Atrup Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Apr-17-2003

Reported in : 2003CriLJ4031; RLW2004(1)Raj22; 2003(3)WLC248

Judge : Shiv Kumar Sharma and; Fateh Chand Bansal, JJ.

Acts : Indian Penal Code (IPC) - Sections 84 and 302

Appeal No. : D.B. Cr. Appeal No. 644 of 1999

Appellant : Atrup

Respondent : State of Rajasthan

Advocate for Def. : Rajendra Yadav, Public Prosecutor

Advocate for Pet/Ap. : Biri Singh, Adv.

Disposition : Appeal dismissed

Judgement :

Sharma, J.

1. Appellant Atrup has been convicted by the learned Additional Sessions Judge Bayana for having committed an offence under Section 302 IPC in that on August 3. 1996, he gave a blow with axe on the head of Bahadur who under the impact of the blow died. Autopsy on the dead body of Bahadur was conducted by Dr. Hari

Mohan Gupta (PW.13) on August 4, 1996. He noticed the following injury :

Incised wound 10 cm. x 2 cm. over occipital and left parietal region. Brain matter came out of bones. On internal examination the autopsy surgeon found under the seat of the injury, fracture of occipital and left parietal bones.

The appellant was sentenced to suffer imprisonment for life and fine of Rs. 500/-in default to suffer rigorous imprisonment for fifteen days.

2. Prom the material on record it is established that the appellant had no motive behind the alleged criminal act and immediately after inflicting the injury, he jumped into well. Investigating Officer Vijay Singh (PW. 14) in his cross examination admitted that while in police custody the appellant had dashed his head to the iron rods of the cell and a case bearing No. 507/96 under Section 309 IPC was registered against him. On the strength of these established facts a plea under Section 84 IPC was raised before the learned trial court on behalf of the appellant, but was rejected.

3. In the instant appeal also it was contended by the learned counsel appearing for the appellant that the appellant by reason of unsoundness of mind was incapable of knowing the nature of the act therefore in view of Section 84 IPC, lie did not commit any offence.

4. The burden of establishing the plea of insanity is by virtue of Section 105 of the Evidence Act on the accused. Their Lordships of the Supreme Court in Dahyabhai Chhaganbhai Thakkar v. State of Gujrat (1), indicated that evidence that falls short of proving insanity may still raise a reasonable doubt about the requisite intention. It was observed as under-

'The doctrine of burden of proof in the context of insanity may be stated thus-

(i) The prosecution must prove beyond reasonable doubt that the accused had committed the offence with the requisite mens rea: and the burden of proving that always rests on the prosecution from the beginning to the end of the trial:

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

(iii) Even if the accused was not able to establish conclusively 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 ingredient of the offence, including means rea 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',

5. Unsoundness of mind as contemplated by Section 84 IPC. is legal insanity which requires that congnative faculties of the accused are such that he does not know what he has bone or what will follow from his act. In the instant case, from the established facts it appears that the appellant made two attempts to commit suicide, first was immediately after the incident when he jumped in to the well and the second was after his arrest when he dashed his head to the iron rods of the prison. But the question is whether it was legal insanity so as to give the appellant the benefit of Section 84 ?

6. In our opinion legal insanity of the appellant is negatived by the following circumstances :-

(a) He entered into the place of incident concealing the axe under his clothes and after inflicting injury on the head of Bahadur, he fled away.

(b) The second circumstance was that after his arrest he disclosed that he had hidden the axe under the soil near the hill and on the basis of his disclosure statement the axe got recovered from the said place by the Investigating Officer.

(c) The third circumstance was that in his explanation under Section 313 Cr. P.C. he stated that he was falsely implicated in the case because of group rivalry and

the prosecution witnesses deposed against him as his relations with them were inimical. All the questions put to the appellant were properly answered by him.

All these circumstances show that the appellant was not insane, his cognitive faculties were not lost and was not incapable of knowing the nature of his act.

7. That takes us to the alternative submission of the learned counsel that the act of the appellant comes under the purview of Exception IV to Section 300 IPC as he only inflicted single blow on the person of the deceased and did not act in a cruel or unusual manner and he had no enmity with the deceased.

8. In Hukam Chand v. State of Haryana (2), their Lordships of the Supreme Court indicated that where the accused came at the place of incident with a pharsa and inflicted a severe blow on head of the deceased which resulted in his death and according to doctor's opinion death was due to crane cerebral damage consequent upon being hit by a sharp cutting weapon and the said injury was sufficient in the ordinary course of nature to cause death, conviction under Section 302 1PC was justified. Plea for conversion of conviction to that under Section 304 Part D IPC was disallowed.

9. In the case on hand also the appellant came at the place of incident with an axe and inflicted single blow on head of Bahadur who under the impact of the blow died. The blow was so severe that it caused fracture of both occipital and left parietal bones and brain matter came out of bones. The injury measuring 10 cm x 2cm by a sharp cutting weapon, as per opinion of Dr. Hari Mohan Gupta (PW. 13) was sufficient in the ordinary course of nature to cause death. Under these circumstances we find no merit in the submissions of the learned counsel for the appellant. In our considered view in the facts of the instant case clause 3rely of Section 300 IPC is attracted.

10. Explaining the essential conditions for applicability of clause 3rdly of Section 300 IPC, in view of the test laid down in Virsa Singh v. State of Punjab (3), their Lordships of the Supreme Court propounded as under :-

'Under clause thirdly of Section 300 IPC. culpable homicide is murder, if both the following conditions are satisfied i.e. (a) that the act which causes death is done with the intention of causing death or is done with the intention of causing a bodily injury : and (b) that the injury intended to be inflicted is sufficient in the ordinary course of nature to cause death. It must be proved that there was an intention to inflict that particular bodily injury which, in the ordinary course of nature, was sufficient to cause death viz. that the injury found to be present was the injury that was intended to be inflicted. For cases to fall within clause thirdly, it is not necessary that the offender intended to cause death, so long as the death ensures from the intentional bodily injury or injuries to cause death in the ordinary course of nature. According to the rule laid down in VIRSA SINGH case even if the intention of the accused was limited to the infliction of a bodily injury sufficient to cause death in the ordinary course of nature, and did not extend to the intention of causing death the offence would be murder, illustration (c) appended to Section 300 clearly brings out this point. The test laid down by VIRSA SINGH case for the applicability of clause 'thirdly' is now ingrained in our legal system and has become part of the rule of law.'

11. For the reasons stated above, we do not see any infirmity in the impugned judgment of the learned trial judge in convicting and sentencing the appellant under Section 302 IPC.

(12). The appeal being devoid of merit stands dismissed.