

Brushabha Digal Vs. State

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Court : Orissa

Decided On : Feb-04-1993

Reported in : 75(1993)CLT839; 1993CriLJ3149

Judge : A. Pasayat and ;D.M. Patnaik, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 84, 54 and 302

Appeal No. : Criminal Appeal No. 358 of 1989

Appellant : Brushabha Digal

Respondent : State

Advocate for Def. : A.N. Mishra, Addl. Govt. Adv.

Advocate for Pet/Ap. : S.K. Sahu, Adv. on behalf of ;D.P. Dhal, Adv.

Disposition : Appeal allowed

Judgement :

A. Pasayat, J.

1. Brushabha Digal (hereinafter referred to as the 'accused') calls in question legality of his conviction punishable for an offence under Section 302 of the Penal Code, 1860 (in short, the 'IPC') and sentence of imprisonment for life as awarded by learned Sessions Judge, Phulbani.

2. Shorn of unnecessary details, prosecution case is that on 8-9-1988 at about 5.30 a.m. accused caught hold of the legs of Moli Digal (hereinafter referred to as the 'deceased'), a girl of two years of age, on the road and struck her on the ground as a result she sustained injury on the head and became senseless. Though she was admitted in the District Headquarters Hospital, Phulbani, she succumbed to injuries. The FIR was lodged at the Phulbani Town Police Station, investigation was undertaken and on completion thereof, chargesheet was submitted and the accused faces trial. The accused pleaded not guilty to the charges.

3. In order to further its case, prosecution examined ten witnesses, out of whom P.Ws. 2, 3 and 4 claimed to be the witnesses who had seen either the whole or part of the ghastly act. A plea of insanity to get protection under Section 84, IPC was advanced by the accused and in support of the plea, two witnesses were examined. One of them was the Doctor, who attended to the accused while he was detained in jail. Learned trial Judge did not accept the plea of insanity, held the accused guilty and convicted and sentenced as aforesaid.

4. Learned counsel for accused has highlighted evidence of D.W. 2 on the plea of insanity. Learned counsel for State, on the other hand, contended that there was inadequate material in support of the plea of insanity and, therefore, learned trial Judge was justified in rejecting the said plea.

5. Section 54 embodies the fundamental maxim of criminal law, i.e. 'actus non facit reum nisi mens sit rea' (an act does not constitute guilt unless done with a guilty intention). In order to constitute an offence, the intent and act must concur; but in the case of insane persons, no culpability is fastened on them as they have no free will (*furiosis nulla voluntas est*). The section itself provides that the benefit is available only when it is proved that at the time of committing the act the accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or, if he did not know it, that he did not know he was doing what was wrong. The crucial point of time for deciding whether the benefit of this section should be given or not is the material time when the offence taken place. If at that moment a man is found to be

labouring under such a defect of reason as not to know the nature of the act he was doing or that, even if he knew it, he did not know it was either wrong or contrary to law then protection under Section 84 is available. Behaviour, antecedent, attendant, and subsequent to the event may be relevant in finding the mental condition of the accused at the time of the event, but not that remote in time. It is difficult to prove the precise state of the offender's mind at the time of the commission of the offence, but some indication thereof is after furnished by the conduct of the offender while committing it or immediately after the commission of the offence. It would be hazardous to lay down in general principle material which would be sufficient to bring the existence of circumstances warranting application of Section 84. The position in law has been elaborately indicated in *Ajaya Mahakud v. State* (1993) 6 OCR 41.

6. In the case on hand, from the evidence of Doctor (D.W.2), it is clear that he had certified the accused to be unsound mind. He had occasion to treat the accused when he was lodged in jail after his arrest. He had also ascertained while collecting past history of the accused from the warders posted on duty that the accused was suffering from mental insanity and was not in a position to speak himself. Nature of the act committed, behaviour of the accused immediately prior to the occurrence some times throws light on the mental state of accused. These behaviours are not conclusive, but they certainly provide an insight to the mind of the offender. Mere absence of motive for a crime however atrocious cannot in the absence of proof of legal insanity bring the case within ambit of Section 84. The standard to be applied is whether according to the ordinary standard adopted by a reasonable man, the act was right or wrong. The question is whether accused was insane at the time of occurrence so as to attract the application of Section 84, is a question of fact to be decided on merits in each case on the facts of that case. On a conjoint reading of the evidence of the prosecution witnesses and giving our considerable attention to the evidence of D.Ws, we are of the view that the accused has been able to prove that protections under Section 84 are to be extended to him. Though he committed the act, by reason of unsoundness of mind was incapable of knowing nature of the act, that it was wrong or contrary to law. The accused shall be lodged at Circle Jail, Berhampur. He shall be treated for active symptoms at M.K.C.C. Medical College Hospital, Berhampur. For other

therapies the Psychiatrist appointed in the Circle Jail shall be consulted and the accused shall be kept under his treatment until he is certified to be mentally fit by him. It is open to any of the friends and relatives of the accused to move the learned Sessions Judge, Berhampur, Ganjam to deliver to him/her. If such a motion is made, the same shall be considered keeping the welfare of the accused in view.

The appeal is allowed.

D.M. Patnaik, J.

7. I agree.

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