

**(1984) 11 CAL CK 0001**

**Calcutta High Court**

**Case No:** Criminal App. No. 280 of 1980

Nimdhari Singh

APPELLANT

Vs

State

RESPONDENT

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**Date of Decision:** Nov. 27, 1984

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 313, 328, 428
- Penal Code, 1860 (IPC) - Section 302, 324, 76, 84

**Citation:** 89 CWN 128

**Hon'ble Judges:** N.G. Chaudhuri, J; G.C. Chatterjee, J

**Bench:** Division Bench

**Advocate:** Chaitanya Mukherjee, for the Appellant; M. Gupta, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

N.C. Chaudhuri, J.

The appellant has been convicted of an offence u/s 302 IPC and sentenced to life imprisonment and to a fine of Rs. 500/- in default to R1 for 6 months in Sessions Trial No. 4 of 1980 by the Additional Sessions Judge, Asansol. He was tried further for an offence u/s 324 IPC in respect of which he has been found guilty and sentenced to 3 years R1 and a fine of Rs. 100/- in default to further R1 for 3 months. The sentences are to run concurrently. So he has come up In appeal. He has been in jail during the pendency of the appeal. The appellant was a sentry constable on duty attached to Cokeoven PS Durgapur District, Burdwan at the time of occurrence namely, 9 30 PM on 11.9.75. He is alleged to have fired his rifle at Driver Subal Singh allotted to CIB (Durgapur) while he was a standing in the room of the Duty Officer of the aforesaid thana and caused his death, almost instantaneously. The circumstances in which the appellant fired have been described in the FIR marked Ext. 1/2 lodged at 23 00 hrs. on 11.9.75 itself. It was alleged therein that informant Sankar Lall Das ASI attached to Coke-oven, PS and examined as PW 1 was talking standing in the space between the table of Sri Surja Kanta Paik Choudhuri SI (PW 2)

and another table In the room of the Duty Officer. Mr. Paik Choudhury was sitting on the chair of the Duty Officer and in front of the table of the informant constable No. 366 Anil Kumar Chakravorty (PW 4) and Home Guard Sudhir Chatterjee were sitting on a bench and RT Constable No. 123 Asoke Mukherjee was sitting by the side of RT shed. When the Police Officers named above were sitting in the above posture in and around the room of the Duty Officer, driver Subol Singh, the victim came near the table of Surja Kanta Paik Choudhury and started talking with him. Suddenly Sentry constable Nimdhari Singh, the appellant, who was on duty fired one round from his rifle aiming at Subal Singh and he immediately fell down on the floor Surja Kanta Paik Choudhury held his hand with his right hand and then pounced upon RGC Asoke Mukherjee. Sushil Chatterjee, Anil Chatterjee, Asoke Mukherjee and the informant tried to get out of the Duty Officer's room in a stampede and they saw appellant stretching the barrel of his rifle again. The Officers attempting to go out shouted for fear of life. Home-Guard Sushil Chatterjee (P. W. 14) however, managed to go out of the Duty Officer's room and attempted to catch the rifle in the hands of the Sentry constable to be hit on his mouth by the barrel of the rifle by the Sentry constable. Despite that Sushil Chatterjee caught hold of the rifle and thereafter a scuffle ensued between him and the Sentry constable and in the meantime constable No. 1164 Ram Chandra Orang (PW 9) and others caught hold of the appellant and snatched away the rifle from him. Sub Inspector Makheser Hossain (PW 3) who was on duty. In the room in front of the Duty Officer's room at the time of the occurrence came out and with the help of all present the appellant could be apprehended. Injured Subodh Singh was taken to D. P. L. Hospital in a Jeep for treatment at about 9.45 P.M. and at about 10 P.M. the doctor attending him at the hospital pronounced him dead. The informant returned to the thana after making arrangement for treatment of S. I. Surja Kanta Paik Choudhury who was also injured Thereafter the FIR was lodged,

2. The appellant faced the Sessions trial on two fold charges namely, one u/s 302 IPC for intentionally causing the death of Subodh Singh and another u/s 324 of the IPC for voluntarily causing hurt to Surya Kanta Paik Choudhury. On behalf of the appellant the plea of his insanity at the time of occurrence was canvassed at the time of trial Prosecution examined in all 15 witnesses. We have already noted that informant was examined as PW 1, Surja Kanta Paik Choudhury who was himself injured was examined as PW 2, Makheser Hossain was examined as PW 3, Anil Chakravorty as PW 4, Narayan Mukherjee a Police constable as PW 5. Bhaskar Patra SO of Police who reached the dead body of Subodh Singh to the Hospital at Asansol for postmortem as PW 6, Dr. P. C. Mukherjee who attended Injured Sushil (PW 14) on the date of occurrence as PW 11, and Dr., Mondal who held postmortem over the dead body of the deceased driver. Witnesses examined for the defence were D W. 1 Dr. N. M. Roy, M. O. attached to Asansol Special Jail and Dr. B.N. Chakravorty attached to Ranchi Manasik Aragyasala at Kanke, and D.W.3 Md. Enaitullah, an employee attached to Ranchi Manasik Aragyasala at Kanke, who came to depose

with regard to the detention of the accused there for sometime and produced some records. The learned trial Judge, however overruled the plea of insanity and convicted the appellant for the offences already stated.

3. Mr. Chaltanya Mukherjee, the learned advocate appearing for the appellant has been engaged by the learned Legal Remembrancer to argue the case of the appellant who is in jail. Mrs. Gupta appeared and argued on behalf of the State Government as respondent.

4. The eye witnesses to the occurrence named in the FIR have given a consistent version of the occurrence. Doctor Mondal (PW 13) has deposed with regard to the injuries found on the person of the deceased at the time of post mortem. In his opinion death was due to gun-shot injury antemortem and homicidal In nature and the injury found by him is quite consistent with the prosecution story of penetration of a bullet of a gun from one side of the gluteal region and going out through the other side of the gluteal region. Mr. Mukherjee does not point out any discrepancy in the testimony of the eye witnesses for which the prosecution story could be disbelieved. Mr. Mukherjee concentrates his attack against the judgment under appeal on the plea of insanity of the appellant. Mr. Mukherjee points out that the time of occurrence was night namely 9 35 P.M. on 11.9.75. Reading out portions of deposition of PW 1, he submits that Subodh Singh the victim was at the time of occurrence wearing only an underwear covered by towel and one ganji Regarding the dress Subodh was wearing at the time p w. 2 is corroborated by PW 2 Surja Kanta Paik Chaudhury. In course of cross-examination PW 2 added that he did not recollect if any message through R. T. was being sent just before the firing in question but in case of transmitting or receiving of message through or from RT particular sound is generated PW 5 a constable deposed that he found the appellant in a turbulent condition for which he had to be roped He was found restless and was shouting loudly and raising a peculiar sound. On this point PW 9 Ramchandra Orang corroborated him. PW 14 Sushil Chatterjee who was himself injured deposed that at the time Nimdhari Singh behaved like an insane person, Mr. Mukherjee accordingly submits that there was no motive for the murder and the conduct of the appellant was abnormal as deposed to by witnesses aforesaid. Mr. Mukherjee submits that the plea of Insanity, therefore deserved to be seriously considered. In this connection he refers to the testimony of the DWs earlier mentioned. Soon after the arrest of the accused the PW 1 MO attached to Asansol Special Jail found the appellant disinclined to talk, work eat, sleep and desiring to live alone and his behaviour was irritable to other prisoners and DW 1 recommended further treatment of the patient by the specialist psychiatrist. DW 2 deposed that as directed by the Court he brought papers from Ranchi Manasik Aragyasala at Kanke, where Nimdhari was admitted as an indoor patient on 24. 11.75 and he was discharged on 22 3.76. DW 3 deposed that Dr. Srivastava actually treated the appellant in the said hospital but Dr. Srivastava was not examined as a witness. To strengthen the plea of the appellant's Insanity Mr. Mukherjee relies not only on the oral deposition of the

DWs but also on the documents produced by them. Mr. Mukherjee submits that he was not only taking a plea of general exception u/s 84 of the IPC but also a plea u/s 76 of the Code. Mr. Mukherjee means that at night Subodh Singh entered into duty Officer's room not dressed as a police personnel but with ganji, underwear and towel. The night was advanced and in the nearby room RT messages regarding commission of dacoity was being received and transmitted. The mention of the word "dacoity" and the appearance of Subodh Singh in the dress as noted above in the thana mislead the appellant to believe that a dacoit had entered into the thana and by reason of the mistake of fact he fired his rifle and might have caused the death of Subodh Singh. Mr. Mukherjee accordingly contends that if the insanity contemplated u/s 84 of the IPC has not been proved, the plea of mistake of fact contemplated u/s 76 was available to the appellant.

5. Before we consider the arguments of Mr. Mukherjee we should recall that the burden of proof of insanity is on the accused as held in the case of [Bhikari Vs. State of Uttar Pradesh](#). We should also bear in mind that the crucial point of time at which the unsoundness of mind of the accused is required to be established is the time when the offence was committed and immediately thereafter. Insanity, if any, at the time of occurrence was within the special knowledge of the appellant and it is for him to plead that in course of his statement u/s 313 Cr. PC. It is worthy of mention that although he gave intelligent and coherent replies to questions put to him in course of his examination u/s 313 Cr. PC, yet the appellant did not say that he had fits of insanity or harboured a wrong impression of facts at the time of occurrence. This omission speaks eloquently against the accused. On a close scrutiny of Section 84 of the IPC it appears that in order to come within the mischief of that section the accused must not only be suffering from unsoundness of mind at the time of committing the offence that must also be incapable of knowing the nature of the act he performed. A distinction has been drawn and emphasized between medical and legal insanity in the case of Surka Gundusua vs. State reported in 1969 Cri. LJ 75. Legal insanity only furnishes grounds for exemption from criminal liability. In order to constitute legal insanity the unsoundness of mind must be of such nature as to make the accused incapable of knowing the nature of his act. In short legal insanity means total loss of the cognitive faculty at the time of occurrence. In the present case we find that no one pleaded that the appellant had a history of insanity prior to the date of occurrence. The appellant was a constable on sentry duty equipped with fire arms. If the officers superior to the appellant had noticed any abnormality in his conduct or behaviour or were aware of any history of insanity they would not certainly have posted him at the place equipped with fire arms. It is to be noted that the appellant is not a fresh recruit, he was at the relevant time on the verge of his retirement. The I. O. deposed that there is a provision for annual medical check up of sentries and officers. So we can infer that there was a medical check up of the appellant at regular intervals and nothing abnormal was found in him. Further we find that soon after his arrest the appellant was put up

before a Magistrate on the plea that he would confess. We have looked into the records of the court below closely, but we find nothing indicating that the Magistrate noticed anything abnormal in his conduct or appearance for which he might be considered incapable of making a confession. The order-sheet of the learned Magistrate reveals that the learned Magistrate gave him adequate time for reflection and did not record his confession immediately. Subsequently on the prayer of the brother of the accused he was sent to Asansol Jail for observation and subsequently he was sent to Ranchi Manasik Aragyasala Kanke for treatment. The point deserving notice is that in cases where Section 328 of the Cr. P.C. is attracted the Magistrate must have reason to believe that the person against whom inquiry is being held is of unsound mind. The first test of insanity, therefore, is that, even without being an expert, looking at the demeanour of the accused produced before him and watching his conduct the Magistrate must *prima facie* believe that the person against whom the enquiry is being held is of unsound mind and consequently incapable of making his defence.

If the Magistrate entertains such a plea he is to enquire into facts of the unsoundness of the mind and cause the person to be examined by the civil surgeon of the district or such other medical officer as the State Government may direct. There is nothing in the order sheet of the learned Magistrate to indicate that he had any reason to suspect that the appellant was of unsound mind and should therefore be examined by a civil surgeon. The reference to the doctor of Asansol Jail was made improperly on the basis of the prayer of the brother of the appellant. We, therefore, reach the conclusion that immediately after the occurrence no sign of insanity of the appellant was noticed.

6. To sum up, for consideration of the plea of insanity as a factor exempting from prosecution for an offence, the burden of proof lies on the accused, he is to plead it, appropriately at the time of his examination u/s 313 Cr. P. C, besides suggesting the above fact to prosecution witnesses. The evidence of insanity should be dependable given by experts with regard to the period prior to the occurrence, at the time of occurrence and immediately following the occurrence; observation if any, made by the Magistrate regarding demeanour conduct or appearance of the accused at the time of his production after arrest is highly relevant. The evidence in order to benefit the accused must be of total loss of cognitive faculty and incapacity to understand nature and consequence of the act alleged. In the present case there is deficiency of materials on record on all the above points.

7. If we go to the extreme and hold that plea of unsoundness of mind of the appellant deserve to be considered we must add that there was no material to hold that he suffered from unsoundness of mind at the time of occurrence. We add further that there is not an iota of evidence to indicate that because of unsoundness of mind the appellant was incapable of knowing the nature of the act he indulged in and the consequence thereof.

8. Instances of persons taking the plea of insanity after commission of an offence and pretension of Insanity are very common. Considering all these we hold that the learned trial Court was justified in overruling the plea of Insanity or unsoundness of mind. The other plea of entertaining mistaken facts was not again specifically pleaded. The conviction of the accused cannot therefore be called in question. In the result the appeal fails and is dismissed. The judgment of conviction and sentence appealed against is affirmed. The appellant is directed to serve out his sentence subject to set off u/s 428 Cr. P. C.