

Kishore Kumar Vs The State of Chhattisgarh

Court: Chhattisgarh High Court

Date of Decision: Sept. 2, 2013

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 313

Evidence Act, 1872 â€” Section 105

Penal Code, 1860 (IPC) â€” Section 299, 302, 84

Citation: (2014) 1 CGLJ 388

Hon'ble Judges: Satish K. Agnihotri, J; R.S. Sharma, J

Bench: Full Bench

Advocate: Fouzia Mirza, for the Appellant; Adil Minhaj, Panel Lawyer, for the Respondent

Final Decision: Dismissed

Judgement

1. This appeal is directed against the judgment dated 06.6.2007 passed by the Sessions Judge, Mahasamund in Sessions Trial No. 21/2007. By

the impugned judgment, accused/appellant Kishore Kumar has been convicted u/s 302 IPC and sentenced to undergo imprisonment for life and to

pay fine of Rs. 2000/-, in default of payment of fine, to further undergo rigorous imprisonment for six months. Case of the prosecution, in brief, is

as under:

On the date of incident, i.e. on 01.12.2006 Ku. Reeta (PW-9) was residing with her father and was studying in Class-VII in Govt. Girls School,

Basna. Reeta (PW-9) was returning her home after the school hours along with Neeru and Lakshmi (deceased). They stopped at village tank and

went towards the pond to wash their faces and hands. After the wash, Reeta (PW-9) and Neeru were standing on the bund of the pond.

Deceased Lakshmi was washing her face and hands. At that time, the appellant came there, caught the hands of Lakshmi (deceased) and dragged

her into the pond. The appellant forcibly drowned her into the water. Having witnessed the incident, Reeta (PW-9) and Neeru got frightened and

ran towards the village shouting "save save". Having heard their shout, the villagers gathered near the pond. Later on, Reeta (PW-9) came to

know that deceased Lakshmi was killed by the appellant by drowning into the water. Reeta (PW-9) lodged merger intimation (Ex-P/9) and First

Information Report (Ex-P/7) in Police Station Basna. Deceased Lakshmi was taken to Community Health Centre, Basna, where she died.

Investigating Officer reached Community Health Centre, Basna, gave notice (Ex-P/4) to Panchas and prepared inquest (Ex-P/5) on the dead body

of the deceased. The dead body was sent to Community Health Centre, Basna for postmortem examination. Dr. MK Naik (PW-5) conducted

postmortem examination on the dead body of the deceased and gave his report (Ex-P/2), finding (i) abrasion, 2 cm x 0.1 cm horizontal, middle of

left clavicle on the chest (ii) abrasion, 1 cm x 0.1 cm on the vertically oblique on the left side of the neck below thyroid cartilage (iii) abrasion, 1 cm

x 0.1 cm below injury No. 2 (iv) abrasion, 1 cm x 0.1 cm below injury No. 3 (v) abrasion, 2 cm x 0.1 cm on right side of the neck. He opined that

cause of death was asphyxia due to drowning and mode of death was homicidal in nature.

In further investigation, spot map (Ex-P/3) was prepared by Patwari Sunil Kumar Sahu (PW-6). A pair of black shoes was seized from the place

of occurrence vide Ex-P/6.

After completion of the investigation, charge sheet was filed against the appellant in the Court of Judicial Magistrate First Class, Saraipali, who, in

turn, committed the case to the Court of Sessions Judge, Mahasamund, who conducted the trial and convicted and sentenced the appellant as

mentioned above.

2. In support of its case, the prosecution has examined Gop Bandhu (PW-1), Devendra Kumar (PW-2), Rishabh Kumar (PW-3), Ganpati Chand

(PW-4), Dr. NK Naik (PW-5), Patwari Sushil Kumar Sahu (PW-6), Rojina Nand (PW-7), Kotwar Thakur Ram (PW-8), Ku. Reeta (PW-9),

Safed Kumar - father of the deceased (PW-10) and Station House Officer Pranesh Dubey (PW-11). The appellant did not examine any witness in

his defence.

3. Smt. Fouzia Mirza, learned counsel for the appellant submitted that the appellant was a person of unsound mind at the time of commission of

offence and his act comes within the general exceptions provided u/s 84 of the Indian Penal Code. She further submitted that the evidence of

prosecution witnesses is not reliable. Their evidence is full of contradictions. Their evidence, being not clinching and cogent, cannot be based for

conviction. Hence, the appellant deserves to be acquitted. She placed reliance on State of Rajasthan Vs. Shera Ram @ Vishnu Dutta, .

4. On the other hand, Shri Adil Minhaj, learned Panel Lawyer for the State/respondent, supporting the impugned judgment, submitted that the

conviction and sentence awarded by the learned Sessions Judge does not warrant any interference of this Court.

5. We have heard learned counsel for the parties at length and have also perused the record of Sessions Trial No. 21/07. The conviction of the

appellant is based on the testimonies of Reeta (PW-9), Gop Bandhu (PW-1) and Rishabh Kumar (PW-3). In the instant case, during the

argument, learned counsel for the appellant submitted that the appellant was a person of unsound mind at the time of commission of offence. We

have perused the record of the Courts below. The accused has not taken defence of unsoundness of his mind before the trial Court.

6. Now, we shall see whether the accused/appellant was actually insane at the time of commission of offence? In view of the plea raised, it is

desirable to consider the meaning of expression "unsoundness of mind". In the context of Section 84 of the Indian Penal Code and for its

appreciation, we deem it expedient to reproduce the same. It reads as follows:

84. Act of a person of unsound mind. 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.

7. Section 84 of the Indian Penal Code deals with general exception. On a plain reading of the above provision, it is evident that an act will not be

an offence, if done by a person who, at the time of doing the same by reason of unsoundness of mind, is not capable of knowing the nature of the

act, or what he is doing, is either wrong or contrary to law. The Hon'ble Supreme Court has considered this question in *Bapu @ Gajraj Singh Vs.*

State of Rajasthan, in which it has been held as follows:

The standard to be applied is whether according to the ordinary standard, adopted by reasonable men, the act was right or wrong. The mere fact

that an accused is conceited, odd, irascible and his brain is not quite all right, or that the physical and mental ailments from which he suffered had

rendered his intellect weak and had affected his emotions and will, or that he had committed certain unusual acts in the past, or that he was liable to

recurring fits of insanity at short intervals, or that he was subject to getting epileptic fits but there was nothing abnormal in his behaviour, or that his

behaviour was queer, cannot be sufficient to attract the application of this section.

8. In *Surendera Mishra Vs. State of Jharkhand*, the Hon'ble Supreme Court has observed as follows:

9. In our opinion, an accused who seeks exoneration from liability of an act u/s 84 of the Indian Penal Code is to prove legal insanity and not

medical insanity. Expression "unsoundness of mind" has not been defined in the Indian Penal Code and it has mainly been treated as equivalent to

insanity. But the term insanity carries different meaning in different contexts and describes varying degrees of mental disorder. Every person who is

suffering from mental disease is not ipso facto exempted from criminal liability. The mere fact that the accused is conceited, odd, irascible and his

brain is not quite all right, or that the physical and mental ailments from which he suffered had rendered his intellect weak and affected his emotions

or indulges in certain unusual acts, or had fits of insanity at short intervals or that he was subject to epileptic fits and there was abnormal behaviour

or the behaviour is queer are not sufficient to attract the application of Section 84 of the Indian Penal Code.

10. Next question which needs consideration is as to on whom the onus lies to prove unsoundness of mind. In law, the presumption is that every

person is sane to the extent that he knows the natural consequences of his act. The burden of proof in the face of Section 105 of the Evidence Act

is on the accused. Though the burden is on the accused but he is not required to prove the same beyond all reasonable doubt, but merely satisfy

the preponderance of probabilities. The onus has to be discharged by producing evidence as to the conduct of the accused prior to the offence, his

conduct at the time or immediately after the offence with reference to his medical condition by production of medical evidence and other relevant

factors. Even if the accused establishes unsoundness of mind, Section 84 of the Indian penal Code will not come to its rescue, in case it is found

that the accused knew that what he was doing was wrong or that it was contrary to law. In order to ascertain that, it is imperative to take into

consideration the circumstances and the behaviour preceding, attending and following the crime. Behaviour of an accused pertaining to a desire for

concealment of the weapon of offence and conduct to avoid detection of crime go a long way to ascertain as to whether, he knew the

consequences of the act done by him. ...

9. In *Dahyabhai Chhaganbhai Thakker Vs. State of Gujarat*, the Hon"ble Supreme Court held that "the prosecution, in a case of homicide, shall

prove beyond reasonable doubt that the accused caused death with the requisite intention described in Section 299 of the Indian Penal Code. This

general burden never shifts and it always rests on the prosecution. But, u/s 105 of the Evidence Act, the burden of proving the existence of

circumstances bringing the case within the said exception lies on the accused, and the Court shall presume the absence of such circumstances. The

accused has to rebut the presumption that such circumstances did not exist, by placing material before the court sufficient to make it consider the

existence of such circumstances so probable that a prudent man would act upon them. The accused has to satisfy the standard of a "prudent man".

If the material placed before the Court, such as, oral and documentary evidence, presumptions, admissions or even the prosecution evidence,

satisfies the test of "prudent man" the accused will have to discharge his burden.

10. In Hari Singh Gond Vs. State of M.P., the Hon"ble Supreme Court held that ""the standard to be applied for deciding applicability of S. 84 is

whether according to the ordinary standard, adopted by reasonable men, the act was right or wrong. The mere fact that an accused is conceited,

odd irascible and his brain is not quite all right, or that the physical and mental ailments from which he suffered had rendered his intellect weak and

had affected his emotions and will, or that he had committed certain unusual acts, in the past or that he was liable to recurring fits of insanity at short

intervals, or that he was subject to getting epileptic fits but there was nothing abnormal in his behaviour, or that his behaviour was queer, cannot be

sufficient to attract the application of this Section. It was held on facts of case that S. 84 had no application.

11. Again in Siddhapal Kamala Yadav Vs. State of Maharashtra, , it was held by the Hon"ble Supreme Court that ""the onus of proving

unsoundness of mind is on the accused. But where, during the investigation, previous history of insanity is revealed, it is the duty of an honest

investigator to subject the accused to a medical examination and place that evidence before the Court and if this is not done, it creates a serious

infirmity in the prosecution case and the benefit of doubt has to be given to the accused. The onus, however, has to be discharged by producing

evidence as to the conduct of the accused shortly prior to the offence and his conduct at the time or immediately afterwards, also by evidence of

his mental condition and other relevant factors. The burden of proof, however, is not so onerous as that upon the prosecution to prove that the

accused committed the act with which he is charged. The burden on the accused is not higher than that resting upon a plaintiff or a defendant in a

civil proceeding.

12. In Sudhakaran Vs. State of Kerala, the Hon"ble Supreme Court observed as follows:

29. Section 84 of the Penal Code, 1860 recognises the defence of insanity. It is defined as under:

84. Act of a person of unsound mind.-- 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 of law.

30. A bare perusal of the aforesaid section would show that in order to succeed, the appellant would have to prove that by reason of unsoundness

of mind, he was incapable of knowing the nature of the act committed by him. In the alternate case, he would have to prove that he was incapable

of knowing that he was doing what is either wrong or contrary to law.

...

35. It is also a settled proposition of law that the crucial point of time for ascertaining the existence of circumstances bringing the case within the

purview of Section 84 is the time when the offence is committed. We may notice here the observations made by this Court in Ratan Lal Vs. The

State of Madhya Pradesh, In para 2 of the aforesaid judgment, it is held as follows:(SCC p. 533)

It is now well settled 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 [appellant].

13. Now, we have to see whether the appellant discharged the burden of proving that he was of unsound mind at the time or immediately after the

offence.

14. In the instant case, no medical certificate has been produced by the appellant to prove unsoundness of his mind or his insanity. Even no single

question is asked or put to investigating officer Pranesh Dubey (PW-11) regarding unsoundness of mind of the appellant. Even the appellant has

not taken defence during the trial that he was insane or having unsound mind at the time of the incident. When the appellant was examined u/s 313

Cr.P.C. and was asked about his defence, he simply replied that he is innocent.

15. Safed Kumar (PW-10) deposed that Lakshmi (deceased) was his daughter and she was studying in Class VI at Govt. Girls School, Basna.

On the date of incident, she had gone to school for studying. Reeta (PW-9) deposed that she was studying in Govt. Girls School, Basna along with

Lakshmi (deceased) and Neeru. On 01.12.2006, after the school hours, they were returning to their houses. They stopped near village tank and

washed their faces and hands. She further deposed that after washing the face and hands, she and Neeru came out of the tank and were standing

on the bund of the tank and Lakshmi (deceased) was washing her face and hands. At that time, the appellant came there, caught Lakshmi, dragged

and drowned her into the water. Having seen the incident, they shouted for help. Having heard their shout, the villagers gathered there.

16. Gop Bandhu (PW-1) and Rishabh Kumar (PW-3) deposed that having heard the shout, they reached near the tank. At that time, the appellant

was putting his leg over the chest of the deceased under the water. Rohit entered into the water and took the deceased out the tank and some

villagers caught the appellant.

17. Reeta (PW-9) deposed that she lodged Merg Intimation (Ex-P/9) and FIR (Ex-P/7) in Police Station, Basna. Dr. NK Naik (PW-5) deposed

that he conducted postmortem examination on the dead body of the deceased and gave his report (Ex-P/2), finding abrasion, 2 cm x 0.1 cm

horizontal, middle of left clavicle on the chest (ii) abrasion, 1 cm x 0.1 cm on the vertically oblique on the left side of the neck below thyroid

cartilage (iii) abrasion, 1 cm x 0.1 cm below injury No. 2 (iv) abrasion, 1 cm x 0.1 cm below injury No. 3(v) abrasion, 2 cm x 0.1 cm on right side

of the neck. He opined that cause of death was asphyxia due to drowning and mode of death was homicidal in nature.

18. The date and time of the incident was 01.12.2006 at about 17 hours and FIR (Ex-P/7) was lodged on the same day at 18.30 hours. The FIR

(Ex-P/7) was lodged within 1 1/2 hours of the incident. In the FIR (Ex-P/7), it is mentioned that:

19. We have carefully perused the evidence of Reeta (PW-9), Gop Bandhu (PW-1) and Rishabh Kumar (PW-3). They have specifically deposed

that on the fateful day, the appellant dragged the deceased into the tank and when villagers gathered there, they saw that the appellant was putting

his leg over the chest of the deceased and the deceased was lying under the water. Their evidence is corroborated by medical evidence. Therefore,

evidence of Reeta (PW-9), Gop Bandhu (PW-1) and Rishabh Kumar (PW-3) is wholly reliable, cogent and can form the basis for conviction of

the appellant. We have also perused the medical evidence. Dr. NK Naik (PW-5) opined that the cause of death of the deceased was due to

asphyxia and the death was homicidal in nature.

20. In absence of medical treatment certificate/documents with regard to unsoundness of mind of the appellant, mere oral submission cannot give

rise to an inference that the appellant was of unsound mind at the time of commission of offence. There is no observation of the Sessions Court in

this regard. Even in the statement of the appellant recorded u/s 313 Cr.P.C., nothing has been observed nor the answers to the questions put to

him are given in such a manner, on which, the Court could have proceeded in that line. In our opinion, the plea of the appellant does not come

within the exceptions contemplated u/s 84 IPC.

21. Therefore, we do not find any infirmity in the finding recorded by the learned Sessions Judge that it was the appellant who dragged the

deceased into the water and the deceased died due to drowning. For the foregoing reasons, we do not find any substance in the appeal, which

deserves to be and is hereby dismissed.