

Digendra Nath Roy Vs. the State

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Court : Kolkata

Decided On : Nov-28-1967

Reported in : 1970CriLJ529

Judge : R.N. Dutt and; N.C. Talukdar, JJ.

Appellant : Digendra Nath Roy

Respondent : The State

Judgement :

N.C. Talukdar, J.

1. This appeal is against an order dated the 31st July 1964 passed by Shri B. Basak, Addl. Sessions Judge, Jalpaiguri, convicting the accused-appellant under Sections 302 and 307 of the Indian Penal Code and sentencing him under the former section to undergo imprisonment for life and under the latter one to undergo rigorous imprisonment for five years, sentences to run concurrently.

2. The prosecution case unfolds a sad and sordid story of a father killing his child, an infant-in-arm and also attempting to kill his wife and another minor son. Digendra alias Dwijendra Nath Roy is the son of one Kimsundar Roy (P. W. 11). He was living with his wife and two children in separate mess but in the same house with his father and stepmother at Madhya Nararthali. On the 28th September 1963 in the evening the accused-appellant re-, turned home, took his

meals and went out again towards the village Harimandir for participation in the distribution of prosad and thereafter spent the night at the house of a friend. Next morning, namely, on the 29th September 1963 he came back home and after resting for some time he went to his father's portion of the house at about 8 or 9 A.M. when his parents were frying puffed rice in the kitchen. The accused pressed for the return of his money which was given to his father as loan and when P. W. 11 refused the accused is stated to have enquired as to how would he then feed his children. To that P. W. 9, Baharmani, who is the stepmother, said that if he was unable to feed his children, he should kill them and being so told, the accused drew out a beki dao from the wall and started sharpening it. At that time he asked his wife Fuleswari to take her bath and then boil the rice. Fuleswari took her daughter aged about 6 months on her lap and also her minor son by the hand and started proceeding towards the river for her bath. The accused then called her back and when she came near him, he suddenly caught her and tried to assault her. In her attempt to free herself from the clutches of the accused during this scuffle the baby daughter fell down and she was at once dealt with two murderous blows by the accused--one on the right cheek and another on the abdomen as a result whereof the baby died. In the meanwhile, P. W. 1, Fuleswari having extricated herself from the clutches of the accused, started running towards the east--all the while being chased by the accused and when she came near a well, her son Paresh alias Kandura, who is aged about 4 years and was standing over there, was struck on the neck by the appellant with the beki dao causing bleeding injuries. Fuleswari continued to run raising alarm when the accused succeeded in catching hold of her hair. She extricated herself but the accused caught hold of her sari, which was the only thing she had on at that time. Frightened of death she left the sari and started running stark naked. The accused finding that she was going out of his clutches, threw the beki dao towards her and the same caused bleeding injuries on Fuleswari's neck. In the meanwhile the alarm raised by P. W. 1 had attracted the attention of a neighbour close by, namely, Dharani Thakur (P. W. 3) who came out of his house and saw Fuleswari in that condition and the accused chasing her with a beki dao in his hand. Dharani cried out to Sushen (P. W. 4), who was at the time living in the house of Bhaben (P. W. 14), a next door neighbour, to come out. When Sushen opened the door Fuleswari managed to get

in and the door was closed, thereby the accused could not enter therein . Dharani found the injured boy running and crying and took him to Bhaben's house, Bhaben's wife gave a cloth to Fuleswari to cover her embarrassment. The accused in the meanwhile fled away towards the south due to the alarms raised. Being attracted by the noise, one Sashi Mohan Roy (P. W. 12) and Subal Chandra Roy (P. W. 2), who is the son-in-law of P. W. 11 and who lodged the first information arrived at the place of occurrence and Fuleswari narrated the incident to Bhaben's wife and also to the abovementioned Sushen, Sashi Mohan, Subal and Dharani. Thereafter, they proceeded in a body to the house of the accused along with the boy whose injury was bandaged. The boy was unfortunately still bleeding and thereupon he was sent to the house of P. W. 1's uncle and therefrom to the hospital at Kamakshya-guri where Fuleswari as well as her son were treated by the doctor. The party upon entering the house of the accused-appellant found the baby daughter lying dead in the courtyard and further found that P. W. Section 9 and 11, namely, Baharmani and Kimsundar, were absent. The chowkidar came and took charge of the dead body of the child and also the Anchal Pradhan; Subal left for the Kamakshya-guri police-station and lodged the first information there (Ext. 1). The accused was not found in the village then; but towards the evening he was apprehended near his house by Mahendra (P. W. 8) and others after being surrounded. An A. S. I. of the Kamargram police-station came to the place of occurrence on the next morning and took charge of the accused and the dead body. The accused made a statement to him and produced the beki dao. After an inquest, the dead body was sent to the Alipurduar hospital for post-mortem examination. Upon completion of the investigation, the charge-sheet was submitted against the accused under Section 302 of the Indian Penal Code on the 23rd March 1964. The committing Magistrate thereafter sent the accused up to the court of session under Section 302 of the Indian Penal Code and there an additional charge under Section 307 of the Indian Penal Code was framed and the accused stood his trial under both the charges, namely, Sections 302 and 307 of the Indian Penal Code.

3. The defence case inter alia is that the accused-appellant is not guilty and he did not commit the murder. The further defence as would appear from the accused's statement under Section 342, Cr. P. C. and also the trend of the cross-

examination is that the accused suffers from epileptic fits and at the material time he had no sense and therefore he was incapable of knowing the nature of his act or that he was committing something which was wrong or contrary to law.

4. Nobody has appeared on behalf of the accused-appellant.

5. Mr. Amal Chandra Chatterjee, Advocate, appearing on behalf of the State, has taken us through the entire evidence and made his submission on the basis thereof. He has contended inter alia that the evidence on record is clear and cogent and establishes the offence charged and the plea of unsoundness of mind that has been raised under Section 84 of the Indian Penal Code has not been proved by the nature of the evidence on record in general and that of the medical evidence in particular. In any event, he has urged that the onus that was on the accused person under Section 105 of the Indian Evidence Act, has not been discharged in order to bring the case of the accused within the ambit of Section 84 of the Indian Penal Code.

(After discussing evidence his Lordship proceeded):

6. Against the background of the evidence as traversed above, we will now proceed to examine the charges and find whether the same has been established beyond reasonable doubt. But before we do the same we have to consider and determine the material point that has been raised on behalf of the defence as to whether in the facts and circumstances of the case, the accused who was stated to be of unsound mind was protected under the provisions of Section 84 I.P.C. It was urged specifically by the defence that the accused was not a normal man and had often epileptic fits; that at the time of the occurrence he had no capacity, because of his unsound mind, to distinguish between right or wrong; and that his mental faculties were impaired to such an extent that he was unable to understand as to what he was doing. This is a point which goes to the very roots of the entire case and if it succeeds, it will be a sufficient defence to both the charges under Sections 302 and 307 I.P.C.

7. Section 84 I.P.C. lays down that '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'. It deals with the deficiency of will due to weak intellect. The concept incorporated in the said section is as old as the hills. Jurists have given various reasons for the exemption of lunatics or of persons of unsound mind from criminal responsibility. It has been said that a mad man is best punished by his own madness--*Furiosus Furore Suo Puniter*. As has been observed by Blackstone 'the second case of deficiency in will which excuses from the guilt of crimes arises also from a defective or vitiated understanding, namely, in an idiot or a lunatic, for the rule of the law, as to the latter, which may easily be adopted also to the former is that *Furiosus Furore Suo Puniter*'. It has further been laid down by the jurist that a mad man has no will--*Furiosus Nulla Voluntas Est*. He is therefore in all ages an object of commiseration, but as society has to be protected even against the attacks of a maniac, the Code of Criminal Procedure provides for his detention to prevent mischief as in Sections 464 and 475 Cr. P. C. Such detention, however, is not his sentence.

8. The legal conception of insanity differs considerably from the medical conception. It is not every form of insanity or madness that is recognised by law as a sufficient excuse.

9. The most elaborate and authoritative exposition of the Law of Insanity in common Law is embodied in Daniel M' Naghten's case, (1843) 8 ER 718, in the answers of the fifteen judges given in June, 1843 to the questions put to them by the Lords, in consequence of the popular alarm provided by the acquittal of Daniel M' Naghten. The answers given by the Judges in the said case have been taken, on all hands, to be an authoritative statement of the Law of England on the subject of insanity as a bar to criminal responsibility. At page 722, the learned Judges laid down inter alia that 'every man is to be presumed to be sane and to possess a sufficient degree of reason to be responsible for his crimes, until the contrary be proved to their (Jury's) satisfaction; and that to establish a defence on the ground of insanity, it must be clearly proved that, at the time of committing the act, the party 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 know it, that he did not know he was doing what was wrong' Section 84 I.P.C. has

incorporated this definition of unsoundness of mind. It is recognised on all hands as a good excuse. A reference in this connection may also be made to the charge to the jury delivered by Mr. Justice M' Cardie in the well-known trial of Ronald True at the Central Criminal Court, Old Bailey, in May, 1922 reported in the Notable British Trials, Volume on Trial of Ronald True at page 246. It has thrown some revealing light on the subject and is inter alia as follows: 'The law assumes that a man is prima facie sane; he must satisfy you otherwise if he desires to escape the consequences of a serious crime. The English law is complex both in civil and criminal cases with regard to insanity ...The foreign codes are simpler. The language there used is broader; wider discretion is given to tribunals. Here we are concerned with the Criminal Law of England by which you and I are bound. It is plain, in my opinion, that insanity from a medical point of view, is one thing; insanity from the point of view of criminal law is a different thing. Doctors exist to cure physical and mental ills. Juries and judges exist to guard the life and property and the welfare of society. There are some things which plainly are not insanity ... Mere eccentricity is not of itself insanity ... At one time in the history of the criminal law in this country, insanity was no defence... The law, I am glad to think, has progressed since then, for all law must progress or it must perish in the esteem of men. We have now to ascertain the law as it stands today and that law was considered eighty years ago by a great body of Judges in 1843 in a case M' Naghten, (1843) 8 ER 718 which has so often been mentioned before you in this Court'. As the presumption of sanity, it has been observed in Halsbury's Laws of England, 3rd. (Simonds) Edition, Vol-29, at p.-419 that 'every man is presumed to be sane until the contrary is proved and this presumption holds as well in civil as in criminal cases'. As to insanity, it has further been observed in Halsbury's Laws of England, 3rd. (Simonds) Edition, Vol-10, at page 287 that 'where it can be shown that a person at the time of his committing or omitting an act, the commission or omission of which would otherwise be criminal, was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act or omission or as not to know that what he was doing was wrong then such a person is not in law responsible for his act'. Regarding persons of unsound mind, the same principle has been reiterated after an appraisal of the abovementioned cases, as well as some others, in Russel on Crime, 11th. Edn. at page 109, that

'all persons who have reached the age of discretion (fourteen years) are presumed to be sane, and criminally responsible and in cases where a person subject to attacks of insanity has lucid intervals, the law presumes the offence of such persons to have been committed in a lucid interval, unless it appears to have been committed in the time of his distemper. In the older cases it was stated that it lay on the accused to prove that he was insane at the time of commission of an offence so as not to be liable to punishment as a sane person. But the modern rule is not so strict since the case of 1935 AC 462, in 1935 and it is now established that the prisoner need do no more than adduce evidence which raises in the minds of the jury a reasonable doubt as to his sanity'. In the well-known case of Woolmington v. Director of Public Prosecutions 1935 AC 462, at p. 481 Lord Chancellor Viscount Sankey, in concurrence with the other Law Lords, said that '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'. The Lord Chancellor proceeded to observe that '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 can be entertained'. The above observations appear to have been somewhat modified in the case of Mancini v. D. P. P. reported in 1942 AC 1, wherein Lord Chancellor Viscount Simon observed inter alia that 'Woolmington's case was one in which the defence to the charge of murder was that of pure accident in circumstances not alleged to amount to criminal negligence. The prisoner gave evidence to that effect and my noble and learned friend Lord Sankey lays it down that if the jury are either satisfied with his explanation or upon a review of all the evidence, are left in reasonable doubt whether, even if his explanation be not accepted, the act was unintentional ... the prisoner is entitled to be acquitted'. In the case of Chankau v. Queen 1955 AC 206, the Judicial Committee observed that 'in cases where the evidence discloses a possible defence of self-defence, the onus remains throughout on the prosecution to establish that the accused is guilty of the crime of murder and the onus is never upon the accused to establish his defence any more than it is for him to establish provocation or any other defence apart from insanity.

11. The same is substantially the principle underlying the Law in India on the subject as embodied in Section 84 of the I.P.C. and Section 105 of the Indian Evidence Act. According to illustration (a) of Section 105 of the Indian Evidence Act the onus of establishing the plea under Section 84 I.P.C. rests on the accused. The burden of proving the existence of circumstances bringing the case under Section 84 I.P.C. is thrown on the accused and Section 105 of the Indian Evidence Act directs that 'the court shall presume the absence of such circumstances'. In order that Section 84 I.P.C. may come into play it is to be established that the accused is of unsound mind and his cognitive faculties are so impaired that he did not know the nature of the act done by him or that what he is doing is either wrong or contrary to law. In this connection it will be pertinent to consider the several decisions of the Supreme Court on this point. In the case of *State of Madhya Pradesh v. Ahmaddullah*- reported in : [1961]3SCR583 , it has been observed that 'the crucial point of time at which the unsoundness of mind as defined in Section 84 I.P.C. has to be established is when the act was committed ...The burden of proof that the mental condition of the accused was, at the crucial point of time, such as is described by Section 84 I.P.C, lies on the accused who claims the benefit of this exemption'. This was also a case of epileptic insanity. In the case of *Dhyabhai Chhaganbhai Thakkar v. State of Gujarat*, reported in : 1964 CriLJ472 , the Supreme Court has again observed that 'it is fundamental principle of criminal jurisprudence that an accused is presumed to be innocent and, therefore, the burden lies on the prosecution to prove the guilt of the accused beyond reasonable doubt. The prosecution, therefore, in a case of homicide shall prove beyond reasonable doubt that the accused caused death with the requisite intention described in Section 299, of the Penal Code. But under Section 105 of the Evidence Act the burden of proving the existence of circumstances bringing the case within the exception lies on the accused; and the court shall presume the absence of such circumstances. Under Section 105 of the Evidence Act, read with the definition of 'shall presume' in Section 4 thereof, the Court shall regard the absence of such circumstances as proved unless, after considering the matters before it, it believes that the said circumstances existed or their existence was so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that they did exist'. It has again been observed

by the Supreme Court in the case of Bhikari V. State of Uttar Pradesh, reported in : 1966 CriLJ63 , that 'Section 84 I.P.C. can be invoked by the accused for nullifying the evidence produced by the prosecution. This he can do by establishing that he was at the relevant time incapable of knowing the nature of the act or that what he was doing was either wrong or contrary to law ...Every person is presumed to know the natural consequence of his act. Similarly every person is also presumed to know the law. The prosecution has not to establish these facts. It is for this reason that Section 105 of the Evidence Act placed upon the accused person the burden of proving the exception relied upon by him.'

12. It has been contended in this connection by the defence that the prosecution could not really prove any motive as to why the said offence was committed by the accused-appellant and as such it appears prima facie that the accused, unless he was of an unsound mind, could not back down his own child and attempt to kill his wife and the other son. We must hold, however, that mere lack of proof by prosecution of a motive for offence cannot be substitute for positive proof required of the defence. In this connection we refer to the case of Attorney General for the State of South Australia v. John Brown reported in 1960 A.C. 432, at p. 442 of the said report, certain passages in the summing up of Mr. Justice Abbot, the trial Judge, have been given as follows: 'Gentlemen, throughout the centuries of civilisation crimes have repeatedly been committed without any apparent or discoverable motive. Theft is one of the reasons why, in our childhood, we were taught never to put temptation in anybody's way and what would be temptation for another man, might be no temptation whatsoever to us. You may, perhaps, remember the words of Shakespeare--'How oft the sight of means to do ill deeds makes ill deeds done'. Lord Tucker in delivering the opinion of the Privy Council refused to accept the presumption of law indicated in the High Court's judgment that uncontrollable impulse is a symptom of insanity and observed as follows: 'But where the whole case for the defence is based upon the accused having a particular form of mental disease such as schizophrenia, the nature and symptoms of which are known to psychiatrists but knowledge of which cannot be attributed to a jury, the law will not step in to instruct a jury in the absence of medical evidence as to the 'true operation of uncontrollable impulse as a possible symptom of insanity of a required kind and degree'.' We hold therefore, that the standard of

proof required by the law of India under Section 84 I.P.C. read along with the provisions of Section 105 of the Evidence Act, is not any the less, and that a mere lack of proof by the prosecution of a motive for the offence cannot be a substitute for the positive proof required of the defence. In the present case the evidence does not fulfill the onus which was on the accused to establish insanity. We further refer to the recent case of Kannakunnummal Ammed Koya v. State of Kerala AIR 1967 Ker 92, wherein Mr. Justice Anna Chandy and Mr. Justice M. Madhavan Nair, have held that to earn exemption under Section 84 I.P.C. defence has to prove insanity of accused at the time of the offending act and that fear complex, excitement or irresistible impulse with loss of self-control, even if proved in a case, affords no defence to a crime under the Indian Law. They have further held that the burden of proving existence of circumstances bringing case under Section 84 I.P.C. lies on the accused and the court must presume absence of such circumstances.

13. To put it in a short compass, the essential ingredients of Section 84 of the Indian Penal Code, are in the first place with the accused. Before he can be entitled to the benefit of Section 84 I.P.C. he must establish that at the time of committing the act, he was Non Compos Mentis--not of a sound mind. If he does not succeed in this preliminary issue, the plea must fail. In the second place, even if, the accused was of unsound mind he must prove that the said unsoundness of mind was of a degree and nature to fulfil one of the tests as laid down in the said section, namely, that by reason of such unsoundness of mind he was incapable of knowing the nature of the act or that he was doing what is either wrong or contrary to law.

14, Let us now test the evidence on the point in the light of the principles mentioned by us above. (His Lordship then discussed the evidence and proceeded:)

15. In view of the said evidence, although in the first blush it may appear that a father would not kill his own daughter and injure his wife and a son until he went berserk, but nonetheless first impressions alone will not do. In order to get the benefit of Section 84 of the Indian Penal Code the essential ingredients thereof

must be satisfied and having traversed the evidence on record, we are of the opinion that it cannot be said that it is one of those cases which come clearly within the ambit of Section 84 I.P.C. The evidence on record, fails not only to establish the most material point that the accused was insane or was of unsound mind at the time of committing the offence but, on the other hand, the body of evidence adduced in this behalf by the prosecution rules it out. At best it establishes that the accused-appellant is a diseased person and undergoes epileptic fits. But it does not appear on the evidence on record that he had any such fit on that day immediately before or after the occurrence or during the period when he was absent from the place of occurrence and before his arrest in the evening on the date in question. It is also shrouded in darkness. Therefore although one may have some sympathies for the accused, the same cannot however be sustained upon ultimate analysis. It is said that law is good but justice is better. But it is also true that justice must be in accordance with law. Therefore although the incident may after all have been due to an outburst of the accumulated frustration of an unfortunate person, who was dogged by ill-luck at every step, we are constrained to hold that he is not entitled to the protection under Section 84 of the Indian Penal Code.

16. We will now enter into the merits of the case and take up for our consideration the charge under Section 302 I.P.C. in the first instance. In order to establish the same, the prosecution has got to prove in the first place that the death of the child has taken place; secondly, that such death has been caused by or in consequence of the act of the accused-appellant; and thirdly, that the said act was done with the intention of causing death or it was done with the intention of causing such bodily injury as the accused knew that it was likely to cause death or was sufficient in the ordinary course of nature to cause death or it was so imminently dangerous that it must, in all probability, cause death, or such bodily injury as was likely to cause death.

17. As to the death of the infant daughter of the accused-appellant, it is not challenged. P.W. 21 Kanti Ranjan Das, A.S.I, of Kumargram Police Station, proceeded to the place of occurrence on the morning following the 29th September, 1963, and found the body of the dead girl and held an inquest on it in

presence of Dharani Chatterjee, Mutaru Roy, Har Kanta Roy and others on the identification by P.W. 1, the mother. He sent the dead body for post-mortem examination through a constable (P.W. 22) and the post-mortem examination was held by P.W. 5. The dead body was identified by P.Ws. 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 19, 20 and 22. These witnesses, therefore, clearly prove the death of the infant daughter of the accused-appellant on the 29th September, 1963. As to how she died, P.W. 5, who held the postmortem examination on the dead body of the child, found several injuries:

1. 4' x 1' x bone deep incised wound on the right cheek.
2. 3' x 2' x cavity deep incised wound on the left side of the abdomen.

And on dissection he found the 9th and the 10th ribs cut along injury No. 2. Death, in his opinion, was due to shock as a result of the injuries which were homicidal and ante-mortem in nature. In any event, the said evidence of P.W. 5 establishes beyond reasonable doubt that the baby daughter of the accused-appellant died because of the injuries found on her person by the said witness. The doctor further stated that those injuries, as found by him, were caused by a heavy and sharp-cutting weapon like a beki dao like Ext. I. The 'Corpus Delecti' therefore is well established.

18. The next point for determination is as to who inflicted the said injuries which caused the death of the baby. P.W. 1 Fuleswari, P.W. 9 Baharmani and P.W. 11, Kimsunder are the material witnesses on the point and they have unequivocally stated that it was the accused-appellant who inflicted the said injuries in the manner mentioned above. There is no reason to disbelieve this body of evidence. Some criticism was made that P.W. 9 being the step-mother, may have been interested, but the same does not hold good so far as the evidence of P.Ws. 1 and 11 is concerned. They have not been even cross-examined on the point and there is no reason as to why their evidence should be brushed aside. As the doctor has held that the death of the baby was due to the injuries described above, it can be safely concluded that the death of the baby was caused by the injuries inflicted on her by the accused-appellant as deposed to by P.Ws. 1, 9 and 11.

19. The question that now remains for consideration is whether the accused-appellant had any intention to cause the death of the infant daughter or had the intention of causing such bodily injury as the offender knew it to be likely to cause her death or that it was done with the intention of causing bodily injury sufficient in the ordinary course of nature to cause death or that the accused knew that it was so imminently dangerous that it must in all probability, cause death and committing such act without any excuse. We have been taken through the evidence on record and it is difficult for us to hold, on the evidence on record and in the peculiar facts and circumstances of the case, that there was any such intention or knowledge. Undoubtedly, there was a number of injuries and the seat of the injuries was on the neck, but it cannot from that alone be safely concluded in view of the other circumstances on record, that the accused-appellant had such knowledge. The learned Addl. Sessions Judge in order to hold the accused appellant guilty under Section 302 of the Indian Penal Code has concluded that he was so guilty because the nature of the injuries was such that it can be concluded safely therefrom that the accused had either the intention to cause the death of the child or had the knowledge that death was the most likely result of such act. There is no finding at all that the person committing the act knew that it was so imminently dangerous that it must, in all probability, cause death. It was more so incumbent in view of the peculiar facts and circumstances of the case. The accused was an epileptic patient. Evidence further is that he was the head of a hungry family and was buffeted by misfortune. P.W. 1 Fuleswari herself in her evidence has unequivocally stated that the accused and the members of his family were passing their days in great difficulty due to want of money and that 2 or 3 days before the occurrence they could not even have their normal meals. She further stated that the accused could not, feed them properly and he sometimes used to to off his head and during this period he himself could not eat and used to be silent. Coupled with this is the evidence of P.Ws. 9 and 11 that the step-mother advised the son to kill his family if he could not feed them properly and immediately thereupon the son, who is the accused-appellant, brought out a beki dao and started assaulting the members of his family. It is difficult for us to hold in the circumstances that the accused had any such requisite intention or knowledge in order to bring home the charge under Section 302 of the Indian Penal Code. We find however that the

evidence on record is sufficient enough to establish a charge under Section 304 Part I of the Indian Penal Code.

20. As to the next charge under Section 307 of the Indian Penal Code that on or about the same date and at the same time the accused caused hurt to his son and to his wife with such intention and knowledge and under such circumstances that if by those acts he had caused the death of those two persons, he would have been guilty of murder and thereby committed an offence under Section 307 of the Indian Penal Code, the evidence on the point can be put in a short compass. The doctor (P.W. 17) has deposed that on the 29th September, 1963, he examined Paresh alias Kandura aged about 3 years and he found several injuries which we have already discussed above. According to him, the said injuries were caused of a sharp-cutting weapon, as for example, a beki dao like Ext. I and he further stated that the neck is a vital part of the body and had the blows been struck with greater intensity, they might have caused the death of the injured. P.W. 17 has not been cross-examined at all. Coupled with this is the evidence of P.Ws. 1, 2, 3, 4 and 6, establishing the elements of the charge under Section 307 of the Indian Penal Code. We have already discussed the evidence and hold that upon the same, the charge under Section 307 of the Indian Penal Code has been established beyond reasonable doubt. Beki dao is a sharp weapon and as such a dangerous one and the neck is a vital part of the body. The accused had not only struck his son Paresh but had further thrown the beki dao towards Fuleswari striking her on the neck. The defence was as we have already observed before, the plea of unsound mind under Section 84 of the Indian Penal Code. We have already found that the exemption provided for under Section 84 of the Indian Penal Code is not available to the accused-appellant and therefore we hold that the charge under Section 307 of the Indian Penal Code has been well established.

21. In view of our above findings, we convert the order of conviction of the accused-appellant from Section 302 of the Indian Penal Code to one under Section 304 Part I of the Indian Penal Code and sentence him to undergo rigorous imprisonment for 7 (seven) years. We uphold the order of conviction and sentence of the accused-appellant under Section 307 of the Indian Penal Code and direct that the sentences are to run concurrently. The appeal is disposed of accordingly.

R.N. Dutt, J.

22. I agree.

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