
(2019) 07 MP CK 0021

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 1254 Of 2007

Bhammu @ Gokulsingh S/O Rupsingh	APPELLANT
Vs	
State Of Madhya Pradesh	RESPONDENT

Date of Decision : 11-07-2019

Acts Referred:

Indian Penal Code, 1860 — Section 84, 302, 325
Evidence Act, 1872 — Section 105

Citation : (2019) 07 MP CK 0021

Hon'ble Judges : Virender Singh, J

Bench : Single Bench

Advocate : Seema Sharma, Gaurav Verma

Final Decision : Dismissed

Judgement

Virender Singh, J

1. The appellant is aggrieved by his conviction under section 302 of the IPC and sentence of life imprisonment along with fine of Rs.1,000/- with

default stipulation recorded vide judgment dated 14.09.2007 by Additional Sessions Judge, Narsinghar District Rajgarh in Sessions Trial No.18/2007,

therefore, he is before this Court.

2. It is not disputed by the appellant that the deceased Hansa Kuwar was his wife.

3. The prosecution case in brief is that on 13.11.2006 at about 10:00 in the night after hearing some clamour, Gopal Singh woke up, came out of the

house and saw the appellant having sword in his hand and shouting that he has killed his wife. Neighbours Mokam Singh and Raghunath @ Chotelal

also came out of their houses. They immediately called Bahadur Singh, who also came and saw the appellant shouting at his door that he has killed his

wife. He was having blood stained sword in his hand. He also set his house on fire. Bahadur called Salam Khan. They all pacified the appellant, took the sword from his hand and tied him with a pole and went inside the room and found dead body of the wife of the appellant lying on the floor. Her bed was burnt. Parents of the appellant were not in the village at that time, therefore, Bahadur sent Gopal and called uncle (elder brother of father of the appellant) Prahlad Singh, who asked Gopal to intimate the police. Gopal informed the police station Kurawar on telephone. His information was taken on record in Roznamcha Sanha. SHO Hitendra Rathore, who was on patrol, was informed on wireless. He directly rushed to the spot, where he found the appellant sitting amongst villagers and inside the house of the appellant, dead body of his wife was lying. There were several injuries on her body. Some burnt or semi burnt clothes were also lying there. Bahadur Singh narrated the incident before him. He (SHO Hitendra Rathore) deduced it as Dehati Nalishi Ex.P/4. Merg intimation Ex.P/19 was also recorded at the same time and spot map was also prepared. Panch witnesses were called and Panchnama Lash was prepared. Several articles like burnt/semi burnt clothes, plain as well as soil smeared with blood, bangles made by wax (Lakh), some pieces of Lakh, nylon shoes, hair of the deceased were also seized vide memo Ex.P/8. The appellant was arrested on the spot. His blood stained shirt was seized vide Ex.P/12. A sword kept near a platform (Chabutra), which was kept by the villagers after taking it from the appellant, was also seized. On the basis of Dehati Nalishi crime No.330/2006 under section 302 of the IPC was registered. The dead body was sent for post-mortem, which revealed the death was due to the injuries caused to the deceased and that the death was homicidal in nature. After completing the investigation, the police filed charge-sheet.

4. The accused is charged tried and convicted as stated in para no.1 above .

5. The appellant has preferred this appeal on the grounds that the judgment of the learned trial Court is contrary to the law and facts available on record. The learned trial Court has committed error in appreciating the evidence of the prosecution and in relying upon the statements of interested witnesses and in discarding the defense version. The learned trial Court has committed error in not appreciating that no evidence regarding intention or motive was available on record, therefore, the appellant is entitled for acquittal.

6. The fact that on the alleged date, time and place, Hansa Kunwar died due to fatal injuries and her death was homicidal in nature is not challenged

by the appellant, therefore, we need not to discuss the evidence produced by the prosecution before the trial Court to establish this fact.

7. Before the Trial Court, the prosecution has examined Bahadursingh (PW-1), Gopal S/o Dayaram (PW-2), Salam Khan (PW-3), Prahaladsingh

(PW-4), Raghunathsingh @ Chhotelal (PW-5), Gopalsingh S/o Pratap Singh (PW-6), Sagir Khan (PW-7), Dilip Singh (PW-10) and Vishnu Prasad

(PW-11). Though, out of these witnesses, some have turned hostile or have not supported the case of the prosecution and some of them were little

hesitant to reveal complete truth before the Court but sum and substantive of the statements of these witnesses or cumulative effect of the evidence

given by them is that on the date of the incident the appellant was shouting outside the house that he has killed his wife and set the house ablaze. He

was having blood stained sword in his hand. people gathered there and tried to pacify him. They exhorted him and when he calmed-down, they took

the sword from his hand and tied him with a pole. They called his uncle (elder brother of father) and were waiting for him. In the meantime the

appellant requested them to untie him assuring them that he will not flee. He was untied and set with the people present there calmly and quietly.

After some time his uncle came, who advised to report the matter to the police and accordingly; the police was informed.

8. The information was recorded as mere intimation (Ex.P/19). The police reached on the spot, deduced Dehati Nalishi (Ex.P/4), prepared memo of

corpse (Ex.P/3), sent the dead body for postmortem and received the report (Ex.P/18), sketched spot map (Ex.P/5), seized the sword (Ex.P/6), seized

plain and blood smudged soil (Ex.P/7), arrested the accused (Ex.P/1), seized several articles like burnt/semi burnt clothes, bangles made by wax

(Lakh), some pieces of Lakh, nylon shoes, hair of the deceased (Ex.P/8), arrested the appellant and seized his blood stained shirt (Ex.P/12). On the

basis of Dehati Nalishi FIR No.330/2006 under section 302 of the IPC was registered. The post-mortem revealed that the death was due to the

injuries caused to the deceased and that the death was homicidal in nature. All this evidence very well supports the statements of the witnesses.

9. Half hearted attempts were made by the appellant to rebut all these facts stated by the aforementioned witnesses but in vain.

10. The center of the argument of the learned Counsel for the appellant is to show that he was insane at the time of the incident and was incapable of

knowing the nature of the act by reason of unsoundness of mind, therefore, in view of the exception carved out in Section 84 of the IPC, the act

alleged against him cannot be counted as an offence and he cannot be held guilty for the act done in insanity.

11. To bolster his contention, the learned counsel referred particular parts of the statements of some of the prosecution witnesses. He also referred

statements of witnesses examined in defence, namely, Rampalsingh (DW-1), Shivrajsingh (DW-2), Bhanvarlal (DW-3) and Dr. S. K. Tandan (DW-

4).

12. So far as the statements of the witnesses examined by the prosecution is concerned, some of them have admitted in their examinations-in-chief or

in cross-examinations that the appellant was insane earlier but that was much prior; about 3-4 years prior to the incident and most of them have

specifically stated that by the time of the incident, he was cured and was not insane or unsound mind. Bahadursingh (PW-1), Gopal S/o Dayaram

(PW-2), Salam Khan (PW-3), Prahaladsingh (PW-4), Raghunathsingh @ Chhotelal (PW-5), Gopalsingh S/o Pratap Singh (PW-6), Sagir Khan (PW-

7) and Roopsingh (PW-8) have specifically stated that at the time of the incident the accused was normal and by the treatment given to him he was

cured much prior to the alleged incident.

13. Deposition of the defence witnesses are more or less the same. They have also stated that earlier the appellant was not normal rather he was

insane. He used to do abnormal activities like jumping in the well, tarnishing his clothes, shouting abuses in public or doing such other abnormal

activities, earlier also once he poured kerosene on his wife, he was suffering from Schizophrenia (Dr. S. K. Tandan (DW-4), but none of them have

specifically stated that at the time of the incident he was unsound mind or was under treatment for insanity or some other such diseases or was doing

some abnormal activities or was unable to understand pros and cons of his act.

14. The law is well settled that exemption provided under Section 84 of the IPC is available only when it is established that at the time of the incident

due to unsoundness of mind the appellant was unable to understand the nature or result of his act. Section 84, which provides the exception reads

thus:-

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.

15. In *Shrikant Anandrao Bhosale v. State of Maharashtra*, (2002) 7 SCC 748 : 2003 SCC (Cri) 14 4at page 751 the Hon'ble Supreme Court has held that:

7. On the other hand, learned counsel for the appellant to establish the plea of unsoundness of mind, drew our attention to the depositions of Dr Arun (DW 2) and Dr Pramod (DW 3). The case history and other proved medical record shows that the appellant was suffering from paranoid

schizophrenia. He was an indoor patient at a government hospital from 28-10-1993 to 5-11-1993 for getting treatment for the said ailment. It further stands established that he was suffering from this disease at least from 20-4-1992. He was examined by DW 3 on 20-4-1992 having visited the said doctor with his wife. It also stands established that 25 times he was taken to hospital for treatment of his mental ailment from 27-6-1994 to 5-12-1994.

DW 2 deposed that the appellant was examined by him on 27-10-1993. He suffered from suspicious ideas, persecutory delusions, loss of sleep and

excitement and was diagnosed as paranoid schizophrenic. The appellant was intermittently becoming apprehensive and excited. DW 3 deposed that on

20-4-1992, he examined the appellant brought by his wife. There was a history of psychiatric illness in his father at the age of 65 years and in 1989 his

father ran away from the house. People used to take advantage of his mental condition and cheat him. After marriage, his mental condition worsened.

On examination, he was found suffering from paranoid schizophrenia. The patient had visual hallucinations (seeing images of wife and children). He

was brought to hospital 25 times as above. Paranoid schizophrenia is a mental disease. It can recur. When a person is under paranoid delusion, he is

not fully aware of his activities and its consequences.

10. What is paranoid schizophrenia, when it starts, what are its characteristics and dangers flowing from this ailment? Paranoid schizophrenia, in the

vast majority of cases, starts in the fourth decade and develops insidiously. Suspiciousness is the characteristic symptom of the early stage. Ideas of

reference occur, which gradually develop into delusions of persecution. Auditory hallucinations follow, which in the beginning, start as sounds or noises in the ears, but afterwards change into abuses or insults. Delusions are at first indefinite, but gradually they become fixed and definite, to lead the patient to believe that he is persecuted by some unknown person or some superhuman agency. He believes that his food is being poisoned, some noxious gases are blown into his room and people are plotting against him to ruin him. Disturbances of general sensation give rise to hallucinations, which are attributed to the effects of hypnotism, electricity, wireless telegraphy or atomic agencies. The patient gets very irritated and excited owing to these painful and disagreeable hallucinations and delusions. Since so many people are against him and are interested in his ruin, he comes to believe that he must be a very important man. The nature of delusions thus may change from persecutory to the grandiose type. He entertains delusions of grandeur, power and wealth, and generally conducts himself in a haughty and overbearing manner. The patient usually retains his memory and orientation and does not show signs of insanity, until the conversation is directed to the particular type of delusion from which he is suffering. When delusions affect his behaviour, he is often a source of danger to himself and to others. (Modi's Medical Jurisprudence and Toxicology, 22nd Edn.)

11. Further, according to Modi, the cause of schizophrenia is still not known but heredity plays a part. The irritation and excitement are effects of illness. On delusion affecting the behaviour of a patient, he is a source of danger to himself and to others.

16. Hon'ble the Apex Court further held in *Uttam Nandram Somwanshi v. State of Maharashtra*, (2016) 13 SCC 205 : 2016 SCC OnLine SC 44 a6t

page 208 that:

9. The Division Bench of the High Court with reference to the conduct of the accused seen before the incident, has arrived at the conclusion that he was working on a plan on the day he was produced before the learned Magistrate on 31-7-2003, there were no signs of unsoundness of mind. The defence has not been successful in proving that â??at the crucial point of timeâ? or â??at the time of doing the actâ? by unsoundness of mind, the appellant-accused was incapable of knowing the nature of his act. Regarding evidence of unsoundness of mind brought on record is not regarding

unsoundness of mind soon before or after the incident. On the contrary, soon before the incident, the appellant-accused appears to have

conscientiously acted upon the plan and, therefore, the Division Bench of the High Court was rightly not agreed with the finding of fact recorded by

the trial court on the charge holding him not guilty. It has rightly set aside the finding of the trial court holding that the case of the accused does not fall

within the purview of general exceptions available under Section 84 IPC. Further, we have carefully examined the reasons recorded by the trial court

Judge that immediately after the incident the appellant has performed pooja and also prepared tea that would factor in to hold that the conclusion

arrived at by the Division Bench of the High Court is based on proper appreciation of the evidence placed on record. More so, in absence of defence

for unsoundness of mind the appellant-accused on the date of the incident, in our considered opinion, the Division Bench of the High Court did not err

in setting aside the acquittal judgment passed by the trial court

17. in this respect we can also refer judgments in the case of Amrat Bhshan Gupta Vs. Union of India reported in AIR 1977 SC 60,8 Sheraliwali

Mohd. Vs. State of Maharashtra reported in AIR 1972 SC 2443, State of MP Vs. Ahmed Ulla reported in AIR 1961 SC 998.

18. Section 105 of the Evidence Act states that burden to prove that his case falls under any of the exception carved out in the IPC lies on the person,

who claims benefit of such exception. Section 105 of the Evidence Act is as follows:-

105. Burden of proving that case of accused comes within exceptions. "When a person is accused of any offence, the burden of proving the

existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code, or within any special exception or proviso

contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such

circumstances.

Illustrations

(a) A, accused of murder, alleges that, by reason of unsoundness of mind, he did not know the nature of the act.

The burden of proof is on A.

(b) A, accused of murder, alleges, that by grave and sudden provocation, he was deprived of the power of self control.

The burden of proof is on A.

(c) Section 325 of the Indian Penal Code, provides that whoever, except in the case provided for by section 335, voluntarily causes grievous hurt, shall

be subject to certain punishments.

A is charged with voluntarily causing grievous hurt under section 325.

The burden of proving the circumstances bringing the case under section 335 lies on A.â??

19. The Trial Court has discussed this ground taken by the appellant in detail right from para 12 of the impugned judgment upto para 17 and has

arrived at a logical conclusion that the appellant failed to establish that at the time of incident he was unsound mind or insane or was unable to

understand the nature of the act or that what is he doing is either wrong or contrary to the law. We are also of the same view. There is nothing on

record to countenance the contention of the learned counsel of the defence.

20. The trial Court as taken into consideration total five circumstances (I) At the time of the incident the appellant was residing with his wife in the

same house. (ii) Immediately after the incident he, with a sword in his hand, came out of the house and shouted that he has killed his wife. (iii) He

made extra judicial confession before Bahadur Singh, Salam and others who reached on the spot at the time of the incident without any threat

pressure provocation or promise or any other element contaminating such confession. (iv) At the time of the incident the accused was having a blood

stained sword in his hand. (v) Immediately after the incident when witnesses visited the room dead body of the deceased was lying there and there

were several incised wound an symptom of burning of the body. The trial Curt has appreciated the evidence and found that all the circumstances

takes a common prudent man to a long conclusion but none else but the accused has done the alleged act and we do not find any reason to defer from

this conclusion.

21. Thus, from the aforesaid discussion it is clear that the fact of killing his wife is not much disputed by the appellant and the prosecution has

successfully established the same. The defence taken by the appellant could not be established to the extent to extend the benefit of the exception

provided by Section 84 of the IPC, therefore, nothing survives in this appeal in favour for the appellant. In the manner and method, the offence was

committed by the appellant, as he caused 12 incised wounds on several parts including the vital parts of the body of his wife and also set her on fire

does not entitle him for any leniency. Though, looking to the facts and circumstances of the case, his act may not fall in the category of rarest of rare

case but in view of the evidence produced by the prosecution and the other facts and circumstances of the case, he is certainly liable for the

punishment awarded by the learned Trial Court, here we also do not find any ground to interfere in his sentence awarded by the learned Trial Court.

22. Ex-consequenti, the appeal preferred by the appellant is dismissed hereby.

23. Order of the Trial Court in respect of disposal of case property is hereby confirmed.