

Rajan Vs. State of Kerala

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Court : Kerala

Decided On : Feb-22-1984

Reported in : 1984CriLJ874

Judge : K.K. Narendran and; M. Fathima Beevi, JJ.

Appellant : Rajan

Respondent : State of Kerala

Judgement :

M. Fathima Beevi, J.

1. The appellant the accused in S. C. No. 16/1978 of the Sessions Court, Kottayam was convicted under Section 302 I.P.C. and sentenced to undergo imprisonment for life. The conviction and sentence are under challenge in this appeal.

2. The charge against the appellant Rajan (30) an agricultural labourer was that he committed murder by causing the death of Biju the three year old son of his elder brother Chellappan (P. W. 5) by cutting the child with a sickle and severing the head, at about 4.30 P.M. on 6-1-1978 at the courtyard of the house of P. W. 5 in the presence of P. W. 1 Narayani the maternal grandmother of the child, while P. W. 5 and his wife were away in the farm. According to the prosecution the aroused who had some grudge against P. W. 5 has wreaked his revenge in thus causing

the death of the child.

3. The prosecution case briefly stated is this: The appellant was staying with his brother P. W. 5 until three months prior to the incident. He then moved to the house of another brother on account of some ill-feeling. On the date of the occurrence P. W. 5 and his wife had gone to the paddy field leaving P. W. 1 in the house to look after the child. The deceased child was playing along with his cousin Pennayi in the southern courtyard and P. W. 1 was standing close by attending to some domestic work. The appellant then arrived there with a sickle in his hand. He separated the other child 'Pennayi', held Biju and cut him with the sickle twice on the neck, severed the head, and when P. W. 1 made an alarming outcry the appellant picked up the severed head of the victim in one hand and with the sickle in the other ran away along the bund. P. W. 2 Poovan the immediate neighbour attracted by the alarm rushed towards the place. He saw the appellant running away and on being confronted by P. W. 2, the appellant dropped the bleeding severed head of the child on the bund and took to his heels. P. W. 3 Janaki another neighbour who had seen the appellant earlier also noticed him running away with a bloodstained sickle.

4. The crime was registered against the appellant at the Vaikom Police Station on recording Ext. P-I statement of P. W. 1 at 7 P. M. the same day. The appellant was apprehended on 7-1-1978 at 7.15 P. M. and the blood-stained lunki was seized. On 8-1-1978 P. W. 9 the Circle Inspector seized M. O. 1 sickle under Ext. P-5 mahazar and on completing the investigation charge-sheeted the case.

5. At the trial P. Ws. 1, 2 and 3 supported the prosecution. The appellant set up the defence of insanity and examined D. Ws. 1 and 2. The learned Sessions Judge accepting the prosecution evidence found the appellant guilty holding that the plea of insanity has not been established. The appellant was accordingly convicted and sentenced as aforesaid.

6. There can be no serious controversy over the question that the appellant had caused the death of the child Biju in the manner alleged by the prosecution. The direct evidence of the eye witness Narayani (P. W. 1) corroborated by the testimony of the two neighbours P. Ws. 2 and 3 and supported by the medical

evidence furnished by P. W. 6 who conducted the autopsy and issued Ext. P-2 certificate, leaves no room for doubt that the appellant had caused the death of Biju by cutting with a sickle in broad day light, while the child was playing in the courtyard. P. Ws. 1, 2 and 3 are disinterested rustic? witnesses who have no axe to grind against the appellant and their version impresses as natural and truthful. P. W. 1 saw the appellant cutting and severing the neck of the child and P. W. 2 an aged agricultural labourer who lives within 15 meters away noticed the appellant just in front of his house advancing with the severed head in one hand and the sickle in the other. P. W. 3 also saw the appellant at a spot not far away from the scene proceeding with a blood-stained sickle. The appellant had dropped the severed head on the chira and it was noticed by P. W. 9 at the time of the inquest at a distance of 14 meters away from the courtyard where the trunk of the body of Biju was lying. P. W. 6 has detailed the marks of violence on the dead body in Ext, P-2 postmortem certificate, and the medical evidence is in consonance with the story narrated by P. W. 1 who has also identified M.O. 1 as the weapon of offence. There can therefore be no doubt that the appellant has caused the death of Biju on 6-1-1978 by inflicting injuries with a sickle.

7. The main argument advanced on behalf of the appellant is that legal insanity pleaded by the appellant is satisfactorily proved in the case and at any rate the materials in evidence are sufficient to raise a doubt in the mind of the court as regards mens rea the essential ingredient of the offence and that the conviction is therefore unsustainable. The defence evidence consisting of the testimony of D. Ws. 1 and 2 in the back-ground of what transpired in the course of the trial has been relied on in support of this argument.

8. The appellant at the time of the incident or his arrest on 7-1-1978 did not show any abnormality according to the prosecution witnesses. However after the commencement of the trial on 13-3-1979, the trial Judge felt that the appellant should be examined medically. Thereafter the appellant was under observation, and treatment in the mental hospital until 8-7-1980. In the course of cross-examination of the prosecution witnesses in the trial that followed, it was suggested that the appellant was insane at the time of the occurrence. The witnesses denied the suggestion. In his statement under Section 313, Cr. P. C. the

appellant said that he did not know what has happened. The appellant had entered on the defence and examined D. W. 1 the psychiatrist attached to the Medical College hospital, Kottayam and D. W. 2 Kesavan another brother of the appellant. According to D. W. 2 the appellant suffered derangement of mind when he was studying in the first form, for about two months and again the appellant became insane some three months prior to the incident. D. W. 1 was then consulted and the appellant continued to be under treatment for about 6 weeks and since (here was some improvement in the condition and due to financial difficulties further administration of drugs was stopped and the appellant was of late behaving like a mentally deficient person. D. W. 2 asserted that the appellant was of unsound mind at the time of the occurrence. D. W. 1 said that he had the vague remembrance that he had treated the appellant. No documentary evidence for the consultation or treatment has been forthcoming. P. W. 5 has emphatically denied that the appellant had any mental derangement at any time before the incident,

9. Even when the evidence of D. W. 2 is preferred to that of P. W. 5 and the testimony of DW 1 is accepted on the point that the appellant was under treatment, what transpires from the evidence is only that the appellant was some time prior to the incident suffering from mental disease. It is also clear from the records of the case that the appellant was insane after the commission of the act. There, is however no rule that once insane a person is always insane or that now insane the accused must have been insane before. In order to get the benefit of exemption under Section 84 of I.P.C. it must be shown that the accused suffered from unsoundness of mind as defined in the section when the offence was committed and not merely before or after the commission of offence. The crucial point of time at which the insanity of the appellant should exist is the time when the offence was committed. Proof of prior or subsequent insanity does not attract S, 84 I.P.C.

10. Insanity is not per se a defence under Section 84 I.P.C. which embodies the fundamental maxim of criminal law that an act does not constitute guilt unless done with a guilty intention. The section provides that nothing is an offence which is done by a person who at the time of doing it by reason of un-soundness of mind

is incapable of knowing the nature of the act or that he is doing what is either wrong or contrary to law. To establish that the act done is not an offence, it must clearly be proved that at the time of the commission of the act the accused was suffering from legal insanity as defined in the section. Under the section a person is legally insane when he is incapable of knowing the nature of the act, i. e., the physical act which is done, or that he is doing wrong or that he is doing what is contrary to law. There can be no legal insanity unless the cognitive faculties of the mind are as a result of unsoundness of the mind at the crucial time so materially impaired that he was incapable of knowing the nature of the act or that what he was doing was either wrong or contrary to law. For purposes of criminal law the emphasis is therefore on unsoundness of mind which incapacitates the person from knowing the nature of the act or that what he does is either wrong or contrary to law.

11. The Supreme Court has in *Dahyabhai v. State of Gujarat* : 1964 CriLJ472 stated that:

When a plea of legal insanity is set up, the court has to consider whether at the time of commission of the 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 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 Penal Code can only be established from the circumstances which preceded, attended and followed the crime.

The fact that the accused caused the death of the child over trifling matter would not warrant the conclusion that he was of unsound mind. Again in *Ratan Lal v. State of M. P.* 1971 SCC (Cri) 139 : 1971 Cri LJ 654 the Supreme Court pointed out that crucial point of time at which unsoundness of mind should be established is the time when the crime is actually committed and the burden of proving this lies on the accused. That the burden of proving the insanity is on the accused is reiterated in *Sheralli Wali Mohammed v. State of Maharashtra* 1973 SCC (Cri) 720 : 1972 Cri LJ 1523 and in *Bhikari v. State of U. P.* : 1966 CriLJ63 .

12. The defence of insanity cannot be admitted upon arguments merely derived from the character of the crime. The absence of motive or the attachment of the accused with the victim or the ghastly nature of the crime is not relevant consideration, in the absence of positive proof that the mental faculties of the appellant were materially impaired at the crucial time by reason of unsoundness of mind. Manifestations evidencing derangement of mental function by themselves do not offer relief from criminal responsibility. When we examine the evidence in this case, we are not satisfied that the appellant has established that at the time of the committing of the offence he was of unsound mind or that the unsoundness of his mind was of such degree and nature that by reason thereof he was incapable of knowing the nature of the act or of knowing that what he was doing was either wrong or contrary to law. The motive urged by the prosecution in this case is no doubt feeble. The evidence also shows that the appellant was fond of the deceased child and the manner in which the appellant did the act is reprehensible. But the evidence clearly negatives the plea of insanity. The appellant according to P, W. 3 was seen at about 3 P. M. going along the bund carrying an iron 'para'. He asked P.W. 3 to lend her sickle which she refused. Later the appellant entered the courtyard of the house of P.W. 5. when he was away, armed with a sickle. This conduct of the appellant indicates deliberation or preparation on his part, His conduct at the time of committing the act' shows that he was conscious of what he was doing and that he was feeling guilty. The appellant singled out Biju after separating his playmate and cut him with the sickle, after severing the head from the trunk picked up the head in one hand and the weapon in the other, and left the place, as soon as P. W. 1 made the alarming cry. Again, when P. W. 2 exclaimed with horror what he had done, the appellant dropped the severed head on the 'chira' and took to his heels. He carried the weapon with him, concealed the same at some place away from the place of occurrence and made himself scarce until the next day. These circumstances indicate that the appellant at the time of committing the act knew that what he did was wrong and after committing the act showed consciousness of guilt and made efforts to avoid detection. The mental faculties of the appellant at the time of committing the act are not thus shown to be impaired. There is no positive proof that the appellant was at the crucial time insane and on the evidence it is to be concluded that legal insanity did not exist,

The material in evidence is not even sufficient to create any doubt as to the mental condition of the appellant at the time of the event, We are therefore unable to accept the contention advanced on behalf of the appellant that the conviction is wrong. The learned Sessions Judge has rightly convicted the appellant and the conviction has only to be confirmed.

13. In the result the appeal is dismissed confirming the conviction and sentence against the appellant.

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