Satya Devi Vs. the State

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Court : Punjab and Haryana

Decided On : Jan-21-1969

Reported in : AIR1969P& H387; 1969CriLJ1424

Judge : Gurdev Singh and; A.C. Koshal, JJ.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 465

Appeal No. : Criminal Appeal No. 859 of 1966

Appellant : Satya Devi

Respondent : The State

Advocate for Def. : D.N. Rampal, Assistant Adv.-General

Advocate for Pet/Ap. : Inderjeet Malhotra, Amicus Curiae

Judgement :

A.D. Koshal, J.

1. This appeal is an appeal by Shrimati Satya Devi, aged 40 years, wife of ram Partap and a resident of village Gurditpura in Police Station Sadar Nabha, against the judgment dated the 22nd of July, 1966, of Shri P. N. Thukral, Sessions Judge, Patiala convicting her of an offence under Section 302 of the Indian Penal Code and sentencing her to imprisonment for life and a fine of Rs.500.

2. We need not set out the prosecution case as we find that the trial held by the learned Sessions Judge is completely vitiated because the allegation as to the unsoundness of mind of the appellant was not investigated in accordance with the provisions of Section 465 of the Code of Criminal Procedure which runs as follows:-

' 465. (1) If any person committed for trial before a Court of Session or a High Court appears to the court at his trial to be of unsound mind and consequently incapable of making his defence, the Jury, or the fact of such unsoundness and incapacity, and if the jury or Court, as the case may be, is satisfied of the fact, the Judge shall record a finding to that effect and shall postpone fruther proceedings in the case and the jury, if any, shall be discharged.

(2) The trial of the fact of the unsoundness of mind and incapacity of the accused shall be deemed to be part of his trial before the Court.'

The section contemplates two stages of procedure. The first stage laid down is that it must appear to the trial Judge that the accused was of unsound mind and consequently incapable of making his defence. The second stage consists of an enquiry into the unsoundness of mind and incapacity of the accused. Where it does not appear to the Judge that the accused is of unsound mind and, therefore, incapable of makimg his defence it is not necessary, much less incumbment, upon the judge to adopt the procedure provided in the section but once his suspicions about the sanity of the accused are aroused or he is not absolutely certain of such sanity, he is bound, in our opinion, to follow the procedure contemplated by the second stage mentioned in the section. It is not enough for the Judge when circumstances exist such as would indicate that the accused may or may not be insane. It would be his duty in such a case, on the other hand, to try the question of sanity as laid down in section 465 and then to decide whethere the accused was or was not sane. This is the true interpretation of what that section lays down.

The circumstances in which the question of insanity was raised before the learned Sessions Judge in the present case may now be stated. On the 21st of July,1966, which was the date on which the trial was held, Shri Vijay Tewari, Advocate, who was appointed to defend the appellant at State expense, made the following

statement in Court:

'I have been engaged by the State to defend the accused. In the first week of July, 1966. I met the accused in the Central Jail, Patiala, in order to make instructions from her regarding her defence. I enquired from her as to whether she has any relations to whom I could write on her behalf and what instructions she wanted to give to me to any coherent reply and sasid that none was her mother and father, a number of times. She did not give me any instructions. From a perusal of the record I found that the accused had confessed her guilt in the Committing Court and so I enquired from her as to what stand she wanted to take regarding this confession but the accused did not give any reply.'

Immediately after this statement was made, the appellant was generally examined by the learned Sessions Judge in the presence of Dr. Dharsam Vir Sehgal, Incharge Civil Hospital, Nabha, who had performed the autopsy of Yugdopal, the victim in the case, whereafter Dr. Sehgal made the following statement:

'The accused has been generally examined by the Court in my presence. It is not possible for me to express any definite opinion regarding the mental condition of the accused. However, a mere look at her face shows that she is to some extent abnormal.'

The learned Sessions Judge then recorded the following order on the file:

'The accused has been examined generally. She is able to tell her name. When Shri Jagan Nath P. W. younger brother of her husband was called in the Court, the accused was able to identify him and said that he was her husband's brother. However, when asked as to what her age was, she replied that she did not know and when asked as to when she was married, she did not give any reply. When asked to identify her husband's brother, the accused folded her hands and addressing Jagan Nath said that he should forgive her. It appears from her general examination that the accused is a simpleton and she does not appear to be insane though she is helpless because neither her husband nor her children appeared to be interested in her or take any interst in her defence.'

and proceeded with the trial of the appellant without following the procedure contemplated by the second stage mentioned in section 465 of the Code of Criminal Procedure and in disregard of the implications of the statement made by Dr. Sehgal. The trial was concluded on the same day and the judgment was pronounced on the next day. In the course of the judgment, the learned Sessions Judge adverted to his order dated the 21st of July, 1966, above-quoted, remarked-

'The above view of mine that the accused was capable of making her defence was confirmed was confirmed when after the conclusion of the trial the accused gave rational answers to all the questions put to her when she was examined under section 342 of the Criminal Procedure Code. Seh even suggested a counter theory of her own accord that Yugdopal had died because he was run over by a cart and she was not to be blamed. She has also stated that she did not make a confession in the Court of the Committing Magistrate and was not guilty of the offence of which she has been charged.'

3. We are fully satisfied from the manner in which the learned Sessions Judge dealt with the question of the appellant's sanity, that he was not absolutely certain of her mental state being such as not to attract the provisions of section 465. In any case, it does appear that the existence of the circumstances related by Shri Tewari and the statement made by Dr. Sehgal provided enough material coupled with some of the conclusions arrived at by the learned Sessions Judge from the examination of the appellant and mentioned in the order dated the 21st of July, 1966, which should have created a very reasonable suspicion in the mind of the learned Sessions Judge about the sanity of the appellant and the least that he should have done was to obtain medical opinion about the mental condition of the appellant before holding that he was satisfied about her sanity. The provisions of section 465 do not embrace an idle formality but are calculated to ensure to an accused person a fair trial which cannot obviously be afforded to an insane person and non-observance of those provisions must be held to convert a trial into a farce. Courts must, therefore, guard against dealing with the matter of suspected sanity of an accused person in a perfunctory manner as such a course is bound to result in the trial Judge, more often than not, coming to an incorrect conclusion about the sanity of the accused before him. In the present case the appellant was

charged with a capital offence but she refused to give any instructions to Shri Tewari who also found that her replies to questions put to her by him were incoherent, irrelevant and repetitive. Again, Dr. Sehgal was of the opinion that the appellant meant that the doctor regarded her being a dement. Dr. Sehgal stated in categorical terms that it was not possible for him to express any opinion regarding the mental condition of the appellant even though she had been examined generally by the Court in his presence. The learned Sessions Judge came to the conclusion that the appellant was a simpleton but 'though she is helpless because neither her husband nor her children appeared to be interested in her or take any interest in her defence'. It may be that the reason given by him itself weighed that the appellant was not insane but only a simpleton but then that reason fill the lacuna which the trial suffers from by reason of the learned Sessions Judge not following the procedure envisaged by the second stage mentioned in section 465.

4. We are fortified in the opinion that we have above expressed by various authorities which we may now discuss. In Jhabbu v. Emperor, AIR 1920 All 354, the Counsel who represented the accused had prayed to the Sessions Judge that evidence might be taken on the question of the sanity or otherwise of the accused in view of certain materials indicating that the accused had been in custody before the commission of the alleged offence as a lunatic. It was held that the provisions of section 465 were obligatory on the Court and that as a preliminary to the hearing of evidence on the charge, the learned Sessions Judge should first of all have tried the plain issue whether or not the accused person as he stood before the Court was of unsound mind and consequently incapable of making his defence. The entire proceedings were regarded as vitiated because the question of soundness or unsoundness of the mind of the accused had not been tried as a preliminary issue.

In Pala Singh v. King Emperor of India 54 Pun Re 1905, the Magistrate, by whom the confession of the accused was taken, recorded a note of the accused was either the accused was mischievous or was under the influence of some drug or under the influence of some narcotic or was unwell. the learned Judge remarked that the accused, without being actually insane so as not to be aware of what he was doing, appeared to be decidedly a man of weak intellect. It was held that it

was incumbent on the Sessions, Judge to make an enquiry under section 465 of the Code of criminal Procedure before the commencement of the trial, which not having been done, the trial was found to be vitiated and a retrial was ordered.

In Santokh Singh v. Emperor, AIR 1926 Lah 498, the Committing Magistrate had reason to think that the appellant might have been incapable of making his defence by reason of unsoundness of mind and, after examining the Civil Surgeon, recorded an order that the medical evidence showed the accused to be sane. While convicting the accused, the learned Sessions Judge made the following observations with regard to this aspect of the matter:

'In this Court the accused has refused to plead at all assuming an appearance of imbecility. He would only roll his eyes about an gaze at the ceiling and refuse to answer any question that was put to him. I, therefore, recorded a plea of not guilty and also recorded all the evidence in the case * * * *

The Civil Surgeon who had the accused under the observation for some time has found that though of peculiar temperament he knew the nature of the deed he was committing. Before the Committing Magistrate the accused made a perfectly intelligent statement and I am of opinion that his imbecility in this Court was largely assumed.'

It was held by Campbell and Addison, JJ. that it was nevertheless incumbent on the learned Sessions Judge himself to hold another enquiry on the question whether the accused was capable of making his defence at the trial and to come to a decision before proceeding furhter. The neglect of the learned Sessions Judge was held to have vitiated the trial and a retrial was ordered with a direction that the same should commence with the proceedings required by section 465 of the Code of Criminal Procedure to be followed by a formal finding as to the capacity of the accused for making his defence.

In State v. Kochan Chellayyan, AIR 1954 Trav-Co. 435, the Jailor, who had charge of the accused, reported on the 7th of June, 1952, to the Sessions Judge that the accused was showing signs of insanity and requested for orders that the accused be hospitalised. The request was granted but it was directed at the same time that

the accused be produced in Court on the 9th of June, 1952, which was the date fixed for the commencement of the trial. On that date the Sessions Judge made a memorandum to the following effect:

'The accused was brought before the Court. The charge against him was read and explained. The accused was asked by me as to whether he had understood the same. He was giving repeated replies (P. W. 1 must be examined).

Apparently, he was pretending to be devoid of understanding. Then a series of questions was put to him. He was able to understand every question put to him and gave relevant answers. But when he was questioned about the charge, he would again give the above answer. As I was convinced that he was not mentally affected, I again questioned him about the charge when he gave the answers and the same were recorded.'

The deposition of one witness for the prosecution was then recorded and thereafter the case was adjourned with a direction to the Medical Officer. In charge of the hospital from where the accused had been brought for trial, to examine him and to report on his mental condition. The Medical Officer certified on the 10th of June, 1952, that the accused was not a lunatic and the trial was proceeded with and concluded. It was held in these circumstances that the Sessions Judge was not absolutely certain of the sanity of the accused and that the trial was vitiated by reason of the Sessions Judge not following the procedure envisaged by the second stage mentioned in section 465. A retrial was ordered.

In Chetu Mushar v. State, AIR 1954 Pat 129, it transpired during the cross-examination of the first witness for the prosecution that the accused had been insane and that his insanity continued upto the date of the trial. The learned Sessions Judge observed that the tiral could not proceed and further noted in the order-sheet that after having put certain questions to the accused, he was not able to understand fully as to whether the accused was insane or sane. He, therefore, directed that the accused should be placed under medical observations and that the Civil Surgeon should report about his mental condition. The trial was adjourned for a week. Later on, however, the learned Sessions Judge rejected the plea of insanity raised on behalf of the accused even without examining the Civil Surgeon

and without his report being placed on the record as legal evidence. Narayan J., who delivered the judgment of the Division Bench deciding the case in appeal, referred to AIR 1920 All 354 (supra), and then observed:

'This, in my opinion, is a much stronger case in which the procedure laid down by section 465 should have been carried out, inasmuch as, as I have already pointed out, both the witnesses on whose evidence the prosecution relies for bringing home to the accused the charge bringing home to the accused the charge under section 302, Indian Penal Code, have stated that the accused had been insane ever since the death of his son about two years back and that he is insane even now. It is difficult to conceive of a stronger case in which the procedure laid down by section 465 should be carried out, and it is regretable that the learned Sessions Judge has rejected the plea of insanity raised by the accused even without examining being placed on the record as a legal evidence in the case. This trial, therefore, stands vitiated, and the case has to be sent back for a retrial.'

5. From the above discussion we conclude that the trial of the appellant is vitiated by reason of the learned Sessions Judge not complying with the provisions of section 465 of the Code of Criminal Prcoedure. Accordingly we accept the appeal, set aside the conviction and the sentence and direct that the learned Sessions Judge. Patiala, shall hold a fresh trial according to law which should commence with the procedure laid down by section 465 of the Code of Criminal Procedure to be followedby a formal findidng as to the capacity of the appellant for making her defence. She will remain in detention and under medical observation until such fresh trial is held.

Gurdev Singh, J.

6. I agree.

7. Order accordingly.