

(1973) 12 MP CK 0003
In the Madhya Pradesh High Court
Case No : Criminal Appeal No. 788 of 1969

State of Madhya Pradesh

APPELLANT

Vs

Godhe Faguwa

RESPONDENT

Date of Decision : 10-12-1973

Acts Referred:

Evidence Act, 1872 — Section 105, 27
Penal Code, 1860 (IPC) — Section 302, 84

Citation : (1976) ILR (MP) 361 : (1974) JLJ 302 : (1974) MPLJ 203

Hon'ble Judges : S.M.N. Raina, J; Raj Krishna Tankha, J

Bench : Division Bench

Advocate : A.P. Tare, Deputy Govt, for the Appellant; A.H. Saifi, for the Respondent

Final Decision : Allowed

Judgement

S.M.N. Raina, J.

This is an appeal by the State Government against an order of acquittal.

The respondent Ghode, aged about 45 years, (hereinafter referred to as "the accused"), was tried on a charge u/s 302 of the Indian Penal Code for committing the murder Pusho alias Pushe. The learned Additional Sessions Judge, Ambikapur, who tried the case; held that the fatal injuries were caused to the deceased by the accused but acquitted him on the ground of insanity u/s 84 of the Indian Penal Code. Being aggrieved thereby, the State Government has preferred this appeal.

The case for the prosecution is, briefly stated, as follows. The accused was an exorcist and on the date of the incident, that is, the 2nd August 1968, he had gone to the house of Konda (P. W. 5) to exorcise the wife of Konda who was afflicted by evil spirits. After exorcising her, he left carrying with him his tabbal (a weapon resembling an axe) and his child. Thereafter, he went to the house of Tetanga (P. W. 2), the father of the deceased, and asked the deceased Pusho to

give him some tobacco. The deceased told him that he was going to clean his teeth with a dataun and would be coming within a short time. As soon as Pusho moved ahead after saying so, the accused dealt a blow with his tabbal just below the left shoulder as a result of which Pusho fell down and subsequently succumbed to his injuries. The accused picked up his child and went away towards his house.

A report of this incident was lodged by Ghashi (P. W. 1), elder brother of the deceased, the same day at about 5 p. m. The autopsy was performed by Dr. R. H. Gope (P. W. 14) on 4-8-1968 at about 9.30 p. m. The doctor found an incised wound 12" x 3" x 6" on the upper part of the left shoulder. On dissection the doctor found fracture of the head of humerus and fracture of the lower part of the glenoid cavity of the scapula. In the opinion of the doctor, death was due to shock and haemorrhage on account of multiple fractures and injuries to axillary vessels. The doctor further opined that the injuries were sufficient in the ordinary course of nature to cause death.

The accused abjured his guilt and pleaded that he was falsely implicated. As already stated above, the learned Additional Sessions Judge, while holding the accused responsible for causing the fatal injuries to the deceased, came to the conclusion that the accused was entitled to the benefit of section 84 of the Indian Penal Code and, therefore, acquitted him.

So far as the finding of the learned Additional Sessions Judge that the accused caused the injuries in question to the deceased, which resulted in his death, is concerned, it was not challenged before us by the learned counsel for the accused. We have, however, looked into the record to satisfy ourselves that the finding is correct. There is direct evidence of Tetanga (P. W. 2), the father of the deceased, to the effect that the accused dealt a blow with a tabbal to the deceased near his left shoulder. He is corroborated on this point by Mst. Adhani (P. W. 3), widow of the deceased, and Panchi (P. W. 4). The testimony of these witnesses has been believed by the trial Court and there appears to be no good reason to take a contrary view, particularly because it is supported by the circumstantial evidence as well. From the evidence of the Station-Officer, Asarkar (P. W. 15), and Jagannath (P. W. 6) it would appear that the accused had made a statement before the police while in police custody as recorded in the memorandum Ex. P-1 leading to the discovery of a tabbal (Art. A) which was concealed in the roof of a cattleshed. This tabbal was sent to the Chemical Examiner and therefrom to the serologist and was found to be stained with blood vide Ex. P. 17. The Serologist was unable to confirm the blood on it to be human blood as it had disintegrated and its origin could not be determined. Asarkar (P. W. 15) seized from the person of the accused a bush shirt and a gamchha (dhoti), Arts. B and C, under seizure memo Ex. P-15. The gamchha (Art. C) was found to be stained with human blood by the Serologist vide Ex. P-18; while the blood on the bush shirt (Art. B) could not be confirmed to be human blood as it had disintegrated in the meantime. From the aforesaid evidence it is conclusively

established that the accused caused the death of the deceased by assaulting him with a tabbal and inflicting Serious injuries which were sufficient in the ordinary course of nature to cause death. It would thus appear that, but for the plea of insanity, the accused would be guilty of murder u/s 302 of the Indian Penal Code and this was not disputed by the learned counsel for the accused.

Thus, the most important question to be determined in this case is whether the accused is entitled to the benefit of the plea of insanity u/s 84 of the Indian Penal Code. Section 84 of the Indian Penal Code reads as under:

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.

Under this section, every person mentally diseased is not ipso facto exempted from criminal liability. The exemption is allowed only where the insanity is of such a degree that the person concerned is incapable of knowing the nature of the act or that he is doing what is either wrong or contrary to law. The section lays down the legal test of the responsibility in cases of alleged soundness of mind and the criminality of the act has to be determined by this test as distinguished from the medical test. An accused may be adjudged to be insane medically; but unless he fulfils the test prescribed by this section, he is not absolved from criminal responsibility of his act which amounts to an offence under the Indian Penal Code.

Unsoundness of mind contemplated by this section may be temporary or permanent, natural or supervening. It may arise from disease or otherwise; but if it is of the nature provided by this section, the accused is entitled to the benefit thereof. There are numerous degrees of insanity; but in order to claim the benefit of the section, it must be shown that the unsoundness of mind was of such a degree that it impaired the cognitive faculties of the offender to such an extent that he was incapable of knowing the nature of the act or that he was doing what was wrong or contrary to law.

While considering a defence on the ground of insanity, the Court is only concerned with the state of mind of the accused at the time of the act, though the antecedent and subsequent conduct of the offender is relevant to show the state of his mind at the time the act was committed.

Section 84 is in the nature of an exception to the Indian Penal Code ; and u/s 105 of the Evidence Act the burden of proving the existence of circumstances bringing the case within its purview is upon the offender. There is, however, a distinction between the nature of the burden that lies on the accused u/s 105 of the Evidence Act and the one that lies on the prosecution to establish the guilt of the accused. The prosecution must discharge its burden by proving the guilt of the accused beyond reasonable doubt; but when the burden of an issue lies upon the accused, he is not called upon to prove it beyond reasonable doubt. It is sufficient if he succeeds in proving a prima facie case. If on the facts and

circumstances of the case, a reasonable doubt is created in the mind of the Court whether the accused is entitled to the benefit of an exception or not, he would be entitled to be acquitted.

In *The State Vs. Chhotelal Gangadin Gadariya*, the contention that the accused is entitled to the benefit of section 84 of the Indian Penal Code even if he succeeds in creating a reasonable doubt regarding the insanity was repelled; but this view can no longer be considered to be good law in view of the decision of their Lordships of the Supreme Court in *Dahyabhai Chhaganbhai Thakker Vs. State of Gujarat*. In that case While discussing doctrine of burden of proof in the context of the plea of insanity their lordships observed as under in paragraph 7:

Even if the accused was not able to establish conclusively that he was insane at the time he committed the offence, the evidence placed before the court by the accused or by the prosecution may raise a reasonable doubt in the mind of the court as regards one or more of the ingredients of the offence, including mens rea of the accused and in that case the court would be entitled to acquit the accused on the ground that the general burden of proof resting on the prosecution was not discharged.

In *Bhikari Vs. State of Uttar Pradesh*, their Lordships held that a person is presumed to know the natural consequences of his act as well as the law, and the burden is on the accused to bring his case within the purview of the exception laid down in section 84 of the Indian Penal Code. In *Sheralli Wali Mohammed Vs. The State of Maharashtra*, their lordships quoted with approval the earlier decision in *Dahyabhai v. State of Gujarat (supra)* and observed that the state of mind of the accused before and after the commission of the offence is relevant to find out whether at the time of commission of the act the offender was suffering from unsoundness of mind of the degree contemplated by section 84 of the Indian Penal Code.

We may now proceed to consider the facts of this case in the light of the principles laid down above. The respondent did not adduce any evidence in this case and he did not even set up the plea of insanity. When he was called upon to enter upon his defence, he stated through his counsel as under:

I am innoent. I have been falsely impliaated.

It is, no doubt, true that the defence of insanity may be established by direct evidence or by asking the Court to infer it as a reasonable inference from the circumstances appearing in the prosecution evidence; but it has to be borne in mind that the burden lies on him to bring the case within the purview of section 84 of the Indian Penal Code and it is for him to show that the facts and circumstances indicated in the prosecution evidence are sufficient to discharge this burden.

In this case there is absolutely no evidence, not even a faint suggestion that the respondent had any history of insanity and had suffered any attack of insanity

before or after the commission of the act. There is absolutely nothing in the evidence to show that at any time before or after the act he had behaved in a manner which may suggest that he was abnormal and was suffering from any kind of mental infirmity. Tetanga (P. W. 2), father of the deceased, no doubt made the following statement in cross-examination:

Is samay par muljim Godhe ne pagala sarikha batchit kiya tha.

Adhani (P. W. 3), wife of the deceased, made a similar statement; but the aforesaid statements, in our view, merely suggest that the behaviour of the accused-respondent at the time of commission of the offence was somewhat abnormal. It cannot be inferred from the said statements that the accused was suffering from unsoundness of mind of such a degree as to render him incapable of knowing the nature of the act or that what he was doing was wrong or contrary to law.

The prosecution evidence shows that the accused-respondent behaved quite normally a little before the commission of the act. According to Konda (P. W. 5), the respondent exercised his wife that morning and was given one paili of makai as wages or reward. From the evidence of Tetanga (P. W. 2) and Adhani (P. W. 3) it would appear that the respondent asked for some tobacco from the deceased and as the deceased ignored the request, he felt humiliated and, therefore, assaulted the deceased in a sudden fit of passion. Immediately thereafter he picked up his child and ran away. All this shows that he was able to understand the nature of the act. Further, from the statement of the respondent recorded u/s 27 of the Evidence Act (Ex. P-1) it would appear that he had concealed the tabbal, that is, the weapon of the offence, in the roof of his house. This clearly indicates the consciousness of his guilt and an effort to conceal the crime. From this it can be legitimately inferred that the accused very well understood that he had committed a serious offence and he took steps to conceal the evidence relating to the crime.

Thus, after carefully considering the entire facts and circumstances of the case, we are not at all satisfied that the accused is entitled to the benefit of section 84 of the Indian Penal Code and the material on record is not sufficient even to raise a reasonable doubt in the matter. The learned Additional Sessions Judge was, therefore, clearly in error in giving the benefit of section 84 of the Indian Penal Code to the respondent merely on the basis of some vague statements made by two of the prosecution witnesses in cross-examination without there being; any other material on record to show that the accused-respondent was suffering from unsoundness of mind as contemplated by section 84 of the Indian Penal Code. The learned Judge ought to have applied his mind to the facts of the case particularly in the absence of any history of unsoundness of mind and there being practically no evidence that at any time before or after the act the accused had behaved abnormally, there was absolutely no justification for coming to a conclusion that the accused had committed the offence for a very trivial reason; but that by itself is not sufficient to establish insanity as contemplated by section

84 of the Indian Penal Code.

We, therefore, disagree with the learned Additional Sessions Judge that the accused-respondent is entitled to the benefit of section 84 of the Indian Penal Code. We, therefore, set aside the acquittal of the accused and convict him of an offence u/s 302 of the Indian Penal Code. As regards sentence, we consider it proper to award him the sentence of imprisonment for life.

The appeal filed by the State of Madhya Pradesh against the acquittal of the accused-respondent Godhe is allowed. We set aside the acquittal of the accused, convict him of an offence u/s 302 of the Indian Penal Code and sentence him to imprisonment for life.