

**Gujraj Vs. State**

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**Court :** Delhi

**Decided On :** May-20-1983

**Reported in :** 1983(2)Crimes746; 1983(5)DRJ266

**Judge :** R.N. Aggarwal and; G.R. Luthra, JJ.

**Acts :** Indian Penal Code (IPC) - Sections 84 and 302

**Appeal No. :** Criminal Appeal No. 190 of 1980

**Appellant :** Gujraj

**Respondent :** State

**Advocate for Def. :** Bharati Anand, Adv.

**Advocate for Pet/Ap. :** Usha Kumar, Adv

**Disposition :** Appeal dismissed

**Judgement :**

**G.R. Luthra, J.**

1. On May 28, 1980, an Additional Sessions Judge, Delhi (Shri P.K Jain), convicted the appellant in respect of commission of an offence of murder of Nathan Singh punishable under Section 302 IPC and sentenced him to undergo imprisonment for life. Nathan Singh deceased had 5 sons, one of whom is Bhim

Singh (PW1). The deceased and his 5 sons were living together in house No. D-583, Jor Bagh, Tri Nagar, Delhi. Appellant was residing in a house No. 1849, Jor Bagh, Tri Nagar, Delhi, which was just opposite with one street intervening to the house of Nathan Singh, deceased.

2. The case of the prosecution is briefly as follows. The appellant was addicted to charas and drinking liquor. Nathan Singh deceased used to admonish the appellant and would ask the latter to desist from his bad habit of drinking etc. The appellant started bearing grudge against Nathan Singh.

3. On December 8, 1978 at about 9 p.m. Nathan Singh was sleeping on a cot in his room. The light of the room was on. The appellant brought a phawra and gave blows on the forehead of Nathan Singh on account of which there was shrieking. Bhim Singh one of the sons and Subhash, grandson of Nathan Singh were sitting in an adjoining room. On hearing the shrieks of Nathan Singh, they immediately rushed to the room where the deceased was sleeping. They found that the appellant was giving successive blows on the head of Nathan Singh with phawra. Both Bhim Singh and Subhash (PW 6) became terrified on noticing the aforesaid occurrence. They slightly retreated. In the meanwhile the appellant rushed outside the gate along with phawra. Then Bhim Singh and Subhash chased the appellant and also raised the alarm, 'Pakro, Pakro'. Meanwhile Bhule Ram (PW 8) and Rajinder Singh (PW 7) reached over there. The appellant, however, had entered into his house and bolted the door from inside. Bhim Singh and Subhash etc. knocked at the door but there was no response. The Subhash and Bhim Singh jumped into the house of the appellant after scaling the low wall adjoining the door and apprehended the appellant who was present near the outer door. Bhule Ram and Rajinder Singh who were standing outside also entered the house because Bhim Singh had opened the door. Appellant was entrusted to the custody of Bhule Ram and Rajinder Singh. Bhim Singh went to the room in which his father was and he found that his father was dead.

4. Bhim Singh immediately went to the police station and lodged the report. His report was recorded at 9.50 p.m. SI Dharam Pal (PW 16) of Police Station Lawrence Road, New Delhi was entrusted with the investigation of the case. Bhim

Singh, Subhash, Rajinder Singh and Bhule Ram produced the appellant before SI Dharam Pal. He made a preliminary examination of the spot. Crime team along with photographer reached the spot. Photographs were taken. The dead body of Nathan Singh was not touched or removed from its original position till the spot was photographed by the photographer of the crime team. Some of the cement mortar which was sticking to the phawrafell on the neck of the deceased. The same was lifted and put into a parcel and sealed. The sample blood was lifted and sealed.

5. SI Dharam Pal (PW 16) interrogated the appellant who made disclosure statement Ex. PW 1/B. Thereafter the appellant led the police party to the roof of his residential house and pointed out towards the phawra lying in the cement mortar. Photograph of the said weapon of offence was taken and therefore the same was taken into possession.

6. On December 9, 1978 at 10.30 p.m. Dr. Bharat Singh (PW 2), Police Surgeon, Police Hospital, Delhi conducted the post mortem examination on the dead body of Nathan Singh. Following injuries were found on the said dead body :

1. One incised looking wound over the left side of skull involving frontal and part of the left parietal area. Size of the wound was 4' x 3/4' x cranial cavity deep. Scalp, tissues and skull were cut in one line.

2. One incised looking wound over the left side of frontal area of skull placed anterior posteriorly and almost parallel to injury No. 1, 1' to its left. Size of the wound was 3' x 1/2' x cranial cavity deep. Margins were more or less regular and all the scalp tissues and skull bones underneath were cut in one line. Wound was covered with dried blood.

3. One incised looking wound over the forehead running obliquely horizontal. Size 4'x3/4' x cranial cavity deep extending from the middle of the left eye brow to the right frontal eminence. Wound was covered by dried blood. All the structures were cut in one line.

4. One incised looking wound over the face placed horizontally at the level of the bridge of nose from one cheek to other. Size of the wound was 6' x 3/4' x cranial cavity deep, All the structures were cut in one line. Direction of the wound was downwards.
5. One superficial incised looking wound over the left side of nose placed vertically. Size 1/2' x 1/10' x skin deep.
6. One superficial incised looking wound over the left cheek. Size 2 1/2' x 1/10' x skin deep.
7. Abrasion on the left side of skull in temporal area. Size 2' x 3/10', red in colour.
8. Bluish ecchymosis around both eyes.
9. One incised looking wound over the right side of occipital area. Size 1 1/2' x 3/10' x bone deep.
10. One incised looking wound over the right side of skull 1' above the right ear. Size of the wound was 1/2' x 2/10' bone deep.

Internal examination :

'There was collection of clotted blood in the scalp in the region of frontal left partial and occipital area, which was dark red in colour. Injury No. 1 had cut the frontal bone on its left side and part of the left parietal bone size of the cut on the bone was 4'. Both tames were completely cut. From the posterior end of the cut on the bone, a fissured fracture was running posteriorly up to 2" on the left parietal bone. Meninges were cut underneath the cut on the bone. Brain was also cut 1/2' deep in the same line. Injury No. 2 had cut the frontal bone on the left side 2' long which was also connected with a fissured fracture on both the sides. Meninges and brain substance was also cut up to 1' depth. Injury No. 3 had cut the frontal bone near the left orbital margin and on the right side 4' long makings and brain substance were also cut in one line up to 1 1/4' depth. There was a fissured fracture connected with the cut on the bone at the right end. Injury No. 4 had cut the bone of the nose completely and also both upper jaws along with soft tissues. This

wound was further continuous in the cranial fossa and finally had cut the brain tissues 1/4' deep, Total depth of this injury was 2 1/4'. Injury Nos. 9 and 10 were bone deep with a cut only on the superficial table on the right side of occipital and temporal bone. Cranial cavity contained the clotted blood, mixed with the brain tissues.'

The doctor opined that injuries No. 1, 2, 3 and 4 were sufficient to cause death individually in the ordinary course of nature and that the death was due to comma resulting from head injuries.

7. In his statement recorded under Section 313 Cr. P.C. the appellant denied the entire version of the prosecution. He stated that he had been falsely implicated on account of enmity, that actually he was sleeping inside his house, that he was made by the police to get up at 2 a.m., that the phawra was planted on him and that he was arrested. He also stated that he had been suffering from mental disorder on the day of and earlier to the alleged occurrence, that he remained admitted in the hospital for mental diseases, Shahdara, that on the day when his statement was being recorded, he was suffering from mental illness and that he was never reprimanded or rebuked by the deceased.

8. There is very cogent evidence to establish the guilt of the appellant beyond all reasonable doubt. Bhim Singh (PW 1) and Subhash (PW 6) are the eye witnesses of the occurrence. They supported the entire prosecution story. They also stated that blood stained bushirt and pant of the appellant were taken into possession by the police vide memo Ex. PW 1/E and that various other blood stained articles (for instance stick, shoes, cot, clothes etc. of the deceased) were taken into possession by the police. Rajinder Singh (PW 7) and Bhule Ram (PW 8) did not see giving of blows by the appellant to the deceased. They stated that on December 8, 1978 they heard the noise of 'Pakro, Pakro' coming from Bhim Singh and Subhash, that they saw the appellant entering his house with a phawra in his hand, that Bhim Singh narrated the incident, that door of the appellant was knocked but the appellant did not open, that Bhim Singh and Subhash jumped over the wall into the house of the appellant, unbolted the door from inside and they also entered the house of the appellant and the appellant was apprehended by them as well as by

Bhim Singh and Subhash. They added that Bhim Singh on finding that Nathan Singh had died, went to the police station, lodged a report and then came back, that the police also came to whom the appellant was handed over. They also testified as to the taking into possession of various articles by the police.

9. There is no reason to disbelieve the aforesaid witnesses. Their statements are corroborated by prompt recording of the first information report at the instance of Bhim Singh. Head Constable Fateh Singh (PW 13) stated that on December 8, 1978 from 8 p.m. to 8 a.m. he was posted as duty officer at Police Station. Lawrence Road, and that Bhim Singh lodged the first information report at 9.50 p.m. therefore, the first information report was lodged within 50 minutes of the occurrence.

10. Sample blood collected from the spot, blood stained phawra, shirt, banian, dhoti, jacket, cloth piece and shoes of the deceased which were having blood stains on them, mattress and quilt which were being used by the deceased at the time of the occurrence and which had blood stains were sent to the Central Forensic Science Laboratory of C.B I. Shri P.K. Biswas, (PW 3), Senior Research Officer, Planning Commission, New Delhi stated that on December 15, 1978 he was posted as Junior Scientific Officer, C.F.S.L.-cum-Asstt. Chemical Examiner to the Government of India, New Delhi, that 11 parcels from Police Station Lawrence Road were received and that after examining the contents of the said parcels, he gave his report Ex. PW 3/A. Those 11 parcels contained the aforesaid blood stained articles and the sample blood. The report Ex. PW 3/A was to the effect that the aforesaid articles were stained with blood.

11. Shri R.K. Bhatnagar (PW 4), Assistant Director, Serilogist-cum-Asstt. Chemical Examiner, Government of India, C.F.S.L., New Delhi stated that he examined the portions of the exhibits mentioned in the report Ex. PW 3/A and prepared the result of serological analysis Ex. PW 4/A. The aforesaid report Ex. PW 4/A shows that the sample blood was of human being and of group 'A' and that on all the articles mentioned above, there was human blood of the same group 'A'. therefore, it is clear from this report that there was human blood of group 'A' on the bushirt and pant of the appellant and that the deceased had blood

of the same group. thereforee there was blood of the deceased on the clothes of the appellant which clearly connects the appellant with the crime. It is, thereforee, proved beyond all doubt that the appellant had committed the murder of Nathan Singh.

12. At the time of arguments much emphasis was laid by Mrs. Usha Kumar, counsel for the appellant, on the plea that the appellant was of unsound mind at the time of the alleged murder and that, thereforee, he could not be convicted of the said offence. The law in this respect is contained in Section 84 1PC, which reads as under :

'84. Nothing is an offence which is done by a person who, at the 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 contrary to law.'

It is clear from the language of section that by itself unsoundness of mind is no defense unless, on account of unsoundness of mind accused is :

(a) either incapable of knowing the nature of the act, or

(b) incapable of knowing that he is doing an act which is either wrong or contrary to law.

It was held in Ratan Lal v. The State of Madhya Pradesh, : 1971 CriLJ654 , that the crucial point of time at which the unsoundness of mind has to be proved is the time when the crime is actually committed and that the burden of proving this can be discharged by the accused from the circumstances which preceded, attended and followed the crime. Same View was expressed by the Supreme Court in State of Madhya Pradesh v. Ahmadalla, : [1961]3SCR583 and Dahyabhai Chhaganbhai Thakkar v. State of Gujarat, : 1964 CriLJ472 .

13. So, it is to be seen if in the present case it stands proved that at the time of the occurrence, the appellant was of unsound mind and also either incapable of knowing the nature of the act or incapable of knowing that the act which he was doing was contrary to law or was wrong. In view of aforementioned Supreme Court authorities aforesaid facts could be proved from circumstances which preceded,

attended and followed the crime. The learned counsel for the appellant (Mrs. Usha Kumar) could not point out any circumstances showing unsoundness of mind or incapability of accused to know the nature of his act at the time of the commission of the crime. She relied upon result of medical examination of accused before and after the occurrence. Her reliance first of all was on the statement of Dr. S.N. Dev (DW 1), Psychiatrist in Hospital for Mental Diseases, Shahdara, Delhi. He brought a case history Ex. DW 1/A consisting of 8 pages and bearing his endorsements Ex. DW 1/B and Ex. DW 1/C, dated 26th and 30th May, 1978 respectively. He stated that he examined the patient mentioned in the said document twice on May 26 and 30, 1978. He expressed his inability to say if the patient was the appellant then present in the trial court. He opined that there was no evidence of gross mental disorder on the two occasions on which he examined the patient. On cross-examination he added that the patient was brought to the hospital on 26th May, 1978. On re-examination he expressed an opinion that there could be malfunctioning of the mind of the patient, whom he examined, due to acute drunkenness. He also stated that temporarily a person could become insane for a day or two or even for more period depending upon the quality of charas taken. He expressed ignorance about the quantity of charas which was being taken by the patient.

14. The case history Ex. DW 1/A relates to one Gajraj Singh son of Sahi Ram, resident of 1849, Jor Bagh, Tri Nagar, Delhi. The same are the name, father's name and address of the appellant and most probably the case history relates to him. But the case history does not, in any way, lead to any definite conclusion that the appellant was of unsound mind in May 1978 i.e., a few months before the occurrence. In any case there is nothing to indicate that the appellant then was incapable of knowing the nature of the acts he was doing or that his acts were contrary to law or wrong.

15. Before starting the trial, the learned Addl. Sessions Judge got the appellant medically examined. That examination was conducted by Dr. B.K. Jha (CW 1), Medical Superintendent, Hospital for Mental Diseases, Shahdara, Delhi on May 23, and June 26, 1979. He gave his reports Ex. CW 1/A and Ex. CW 1/B and also testified to the effect that the patient appeared to be of unsound mind but he could

understand the nature of questions but to him and could give rational answers and that he would be able to follow the proceedings of the case. His statement also does not, in any way, help the appellant.

16. therefore, the evidence on record does not, in any way, indicate if before (at the time of examination by Dr. S.N. Dev, DW 1) and after (examination by Dr. B.K. Jha, CW 1) the appellant, on account of unsound-ness of mind, was incapable of knowing the nature of the act or that he was doing an act which was contrary to law or was wrong.

17. On the other hand, there are positive indications that the appellant, at the time of commission of murder of Nathan Singh, was fully capable of understanding and was conscious that the act, which he was doing, was wrong and contrary to law. He seized the first opportunity to run away after giving phawra blows to Nathan Singh. Then he bolted the door of his house from inside and did not open the same inspire of knocking Obviously, it was guilty mind and full knowledge of the fact that the act which he had done was wrong and contrary to law which was prompting him to conceal himself in his house. He had to be forcibly brought out. Had he not been knowing the nature of the act or that the same was wrong and contrary to law, he would have normally kept on standing near the dead body itself. Had he not been Realizing that he had done something wrong or contrary to law, there would have been hardly any urge on his part to escape apprehension by running away.

18. The replies which he gave in examination under Section 313 Cr. P.C. and especially taking of the plea of insanity clearly indicate that the appellant fully understood the implications and nature of his acts. A person of unsound mind will never say that he is insane and rather it is well known that a person of unsound mind who does not understand the implication of his acts thinks that he is the wisest man on earth while all others are either idiots or at least fools and he will be incapable of taking a plea that he was insane when the occurrence took place.

19. It is clear from the above that with the intention of causing death, the appellant gave Phawra blows on the head, which is a vital part of the body, and as Nathan Singh died, he committed murder. It is thus clear that the appellant is not entitled

to any benefit of Section 84 IPC.

20. Under the above circumstances we uphold the conviction and sentence of the appellant and dismiss the appeal.

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