

Khageswar Pujari Vs. the State of Orissa

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Court : Orissa

Decided On : Dec-06-1983

Reported in : 57(1984)CLT158; 1984(I)OLR142

Judge : D. Pathak, C.J. and ;D.P. Mohapatra, J.

Acts : Indian Penal Code (IPC) - Sections 6, 84 and 299; Evidence Act - Sections 106

Appeal No. : Jail Criminal Appeal No. 72 of 1980

Appellant : Khageswar Pujari

Respondent : The State of Orissa

Advocate for Def. : Ajit Rath, Addl. Standing Counsel

Advocate for Pet/Ap. : Krutibas Kar, Adv.

Disposition : Appeal allowed

Judgement :

D. Pathak, C.J.

1. The appellant Khageswar Pujari has been convicted by Additional District and Sessions Judge, Bhawanipatna under section 302 I. P. C. and sentenced to under go R. I. for life for murdering his daughter Basanti, aged about 2 1/2 years.

2. The facts of this case are telling and standing almost uncontroverted. The evidence on record as to the factum of infliction of injury by the appellant on the victim while she was feasting on some soaked rice in the morning of the date of occurrence is conclusive and of clinching nature.

3. As the appellant was not represented by any Counsel we engaged Mr. Krutibas Kar, Advocate to represent him at the state expense.

4. The only point that has been urged by the learned counsel for the appellant is that the appellant at the time of the occurrence was labouring under mental insanity covered by the general exception engrafted under section 84 of the Indian Penal Code. The learned counsel further submits that the Trial Court did not properly appreciate the evidence on record although it was the duty of the court to have considered all the factors and the relevant evidence attending the case in order to findout as to whether the provision of section 84 was attracted or not.

5. In order to appreciate the submission of the learned counsel for the appellant, it is better to have a look at the provision of section 84, I. P. C. which read ;-

'84. Act of a person of unsound mind Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind to incapable of knowing the nature of the act, or that he is doing what is either wrong or contrarv to law'.

Section 84 I. P. C. casts the burden on the accused to adduce evidence and prove that at the time of the occurrence his mental condition was such that he did not know what he was doing. In such a case, a duty is also cast on the court itself to find out from the materials on record, viz., the conduct of the accused, as to whether any doubt arises in the mind of the court that at the time of the occurrence the accused was not in a fit mental condition to have the requisite mensrea for the commission of the offence and that he did not have the element' of mans are required under section 299 of the Indian Penal Code. In this context, we may also refer to section 6 of the Indian Penal code. Section 6 so far as relevant, reads as follows :-

'6. Definitions in the code to be understood subject to exceptions :-

Throughout this code, every definition of an offence, every such definition or penal provision shall be understood subject to the exceptions contained in the chapter entitled 'General Exceptions' though those exceptions are not repeated in such definition, penal provision and illustration. ILLUSTRATION XX XX XX XX XX XX ' '

6. Section 6 I. P. C. carves out or stands in the nature of a proviso to Section-106 of the Indian Evidence Act and imposes an obligation on the court as well to consider the case of exceptions on its own in so far as it relates to the burden of proving legal insanity as the essential element of special knowledge as envisaged in Section 106 of the Evidence Act. If the case of the appellant comes within the purview of section 84, I. P. C. which is one of the provisions in Chapter IV of the General Exception of the Indian Penal code, the court is to give due consideration and find out as to whether at the time of the occurrence the appellant had any mental disability so as not to know what he was doing. In *Dayabhai Chhaganbhai Thakkar v. State of Gujrat*, A. I. R. 1964 Supreme Court, 15S3 their Lordships of the Supreme Court have summarised the principle of law in the following succinct and felicitous language in dealing with the doctrine of burden of proof in the plea of insanity

'The doctrine of burden of proof in the context of the plea of insanity may be stated in the following propositions:-

(1) The prosecution must prove beyond reasonable doubt that the accused of the offence with the requisite mensrea : and the burden of proving that always rests on the prosecution from the beginning to the end of the trial.

(2) There is a rebuttable presumption that the accused was not insane, when he committed the crime, in the sense laid down by 8-84 of the Indian Penal Code ; the accused may rebut it by placing before the court all the relevant evidence-oral, documentary or circumstantial, but the burden of proof upon him is no higher than that rests upon a party to civil proceedings

(3) Even if the accused was not able to establish consecutively that he was insane at the time he committed the offence, the evidence placed before the court by the accused or by the prosecution may raise a reasonable doubt in the mind of the court as regards one or more of the ingredients of the offence including mensrea of the accused and in that case the court would be entitled to acquit the accused on the ground that the general burden of proof resting on the prosecution was not discharged.'

7. Keeping the above principles in view, we may now scrutinise the evidence adduced by the prosecution on the aspect of insanity of the appellant.

P. W.2 Umasankar Pujari is a cousin of the appellant. In cross-examination this witness has stated that 5 to 6 months prior to the occurrence the appellant was behaving as an insane man. He has further stated that on the previous day of the occurrence the appellant was lying on dust on the hot sun and was roaming about in the street and that two years prior to the occurrence the appellant was insane and was brought to the hospital for treatment. It is further found from his evidence that the appellant was also moving about in the street in the dead of night. This witness lodged the F. I. R. where also he has indicated that since 8 to 10 days the appellant was behaving like a mad man.

P. W. 3 Nanda Pujari, is the father of the appellant. In cross examination this witness has stated that he did not see the actual assault on the deceased, but he thought as his son (the appellant) was insane, it would be he who killed the victim.

P. W. 5, Rama Pujari, is the wife of the appellant. She has stated in her evidence that in the last Baisakh on a Monday her daughter Basanti (deceased) was taking soaked rice and the witness was bringing some cow dung from the cow-shed. At that time the appellant came with an axe (M. O. I) and gave a stroke with that Axe on the head of Basanti as a result of which she died at the spot with bleeding injury. She has further stated that the father of the appellant came running to the place of occurrence and gave two to three slaps to him. Thereupon the appellant threw away the axe and ran away from the spot and he was subsequently caught. In her cross-examination she has stated that 8 to 10 days prior to the occurrence, the appellant, her husband, was behaving like a mad man and was taking a little

food and so they had taken astrological prosecution for his cure.

P. W. 8 Haraharl Naik is a co-villager of the appellant. It is a disinterested and independent witness. In cross-examination he has stated that the appellant was insane prior to the occurrence.

8. The evidence discussed above discloses that the appellant came suddenly and dealt an axe blow on the deceased. There is no motive to be found and unless the appellant was suffering from abnormality it was not expected of him to have behaved like that and kill his own daughter.

On a proper scanning of the evidence, we have no hesitation to come to the conclusion that it was doubtful as to whether the appellant was in a fit mental condition and had the malice propense mans are for the commission of the crime. The evidence adduced by the prosecution as scrutinised by me discloses that all probability the appellant did not have the proper balance of mind at the time of the occurrence.

9. Mr. Ajit Rath, the learned public prosecutor appearing on behalf of the state, very candidly submits that in view of the state of evidence brought on record, the learned Trial Court should have considered the question of the mental state of the appellant not during the trial but at the time of commission of offence on the basis of the evidence adduced by the prosecution,

10. For the foregoing reasons, we hold that the appellant at the crucial point, of time was not in a fit mental condition and was incapable of knowing the nature of the act or that he was doing what was either wrong or contrary to law. We are therefore of the firm opinion that the order of conviction and sentence passed against the appellant is not sustainable in law.

11. In the result we allow the appeal and set aside the order of conviction and sentence passed against the appellant. However in view of the provisions of sections 334 and 335 of the Criminal Procedure code, we are not in a position to direct his release forthwith. The appellant shall be detained in safe custody in Jail until the Civil Surgeon concerned certifies that he is fit enough to live in the society

and is no longer a security hazard to the society. The jail authority shall comply with the provisions of the Indian Lunacy Act, 1912 and the rules framed thereunder. The appellant may, however be handed over to his relatives or friend if an application is made to that effect by any such relative or friend, but he shall be so released only on proper security being furnished to the satisfaction of the sub-divisional Judicial Magistrate, Dharmgarh. The state shall take necessary steps to inform about this order to the relative of the appellant forthwith.

D.P. Mohapatra, J.

12. I agree.

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