

THE HON'BLE CHIEF JUSTICE SRI THOTTATHIL
B. RADHAKRISHNAN

AND

THE HON'BLE SMT JUSTICE T. RAJANI

CRIMINAL APPEAL No.465 of 2013

JUDGMENT: (*per Hon'ble Smt Justice T. Rajani*)

This appeal is preferred by the appellant assailing the judgment of the III Additional District and Sessions Judge, Tirupati in S.C.No.273 of 2012 dated 14.03.2013 convicting him and sentencing him to undergo imprisonment for life and pay fine of Rs.500/- and in default to undergo simple imprisonment for a period of three months for the offence punishable under Section 302 IPC.

2. The facts, in brief, as reflected in the charge sheet, are as follows:

On 07.11.2011 at 11 PM, the complainant lodged a complaint stating that she has two issues, a son named V. Madhavaiah, aged 45 years and a daughter named V. Jayamma. Her daughter was given in marriage to one M. Harinath and her son was married one Hamsa, a resident of Vepagunta and he begot two daughters. About five years ago, since her son lost mental balance, his wife left him and went away to her mother's house, along with her children. Since the date of her leaving, she kept her son at her house and was taking care of him and her son does not attend any work and if food is provided, he eats and roams about in the streets. On 07.11.2011, at about 1.30 PM, while her husband, aged 80 years, sat in front of her house, her son, who is the accused, in this case, came from inside the house all of a sudden, with a bill hook and hacked on the head of her husband.

When he kept across his hand to ward off the blow, he hacked him again. The deceased was shifted to hospital in 108 Ambulance and he died during the course of treatment, on the same day.

Based on the said report, a case was registered in Cr.No.67 of 2011 under Section 302 of the Indian Penal Code of K. Nagar Police Station.

During investigation, the statement of the complainant was recorded. On 08.11.2011, P.W.10 visited the hospital and received the dead body of the deceased and subjected the same to inquest and post mortem examination. The scene of offence panchanama was conducted and material objects were seized from the scene, under the cover panchanama at 9 PM on 08.11.2011. The police constable of K. Nagar Police Station produced the soiled and blood stained dhoti of the deceased, which was seized by P.W.10 and P.W.11, the Inspector of Police, took up further investigation and recorded the statements of some more witnesses. He sent the material objects to FSL and effected the arrest of the accused on 12.11.2001 at 8 AM at Krishnapuram bus stop and recorded the confessional statement. Later, he was sent to court, judicial remand. After concluding the investigation, charge sheet was laid against the accused for the offence under Section 302 IPC.

On appearance of the accused, the Judicial Magistrate of First Class, Puttur took cognizance of the case under Section 302 IPC and after complying with the required legal formalities, committed the case to the Sessions Division, Chittoor District by virtue of orders in PRC.No.15 of 2012. The learned Sessions Judge, in turn, made over

the case to the Court of III Additional District and Sessions Judge, Tirupati for trial and disposal in accordance with law. On appearance of the accused before the Court below, the charges referred to above came to be framed and were read over to the accused, to which the accused pleaded not guilty and claimed to be tried. During trial, in support of its case, the prosecution examined P.Ws.1 to 11 and got marked Exs.P1 to P11 and M.Os.1 and 3. After completion of the prosecution evidence, the accused was questioned about the incriminating circumstances appearing in the prosecution evidence. The accused denied truth in the prosecution evidence, and stated that he did not commit the offence and reported no evidence on his behalf.

3. The Court below, after considering the evidence and the material on record, passed the impugned judgment against which the present appeal is preferred on the following grounds:

The Court below passed the judgment of conviction, though there was no material available on record to prove the guilt of the accused; it failed to appreciate that there are several discrepancies in the statements given by the witnesses; it failed to see that the circumstances relied upon by the prosecution do not form chain of events; it ought to have seen that there was no intention on the part of the accused to kill the deceased; the evidence of P.W.1 would show that she was not present at the scene and the same was not considered by the Court below; as per the evidence of P.Ws.1 to 4 and P.W.10, the accused was suffering with mental illness by the date of incident and was not in a position to know the nature of the act that he was committing and the Court below ought to have considered the

same and acquitted the appellant. Based on the above, the appellant seeks this Court to set aside the judgment of the Court below.

4. Heard the counsel for the appellant and the learned Public Prosecutor.

5. The counsel for the appellant contends that the evidence of the prosecution witnesses would show that the accused was suffering from mental illness and hence, has to be acquitted by invoking Section 84 IPC. Except the above submission, no tenable argument was made with regard to the accused not committing the offence.

6. Learned Public Prosecutor, on the other hand, contends that the burden of proof that the accused falls under the general exception under Section 84 IPC is clearly on the accused, which he failed to discharge and hence, Section 84 IPC cannot be invoked to give benefit to the accused.

7. Based on the arguments and the evidence, we propose to frame the following points for consideration:

1. Whether the accused is entitled to the benefit under Section 84 IPC and whether he was successful in discharging the burden of proving that he was insane at the time of committing the offence.
2. Whether the judgement of the trial court can be sustained.
3. To what result

POINT No.1:

8. Starting with the report given by the complainant, who is examined as P.W.1, the plea of insanity can be examined. P.W.1 is the wife of the deceased and the mother of the accused. In Ex.P1 she states that since the accused was insane since five years prior to the date of the incident, his wife left him along with her children. Since that date, the accused has been staying along with P.W.1 and he was not attending any work. He takes food, whenever it is served to him and he roams in the streets. On 07.11.2011 when the deceased was sitting in front of their house, suddenly the accused brought a '*Matchu Katti*' and hacked the deceased. From the report itself, it is evident that the accused was insane since five years prior to the incident.

In the evidence, P.W.1 slightly improved the version reflected in Ex.P1 and states that the accused used to pick up quarrel with her and her husband, on the ground that they were not providing food to him and that they were not bringing his wife to the house for marital life. In the cross-examination, she states that the wife of the accused left him on the ground that he was suffering from mental illness and that he was having mental illness on the date of the incident. He was not in a position to know as to what he was doing on the date of the incident. There was no galata between the accused and the deceased prior to the date of the incident. She did not go and give report to the police after the incident but she states that the police obtained her thumb impression at her house and she does not know the contents of the report. Her evidence does not reflect the conduct of the accused after the incident. She only states that one Anna Dorai, who came to the

spot on hearing the cries, snatched the knife used by the accused and threw it at the scene of offence.

10. P.W.2 is the younger sister of the accused. She is not an eye witness for the incident. She only came to know about the incident, after it occurred, through one Subramanyam, who, in turn, got the information from one someone from RKVB Pet village. Speaking about the motive, she states that the accused bore grudge against her parents for not providing food and for not bringing his wife to their house for marital life. In the chief examination, she does not speak about the mental condition of the accused but in the cross-examination, she states that the accused used to suffer from mental illness during the days of the incident and he also had mental illness even after the incident and he used to behave in an abnormal way whenever he was having mental illness, by throwing away the food, hurling stones and cutting papers. She also stated that the accused used to come to her house and stay there for a few days and leave the house, without informing him. He never used to go to any other place, except to her house and the house of her mother. The reason for the wife of the accused leaving him is stated to be her inability to bear the mental behaviour of the accused. She states that the accused never asked her about his wife and never asked her parents about his wife.

11. P.W.3 is an independent witness and neighbour of P.W.1. He states about the wife of the accused leaving him. According to him, the accused used to wander for some time. On the date of the incident, he was at his house and on hearing cries, from the house of P.W.1, he went to the spot and saw the deceased lying in bleeding injuries. He

saw the accused holding a knife and the accused threw away the knife at the scene of offence. They took the deceased to the hospital. He further states that the accused asked P.W.1 and the deceased to bring his wife and children but they did not respond, due to which the accused bore grudge against them. He also does not speak about the conduct of the accused and whether he was at the spot or whether he left the spot after the incident.

In the cross-examination, he states that he does not have personal knowledge about the accused asking his parents to bring his wife and children. He also admits that he did not state to the police about the said fact and about the accused bearing grudge against his parents. The mental illness of the accused is also spoken to by P.W.3. He states that the accused was mentally ill by the date of the incident and he used to behave in an abnormal way.

12. P.W.4 is another independent witness and is a neighbour to P.W.1. In the chief examination, she states that the accused used to move like a mentally ill person and the wife of the accused left him on account of mental illness of the accused. On the date of the incident, she went to the house of P.W.1 and saw the deceased with bleeding injuries. She does not speak about the presence or absence of the accused at the scene of the offence. She was, however, declared hostile by the prosecution.

13. P.W.5 is the husband of P.W.4. He also states the same facts as stated by P.W.4 and does not speak about the presence or absence of the accused at the spot. He was also declared hostile. The other witnesses are: P.W.6, witness for inquest, P.W.7, witness for the

scene of offence panchanama and the seizure of M.Os.1 and 2, which are plastic chair and Matchu Katti, P.W.8, witness for the confession made by the accused, P.W.9, Professor, Department of Forensic Medicine, S.V. Medical College, Tirupati, who conducted post-mortem examination on the dead body of the deceased and found sutured wound of 3 cms long over right parieto occipital region of head, sutured wound of 4 cms long over left fronto temporal region of head and incised wound of 3 x 1 cm bone deep oblique over back of right hand, over base of index and middle fingers. The internal injuries, as spoken to by P.W.9, are a rectangular bone chip of 4 x 2 cms separated from right half of the occipital bone of skull with a corresponding cut in the right occipital lobe of brain; C shape cut of 5 cms long over left half of the frontal bone and diffused subarchoid haemorrhage over brain and the injuries are stated to be ante-mortem in nature. P.W.10 is the SI of Police, at the relevant point of time, who registered the case and conducted part of investigation. P.W.11 is the Inspector of Police, at the relevant point, who conducted the remaining part of the investigation and filed a charge sheet.

14. The above evidence makes it clear that it is the accused, who hacked the deceased and caused his death. The evidence of P.Ws.1 to 5 would prove that the accused was mentally ill by the date of the incident. Now it has to be examined whether the above evidence would suffice to hold that the accused was mentally ill. Apart from that, the observation made by the Court below that before framing of the charges, on seeing the behaviour of the accused, the Court below forwarded the accused to a Psychiatrist to know whether he was

suffering from mental illness or not and the accused was treated for some time in Government Hospital for Mental Care, Hyderabad and he was discharged by discharge committee as his mental illness was cured, also bears immense relevance. The Court, in the judgment, notes that from the record it was clear that by the date of arrest, the accused was not at all insane. The Court gathers the said fact from the evidence of P.W.11, who stated that when he effected the arrest of the accused, the mental condition of the accused was stable.

15. The evidence of P.W.11 does not seem to be based on any critical examination with regard to the condition of the accused. The evidence of P.Ws.1 to 5 coupled with the fact that the Court below could observe some abnormality in the behaviour of the accused at the time of framing charges, would only suggest that P.W.11 was not keen on assessing the mental condition of the accused, on the date of arrest.

16. The High Court of Gauhati in *ABUL LATIF v. STATE OF ASSAM*¹ has validly highlighted the impossibility involved in an insane accused discharging the burden of proof, that he is insane. In the said case also, the prosecution admitted that the accused was a lunatic.

In this case also, by virtue of the fact that insanity of the accused is mentioned in the report, Ex.P1 and that P.W.1 spoke about the said insanity in her chief examination, the case of the prosecution stands to be that the accused was insane as on the date of incident.

¹ 1981 CRI.LJ. 1205

In the above decision, it was held that it is not justice to demand the proof of the insanity from a person just recovered from mental derangement and to demand him to establish his mental faculties at the time of the offence. It further held that the insanity may be established by preponderance of probabilities on the basis of some features, gleaned from the conduct of the accused, which point to a reasonable doubt that he had acted under circumstances set forth in Section 84. Pointing to Section 106 of the Evidence Act, it held that Section 106 of the Evidence Act seems to be somewhat harsh to prove insanity. The Court held that Section 6 IPC must be treated as a proviso to Section 106 of the Evidence Act, which imposed obligation on the Court as well, to consider the cases of exceptions on its own, insofar as it relates to burden of proving legal insanity. An interesting observation made by the Court is that 'Special Knowledge' envisaged in Section 106 of the Evidence Act is always impaired due to mental derangement. It was further held that where the prosecution admitted that the accused was an insane person at the time of the occurrence, the burden of proof is on the prosecution to establish that the accused had feigned madness.

17. We find absolute rationality in the observations made by the Gauhati High Court. A person, who is insane, cannot be called upon to prove that he is insane. Section 106 of the Evidence Act speaks about the proof of fact, which is within the special knowledge of a person. As rightly observed by the High Court of Gauhati, in the aforesaid decision, when the knowledge itself is impaired by virtue of the insanity, a person cannot be imputed with possession of special

knowledge. Apart from that, we opine that insanity is not a fact, which can be within the knowledge of the person, who is insane, but his insane behaviour, which can be observed by outsiders, in fact becomes the knowledge of the persons, who observe his insane behaviour and which can be spoken to by any person, who witness such behaviour and with a prudent person's understanding and assessment of things, can come to a conclusion that a person is insane. It somehow does not sound sane to call upon the accused to prove his insanity, the basic feature of which is loss of faculty of knowledge. Only possibility of the accused being able to take the burden is, when he regains his mental faculty of knowledge and comes to know that he was sometime back insane and committed the offence during such time. Even in such case, unless there is some record of his medical treatment, he will have to probably gather evidence only in the form of witnesses who can testify about his insane behaviour,.

18. The High Court of Kerala in *PARAPUZHA THANMBAN v. STATE OF KERALA*² also dealt with a case in which the accused was pleaded to be insane. It observed as follows:

“The provision contained in S.84, I.P.C., being an exception, the burden is on the defence to establish insanity in view of the provisions contained in S.105 of the Evidence Act. However, it is not absolutely necessary that the defence must put forward specifically a contention of insanity. The circumstances emerging from the prosecution evidence may, indicate that the person must have been suffering from insanity and in such a case, the accused is entitled to get the benefit of doubt.

² 1989 CRI.LJ. 1372

The burden which rests on the accused is however not higher than that which rests upon a party in a civil litigation. The materials placed before the Court may not sometimes be sufficient to discharge the burden under S.105 of the Evidence Act. However, it may raise a reasonable doubt in the mind of the court as regards one or the other of the necessary ingredients of the offence itself, either *actus reus* or *mens rea*. If it 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, production must be taken to have failed to prove the guilt of the accused beyond reasonable doubt. Behaviour antecedent, attendant and subsequent to the event may be relevant in finding the mental condition at the time of the event, but not those remote in time. If it comes to the notice of the investigating officer that the accused had as previous history of insanity, it is the duty of the investigating officer to investigate the mental condition of the accused and place the material before the Court.

The above position obligates the Investigating Officer, to whose notice the insanity of the accused is brought, to investigate the mental condition of the accused and place the material before the Court. In this case, from the fact that the complaint itself contains a recital of insanity of the accused, the evidence of the I.O., as P.W.11, would only reflect his negligence and perfunctory attitude, in investigating the matter. Apart from not discharging the obligation that is thrown on him, taking note of the said fact and investigating into it, he callously deposes before the Court that the accused is mentally stable as on the date of arrest. The Kerala High Court, in the aforesaid decision, relied on a decision of the Supreme Court in *BHIKARI v. STATE OF UTTAR*

PRADESHG [1966 CRI LJ 63] wherein the Supreme Court observed as under:

“There is no doubt that the burden of proving an offence is always on the prosecution and that it never shifts. It would, therefore, be correct to say that intention, when it is an essential ingredient of an offence, has also to be established by the prosecution. But the state of mind of a person can ordinarily only be inferred from circumstances. Thus if a person deliberately strikes another with a deadly weapon, which according to the common experience of mankind is likely to cause an injury and sometimes even a fatal injury depending upon the quality of the weapon and the part of the body on which it is struck, it would be reasonable to infer that what the accused did was accompanied by the intention to cause a kind of injury which in fact resulted from the act. In such a case the prosecution must be deemed to have discharged the burden which rested upon it to establish an essential ingredient of the offence, namely the intention of the accused in inflicting a blow with a deadly weapon. Section 84 of the Penal Code can no doubt be invoked by a person for nullifying the evidence adduced by the prosecution 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. Now it is not for the prosecution to establish that a person who strikes another with a deadly weapon was incapable of knowing the nature of the act or knowing that what he was doing was either wrong or contrary to law. Everyone is presumed to know the natural consequences of his act. Similarly everyone is also presumed to know the law. These are not facts which the prosecution has to establish.”

19. In this case, by virtue of the fact of insanity of the accused being probabalized, if not proved, by the evidence of P.Ws.1 to 5, it is for the prosecution to prove that the accused hacked the deceased with the required intention of causing his murder and that he was aware of the natural consequences of his act. The prosecution did not discharge the onus that has shifted on to it by virtue of the evidence of P.Ws.1 to 5.

20. We have a decision of the Supreme Court in *DEVIDAS LOKA RATHOD v. STATE OF MAHARASHTRA*³ which also relied on its earlier decision in *RATAN LAL v. STATE OF MADHYA PRADESH* [AIR 1971 SC 778]. In the said case also the accused was taken into custody and charge sheet was filed. The trial Court visited the prison and administration of certain drugs was recorded and the impression of the Doctor that the patient is psychotic and needs continuation of treatment was also taken note of. The plea that the accused was mentally stable was considered, by observing that merely because five years later in the witness box the witness may have stated that there was no complaint from the police with regard to the conduct of the appellant in custody, it cannot be said that the accused was mentally fit. It observed that the trial Judge manifestly erred in his conclusion with regard to the mental state of the appellant at the time of occurrence, by testing it on the touchstone of the present demeanour in Court and present conduct of the appellant, without any reference to the medication that was being provided to the appellant while in custody. By virtue of the decision in *RATAN LAL's* case (supra),

³ AIR 2018 SC 3093

the Supreme Court has settled the law that the crucial point of time at which unsoundness of mind should be established is the time when the crime is actually committed and the burden of proving this lies on the accused. The Supreme Court also relied on its earlier decision in *DAHYABHAI CHHAGANBHAI THAKKAR v. STATE OF GUJARAT* [(1964) 7 SCR 361] wherein it was laid down that there is a rebuttable presumption that the accused was not insane when he committed the crime in the sense laid down by Section 84 IPC and 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.

Undoubtedly, the state of mind of the accused at the time of commission of the offence is to be proved so as to get the benefit of the exception. But, the nature of the burden of proof on the accused to prove insanity is no higher than that which rests upon a party to civil proceedings i.e. by preponderance of probabilities.

21. We see that, in this case, by the preponderance of probabilities brought out through the evidence of P.Ws.1 to 5 and the fact that the accused was referred to mental asylum at the time of framing charges, the accused stands discharging his burden of proof that he is mentally ill. At any rate, the benefit of doubt, which arises from the failure of the prosecution to prove that the accused was mentally stable as on the date of the incident and that he was aware of the consequences of his act, accrues to the accused.

22. POINT NO.2: Hence, in view of the above, we are of the opinion that the judgment of the trial Court cannot be sustained and the accused is entitled to the benefit of the exception under Section 84 IPC.

The point is accordingly answered.

POINT No.3:

In the result, the criminal appeal is allowed. The conviction and sentence imposed on the appellant-accused in S.C.No.273 of 2012 dated 14.03.2013 on the file of the III Additional District and Sessions Judge, Tirupati are set aside. The appellant-accused is acquitted of the offence under Section 302 IPC.

We have held that at the crucial point of time, the accused was of unsound mind and was incapable of knowing the nature of the act or what he was doing was either wrong or contrary to law and acquitted the accused. Since the plea of insanity is accepted by us, in view of Section 335 of the Criminal Procedure Code, the accused shall not be set at liberty, but has to be detained in safe custody. Hence, in view of the above, we direct that the accused shall be detained in safe custody in jail and the jail authorities shall get the accused examined by the concerned Civil Surgeon to ascertain whether the accused is fit for release from jail, if he is no longer a security hazard to others. The accused, however, may be delivered to any relative or friend, if such an application is made by such relative or friend concerned, only on his giving security to the satisfaction of the Chief Judicial Magistrate, Tirupati in terms of Section 335 (3) of Cr.P.C.

As a sequel, the miscellaneous applications, if any pending, shall stand closed.

THOTTATHIL B. RADHAKRISHNAN, CJ

T. RAJANI, J

September 20, 2018

Note:

1. LR Copy to be marked.
2. Office to dispatch the copy of the judgment to the Trial Court forthwith.
(B/o) DSK

