

Jagannath Das Vs. the State

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Court : Kolkata

Decided On : Jul-01-1991

Reported in : (1992)2CALLT411(HC),95CWN1163

Judge : Mukul Gopal Mukherji and ;Manabendra Nath Roy, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 386 and 482; ;Indian Penal Code (IPC) - Sections 84 and 299; ;Evidence Act - Section 105

Appeal No. : Cr. Appeal No. 308 of 1986

Appellant : Jagannath Das

Respondent : The State

Advocate for Def. : B.N. Das and ;R.R. Biswas Advs.

Advocate for Pet/Ap. : N.N. Adhikari and ;Ranjan Roy, Advs.

Disposition : Appeal allowed

Judgement :

Mukul Gopal Mukherji, J.

1. We have exhaustively dealt with the facts of the present case in our judgment dt. 17.7.89 which may be treated as a part of the present judgment too. The appellant was found guilty by the trial court on the basis of circumstantial evidence

that the appellant killed his wife Pratima even though the motive for the murder was not clinched. It came out in the evidence not only in the first information report but also from the testimony of several witnesses that the appellant suffered from leprosy and was also suffering from insanity for sometime past. The appellant while passing through the road talked aimlessly to the passers-by and sometime rushed out to beat them. The appellant had no means to maintain his wife and children and did not have any landed property either. The victim, Pratima used to live at the house of her father with the children but some-time she used to come to the house of the appellant with the children. 7/8 days prior to the incident the appellant brought his wife, Pratima and the son and daughter at his house from the house of his father-in-law. Despite the fact that the appellant did suffer from leprosy for a period of 7/8 years prior to the date of the incident, they had one daughter and a son. The daughter was aged about 7/8 years and the son was aged about 2i/3 years on the date of the incident. At the time of the occurrence the eldest daughter was in her maternal uncle's house. Many of the witnesses testified to the effect that the appellant had a good relationship with his wife. The testimonies of P.Ws. 3, 4 and 5 are relevant on the point.

2. In our considered view the general law is that the plea of insanity or that of temporary insanity is a special plea that is to be taken by the defence and the onus to prove that the appellant at the relevant time was suffering from insanity per se or even of temporary insanity is on the appellant. The learned trial judge did not think it his duty to cause the appellant to be examined by any psychiatrist or by an expert on mental diseases for clinching the issue as to whether the appellant was really suffering from any insanity. We do not really find out any positive animus on the part of the appellant to kill Pratima unnecessarily but then the fact remains that Pratima was done to death in a brutal manner. We were, of the further view, since the prosecution evidence itself indicated that the appellant was temporarily insane for a time of about 1 month prior to the date of the incident and almost all the witnesses spoke about his mental infirmity at the relevant time, the ends of justice required that the appellant should be examined by a doctor who is an expert in mental diseases. We forwarded the records to the learned Additional Sessions Judge, Asansol so that there can be a proper examination of the accused-appellant by a psychiatrist and/or .an expert in mental diseases with a

direction that after the said report the records would be returned back to us by the learned Additional Sessions Judge, Asansol. The appellant was examined by the Head of the department, Psychiatric Unit, Burdwan Medical College and Hospital, Burdwan on 9.6.90 and on 11.6.90 and by a report dt. 18.6.90 it was submitted before us that the appellant is suffering from Paranoid Schizophrenia. The details of the said findings are in his report. We accept the said report which reveals that on the date of the examination he was suffering from Paranoid Schizophrenia. It was found by the Head of the Department, Psychiatric Unit of the Burdwan Medical College and Hospital that he was suffering from a delusion and he had auditory hallucination thinking that people were conspiring against him. He was of a suspicious and irritable mood but he becomes cheerful when religious matters are discussed. Because of the impact of leprosy on him, the doctor found deformity of the feet and the toes specially at the lower extrimities. Reading the entire evidence with the context of the finding by the doctor who is a specialist, we feel no hesitation to find that the appellant must have killed his wife by reason of unsoundness of mind when he was incapable of knowing the nature of the act or that he was doing something either wrong or contrary to law.

3. Under Section 105 of the Evidence Act the accused person has to discharge the burden of proving the exception relied upon by him. In *Dahyabhai Chhaganbhai Thakkar v. State of Gujarat* reported in : 1964 CriLJ472 , it was held by the Supreme Court that the crucial point of time for ascertaining the state of mind of the accused is the time when the offence was committed. Whether the accused was in such a state of mind as to be entitled to the benefit of Section 84 of the Indian Penal Code can only be established from the circumstances which preceded, attended and followed the crime. It was further observed by the Supreme Court that from the number of blows which the alleged murderer inflicts on the victim, the Court could not draw any inference that the accused was doing the act under some hallucination. The accused will have to rebut the presumption that the normal state of mind was not there in him by placing materials before the court sufficient to make it considered, that the existence of the circumstances was so probable that a prudent man would act upon them and if from the consideration of a prudent man, the Court comes to an inference that the accused was really an insane person, the accused will be said to have discharged his burden. The

evidence so placed may not be sufficient to discharge the burden under Section 105 of the Evidence Act but it may raise a reasonable doubt in the mind of the Judge as regards one or other of the necessary ingredients of the evidence itself. It may raise a reasonable doubt in the mind of the Judge whether the accused had the requisite intention laid down in Section 299 I.P.C. If the Judge has such reasonable doubt he has to acquit the accused, for in that event the prosecution will be deemed to have failed to prove conclusively the guilt of the accused. The doctrine of burden of proof in the context of the plea of insanity may be stated to have been amply explained in the aforesaid proposition.

4. A Division Bench of the Delhi High Court in *Mst. Shanti Devi v. State*, reported in : AIR1968 Delhi177 also reported in 1968 Criminal Law Journal 1156, was of the view that it is difficult to prove the precise state of the offender's mind at the time of commission of the offence but some indication thereof is often furnished by the conduct of the offender while committing it or immediately after the commission of the offence. Though for the purpose of Section 84, it is the state of mind of the offender at the time of committing the offence which is relevant, antecedent and subsequent state of mind and conduct of the offender become relevant only for the purpose of showing what the state of his mind was at the time when the act was committed. Where a plea of legal insanity is set up, it is most material to consider the circumstances which have preceded, attended and followed the crime, whether there was deliberation and preparation for the act, whether it was done in a manner which showed desire to conceal ; whether after the crime, the offender showed consciousness of guilt and made efforts to avoid detection. Again, in order to find whether the accused was by reason of unsoundness of mind incapable of knowing the nature of the act, the Court may rely not only on defence evidence, but also on what is elicited from the prosecution witnesses as well as on circumstantial evidence consisting of the previous history of the accused and his subsequent conduct in the surrounding circumstances including absence of motive. Generally, a case in which the sanity of the accused is called in question, motivation for the crime with which he is charged assumes unusual importance because if a serious crime like murder is committed by a man, who had absolutely no rational motive to commit it, the plea of unsoundness of mind can be more easily established than in other cases. The absence of motive

assumes not only unusual importance, but also almost conclusive and crucial importance in a case where a mother had murdered her own child of a tender age. As a matter of fact, in such cases, the act speaks for itself as the act of a mad woman, the act itself is intrinsically the chief evidence of insanity.

5. In the Supreme Court decision in *Sheralli Wait Mohammed v. State of Maharashtra* reported in : 1972 CriLJ1523 , the Supreme Court however struck a discordant note. It was observed by the Supreme Court in a bench comprised of four learned Judges that in order to see whether the accused was insane at the time of the commission of the offence, the state of his mind before and after the commission of the offence is relevant. The law presumes every person of the age of discretion to be sane unless the contrary is proved. It would be most dangerous to admit the defence of insanity upon arguments derived merely from the character of the crime. The mere fact that no motive has been proved as to why the accused murdered his wife and child or, the fact that he made no attempt to run away when the door was broken open, would not indicate that he was insane or, that he did not have the necessary mens rea for the commission of the offence.

6. In *Kuttappan v. State of Kerala* reported in 1986 Criminal Law Journal 271 : 1986(1) Crimes 155 a Division Bench of the Kerala High Court held that a person is legally insane when he is incapable of knowing the nature of the act or that what he was doing was wrong or contrary to law. Incapacity of the person on account of insanity must be of the nature which attracts the operation of Section 84, I.P.C. Under Section 105 of the Evidence Act, the burden of proving the existence of circumstances bringing the case within the exception contemplated under Section 84 I.P.C. lies on the accused and the court has to presume the absence of such circumstances. Accused has to rebut the presumption that such circumstances did not exist by placing materials before court or relying on materials already before the court, sufficient to make it consider the existence of such circumstances so probable that a prudent man would act upon them. The burden which rests on the accused is however not higher than that which rests upon a party in a civil litigation.

7. If the material placed before the court raises a reasonable doubt in the mind of the court whether the accused had the mens rea required for the offence, accused would be entitled to the benefit of doubt. In such an event, prosecution must be taken to have failed to prove the guilt of the accused beyond reasonable doubt. The crucial point of time at which un-soundness of mind should be established is the time when the crime was actually committed. For this purpose, the state of his mind, both before and after the commission of the act, is also relevant. The court has to pay due regard to the circumstances which preceded, attended and followed the act. That was however a case where the accused was charged for murder of his wife and it was proved that he was suffering from mental illness which developed paranoid psychosis and later into paranoid schizophrenia, which if not properly treated, would persist and even aggravate. And from the fact that he had disappeared from the village for about two years and had returned only two months prior to the occurrence, it could be said that at the time of the occurrence the accused was a person of unsound mind and by reason of such disease he was incapable of knowing the nature of his act, and accordingly he was acquitted. It was however held in this case that even though the appellant was found not guilty of charge of murder on the ground of unsoundness of his mind, he must be detained under Section 335 in mental hospital in accordance with Rules framed by State of Kerala.

8. A Division Bench of Andhra Pradesh High Court in Machi Parvaiah v. State of Andhra Pradesh reported in 1985 Cr. LJ 1824 held that in a case of murder where the conduct of the accused demonstrates abnormality, it is the duty of the prosecution to subject the accused to a medical examination immediately, especially when during investigation the witnesses stated that the accused was suffering from mental disorders periodically and place before the Court all the evidence that could be available to show that the accused was in a proper state of mind when he committed the alleged offence so as to rule out the plea of mental disease or insanity that may be raised at the trial. The failure of the prosecution to do so creates serious infirmity in the prosecution case of murder when plea of insanity is raised by the accused at the trial and raises a doubt whether alleged acts of violence were committed with the requisite intention of committing the offence and consequently entitling the accused to the benefit of doubt. Unless the

prosecution proves that the accused committed the offence with a requisite 'mens red' it cannot ask for conviction of the accused for murder. In judging the plea of insanity while no single circumstance may be conclusive, the cumulative effect of all the circumstances will have to be taken into account. Even if no evidence is forthcoming regarding the conduct and behaviour of the accused preceding, attending and following the commission of the offence, the Court can look into the acts which serve to ascertain whether they provide intrinsically the chief evidence of insanity. That was a case of the accused killing his mother without motive and without provocation and there was no attempt of absconding or hiding the weapon and instead the accused wept for his mother with other relations. The court rightly applied Section 84 I.P.C. and gave the accused benefit of doubt.

9. A Division Bench of our own High Court in Sukhen Mondal v. The State and Ors. reported in 1989 Calcutta Criminal Law Reporters (Calcutta) 289 reiterated the principles of law as discussed hereinbefore and held that if a reasonable doubt is raised in the mind of the Court whether the accused had the requisite intention laid down in Section 299 of the Indian Penal Code, the accused is entitled to the benefit of doubt. When a plea of legal insanity is set up, the court has to consider whether at the time of commission of the offence, the accused, by reason of unsoundness of mind, was incapable of the knowing the nature of the act or that he was doing what was either wrong or contrary to law. The crucial point of time for ascertaining the state of mind of the accused is the time when the offence was committed. Whether the accused was in such a state of mind as to be entitled to the benefit of Section 84 of the Indian Penal Code can only be established from the circumstances which preceded, attended and followed the crime.

10. Taking the entire gamut of case laws on the point in the background of the medical opinion that the appellant is suffering from paranoid schizophrenia which is a form of Paranoid psychosis and relying on the prosecution evidence itself about the general state of mind of the appellant preceding the incident and immediately after the commission of the offence, we are of the view that the plea of insanity is available to the appellant and he is entitled to the benefit of reasonable doubt. In that view of the matter we allow the appeal, set aside the order of conviction and sentence ; but then, since we are not convinced that the

appellant at the present moment is in a fit state of mind to judge his own welfare or to distinguish between right and wrong and take care of himself without medical aid and the evidence is that he was, immediately preceding the incident, suffering from leprosy, that he should be detained in safe custody in an appropriate hospital or a place of custody of non-criminal lunatics as may be provided to him by our State Government under the direct supervision of the Director of Prisons and he should not be released from safe custody unless and until further medical opinion is obtained with regard to his state of mind that he can take care of himself and he has been cured of his mental disease and infirmity.

11. Let a copy of this judgment and order be communicated to the appellant and let the Department of Jails and Social Welfare of the State Government and the Director of Prisons take appropriate measures in this regard in the light of our decision.

M.N. Roy, J.

12. I agree.