

State Vs. Koli Jeram Dua

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Court : Gujarat

Decided On : Oct-01-1954

Reported in : 1955CriLJ1628

Judge : Shah, C.J. and; Baxi, J.

Appellant : State

Respondent : Koli Jeram Dua

Judgement :

Shah, C.J.

1. This is an appeal by the State against the acquittal of the respondent Jeram Duda, of the charge of murdering his wife Babuji on the ground that although the accused did murder Uji, he was by reason of unsoundness of mind incapable of knowing the nature of the act and that Under Section 84, Penal Code, the act did not amount to an offence.

The accused lived with Uji who was his second wife, and his three children born of her at village

Dhedhuki, and Jiwa, his son by the first wife, lived separate from him. The father and brothers of the accused also lived separate in the same village.

The accused, Bai. Uji and the children were sleeping in the house when in the early morning of 17-3-1953 the accused dealt blows on Uji's face and head with a thick handle of a spade causing multiple injuries and then left the house. His son Jadav, who is aged about 8 or 10 years, was awakened by the noise of the attack on his mother and ran to the house of his uncle Vashram and told him that the accused had beaten his mother and had run away. Vashram went to the house of the accused but did not find him there and since there was no light in the house, he went to his brother Dana and returned to 'accused's house with Dana.

He found Uji lying unconscious on a cot in the 'Osri' of the house with several injuries on the face and head and the blood-stained handle of the spade lying near the cot. Vashram informed the village policeman Surag who also came down. Soon thereafter they put Uji in a cart to take her to the dispensary at Vichhia but she died within a short distance of the village and was brought back to the house of the accused.

The accused was put under arrest in the afternoon at 4 p. m. the same day, and his blood-stained clothes seized by the police, and he was later sent up for his trial on the charge of murder.

2. In the Court of the committing Magistrate the accused stated that he had not caused any injuries to Uji, that he was at his thrashing floor and that Vashram had come to call him and so he returned to his house. He denied that the clothes attached by the police were his own or that the handle of the spade belonged to him and as regards Jadav and the other witnesses he stated that they were not telling the truth.

In the Sessions Court the accused behaved as if he did not understand anything and stated that he did not know if he had made the statement in the committing Court and to all the questions put to him he gave only one reply, namely, that he did not know.

3. As the medical evidence shows, there were - eight contused wounds all over the face and forehead fracturing the skull and facial bones and from the seriousness of the injuries caused there can be no doubt that the person who

caused them must be taken to have intended to cause injuries which were sufficient in the ordinary course of nature to cause death and that the offence was one of murder. The evidence also amply proves that the murderer was the accused and none else.

The deceased and the accused lived together and were sleeping in the house that night and the offence has taken place in the early morning between 4 and 5 a. m. The handle of the spade with which the deceased was attacked is proved to belong to the accused. Jadav, who was sleeping in the 'Osri,', had seen the accused beating the deceased with the handle and he had run to his uncle's house to inform him.

Jadav deposed to these facts in detail in the committing Court but in the Sessions Court he remained silent and declined to answer any questions and so the learned Judge brought on record his evidence in the committing Court Under Section 228, Criminal P. C.

The learned Judge has taken care to seek corroboration to Jadav's evidence. It was from Jadav that Vashram came to know of the incident and Vashram definitely says that Jadav had told him that the accused had run away after beating the deceased. Vashram had repeated the story to Surag and others. The learned Judge was therefore right in relying upon Jadav's evidence.

There is also the evidence of Manji, a neighbour, which shows that the accused had dealt blows to the deceased and in fact Manji saw him going away thereafter though the witness could not identify the person definitely on account of darkness. It is not denied that the accused had left his house early that morning and was subsequently found at his thrashing floor.

Considering that there were no other inmates in the house, it can be safely inferred that the person whom Manji saw going away must have been the accused. The clothes of the accused, which were attached from his person, also bore stains of blood which the serologist certifies as human blood. The probability of anyone else having entered the house in the night and killed Uji and having left the place must be ruled out altogether because in that case the accused would be

found in the house, and as he was sleeping near the deceased he would be expected to raise a hue and cry over the incident. The evidence therefore proves conclusively that the person who killed the deceased was the accused and none else.

4. But the learned Sessions Judge finds that by reason of unsoundness of mind the accused was incapable of knowing the nature of the act done by him and the question is whether this fact is proved and the accused is entitled to the benefit of Section 84, Penal Code.

The question of the insanity of the accused was not raised or suggested until the trial in the Sessions Court. As I said, in his statement in the committing Court the accused denied having caused injuries to his wife and also said that Jadav and other witnesses were telling a lie. In the Sessions Court he refused to say anything and behaved as if he did not understand anything.

The learned Counsel for the accused in the Sessions Court did not make any suggestion as to the insanity of the accused and it was the 'learned Judge who put certain questions by the Court to witness Surag Kavat as to the behaviour of the accused prior to the offence, because, it appears, the learned Judge thought that it was necessary to explore that possibility, and later other witnesses were questioned on the point.

The learned Judge was no doubt justified in eliciting the information, and whether the plea was taken by the accused or not the fact does remain that if the evidence discloses the insanity of the accused at the material time then it has to be considered in weighing the criminality of the accused and in adjudging whether he was responsible for the crime or not.

5. The evidence is that the accused had a fit of insanity ten years back and at that time he had run through a thick cactus hedge like an animal and that he had to be watched and attended to then. It is admitted that after some treatment the accused got completely well and he remained perfectly sane for about eight or nine years thereafter. Now so far as this incident is concerned, it is very old and it can have no relevance to the question of unsoundness of mind at or about the time of this

offence.

It is then said that the accused had started to behave abnormally since about a month or a month and a half prior to the offence, and as to this Stirag says that the accused used to sit in his house with a blank mind and smoke pipes, that he did not go to his field but some times came to sit at the otta, that he talked little but did not exhibit any signs of violence nor did abuse nor quarrel with anyone and that an exorcist was called to cure him.

The evidence of Vashram, brother of the accused, is that the accused sat in his house and did not go out, that he did not attend to his 'khala' (thrashing poona) that he had become weak in mind and would not eat nor listen to anyone and that when once his father asked him to eat the accused had slapped him.

The evidence of Dana, another brother of the accused, is to the effect that the accused showed no violence, nor did molest anyone but simply sat silent and would not talk to anyone nor attend to his work.

On the other hand, Jiwa Jeram says that the accused was raving like a mad man since about four or five months prior to Uji's death. Manji Hama, who is a neighbour of the accused, says that he had sent his wife and children to his wadi because he was afraid the accused might do them harm and because they were also afraid of the accused but beyond making a general statement he gives no details of the behaviour of the accused. According to Bhura the accused sat silently and did not talk to anyone nor did do any work.

Jagmal Dahya, Ex. 10, speaks of the exorcist having been called to cure the accused but he admits that the accused did go to his field and had also attended to the cutting operations and that after the cutting he had removed the crops to his thrashing floor but had not brought the crops home from the thrashing floor. Sama Bogha infers that the accused must have been insane because he sat in a moody frame of mind.

Gobar Poona, who is the Revenue Patel of the village, had seen the accused going to his field with a bullock about fifteen or twenty days before IFji's death and

had not found him abnormal. According to the witness the bajra crop of the accused had been brought to his 'khala' and had even been thrashed, that only the 'falwa' (thrashed stalks) had been lying in the 'khala' and that in the case of other farmers too 'fulwa' is usually attended to later and some times it lies in the field until Chaitra.

This is all the evidence relating to the alleged unsoundness of the accused's mind and in our opinion it indicates a moody and pensive temperament and at the highest some eccentricity and abnormality of behaviour; but it does not in the least indicate an unsoundness of mind.

6. I will next turn to his conduct after the incident. After killing Uji he left the house and went away to his 'khala' a fact which rather suggests that he was conscious that he had done something wrong. When Vashram went to call him he would not come and he had to be seized by the hand and brought to Vashram's house. After he was put under arrest at 4 o'clock the same day, he only sat in a dazed state for some time and would not answer questions but afterwards he behaved like a normal man and gave rational answers to all the questions put to him.

He was sent to the judicial lock up at about 7 E. m. on the next day, 18th March and at that time he was not speaking anything and was appearing like a dazed person. He refused to take food that evening and also the next morning and so was sent to the Medical Officer and these facts were stated in the report sent to the Medical Officer. However, the evidence of Virji Kanji, the Jailor of the judicial lock up, is that the accused did not behave like an insane person but he only appeared to be in a dazed state.

At the dispensary the accused was asked to take food but he refused and he had to be fed forcibly through the nose. The evidence of Dr. Harischandra Buch (Ex. 31) is that the accused behaved normally when he was brought to him on the 19th and also on 20th, that he understood the questions and gave rational answers and excepting that he declined to take food and was obstinate about it he exhibited no signs of eccentricity of mind. When being pressed to take food the accused said with folded hands that he had taken a vow not to take food and he may not be pressed for it, but he did not say why he had taken the vow.

The accused was sent to the Central Prison, Raj-kot, on the 22nd and was examined by Dr. Jesukhlal Mankad Ex. 34. On Dr. Mankad's questioning him why he did not take food the accused said that he would take food if he was released. The accused did not take food till the 24th and when he was threatened with forcible feeding and shown the implements thereof, he took food on 24th and there was no report of his declining to take food thereafter.

According to Dr. Mankad the accused understood the questions put to him and gave rational answers and did not show any signs of unsoundness of mind. The learned Judge's conclusion on this point also is that the accused did not behave abnormally in the jail and that he did not show any signs of insanity after the offence but only behaved like a dazed person refusing to take food. As to this however, the accused himself had said that he had taken a vow, which rather suggests deliberation and the capacity to understand things.

7. Now the burden of proving the plea of insanity rests on the accused and that onus can be discharged by producing evidence as to his conduct shortly prior to the offence and his conduct at the time or immediately afterwards, and by evidence of his mental condition and other relevant facts. In adjudging on such a plea the Court has to consider two points, first, whether the accused has established that at the time of committing the act he was of unsound mind and, second, if he succeeds in proving it, then whether he has established that the unsoundness of mind was of such a 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.

There is a difference between medical insanity and legal insanity and it is only legal insanity which exonerates the accused from the crime. There can be no legal insanity unless the cognitive faculties of the accused are, as a result of unsoundness of mind, so completely impaired as to render him incapable of knowing the nature of the act, or that what he is doing is wrong or contrary to law.

From the facts that the accused did not go to his fields nor did attend to the thrashing operations (which in our opinion is not true) that he used to sit in a moody and pensive condition and would not talk, that he once slapped his father

and that on the whole his behaviour was eccentric and abnormal and from the further fact that he had killed his wife without the slightest reason and the crime was altogether motiveless the learned Sessions Judge holds that the cognitive faculties of the accused were so impaired that he could not know the nature of the act, or that what he was doing was wrong or contrary to law. The learned Judge has relied on a dissenting judgment of Patanjali Sastri J. (as he then was) in *re Saukappa Shetty* AIR 1941 Mad 326 (A) in this connection.

Now apart from the fact that the view of Patanjali Sastri J. was not accepted by King J. to whom the case was referred on a difference of opinion between the two judges, Patanjali Sastri J. himself recognises the limitations of the plea of insanity and he says that :

a mere lack of apparent motive for the deed does not necessarily or always lead to an inference of intellectual aberration or insanity, but a total lack of an apparent motive may in some cases taken along with other facts legitimately give rise to an inference that the act was done under an insane impulse.

The learned Judge, also agrees that a crime is not excused by its own atrocity and his objection is against laying down as a rule of evidence that one must look outside that act itself for the evidence as to how much the accused knew about it; and finally he says that there can be no general rule and that the only proper course to adopt is to decide each case on its own peculiar facts. This last proposition is perfectly true. At the same time, with all respect, " the proposition that the act itself should be taken as indicative of the soundness or otherwise of the man's mind is also not the correct test to apply.

Whether the crime has been committed while the accused was in an unsound state of mind has to be ascertained from the state of his mind at or about the time of the offence and for that purpose it is very necessary to take into account his 'conduct at the date of the offence or shortly prior to it, and it will not be enough to judge it simply from the act itself because in that case there is the danger of falling into the error of equating the motivelessness and the enormity of the crime with insanity. With respect, that will not be a correct approach.

The learned Sessions Judge has also relied on 'Wazir v. Emperor' AIR 1948 Oudh 179 (B), which was a case of a double murder by a father of his two children and the decision was based on its own peculiar facts. It was however recognised that mere abnormality of the mind has never been accepted as an excuse for the commission of crimes, and that the Court must arrive at its conclusion from the surrounding circumstances.

8. In re'Manickam' : AIR1950 Mad576 , the facts were that the deceased lost a cock belonging to her and was searching for it and she was muttering curses on the unknown thief and as she and the prosecution witness were going past the shop of the accused, the accused, thinking that the curses were levelled against him, suddenly came out and cut the neck of the deceased twice or thrice and killed her.

Evidence was adduced that the accused was in the habit of going about the village shouting 'Kali, Kali', that he was not quite a normal man but a little unbalanced in mind, that he had certain obsessions regarding Kali worship and was saying that the Kali temple in the village ought to be electrified. It was held that the accused was not insane but merely unbalanced and excited and probably was in some kind of obsession or hallucination, and that he could not get the benefit of Section 84.

In'Bazlur Rahman v. Emperor' : AIR1929 Cal1 , it was held that mere eccentricity or singularity of manner will not suffice to establish the plea of insanity; it must be shown that the prisoner had no competent use of his understanding so as to know that he was doing a wrong thing in the particular act in question.

The facts of this case were rather extreme and the accused was behaving like a maniac. C. C. Ghose J., observed :

The onus of proof where the plea of insanity is taken on behalf of the accused lies on him and it must be proved affirmatively that the accused was insane at the time when he committed the act in question. Uncontrollable impulse co-existing with the full possession of the reasoning powers is no defence in law, nor is moral insanity i. e., existence of delusions which indicate a defect of sanity such as will relieve a person from criminal responsibility, any, defence in law. It is not mere eccentricity

or singularity of manner that will suffice to establish the plea of insanity.

It must be shown that the prisoner had no competent use of his understanding so as to know that he was doing a wrong thing in the particular act in question. If there is evidence of premeditation and design or evidence that the prisoner after the act in question tried to resist arrest, the plea of insanity must be negated.....It is a mistake to suppose that in order to satisfy a jury that the plea of insanity is well founded, scientific evidence must be adduced. If the existence of facts is such as to indicate an unsound state of mind, that is quite sufficient.

Referring to motive the learned Judge said :

If the facts are clear so far as the act complained of is concerned the motive is irrelevant. If the facts are not clear, motive may explain what otherwise would be difficult of explanation. The want of motive for the commission of a crime and its being committed under circumstances which render detection inevitable are no doubt important points to be taken into consideration coupled with the other evidence on record bearing on the question of insanity.

In my opinion, it is not the law that because a horrible murder has been committed with no apparent motive, in circumstances as have been spoken to by the prosecution witnesses, one may conclude therefrom that the perpetrator of the deed in question must have been mad at the time.

9. In 'Chandi v. Emperor' AIR 1932 Lah 260 (E), the facts urged in support of the plea of insanity were that the accused made no attempt to run away and that he kept on wearing the bloodstained clothes till the arrival of the police and did not try to conceal them or to do away with them, and further that the accused was showing signs of mental unsoundness or abnormal behaviour on previous occasions. It was stated that he used to snatch away huqqas from people saying that it was bad to smoke, and sometimes even began tearing off his clothes or hurling brickbats, and he had once beaten his uncle.

It was held that the acts were not such as to lead to an inference that the accused was incapable of understanding the nature of his act at the time when the act in

question was committed. The fact of his not running away or of not changing his bloodstained clothes were unusual but even that conduct cannot lead to any necessary inference of insanity.

10. The question of the requisite mental un-soundness of mind Under Section 84, Penal Code has been discussed at great length in an elaborate judgment by Hidayatullah J. in 'Baswantrao Bajirao v. Emperor' . The following observations in Russell 'On Crimes' Edn. 9, p. 18 were relied upon and quoted by the learned Judge. The observations are of Tracy J., in 'Arnold's case', 16 Stir 764 at p. (765) (F-I) and Tracy J., told the jury that :

Where a person has committed a great offence, the exemption of insanity must be clearly made out before it is allowed; that it is not every kind of idle and frantic humour of a man, or something unaccountable in his actions, which will show him to be such a madman as is to be exempted from punishment; but that where a man is totally deprived of his understanding and memory, and does not know what he is doing, any more than an infant, or a wild beast, he will properly be exempted from the punishment of the law.

Hidayatullah J, quoted, inter alia, the following passage from Mayne (Criminal Law of India) :

The next ground of exemption is the most important, as it is generally the test in the very numerous cases, where mental disease has only partially extinguished reason. One familiar instance of such partial extinction is the case of delusions, which, apparently leave the mind unaltered outside the special ideas which they affect.....A person labouring under specific delusions, but in other respects sane shall not be acquitted on the ground of insanity, unless the delusions caused him to believe in the existence of some state of things which, if it existed, would justify or excuse his act. Provided that insanity before or after the time he committed the act, and insane delusions, though only partial, may be evidence that the offender was, at the time, when he committed the act, in such a condition of mind as to entitle him to be acquitted on the ground of insanity.

Dealing with the question further, Hidayatullah J. drew a distinction between cases in which insanity is more or less proved and the question is only as to the degree of insanity and cases in which insanity is sought to be proved in respect of a person who for all intents and purposes appears sane. In all cases where previous insanity is proved or admitted certain considerations have to be borne in mind, and the learned Judge again referred to Mayne and quoted the following observations with approval :

Whether there was deliberation and preparation for the act; whether it was done in a manner which showed a desire to concealment; whether, after the Crime, the offender showed consciousness of guilt and made efforts to avoid detection; whether, after his arrest he offered false excuses 'and made false statements. All facts of this sort are material, as bearing on the test which Bramwell, B. submitted to a jury in such a case: 'would the prisoner have committed the act if there had been a policeman at his elbow ?

On the question of what Mayne calls 'inferential insanity' he observes :

In cases of this sort no suspicion of insanity would rest upon the prisoner, apart from the crime. But from the character of the crime itself, its suddenness, violence, cruelty and atrocity, its apparent absence of motive or purpose, a suggestion is raised that the offender must have been insane at the time of its committal.

A defence of this sort is generally set up, when the facts admit of no other, and it is usually eked out with evidence of previous outbursts of eccentricity or violence and suggestions of hereditary insanity or of former diseases which might possibly have affected the brain. It is needless to remark how utterly unsafe it would be to admit a defence of insanity upon arguments merely derived from the character of the crime.

In such a case Rolfe B. said: 'It would be a most dangerous doctrine to lay down, that because a man committed a desperate offence, 'with the chance of instant death and the certainty of future punishment before him, he was therefore insane, as if the perpetration of crimes was to be excused by their very atrocity. 'K. v. Stokes', (1848) 3 Car. & K. 185 (G).

In the above Nagpur case the facts were rather extreme and there the accused had killed his two wives. His behaviour has been summarised by the learned Judge in para. 17 of the judgment, but without dealing it, it may be simply stated it was much more peculiar and eccentric than that of the accused in the present case; and it was held that the behaviour of the accused was eccentric, but that it could not be said that the accused was suffering from such unsoundness of mind as is requisite Under Section 84 of the Code.

11. The behaviour of the present accused may now be adjudged in the light of the test laid down in 'the above cases. The incident of ten years before the offence when he ran into a cactus hedge and was injured is too old to have any bearing on his behaviour shortly prior to the offence, and in fact he was completely sane for nearly eight or nine years thereafter.

During the month and a half prior to the offence, the utmost that is alleged is that he remained in his house for most of the time, that he smoked excessively and did not speak to people and remained in a moody and pensive state. The evidence is mainly of a general character and there is no particular instance of the accused's insane or violent behaviour except once when he slapped his father, but that at best exhibits as eccentricity of mind.

We believe that he did go to his field and had attended to the first thrashing operations of his grain. It is not alleged that he was suffering from any delusions, and the fact that some exorcists were called to charm away the ailment does not by itself mean that the accused was insane. Services of Bhujas and Fakirs are requisitioned in villages for any type of malady and on the slightest pretext, and no inference of unsoundness of mind can be drawn from this particular fact.

On an anxious consideration of the evidence, the conclusions to which we come to are that the accused was in a moody and pensive state, was some times irritable and that his behaviour was erratic and not normal and he even showed a little eccentricity, but he was certainly not insane. His behaviour in the very afternoon of the offence was normal and he exhibited no signs of unsoundness of mind during his detention in the judicial lock up and subsequently in the dispensary and jail and the doctor's evidence is that excepting that he refused to take food his behaviour

was perfectly normal and sane.

The food he refused to take on the ground that he had taken a vow, and he even said that he would take it if he was released from jail, which rather indicates that the abstaining from food was deliberate. It is unlikely that his insanity, if any, would come to an end so soon after the offence and would leave no trace.

12. The learned Sessions Judge has relied on the opinion of Dr. Buch (Ex. 31). The learned Judge had put a hypothetical question to the doctor, namely, that if a person would sit in a moody state and would not talk to anyone and would not take food even if asked to take it and if he brought about the death of his wife by inflicting serious injuries without any apparent motive, could it be said that he did the act in an unsound state of mind and without knowing the nature of the act ?

The doctors' reply was that it is probable that such a person may not be able to know what he is doing and that he may not be in a position to know what he was doing even when he was killing some other person. The answer is not positive and does not necessarily imply that the person was of an unsound state of mind at the time.

He had not heard the evidence in the case and he merely gave an off-hand opinion, on the spur of the moment, and his answer is not based on any observation of the behaviour of the accused. In fact he had not kept the accused under observation. '

It was observed that it is the duty of the medical expert who is called to prove insanity of the prisoner at the time of the commission of the offence, but who is sane at the time of the trial, to offer to keep the prisoner under his observation. He cannot base his opinion on the summary of evidence at the trial, supplied to him.

It was also held that a medical man, conversant with the disease of insanity, who has never seen the prisoner before the trial but who is present at the whole trial, cannot in strictness be asked his opinion as to the state of the prisoner's mind at the time of the commission of the crime or his opinion whether the prisoner was

conscious, at the time of doing the act, that he was acting contrary to law or whether he was labouring under a delusion at the time or whether by reason of any disease affecting the mind the accused was incapable or prevented from controlling his conduct.

These are questions for the jury to decide and the questions are not mere questions upon a matter of science.

There is a distinction between appreciation of facts and an expression of opinion on questions of science. The opinion of a medical man on the state of the mind of the accused at the time of the commission of the murder is merely relevant as being helpful. It is for the Judge or the Judge and the jury, as the case may be, to give a decision of these matters, and the function of the medical witness is to assist, not to supersede the Judge.

Dr. Buch had no doubt seen the accused at the Jasdán dispensary but he had not observed him with an eye to ascertaining insanity or otherwise and on the contrary he says he had found the accused quite sane then. His opinion in the course of his evidence referred to above is therefore entirely valueless.

13. We hold therefore that it has not been proved that the accused was of unsound mind at the time when he committed the offence and that by reason of unsoundness of mind he was incapable of knowing the nature of the act or of knowing that he is doing what is either wrong or contrary to law.

Consequently he is not entitled to the benefit of Section 84, IPC, and he cannot be exonerated from the responsibility for the crime. Accordingly we allow the appeal, set aside the acquittal and convict the accused Under Section 302, IPC. However the case does not call for the extreme penalty of the law, nor has the learned Advocate General pressed for it, and in our opinion the requirements of the case will be met by awarding the lesser sentence, and we therefore sentence the accused to transportation for life.

Baxi, J.

14. I agree.

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