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Lala Sk. Vs. the State

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Court : Kolkata

Decided On : Mar-22-1983

Reported in : 1983CriLJ1675

Judge : B.C. Chakrabarti and ;Jitendra Nath Chaudhuri, JJ.

Appellant : Lala Sk.

Respondent : The State

Judgement :

B.C. Chakrabarti, J.

1. This is an appeal against an order of conviction under Section 302 of the I.P.C. sentencing the appellant to suffer imprisonment for life, by the learned Sessions Judge, Malda in Sessions Trial No. 19 of 1981.

2. The prosecution case may be briefly stated thus. At about mid-day on Sept. 14, 1977 the victim Marjen All went to a field known as Battali Field along with his uncle Nunshed for collecting fuel wood. They collected some dry plants of maize from the field and for the purpose of tying these plants into bundle some jute was collected from the land of the accused Lala Sk. Thereafter while they were coming they met Lala on the way. The accused enquired of Marjen and Nurshed as to where-from they had collected the jute. Marjen admitted having taken it from the land of the accused. The accused then took Marjen to his land and directed him to

show the place where from the jute was taken. On the place being shown the accused Lala Sk. became infuriated. He had a hasua in his hand and he started hitting Marjen with the hasua. Marjen fell down while Nurshed fled away from the scene out of fear and ran towards his house while shouting that Lala Sk. had murdered Mar.ien. Getting the information from Nurshed, Marjen's grandfather Ettai Ali and some other members of the house as also some villagers rushed towards the field. Going there they found Marjen lying in a pool of blood and already dead. Some of the witnesses saw the accused fleeing away towards the west with a bloodstained hasua in his hand. It is also the prosecution case that the accused threatened the persons who chased him and subsequently washed the hasua and his wearing garments in a nearby pond and thereafter he was taken towards his home by his brother Taleb Sk.

3. Information as to the occurrence was lodged at the police station at about 16.15 hrs. on the very same day by Ettai All (P. W. 1). The police on arrival to the house of the accused found him inside a locked room while the hasua was recovered from another room of the house. After completion of investigation the police submitted charge-sheet against the accused appellant as also Taleb Sk-the former under Section 302 I.P.C. and the latter under Section 201 I.P.C. Before the learned Sessions Judge there being no material as against Taleb Sk. under Section 201 I.P.C. the trial proceeded against the appellant alone under Section 302 I.P.C. while the other accused was discharged.

4. Upon a consideration of the evidence on record consisting of as many as 21 witnesses, the learned Judge found that the prosecution had succeeded in bringing home the charge under Section 302 I.P.C. It appears upon a perusal of the judgment under appeal that at the trial the accused took a plea of insanity and claimed exemption from criminal liability under Section 84 of the I.P.C. The prosecution case as to the manner of the incident was also disputed. The learned Judge found that the prosecution succeeded in proving their case and did not accept the defence plea of insanity so that he might claim exemption under Section 84I.P.C. Upon such finding the learned Judge sentenced the appellant to suffer imprisonment for life.

5. Mr. Samanta appearing on behalf of the appellant while arguing that the prosecution witnesses have improved upon the initial case made out in the F.I.R. and have introduced stories about the accused being chased with a bloodstained hasua in hand were untrue, he laid greater emphasis on the plea that the appellant was at the time the alleged act was committed mentally deranged and was incapable of knowing the nature of the act or that he was doing what was either wrong or contrary to law. Mr. Samanta also argued that even though the defence did not adduce any evidence in the affirmative to indicate that by reason of unsound-ness of mind the accused was incapable of knowing the nature of the act yet he was entitled to plead exemption under the said section if circumstances appearing on the prosecution evidence itself entitle him to take such a plea.

6. Before we came to the question whether the accused was entitled to claim exemption by reason of unsound-ness of mind it is first of all necessary to see whether the prosecution case as made out. has been proved against the accused, for if the prosecution fails to make out such a case at all the question of unsoundness of mind would be absolutely irrelevant and redundant.

7. The prosecution case has been sought to be proved by as many as 21 witnesses. P. W. 2 in fact is the principal witness in this case. He is the uncle of the victim Marjen and he and Marjen together had gone to the field to collect fire-wood. He says that while they were going back accused Lala ap~ proached them and enquired from where they had collected the iute string by which the bundle was tied up. Marj,en gave out that he had taken the same from the land of the accused. The accused then took Marjen to his land to point out the exact place from where the jute was taken. The witness was following them but he was threatened not to follow. After the victim had pointed out the place the accused hit Marjen with a hasua in his hand at his legs first and thereafter on his head. Being frightened at this the witness started shouting and running towards his house to report the incident. On hearing from h:m his father and other inmates came back to the field only to find Marjen lying dead in a pool of blood. It was taken in cross-examination that he had not stated to the police that the accused had also hit Marjen on his head and it was argued by Mr. Samanta that his evidence that he saw the assault on the head was an embellishment and an improvement made at

the trial.

8. P. W. 1 is the grandfather of the victim, He says that on hearing from P. W. 2 he rushed towards the field and saw the victim lying dead. He lodged the F.I.R. It was taken from him in cross-examination that on the date of incident accused Lala had some sort of derangement of brain. P. W. 3 Entaj AH is one of the villagers who had gone to the place on hearing the hue and cry. His evidence is that on reaching the Battala field he found Marjen lying on the ground in a pool of blood and learnt then and there that Marjen had been murdered by Lala. He also noticed Lala being chased by some people. This witness also was cross-examined to say that at the time of occurrence accused Lala had some sort of derangement of brain and that he used to chase persons and throw stones at them. P. W. 4 Hamid says that on that day at about 2 p, m. while he was going towards his own land he saw Nurshed coming hurriedly and shouting that Marjen had been murdered by Lala with a hasua. He rushed towards the field and beiore arriving at the field noticed from a distance that accused Lala was fleeing away towards the west being chased by several persons. He was ought to be discredited by indicating that in a statement before the police he did not say that Nurshed came running and shouting that Marjen had been murdered by Lala with a hasua. P, W. 5 Ekleshur Rahman is another co-villager who went to the field on hearing the hue and cry. His evidence in court is that he found Marjen lying dead on the ground but that he had not seen Lala Sk. on his way to the field. The prosecution was however, permitted to cross-examine this witness with reference to his earlier statement to the police and it appears as if he had stated before the police that he had found Lal a Sk. fleeing away with a hasua which had stains of blood on it. On cross-examination by the defence this witness stated that at the time of the incident accused Lala Sk. had some derangement of brain, that he, used to throw stones at others and remain at his house. P. W. 6 Jamsed Ali is a son of P. W. 1 Attaj AH. He claims to have seen the accused Lala Sk. fleeing away towards the west with a hasua in his hand and to have chased him then and there. It is also his evidence that Lala went to a pond and washed the stains of blood from the hasua as also from his shirt. He continued to chase Lala Sk. when Lala threatened that he had murdered his brother's son and would repeat the offence if he was any further chased. Being frightened he gave up the chase and came back to the field. P. W.

7 Bellat Ali also corroborated the other witnesses when he says that while rushing towards the Battala field he noticed the accused fleeing awav with a hasua in his hand towards the west and that P. W. Jamsed and others chased him. All that was asked in cross-examination was that at the time of the incident accused Lala had derangement of brain and he used to roam about in the streets aimlessly.

9. P. W. 8 Rasham Bibi is the grandmother of the victim. She came to the field on hearing that Marjen had been murdered by Lala, saw the victim lying on the land in a pool of blood with several injuries on his person and seeing this she fainted. P.W. 9 Abu Sayed is another co-villager who on hearing the row came out of his house, heard of the occurrence and rushed towards the field. While going there he found Lala Sk. fleeing away towards the west and it is also his evidence that he along with P. W. Jamsed, P. W. Elkash and others chased Lala. p. W. 10 Amjad Ali also materially corroborates the other witnesses and claims to have joined Jamsed. Elkash and others in chasing Lala. P. W. 11 Gafur Ali did not himself chase Lala but saw Lala being chased by Jamsed and others. He was declared hostile and it was proved that he had stated to the police that he found Lala Sk. going with a bloodstained hasua in his hand and that Lala made some statements confessing that he had committed a murder, p. W. 12. P. W. 13 and p. W. 16 were tendered and cross-examination was declined. P. W. 14 recorded the statement of P. W. 1 on the basis of which the formal F.I.R. was drawn up. P. W. 15 is one of several women who were working in the pond where accused Lala is said to have gone and washed the hasua and the garments. She says that she saw Jamsed chasing the accused and heard Lala to say that he had already murdered his brother's son and would also murder him. P. W. 17 is the I. O. of the case. P. W. 18 is the medical officer who held the postmortem examination on the dead body of the victim. He found as many as 12 injuries all of which were incised wounds and most of them were inflicted on the vital parts of the body. (After considering the evidence, the Judge proceeds -Ed.).

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Death in the opinion of the doctor was caused due to the above injuries which were ante mortem and homicidal in nature. The doctor further opined that such

injuries could be caused by a hasua. P. W. 19 is a police constable and his evidence is of a formal nature. P. W. 20 is the senior scientific officer attached to the Forensic Science Laboratory Government of West Bengal. He examined the articles sent to him for chemical examination and he found stains of blood on the wearing apparels. The hasua was marked F by him and no blood could be detected in the stains on the same. P. W. 21 is an S. I. of police who after perusal of the case diary and other connected papers finally submitted charge-sheet against the accused.

10. The accused did not adduce any evidence and it transpires from his examination under Section 313 Cr. P.C. that he did not make out any case whatsoever except merely saying that he did not know anything.

11. From the evidence thus adduced Mr. Samanta argued that the story of chase as adduced by P. W. Jamsed, Eklasur. Abu Sayed and Amjad Ali cannot be believed in view of material discrepancies in their evidence. We have carefully gone through the. evidence but we are unable to find any material discrepancy which could be considered sufficient to discredit their positive evidence that they had chased the accused Lala while he was running away with a bloodstained hasua in his hand. It may be that P. W. 1 Ettai Ali did not speak about Lala fleeing away or being chased by others, but that does not render the evidence coming from the witnesses who had actually chased untrue. P. W. 1 was an old man and he might not have noticed the accused actually fleeing away Apart from the pursuers who have deposed in court that they had chased Lala, there is the evidence of P. W. 3 Entai Ali. P. W. 4 Abdul Hamid. P. W. 7 Belat Ali and P. W. 15 Samsunnessa corroborating the story that accused Lala was seen running away towards the west being chased by Jamsed and others. We are not, therefore, upon a consideration of the entire evidence on record, inclined to disbelieve the prosecution case that the accused immediately after the occurrence was seen running away with a bloodstained hasua in his hand and was chased by several witnesses. The evidence also indicates that Lala Sk. with a view to conceal the evidence of the act done by him washed the hasua and his garments with water in a tank and with a view to prevent the witnesses from chasing him threatened them with violence. We also find from the evidence of P. W. 2 that the entire incident

occurred due to the fact that the victim had taken a small piece of jute string from the jute field of the accused. P. W. 2 has positively stated that the victim was taken to the field by the accused, by that he was prevented from following them. It is also his evidence that he saw the accused inflicting blows with hasua. on the victim. Mr. Samanta argued that this witness did not state at the initial stage about any injury being inflicted on the head and that therefore he was a witness who was proved to have made embellishments and improvements upon the initial story made out by him. The omission to state before the police that he saw infliction of the injury on the head as well does not appear to us to be a matter of great con-sequence. In fact the evidence in its totality indicates that immediately after the blow was struck by the accused Lala upon Marjen. p. W. 2 raised an alarm and rushed to the village. Immediately thereafter he came back with some members of his family and other villagers also came. They found the victim lying dead on the land and saw the accused running away. The conclusion is irresistible that the other injuries besides the one found on the leg must have been inflicted by the accused Lala. We are also satisfied upon the evidence that after doing so he was running away from the scene with the weapon in his hand. The evidence conclusively shows that the accused had committed the act, viz the act of murder caused by inflicting as many as 12 injuries on the body of the victim Marjen. Mr. Samanta, however, relying upon the admissions taken from P. Ws. 1, 3, 5 and 7 has argued that the accused Lala was at the relevant time mentally deranged and was incapable of knowing the nature of his act or that he was doing what was either wrong or contrary to law. This is a plea which it is for the accused to prove. It is not, however, necessary that the accused must in all cases where such a plea is taken, adduce evidence of an affirmative nature to bring the case within the meaning of the exception provided for in Section 84 of the I.P.C. Mr. Samanta relied on certain observations in the case of Dahyabhai v. State of Gujarat : 1964 CriLJ472 in support of his contention. This decision lays down that the accused will have to rebut the presumption that such circumstances did not exist, by placing material before the court sufficient to make it consider the existence of circumstances so probable that a prudent man would act upon them. The accused has to satisfy the standard of a prudent man. The decision further lays down that if the material placed before the court, such as, oral and documentary evidence, presumptions,

admissions or even the prosecution evidence, satisfies the test of prudent man, the counsel will have discharged his burden. The evidence was 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 a Judge as regards one or other of the necessary ingredients of the offence itself. The burden of proof upon the accused, the decision further holds, is not higher than that rests upon a party to a civil proceeding. Keeping these principles in view, let us see what are the circumstances that transpire from the evidence on record. It will bear repetition that the accused did not adduce any evidence whatsoever and reliance was placed entirely on the admissions taken from P. Ws. 1, 2, 5 and 7 and the circumstances of the case. P. Ws. 1, 3, 5 and 7 have undoubtedly spoken that the accused at the time of the incident was suffering from some form of mental derangement. Some have stated that he used to throw stones at others while others indicated as if he used to roam about aimlessly in the streets or confine himself to his house. Beyond this there is no evidence of the nature, extent and degree of unsound-ness or derangement of mind.

12. The decisions referred to by Mr. Samanta in the case of Munshiram v. Delhi Administration AIR 1968 SC 702: 1968 Cri LJ 806 and Partap v. State of U.P. : [1976]1SCR757 both relate to cases where the accused took the plea of self defence. In both these cases it was observed that the burden of establishing the plea can be discharged by showing the preponderance of probabilities in favour of that piea on the basis of materials on record. The case of a plea of self-defence, in our view, stands on a somewhat different footing from a plea of legal insanity so as to exempt the person committing the act from any criminal liability whatsoever. In the case of self-defence the accused acts in defence against aggression upon it and in such a situation it is easier for the defence to establish the existence of circumstances upon the prosecution evidence itself or on other materials on record. In the case of a plea of insanity the case stands on a different footing in the sense that here the plea is taken by a person who is alleged to have taken the role of the aggressor himself and necessarily the question whether the burden is discharged or not would call for a closer and stricter scrutiny then in the case of a person taking a plea of self-defence against aggression.

13. In the instant case Mr. Samanta argued that there is the history of mental derangement and the very fact that a person was done to death by inflicting as many as 12 injuries for a trivial thing, viz., the taking of a jute string from the field of the accused is sufficient to indicate the state of mind of the accused at the relevant, time. He argued that the factors to be taken into consideration are the state of mind proced-ing the act, at the time of the act and following the act. We do not have any quarrel with the proposition but what we get from the evidence is that the circumstances preceding the act do not indicate that the accused was suffering from such mental derangement or insanity which rendered him incapable of understanding the nature of the act or from distinguishing right from wrong. The evidence indicates that he was conscious of his property rights. The idea that somebody else had invaded upon his property even though for a negligible purpose enraged him. He prevented P. W. 2 from following them. This also shows consciousness on the part of the accused to prevent interference with his plan and design. Then we have the evidence that immediately after the occurrence he was running away from the scene of occurrence and was also seen to have washed away his garments and the stains from the hasua with water. He was obviously doing so with a view to concealing evidence of the act done by him. There is further evidence on record that he threatened his pursuers by saying that he had committed one murder and would do so if the chasers continued to run after him. This again indicates that he was conscious of the nature of the act done by him.

14. The mere fact that on some former occasions the accused had been occasionally subject to insane delusions or had suffered from derangement of the mind, or that subsequently behaved like a mentally deficient person is per se insufficient to bring his case within the exemption. It is not every person suffering from mental disease that can avoid responsibility for a crime by invoking the plea of insanity. There is a distinction between medical insanity and legal insanity. Courts are only concerned with the legal and not the medical view of the question. It is only legal insanity which furnishes a ground for exemption and there can be no legal insanity unless the cognitive faculties of the accused are, as a result of derangement or unsoundness completely impaired. The un-soundness must be such as to make the offender incapable of knowing the nature of the act or that what he is doing is wrong or contrary to law. in the instant case the admissions

taken from some of the witnesses merely indicates that the accused had been suffering from some form of mental derangement, It is significant that the derangement was not of a permanent nature. There was no indication since the arrest of the accused till the trial commenced before the learned Sessions Judge that the accused behaved in an abnormal manner. Even the learned Sessions Judge during the trial did not find any abnormality. Therefore it can be safely presumed that the accused was not suffering from mental derangement of a permanent nature. Even if there was some derangement we do not know the extent and degree thereof but we know for certain that there are lucid intervals. In the instant case the conduct of the accused immediately preceding the act and following the act clearly indicates that he was conscious of the nature of the act done by him and was not. unsound to the extent of not being able to distinguish right from wrong or from understanding the nature of the act done by him.

15. Mr. Samanta argued, however, that the very fact that the incident occurred over a trivial and trifling thing, viz., taking of a small piece of jute string indicates that no sane or normal person could have behaved in the way the accused did. From this we were called upon to infer that the accused must have been suffering from legal insanity. It would be dangerous in our view, to lay down that a man committing a desperate offence for a trifling thing should be for that reason alone considered innocent, for, to say so would mean as if the perpetration of crimes was to be excused by their very atrocity.

16. In the case of Oyami Ayatu v. State of M.P. : 1974 CriLJ305 the facts were that while the victim was proceeding to the urinal his feet touched the bamboo stick which had been spread by the accused. While the victim sat down to urinate the accused attacked him with a knife. The victim ran away from the urinal, but was chased by the accused and was given a large number of knife blows. Before the Supreme Court a plea of insanity was taken and it was argued that the fact that the appellant caused the death of the deceased over a trifling matter would warrant the conclusion that the appellant was not a sane person. It was held that this was a circumstance which could not be considered sufficient to warrant a conclusion that such an act could be done only by an insane person.

17. Having considered the evidence on record the submissions made on behalf of the appellant and the entire circumstances preceding, attending and following the incident we are unable to find that the accused had succeeded in discharging the onus by establishing the preponderance of probability that he must have been suffering from legal insanity at the time the act was committed. The materials on record are insufficient to establish such a case. We find that the prosecution has succeeded in proving the case beyond reasonable doubt. We are unable to find that the accused had succeeded in making out a case within the meaning of Section 84 of the I.P.C.

18. In the result the appeal fails and is hereby dismissed. The order of conviction and sentence is affirmed.

Jitendra Nath chaudhuri, J.

19. I agree.

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