

**Chhagan Vs. State**

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**Court :** Rajasthan

**Decided On :** Jul-23-1975

**Reported in :** 1976CriLJ671; 1975()WLN479

**Judge :** Kan Singh and; P.D. Kudal, JJ.

**Appellant :** Chhagan

**Respondent :** State

**Judgement :**

ORDER

**Kudal, J.**

1. This is an appeal by Chhagan from Jail who has been convicted by the learned Additional Sessions Judge, Banswara under Section 302, I. P.C. on 18-7-1970, and sentenced to imprisonment for life, and a fine of Rs. 200/-, and in default of payment of fine to undergo rigorous imprisonment for three months more,

2. The facts of the case, in brief, are that Smt. Jawari, mother of the accused Chhagan, used to live with him in village Loonavada, which is at a distance of about 7 miles from the Police Station, Kausalgarh. Mst. Hudi, wife of the accused, also resided with them along with her two minor children. On 1-3-1970, Mst. Hudi raised an alarm that Smt. Jawari is dead. On hearing the alarm, Metah son of Jetha Bheel, came to the house of the accused, and saw that Mst, Jawari was

lying dead in the 'angan' of the house. It is alleged that Chhagan told Metah that his mother was a witch, and that he had killed her, as he was not keeping well for the last one month. Metah and Chhagan then went to the house of Roopji, where Vijay Singh and the Sarpanch Holiya and Sardara also came. F. I. R. Ex. P-I was lodged at 8.30 A.M. on 2-3-1970. at Police Station, Kausalgarh by Metah. P.W. 5 Shri Vasudeo, Deputy Superintendent of Police, reached the spot, and site-plan Ex. P-5 was prepared under his guidance by Sabir Mohd. Chhagan was arrested on spot by P.W. 5, Vasudeo, the Deputy Superintendent of Police. In pursuance of the statement recorded under Section 27 of the Evidence Act, an axe had been recovered in the 'Tapari', opposite the house of Chhagan. The information given by the accused was recorded by Shri Vasudeo in Ex. P-II. The learned Additional Sessions Judge after recording the evidence convicted the accused, as aforesaid.

3. Mr. Bajwa, appearing as Amicus Curiae for the accused, contended that Metah, Roopji and Vijay Singh have not supported the prosecution story. It was contended that Metah and Vijay Singh have been declared hostile. It was also contended that the accused Chhagan was not of a sound mind, and he was behaving like an insane for the last four or five months prior to the incident. It was, therefore, contended that the accused Chhagan is entitled to the protection of Section 84 of the Indian Penal Code.

4. On behalf of the State, it was contended by the learned Public Prosecutor that there is no evidence on record to the effect that Chhagan was insane at the time when the offence was committed by him. It was also contended that the presumption of law is that every individual is supposed to be sane unless it is otherwise established. It was also contended that the statements of Metah and Roopji recorded before the committing Court were taken on record under Section 288, Criminal P.C. (old), and that the recovery of the axe at the instance of the accused coupled with the statements of Metah and Vijay Singh and the medical report of the Doctor amply bring home the guilt to the accused.

5. We have carefully scrutinised the evidence of Metah, Roopji and Vijay Singh. Metah is a cousin-brother of Chhagan. While lodging the FIR, Metah had stated that Chhagan told him, 'my mother was a witch, and, therefore, he has killed her

by causing injuries by an axe on her head.' In his statement before the committing Court on 1-4-1970, he had stated that Chhagan had told him that he was keeping unwell for a month or more, and that he considered his mother to be a witch, and, therefore, he killed her. The statements made by Metah before the committing Court, and in the F. I. R. were confronted to him. But the learned Counsel for the accused did not cross-examine this witness on this score. The entire cross-examination was directed in proving the insanity of Chhagan at that time. P.W. 2 Vijay Singh stated that Chhagan had told him that he had given a lathi-blow to his mother, as a result of which she died. P.W. 3 Roopji was also confronted with his statement before the committing Court, made by him on 6-4-1970. He had stated that Chhagan had told him that he was feeling giddy, and that is why he had killed his mother. P.W. 4 Dr. S. D. Sharma, who accompanied the Deputy Superintendent of Police Vasudeo at the spot, conducted the post-mortem examination on the dead body of Mst. Jawari. The following injuries were found :

1. Incised wound 6'X2'X2' extending on left side of the head from occipital protuberance to the point 2' above left ear. Four pieces of underlying skull pierced into brain matter.
2. Incised wound 1/5' X1/2' skin deep on the back of left elbow.
3. Incised wound 1.5'X1/2' skin deep on back of right hand between thumb and index finger.
6. In the opinion of the Doctor S. D. Sharma P.W. 4 all the injuries were ante-mortem in nature, and could have been caused by any sharp edged weapon. They can be caused by the axe Ex. 1, which was shown to the doctor in the Court. On opening the body, the Doctor found that the scalp was cut and was fractured and four pieces of left parietal bone and occipital bone had pierced into the cerebrum. Membranes of the brain were also cut. Brain could be clearly seen through the injury and it contained the bone pieces of skull.
7. The Chemical Examiner has found the clothes of the deceased, blood-smeared earth and the axe Ex. 1 bloodstained, vide Ex. P-13. The report of the Serologist also confirmed that it was human blood. The statements of Metah, Roopji and

Vijay Singh along with the recovery of the axe and blood-stained clothes at the instance of the accused Chhagan, clearly lead to the conclusion that there is no manner of doubt regarding the murder of Jawari by Chhagan.

8. The plea of the accused that he is entitled to the protection under Section 84 of the Indian Penal Code, has to be seen in the light of the evidence on record. Section 84 of the Indian Penal Code provides that 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. To be entitled to the protection of Section 84 of the Indian Penal Code, the person must be non compos mentis at the time of commission of offence. There is no evidence worth the name on record to establish that at about 6 p.m. on 1-3-1969, when the offence is alleged to have been committed. Chhagan was in such a state of mind that he could not know or understand that what he was doing was contrary to law. The evidence on record is only that he was feeling giddy, and that he used to run after children or cattle-heads. Such a weak evidence can be of no avail to ensure the protection of Section 84 of the Indian Penal Code. The law presumes every person of the age of discretion to be sane unless the contrary is proved; and even if a lunatic has lucid intervals the law presumes the offence of such person to have been committed in a lucid interval, unless it appears to have been committed during derangement. It would be most dangerous to admit a defence of insanity upon arguments merely derived from the character of the crime. The mere fact that it was attended with some giddiness, or, that the accused Chhagan was not feeling well for the last one month, or that he was running after the village children or the cattle-heads does not establish that he was a person who would be called non compos mentis.

9. The statements recorded in the committing Court when transferred under Section 288, Criminal P.C. (old) to the Sessions trial, are substantive piece of evidence, and can be a basis of conviction, if there are no reasons to disbelieve the testimony of the witnesses. Reliance can be placed on *Chittaranjan Das v. State of West Bengal* : [1964]3SCR237 . The axe Ex. 1 was also recovered immediately after the occurrence at the instance of the accused on the information furnished by him under Section 27 of the Evidence Act.

10. Mr. Bajwa, appearing as Amicus Curiae in this case, has placed reliance on Ujagar Singh v. State AIR 1954 Pepsu 4 : 1953 Cri LJ 1859; Subbigadu v Emperor. (1926) 27 Cri LJ 46 (Mad) and Waryam Singh v. Emperor (1927) 28 Cri LJ 39 (Lain).

11. In Ujagar Singh v. State. 1953 Cri LJ 1859 (Pepsu), it has been held that to find out the state of the mind of the accused a Court need not look for such a plea having been raised by him or the evidence examined by him in defence. It may equally rely on what is elicited from the prosecution witnesses as well as on the circumstantial evidence consisting of his condition antecedent and subsequent to the commission of the crime and also on surrounding circumstances including an absence of any motive.

12. In Subbigadu v. Emperor AIR 1925 Mad 1238:(27 Cri LJ 46) it has been held that absence of sane motive is one of the indicia of the act being done by some kind of insane impulse. The accused asked his wife to give him some water and after it was given he remained there and behaved in an extraordinary manner muttering that those were the people who had spoilt him. In the same afternoon the accused murdered his wife when they were returning home. There was also absence of motive. The accused was held, in the circumstances of the case. to suffer from homicidal mania at the time he did the act.

13. In Waryam Singh v. Emperor AIR 1926 Lah 554 : (28 Cri LJ 39), it has been held that where accused assaulted a man believing him to be a ghost and the assault proved fatal, he did not commit any offence under Section 302, I. P.C.

14. We have carefully gone through these rulings, and we are afraid, these rulings have no relevancy to the facts of the present case. There is no evidence on record from which it can be reasonably inferred that at the time of commission of the offence, the accused-appellant did not know that what he was doing was either illegal, or contrary to law.

15. In view of these circumstances, we have no hesitation in holding that the guilt of the accused has been brought home beyond any manner of doubt. Under the circumstances, the accused is not entitled to any protection under Section 84, I.

P.C. as it has not been established that he was insane at the time of commission of the offence.

16. For the reasons stated above, we see no force in this appeal, which is hereby dismissed.

**Kan Singh, J.**

17. I agree.

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