

Nalysis of Section 85 & 85 of Indian Penal Code, 1860 [Sec 23 & 24 Bhartiya Nyay Sanhita, 2023] with Case Law Analysis Basdev Vs State of Pepsu Air 1956 Sc 488

Rashida Husain

Student, School of Law, Christ (Deemed to be University), Pune Lavasa Campus

Abstract

This research paper examines the legal principles surrounding the defense of intoxication under Indian Penal Code (IPC) Sections 85 and 86 (now Sections 23 and 24 under Bhartiya Nyay Sanhita, 2023). These sections distinguish between involuntary and voluntary intoxication in criminal acts, specifying the conditions under which an accused can claim intoxication as a defense. This analysis is contextualized through the case of Basdev vs. State of Pepsu, 1956 wherein the appellant, under voluntary intoxication, committed homicide. The paper traces historical perspectives on intoxication as a defense, scrutinizes the application of intent and knowledge in criminal liability, and critically evaluates the court's rationale in affirming the conviction under Section 302 IPC for murder, rather than reducing it to culpable homicide not amounting to murder under Section 304 IPC. The findings underscore that voluntary intoxication does not absolve criminal liability if the accused possesses sufficient awareness of their actions and the consequences. The study concludes with an affirmation of the Supreme Court's judgment, emphasizing the significance of recklessness and behavioral assessment in applying Section 86 IPC.

Keywords: General Defence, Drunkenness, Section 85 & Section 86, Section 23 & 24 of BNS.

Introduction

It is a well-known fact that for a crime to occur there must be *mens rea* and *actus reus* this means intent and action respectively. An act is not punishable unless the mind is also guilty this principle of criminal law is derived from the maxim "actus non facit reum nisi mens sit rea". However, chapter IV of the Indian Penal Code gives certain General Defences. Sections 85 and 86¹ (SEC 23 & 24 respectively Bhartiya Nyay Sanhita, 2023) are defenses of intoxication. Section 85- talks about involuntary intoxication where a person who was intoxicated without his knowledge can claim the defense of intoxication due to which it was hard to ascertain what is right and wrong. Section 86 talks about voluntary intoxication where a person will be liable for his/her actions and punished as though the acts were committed in a sober state. In the earlier societies intoxication was not a defence for example in the case of Reginer vs Fogossa² the accused was sentenced to death for an offence committed in a state of extreme intoxication. Earlier the

¹ Indian penal code § 85,86 (1860).

² Reginer vs Fogossa 75 E.R. 1

mens rea was not mandatory to prove. Later in the case of R vs O'Connor³ the scope of intoxication was defined as the consumption of substances that lead to reduced capacities to exercise one's ability.

To claim the defence of intoxication successfully the accused must prove the state of intoxication was involuntary and caused through fault of another party. The accused must also establish that he was unaware the act done by him/her was wrong.

R vs Majewski⁴ case established a rule that an intoxicated person is safe from proceedings against 'specific intention' not the 'basic intention' because even when intoxicated a person would be somewhat aware of their wrong actions.

Facts

- Appellant Basdev was a resident of Harigarh village and was a retired Feudal Lord or an armed zamindar of the British Period. Such Zamindars like military generals helped curb the rebellion of peasants.
- On 12th March 1954, Basdev went to a wedding party at the house of the bride. This was a midday meal and some guests had seated themselves while some found themselves without a seat.
- Basdev asked a young boy named Maghar Singh aged about 15 or 16 years old to move so that Basdev could sit.
- The boy refused and Basdev took out a gun and shot the boy in the stomach which killed him.
- The party had been quite lively and everyone had indulged in drinking. Basdev himself had quite a lot of drinks one of the witnesses Wazir Singh stated Basdev was drunk to the point of unconsciousness.
- When the case was taken to the sessions court it was noted by the sessions court judge that Basdev was excessively drunk.
- The Sessions Court Judge took into account the intoxication and the absence of intent to kill and sentenced Basdev to life imprisonment.
- An appeal to High Court of Pepsu was filed but which proved pointless.
- The High Court granted special leave petition to the appellant but it was limited to the question of whether section 304 or 302⁴ of the Indian Penal Code shall be applicable having regard to Section 86 of the Indian Penal Code, 1860.
- Section 302 of the Indian Penal Code states that whoever shall commit murder shall
 - be sentenced to death or life imprisonment and shall be liable to a fine
- Section 304 of the Indian Penal Code states that a person who has culpable homicide not amounting to murder shall be sentenced to life imprisonment or to imprisonment which may extend up to 10 years and he shall also be liable to fine.

Issues

1. Can voluntary intoxication without the presence of an intent amount to a crime
2. Can the charges of the accused be reduced from section 302 of Indian Penal Code to Section 304.

Analysis

The scope of section 86 of the Indian Penal Code, 1860 was discussed at length. Section 86 grants a defence to persons intoxicated involuntarily whereas in Basdev's court whether voluntary intoxication but absence

³ R vs O'Connor Crim LR 135

⁴ Indian penal code § 302,304 (1860).

of mens rea amounted to a crime.

The Court also discussed intent, motive, and knowledge. The court acknowledged the degree of intoxication. It was discussed that motive gives rise to intention and knowledge is the awareness of the result or consequence of an act that is performed or to be performed. Often the lines between intention and knowledge are blurred.

In the case of Rex vs Meakin, the instrument used to cause bodily harm was taken into consideration as an element of intention in case of intoxication if a man were to use a stick there wouldn't be a strong charge against him but if he used a dangerous instrument then that changes the opinion. But in the case of Regina vs Cruse and Mary, it was held that if a person is so drunk there may be an absence of intention in what they have done even if it is a crime like murdering their child.

The defense or excuse of intoxication lies on the accused to prove. Mere irritability isn't enough, it should be established that the accused was intoxicated person was unable to restrict his actions or he was unable to form any specific intention.

In the case of DPP vs Beard, the accused raped a thirteen-year-old girl while drunk and put his hand on her mouth but his thumb was on her throat which ended up suffocating her to death. The accused pleaded defense of drunkenness however this was denied as the accused was aware of the actions he committed and the consequences of committing them. He was sentenced to death by the House of Lords. In the case of Basdev also the court noticed the accused wasn't so drunk he wouldn't know what the consequences of his actions might be.

The evidence showed that he was intoxicated and incoherent in his speech but the same evidence also establishes that the accused had enough sense to come to identify a seat and ask the deceased to move so that he could sit and then attempt to run away because he did have a realization of what he did. Thus, this does not prove his incapacity to form reason in his mind and he was fully aware of the consequences his action would have which would be bodily injury to the deceased.

On these findings, the conviction of the lower court was upheld the sentence was not reduced by the Supreme Court and neither the charges of section 302 of the Indian Penal Code were dropped.

Conclusion

This case established a few criteria for the defense under section 86 of the Indian Penal code⁵

- a) The accused must prove the recklessness of the act, otherwise the accused will be treated as having known the consequences of his actions
- b) The defence applies to both involuntary intoxication by drugs and drinks
- c) The section can be applied to the behavior of the accused instead of the intent. The behaviour the accused is an alternative to the intent

I agree with the judgment given by the Supreme Court in the case of Basdev vs the State of Pepsu. The accused just acted in a sense of irritation and another important thing was his work background as a Zamindar may have given him a sense of entitlement which led to him killing a boy over a seat at the party. I believe and agree with the Court's opinion in the conscious and full capability of forming a thought while committing the act.

⁵ RAMALINGGAM, P., HASSAN, D.M.S. and ZAHIR, D.M.Z.M., INTOXICATION DUE TO DRUGS AS A DEFENCE.