Shanti Devi Vs. the State

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Court : Delhi

Decided On : Mar-28-1967

Reported in : AIR1968Delhi177; 1968CriLJ1156

Judge : I.D. Dua and; M.M. Ismail, JJ.

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

Appeal No. : Criminal Appeal No. 43-D of 1966, from order of Addl. S.J., Delhi, dated 25-1-1966

Appellant : Shanti Devi

Respondent : The State

Advocate for Def. : Bishamber Dayal, Standing Counsel

Advocate for Pet/Ap. : Bawa Gurcharan Singh, Adv

Judgement :

(1) On 29-4-1965, at about 1-30 p.m., when Sri Ram Parkash (P. W. 1) along with his friend Sri kanhaiya Lal (P. W. 3) were passing though the lane on the backside of house NO. 489 /6, situate in prem Gali, heard the shrieks of a child form inside the house. They peeped though the window of that house which abutted the lane and which was open and they saw that the appellant shanti devi was holding a razor in her right hand and cutting the neck of a child (her own child), aged about

one year and that the child was crying and blood was oozing out of his neck. Btoh of them hurriedly entered the house through its main gate on the toher side of the wall, while raising an alarm with a view to save the child's life. Meanwhile, Shiv Shankar (P.W. 4), a boy residing in the neighborhood, also came to the spto. Seeing all the three people, Smt. Shanti Devi, the appellant herein, left the child, sat down on a cto and threw the razor under the cto. Leaving Shri Kanhaiya Lal (P.W.) and Shri Shiv Shankar (P.W) at the spto, Shri Ram Parkash went to Gandhinagar Police Station of North Delhi District and gave a report of the occurrence. On this, the police came to the spto, took up the investigation and prosecuted the appellant for an offence punishable under Section 302 of the Indian Penal Code, for murdering the child.

The learned Magistrate in whose court the challan was submitted found a prima facie case against the appellant and committed her for trial by the Court of Sessions under S. 302 of the Indian Penal Code. The learned Additional Sessions Judge, Delhi, by his judgment dated 25-1-1966, found her guilty of her child's murder and sentenced her to rigorous imprisonment for life. As the learned Additional Sessions Judge posed before himself, there were two questions for decision in the case before him: one was as to whether Mst. Shanti Devi, the appellant herein, killed the child with a razor as alleged by the prosecution and the second a question was as to whether she was insane, nto capable of understanding the consequences of her acts, at that time. On the first question, on the evidence available, he came to the conclusion that Smt.Shanti Devi, the appellant herein, killed the child with a razor. On the second question he came to the conclusion that the evidence before him did nto establish the plea of insanity set up by the appellant herein. It is on the basis of this conclusion of his, he convicted the appellant and sentenced her as mentioned above. Hence this appeal by Smt. Shanti Devi.

(2) The only point that was argued before us was that the appellant herein was insane at the time when she killed her child so as to be entitled to the benefit of section 84 of the Indian Penal Code and the learned counsel for the appellant contended that the evidence placed before the learned Additional Sessions judge clearly established that the appellant herein, by reason of unsoundness of mind,

was incapable of knowing nature of the Act, which she committed, when she killed her own child . After carefully when she considering the evidence available in the case and the surrounding circumstances, we have come to the Conclusion that the appellant herein is entitled to the benefit of Section 84 of the Indian Penal Code. We shall refer to the evidence available in this case and also the reason why the learned Additional Sessions Judge did nto consider the evidence sufficient to establish the plea of insanity put forward by the appellant herein.

As stated already. P.W. 1, P.W. 3 and P.W. 4 were eye-witnesses to the occurrence. P.W. 6, Smt Sumitra Devi, was a lady constable who joined the investigation of this case and at the place of occurrence, she removed a dhtoi from the person of the appellant, having some blood-stains. P.W. 1, P.W.3 and P.W. 4 stated that when they reached the room, the appellant was sitting on a cto and the child was lying in the room at a distance of about one foto only from her and that she was sitting there quietly, without weeping or laughing and without making any effort to conceal the child or to run away and she did nto say anything to any of those persons. P.W. 4, who was living in antoher portion in the same premises, further stated that he had heard that she had earlier in the year gone to Jaipur for treatment and about one month before the occurrence, the appellant would sometimes laugh without reason and sometimes weep without reason and she was nto insane, but she was suffering from some mental trouble.

P.W. 6 also stated that when she removed the dhtoi from the person of the appellant. She remained 'gums' and she was neither laughing nor weeping. P.W. 9 was the person who was sent to take the phtoographs on the spto and he took the phtoographs at 5 p.m., on the same day. He deposed that when he went to take phtoographs, the appellant was present and she was sitting quiet, silent and she was neither excited nto in tears nor was she crying or sobbing. P.W. 10 was the Sub-Inspector of Police of Gandhinagar Police Station, who was entrusted with the investigation of the case. According to him, the appellant was present on the spto, sitting on a cto and she was replying to questions put to her, but toherwise she was quiet. Even he admitted that, excepting the name of the deceased, he did nto ask any toher thing from the appellant and during the two hours he was there, the appellant continued sitting there and she did ntohing by way of concealing

anything and she just sat quietly.

P.W. 11 of the C.I.D special staff and S.H.O., police station, Gandhinagar, who went that when he reached the spto, the appellant was sitting in her room and she was all right at that time and was replying to his questions. Even though he said that the appellant was perfectly in a sane condition when he interrogated her at the spto and there was ntohing she was talking to him as if ntohing had happened and she did nto make any effort to conceal and to run. This was all the evidence available with respect to the condition and reaction of the appellant at the time of the occurrence.

(3) There was evidence that prior to the occurrence, the appellant was admitted into the Mental Hospital, Jaipur, and was under treatment. Shri S. K. Pandey, Civil Assistant Surgeon, Mental Hospital, Jaipur, was examined as D. W. 3 and he stated that the appellant was admitted into the hospital on 17-1-1965 and remained in the hospital up to 5-3-19665, on which date she was discharged and that she was asked to come after a month for check-up. According to him, the record showed that she was suffering from Maniac Depressive Psychosis, a type of insanity. Dr. V. K. Vyas, Superintendent of that hospital was examined as D. W. 10. He had deposed that the appellant was suffering from Schizophernic Psychosis, a type of insanity; it was an acute illness; she was talking incoherently; she had auditory and visual hallucinations; she was abusive; she was assaultive, throwing stones and trying to run away; in that state, she was nto able to understand what she was doing and the consequences of her actions; she was suffering from insanity.

He also stated that she was discharged on 5-3-1965 when she had recovered from her illness and at the time, she was quite all right and she was nto abusive, nor violent and in cases of this type, he used to ask the patient to come up again since sometimes relapse takes place. There was the evidence of Dr. Ambresjh Gupta, who was examined as D. W. 8, that even earlier in November 1964, she was under his treatment and she was too much talkative, talking all irrelevant matters and her general condition showed that she was insane and everything which she was doing was without reason and he judged that it was a case of

insanity. Dr. R. M. Sehgal, who was examined as D. W. 2, stated that in April, 1965, the appellant was under his treatment and he had diagnosed her as a mental case and asked her husband to have a specialised treatment.

According to him, at the time when he was consulted, she was nto in a position to understand things as a normal man is expected to do and she did nto know what she was talking about and she was answering his questions irrelevantly and it was an acute case when she came to him. This was all the evidence, in the form of medical evidence, about the mental condition of the appellant before the occurrence. Subsequent to the occurrence, she was examined and treated by Dr. S. B. Mathur, Psychiatrist, Mental Hospital, Central Jail, Tihar, New Delhi. He was examined as D. W. 1. He deposed that the appellant came to the Central Jail on 30-4-1965, was referred to the Mental Hospital on 25-5-1965, under the orders of the Magistrate and she was sent for observations of her mental state; he submitted a report on 28-5-1965, wherein he had stated that the she needed further observations and she was unfit for attending the Court. In his final report dated 10-6-1965, he stated that she was suffering from severe mental Schizophrenia and needed hospitalisation and treatment.

According to him, it was difficult to say how long she had been suffering from this illness and the illness could arise all of a sudden and also gradually and he could nto give an answer to the question that how long gradually it would take to reach the stage at which he examined her. To a specific question put to him, as to whether he could exclude the possibility of such a mental illness and incapacity to understand being the culmination of the deterioration for a month or so, he gave a negative answer; obviously, this period was with reference to 10-6-1965 on which date he sent his final report about the mental condition of the appellant. This was the only evidence available with reference to the mental condition of the appellant, after the occurrence.

(4) Thus, we have the medical evidence as to the insanity of the appellant before the occurrence and after the occurrence. We also have the evidence of the prosecution witnesses themselves as to the condition and the reaction of the appellant at the time of the occurrence itself. The only question is whether all

these materials taken together can be said to substantiate the plea of the appellant, based upon Section 84 of the Indian Penal Code. As pointed out already, the learned Additional Sessions Judge negatived this plea. Though he stated that the evidence of D. W. 2 Dr. R. M. Sehgal did nto inspire confidence and it appeared to him that he had come forward to help the appellant, he did nto reject the evidence as to the appellant having been treated in the Mental Hospital, Jaipur, during the months of January to March 1965 and the evidence as to her subsequent mental condition as deposed by D. W. 1 Dr. Mathur.

But he concentrated solely on the fact that there was no evidence to show that on the date of the occurrence, the appellant was insane. In this context, the learned Additional Sessions Judge failed to properly consider and appreciate the evidence of the prosecution witnesses themselves as to the condition and the reaction of the appellant at the time of the occurrence. He proceeded as if that the prosecution witnesses had stated that the appellant was all right on the date of the occurrence and she was sane at the time of the occurrence and was nto incapable of understanding the consequences of her acts. Even with regard to the specific question mentioned above put to Dr. S. B. Mathur and the answer given by him, the learned Additional Sessions Judge proceeded to apply a strange test of strict mathematical accuracy and deduced that even if a margin of one month is given, then also she could nto be in proper health on 10-5-1965 and nto on 29-4-1965 with which date .alone we are concerned in this case.

The learned Additional Sessions Judge failed to ntoe that such a mathematical accuracy cannto be safely resorted to in such matters and even here, he failed to ntoe that the question put to Dr. Mathur did nto specifically refer to one month, but mentioned a month or so' and the interval between 29-4-1965 to 10-5-1965 altogether from the scope of the expression ' a month or so' and from the negative answer given by Dr. Mathur. Apart from this, there are several aspects which the learned Addl. Sessions Judge failed to take ntoe of. The most important thing is the question of mtoive. It was a case of antoher killing her own child, and that too, a child about a year old. If a mtoher were to kill her own child in a normal state of mind, there must be very strong mtoives for doing so. Taking the normal human nature into account, no mtoher will kill her own child, in a normal state of mind,

strong social stigma or condemnation concerning her chastity or moral conduct.

Strangely enough, in this particular case, there has been no whisper about any mtoive for the appellant murdering her own child. Curiously, the learned Additional Sessions Judge completely lost sight of this aspect when dealing with the case of the plea of the appellant based on Section 84 of the Indian panel Code, though when imposing the punishment, he took ntoe of this lack of mtoive. Though lack of mtoive itself may nto be aground for sustaining the plea of insanity under Sec.84 of the Indian Penal Code, we are of the view that the various circumstances disclosed by the evidence taken along with the absence of any mtoive whatever, establish the plea of insanity put forward by the appellant.

(5) We would like to point out that in this case, the evidence as to the insanity of the appellant before the occurrence, , the evidence about her condition and reaction on the date of the occurrence, and the evidence about her insanity subsequent to the occurrence, all substantiate the defense of the appellant under Section 84, Indian Penal Code. As has been repeatedly pointed out in decided cases, it is difficult to prove the precise state of the offender's mind at the time of the commission of the offence but some indication thereof is often furnished by the conduct of the offender while committing it, or immediately after the commission of the offence. Though, for the purpose of Section 84, it is the state of mind of the offender at the time of committing the offence which is relevant, antecedent and subsequent state of mind and conduct of the offender become relevant only for the purpose of showing what the state of his mind was at the time when the act was committed.

Again, in order to find whether the accaused was by reason of unsoundness of mind incapable of knowing the nature of the act, a Court, may rely nto only on the defense 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 in the surrounding circumstances, including absence of mtoive. Generally, a case in which the sanity of the accused is called in question, mtoivation for the crime with which he is charged assumes unusal importance because if a serious crime like murder is committed by a man, who

had absolutely no rational mtoive to commit it, the plea of unsoundness of mind can be more easily established than in toher cases. We are of the view that the absence of mtoive assumes nto only unusal importance, but also almost conclusive and Crucial importance in a case where a mtoher has murdered her child, and that too, a child of such a tender age as here. As a matter of fact, in such cases, the act speaks for itself as the act of a mad woman; the act itself is intrinsically the chief evidence of insanity.

(6) As pointed out already, the prosecution witnesses themselves stated that after having killed her own child, the appellant remained completely unmindful of what happened, she did nto weep nor did she laugh, nor did she make any attempt to run or to conceal anything. In short, she did nto exhibit any feeling or reaction whatever. It is impossible to believe that, if a mtoher had killed her own child, knowing what she was doing, she will be in a such a state, without exhibiting any feeling whatever, after having done the act and when the child which she has killed, the helpless and innocent victim of the horrible and heinous crime, is lying at her feet, just one foto away from her. This circumstance also, to our mind, is indicative of the fact that the time when the appellant murdered her child, she was mentally incapable of knowing what she was doing.

Where a plea of legal insanity is set up, it is most material to consider the circumstances which have preceded, attended and followed the crime; whether there was deliberation and preparation for the act; whether it was done in a manner which showed desire to conceal; whether after the crime, the offender showed consciousness of guilt and made efforts to avoid detection. As we pointed out already, when the police and toher people came to the spto, the appellant never made any attempt to run away. There is absolutely no evidence as to any preparation or premeditation, in connection with the commission of the offence. On the toher hand, we have gto the evidence of the prosecution witnesses themselves that the window was open, the door of the room was open and the main gate of the house was open ad the offence itself was committed in board daylight at 1-30 p.m., there being no attempt whatever to commit the same in secrecy. Taking all these aspects into consideration, we are of the view that the appellant is entitled to the benefit of Section 84 of the Indian Penal Code, on the ground that at the time

when the appellant murdered her child, she was incapable of knowing the nature of the act, by reason of unsoundness of mind.

(7) Before us, the decision of the Supreme Court, in Dahyabhai Chhagan Bhai v. State of Gujrat, : 1964 CriLJ472 , was cited and relied upon on behalf of the appellant. In that case, the Supreme Court had occasion to consider the burden of proof generally resting on the prosecution to prove the offence and the burden of proof resting on the accused when he seeks to have the benefit of Section 84 of the Indian Penal Code, in view of Section 105 of the Indian Evidence Act. The Supreme Court pointed out that the burden that lies on the prosecution to prove the guilt of the accused beyond reasonable doubt always rests on the prosecution and this burden never shifts. On the toher hand, for the purpose of obtaining the benefit of Section 84, the accused will have to establish the circumstances which alone will enable him to claim the said benefit. The Court further observed:

'When a plea of legal insanity is set up, the Court has to consider whether at the time of the commission of an offence, the accused, by reason of unsoundness of mind, was incapable of knowing the nature of the act or that he was doing what was either wrong or contrary to the law. The crucial point of time for ascertaining the state of mind of the accused is the time when the offence was committed. Whether the accused was in such a state of mind as to be entitled to the benefit of Section 84 of the Indian Penal Code can only be established from the circumstances which preceded, attended and followed the crime.'

'2(1) What is the mtoive for the appellant to kill his wife, in the ghastly manner he did, by inflicting 44 knife injuries on her body?

(2) What was the previous history of the mental condition of the accused?

The toher decision cited before us is a decision of the kerala High Court in Unniri Kannan v. State, : AIR1960 Ker24 . It was a case where a son, for no obvious reason, murdered his mtoher and the defense was that he was suffering from Epyleptic Fits and he did nto remember anything that had happened. The Court, while accepting the plea of the accused that he was entitled to the benefit of Section 84 of the Indian Penal Code, observed:

'The accused made no attempt whatsoever either to conceal his crime or to escape from the scene. When the police arrived, they found him sitting quietly by the side of the house, his dress and hands smeared with blood. The complete absence of mtoive or provocation, the nature and multiplicity of the weapons used, the duration of the attack, the maniacal fury with which the attack was delivered and his subsequent conduct are all indications that the accused was acting under some insane impulse.'

(8) Under these circumstances, we are of the view that the appellant herein is entitled to the benefit of Section 84, Indian Penal Code, and we allow the appeal, set aside the conviction of and sentence on, the accused, under Section 302 of the Indian Penal Code, and acquit her.

(9) Appeal allowed.