

(2005) 08 MAD CK 0059
In the Madras High Court
Case No : Criminal Appeal No. 91 of 2003

Govindaraj

APPELLANT

Vs

State by Inspector of Police

RESPONDENT

Date of Decision : 02-08-2005

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 307, 84

Citation : (2005) CriLJ 4676 : (2006) 1 LW(Cri) 173

Hon'ble Judges : S. Sardar Zackria Hussain, J;M. Karpagavinayagam, J

Bench : Division Bench

Advocate : P. Venkatasubramaniam, for the Appellant; E. Raja, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

M. Karpagavinayagam, J.—Insanity of the appellant, at the time of commission of offence, is the main plea that has been urged before this

Court, seeking for setting aside the conviction and sentence imposed on him by the trial Court, for the offences under Sections 307 and 302 IPC.

2. The short facts are as follows :

(a) P.W.1 Raju Naicker is the brother-in-law of the deceased Hanumanthan. Govindaraj, accused, is distantly related to the deceased. Both were

inimical towards each other, in regard to a bund, dividing the lands belonging to both.

(b) P.W.1 Raju Nicker is a resident of Pythamparai village. On 02.02.1999, he came to the village of the deceased for attending a function. On

03.02.1999 also, he stayed in the house of the deceased. On 03.02.1999, at about 05.30 p.m., when he was inside the house, he heard a sound

outside, where some children cried aloud. P.W.1 came out of the house and saw

the deceased, being chased by the accused with a soori knife. He intervened and stopped the accused, questioning him as to why he was chasing the deceased. Then, the accused replied stating, that P.W.1 must be done to death first and then only the entire problem will be solved. So saying, the accused stabbed P.W.1 on the left side of the throat, in the space between throat and shoulder; due to which, P.W.1 fell down. On seeing P.W.1 being attacked, the deceased, who was running, came back.

At that time, the accused attacked the deceased and gave a stab on his neck; as a result of which, the deceased fell down and died on the spot.

P.W.1 went to hospital and got himself admitted.

(c) P.W.2, doctor, admitted P.W.1 in the hospital and sent intimation to the police.

(d) P.W.7, Sub-Inspector of Police, came to the hospital and recorded a statement from P.W.1 and registered a case for the offences under

Sections 307 and 302 IPC.

(e) P.W.10, Inspector of Police, took up investigation; came to the scene and observed all formalities. He conducted inquest and examined the

witnesses. Thereafter, the body was sent for post-mortem.

(f) P.W.3, doctor, conducted post-mortem and issued Post-mortem Certificate Ex.P-3, giving his opinion that the deceased would have died of

injuries to the vital organ, the greater vessel of the heart and the greater vessel to brain, due to haemorrhage and shock and also that he would have

died of about 16 to 20 hours prior to autopsy.

(g) P.W.10, Inspector of Police, thereupon, went to the house of the accused and arrested him.

(h) On 04.02.1999 at about 05.00 a.m., since the accused was found with injury on the head, he was sent to hospital. The doctor treated him as

out-patient. Later, the accused was brought back to the station and, then, he was remanded by the Court. The material objects were sent for

analysis.

(i) After completion of the investigation, P.W.10 filed charge sheet against the accused for the offences under Sections 307 and 302 IPC.

3. During the course of trial, on behalf of prosecution, P.Ws.1 to 10 were examined, Exhibits P-1 to P-14 were filed and M.Os.1 to 9 were

marked. On behalf of the Court, C.W.1 was examined and Ex.C-1 was marked.

4. The accused, on being questioned, denied his complicity in the crime and said that a false case is foisted against him.

5. Before the commencement of trial, since the Sessions Court felt that the accused was mentally not alright, he was sent for medical examination,

to find out whether he was fit enough to face trial. The doctor, in the mental hospital, gave treatment to the accused and, ultimately, gave a

certificate, stating that the accused was suffering from epileptic psychosis and he was fit to stand trial.

6. The trial Court, having examined the materials, concluded that the prosecution has proved its case beyond reasonable doubt and found the

accused guilty of the offences under Sections 307 and 302 IPC and sentenced him thereunder. This is the subject matter of the appeal.

7. Mr. P. Venkatasubramaniam, learned counsel for the appellant, would mainly contend that the accused cannot be liable to be convicted, since

he was suffering from insanity at the time of commission of offence and, as such, he is liable to be acquitted, u/s 84 IPC. To substantiate his

contention, he cited the following authorities :

(i) Dahyabhai Chhaganbhai Thakker Vs. State of Gujarat, ;

(ii) Sheralli Wali Mohammed Vs. The State of Maharashtra, ;

(iii) 2002 Supreme Court Cases (Cri) 103 (T.N. Lakshmaiah v. State of Karnataka); and

(iv) 2005 (1) Law Weekly (Cri) 465 (Albert Collins v. State).

8. Mr. E. Raja, learned Additional Public Prosecutor, in justification of the reasoning given by the trial Court for convicting the accused, would

contend that there is no material to show that the accused was suffering from insanity at the time of commission of offence and, therefore, the

conviction is perfectly justified. He would cite the following decisions :

(i) 1976 LW (Cri) 128 (Balagopal, In Re);

(ii) 1977 L W (Cri) 28 (Amrit Bhusan Gupta v. Union of India);

(iii) 1978 LW (Cri) 86 (Palaniappan, In Re);

(iv) 1984 LW (Cri) 260 (Velusamy v. State);

(v) 1987 LW (Cri) 170 (Murthy, In Re);

(vi) 2001 SCC (CRI) 980 (State of Himachal Pradesh v. Gian Chand);

(vii) 2003 (2) LW(Cri) 682 (Shrikant Anandrao Bhosale v. State of Maharashtra);
and

(viii) 2005 (1) LW (Cri) 465 (Albert Collins v. State)

9. We have heard the learned counsel for the appellant and the learned Additional Public Prosecutor, appearing for the State, and also gone through the records.

10. There are three eye witnesses. P.W.1 is the injured eye witness; P.W.4 is the wife of the deceased and P.W.5 is the son of the deceased. All

of them have stated that the deceased was chased by the accused and when P.W.1 intervened, the accused attacked him and when the deceased

came back to the scene of occurrence, he was also attacked, as a result of which the deceased fell down and died on the spot. This aspect of the

evidence has been supported by the medical evidence, adduced by P.Ws.2 and 3, doctors.

11. The main point, urged by the learned counsel for the appellant, is, that at the time of commission of offence, the accused was in unsound state

of mind and, as such, he is entitled to the benefit of Section 84 of the Indian Penal Code.

12. The law presumes that every individual is sane and possessed of a sufficient degree of reason to be responsible for his criminal acts, unless the

contrary is proved. In criminal cases, where insanity is raised as a plea, the burden of proving the same lies on the defence and it must be

established that the accused was of unsound mind, at the time of committing the offence.

13. It is true, as laid down by the Supreme Court, that the prosecution must prove beyond reasonable doubt that the accused had committed the

offence with the requisite mens rea and there is a rebuttable presumption that the accused was not insane when he committed the crime, in the

sense laid down by Section 84 IPC and once the prosecution is able to prove that the accused was sane, he may rebut it by placing before the

Court the evidence, both oral and documentary, and the burden of proof upon him is no higher than that rests upon a party to civil proceedings. It

is also held by the Supreme Court, that even if the accused is not able to establish conclusively that he was insane at the time of occurrence, the

evidence placed before the Court either by the accused or by the prosecution

may raise a reasonable doubt in the mind of the Court with reference to the mens rea of the accused and then, the Court would be entitled to acquit the accused, on the ground that the general burden of proof resting on the prosecution has not been discharged.

14. On the basis of the above principles, as laid down by the Supreme Court, it is contended by the learned counsel for the appellant that even

though the accused has not placed any material to show that he was insane at the time of committing the offence, the prosecution has not

established that the accused was sane at the time of commission of offence. The learned counsel would point out that in the inquest report, the

panchayatdars opined that the accused committed the act only due to mental derangement.

15. We are not able to accept this argument, because, the circumstances, under which the offence was committed, and the conduct of the accused,

prior to and after the commission of the offence, would clearly indicate that the accused was sane at the time of commission of offence.

16. According to the prosecution, there was a misunderstanding between the accused and the deceased, regarding a bund, dividing the lands,

belonging to both.

17. It is the specific evidence of P.W.4, wife of the deceased, that there used to be frequent quarrels between the deceased and the accused in

regard to the said dispute. The fact that both were inimical against each other has been mentioned in the complaint, EX.P-1, given by P.W.1, the

earliest document. Further, at the time of occurrence, P.W.1 saw the deceased, being chased by the accused. P.W.1 intervened and questioned

the accused as to why the deceased was chased and, thereafter, the accused stabbed on his left throat, saying that only if he is killed, the entire

problem will be solved and when the deceased came back, P.W.1 saw the accused attacking the deceased also, by giving a fatal stab on the neck

of the deceased; as a result of which, the deceased died on the spot.

18. These things would indicate that when the accused attempted to murder the deceased and also when the said act was prevented from being

committed, the accused got angry against P.W.1 and attacked him, by using a knife, and inflicted a serious injury on the throat of P.W.1. Similarly,

he attacked the deceased on the vital part, namely, neck of the deceased, and

caused his instantaneous death. This would show that the accused was very conscious about his act. Further, after the occurrence was over, he went and concealed himself in the house. Then, P.W.10 arrested him on the next day.

19. There is no material available on record to show, that at the time of offence, the accused was suffering from insanity. Though C.W.1 would give a report that the accused was suffering from epileptic psychosis, that would not be sufficient to hold, that at the time of offence, the accused was suffering from mental and legal insanity, as provided u/s 84 IPC.

20. In this context, it shall be noted that it is not every person, mentally diseased, who is exempted from criminal responsibility u/s 84 IPC. Such exemption can be claimed only when the insane person is incapable of knowing the nature of the act or he is doing either wrong or contrary to law.

It is by this test, as distinguished from the medical test, that the criminality of the act is to be determined. Of course, in the inquest report, it has been referred to in one of the columns as opined by the Panchayatdars that the accused was suffering from mental disorder. But, that is not enough.

21. Even assuming that there is some material to indicate that there is medical insanity, unless it is established that the accused was suffering from

legal insanity, we cannot invoke Section 84 IPC. There is a good deal of difference between "medical insanity" and "legal insanity" and Courts are

concerned only with the legal and not the medical aspect of the matter. In other words, it is not every kind of fantastic humour or something

unaccountable in a man's action, that points him out to be a mad man, to be exempted from punishment. It is not mere eccentricity or singularity of

manner that would suffice the plea of insanity. Abnormality of mind is not by itself sufficient to show that the accused must have acted while of

unsound mind. These are all the principles, laid down by various Courts, including the Supreme Court.

22. In view of the above circumstances, under which the offence has been committed, we are of the view that there is no material to invoke

Section 84 IPC and, as such, the conviction and sentence imposed on the appellant by the trial Court, for the offences referred to above, are

perfectly justified.

23. Criminal Appeal is dismissed, confirming the conviction and sentence, imposed on the appellant, by the trial Court.