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State Vs. Dhanna Ram

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Court : Rajasthan

Decided On : Apr-20-1973

Reported in : 1974CriLJ1123; 1973()WLN463

Judge : V.P. Tyagi and; L.S. Mehta, JJ.

Appellant : State

Respondent : Dhanna Ram

Judgement :

L.S. Mehta, J.

1. Succinctly put the prosecution story is that Mst. Chhagni, daughter of accused Dhanna Ram's brother Rama Ram. a resident of Kanwla raised an outcry at about 11 a.m. on March 10. 1972. that her uncle Dhanna Ram had killed his daughter Mst. Shanti and that he had been standing near the dead body with a blood stained hatchet in his hand. On hearing her scream and shriek Thana Ram. P.W. 3, Ganga Ram P.W. 5 and Jagga P.W. 6 reached the spot with hurry and rush. They entered Dhanna Ram's house. They first saw Mst. Shanti (aged about 6 years) lying injured and dead in the courtyard of the accused's house and Dhanna Ram standing close at hand clutching a blood-stained axe tenaciously. Ganga Ram caught hold of Dhanna Ram and Jagga snatched away his axe abruptly with, a sudden jerk. On their query the accused told them that he had killed not only his daughter but also his four sons. The witnesses then saw the dead bodies of Phulia

(aged 10 years) and Chhoga (12 years of age) in the accused's Bara'. These two children had also been hacked to death. Thereafter the witnesses entered Dhanna Ram's room wherein they located the dead bodies of Dhanna Ram's sons. Kapura (14 years old), and Puria (2 1/2 years of age). The two boys had also sustained fatal injuries on their necks. Soon after Thana Ram. P.W. 3. went to Parbat Singh, Sarpanch of village Kanwla (P. W. 2) and acquainted him with what he had seen. Parbat Sinsh then reached the spot and he found five corpses of Dhanna Ram's children. On his grill Dhanna Ram made a confession before him that he had killed his five infants. P.W. 2 Parbat Singh scribed the first information report (Ex. R. 1) and he sent it to the police station Umedpur through P.W. 1 Pratap Singh That very day the S.H.Q. Umedpur. Kishan Lal P.W. 8. on receipt of the above factual statement of events, registered a case under Section 302. I.P.C. against Dhanna Ram and took over investigation. He reached the spot and prepared inquest reports in respect of the dead bodies of all the five youngsters, site plan and other necessary documents. He seized the blood-stained Shirt Article 2 and Dhoti Article 3 which Dhanna Ram had been wearing. He also seized the blood-stained hatchet Article 1 under memo Ex. P. 10. dated March 10. 1972. These articles were duly sealed and were sent to the Chemical Examiner. Jaipur through Boota Ram P.W. 7 (L. C. No. 514). The Chemical Examiner, Jaipur in his report (Ex. P. 23) certified that the articles were positive for blood. The Serologist and the Chemical Examiner to the Government of India. Calcutta, in his report (Ex. P. 24) opined that the constituents were stained with human blood. The post-mortem examination of the dead body of Kapura Ram was conducted by Dr. Raman Verma (C. W. 1) and he found the following injuries on the person of the deceased:--

1. an incised horizontal wound 3' X 1', extending from the right angle of the mouth and cutting the whole cheek. The second lower right molar tooth had come out.

2. horizontal incised wound, 6' X 2' X 3', over the anterior of the neck just below the thyroid-cartilage, cutting trachea, oesophagus, and all the blood vessels and muscles intervening; and

3. horizontal incised wound, 4' XI ' X 3'. over the posterior of the neck cutting the vertebrae at the level of the third cervical between the third and fourth cervical. All

the intervening structures i. e., blood-vessels and muscles had been cut.

The above injuries were ante-mortem and homicidal. The cause of death, in the opinion of the Doctor, was syncope, produced by severe haemorrhage from the wounds. There was no possibility of the survival of the deceased. Injuries Nos. 2 and 3 were sufficient in the ordinary course of nature to have caused the death.

2. Following injuries in the course of autopsy were noticed on the person of deceased Chhoga Ram:--

l. incised horizontal wound, 3' X2 ' X3 ', over the anterior of the neck just below the thyroid cartilage cutting trachea oesophagus and all the bigger blood vessels and muscles intervening.

2. horizontal incised wound, 4' X2 ' X3 ', over the posterior of the neck cutting the third cervical vertebra; all the intervening blood vessels and muscles had been cut;

3. horizontal incised wound.

2' X1 ' X3 ' cutting the head of the right humerus (injuries on the tip of the right shoulder joint); and

4. verticle bruise. 7' X2 ', over the lateral aspect of the lower third of right thigh.

All the above injuries were homicidal and ante-mortem. Injuries Nos. 1 and 2 were individually as well as collectively sufficient in the ordinary course of nature to have caused the death of the deceased. The deceased, the Doctor adds must have died without any perceptible lapse of time.

3. On the dissection of the dead body of Phulia the Doctor noticed that he had sustained the following three injuries, which were ante-mortem and homicidal:--

1. horizontal incised wound, . 4' X1 ' X3 '. over the posterior aspect of the neck at the level of the second and the third cervical vertebrae, cutting the inter-vertebral disc, spinal cord and all the intervening blood vessels and muscles.

2. horizontal incised wound, 3 Xl'X2 1/2' below injury No. 1, cutting the inter-vertebral disc between the 3rd and 4th cervical vertebrae, spinal cord, intervening muscles and blood vessels; and

3. incised wound anterio-posterior, 2'X1'X3', cutting the muscles and the neck of the left humerus; there were injuries on the tip of the left shoulder joint. Injuries Nos. 1 and 2 were collectively as well as individually sufficient in the ordinary course of nature to have caused the death. The deceased, according to the Doctor must have died there and then.

4. Mst. Shanti. according to the post-mortem examination, sustained the following 3 injuries :--

1. vertical incised wound, 2'X1'X2' over the left side of the neck, cutting the carotid artery and other blood vessels and muscles intervening.

2. anterior-posterior incised wound 2'X 1/2'X1', over the tip of the left shoulder joint cutting the neck of the humerus; and

3. incised wound, 2'X1'X2', 1/2' medial to injury No. 2.

All these injuries were homicidal and ante-mortem in nature. Injury No. 3 was sufficient in the ordinary course of nature to have caused the death. The death must have occurred in an instant.

5. The Doctor also found two injuries on the person of deceased Puria. They are:

1. horizontal incised wound 4'X3'X4'. all the structures of the neck i. e. skin, muscles, all blood vessels trachea, oesophagus, and vertebral column at the level between the third and the fourth cervical column were cut. Only the skin of the remaining neck (posterior) was saved; and

2. horizontal incised wound. A'X1'X bone deep over the left side of of the head one inch above the left ear.

All the injuries were ante-mortem and were homicidal. The cause of death was excessive haemorrhage, produced by the injury No. 1. There was no chance of

survival of the deceased.

6. The duration of the injuries on the persons of the deceased the Doctor added was about 24 hours and all the injuries were caused by a sharp-edged weapon, like hatchet (Art. 1). present before the court.

7. After necessary investigatibn. the police put up a challan against accused Dhanna Ram in the court of Munsiff-Magistrate, Jalore. Learned Munsiff-Magistrate conducted preliminary inquiry in accordance with the provisions of Section 207A. Cr.P.C. and coimmitted accused Dhanna Ram to the court of the Additional Sessions Judge. Jalore. Mr. D. D. Bajaj. Additional Sessions Judge, tried the case. The accused was charged on November 13. 1972, by the trial court under Section 302. I.P.C. to which he pleaded not guilty. In support of its case the prosecution examined 10 witnesses. In his statement, recorded under Section 342, Cr.P.C. the accused refuted to have made the two sets of extra-judicial confessional statements to the village people, including Sarpanch Parbat Singh P.W. 2. He further stated that neither bloodstained hatchet, nor his clothes were seized from his possession. He also took the plea that Ganga Ram bore ill-will against him. He was not at his house at the time of the occurrence, but he returned home at about 1.30 p. m. and found his daughter lying dead and injured and that had upset the balance of his mind. Thereafter he lost his consciousness. He knew nothing about the assassination of his other children. In his defence he did not produce any evidence. The trial court, by its judgment, dated December, 12. 1972. convicted accused Dhanna Ram under Section 302. I.P.C. and sentenced him to death.

8. Against the above verdict. the accused has taken jail appeal. which has been registered as D. B. Criminal Jail Appeal No. 4 of 1973 (Dhanna Ram v. State). The Additional Sessions Judge, Jalore. has submitted the proceedings to this court for confirmation of the death sentence in accordance with the provisions of Section 374. Cr.P.C..

9. As the accused was unrepresented, this Court appointed Mr. P. N. Mohnani as amicus curiae. In the course of hearing the appeal it transpired that the trial court did not record tihe evidence of Dr. Raman Verma. P.W. 9. in accordance with law.

He was. therefore, examined fry this Court on April 12. 1973, in the presence of the appellant and his counsel.

10. The contention of learned Counsel for the appellant is that there is no direct evidence on the record. The trial court should not have placed reliance on the extra-judicial confessions made before Thana Rarn. P.W. 3. and Ganga Ram, P.W. 5. as also before Pratap Singh P.W. 1 and Jagga. P.W. 6. Learned Counsel also argued that there was no motive for the commission of the crime and it appears that even if it is held that the accused committed the murders. he did so by reason of unsoundness of his mind and, therefore. he is entitled to the benefit of Section 84. I.P.C. Learned Counsel in his alternative argument submitted that if the court reached the conclusion that the accused failed to prove his insanity at the relevant time, the sentence of death awarded to him. under the circumstances of the case. merits serious. consideration. Learned Deputy Government Advocate supported the judgment of the court be-low.

11. From the medical evidence given by Dr. Raman Verma (C. W. 1). it is proved beyond reasonable doubt that the deceased Kapura, Chhoga Ram, Phulia, Puria and Mst. Shanti sustained on their necks fatal injuries with a sharp-edged weapon. All these injuries were homicidal and antemortem in nature. Their duration was about 24 hours. The details of these injuries as mentioned by the Medical Officer. Dr. Raman Verma (C. W. 1). have been set out above in ex-tenso. It has been unequivocally stated by the Medical Officer that none of the victims had had a chance of survival and they all must have died at the precise place and time forthwith. Thus, the prosecution has attained the desired object in setting up the fact that the above-named five victims met with homicidal death on March, 12. 1972.

12. The only question that survives for consideration is whether or not accused Dhanna Ram was the perpetrator of this tragic incident. There is no direct evidence on the record. connecting the accused with the crime. In cases where the evidence is of a circumstantial nature the circumstances from which the conclusion of guilt is to be drawn should be conclusive and must be incapable of explanation on any hypothesis consistent with the innocence of the accused.

When deciding the question of sufficiency what the court has to consider is the total cumulative effect of all the proved facts, each one of which reinforces the conclusion of guilt and if the combined effect of all those facts taken together is conclusive in establishing the guilt of the accused, the conviction would be justified, even though it may be that any one or more of those facts by itself may not be decisive: see State of Andhra Pradesh v. I.B.S. Prasada Rao 1970 SC Cri R 533 : 1970 Cri LJ 733. In other words the chain of evidence to sustain conviction must be complete and admit of no reasonable conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused. With this background we have to examine the circumstances produced by the prosecution with meticulous care; so that conjectures or suspicions may not take the place of legal proof.

13. In this case one of the important circumstances is that just prior to the occurrence the prisoner was last seen with this five children by Mst. Chhagni, P.W. 4, Mst. Chhagni. daughter of Rama Ram (brother of accused Dhanna Ram), was the next door neighbour of the accused and was living in the house adjoining that of the appellant. In the forenoon of the date of the occurrence she had left her house for having bath and for fetching water from the village-well. She passed through the 'Poli' and saw her uncle Dhanna Ram sitting therein, while his five children Kapura, Phulia. Chhoga, Shanti and Puria were playing in close proximity. She stood in horror in seeing Mst. Shanti lying injured and dead in the courtyard on her return after a couple of minutes. She then raised an outcry asking the village people to visit the spot. This statement has not in any manner been smashed in the cross-examination. No animosity or ill-will between the witness and the accused has been brought to light. There is no reason why a close relation of the accused should falsely implicate him, Ordinarily a near relation would be the last person to screen the real culprit and falsely implicate an innocent person and hence the fact of relationship is oftentimes a sure guarantee of truth. From the evidence of Mst. Chhagni. it is plain that accused Dhanna Ram was last seen in the company of his five deceased children soon before the occurrence. This is a circumstance of a very clinching nature which taken along with the other circumstances proves the complicity of the deceased: see Tufail v. State of U. P. 1969 U. J. (S.C.) 25.

14. The next link in the chain of circumstantial evidence is the extrajudicial confessions made by the accused soon after the commission of the crime. P.W. 3 Thana Ram and P.W. 5 Ganga Ram have deposed that on hearing the yelling of Mst. Chhagni they arrived on the spot. On seeing Mst. Shanti's dead body lying in the courtyard and the accused standing nearby with a blood-stained hatchet asked the accused as to what he had done. The accused told them that he had not only put to death the life of his daughter Mst. Shanti. but deprived his four sons of their lives and that their dead bodtes were lying inside his house The testimony of P.W. 3 Thana Ram and P.W. 5 Ganga Ram is unflinching and steady. P.W. 6 Jagga has no doubt, in his statement before the trial Court resiled from his deposition made before the committing court. He told the trial court that Dhanna Ram did not speak to him anything relating to the first confessional statement. When the witness was confronted with the particular portion in the committing court's statement (Ex. P. 16), wherein he had said that Dhanna Ram had told him that he had killed not only his daughter but also his four sons, he could not give any satisfactory explanation for turning back from his previous stand. In our view the first extra-judicial confession is capable of winning favourable acceptance by the mind.

15. When Parbat Singh. P.W. 2 Sarpanch of village Kanwla. reached the spot at the request made by Thana Ram, P.W. 3. he enquired of the accused as to why he had killed his daughter. The accused told him that he had not only knocked off his daughter but had committed the slaughter of his four sons. The statement of Parbat Singh stands corroborated by P.W. 6 Jagga, who has been declared hostile by the prosecution. Jagga has without any mental reservation stated that on the query made by the Sarpanch the accused had told him that he had killed his five children. Nothing has been made out in the cross-examination of Parbat Singh by which it may be held that his evidence is not entitled to weight.

16. A retracted confession may form the legal basis of a conviction if the court is satisfied that it is true and has been voluntarily made. It is not an inflexible rule of law or of practice or prudence that under no circumstances a conviction can be made on the basis of retracted confession without corrobora-tion. for a court may in a particular case be convinced of the absolute truth of the confession and be

prepared to act upon it without corroboration. It is, no doubt, true that as a general rule of (practice it is unsafe to rely upon a confession mulch less on a retracted confession unless the court is satisfied that the retracted confession is true and voluntarily made and has been corroborated in material particulars: Pyare Lal v. State of Rajasthan : 1963 CriLJ178 . The matter received further consideration of the Supreme Court in Ram Chandra v. State of Bihar : 1967 CriLJ409 , . Relying upon Pyare Lai's case (supra), their Lordships held that conviction based on retracted confession, without corrobbration cannot be said to be illegal. In a recent decision of the Supreme Court, reported in Thimma v. State of Mysore : 1971 CriLJ1314 following observation has been made by his Lordship Dua J.:

An unambiguous confession, if admissible in evidence and free from suspicion of falsity is a valuable piece of evi-dience possessing a high probative force. But in the process of proof of a confession the Court must be satisfied that it is voluntary that it does not appear to be the result of inducement threat or promise as contemplated by the Section (24 of the Evidence Act) and the surrounding circumstances do not indicate that it is inspired by some improper or collateral consideration suggesting that it may not be true.

17. Self-love the main spring of human conduct will usually prevent a rational being from making admissions prejudicial to his interest and safety unless when caused by the promptings of truth and conscience: see Wills on Circumstantial Evidence Page 119.

18. In the instant case it is quite clear from the record that Parbat Singh P.W. 2. Thana P.W. 3. Ganga Ram P.W. 5 and Jagga P.W. 6 were not the persons in (authority before whom the ex-tra-judioial confessions had been made. So there could be no question of any inducement threat or promise rendering the confessions irrelevant nor has any cogent reason been suggested why the appellant should have made untrue confessions soon after the crime. The confessions appear to us to be free from taint. The fact that the witnesses suspected that the accused might have committed the crime would not cast any doubt on the voluntary character of the confession. The aforesaid witnesses had had no motive to concoct the story of confessions. The confessions, therefore are

admissible in evidence and, being true, deserve to be acted upon. The words used by the appellant in the confessional statements are clear and admit of no doubt of his guilt. Though the confessional statements of this nature hardly need any corroboration, we find that corrobtoration in material particulars is forthcoming on the record. The existence of the dead bodies the presence of the accused with the blood-stained hatchet near the corpse of his daughter, Mst. Shanti. the visit of the witnesses soon after the crime and the bloodstained clothes found on the person of the accused and other surrounding circumstances furnish confirmatory circumstances. The trial court was thus quite right in relying on the extra-judicial confessions made by the accused to the aforesaid witnesses and we do not find any sufficient reason for disagreeing with it.

19. There is also another important loop in the chain of circumstantial evidence. Thana Ram P.W. 3, Ganga Ram, P.W. 5 and Jagga, P.W. 6 reached the spot on the cries raised by Mst. Chhagni, P.W. 4. They found the accused standing near the dead body of Mst. Shanti. He was armed with a blood-stained hatchet. Ganga Ram caught hold of the accused and Jagga snatched away the weapon of the offence from him. The axe was handed over to the Station House Officer. Kisan Lal, P.W. 8. soon after the crime. It was seized and sealed by the Station House Officer: vide memo fix P. 10. The weopon of the offence was sent to the Chemical Examiner under a sealed condition through the messenger Boota Ram, P.W. 7. Similarly when accused Dhanna Ram was arrested by the Station House Officer. Kishan Lal. he noticed blood-stains on the shirt Article 2 and Dhoti Article 3. He seized and sealed them and then sent them to the Chemical Examiner and eventually to the Serologist. The Chemical Examiner reported that all the three articles were positive for blood (see Ex. P. 23). The Serologist examined the articles and certified that they were stained with human blood. The discovery of the above mentioned articles is an important circumstance connecting the accused with the crime. No plausible explanation is forthcoming, as to why and how the accused was at the relevant time putting on blood stained-clothes and was holding a hatchet. stained with human blood.

20. Apart from the aforesaid evidence the prosecution has relied upon that specific part of the testimony of P.W. 2 Parbat Singh. wherein he has said that after having

seen the dead bodies of the deceased children and after having enquired from accused Dhanna Ram he came out of the adcused's residence and scribed first information report Ex. P. 1. wherein the name of the accused as the author of the crime has been specifically inserted. This evidence shows that right from the beginning the appellant's name as the perpetrator of the crime has been mentioned. The chain of the circumstantial evidence also gets strength from the medical evidence given by Dr. Raman Verma.

21. From the above evidence we are satisfied that the prosecution has succeeded in bringing home the appellant's guilt beyond reasonable doubt. The evidence is inconsistent with any other reasonable hypothesis than that of the guilt of the accused

21A. We may now turn to the alternative argument raised by learned amicus curiae on behalf of the appellant. Learned Counsel submits that the prosecution has not brought to light any motive on the part of the accused as a result whereof he would kill his five innocent children, unless the accused was insane. He, therefore, urges that the benefit of Section 84. I.P.C. should be conferred on the accused-appellant. Learned Deputy Government Advocate urged that there is no hint innuendo which could show that the accused was under delusion or hallucination during the pertinent period. The burden lay upon the accused in accordance with the provision of Section 105. Evidence Act. to prove that he committed the act by reason of unsound ness of mind or that he was incapable of knowing the nature of the act.

22. The legal doctrine in regard to criminal insanity for the first time was settled in England after the trial of Me Naghten for the murder of Mr. Drummond ((1843) 10 Cl. & F. 200). Me Nagh-ten had for many years suffered from what is known to Doctors as 'persecution mania'. He thought that he was dogged by a gang of persons who followed him about and stranded him. and prevented him from getting situations He had some fancied grievance against Sir Robert Peel. He shot Mr. Drum-mond. mistaking him for the Prime Minister, Sir Robert Peel. Tindal. C J., in charging the Jury, said nothing about uncontrollable impulse. He asked them:

Whether you are satisfied that at the time the act was committed. the prisoner had that competent use of his understanding as that he knew that he was doing by the very act itself. a wicked and a wrong thing. If he was not sensible at the time he committed that act that it was a violation of the law of God or of man, undoubtedly he was not responsible for that Act.

The jury acquitted the prisoner on the ground of insanity. The trial and its result caused considerable sensation and tine House of Lords called on the 15 Judges to lay down the law on the subject of criminal responsibility in cases of alleged lunacy. The Judges in the course of their verdict observed:

The jury ought to be told in all cases that every man is presumed to be sane and to possess a sufficient degree of reason to be responsible for his crimes, until the contrary be proved to their satisfaction and that to establish a defence on the ground of insanity it must be clearly proved that at the time of the committing of the act the party accused was labouring under such a defect of reason from disease of the mind as not to know the nature and the quality of the act he was doing, or. if he did know it, that he did not know, he was doing What was wrong.

The above opinion is of the highest possible weight being given by 15 most experienced Judges after anxious deliberation and no doubt fullest consideration of everything that had been written or decided upon the point in England. In every subsequent case in England these opinions have been followed as the most authoritative expression of the law on the subject. The case R. v. Hadfield (1800) 27 St. 1281 is another important pronouncement on the subject. Hadfield became an outrageous lunatic. Hig latest delusion was that the world was coming to an end. that he was commissioned by Almighty to save mankind by the sacrifice of himself. As he did not wish to commit suicide he hit upon a plan of doing some act for which he could be hung. He went to Drury Lane Theatre which was to be attended by the Royal Family. As soon as the King entered the box. Hadfield stood up and fired at him. It is stated that a slug only missed him by about a yard. The accused was seized. After the trial Hadfield was acquitted on the ground of insanity. Lord Kenyon. assisted by three very able Judges, namely, Grose. Lawrence and Le Blane held that the accused was in a state of deranged state of

mind and, therefore, he was not answerable to the charge. The Jury accordingly returned the verdict of not guilty. In that case Hadfield had no idea of the quality of his act, He thought that he was taking indispensable step towards effecting the salvation of the world.

23. In Reg v. Green Smith (Med Chir Rev Vol. 28 P. 84) the accused was charged with the murder of four of his children. He was an affectionate father, but 'having fallen into distressed strain, he destroyed his four children by strangling them in order, as he said, that they might not turn into streets. The idea came to him on the night of his perpetrating the crime. He made a full confession the next day and he made no defence at the trial. None of the witnesses had ever observed the slightest indication of intellectual insanity about him. He was, therefore, convicted and sentenced to death by the trial court. But with active interference of Dr. Blake he was subsequently respited on the ground of insanity . In Reg v. Brixey (Med-Gaz. Vol. 36 P. 166. 247) the prisoner was a quiet, inoffensive girl, a maid-servant in a respectable family. She had laboured under disordered menstruation and had shown violence of temper about trivial domestic matter. She procured a knife from the kitchen and cut the throat of her master's infant child. She was perfectly conscious of the crime she had committed and she told her master what she had done. The prisoner was acquitted though there was no proof of the existence of the intellectual insanity. In Reg v. Burton (Huntingdon Summer Assizes. 1848) the prisoner was convicted of the murder of his wife by cutting her throat. He had no motive for the crime. There was no attempt at concealment or no expression of sorrow or remorse: The medical witness attributed the act to a sudden homicidal impulse. But the Judge dissented from this view because the excuse of an irresistible impulse, co-existing with the full possession of reason, would justify any crime whatever. No reasonable being would commit an act of this nature, under the circumstances mentioned.

24. It seems that the authors of the Indian Penal Code have tried to embody in Section 84 the substance of the answer of the Judges in the aforesaid cases more particularly, the answers made by the 15 Judges in McNaghten's case, In comparing the present case with the cases, which we have referred to above, it is to be noted that though there is no motive for the commission of the crime, it would

be impossible for us to acquit the accused unless we could hold that the accused was either insane or was suffering from delirium or that he was not conscious of the nature of the crime. It is in the evidence of Jugga. P.W. 6 and Ganga Ram, P.W. 5. that the latter made an effort to snatch the weapon of the offence from the possession of the accused, but the accused resisted. Thereafter Jagga succeeded in seizing the same from him. The accused also did not plead insanity before the committing court nor before the trial court. No doubt in his statement, recorded under Section 164. Criminal P.C. he did say that he was not keeping balancee of his mind at the time of the occurrence, nor did he know what he was doing. But he did not raise such a plea subsequently nor did he lead any evidence worth the name in support thereof. The law presumes every person of the age of discretion to be sane unless the contrary is proved. As has been observed by their Lordships of the Supreme Court in S.W. Mohammed v. State of Maharashtra : 1972 CriLJ1523 . it would be most dangerous to admit the defence of insanity on the basis of no motive or on the ground that no attempt was made by the accused to run away from the place of the occurrence or that he did not have the necessary mens rea for the commission of the offence. Learned Counsel for the accused then submitted that the number of blows given by the accused to his five children reflects insanity on his part. We do not agree with this proposition. Many sane persons give more than necessary stabs to their victims. The number of blows given might perhaps reject his mood or his determination to see that the victims should not escape. One does not count his strokes when one commits murder: see Dahyabhai v. State of Gujarat : 1964 CriLJ472 . The number of injuries caused by the accused to his victims does not necessarily prove that the accused was doing the act under some hallucination. It is in the evidence of P.W. 2 Parbat Singh, P.W. 3 Thana Ram. P.W. 5 Ganga Ram and P.W. 6 Jagga that the behaviour of the accused after the commission of the crime was not abnormal. They have precisely stated that his condition did not deviate from that of an average person and that he was keeping quiet and did not run away. Having regard to the facts and the circumstances of the case it cannot be said that the accused was mentally deranged or deluded at the time of the commission of the crime or that he was incapable of knowing the nature of the felony.

25. Illustration (a) to Section 105, Evidence Act reads as under:

(a) A. accused of murder, alleged that by reason of unsoundness of mind, he did not know the nature of the act.' the burden of proof is on A.

26. Whether the prisoner was sane or insane in the legal sense at the time the act was committed is a question of fact and the onus of establishing it lies upon the prisoner; see page 18 Archbold's Pleading. Evidence and Practice in Criminal Cases 32nd Edn. Similarly Sir Stephens in his Text of the Criminal Law 8th Edn. writes at page 7.

The burden of proving that he is irresponsible is upon the accused (person.' The modes of evidencing mental incapacity circumstantially depend upon three classes of facts:

1. the person's outward conduct;

2. pre-existing external circumstances, tending to produce a special mental condition and

3. the prior or subsequent existence of the condition from which its existence at the time in question may be inferred: (Vide Article 227 Wigmore on Evidence Vol. 2).

Almost identical views have been ex-pressed by their Lordships of the Supreme Court in Narain Singh v. State of Punjab : 1964 CriLJ472 (supra) and in K. M. Nanavati v. State of Gujarat : AIR 1962 SC605 . It is true that. the burden of proof which rests upon the prisoner to establish the defence is not as heavy as that which rests upon the prosecution to prove the facts which it has to establish. It may be stated that the burden is not higher than the burden which rests upon the plaintiff or the defendant in civil proceedings and may be discharged by evidence satisfying the court of the (probability of that which the prisoner is called upon to establish see Sodeman v. R. (1936) 2 All ER 1138

Nevertheless the burden is on the accused to show as to how he is entitled to the benefit under Section 84, I.P.C. and this burden the accused in the instant case has totally failed to discharge.

27. In the light of the foregoing discussion we decline to hold that the accused was under mental hallucination or was insane at the time of the commission of the crime in the absence of evidence on the record. We. therefore, maintain the conviction of the accused under Section 302. I. P. C.

28. Coming now to the question of sentence, it may be mentioned that the accused had had no motive to kill his five children. There was no premeditation or pre-arrangement. There is no evidence on the record to show that the accused was either cruel or quarrelsome by nature. It appears that he under a sudden and strong impulse, has committed these murders. The accused had not succeeded in bringing his case within the exception provided in Section 84 of the Penal Code, but the fact still remains that at the time of the occurrence sudden impulse must have visited him and that proved too strong for him to resist. It appears that it was under that impulse that he acted abnormally. These are in our opinion, extenuating circumstances which impel us to modify the sentence passed by the learned Additional Sessions Judge against the accused. We are supported in modifying the sentence by several reported cases where in similar circumstances the accused while found guilty of the offence under Section 302, I.P.C. was awarded life imprisonment: see for instance Kali Charan v. Emperor AIR 1948 Nag 20 12 : 48 Cri LJ 377 and Queen Empress v. Lakshman Dagdu (1886) ILR 10 Bom 512. We. therefore decline to confirm the sentence of death passed by the learned Additional Sessions Judge, Jialore and sentence the accused-appellant Dhanna Ram to imprisonment for life.

29. In the result the reference submitted by the Additional Sessions Judge, Jialore. is rejected. The appeal filed by accused Dhanna Ram is partially accepted. His conviction under Section 302. I.P.C. is maintained. But the sentence of death awarded to him by the trial court is altered to one of imprisonment for life.

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