

SERIOUS ILLNESS AS A DEFENCE IN A CRIMINAL CASE

Section 84 of the Indian Penal Code provides for an accused facing a criminal trial, a defence if he has serious mental illness. If a person suffering from serious illness like hallucination and delusion (psychotic disorder) is accused of assaulting a person with a weapon say a club and as a result of the same, the victim suffers an injury either grievous or simple, the accused can set up a defence stating that he did not know the consequences of what he did as he was suffering from serious mental illness at the time of inflicting injury. If he is able to probablise the same, he will be acquitted. Section 84 of IPC reads as follows:-

“84. 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.”

I can recall an incident of giving such a benefit to a person who had been accused of assaulting his own father with a wooden plank on his head and causing his death in front of his house, that too in the presence of his (accused) mother. A young rustic villager, aged about 30-35 years had been charge sheeted by Udupi Police

for offence punishable under Section 302 of IPC for murdering his own father by assaulting with a wooden plank in front of his house. There was some exchange of words between the father and the son and suddenly he picked up a wooden piece which was lying there and assaulted his father with the said wooden piece on his head forcibly as a result of which his father fell down and died. This was noticed by his mother who was very much present there.

Information was given to the police about the same by the neighbourer who was a relative of the deceased and a case was registered by the police. After conducting investigation, charge sheet was filed against the accused before the JMFC Court which committed the case to the Court of Sessions at Udupi of which I was the Principal Sessions Judge. The accused had pleaded not guilty and claimed to be tried pursuant to the charges leveled against him. He had completely understood the charges read over to him. At the request of the Public Prosecutor summons was issued to the wife of the deceased (mother of the accused) as she was the only eye witnesses to the incident in question. She was examined-in-chief by the public prosecutor and she had supported the case of the

prosecution in its entirety. Being a rustic villager, the witness had given a true account of what was witnessed by her.

Young advocate who had represented the accused in custody tried his best to elicit from her mouth to bring out some answers to favour the accused but was in vain. 20-25 minutes after the cross-examination of the eye witness i.e., mother, I could notice that the accused who was seated in the accused dock about 25 feet from my seat, was behaving unusually as though he was unconcerned with the case. He was turning his head briskly and looking up and down and this continued for about 10 minutes. I stopped recording further cross examination of his mother and asked the advocate for the accused about the unusual behaviour of the accused and he feigned ignorance about the same. Then, I asked the witness as to why her son was having like that. She answered that at times he would behave like that. She even went to the extent of stating that if she were to take some time i.e., providing food the moment he asked, he would throw the plate forcibly and would go to his room and sleep and would not take the food. I thought that the accused had some serious problems with his behaviour.

Suddenly, I stopped recording her evidence and told the advocate to file an application in the afternoon as per the relevant provisions in Cr.P.C. seeking a thorough psychiatric evaluation. On such an application being filed in the afternoon session, I personally put several questions to the witness about the unusual behaviour of her son and I was satisfied that the accused needed a thorough psychiatric evaluation. A brief order was passed and the accused was referred to Government Wenlock Hospital at Mangalore for thorough psychiatric evaluation by an experienced psychiatrist and to submit a report.

Dr.Rao a Senior Psychiatrist of Wenlock Hospital assessed the accused and submitted a detailed report within 15 days, opining that the accused was suffering from serious hallucination and delusion (known as serious psychotic disorder) and that he needed treatment at NIMHANS, Bengaluru only. On the basis of the said report the accused was referred to NIMHANS where he was thoroughly treated by Dr.C.R.Chandrashekar, a psychiatrist of great eminence for 3 ½ months. Thereafter, he was sent to the Court with

an opinion that the accused had been treated thoroughly and he was fit to stand the trial.

Later on, mother of the accused was fully cross-examined by the Advocate, of course with major focus on the behaviour of the accused. Crucial witness in this case was Dr.Rao, Senior Psychiatrist who had evaluated the accused at Mangalore. Invoking Section 165 of Evidence Act, which enables the Court to put any question to any witness at any point of time, his opinion was sought as to whether the mental illness that the accused had was chronic in nature and if so, whether he had been treated at any point of time earlier to the assault. Doctor gave a categorical opinion that he must have been suffering from such serious mental illness for more than 10 years and he had not been treated at any point of time. He further opined that persons with such serious mental illness would not be knowing as to what they would do at times and its consequences.

Doctor's Evidence is admissible under Section 45 of the Evidence Act as it is the evidence of an expert. The opinion of the doctor was corroborated with the evidence of the mother of the

accused, who was the best witness to speak about his persistent unusual behaviour. Apart from this, the mother of the accused, during the course of her cross examination, had deposed that soon after assaulting his father, her son went inside the kitchen and brought a vessel containing boiling rice and poured the same on the stomach of his father and suddenly went inside the room and slept. Normally no accused would remain in the spot after the incident. But here the accused, instead of running away from the spot, went inside his room and slept coolly. This unusual behaviour was indicative of his serious mental illness.

Prosecution is always expected to adduce proof beyond reasonable doubt, if the accused is to be convicted. But if an accused is to probablize his defence as per General Exceptions found in IPC, he is not expected to adduce evidence in the same degree, but he can probablize the same on the basis of preponderance of probabilities. Taking into consideration the overall circumstances the case and in the light of the other evidence adduced in the said case, accused was acquitted by giving benefit as per Section 84 of IPC.

(A.V.CHANDRASHEKARA)
JUDGE, HIGH COURT OF KARNATAKA