

Rustam Ali Vs. State

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Court : Allahabad

Decided On : Aug-31-1959

Reported in : AIR1960All333; 1960CriLJ768

Judge : D.N. Roy and ;D.P. Uniyal, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 84

Appeal No. : Criminal Appeal No. 1446 of 1959

Appellant : Rustam Ali

Respondent : State

Advocate for Def. : Govt. Adv.

Advocate for Pet/Ap. : D.C. Asthana and ;P.C. Chaturvedi, Adv.

Disposition : Appeal dismissed

Judgement :

D.N. Roy, J.

1. This is an appeal by Rustam Ali who has been convicted under Section 302, I.P.C. for the murder of Om Prakash, son of Dhani Ram, aged about' four years, and sentenced to death; and who has also been convicted under Section 307 for a brutal attack on Sarju Prasad with the intention of killing him and has been

sentenced to three years' rigorous imprisonment. Along with the appeal there is a reference by the learned Sessions Judge for the confirmation of the death sentence.

2. The appellant was employed in the Cooper Alien Mills at Kanpur and he was occupying one of the quarters in a settlement meant for the labouring classes known as the Allenganj Settlement. On 25-4-1957 when most of the menfolk residing there had gone away to the Mills to attend to their duties the appellant, it is said, came out of his quarters at about 7 A.M. armed with a Gandasa. It is said that Sarju Prasad P.W. 2 who was living with his brother in the Allenganj Settlement was sitting on his bed in front of his house when Rustam Ali came and struck him from behind with the Gandasa. Sarju Prasad tried to struggle for his safety but he was given several blows with the Gandasa in the meantime. Rustam Ali then ran away towards the north leaving Sarju Prasad there.

It is further said that Om Prakash the son of Dhani Ram who was sitting on a cot in front of quarter No. 40/15 of his father was given Gandasa blow by Rustam Ali who thereafter ran away further north. After Rustam Ali had assaulted several other boys he was returning to his own quarter when he was overpowered and arrested with the blood-stained Gandasa in his hand by several persons of the locality inclusive of Mushtaq Ali P.W. 1. During the process of arrest, and subsequently as well, injuries had been inflicted on Rustam Ali by the persons who had assembled there out of natural revolt engendered by the enormity of the crime committed by him. The emergency squad of the police was in the meantime informed by some one. Rustam Ali was handed over to the police and was taken to the hospital where he was attended to for his injuries.

3. The report of the occurrence was made at the police station by Mustaq Ali at 7-35 A.M. Mus-taq Ali is also employed in the Cooper Alien Mills and he had rushed to the place of occurrence on hearing the alarm of the people who had taken part in overpowering the accused. After the report was made the investigation of the case was taken up by Sub-Inspector Mohammad Sultan, the Second Officer of police station Nawabganj at the instance of Sub-Inspector Chandrapal Singh the Station Officer of that place.

4. Sarju Prasad and Om Prakash were both hurried to the hospital soon after their receiving the injuries, Sarju Prasad's injuries were examined by Dr. D. S. Kapoor, P.W. 19, and the following injuries were found on his person :

1. Incised wound 4 1/2' by 1 3/4' muscle deep, On the posterior lateral aspect of the middle 1/3 of the left thigh, directed obliquely and internally and posteriorly.

2. Incised wound, 1' by 1/2', muscle deep, on the left calf, posterior aspect, 5' below the knee.

3. Incised wound 1/4' by 1/3', skin deep, over the knuckle of right index finger.

4. Incised wound 3' by 1', bone deep, over the posterior aspect of head, transversely placed, slightly curved, lower flap sliced down.

5. Incised wound, 2 1/4' by 1', muscle deep, and muscle cut on the left side of the neck 3' below the ear of left side passing backwards.

5. The injuries of Om Prakash son of Dhani Ram were examined by Dr. Sharda Prasad (P.W. 18). An incised wound 3 1/2' x 1/2' x 1 1/2' deep, below the occiput, on the back portion of the neck 2' to the right and 1 1/2' to the left of the mid-line of the neck, was found.

6. In spite of medical aid Om Prakash did not survive and he died at the hospital on the same date at 12-30 P.M. His body was sent for post mortem examination, which was conducted on that very day at the mortuary at 5-30 p.m. The post mortem examination revealed an incised wound 3 1/2' x 1' bone deep on the back of the neck, middle third, cutting the fourth cervical vertebra and injuring the spinal cord partially. Dr. D. P. Gupta was of opinion that death was caused by shock due to the injury to the spinal cord in the cervical region.

7. When the first information report was lodged by Mustaq Ali P.W. 1 at the police station, the gandasas recovered from the accused, namely, Ex. 1, was handed over there. At the police station it was sealed up by the Head Constable after the recovery memo, had been prepared. This gandasas was sent to the Chemical Examiner and to the Serologist to Government, and it was found to contain human

blood.

8. The accused denied the allegations made against him. He denied that he attacked Sarju Prasad and Om Prakash, son of Dhani Ram. He denied that the gandas Ex. I belonged to him, or that it was taken away from him when he was overpowered. He did not state anything as to how he was arrested and by whom.

9. It may be stated here that on an earlier occasion when the case came up before the learned Sessions Judge for trial, it was contended on behalf of the accused that he was of unsound mind and incapable of making his defence. An inquiry was therefore conducted in respect of that allegation. The Civil Surgeon of Kanpur kept him under observation for some time, and he gave evidence in Court to the effect that the accused's power of understanding was poor; that he did not remember the incident in respect of which he was being prosecuted; that he did not also remember what was his monthly salary and where he was employed; and that he did not even know why people are sent to jail. The Civil Surgeon was of the opinion that the mental condition of Rustam Ali was such that he would not be in a position to defend himself.

This was, however, the position in April, 1958. The learned Sessions Judge by an order dated 5-5-1958 held that the accused was insane and incapable of making his defence and that further proceedings in the case be postponed in accordance with the provisions of Section 465, Cr. P. C. The accused was thereafter transferred to the Mental Hos-pital at Varanasi. The Superintendent of that Hospital later on certified in December 1958 that Rustam Ali was then in a fit condition to stand his trial. He was thereafter transferred to Kanpur Jail and the trial was held.

10. The defence that was taken by the accused in the Court of Sessions was that by reason of unsoundness of mind at the time of the alleged commission of the offence he was incapable of knowing the nature of the act and that what he was doing was contrary to law and, therefore, his act was protected under Section 84, I.P.C. To support that plea it was contended on behalf of Rustam Ali that he used to beat his wife and also used to lock her up inside the quarters when he used to go out for works; that he was of an eccentric type; that off and on he raised

objections in the factory where he was employed about the quantity of work that was given to him; and that the very fact that he attacked a number of persons just about the timewhen Sarju Prasad and Om Prakash had been assaulted, affords proof of the circumstance that his mind was unhinged.

11. The fact that Sarju Prasad P.W. 2 and Om Prakash son of Dhani Ham had been attacked by the appellant with the gandasa Ext. 1 on the morning of 25-4-1957 at the respective places stated above and that Om Prakash son of Dhani Ram died as a result of the injury received by him on the same date at the hospital at 12-50 p.m. admits of no doubt whatsoever. That was conclusively proved by the medical evidence referred to above and by the eye-witnesses. The first incident relating to Sarju Prasad was testified to not only be Sarju Prasad who was the victim of the assault, but by two other witnesses, Smt. Sunder P.W. 4 and Smt. Rabia P.W. 7, Smt. Sunder is the wife of Sarju Prasad's brother, who had gone out to work. Sunder was inside the house and she came out when she heard Sarju Prasad and Rabia shouting for help. She deposed that she saw Rustam All striking Sarju Prasad with the gandasa. Smt. Rabia resides in one of the neighbouring quarters.

She stated that she saw Rustam Ali passing by her quarters. She inquired from him as to why he had not gone to his work, and Rustam Ali told her that he had taken leave for the day. Rustam Ali then took an onward course and Smt. Rabia applied herself to her own work. She then heard the cries of Sarju and, when she raised her head, she found Rustam. Ali attacking Sarju with the Gandasa Ex. 1. She also raised cries. Sarju fell down and became unconscious. The two ladies lifted up Sarju who was sent to the hospital. The statements of these three witnesses fully established the fact that it was Rustam Ali who attacked Sarju Prasad. There was nothing on the record to suggest or to show that these three witnesses had any motive to implicate the accused falsely.

12. With respect to the second incident we have the statement of three witnesses, Lakshmi (P.W. 10), Ram Pyari (P.W. 11) and Dhani Ram (P.W. 16). Ram Pyari and Dhani Ram are the parents of Om Prakash; and Smt. Lakshmi is the wife of one Hem Nath who was residing in the adjoining quarters. All the three witnesses

were inside their respective quarters. Smt. Lakshmi heard some noise outside and she came out to see what the matter was and she saw that Rustam Ali was running with a Gandasa in his hand from the side of Sarju Prasad's quarters. At that time Om Prakash the son of Dhani Ram was sitting over the cot in front of his quarter.

Om Prakash was getting into the house when he was alerted and asked by his parents to do so, but before he could get inside the house, Rustam Ali struck him with the Gandasa. This part of the case was fully corroborated by these three witnesses. Om Prakash was rushed to the hospital and in spite of medical aid he expired at the hospital on the same day at about 12-50 P.M. There was nothing on the record to raise any semblance of doubt about the truth of the matter deposed to by these two witnesses. We have already said that in the process of apprehension, and immediately afterwards, those who apprehended him and those who had gathered at the spot made an attack at Rustam Ali obviously on account of the enormity of the offence and the reckless way in which the accused had attacked innocent persons.

Mushtaq Ali (P.W. 1) who was one of the persons who had arrested the accused was quite an independent witness. He showed great courage in apprehending the accused. Rustam Ali had no explanation to give as to how he was arrested and when. From what we have said above there is no reason to disbelieve the prosecution evidence relating to the two incidents. That evidence fully established that it was Rustam Ali who made a murderous attack on Om Prakash with the Gandasa' Ex. 1 which resulted in the death of Om Prakash and he also made a murderous attack on Sarju Prasad witness but Sarju Prasad luckily escaped death.

13. The plea raised by the accused, that he is entitled to the protection under Section 84, I.P.C., was, in our opinion, rightly rejected by the learned Sessions Judge. There was no doubt the evidence of Smt. Sunder (P.W. 4) that Rustam Ali used to lock up his wife and children inside his house when housed to go out for work. There was the further evidence of Smt. Ram Pyari (P. W. 11) who stated that Rustam Ali used to quarrel with his wife and to beat her. There was again the

evidence of Dhani Ram (P.W. 16) to the same effect. Quarrel between husband and wife on certain occasions and the attitude towards tile wife in locking her up inside the house whenever he used to go to work, although signs of some eccentricity, cannot be taken as elements proving the requirements of Section 84 of the Code.

Section 84 lays down that nothing is an offence which is done by a person who, at the time of committing 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. The section lays down the legal test of responsibility in case of alleged unsoundness of mind. Under it a person is exonerated from liability from doing an act on the ground of unsoundness of mind if he, at the time of doing the act, is either incapable of knowing (1) the nature of the act, or (2) that he is doing what is either wrong or contrary to law. The onus of proving unsoundness of mind at the time of doing the act is on the accused. It may be discharged by producing evidence as to the conduct of the accused shortly prior to the offence and his conduct at the time or immediately afterwards, also by evidence of his mental condition, his family history and so forth.

There are four kinds of persons who may be said to be non compos mentis : (1) an idiot; (2) one made non compos by illness; (3) a lunatic or madman; and (4) one who is drunk. An idiot is one who is of non-sane memory from his birth, by a perpetual infirmity, without lucid intervals. A person made non compos mentis by illness is excused in criminal cases from such acts as are committed while under the influence of his disorder. A lunatic is one who is afflicted by mental disorder only at certain periods and vicissitudes; having intervals of reason. Madness is permanent. Lunacy and madness are spoken of as acquired insanity, and idiocy as natural insanity. A case of person who may be said to be non compos mentis on account of drunkenness is dealt with by Section 85, I. P .C.

14. We have in evidence the statement of A. D. Kotvval, the Junior Overseer in Cooper Alien Mills under whom Rustam Ali accused had been working who stated that the accused was a little slow at work and he used to complain every third or fourth clay that more work was being allotted to him than was justified. Sri A. D.

Kotwal stated that that type of complaint also used to come to him from other labourers. Sri Kotwal further stated that the accused attended to his duty as Trimmer at the mills up to 24-4-1957 and he the witness, did not know of any abnormality in his mind. We have also the evidence of Dr. D. S. Kapoor (P.W. 19) that on 25-4-1957 he examined Rustam Ali at 8 A.M. for his injuries and also at 10-20 A.M. when he made a report that the dying declaration should be recorded and that Rustam Ali's mental condition on both occasions was perfectly sound.

Just before the occurrence the mental condition of Rustam Ali was testified to by Smt. Rabia (P.W. 7) who stated that when Rustam Ali was passing by her door she asked him why he did not go to work and she got the reply that he was on leave. His mental condition was therefore not unsound. The case is, therefore, not one in which any suspicion of unsoundness of mind at the time of the commission of the offence could be raised in favour of the accused. It was urged on behalf of the appellant that from the character of the crime itself an inference should be drawn that the accused was insane at the time of the commission of the offence. We are unable to support this contention. The law presumes a man of the age of discretion to be sane unless the contrary is proved. It would certainly be dangerous to admit a defence of insanity upon arguments merely derived from the character of the crime.

The mere fact that it was attended with uncommon ferocity would alone not suffice for the inference that the accused had a deranged mind. Under Section 105 of the Evidence Act the burden is on the accused to prove strictly that he committed the act in a moment of insanity; that he did not know the nature and quality of his act or that his act was wrong or contrary to law. Again, the accused's action alone cannot furnish a safe or legal basis to support the theory of insanity of any kind, let alone legal insanity. A careful study of Section 84, I.P.C. will show that it is not every person mentally deranged who is ipso facto exempted from criminal responsibility.

Such exemption would be allowed only where the insanity produces incapacity to know the nature of the act or to know that what he is doing is either wrong or contrary to law. These are two completely different mental conditions. The first

refers to the offender's consciousness to the bearing his act has on those who are affected by it. The second is his consciousness in relation to himself. Each species of consciousness is present in the mind of a normally sane person. Either or both may be absent from the mind of one who is mentally diseased. The absence of both or either relieves the offenders from liability to punishment in the ordinary way.

In order to bring a person within the four corners of legal insanity it must be shown that the cognitive faculties of the accused are, as a result of unsoundness of mind, so completely impaired as to render him incapable of knowing the nature of the act or that what he is doing is wrong or contrary to law. Moody or pensive state of mind, or eccentricity of the type suggested by the prosecution would not amount to proof that the accused was of unsound mind at the time of the doing of the criminal act and that the unsoundness extended to an extent that he was incapable of knowing the nature of the act or that what he was doing was either wrong or contrary to law.

15. In *Keg. v. Stokes*, (1848) 3 Car. and K. 185, Rolfe, B., said :

'It would be a most dangerous doctrine to lay down, that, because a man commuted a desperate offence, with the chance of instant death and the certainty of future punishment before him, he was therefore insane, as if the perpetration of crimes was to be excused by their very atrocity.'

16. In *Reg. v. Haynes*, (1859) 1 F. and F. 666, Bramwell, B., said to the jury :

'It has been urged that you should acquit the prisoner on the ground that, it being impossible to assign any motive for the perpetration of the offence, he must have been acting under what is called a powerful and irresistible influence, or homicidal tendency. But the circumstance of act being apparently motiveless, is not a ground from which you can safely infer the existence of such an influence. Motives exist, unknown and innumerable, which might prompt the act. A morbid and restless (but resistible) thirst for blood, would itself be a motive urging to such deed for its own relief. But if an influence be so powerful as to be termed irresistible, so much the more reason is there why we should not withdraw any of the safeguards tending to

counteract it. There are three powerful restraints, all tending to the assistance of the person who is suffering under such an influence the restraint of religion, the restraint of conscience, and the restraint of law. But if the influence itself be held a legal excuse, rendering the crime dispunishable, you at once withdraw a most powerful restraint that forbidding and punishing the murder.'

17. These remarks are very pertinent in the present case, specially in finding out whether the appellant can get the protection of Section 84 I. P. C. by advancing the plea that he was of a pensive state of mind or was somewhat eccentric or that the atrocity of the crime betokens that he was insane and he should therefore be excused by its very atrocity.

18. After having given the case our careful and anxious consideration, we are of opinion that the appellant is not entitled to the benefit of Section 84 I. P. C. We are further of opinion that the charges under Sections 302 and 307 I. P. C. had been clearly made out against the appellant. The attack on Om Prakash son of Dhani Ram was unprovoked; so was the attack on Sarju Prasad. There was no extenuating circumstance established in the case to entitle the appellant to claim the lesser punishment provided under Section 302 I. P. C. Accordingly, we see no merit in this appeal and we dismiss it. We affirm the conviction and sentences of the appellant under Sections 302 and 307 I. P. C. We accept the reference and we direct that the sentence of death awarded to the appellant under Section 302 I. P. C. be carried out in accordance with law.

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