

Patreswar Basumatary Vs State of Assam

None

Court: Gauhati High Court

Date of Decision: Oct. 3, 1988

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) â€” Section 164#Penal Code, 1860 (IPC) â€” Section 302

Citation: (1989) CriLJ 196

Hon'ble Judges: S.N. Phukan, J; R.K. Manisana Singh, J

Bench: Division Bench

Judgement

R.K. Manisana Singh, J.

This appeal arises from a judgment of the Sessions Judge, Goalpara passed on 25-6-86 in Sessions Case No.

25(3-G) of 1985 convicting the accused appellant u/s 302, IPC and sentencing him to imprisonment for life.

2. Undisputed fact, which is supported by the evidence and materials on record, is that the deceased Karmeswar Basumatary and the accused

Patreswar Basumatary are brothers and are resident of Bamunigaon. At the time of occurrence accused was a student, aged 20 and the deceased

Karmeswar Basumatary aged 30. They lived together and slept together in one room. They had no other family members. They had no bed as

such. They made arrangement for their sleeping on the floor of the room and the deceased was sleeping with the accused on the night of 4-3-83.

The accused killed his older brother with whom he was asleep, while the cleeeased was sleeping.

3. The accused spoke in defence when he was asleep with his brother, he dreamt a dream in which he was throttled by someone and, therefore, he

took the dao which was kept on the head of the bed and dealt a blow. But blow fell on the neck of his elder brother who was then sleeping. This

fact is also stated in the confession of accused recorded u/s 164, Cr. P.C. After hearing the learned Counsel for the parties, the plea of the

accused has not been disputed.

4. The question then is, - whether the accused has committed any offence?

5. The instances of mental disorder negating mens rea yet not amounting to insanity are involuntary acts known as "automatism" or "non-insane automatism".

6. At this stage, it will be helpful to refer to the decisions in R. v. Clarke (1972) 1 All ER 219 and Bratty v. Attorney General (1961) 3 All ER

523. In Clarke, a woman was charged with theft from a supermarket. Her defence was that she had taken the goods in a state of absent

mindedness resulting from depression. Accepting medical evidence, her mental condition and her conduct in her house, her defence was accepted

and she was acquitted.

7. In Bratty, the accused killed a girl, with whom he was driving in his car on an errand. The accused took off her stocking and strangled her with

it. His defence was that a "blackness" had come over him and that he did not know what he was doing. He did not realise anything. He also said

that previously he had feelings of "blackness" and headaches, and there was evidence of his odd behaviour at times of his mental backwardness

and his religious leanings. The girl had not been sexually assaulted. Considering the evidence on record the defence of "automatism" was not

accepted by the House of Lords and the accused was convicted

8. In Bratty, Lord Denning observed : "Automatism" - means an act which is done by the muscles without any control by the mind such as a spasm

a reflex action or a convulsion; or an act done by a person who is not conscious of what he is doing; such as an act done whilst suffering from

concussion or whilst sleepwalking".

8A. As regards the sleepwalking, it has happened from time to time that a person has killed or wounded another with whom he is asleep in bed,

while walking in his sleep, or immediately upon rousing from sleep and while still in semi-consciousness. A sleepwalker does not walk with eyes

closed. His eyes are open and he appears to be in perfect control. He will open a door and go to the kitchen, take a knife, return to the bedroom

where his wife is asleep, and sticks the knife into his wife. After waking up he will not remember what he has done. He has reason for killing his

wife in his dream-state. But he does not act with his normal conscious mind. The imagination of sleepwalking or other behaviour during sleep or

semi-sleep is dissociation, i.e., splitting off from consciousness of all unpalatable ideas. The causes of dissociation may be from varieties of factors.

It may be also from brain disease.

9. In view of the above discussion the "automatism" is self-acting of performance, or "involuntary acts", without any knowledge of acting, or action

with no consciousness of what was being done. However, in the light of the decision in Bratty, any act is not to be regarded as "involuntary act"

simply because the doer does not remember what he has done, or he did not know what he was doing.

10. Turning to the case on hand the auctions for consideration are,- Did the accused know what he was doing; did the accused know that he was

killing someone or his elder brother; did the accused know that he was striking some one or his elder brother a dao blow on the neck.

11. It is settled law that the prosecution must prove the guilt of the accused beyond reasonable doubt. However, beyond reasonable doubt does

not mean to prove conclusively the guilt of the accused (See State of Kerala Vs. Bahuleyan, On the facts and in the circumstances of the present

case, the prosecution must prove (1) death as a result of the voluntary act of the accused and (2) malice or motive of the accused. However, it also

cannot be ignored that if the accused set up a special plea, the onus of proof (not the burden of proof) is shifted to the accused, although the

standard of proof is not like that of the prosecution.

12. In the present case, immediately after killing of his brother, the accused went to his cousin brother P. W. 2 Debeswar Basumatari and said that

he had killed his elder brother, and thereafter the accused fell down on the ground. The accused wanted to go away from the house of the P. W. 2

saying that he would commit suicide since he had killed his brother. There is no evidence of malice or motive. There is only one incised wound on

the neck of the deceased. These facts lean towards "involuntary acts" of the accused i.e. the accused did the act in his dream state or semi-sleep. In

such a situation we are of the opinion that the accused must be given the benefit of doubt.

13. For the foregoing reasons, the conviction and sentences passed by the Sessions Judge, Goalpara are set aside and the accused shall be

released forthwith, if he is not required in connection with any other case,

S.N. Phukan, J.

14. I agree.