Musammat Anandi Vs. Emperor

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Court : Allahabad

Decided On : Jan-24-1923

Reported in : AIR1923All327; 71Ind.Cas.689

Judge : Walsh and ;Ryves, JJ.

Appellant : Musammat Anandi

Respondent : Emperor

Judgement :

Ryves, J.

1. Musammat Anandi was convicted by the learned Sessions Judge of Muttra of the murder of a boy Har Charan and sentenced to transportation for life. She has appealed. There is no doubt whatever that the child, Har Charan, was left alone in the house with Musammat Anandi on the morning of the 19th of October 1921 while the other women inmates of the house had gone to the village well. The male members of the family were already out at work in the fields. When the women returned from the well they found the outer door chained from the inside. It was opened by the accused and they noticed blood about and on the cot on which the child had been sleeping when they left the house; they found the dead body of the child with its throat cut. The accused apparently was in the same room. They asked the accused what she had done and she said that she had destroyed Poorna's issue. A report was made and the accused was taken into custody that

same day. It is in evidence that she attempted to run out of the house either with the intention of escaping or of jumping down a well. She was caught, however, and tied up by the Chaukidar. After being taken to the Police Station it appears that she was sent to the jail at Muttra, and we find that on the 14th of November 1921 a letter was sent by the Joint Magistrate to the Civil Surgeon of Muttra asking whether Musammat Anandi was capable of standing her trial. This shows that before that the Police must have had doubts about the matter. On the 6th of December the Civil Surgeon replied that she was unable to plead or stand her trial, and on the 6th of December the District Magistrate ordered her trial to be postponed until she was fit. On the 2nd of February the Civil Surgeon of Muttra reported that she was insane, with the result that she was removed from the Jail at Muttra to the lunatic Asylum at Agra and she remained there until the 23rd of August. Subsequently, it was certified that she had recovered her senses and could stand her trial. The main facts of the case are not disputed and they are all recorded in the judgment of the learned Sessions Judge. The only question is, whether Musammat Anandi who undoubtedly killed the child was guilty of murder or whether she was protected by the provisions of Section 84 of the Indian Penal Code. There is no doubt that the law requires, as laid down in Section 105 of the Indian Evidence Act, that the onus of proving circumstances which give the benefit of the general Exception to an accused person lies on him, and in the absence of evidence the presumption is against the accused. But this does not mean that the accused must lead evidence. If it is apparent from the evidence on the r cord, whether produced by the prosecution or by the defence, that the general Exception would apply, then the presumption is removed and it is open to the Court to consider whether the evidence proves to the satisfaction of the Court that the accused comes within the Exception. Now, here it is established by the evidence of two qualified expert medical witnesses that at any rule from shortly after the 19th of October 1921 until the 23rd of August 1922 the woman was not in her senses. There is evidence that her father and some evidence that her grand-father had been at one time or another insane. There is also evidence that before the murder she occasionally went out of her mind. In other words, it is proved that she was subject to occasional fits of insanity. Now, the Court has to consider whether it is established by the evidence that the murder was committed at a time

when she was in this state or not. The learned Judge comes to the conclusion that she has not proved that she was, and that the onus lay on her to do so. He draws an adverse inference against her from the circumstance that after killing the child she closed the main door of the house, that she then changed the shirt which she had been wearing when she killed the child and washed it in an attempt to remove blood stains and when discovered she attempted to run out of the house in order to throw herself into a well. He says that her washing the shirt and running out of the house to throw herself into a well are evidence of the concealment of her guilt and to escape punishment. We draw quite a different inference from these acts of hers. It was at the most a half-witted attempt at concealment while all the time the body of the child was lying in the room with its throat cut for any one to see who entered. The most important circumstance against the woman appears to be that the Darogha, when he questioned her that day, received what he considered rational answers, and that at that time her relations did not tell him that she had suffered from unsoundness of mind on occasions. It seems to us that from the previous history of the accused before the murder and from her family history followed by the proof that very shortly after the murder and for several months subsequently she was, insane, and from the want of real motive for the murder itself and the woman's conduct immediately after it, there is sufficient evidence in our opinion that the woman was not accountable for her actions when she killed the child. In our opinion, therefore, when she killed the child she was of unsound mind and cannot be convicted of murder. We, therefore, acquit her of the offence of murder, but under Section 471 of the Criminal Procedure Code we declare her to be a criminal lunatic within the meaning of Act IV of 1912 and direct her to be kept in safe custody in the jail at Muttra, or it the Superintendent of such jail thinks better, in the Lunatic Asylum at Agra until the Local Government makes further orders in the case.

Walsh, J.

2. In consequence of what has fallen from the Assistant-Government Advocate, namely, that this person is said now to be sane, it is necessary to remove any misconception which may be created by that observation. It is the duty of the Appellate Court when the Trial Court fails into an error in the performance of its

duty, to decide whether or not at the time the act was committed, the accused was capable of understanding the nature of her act. We are satisfied that she was not. We have, therefore, an absolute duty imposed upon us to make an order in accordance with the statutory provisions of the law. We have no alternative and we are not concerned with the consequence. We are dealing with an alleged murder committed thirteen or fourteen months ago. If the result of proper treatment, first, in jail and, second, in a lunatic Asylum provided with expert assistance and intended; for the purpose of applying remedies to demented persons, is that the person becomes comparatively well again that is not a matter which concerns jus. The future orders for the disposition of this person rest, not with us, but with the authorities who have charge of persons who are mentallp unfit. I would just add that although it would be wrong to say that the Judge has not taken sufficient care, because he has indeed written a very long and apparently careful judgment, he has unfortunately utterly failed to get to close quarters with the essential and fundamental facts of the case. It is idle to talk about a person attempting to conceal a crime by changing a shirt, when all the evidence of the crime including her proximity to the corpse, were evident for all the world to see. There was no attempt at concealment, and changing a shirt seems to me merely the feeble attempt of a half-witted person to do that which a deliberate criminal might do as part of a real effort at concealment. Further, I would observe that Judges should be a little more careful on questions of scientific evidence and be guided by the opinion of trained experts. The result of the first Civil Surgeon's observation was brought about by a special request made to him by the Magisterial authorities to keep an observation upon this person, and two experienced Civil Surgeons, trained from their youth to observe and form opinions upon matters upon which the learned Judge has probably no adequate training or information of his own, expressed a very strong opinion that this person was mentally unfit for some thing like nine or ten months. How, under these circumstances, a learned Judge could persuade himself that the medical evidence did not help the defence, I am at a loss to understand. I agree with the order proposed.