Bhikari vs State Of Uttar Pradesh on 25 February, 1965

Equivalent citations: 1966 AIR, 1 1965 SCR (3) 194, AIR 1966 SUPREME COURT 1, 1966 MADLJ(CRI) 561, (1965) 2 SCWR 777, 1965 SCD 953, 1966 ALLCRIR 98, (1965) 3 SCR 194, 1965 6 SCR 194, (1966) 2 SCJ 281

Author: J.R. Mudholkar

Bench: J.R. Mudholkar, K.N. Wanchoo, S.M. Sikri

PETITIONER:
BHIKARI

Vs.

RESPONDENT:
STATE OF UTTAR PRADESH

DATE OF JUDGMENT:
25/02/1965

BENCH:
MUDHOLKAR, J.R.
BENCH:
MUDHOLKAR, J.R.
WANCHOO, K.N.
SIKRI, S.M.

CITATION:
1966 AIR 1 1965 SCR (3) 194
CITATOR INFO :
F 1974 SC 216 (6)
RF 1990 SC1459 (17)

ACT:
Criminal Trial--Insanity--Burden of proving--Indian Penal Code (Act 45 of 1860), s. 84--Indian Evidence Act (1 of 1872), s. 105.

HEADNOTE:
The appellant who killed a child in a cruel manner and injured others was tried and convicted under s. 302 Indian Penal Code, and his appeal before the High Court also failed. In his statement at the trial he did not specifically plead insanity but in both the courts the plea that being insane he could not be credited with the intention requisite for the offence alleged was raised on

his behalf. appeal, by special leave, before the Supreme Court, it was urged his behalf that despite the provisions of s. 105 Indian Evidence Act the burden of proving that the accused had the requisite intention and therefore of proving that he was not insane was on the prosecution. The argument was sought to be supported by certain observations of the Court in Dahyabhai Chhaganbhai Thakkar's case.

HELD: (i) The burden of proving the intention of the accused person, where intention is an ingredient of the offence is on the prosecution and this burden never shifts. But intention can sometimes be only proved from circumstances and therefore it is sufficient for the prosecution to prove the acts of the accused and the circumstances in which they were committed. If from these an ference of the requisite intention can be reasonably drawn, the prosecution must be deemed to have discharged its burden. [196 G-197B]

(ii) Section 84 of the Indian Penal Code can no doubt be invoked by a person for nullifying the evidence adduced by the prosecution by establishing that he was at the relevant time incapable of knowing the nature of the act or that what he was doing was wrong or contrary to law. The prosecution need not give evidence about the capacity of the accused to know the nature of the act or that it was wrong or contrary to law because these are matters of presumption. Everyone is presumed to know the natural consequences of his act. Similarly everyone is presumed to know the law. It is for this reason that s. 105 of the Evidence Act places upon the accused person the burden of proving the exception on which he relies. [197 B-D]

(iii) The second part of s. 105 lays down that the Court shall presume the absence of circumstances on the basis of which the case could be said to come under a General Exception. But this presumption is rebuttable and the accused can rebut it either by leading evidence or by relying upon the prosecution evidence itself. If upon the evidence adduced in the case whether by the prosecution or by the accused a reasonable doubt is created in the mind of the court as regards one or more of the ingredients of the offence including menses of the accused, he would be entitled to be acquitted. This is very different from saying that the prosecution must also establish the sanity of the accused at the time of the commission of the offence despite what has been expressly provided for in s. 105 of the Evidence Act. [196. E; 198 A-C]

Dahabhai Chhaganbhai Thakkar v. State of Gujarat, [1964] 7 S.C.R. 361, explained and affirmed.

195

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 263 of 1964.

Appeal by special leave from the judgment and order dated July 2, 1964 of the Allahabad High Court in Criminal Appeal No. 356 of 1964 and Ref. No. 15 of 1964. S.P. Varma, for the appellant.

O.P. Rana, for the respondent.

The Judgment of the Court was delivered by Mudholkar, J. The appellant has appealed from the judgment of the High Court at Allahabad affirming his conviction for offences under ss. 302, 307 and 324, Indian Penal Code and confirming the sentence of death passed upon him in respect of the offence under s. 302 and also affirming the sentences passed in respect of the other two offences.

The facts as found by the High Court are these:

> The appellant had quarrelled with Mangali, PW 1, as Mangali reprimanded him over the grazing of his cattle in Mangali's field and damaging his crops. The appellant threatened Mangali that he would exterminate the latter's family. On February 25, 1957 at about 3-00 p.m. Babu Ram son of Mangali, aged about 7 or 8 years, Ram Ratia, aged about 2 years, daughter of Mangali's brother and Punna, son of Baijnath, brother of Mangali and Dulli, daughter of one Ladda Kewat, aged about 10 or 11 years and some other children were playing in the village near the hut of Hiralal, P.W. 3. The appellant came there armed with a sickle and rushed at the children. He first struck a blow on Babu Ram, who fled away and started crying. Mangali's one year old daughter Lachhminia was also there at that time and the appellant ripped open that child's chest with the sickle as a result of which she died almost immediately. The appellant then struck blows on Ram Ratia and also on Punna. Hiralal, the brother of the appellant who was sleeping in his hut was awakened by the cries of children and rushed out to save them. Thereupon the appellant struck a blow on Hiralal as well. Hearing the cries of children a number of villagers rushed to the spot but the appellant escaped from their clutches by running towards the river Ganges which is at a distance of about 75 paces from the place of the incident, jumped into the water and swam to the other shore and absconded. On October 11, 1957 proceedings under ss. 87 and 88 of the Code of Criminal Procedure were started against him and he was eventually proceeded against as an absconder. It was only on February 1, 1963 that he was arrested and thereafter sent up for trial. At that trial he was convicted and sentenced, as already stated. The only point urged by Mr. Varma who appears for the appellant is that the appellant was a person of unsound mind and that he was not in a position to know or realise the nature of the acts D),2SCI-16 which he was committing. Learned counsel argued that mens rea being an essential ingredient of all the offences with which the appellant was charged his conviction with respect to any of them cannot be sustained for the simple reason that no intention to cause death or to cause any injury whether resulting in death or not could possibly be attributed to a person who, when he committed the acts, was insane. Similar arguments appear to have been addressed before the Sessions Judge ,as well as the

> High Court, even though in his examination under s. 342 of the Code of Criminal Procedure the appellant did not plead the defence of insanity.

Section 84 of the Penal Code, one of the provisions in Ch. IV of the Penal Code, which deals with "General Exceptions" provides as follows:

> "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 ."

Under s. 105 of the Indian Evidence Act, 1872 the burden of proving the existence of circumstances bringing the case within any of the exceptions specified in the Penal Code lies upon the accused person. It further provides that in such a case the Court shall presume the absence of such circumstances. Illustration (a) to that provision runs as follows:--

> "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."

Learned counsel, however, relies upon a decision of this Court in Dahyabhai Chhaganbhai Thakkar v. State of Gujarat(1), and contends that it is for the prosecution to establish the necessary mens rea of the accused and that even though the accused may not have taken the plea of insanity or led any evidence to show that he was insane when he committed an offence of which intention is an ingredient the prosecution must satisfy the court that the accused had the requisite intention. There is no doubt that the burden of proving an offence is always on the prosecution and that it never shifts. It would, therefore, be correct to. say that intention when it is an essential ingredient of an offence, has also to be established by the prosecution. But the state of mind of a person can ordinarily only be inferred from circumstances. Thus if a person deliberately strikes another with a deadly weapon, which according to the common experience of mankind is likely to cause an injury and sometimes even a fatal injury depending upon the quality of the weapon and the part of the body on which it is struck, it would be reasonable to infer that what the accused did was accompanied [1964] 7 S.C.R. 361.

by the intention to cause a kind of injury which in fact resulted from the act. In such a case the prosecution must be deemed to have discharged the burden which rested upon it to establish an essential ingredient of the offence, namely the intention of the accused in inflicting a blow with a deadly weapon. Section 84 of the Indian Penal Code can no doubt be invoked by a person for nullifying the evidence adduced by the prosecution by establishing that he was at the relevant time incapable of knowing the-nature of the act or that what he was doing was either wrong or contrary to law. Now it is not for the prosecution to establish that a person who strikes another with a deadly weapon was incapable of knowing the nature of the act or of knowing that what he was doing was

either wrong or contrary to law. Everyone is presumed to know the natural consequences of his act. Similarly everyone is also presumed to know the law. These are not facts which the prosecution has to establish. It is for this reason that s. 105 of the Evidence Act places upon the accused person the burden of proving the exception upon which he relies. Mr. Varma, however, relies upon the following passage occurring in the aforementioned judgment of this court:--

> "The doctrine of burden of proof in the context of the plea of insanity may be stated in the following propositions: (1) The prosecution must prove beyond reasonable doubt that the accused had committed the offence with the requisite mens rea; and the burden of proving that always rests on the prosecution from the beginning to the end of the trial. (2) There is a rebuttable presumption that the accused was not insane, when he committed the crime, in the sense laid down by s. 84 of the Indian Penal Code: the accused may rebut it by placing before the court all the relevant evidence--oral, documentary or circumstantial, but the burden of proof upon him is no higher than that rests upon a party to civil proceedings. (3) 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."

and contends that according to the decision of this Court the legal position is otherwise.

This passage does not say anything different from what we have said earlier. Undoubtedly it is for the prosecution to prove beyond reasonable doubt that the accused had committed the offence with the requisite mens rea. Once that is done a presumption that the accused was sane when he committed the offence would arise. This presumption is rebuttable and he can rebut it either by leading evidence or by relying upon the prosecution evidence itself. If upon the evidence adduced in the case whether by the prosecution or by the accused a reasonable doubt is created in the mind of the court as regards one or more of the ingredients of the offence including mens rea of the accused he would be entitled to be acquitted. This is very different from saying that the prosecution must also establish the sanity of the accused at the time of commission of the offence despite what has been expressly provided for in s. 105 of the Evidence Act.

Mr. Varma further contends that there is evidence on record from which it can be inferred that the appellant was a person of unsound mind. In the first place, he points out, that no man in his senses will go on attacking children indiscriminately and go to the length of ripping open the chest of one year old child. He then refers to the statement of Dulli, P.W. 6, and that of Hiralal P.W. 3 in which the appellant is referred to as pagalwa and also to the specific statement of the former to the effect that the appellant was insane when he attacked the children. It seems to us that the indiscriminate manner in which the appellant attacked three innocent children and particularly his act of ripping open the chest of Lachhminia only shows the brutality of the assailant and cannot reasonably be regarded as a circumstance from which it could be inferred that he was of unsound mind. As regards

the reference to the appellant as pagalwa by the two witnesses we must point out two relevant facts. In the first place Hiralal is the brother of the appellant while Dulli, as she herself admits, belongs to the family of the appellant. Both are therefore interested in the appellant. Neither of them had on earlier occasions ever mentioned that the appellant was called pagalwa by the villagers or that any one shouted when the appellant killed Lachhminia that she was killed by the pagalwa. As Dulli herself admits, it was for the first time that she came out with this statement in cross-examination Similarly it was for the first time in the cross-examination that she stated that the appellant was insane when he committed the crime. It is because of this that the prosecution was allowed to cross-examine her. Similarly Hiralal, after making the particular statement was, at the request of the prosecution, declared hostile and cross-examined. The earlier statements made by him which would give a lie to what he had stated in favour of the appellant at the trial were denied by him but the denial was false. In these circumstances the learned Sessions Judge disbelieved that part of the evidence of these two witnesses which tended to suggest that the appellant was a person of unsound mind and was known as such the village.

Mr. Varma then relies on the following observations made by the learned Sessions Judge and says that in view of these observations it would appear that the learned Sessions Judge entertained a doubt about the sanity of the appellant and that, therefore, the benefit of that doubt must be given to him. The statement runs thus:

> "I am conscious of the fact that the standard of proof required from the accused for the proving of his (sic) insanity at the time of commission of the crime is not the standard of proof required from the prosecution but it is for the defence to prove that insanity existed at the time of commission of the crime and this burden cannot be discharged merely by creating a doubt about his insanity."

We find it difficult to construe these observations of the learned Sessions Judge to mean what learned Counsel says they mean. Immediately after the statement which we have quoted occurs the following in the judgment of the learned Sessions Judge.

> "The defence must establish certain circumstances either by its own evidence or by the prosecution evidence from which the existence of insanity can reasonably be inferred. The mere statement of hostile witnesses that he was insane cannot be accepted as sufficient evidence for the proof of the existence of the insanity."

all that the learned Sessions Judge meant by saying "by creating a doubt" evidently was that by merely trying to throw doubt about his sanity at the relevant time an accused person cannot be said to discharge the burden of proving that he was insane.

Apart from that. as the learned Sessions Judge has himself pointed out, the way in which the appellant used to conduct himself before the incident, the manner in which he acted during the incident and his subsequent conduct show. on the other hand, that he was perfectly sane. We can do no better than quote the relevant portion of the judgment of the learned Sessions Judge:

> "In the present case, there is evidence that up to the time of occurrence he has been doing his cultivation. There is no evidence on record to prove the characteristic of his habit from which it could be concluded that he was acting like an insane man. Before the commission of crime he not beat any person. On the other hand, few months before the occurrence the accused admittedly picked up quarrel with Mangali and Bhaiya Lal and had given threatening to make their family indistinct. An insane person could not have done so and it is not expected that he would have continued his cultivation properly like a sane person. Further, on the date of occurrence many children were playing including her own cousin sister. But first of all he gave a sickle blow only to Babu Ram and other children of the family of Mangali and Bhaiya Lal and not to any other children. This shows that he did not act under the influence of insanity but only with some previous deliberation and preparation. It is further in evidence that he had given threatening to the witnesses. He beat Hira Lal only when he tried to stop the act of beating of the children of Mangali and Bhaiya Lal's family with whom he had picked up quarrel previously. Lastly, a sense of fear prevailed in him and that is why he acted like a sane man by running and then escaping by jumping into the Ganges river. So, in my view all these circumstances lead to one conclusion that he was not insane and had acted like a sane man and with some motive."

We entirely agree with these observations of the learned Sessions Judge and also with the conclusion arrived at by him that the case of the appellant does not fall under the exception created by s. 84 of the Indian Penal Code. In the result we dismiss the appeal and affirm the conviction and sentences passed on the appellant in respect of each of the three offences for which he was found guilty by the learned Sessions Judge.

Appeal dismissed.