

Pancha Vs. Emperor

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Court : Allahabad

Decided On : Oct-02-1931

Reported in : AIR1932All233

Appellant : Pancha

Respondent : Emperor

Judgement :

Sulaiman, J.

1. This is a criminal appeal from a conviction under Section 302, I.P.C. The facts relating to the murder of the deceased Fakira Chamar are perfectly clear. The 2nd April 1931 was a moonlit night on which a lunar eclipse occurred. Just about the time when the eclipse was at its maximum and there was darkness all round, the accused Pancha Chamar attacked Fakir Chamar with lathis, who was sleeping on a charpoy in front of Simru's house. Several blows fell on his head near and above the left eyebrow and fractured his skull completely resulting in instantaneous death. The first information report was made at 8 o'clock next morning at the police station, which was one mile off, and the names of the accused and the important witnesses were mentioned in it

2. Mt. Kori, a Chamar woman, 70 years of age, whose house is across the lane and on the opposite side of Simru's house at a distance of only a few paces, got up at midnight to supply water to the wife of her nephew who was lying ill. She

went out into the lane for the call of nature, and saw Pancha accused standing there and later saw him striking Fakira With a lathi. According to her two or three blows were struck in her, presence and Fakira did not utter any sound. The night was dark at the time on account of the eclipse, and the whole of the moon was covered up by the shadow. Later she saw the accused run away from the place.

3. Mauji Chamar, who is a nephew of Mt. Kori and lives in her house, was sleeping inside the house, when about 1 o'clock at night he was awakened by the cries of Mt. Kori that Pancha had killed Fakira. 'When he opened the door and came out, he saw Pancha running away at a distance of a few paces. According to him more than half the moon was covered by the shadow.

4. Mt. Mahakuar, who is the wife of Simru, has stated that she was sleeping inside her house but was awake at the time of the lunar eclipse. Fakira was sleeping outside her house, and she could see his charpoy from inside the house, as he was only a few paces from her. At midnight she saw Pancha accused assaulting Fakira with a lathi and giving him three blows in her presence after which the accused ran away.

5. Besides the evidence of these three eyewitnesses there are the statements of other witnesses, who were awakened by the alarm and rushed to the place and saw the injured body of Fakira. They further prove that Pancha was named as the assailant by witnesses and was arrested on the same night.

6. The evidence is clear and has been believed by the Sessions Judge who heard it. There is no reason to doubt his finding that it was the accused Pancha who killed the deceased Fakira. In the committing Magistrate's Court no defence was put forward except a denial that the accused had killed the deceased. In the Sessions Court an additional position was taken up that the accused was of unsound mind.

7. In the first information report the deceased's brother Raman bad himself mentioned that in the view of Mt. Kori Chamar Pancha had been under the influence of madness for several days and going about talking nonsense. In the charge-sheet prepared by Sub-Inspector Diwanchand he also stated that the

accused appears to be like a mad man. No motive was specifically alleged in the first information report, but in his evidence Raman stated that two months before the occurrence there was a burglary in Fakira's house and Fakira suspected Pancha's brother Bala as the thief, and there was a quarrel.

8. Raman explained the reference in his report to the accused being mad by saying that it was based on what Mt. Kori had told him, Mt. Kori in her cross-examination also stated that when she met the accused in the lane and asked who it was he replied and gave her his name, but gave no reason when asked why he was there. She further stated that Pancha had been suffering from fits of insanity for the last two years and used to abuse his wife and wandered about in the village. Similarly Mauji Chamar has admitted that when he found Pancha running away he raised an alarm that the mad man had killed Fakira. He also stated in cross-examination that the accused had three fits of insanity during the last year and used to talk nonsense at times. Mahakuar was not questioned about his insanity. On the other hand, Raman stated that to, his knowledge the accused was not a lunatic. Another prosecution witness Ghasita also stated that when the accused was arrested he did not say anything and that the witness had previously seen him abusing his own wife. But the witness had seen nothing from which to infer that he was suffering from insanity. Sub-Inspector Diwanchand explained that no one in the village corroborated the statement in the report that the accused was insane, He does not appear to have been questioned as regards the entry in the charge sheet.

9. The occurrence happened on the night preceding 3rd April 1931. The accused was placed under the observation of Major Bose, Officiating Civil Surgeon, from 4th April 1931 till 22nd April 1931. The accused appeared to him to be of weak intellect but otherwise he did not show any signs of insanity while under observation. In his evidence the doctor stated that although Pancha was kept under observation he did not show any sign of insanity though he was of weak intellect. According to the doctor the accused was capable of understanding the nature and consequences of his action.

10. In the committing Magistrate's Court the accused showed no sign which would suggest to the Magistrate that he was insane. His answers to the questions put to him were quite rational. The Sessions Judge has noted that at the trial the accused behaved in a perfectly sane manner and gave reasonable answers to questions that were put to him.

11. The Sessions Judge in coming to the conclusion that his case did not fall under Section 84, I.P.C. has further pointed out that the time selected by the accused for the attack was an opportune one, that the blows were all aimed at the head, indicating deliberation and that the accused ran away from the spot as soon as the alarm was raised. He accordingly held that merely because the motive has not been discovered and the accused was a man of weak intellect or had had fits, the case did not fall under Section 84, I.P.C.

12. The question for consideration is whether the accused can be acquitted on the ground of insanity.

13. At one time there was considerable divergence between medical and legal opinions. According to medical science insanity is another name for mental abnormality due to various causes and existing in various degrees. Even an uncontrollable impulse driving a man to kill or wound comes within its scope. But a man whom the medical science would pronounce as insane does not necessarily take leave of his emotions and feelings. Hope, ambition, revenge etc., may still govern his mind. Fear may exercise its influence over him, and threats may have a deterrent effect. Such persons, though insane, would refrain from committing any acts of violence or mischief if more powerful men are present. In the words of Bramwell, B:

there are mad men who would not have yielded to their insanity, if a policeman had been at their elbow.

14. The legal conception of insanity differs considerably from the medical conception. It is not every form of insanity or madness that is recognized by law as a sufficient excuse, The most elaborate and authoritative exposition of the English Common Law of insanity was embodied in the answers of 15 Judges given in June

1843 to the questions put to them by the Lords in consequence of the popular alarm provoked by the acquittal of Daniel Mc Naughten. The learned Judges unanimously laid down that

to establish a defence on the ground of insanity it must be clearly proved that at the time of committing the act the accused was labouring under such a disease of the mind as not to know the nature and quality of the act he was doing, or if he did know it, that he did not know he was doing what was wrong.

15. Section 84, I.P.C., has borrowed this definition of unsoundness of mind which is recognized by law as a good excuse. In order to be a good defence the burden of proof lies on the defence to show that the accused at the time of committing the offence was

by reason of unsoundness of mind incapable of knowing the nature of the act, or that he was doing what was either wrong or contrary to law.

16. Nothing short of this particular degree of insanity would bring the case within the exception. All other forms of insanity and all other minor aberrations of mind which are recognized by the medical science as amounting to madness are excluded in the eye of the law.

17. No doubt in order to find whether the accused was by reason of unsoundness of mind incapable of knowing the nature of the act or that he was doing what was either wrong or contrary to law, a Court may rely not only on the defence evidence but also on what is elicited from the prosecution witnesses as well as on circumstantial evidence consisting of the previous history of the accused and his subsequent conduct and also of course on the surrounding circumstances including an absence of motive. But the Court before acquitting the accused has to record a categorical finding that he was incapable of knowing the nature of the act the committed or knowing that he was doing what was either wrong or contrary to law.

18. The Indian Criminal law in conformity with the English Common law, places a heavy burden on the defence before the act can be excused. The mere fact that

the accused's mind was partially deranged or that he was subject to some uncontrollable impulse due to insanity would not do. So long as the man was not so insane as to make it impossible for him to know the nature of the act or to realize that his act was wrong or contrary to law, he would be guilty of the offence committed by him.

19. I am afraid the evidence on the record of this case falls very much short of bringing the case of the accused within the exception. The evidence points to the conclusion that the accused was suffering from some form of insanity and very occasionally he had had fits, but the opinion of a Chamar woman aged 70 years or of her nephew would be wholly insufficient to establish that high degree of insanity which alone is recognized by law. The Civil Surgeon who kept him under observation was not satisfied that the accused was insane. Neither the Magistrate nor the Sessions Judge on watching the behaviour of the accused suspected that he was really insane.

20. The prosecution evidence undoubtedly raises; grave suspicions that the accused might have been of unsound mind in the legal sense of the term. But this is not a case where the burden lay on the prosecution and the benefit of such doubt could go to the accused. The onus of proof is on the accused, and mere possibilities cannot be sufficient to discharge that onus. The evidence ought to be sufficient for a categorical finding that at the time when the accused committed the act he was of unsound mind to such an extent that he was incapable of knowing what he was doing at the time or knowing that what he was doing was wrong or contrary to law. The conduct of the accused even at that time suggests that he did not know that he was doing a wrong thing for he ran away from the spot when the alarm was raised.

21. The absence of a strong motive cannot be conclusive. Kaman has referred to the existence of some motive for what it is worth. It must be borne in mind that a trivial motive, which may not be strong enough to impel a normal person to act in a particular way, may be quite sufficient for an abnormal person. We know how village riots and murders are sometimes committed on trivial and incredible grounds. It may be that the accused had been brooding over the suspicions of

burglary against his brother and was harbouring an idea of revenge on account of the quarrel that followed. There was no burden of proof on the prosecution to establish the existence of any motive, and no serious attempt appears to have been made to discover it.

22. I therefore cannot help coming to the conclusion that the case of the accused, as disclosed by the evidence, does not fall under Section 84, I.P.C.

23. But there is no doubt that he is a person of weak intellect subject to fits and is not possessed of a normal mind. It may be that owing to some feeling of revenge he was impelled to some uncontrollable impulse to attack the deceased brutally. I therefore think that in a case of this kind the sentence of death is not appropriate.

24. I would accordingly uphold his conviction under Section 302, I.P.C., but reduce the sentence to one of transportation for life, which is the minimum sentence that can be imposed under this section. The Local Government may consider the advisability of reducing the sentence still further.

Niamatnllah, J.

25. I agree with the order which my learned brother proposes to pass in this case, but would like to make some observations on certain aspects of the case which do not seem to have had as careful an attention from the learned pleader who defended the accused, and on some points, from the Committing Magistrate and the learned Sessions Judge, In a case in which the sanity of the accused is called in question, motive for the crime with, which he is charged assumes unusual importance, because if a serious crime like murder is committed, by a man who had absolutely no rational motive to commit it, the plea of unsoundness of mind can be more easily established than in other cases. According to the first information report made by Kaman, who received an account of the occurrence from Kori Chamarin, an eyewitness:

Pancha who had been under the influence of madness for several days and going about talking nonsense came from the direction of the Chaupal into the courtyard carrying a lathi in his hand and in her presence began belabouring Fakira. who

was assaulted with lathis.

26. The investigating officer noted in the charge sheet submitted by him that 'the accused appears to be like a mad man.' The accused chose a time for the murder when a number of people were awake owing to the eclipse. Raman mentions a number of persons who were awake at the time of the assault. Mt. Kori saw the accused standing in a lane immediately before the assault and questioned him. He gave his name but no reason for standing in the lane at that hour of the night. After the assault the accused was found in his house and Ghasita, chaukidar, arrested him. He made no remark.

27. Attempts seem to have been made to improve the case for the prosecution in the Court of Session. Raman, who made the first information report which conveys an impression that, so far as he knew the reason why the accused committed the murder of Faqira was that he was a lunatic, stated for the first time in the Court of Session that two months before the occurrence there was a burglary in Faqira's house and that Faqira suspected the accused's brother Bala which led to a quarrel. He says he did not mention this in the first information report as he was upset at the time, and that to his knowledge accused was not a lunatic. He attempted to explain away the reference in the first information report to the accused being insane on the allegation that Mt. Kori had told him so. It is difficult to believe that he had learnt it for the first time from Mt. Kori when he went to make the report that the accused behaved like a lunatic on some occasions, and that he so far accepted Mt. Kori's statement on that point that he gave great prominence to it in the first information report. The investigating officer was not put a single question as regards his remark in the charge-sheet, already referred to. The only thing that was elicited in cross-examination is no one in the village corroborated the statement in the report that the accused was insane.' The remark occurring in the charge-sheet appears to be based on the personal observation of the investigating officer. Strictly speaking this is not evidence. It should have been put to the Sub-Inspector, and if he could give particulars of what led him to believe that the accused was a lunatic, they might have been of considerable importance. The members of the family of the accused, particularly his wife, could have given evidence of the state of his mind and of the 'fits' referred to by some of the

prosecution witnesses.

28. I entirely agree with my learned colleague that the burden of establishing facts which would bring the case within the purview of Section 84, I.P.C., lies on the accused. He must establish that by reason of unsoundness of mind he was incapable of knowing the nature of the act or that he was doing what is either wrong or contrary to law. This he can only do by proof of circumstances from which an inference to that effect can be made. Total absence of motive for the crime may go a long way towards establishing the plea. That he had no motive to commit the offence with which he is charged cannot admit of any direct positive evidence. If nothing was known to people in the village or neighbourhood which could have led the accused to commit murder of a particular individual, it will in general be safe to accept the fact that there was no motive on the part of the accused to commit that crime. Unfortunately in the present case questions were not put to prosecution witnesses for the purpose of establishing all absence of motive on the part of the accused. Internal indications are afforded by the first information report that at that time no one could account for the conduct of the accused except by a suggestion of his unsoundness of mind. This was apparently so up to the time the investigating officer submitted the charge-sheet. Raman was not closely questioned on what must have been his view on the point when he made the first information report. The motive which he suggested as an afterthought in the Sessions Court was not only not mentioned in the first report, but was not suggested in his statement before the Committing Magistrate, which should have been put to him and which I have examined but cannot use as evidence at this stage. The movements of the accused and the state of his mind as indicated by his actions immediately before and after the crime, were also material. These have not been sufficiently inquired into. On the record as it stands I agree with my learned brother in the order which he proposes to pass, but note my feeling that the case merited closer examination than it received in the trial Court, and that the result might have been different if all avenues of information had been explored. A man who pleads insanity and as to who, according to the prosecution witnesses, had showed abnormality of mind on previous occasions and the medical evidence tends in the same direction, cannot be expected to look after his defence as an accused in an ordinary case. It is the duty of the Court to

watch his interests with unusual degree of care and circumspection.

29. The appeal is allowed in part, the conviction under Section 302, I.P.C., is upheld, but the sentence is reduced to one of transportation for life. The Local Government may consider the advisability of a reduction in the sentence.

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