

Jhabbu Vs. Emperor

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Court : Allahabad

Decided On : Nov-13-1919

Reported in : AIR1920All209; 54Ind.Cas.483

Judge : Piggott and ;Dalal, JJ.

Appellant : Jhabbu

Respondent : Emperor

Judgement :

1. Jhabbu, blacksmith, has been found guilty under Section 302, Indian Penal Code, of the murder of Musammat Resham, the wife of his own brother Jhamman. In his petition of appeal to this Court, Jhabbu says that he did not kill his brother's wife : that he was not in his proper senses at the time when the woman was killed, or for some time previously, and that he does not know who killed her. In the Sessions Court Jhabbu refused to answer any of the questions put to him by the Sessions Judge. In the Court of the Committing Magistrate he was asked whether he had struck his sister-in-law Musammat Resham with a hammer, causing her such bodily injury as led to her death. To this he replied, 'I do not remember if I did so.' Only one further question was asked of him and in reply to that he said that he did not know why he was being accused of the crime. The case for Jhabbu has been very satisfactorily argued before us by Counsel, and as so laid before us that case involves two distinct points. There is of course the question whether the learned Sessions Judge was or was not right in holding that the accused was not

entitled to an acquittal under the general exception of insanity as defined by Section 84, Indian Penal Code. This question, however, can only arise after the Court is satisfied that the accused was properly and legally tried, in other words, that the procedure laid down in Sections 464 and 465 of the Criminal procedure Code was duly followed by the Committing Magistrate and by the Sessions Judge respectively. The vernacular record shows that, when the case was first brought before the Committing Magistrate, the latter undoubtedly found reason to believe that the man was of unsound mind and consequently incapable of making his defence. He so far complied with the provisions of the law that he caused enquiry to be made into the fact of such unsoundness and caused the accused a person to be examined by an officer who is described as the Civil Assistant Surgeon of Bareilly, So far as the record goes, it is not quite clear whether the officer in question was the proper officer to perform this duty under the provisions of the section in question, but in any case the Committing Magistrate failed to follow up his action by examining the Civil Assistant Surgeon and reducing his examination to writing, as required by law. In saying this we are not overlooking the fact that, when the Civil Assistant Surgeon was examined by the Magistrate on the 7th of August 1919, that is almost a month and a half after the accused Jhabbu had first been brought before the Magistrate, he did depose that during the period between the 4th July and the 22nd July 1919 he had kept Jhabbu under observation and had come to the conclusion that he was sane and could understand what he was doing. This, however, is unsatisfactory for two reasons. In the first place, Section 434 of the Criminal procedure Code clearly contemplates that a Magistrate who has once found reason to doubt the soundness of mind of an accused person brought before him shall examine the medical expert whose opinion has been taken as a preliminary to the holding of the enquiry and not, as was done in this case, at the very close. In fact the Committing Magistrate was bound to enquire, before he began to record evidence in this case, whether the accused Jhabbu was or was not incapacitated by unsoundness of mind from making his defence. He did not record any finding to that effect before entering upon the enquiry, and his subsequent examination of the Civil Assistant Surgeon does not really cover the defect. Moreover, the evidence of the medical expert, as it stands, is directed to the state of the accused's mind between the 4th and the 22nd July 1919; what the

Magistrate had to find was that the accused person before him was capable of making his defence when the enquiry commenced, that is to say, on the 2nd of August. This we might have passed over as an irregularity not material to the case, if we could have felt satisfied that the Sessions Judge himself had fully complied with the provisions of Section 465 of the Criminal procedure Code. So far as the record goes, it would seem that the learned Sessions Judge was satisfied from the Committing Magistrate's record, and perhaps from the appearance of the accused person before him, that there was no reason to doubt Jhabbu's soundness of mind or his capacity of making his defence. In our opinion, however, the record discloses strong reasons for easting doubt on this point. There is evidence on the record that the accused had been in custody at Budaun, not long before the commission of the alleged offence, as a dangerous lunatic. We notice that Counsel who represented the accused at the Sessions trial particularly asked that evidence might be taken as to these proceedings at Budaun and invited the attention of the Court to the fact that the accused seemed to be incapable of making a proper defence, at any rate to this extent that the learned Counsel was unable to obtain any instructions from him. Under these circumstances we are of opinion that the provisions of Section 465, Criminal procedure Code, were obligatory on the Court and that, as a preliminary to the hearing of evidence on the charge, the learned Sessions Judge should first of all have tried the plain issue whether or not the accused person, as he stood before him, was of unsound mind and consequently incapable of making his defense. The proof of the fact of the soundness or unsoundness of mind of the accused is to be deemed part of his trial before the Court, and in the absence of a clear finding on this point, we are of opinion that the entire proceedings in the Sessions Court are vitiated and ought to be set aside. We accordingly set aside the conviction and sentence in this case, but we do not acquit the accused of the offence charged. We order that he be placed on his trial again before the Sessions Court of Bareilly and that the trial do commence with the proceedings required by Section 465, Criminal procedure Code, leading up to a formal finding as to the capacity of the accused for making a defence. If the accused is now found to be capable of making a defence, the trial will proceed, and the onus will be laid on the accused of satisfying the Court that, on the date on which he committed the crime, he was by reason of unsoundness

of mind incapable of knowing the nature of his act, or that he was doing what was either wrong or contrary to law. There has been some argument before us as to the law on this point, We are content to refer to the case of Muhammad Husain v. Emperor 18 Ind. Cas. 641 : 16 O.C. 321 : 14 Cr.L.J. 81 partly because one of us was a party to that decision, and also because it contains a complete discussion, from three different points of view, of the law on the subject of criminal, as distinguished from medical, insanity, and a review of a number of previous authorities. In conclusion we may say that in our opinion it is important, both as bearing on the enquiry under Section 465, Criminal procedure Code, and on the question of the guilt or innocence of the accused, that the evidence of the medical expert who examined Jhabbu at Budaun should, if possible, be brought upon the record. With these directions we return the case to the Court of Session at Bareilly for a new trial as ordered. Pending his re-trial the accused should be detained in custody as an undertrial prisoner.