

(1996) 06 BOM CK 0085
In the Bombay High Court
Case No : Criminal Appeal No. 199 of 1992

Laxmandas Mangaldas Manikpuri

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 27-06-1996

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Evidence Act, 1872 — Section 105, 21, 25, 26, 8
Penal Code, 1860 (IPC) — Section 300, 302, 304, 307, 84

Citation : (1997) CriLJ 950 : (1997) 1 MhLj 435

Hon'ble Judges : S.B. Mhase, J; L. Manoharan, J

Bench : Division Bench

Advocate : M.R. Daga, for the Appellant; Smt. Indira Bodade, Assistant Public Prosecutor, for the Respondent

Judgement

L. Manoharan, J.—The appellant/accused in Sessions Case No. 130 of 91 of the Court of 2nd Additional Sessions Judge, Chandrapur, stands convicted for the offence punishable u/s 302 of the Indian Penal Code. The learned Additional Sessions Judge sentenced him to undergo rigorous imprisonment for life and pay a fine of Rs. 1000/-, in default to suffer rigorous imprisonment for one year. Aggrieved by the said conviction and sentence, the accused has come up in appeal.

2. Accused Laxmandas, brother of D.W. 3 Khilawandas came along with his wife Subhadra from Kertha Bazar, Tahsil Daundi Lohara, District Durg (MP). At the relevant time, accused along with his wife Subhadra was residing at Gopalpuri, Chandrapur. D.W. 3 Khilwandas, his younger brother, also came with him to Chandrapur for work. On 10-1-1991 at about 11.30 p.m. when Subhadra was asleep, accused attacked her with dagger and on that when the blade of dagger broke, he took out axe (Article 1) and hit her on several parts of the body. The prosecution alleges that after causing injuries to Subhadra, accused proceeded to Police Station. He verified with P.W. 13 Anandrao as to the location of the Police Station and on reaching the Police Station, he tendered Exhibit 38, First

Information Report before P.W. 17 Dhanraj, Police Sub-Inspector. After recording the said statement, P.W. 17 registered a crime against the accused u/s 307 of the Indian Penal Code. He seized the axe which was produced by accused himself and also seized his clothes. Then he proceeded to the scene of offence and removed injured Subhadra to hospital where she succumbed to the injuries. Thereafter the offence was altered from Section 307 of the Indian Penal Code to Section 302 of the Code. After completing investigation, P.W. 17 Dhanraj laid charge before the Court against the accused.

3. On committal of the case, the learned Sessions Judge framed charge against the accused u/s 302 to which accused pleaded not guilty. Thereupon the prosecution produced 17 witnesses and also material objects and the relevant documents in support of the prosecution case. Accused was duly questioned u/s 313, Cr.P.C. by the learned Sessions Judge, after the closing of the prosecution evidence, accused examined defence witnesses.

4. Of course, there is no eye-witness as such to the occurrence. Naturally, therefore, prosecution mainly relies on the evidence of PWs. 1, 2 and 13 to prove that it was the accused and nobody else who had inflicted injuries on Subhadra to which she later succumbed. P.W. 6 Dr. Sudhakar conducted autopsy on the dead body of Subhadra. He has noted 12 incised injuries and six fractures. He has sworn to the effect that the cause of death was due to injuries to brain. Perusal of his deposition would show that the injuries Nos. 1 to 12 were incised injuries and there were also six fractures. He said that external injury No. 5 is possible to be caused by a weapon like dagger or knife and other external injuries could be possible by the weapon like axe. He said that the said injuries could be caused with the weapon like Article "1", axe. With due regard to the evidence P.W. 6, it is clear that Subhadra's death was homicide.

27-6-96

5. The prosecution mainly relies on the evidence of P.Ws. 1, 2 and D.W. 3 Khilawandas along with the attending circumstances. As has already been noted, there is no occurrence witness as such. Understandably, with due regard to the scene of occurrence and also time of occurrence, there could not have been any occurrence witness. D.W. 3 Khilawandas, at about 7/7.30 p.m., as usual, came to the house where the accused along with deceased Subhadra was living, took his dinner and left for sleep at the place where he used to sleep. This occurrence took place in a room which has adjacent rooms where others were residing. PWs. 1 and 2 are residents in the nearby rooms. According to them, on hearing cry and commotion, they came out of their respective rooms, when they saw the accused going out with an axe in his hand. P.W. 13 Anandrao is auto-rickshaw driver. He swears that at about 11 to 11-15 p.m. while he was standing near auto-rickshaw at Gandhi Square, accused came to that place and asked him as to location of the Police station. He would swear that he directed the accused to the Police Station and he followed him. P.W. 17 Dhanraj Pakhinde, PSI would answer that the accused appeared before him with an axe in his hand and gave

statement (exhibit 38) which he recorded and on the basis of it he registered a crime u/s 307 of the Indian Penal Code. His evidence further shows, Subhadra was removed to the hospital where she was examined by P.W. 11 and issued Exhibit 32, Wound Certificate. The evidence of P.W. 17 shows, in the same night Subhadra died and on receipt of report to the said effect, the crime was registered u/s 302 of the Indian Penal Code also.

6. Shri Daga, the learned Counsel for appellant though made attack against the evidence of these witnesses, in appreciating their evidence, one factor has to be kept in view, that is, PWs 1 and 2 being persons residing in the adjacent rooms, are the probable witnesses and since there is no material brought out in their cross-examination to show that they are either interested in the prosecution or hostile to the accused, it is not possible for us to agree with the learned Counsel when the learned counsel submitted that their evidence is not acceptable. Their evidence gets enough corroboration from circumstances also. It should be noted that Subhadra sustained injuries in the room occupied by the accused and at that time, there was nobody other than these two persons in that room. In other words, Subhadra met with homicidal death when she was in the custody of the accused.

In the decision in *Ganeshlal Vs. State of Maharashtra*, , the Supreme Court held that when death was caused while the deceased was in the custody of the accused, accused is obliged to give a plausible explanation for the cause of death in his statement u/s 313, Cr.P.C. Even D.W. 3 Khilawandas (brother of accused) also swears that the wake up from his sleep on hearing commotion from direction of the residence of the accused and when he came out, he saw accused going with an axe in his hand. This piece of evidence comes from unpoluted source, because nothing could be said against D.W. 3 as hostile to accused or interested in the prosecution. Therefore, this evidence of D.W. 3 Khilawandas has high degree of relevance in considering this aspect of the matter.

7. In this regard, it is necessary to note the conduct of the accused by proceeding to the police station and rendering Exhibit 38. Though even assuming the confessional part in Exhibit 38 is not admissible against the accused as it is opposed to Sections 25 and 26 of the Evidence, Act the conduct of the accused in proceeding to the Police Station and tendering F.I. statement is admissible u/s 8 of the Evidence Act. In the decision in *Aghnoo Nagesia Vs. State of Bihar*, , the Supreme Court held that where the accused himself gives the first information, the fact of his giving the information is admissible against him as evidence of his conduct u/s 8 of the Evidence Act. The Supreme Court held that if the information is non-confessional, it is admissible against the accused as an admission u/s 21 of the Evidence Act. But the Supreme Court cautioned that a confessional first information report by the accused to a police officer cannot be used against him in view of Section 25 of the Evidence Act. In this case, all that to be said is, even excluding the confessional part in Exhibit 38, the conduct disclosed by the fact of the accused tendering the first information statement

before the police when taken along with the aforesaid ocular evidence, it is clear that the evidence of these witnesses is capable of only one inference and that is, it was the accused and nobody else who caused injuries on the body of Subhadra. The scene of occurrence and the circumstance of the deceased being in the custody of the accused also lends enough support to the aforesaid conclusion. Therefore, there can be no doubt that it was the accused who caused the death of Subhadra. Now, the question is, whether the accused is entitled to acquittal on account of the claim of insanity. The accused claims benefit of exception u/s 84 of the Indian Penal Code.

8. Section 84 of the Indian Penal Code states 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 he is doing what is either wrong or contrary to law. It is settled position that though the onus of establishing the prosecution case is on the prosecution and it never shifts, when the accused raised a plea of the said exception, the Court is bound to presume non-existence of such an exception because of Section 105 of the Evidence Act. Section 105 of the Evidence Act enjoins that 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. Thus, the burden is on the accused to establish the circumstance that he was, at the time of commission the offence, by reason of unsoundness of mind incapable of knowing the nature of his act or that what he was doing was either wrong or contrary to law. Though the prosecution has to discharge its burden beyond the shadow of reasonable doubt, accused need discharge the said burden by preponderance of probability. In a given case, even when the accused has not led the evidence, he can rely on the very prosecution evidence in his endeavour to discharge the burden u/s 105 of the Evidence Act. In the decision in *Kuzhiyaramadiyil Madhavan Vs. State*, , the Division Bench of the Kerala High Court has dealt with the nature of burden which an accused, who claims benefit u/s 84 of the Indian Penal Code, has to discharge. It is held therein that every person is presumed to know the law and the natural sequence of his act, and Section 105 of the Evidence Act enjoins that the Court shall presume the absence of the exception. Therefore, the prosecution in discharging burden, need prove the basic facts and can rely upon the normal presumption. In other words, the prosecution is not bound to show that the accused at the relevant time was not insane. The said decision, amongst other things, states that, simply because no motive is proved, that by itself cannot show that the accused was suffering from mental malady which would amount to legal insanity. In other words, sheerly because there is no evidence as to motive, it cannot be inferred that the impugned act was of a mad man. In *Kuzhiyaramadiyil Madhavan Vs. State*, , one of us (Manoharan, J.) speaking on behalf of the Bench said :-

"Every mental aberration cannot constitute legal insanity. Every type of insanity

cannot amount to legal insanity, unless it is shown that his mental condition was such that it destroyed his capacity to understand the nature of his action. Minor mental aberration, hot temperament, lack of self-control or feeling easily provoked are not sufficient to absolve one from the liability of his act. Thus, what is crucial in such circumstance is, his mental condition at the time of commission of the offence. In that regard his conduct immediately before and after the occurrence may be of relevance. If the accused has a previous history of mental disease that also would be a relevant factor in considering the probability of the case pleaded."

9. With the aforesaid position of law, it is now necessary to analyse the evidence on record as to the said aspects of the defence case. In an endeavour to prove the aforesaid case of the defence, the accused examined DWs 1 to 5. D.W. 1 Subhauram describes himself as Mantrik and swears that three years prior to giving evidence, the accused was taken to him by his father stating that accused used to wander with stick or axe and that he imparted some treatment by administering certain Mantras. The said incident on the very face of it, was about 1 1/2 years prior to the occurrence and the character of the evidence is such that it hardly can have any persuasive value. D.W. 2 Ramcharan claims to be a signatory to Exhibit 77A which purports to be a certificate issued by the villagers as regards the mental condition of accused; the said type of evidence is not admissible in evidence. The evidence of this witness being opinion evidence by a person who is not an expert, cannot be relied upon for proving the alleged insanity. The evidence of D.W. 3 Khilawandas, brother of accused cannot be treated as sufficient to discharge the burden, for he only states that after studying up to 10th standard, the accused left the place; he was not doing any work and he used to wander about. This cannot be equated with legal insanity as is required u/s 84 of the Indian Penal Code. The evidence of D.W. 5 Ramdayal which is to the same effect as that of D.W. 2 also is not of any help to the accused.

10. D.W. 4 Kiran Deshpande, though is doctor, he does not claim to have treated the accused at any point of time. Now, focusing on the sequence of events which ultimately resulted in the death of Subhadra and the immediate conduct of the accused, one may not be able to conclude that the accused was not aware of the consequence of his act or that he was not aware that he did not know that what he was doing was against law. D.W. 3's evidence would not help to show that the accused was having any mental derangement. On the other hand, his evidence would show that the accused was a normal person. Shri Daga, the learned Counsel for appellant maintained that looking at the nature of the injuries and the persistence of the accused in inflicting injuries with two weapons, would show that he was mad because according to the learned counsel, a normal person would not have inflicted such type of injuries on his wife with two weapons.

11. In this context, it is necessary to refer to Exhibits 60 to 65, the contents of

diary. In Exhibit 60, accused states that if Subhadra is not his, she cannot be of anyone else and that she should belong to God. He complains that she looked at him with hatred and, therefore, he decided to kill her. This gives an insight into the mind of the accused and that reveals the disappointed and frustrated mind of a husband who was constantly being spurned by his wife. The injury to his feeling possessiveness has relevance in considering as to why he has inflicted so much injuries on his wife. Ferocity in inflicting injuries of the type, explains his wrath and frustration, but that conduct by itself cannot prove that the same was the act of an insane person, because what immediately followed, does not support a conclusion that he was insane. Immediately after attacking his wife, the accused proceeded to the police station with axe in hand; he met P.W. 13 Anandrao with whom he made enquiry as to the location of the police station, and then he presented himself before P.W. 17 Dhanraj and gave Exh. 38, statement to him. P.W. 17 while recording statement (exhibit 38) did not notice any abnormality in the behaviour of the accused much less as a person suffering from any mental disorder. Thus, looking at the conduct of the accused before and after the incident, it is impossible to hold that the accused demonstrated any mental disorder and, therefore, it cannot be said that the accused is successful in discharging the burden of proof that he was suffering from legal insanity at the time of commission of offence.

12. Lastly, Shri Daga submitted that the accused is entitled to benefit of Exception 1 to Section 300 of the Indian Penal Code. The learned Counsel argued that the accused was victim of sudden and grave provocation and, therefore, the offence if at all can only be punishable under Part I of Section 304 of the Indian Penal Code; culpable homicide not amounting to murder. As indicated earlier, the burden is certainly on the accused in this regard, because he claims benefit under Exception I of Section 300 of the Indian Penal Code he has to show that he committed the offence while he was deprived of power of self-control on account of sudden and grave provocation. The very Exception 1 to Section 300 of the Indian Penal Code is subject to three other Exceptions; the first being the provocation having not been sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person. According to Shri Daga, the prosecution evidence would show that there was quarrel between deceased and accused, and the nature of injuries inflicted, would show that he attacked the deceased at the time when he lost the self-control on account of sudden and grave provocation emanating from quarrel. According to D.W. 3, the dinner was at about 7.00 p.m. and the occurrence was at about 11.30 p.m. Exhibit 38, the statement by the accused before P.W. 17 states that the deceased uttered bad words against him. And even after D.W. 3 left and when they prepared for sleep deceased quarrelled and scolded him. It is true, though a confessional statement cannot be used against the accused, Section 25 of the Evidence Act does not bar the use of the same in favour of the accused. In the contest of the claim of benefit under Explanation I of Section 300 of the Indian Penal Code, it is obligatory for the accused to prove the attack on the deceased was immediate or

at least so proximate to the quarrel so that it could be said, the attack was directly the result of the quarrel. Even in his statement u/s 313, Cr.P.C. he does not mention anything as regards that aspect. This is more so when there is a duty for him to explain as to how his wife died when she was in his custody. In the circumstance, he cannot take advantage of his aforesaid statement. With due regard to the time of occurrence as could be seen from the evidence of PWs 1, 2 and 13, in the circumstance, it has to be found that the attack was when Subhadra was asleep. The very fact that the accused attacked deceased Subhadra when she was sleep would show that he had determination to do so and as he was nourishing a feeling that his wife not respond to his love and affection and she treated him with hatred. Therefore, the said argument of the learned Counsel is without force and cannot be accepted.

13. Thus, we do not see anything to interfere in the finding, conviction and sentence awarded by the learned Sessions Judge. Appeal is without merit and the same is liable to be dismissed which, accordingly, we hereby dismiss.

14. Appeal dismissed.