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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ Crl. A. 476/2004

Date of Decision: 24th July, 2013

RAJ BALLABH

..... Appellant

Through: Mr. Manoj Singh, Advocate.

versus

STATE (GNCT) DELHI

..... Respondent

Through: Ms. Fizani Husain, APP

CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. Insanity of the appellant, at the time of commission of offence, is the main plea that has been urged for reversing the conviction and sentence in question.

2. The appeal against the conviction and sentence has been filed by the appellant Raj Bhallabh in Sessions Case No. 83/2003 arising out of FIR 62/2003 under Section 307, PS Darya Ganj, in which he has been convicted for offence under Section 307 of the Indian Penal

Code (for short 'IPC') and has been sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.500/-, in default of payment of fine to further undergo rigorous imprisonment for three months.

3. The findings of guilt has been returned on the basis of testimony of PW1, Amit Goyal who unfolded that on 18th February, 2003, he had gone to Rajghat, Delhi in his car bearing Registration No. DL-3CK-8662. Sushil Kumar was driving the said car. He parked the car near bus stand. He alighted the car and was going towards Shakti Sthala via service lane. When he proceeded ahead up to a distance of 20 meters, then accused-appellant came there having a 'gandasa'(DAU) in his hand. He started blowing 'gandasa' blows on his head. In order to save himself, he ward off his hand and sustained injuries on his right hand. Middle finger of his hand was cut and it was hanging with the help of skin. He raised alarm for help and his driver Sushil Kumar along with some other persons came for rescue. On seeing them, the assailant ran towards road on outer side. The accused was overpowered. Sushil Kumar, driver of Amit Goyal corroborated the facts narrated by Sh. Amit Goyal. He testified that

on 18th February, 2003, they reached Rajghat and he parked the car on one side and Sh. Amit Goyal became busy in his morning walk. At about 6:20 a.m. he heard his cries for help. He rushed in that direction and noticed that the accused was wielding blows on the person of Amit Goyal with 'dao' Ex.P-1. Amit Goyal sustained injuries over his head as well as his right hand.

4. Head Constable Ram Singh (PW4) was on patrolling duty from 6.00a.m. to 9.00a.m. at Rajghat on 18th February, 2003. Constable Prakash Chand (PW5) was on picket duty when he received information about injuries received by Amit Goyal. He rushed towards the spot and noted that accused Raj Bhallabh was running from there having a 'gandasa' in his hand. The crowd had collected at the spot. Accused was overpowered and 'gandasa' was seized from his possession. His shirt was blood stained, which was taken into possession. Constable Rohtash (PW12) gave confirmation to the facts narrated by Constable Prakash Chand.

5. On receipt of DD 6A, Ex.PW-3/A, SI Mahender Singh (PW-13) went to public gate, Raj Ghat, Delhi along with Constable Johar Singh (PW10) where Constable Prakash and Constable Rohtash met him.

They produced accused Raj Ballabh and the weapon of offence 'dao'. He came to know that injured has already been removed to JPN Hospital. As such, SI Mahinder Singh went to JPN Hospital and collected MLC of Amit Goyal, who was opined unfit for statement. Sushil Kumar met him in the hospital. His statement Ex.PW-7/A was recorded on the basis of which FIR (carbon copy Ex. PW2/B) was recorded by HC Anita (PW2). Sketch of 'dao' was prepared which was sealed with the seal of MS and was taken into possession vide memo Ex.PW-7/B. Blood stained shirt of the accused was taken into possession vide memo Ex.PW-5/C. Trousers of the injured was also taken into possession vide memo Ex.PW13/B. Two air pistols were recovered from the possession of accused Raj Ballabh which was also taken into possession vide memo Ex.PW5/B. Accused was arrested and his personal search was taken vide memo Ex.PW5/E.

6. Amit Goyal was examined by Dr. Amit Sharma (PW11) who prepared his MLC, Ex.PW11/A, and opined that injury sustained by him were grievous in nature.

7. Blood stained shirt of accused and trousers of the victim were sent to FSL for analysis. Report Ex.PB highlights that there was

human blood of A-group on the shirt of accused and trousers of the victim also had the same human blood of A-group. These facts make it clear that there was blood of the victim over the shirt of the accused.

8. The only plea taken by learned counsel for the appellant is that there was no motive to commit crime inasmuch as, injured was stranger to the accused. It is settled law that when the testimony of eye witness is reliable, cogent and inspire confidence, absence of motive pales into insignificance. Absolutely no enmity, ill-will or grudge has been alleged either against Amit Goyal or Sushil Kumar or the police officials for which reason they will falsely implicate the appellant in this case. Moreover, the appellant was apprehended at the spot and the weapon of offence was recovered from his possession. Not only that, the medical and scientific evidence also substantially corroborate the ocular testimony of the prosecution witnesses. Under the circumstances, it was rightly observed by the learned Additional Sessions Judge that the prosecution had established its case beyond reasonable doubt against the appellant. The appellant had chosen head of Amit Goyal for causing injuries and successive blows were given on his person. In order to save himself, Amit ward off his hand

and sustained injuries on his right hand which proved to be grievous and it has come in his testimony that now on account of the injuries received on his right hand, same has become impaired and he cannot write anything with his right hand. These circumstances, coupled with the ocular testimony of Amit Goyal and Sushil Kumar that the accused has caused injuries on the person of Amit Goyal knowing that those injuries were likely to cause death of the victim, the appellant was rightly convicted of the offence under Section 307 IPC and was sentenced as noted above. The finding of learned Additional Sessions Judge does not suffer from any infirmity which calls for interference.

9. In fact conviction of the appellant on merits of the case has not even been challenged during the course of arguments, inasmuch as, the appellant has already served the sentence imposed upon him. However, it was emphasised that appellant was suffering from insanity at the time of alleged offence and, was, thus, entitled to benefit of general exception contained in Section 84 of IPC.

10. Learned counsel for appellant referred to a literature with regard to delusional disorder and also relied upon *Shrikant Anandrao Bhosale Vs. State of Maharashtra*, 2002 Legal Eagle (SC) 823 and

Radhey Shyam Vs. State, 2011 Cr.L.J 250 for contending that the petitioner was suffering from delusional disorder that he was incarnation of Mahatma Gandhi and always used to believe that somebody is going to kill him. Under that delusion, the offence may have been committed. As such, he is entitled to the benefit of Section 84 of IPC and deserves to be acquitted of the offence alleged against him.

11. Learned Public Prosecutor for the State, on the other hand, has referred to the answers given by the appellant when his statement under Section 313 Cr. P.C. was recorded wherein in pursuance to the specific question, as to whether he had to say anything else, he replied, “I am innocent. I was sent to mental hospital by the orders of MM and there I was treated. As such, prosecution claims that I am an insane person. In such a situation how it can be claimed that I had committed an offence with knowledge and intention.” It was submitted that the manner of giving the answer itself is reflective of the fact that the appellant was not insane and was giving coherent answers. She further referred to the statement of DW-1 Dr. R.K. Srivastava, who was

examined by the appellant in his defence who had deposed that the appellant was admitted in the Institute of Human Behaviour and Allied Sciences and remained indoor patient till 29th July, 1999. Again, he was admitted in the aforesaid institute on 13th April, 2001 and remained an indoor patient till 9th July, 2001. Thereafter, he never visited the hospital. In cross-examination, he deposed that during his stay in the Institute, a medical board was constituted and he was found fit to stand trial. It was submitted that the incident has taken place in the year, 2003. There is nothing to show that on the date of incident or thereafter, the appellant was suffering from any delusion. As such, he is not entitled to benefit of Section 84 IPC. The appeal is bereft of merit and is liable to be dismissed.

12. The defence of insanity is recognized in India by virtue of Section 84 of the IPC which reads as under:

“Section 84: 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.”

13. A bare reading of Section 84 IPC reveals that the mental status of the accused has to be considered at the time of the doing of the act complained of. Thus, it would be useless evidence to simply

prove that the accused suffered from schizophrenia or any other psychiatric or psychological disorder.

14. The second facet which emerges from a bare reading of Section 84 IPC is the proof of the fact that by reason of unsoundness of mind, at the time of commission of the offending act, the offender was either incapable of knowing the nature of the act or was incapable of knowing that what he is doing is wrong or contrary to law.

15. There is a distinction between medical insanity and legal insanity. From a doctor's point of view a patient of schizophrenia would be treated as a mentally sick person. But for the purposes of Section 84 IPC such a person would escape being classified as a normal person and to be treated insane vis-à-vis the offence only on proof of the cognitive faculties being impaired at the relevant time i.e. at the time the crime was committed.

16. Historical evolution of the law pertaining to the defence of insanity at a criminal trial may be traced to the celebrated decision reported as ***R v. Daniel Mc Naughten***, 1843 RR 59: 8ER 718 (HL). The defence of insanity in said case was set up on the evidence that

the accused suffered from an insane delusion that the Prime Minister Sir Robert Peel had injured him. Mistaking the deceased for Sir Robert Peel, the accused killed him by shooting him. The jury returned the verdict of not guilty on the ground of insanity. The question of law pertaining to insanity was referred to the House of Lords. Five questions were posed to the House of Lords, as enunciated below:

1. What is the law respecting alleged crimes committed by persons afflicted with insane delusion, in respect of one or more particular subjects or persons: as, for instance, where at the time of the commission of the alleged crime, the accused knew he was acting contrary to law, but did the act complained of with a view, under the influence of insane delusion, of redressing or revenging some supposed grievance or injury, or of producing some supposed public benefit?
2. What are the proper questions to be submitted to the jury, when a person alleged to be afflicted with insane delusion respecting one or more particular subjects or persons, is charged

with the commission of a crime (murder, for example), and insanity is set up as a defence ?

3. In what terms ought the question. to be left to the jury, as to the prisoner's state of mind at the time when the act was committed?

4. If a person under an insane delusion, as to existing facts, commits an offence in consequence thereof, is he thereby excused?

5. Can a medical man conversant with the disease of insanity, who never saw the prisoner previously to the trial, but who was present during the whole trial and the examination of all the witnesses, be asked his opinion as to the state of the prisoner's mind at the time of the commission of the alleged crime, or his opinion whether the prisoner was conscious at the time of doing the act, that he was acting. contrary to law, or whether he was labouring under any and what delusion at the time.

17. Lord Chief Justice Tindal expressed opinion upon the above said terms of reference as follows:

Opinion upon Question 1

“...In answer to which question, assuming that your Lordships' inquiries are confined to those persons who, labour under such partial delusions only, and are not in other respects insane, we are of opinion that, notwithstanding the party accused did the act complained of with a view, under the influence of insane delusion, of redressing or revenging some supposed grievance or injury, or of producing some public benefit, he is nevertheless punishable according to the nature of the crime committed, if he knew at the time of committing such crime that he was acting contrary to law; by which expression we understand your Lordships to mean the law of the land....”

Opinion upon Question 2 and 3

“...These two questions appear to us to be more conveniently answered together, we have to submit our opinion to be, that the jurors ought to be told in all cases 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 satisfaction; and that to establish a defence on

the ground of insanity, it must be clearly proved that, at the time of the committing of 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. The mode of putting the latter part of the question to the jury on these occasions has generally been, whether the accused at the time of doing the act knew the difference between, right and wrong: which mode, though rarely; if ever, leading to any mistake with the jury, is not, as we conceive, so accurate when put. generally and in the abstract, as when put with reference to the party's knowledge of right and wrong in respect to the very act with which he is charged. If the question were to be put as to the knowledge of the accused solely and exclusively with reference to the law of the land, it might tend to confound the jury, by inducing them to believe that an actual knowledge of the law of the land was essential in order to lead to a conviction; whereas the law is administered upon the principle that every one

must be taken conclusively to know it, without proof that he does know it. If the accused was conscious that the act was one which he ought not to do, and if that act was at the same time contrary to the law of the land, he is punishable; and the usual course therefore has been to leave the question to the jury, whether the party accused had a sufficient degree of reason to know that he was doing an act that was wrong: and this course we think is correct, accompanied with such observations and explanations as the circumstances of each particular case may require....”

Opinion on Question 4

“...The answer must of course depend on the nature of the delusion: but, making the same assumption as we did before, namely, that he labours under such partial delusion only, and is not in other respects insane, we think he must be considered in the same situation as to responsibility as if the facts with respect to which the delusion exists were real. For example, if under the influence of his delusion he supposes another man to be in the act of attempting to take away his

life, and he kills that man, as he supposes, in self- defence, he would be exempt from punishment. If his delusion was that the deceased had inflicted a serious injury to his character and fortune, and he killed him in revenge for such supposed injury, he would be liable to punishment....”

Opinion on Question5

“...In answer thereto, we state to your Lordships, that we think the medical man, under the circumstances supposed, cannot in strictness be asked his opinion in the terms above stated, because each of those questions involves the determination of the truth of the facts deposed to, which it is for the jury to decide, and the questions are not mere questions upon a matter of science, in which case such evidence is admissible. But where the facts are admitted or not disputed, and the question becomes substantially one of science only, it may be convenient to allow the question to be put in that general form, though the same cannot be insisted on as a matter of right....”

18. The law afore-noted has come to be known as the Mc Naughten's Principles. A person laboring under a delusion or a psychological or a psychiatric ailment would not be entitled to be acquitted on the ground of insanity unless it is established that at the time when the crime was committed he was suffering the delusion, psychological or psychiatric condition and was incapable of knowing the nature of his act or that he was not knowing that what he was doing was wrong or contrary to law.

19. The leading decision of the Supreme Court on the aspect of the defence of insanity is *Dayabhai Chhaganbhai Thakker Vs. State of Gujarat*, (1964) 7 SCR 361 where it was held that the burden to prove that the appellant was of unsound mind and as a result thereof, he was incapable of knowing the consequences of his acts, is on the defence under Section 105 of the Indian Evidence Act. Under the said section, the Court shall presume the absence of such circumstances. Illustration (a) to Section 105 is as follows:-

“(A) A, accused of murder, alleges that, by reason of unsoundness of mind, he did not know the nature of the act. The burden of proof is on A.”

20. Later, the Court rules thus:

"The doctrine of burden of proof in the context of the plea of insanity may be stated in the following propositions: (1) 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. (2) There is a rebuttal presumption that the accused was not insane, when he committed the crime, in the sense laid down by Section 84 of the Indian Penal Code: the accused may rebut it by placing before the court all the relevant evidence--oral, documentary or circumstantial, but the burden of proof upon him is no higher than that rests upon a party to civil proceedings.(3) 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 ingredients of the offence, including mens 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."

21. It was further observed:

"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 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."

22. In the instant case, the appellant did not enter the plea of insanity at any time when the prosecution witnesses were examined

and it was only when his statement was recorded under Section 313 Cr. P.C that for the first time, he took this plea and then examined DW-1 Dr. R.K. Srivastava.

23. There is no evidence pertaining to the conduct of the appellant prior to and after the crime. Neither his acts or utterances save and except the witnesses speaking that he used a 'dao' to assault the deceased have surfaced. The story of the defence that at the time of commission of offence, the appellant was not mentally fit to understand his action, is not believable. Had it been so, as suggested by the learned counsel for the appellants, then, he would not have made an attempt to flee towards road on outer side as deposed by the witnesses. The attempt of the accused/appellant to escape from the scene of occurrence after arrival of Sushil Kumar and police official further throws a flood of light on this aspect of the matter that he was mentally in a fit condition and he was capable to understand what is wrong and what is right and, therefore, he is not entitled to get the benefit of Section 84 of the IPC.

24. Even Dr. R.K. Srivastava(DW-1), who had examined the appellant, has deposed that the appellant was a patient of delusional

disorder till 9th July, 2001, inasmuch as, according to him, he was admitted in the Institute of Human Behaviour and Allied Sciences on 22nd December, 1998 and remained as indoor patient till 29th July, 1999 and, thereafter, he was admitted on 13th April, 2001 and remained as indoor patient till 9th July, 2001. Thereafter, he never visited the hospital for either treatment or any advice. The Medical Board was constituted and he was diagnosed to be a patient of delusional disorder. Except the delusion on a particular point that he is incarnation of Mahatma Gandhi, he understands what he is doing and what is happening around him. In cross-examination, he reiterated that except the delusion that he is incarnation of Mahatma Gandhi, he understands each and everything. Even during his stay in the Institute, a medical board was constituted and he was found fit to stand trial. Under the circumstances, there is no evidence available on record to show that after 2001 till the date when incident took place on 18th November, 2003, the appellant continued to suffer from delusional disorder or what was his conduct thereafter. Thus, the evidence pertaining to the mental health of the appellant brought on record during the trial is insufficient evidence from where it can be

said that the appellant was insane at the time when he committed the crime.

25. There is yet another reason to repel the arguments of learned counsel for the appellant about the unsoundness of mind of the accused/appellant, inasmuch as, in such cases, a separate chapter XXV Cr. P.C. is provided where specific provisions have been made under Section 326 to 339. Had it been a truth that the appellant was of unsound mind then, the accused/appellant or his counsel ought to have made an application for deciding the trial by following the procedure provided for trial of an accused person of unsound mind as provided in the aforesaid provision of Cr. P.C. No such plea was taken during the entire trial of the case and only for the first time when his statement was recorded under Section 313 Cr. P.C., it was alleged that according to the prosecution he was insane and if that is so, how could he commit the offence. Even in this statement, there was no categorical assertion that he was of unsound mind and that being so, he was not capable of understanding what he was doing when the act was committed. After this plea was taken in statement under Section 313 Cr.P.C., he examined a doctor. The learned

Sessions Judge has rightly rejected the evidence led by the appellant after analytical discussion of oral and documentary evidence on record, which do not call for interference.

26. The authorities relied upon by the learned counsel for the appellant has no application to the facts of the case in hand. In ***Radhey Shyam*** (supra), the appellant was acquitted not on the ground of insanity but because of the fact that the prosecution had failed to establish its case beyond reasonable doubt. In ***Shrikant Anandrao Bhosale*** (Supra), the appellant, a police constable killed his wife by hitting her on her head with a grinding stone. Case history and other proved medical record showed that the appellant was suffering from paranoid schizophrenia and was under regular medical treatment. Within short span after the incident he was taken 25 times to the hospital for treatment. Even after killing his wife, there was no attempt to hide or run away. Thus, from the circumstances, it was inferred that he was under a delusion at the relevant time and was granted benefit of Section 84 of IPC. However, as seen above, the facts of the present case are entirely different where neither there is any medical evidence to show as to what was his condition when the

crime was committed and thereafter. Rather the action of the appellant in trying to run away after committing the crime itself is suggestive of the fact that he understood the consequences of his acts. That being so, he is not entitled to get the benefit of Section 84 of IPC.

27. The net result is that there is no merit in the appeal, same is accordingly dismissed.

28. Trial court record be sent back.

**SUNITA GUPTA
(JUDGE)**

July 24, 2013
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