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Dhaneswar Pradhani Vs State of Assam

Criminal Appeal No. 229 (J) of 1998

Court: Gauhati High Court

Date of Decision: Oct. 1, 2002

Acts Referred:
Penal Code, 1860 (IPC) â€" Section 302, 84

Citation: (2003) CriLJ 733 : (2003) 2 GLR 15 : (2003) 1 GLT 192

Hon'ble Judges: P.P. Naolekar, C.J; B.B. Deb, J

Bench: Division Bench

Advocate: Abdul Mannan, Amicus Curiae, for the Appellant; Public Prosecutor, for the Respondent

Final Decision: Dismissed

Judgement

B.B. Deb, J.
The appellant Shri Dhaneswar Pradhani was convicted u/s 302 of the Indian Penal Code and sentenced to suffer rigorous

imprisonment for life and a fine of Rs. 2,000 on 12.8.1998 by the learned Additional Sessions Judge, Dhubri in Sessions Case No. 41 of 1997.

The convict vide petition dated 2.10.1998 communicated a letter from Jail to the Registrar General of this Court and on that basis the appeal has

been registered and this Court appointed Shri Abdul Mannan, learned Advocate, as Amicus Curiae to conduct this appeal.

2. Precisely the prosecution case may he stated thus :

In the night intervening 26th - 27th October, 1996, the accused killed his wife Smt. Suniti Sinha (45 years) and his daughter Smt. Sukriti Pradhani

(17 years) and on the following morning (27.10.1996) carried the two dead bodies by a hand cart and arrived at Agamani Police Outpost and

made a statement to the Police officer on duty that he "cut" his wife and daughter to death with an axe and he surrendered to "the police. The Duty

officer recorded his version and the accused put his signature. However, on the basis of the statement so made by the accused-appellant, the Duty

officer formally lodged one formal FIR addressing O. C. on that date itself. During investigation the accused-appellant expressed his desire to

make confessional statement and the learned Judicial Magistrate. 1st Class. Dhubri recorded his confessional statement. On completion of the

investigation. Police furnished chargesheet. The case being one exclusively triable by the Court of the Sessions the learned Chief Judicial

Magistrate, committed the same. After hearing the prosecution and the defence the learned trial Court framed the charge against the accused

punishable u/s 302 of the Indian Penal Code for committing culpable homicide amounting to murder of his wife Smt. Suniti Sinha and his daughter

Smt. Sukriti Pradhani.

3. During examination prosecution examined as many as 19 witnesses.

4. PW 12, Doctor of Dhubri Civil Hospital, conducted autopsy on the two Corpuses on 27.10.1996, He found the following injuries on the corpus

of Smti. Suniti Singh :

(1) Sharp cutting injury on the left side efface started from the middle of left upper lip upto the left ear labula.

(2) Left maxillary process is crushed.

(3) Left mandibula is found fractured.

(4) Sharp cutting injury on the fore-head started from left temporal region upto the upper part of the left side of the nose having the frontal bone of

head fractured.

(5) Brain matter of frontal region of left side and temporal region is burst out.

(6) Cut injury started from middle of lower lip including the angle of left side of the mouth.

Left side of facial muscles found injured and according to Doctor the cause of death is due i o shock and haemorrhage as a result of multiple

injuries sustained.

He also conducted postmortem on the corpus of Smt. Sudhriti Pradhani and found the following injuries ;

(1) Fracture head injury on the occipital and right side of the Parietal hone Drain matter of right side occipital and parietal region found crushed and

burst out.

(2) Right ear punctured as a result of cut injury on the middle of the light ear.

(3) Cut injury in the right temporal and right side of occipital with fractured a bone. Brain matter of right temporal and occipital region are found

crushed and burshed out.

(4) Muscle of right temporal and right side of occipital region found injured.

According to the Doctor the cause of death was due to shock and haemorrhage as a result of head injury sustained.

5. From the nature of injuries as have been detected by the Doctor, conducting postmortem on the corpuses unhesitatingly reveals that it is a case

of homicidal death. With definite intention to cause death the killer assaulted both the females with sharp cutting weapon.

6. Undoubtedly, there is no eye witness in the present case and the prosecution relied upon the confessional statement made by the accused -

appellant. That apart the neighbouring witnesses including PW 11 who happened to be the relative of the accused - appellant, deposed that in the

night of incident there was a Kirtan (chanting of religious song) in the house of PW 11 (Fanindra Nath Pradhani) where villagers assembled and

participated in the religious song and they saw the accused appellant in the Kirtan for sometime. The said Kirtan continued till dawn while some of

the neighbours noticed that the doors of the accused''s house remained open. Some went there and found none in the house but floor of the room

have been found stained with blood.

7. PW 1 Smti. Aloka Pradhani is the wife of PW 11 PW 5 Shri Ranjit Kr. Roy, a neighbour of the accused-appellant PW 7 is Ramesh Ch.

Saikar, a neighbour, PW 8 Ramesh Ch. Ray is the neighbour, PW 9 Sri Madan Ch. Ray, is the neighbour. PW 11 is the relative of the accused

appellant On careful examination of the depositions of the afore named PWs it reveals that on the fateful night there was a Kirtan organised in the

house of PW 11 where the aforesaid witnesses participated. Kirtan continued whole night. In the night they noticed the presence of the accused

appellant in Kirtan for some time. At dawn some neighbouring people came to the house of PW 11 and reported that none was found in the house

of the accused-appellant and doors were found opened. All those witnesses and other village people rushed to the house of the accused-appellant

and fund pool of blood on the floor of the rooms belonging to the accused-appellant in the mean time, some of the villagers reported that the

accused appellant already had gone to the Police Station carrying the dead bodies of his wife and daughter on a hand cart.

8. PW 4 Abdul Haque, deposed that hearing the incident of killing he rushed to the Agamani Police Out Post and found the two dead bodies in a

push card. Many people gathered there.

9. From the trend of cross-examination conducted by the defence during the trial it appears that the incident of killing of his wife and daughter by

the convict appellant remains not in dispute rather admitting the incident defence put forward a claim of ""insanity"". It is correct that some of the

witnesses during cross-examination deposed that sometime they noticed the periodical insanity suffered with by the accused - appellant, none spelt

any definite period of such insanity found to have been suffered by the accused-appellant. From the testimonies of the witnesses it is very hard to

ascertain the proximity between the period of insanity and the aforesaid commission of homicidal death.

10. Insanity, indeed, is a legal defence available to an accused to claim immunity from the penal consequences in a criminal trial provided u/s 84 of

the Indian Penal Code. The provision of Section 84 IPC contemplates that by reason of unsoundness of mind if one becomes incapable of

knowing the nature and consequences of the act, he does or becomes mentally handicapped of knowing what he is doing could legitimately claim

the immunity under the said provision. The pica of insanity or un-soundness of mind per se does not allow the accused to avail the benefit of

Section 84 of the Indian Penal Code unless it is proved that at the relevant time of the commission of offence he was suffering from such a degree

of unsoundness of mind rendering him incapable of knowing the nature for the act. Mere feeble mind - ness, emotional imbalance or un-controlable

anger or eccentricity can not lawfully provide any relief to be claimed under the aforesaid provision, unless it is proved from the evidence, of

course, by pre-ponderance of probalities, that at the relevant time or soon before the commission of offence the accused suffered from such

degree of insanity which made him incapable of knowing the consequences of the act, he did. But, unfortunately in the present case nothing of the

sort is available from the evidence. Some vague statements are available in the depositions of some of the witnesses to the effect that in the past,

some lime they found the appellant suffering with mental insanity and while he was so suffering he used to cut goats, etc. But, unless the symptoms

of insanity has its proximity with the commission of crime it would be very difficult to allow legal immunity in favour of the accused-appellant.

11. From the statement made by the accused appellant white making confession u/s 164 Cr.PC no abnormality was detected, even during

examination u/s 213 Cr.PC the accused appellant never put forward an explanation of such degree of insanity he suffered with. The close relative

of the accused-appellant could have been produced as defence witness to unfold the nature and degree of insanity he suffered having probable

proximity with the commission of offence, but unfortunately, the defence did not make any attempt to discharge its burden.

12. Learned Amicus Curiae, appearing for the petitioner submits that it was the duty of the learned trial Court to get the accused appellant

examined by Medical Expert From the lower Court record it does not reveal that at any point of time either the accused himself or any of his

relatives or his defence counsel urged for any medical examination of the accused during trial. From the conduct of the accused while his

confessional statement was recorded under 164 Cr.PC and while he was examined u/s 313 Cr.PC it can not be inferred that the accused appellant

committed murder of his wife and daughter during the period of insanity suffered with and as such we are not inclined to share with the submission

of the learned Amicus Curiae appearing for the appellant that the accused is entitled to get immunity u/s 84 of the Indian Penal Code.

13. In this respect a profitable reference may be had to a decision of the Hon''ble Apex Court in Dahyabhai Chhaganbhai Thakker Vs. State of

Gujarat, The Hon''ble Apex Court in para 9 of the citation held that ""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. Weather 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.

14. From the evidence on record it appears that the appellant attended the kirtan just in the night itself preceding to the commission of offence and

he carried the corpus in a hard cart, made his statement before the police expressing his desire to make confessional statement which was

recorded by the competent judicial Magistrate with no noticible abnormality of mental disorderness. Even during trial and at the end while he was

examined u/s 313, he exposed his soundness of mind and as such in our considered opinion the appellant is not entitled to be allowed immunity

provided u/s 84 of the IPC.

15. The evidence on record convincingly led us to hold that the learned trial Court rightly appreciated the evidence and circumstances in convicting

the accused appellant under Stion 302 of the IPC and we fail to persuade ourselves to differ with the aforesaid finding of the learned trial Court.

16. In the result, the appeal fails and is hereby dismissed.