
(1998) 02 KAR CK 0002
In the Karnataka High Court
Case No : Criminal Appeal No. 357 of 1995

Chandrashekar	Vs	APPELLANT
State of Karnataka		RESPONDENT

Date of Decision : 11-02-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 333, 334, 335
Penal Code, 1860 (IPC) — Section 84

Citation : (1998) CriLJ 2237 : (1998) 3 KarLJ 159

Hon'ble Judges : M.F. Saldanha, J; B.N. Mallikarjuna, J

Bench : Division Bench

Advocate : Smt. G.S. Anasuya, for the Appellant; Sri B.R. Nanjundaiah, State Public Prosecutor, for the Respondent

Judgement

M.F. Saldanha, J.—This appeal was originally argued in the month of February 1997. The appellant's learned Advocate had taken up the plea that the accused would come under the general exception insofar as it was her contention that he was a person of unsound mind at the time when the offence was committed. It was pointed out to the Court that the accused had a history of mental illness and that he had been treated more than once in the mental hospital at Dharwad. The allied submission that was canvassed was that the Trial Court ought to have, in view of this record ascertained the position as to whether the accused was of unsound mind at the time when the trial was being commenced as he would not have been in a legally fit condition to stand trial and enter upon his defence. If this was his position more importantly, even if the accused was certified to be of unsound mind and was incapable of standing trial, the other aspect of the matter namely the question as to whether he was of unsound mind on the date, when the offence was committed had to be gone into. Since this was not done, we referred the matter to the mental hospital at Dharwad for the reason that the accused had been treated there more than once on earlier occasions. We had directed the authorities to keep the accused under observation and to put forward a considered report if possible, on the basis of their detailed

observations and on the basis of the reports and the case history, the antecedents of the accused and more importantly on the basis of the records maintained by the institution in relation to his earlier periods of treatment and to indicate to the Court whether at the point of time when the offence was committed and at the point of time when he was to stand trial, the accused was of unsound mind.

2. The doctors have carried out the directions of this Court and a report has been submitted. The report unequivocally indicates that the accused was of unsound mind at the time when he committed the offences. We have independently applied our mind to the report submitted by the authorities and the Annexures thereto and we are satisfied that this is a correct report. The report is therefore taken on record and we can safely place reliance on it.

3. On the basis of this report, it is very clear that the accused was of unsound mind at the time when the offences were committed. If this be the position, then the ratio of the earlier Division Bench decision in the case of Sanna Eranna Vs. State of Karnataka, , would apply. Section 84 of the IPC makes a general exception in case of accused persons of unsound mind and clearly postulates that 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 what he is doing is either wrong or contrary to law. In view of this situation, the conviction recorded against the accused is unsustainable in law and will have to be quashed.

4. Unfortunately, while deciding some of the earlier cases, the provisions of Sections 333, 334 and 335 of the Cr. P.C. had not been considered by the Court.

5. Chapter 25 of the Cr. P.C. incorporates certain special provisions with regard to the procedure that is to be followed by the Court in cases where unsoundness of mind is pleaded. The reason for this is because the Legislature was conscious of the fact that whereas a person who is of unsound mind cannot be convicted or detained in prison, by virtue of the mental disability, that the law takes into account certain other aspects of the matter, the most important of which is that the individual has already exhibited certain dangerous traits such as the tendency to turn violent or to attack other persons and in view of this position, the law does not permit the Court to set such persons at liberty. The procedure that would have to be followed therefore is that even if the accused cannot be detained any longer in prison, that he will have to be admitted to the mental hospital and the provisions of Section 335 of the Cr. P.O. will have to be followed. We are aware of the fact that the incident has taken place several years ago and we are also aware of the fact that Medical Science has made a lot of progress and that there are situations in which persons of this category can be partially cured, temporarily cured or even permanently cured. The authorities will therefore keep the accused under observation and treatment and will have to decide as to whether or not he qualifies for being retained in that institution. If his mental condition requires that he must be retained in the institution, then

such a course of action shall be followed. On the other hand, if after observation or at some future point of time a stage is reached when the doctors are of the view that the accused is perfectly safe both to himself and to the society, in that event, it shall be open to them to release the accused. There is a provision in Section 335 of the Cr. P.C. incorporating certain safety clauses the most important of which is that some relative or friend of the person must satisfy the Magistrate or the Court that the person delivered will be properly taken care of and prevented from doing injury to himself or to any person and that he will be produced for inspection by such officer or at such time and place as the Court may direct. If there is an application for his release under these circumstances and provided the hospital authorities are of the view that the same is in order, then this procedure may be followed.

6. The appeal accordingly succeeds. The conviction and sentence are quashed and set aside. The authorities shall follow the procedure as indicated in this judgment as far as the accused is concerned.

The Registrar General shall forward a copy of this judgment to the Superintendent, Central Prison, Gulbarga, as also to the Medical Superintendent, Karnataka Institute of Mental Health, Dharwad.