Section 105 of the Indian Evidence Act which is the main basis of argument on behalf of the prosecution. It runs as follows:--

'105. 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, or within anv 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.'

6. Exactly, the same question came up for decision before their Lordships in the Pull Bench case and their Lordships observed :

'Put shortly, the test is not whether the accused has proved beyond all reasonable doubt that he comes within any exception to the Indian Penal Code, but whether in

setting up his defence he has established a reasonable doubt in the case for the prosecution and has thereby earned his right to an acauittal.'

Their Lordships decided in construing the provisions of Section 105 of the Indian Evidence Act. The phrase burden of proof is used in two distinct meaning in the law of evidence, namely, the burden of establishing a case, and the burden of introducing evidence, in a criminal trial the burden of proving everything essential to the establishment of the guilt of the accused always lies upon the prosecution and that burden never shifts whatever the evidence may be during the progress of the case.

Their Lordships are absolutely cognizant of the position if the proposition stated above is laid down in this bald manner. It would be clearly impossible a task on the prosecution if it were required to anticipate every possible defence of the accused and to establish that each such defence could not be made out. It is only for the purpose of relieving the prosecution of this impossible task that Section 105 and Section 106 have been introduced. But, nevertheless, their Lordships are of the view that the duty of the accused under Section 105 is to introduce such evidence 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.

The burden of the issue as to the non-existence of such circumstances is then shifted to the nrosecution which has still to discharge the major burden of proving the guilt of the accused beyond reasonable doubt. If the Court, on a review of all the evidence is left in reasonable doubt whether the circumstances bringing the case within general exceptions do exist or not, the accused in the case of a general exception, is entitled to be acquitted. Their Lordships in deciding the case had relied upon the fundamental principles of criminal justice laid down in the famous case of Woolmington-V. Director of Public Prosecutions, (1935) AC 462 (D). Viscount Sankey L. C. in the course of his judgment in (1935) AC 462 (D) observed as follows:

'Just as there is evidence on behalf of the prosecution so there may be evidence on behalf of the prisoner which may cause a doubt as to his guilt. In either case,

he is entitled to the benefit of the doubt. But while the prosecution must prove the guilt of the prisoner, there is no such burden laid on the prisoner to prove his innocence and it is sufficient for him. to raise a doubt as to his guilt; he is not bound to satisfy the Jury of his innocence ..... .Throughout the web of the English criminal law one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner's guilt subject to what I have already said as to the defence of insanity and subject also to any statutory exception. If, at the end of and on the Whole of the case, there is reasonable doubt created by the evidence given by either the prosecution or the prisoner, as to whether the prisoner killed the deceased with a malicious intention, the prosecution has not made out the case and the prisoner is entitled to an acquittal. No matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law of England and no attempt to whittle it down C9?i be entertained."

The final conclusion or their Lordships is that this fs not inconsistent with the provisions of Section 105 of the Indian Evidence Act but rather is a great guide for the interpretation of the section. This Full Bench decision was followed by a Full Bench of the Allahabad High Court of seven Judges in the case of Parbhoo v. Emperor AIR 1941 All 402 (E). The Judges were divided by four to three, but. the majority view was in consonance with the principle laid down by their Lordships of the Rangoon High Court in the aforesaid Full Bench case.

We would also mention that the Patna High Court in a subsequent decision in the case Nara-yan Raut v. Emperor, AIR 1948 Pat 294 (F) laid down the same view. Agarwala, C. J. and Rama-swami, J. in that case decided that when the accused pleads the right of private defence it is not necessary that he must prove beyond reasonable doubt the existence of the circumstances on which the right is founded. The accused need merely make out a prima facie case. In other words, it is sufficient if he satisfied the Court of the probability of what he is called upon to establish.

It is not necessary for the accused to lead evidence if he is able to establish what he seeks to Drove by the evidence that is on record; that is to say, if he has been

able to elicit sufficient materials from the prosecution witnesses. If from that evidence it appears probable that the defence version is true, he is entitled to a decision in his favour even though he has not proved the truth of his version beyond reasonable doubt.

The same construction was also put on the provisions of Section 105 of the Indian Evidence Act. On a review of these three important decisions on the subject, we are convinced of the position that the accused is not called upon to prove the ingredients of the provisions of Section 84 of the Indian Penal Code beyond all reasonable doubt in. order to get an order of acquittal. It will be sufficient if on a review of all the evidence before the Court, the Court feels that the ingredients required under the section may reasonably be probable the accused is entitled to an acquittal.

Or. in other words, on a review of the entire evidence, if the Court entertains a reasonable doubt about the guilt of the accused, he is entitled to an acquittal in the case, on the cardinal principle of criminal justice which has not been affected by the special provisions of Section 105 of the Indian Evidence Act. The evidence that we have placed above along with the feature regarding the motive of the case leads us to conclude that the present accused is entitled to the benefit of Section 84 of the Indian Penal Code and is, therefore, acquitted on that ground.

But. as required under Section 470 of the Criminal Procedure Code, we definitely find that he committed the act as alleged by the prosecution. We would, therefore, direct the Sessions Judge of Mayurbhanj to take action under Section 471 of the Criminal Procedure Code regarding detention of the accused in safe custody and he should report the action taken to the State Government.

Das, J.

7. I agree.

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