Lakshmi Vs. State

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Court : Allahabad

Decided On : Oct-29-1958

Reported in : AIR1959All534; 1959CriLJ1033

Judge : Nasirullah Beg and ;V.D. Bhargava, JJ.

Acts : Indian Penal Code (IPC), 1860 - Sections 84

Appeal No. : Criminal Appeal No. 1012 of 1956

Appellant : Lakshmi

Respondent : State

Advocate for Def. : Dy. Govt. Adv.

Advocate for Pet/Ap. : P.C. Chaturvedi, Adv.

Disposition : Appeal dismissed

Judgement :

Beg, J.

1. This is an appeal by one Lakshmi who has been convicted under Section 302, I. P. C. and sentenced to imprisonment for life and a fine of Rs 100/-; in default, to undergo further rigorous imprisonment for one year.

2. The appellant Lakshmi has been found guilty of having murderd his step brother Chhedi Lal on 6-10-1954 at about 8 p. m. in village Baheri, police station Girwan, district Eanda.

3. The prosecution case is that the appellant was addicted to taking ganja and wine. He used to go about making demands for money from his relations. He used to beat his wife and mother. He also used to make similar demands from the deceased Chhedi Lal who was opposed to this habit of life of the appellant, and would not accede to his requests to advance to him monies to enable him to indulge in these vices. It is said that in the month of Jeth preceding the incident he had beaten his mother and wife. At that time the deceased and other persons had intervened and prevented him from doing so. On the appellant's refusal to obey him, the deceased had chained him. The appellant had run away after breaking the chains. Five or six days after that, Nichari Ahir of village Baheri had approached Chhedi Lal deceased, and had told him that when Lakshmi was used to taking ganja and bhang, why was he not supplying the same to him, Chhedi Lal did not accede to his request either. Thereafter it is said that Lakshmi appellant had stopped speaking to Chhedi Lal.

4. The incident itself is said to have taken place on the evening of 6-10-1954. The prosecution Story is that at about 8 p.m. in the night, Chhedi Lal had returned to his house after attending, to the call of nature. He was sitting at his door on the chabutra. At that time the appellant took a pharsa and proceeded towards Chhedi Lal. He began to assault Chhedi Lal with the pharsa, Chhedi Lal raised an alarm. A number of persons including Durga, Chhakori and Debi Dayal the son of Chhedi Lal, reached the spot on hearing the alarm. On the arrival of these persons the appellant fled away outside the village taking the pharsa along with him. Chhedi Lal died within an hour or two.

5. Thereafter Chhedi Lal's son Debi Daval went to police station Girwan, and lodged a first information report there at 1 O'clock in the night. In this report Debi Dayal referred to the fact that the appellant was addicted to taking ganja and bhang. He also stated that he had beaten his mother and wife in the month of Jeth, and that his father had tried to stop him from doing that. On his refusal to

obey him, his father and other persons had tied him up with a chain. He also stated that five or six days after that Nichari Ahir had brought Lakshmi to his father, and had asked him to provide ganja and bhang for the appellant, as he was used to these intoxicants. His father had refused to supply the same to him. Thereafter Lakshmi appellant had stopped speaking with his father. He then narrated the main facts of the incident and stated that, on hearing thealarm, he had reached the spot and seen the appellant giving pharsa blows to his father. A number of other persons also reached the. spot. On being challenged by them, the appellant had fled away outside the village with the pharsa.

6. This first information report was lodged in the presence of S. I. Mohammad Ahmed, station officer, Girwan. He went to the spot and prepared an inquest report. He got the statements of the witnesses recorded under Section 164, Cr. P. C. The reason given by him for taking this step was that the witnesses being relations of the appellant, he was apprehensive that they might be tampered with. He also stated that the witnesses were going about with the pairokar of the appellant, and had colluded with him. He searched for the appellant in the village. The appellant was found absconding and could not be arrested. The appellant surrendered in court on 8-10-1954.

7. The post mortem examination of Chhedi Lal disclosed the following injuries on his body.

1. The Antero-posterior incised wound 3'x1/4' bone underneath cut 2 1/2' above left eye brow.

2. Oblique incised wound 3/4' x 1/6' x bone underneath cut 1/2' above eye brow.

3. Contused wound 1 1/4' x 1/4' x bone deep along the left eye-brow.

4. Transverse incised wound 3 1/2' x 1/2' bone deep left cheek beginning from just above the left corner of the mouth running towards the left ear

5. Incised wound 5 1/2' x 1 1/2' bone underneath cut 1/2' below and parallel to injury No. 4.

6. Transverse incised wound 1 1/4' x 1/8' skin deep front of left shoulder.'

Death in the opinion of the doctor was due to shock and haemorrhage as a result of the injuries sustained by the deceased.

8. The appellant denied the guilt. He denied that he had run away with the pharsa after striking Chhedi Lal. He, however, admitted that he used to smoke ganja and people used to stop him from doing so and that he was tied up for that reason.

9. The main facts relating to the assault made on the deceased by the appellant have not been contested before us by learned counsel for the appellant. The question, however, which has been seriously argued by him is that the act of the appellant in murdering Chhedi Lal fell under the Exception provided by Section 84 in Chap. IV of the Indian Penal Code.

10. Having heard learned counsel for the appellant at length we find ourselves unable to agrea with him. In order to determine this question the prosecution evidence may be divided into three categories enumerated below :

1. Motive.

2. Conduct of the appellant immediately before the incident, at the time of the incident and shortly after the incident.

3. Subsequent conduct of the appellant and his conduct during the trial of the case.

11. (After discussion of evidence His Lordship proceeded.) To sum up, in the present case there is evidence of motive against the appellant. His conduct prior to the incident as well as at the time of the incident does not support the contention that he was insane at the time when the offence was committed. His conduct subsequent to the incident also does not lend any support to this contention. The conduct history of the appellant in the Court of enquiry as well as in the trial Court also militate against the contention that the appellant was liable to recurring fits of insanity at short intervals.

12. Learned counsel for the appellant has cited two cases to support his contention. The first is Ashiruddin Ahmad v. The King AIR 1949 Cal 182. The facts of this case were that the accused had dreamt that he was commanded by someone in paradise to sacrifice his own son of five years. The next morning the accused took his son to a mosque and killed him by thrusting a knife in his throat. He then went straight to his uncle, but, finding a chaukidar nearby took his uncle to a tank at some distance and slowly told him the story. On these facts it was held by a Bench of the Calcutta High Court that the case of insanity tinder Section 84, I.P.C. was made out.

It was held in that case that to enable an accused to get the benefit of Section 84 he should be able to establish any one of the following three elements viz. : (1) that the nature of the act was not known to the accused or (2) that the act was not known by him to be contrary to law or (3) that the act was not known by him to be wrong. On the above facts, the Bench held that the third element was established by the accused, namely, that the accused did not know that the act was wrong. This was obviously on the ground that the accused was labouring under a belief that his dream was a reality. The Bench came to the following conclusion :

'That the accused was clearly of unsound mind and that acting under delusion of his dream, he made this sacrifice believing it to be right.'

We find ourselves unable to endorse this view of Section 84, I.P.C., and must therefore, express our respectful disagreement with it. We are further of opinion that once this view is accepted to be correct, it will lead to serious consequences, it will be open to an accused in every case to plead that he had dreamt a dream enjoining him to do a criminal act, and believing that his dream was a command by a higher authority, he was impelled to do the criminal act, and he was therefore, protected by Section 84. We are of opinion that such a plea would be untenable, and would not fall within the four corners of Section 84. Section 84, I.P.C. provides as follows :

'Nothing is an offence which is done by a person who, at tthe 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 contraiy to law.'

The significant word in the above section is 'incapable'. The fallacy of the above view lies in the fact that it ignores that what Section 84 lays down is not that the accused claiming protection under it should not know an act to be right or wrong, but that the accused should be 'incapable' of knowing whether the act done by him is right or wrong. The capacity to know a thing is quite different from what a person knows. The former is a potentiality, the latter is the result of it. If a person possesses the former, he cannot be protected in law, whatever, might be the result of his potentiality. In other words, what is protected is an inherent or organic incapacity, and not a wrong or erroneous belief which might be the result of a perverted potentiality.

A person might believe so may things. His beliefs can never protect him once it is found that he possessed the capacity to distinguish between right and wrong. If his potentialities lead him; to a wrong conclusion, he takes the risk and law will hold him responsible for the deed which emanated from him. What the law protects is the case of a man in whom the guiding light that enables a man to distinguish between right and wrong and between legality and illegality is completely extinguished. Where such light is found to be still flickering, a man cannot be heard to plead that he should be protected because he was misled by his own misguided intuition or by any fancied delusion which had been haunting him and which he mistook to be a reality. Our beliefsare primarily the offsprings of the faculty of intuition. On the other hand the content of our knowledge and our realisation of its nature is born out of the faculties of cognition and reason.

If cognition and reason are found to be still alive and gleaming, it will not avail a man to say that at the crucial moment he had been befogged by an overhanging cloud of intuition which had been casting its deep and dark shadows over them, 'Legal insanity' is not the same thing as 'medical insanity' and a case that falls within the latter category need not necessarily fall within the former. Further, the case where a murderer is struck with an insane delusion is different from the case of a man suffering from organic insanity. In the case cited the plea of the accused would belong to the former class, whereas in the present case the plea of the accused would belong to the latter class. The considerations that arise in the two cases might be different. Mayne quoting from the Draft Code of 1879 has stated

the principle applicable to cases of delusions to be as follows :

'A person labouring under specific delusions, but in other respects sane, shall not be acquitted on the ground of insanity, unless the delusions caused him to believe in the existence of some state of things which, if it existed, would justify or excuse his act.'

13. The next case cited by learned counsel for the appellant is Anandi v. Emperor AIR 1923 All 327 (2). This case is easily distinguishable on facts from the present case. This was a case in which a lady named Anandi had murdered a boy. In this case there was in her favour the evidence of two experts, one of whom was a Civil Surgeon and the other also was a doctor. Both of them had found the accused subject to fits of insanity shortly after the murder. There was also evidence of hereditary insanity in the family of the accused. There was also evidence showing that her grandfather had at some time or other been insane. Further, the facts indicated that the murder was committed without any motive. The above case, therefore, stands on a footing quite different from the present case.

In the present case there is evidence of motive and, as already observed by us, the conduct of the appellant at the time of the incident as well as his antecedent and subsequent conduct both negative the plea of insanity under Section 84 of the Indian Penal Code. Further, in the present case, there is no evidence of any hereditary insanity. There is also nothing to indicate that the accused was, at any time, overtaken by any fit of insanity after the crime. Further, there is no evidence of any expert in his favour. Under the circumstances we fail to see how the above case helps the appellant.

14. For the above reasons, we are of opinion that there is no substance in this appeal. We, accordingly, dismiss this appeal and maintain the conviction and sentence of the appellant.