

Ramlal Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Sep-27-1976

Reported in : 1976WLN624

Judge : V.P. Tyagi, Actg. C.J. and; R.L. Gupta, J.

Appeal No. : D.B. Criminal (Jail) Appeal No. 54 of 1972

Appellant : Ramlal

Respondent : State of Rajasthan

Disposition : Appeal dismissed

Judgement :

V.P. Tyagi Actg. C.J.

1. This appeal of Ram Lal is direct against the judgment of the learned Sessions Judge, Kota dated 1-12-1971, whereby tie accused was convicted of the charge under Section 302 IPC for committing the murder of Omprakash and Ram Narain.

2. The charge against the accused was that on May 31, 1971 at about 12 A.M. the accused came from his village Ganeshpura to village Humav which was situated at a distance of hardly 2 furlongs from his village He was armed with kulhari. The accused sister Kalyani used to live in village Humav. Kalyani when saw her brother coming with a kulhari in his hand rushed back to her house. Omprakash a

boy of 8 years came across the accused in a lane. It is said that accused Ram Lal dealt a kulhari blow on the head of Omprakash with the result that he died of that injury. He then entered the house of Ram Narain who was ailing and sitting on his cot. The accused gave a kulhari blow on the head of Ram Narain also and then ran away with his axe to his village. While he was coming back to the village he threw his axe in the jungle. A report was lodged of this incident at the Police Station Morak within two hours of the incident. The accused was arrested by the Head Constable PW 3 Shri Yashwant Rai from his house where he was locked by the villagers in a kotha. The post mortem on the dead body of Omprakash was performed by Dr. Rameshwar Vijay, whose statement was recorded in 'he committing court and brought on the record as Ex. P 11. The Doctor found one injury on the head of the deceased. The size of which was 3' x 1' x 1 1/2'.

In the opinion of the doctor the death was caused due to head injury and shock. Ram Narain was also examined by the same doctor and he was found to have sustained a compound fracture 3' x 1/4' x 1' on the scalp right temporal bone. In the opinion of the doctor this injury was also caused by blunt weapon. The brain matter was found coming out of the wound and chips of bone were also seen protruding. Ram Narain survived the injury and died after about 2 months, but his body was not subjected to any post mortem examination nor did the prosecution lead any evidence to prove the cause of the death of Ram Narain.

3. A challan was put up in the court of the Munsiff-Magistrate Ramganj Mandi, who after taking committal proceedings sent the accused for trial to the Court of Sessions Judge.

4. The prosecution examined as many as 19 witnesses and brought on the record as evidence the statement of the Doctor, recorded by the committing Magistrate.' The accused in his examination under Section 342 Cr. P C admitted to have inflicted the head injury with his axe on the head of the deceased Omprakash but refused to have caused any injury to Ram Narain. The accused pleaded that it was in insane state of mind that he caused injury to Omprakash. He however did not produce any defence evidence.

5. The learned Sessions Judge after carefully going through the record came to the conclusion that the author of the fatal injury on the head of Omprakash was none but the accused and that the injury was caused when he was quite in senses. The plea of insanity was discarded by the learned trial Judge. The finding was also recorded that the injury on the head was caused to Ram Narain by the accused and therefore the accused was held guilty for causing death of both Omprakash and Ram Narain. It is against this judgment that the present appeal has been preferred before this court by the accused appellant.

8. Learned Counsel appearing on behalf of the accused appellant assailed the judgment of the trial court mainly on 2 grounds viz: (1) that there is no evidence on the record to show that the death of Ram Narain had taken place on account of the injury caused by the accused appellant on his head and therefore conviction of the accused for causing the death of Ram Narain cannot be sustained, (ii) The plea of insanity at the time when injury was inflicted on the head of the Omprakash was erroneously discarded by the trial court. According to the learned Counsel, accused is entitled to take the benefit of Section 84 of the Penal Code and on that ground it is prayed that the conviction of the accused be quashed.

7. It is admitted by the learned Public Prosecutor that the prosecution did not lead any evidence to show the cause of the death of Ram Narain whose body was not subjected to the post mortem examination & therefore, it is candidly conceded by Dr. Tiwari, and in our opinion rightly so, that the appellant cannot be held responsible for the death of Ramnarain. In the absence of any evidence it is difficult for us to say that Ramnarain died of the injury sustained by him at the hand of the accused. The conviction of Ram Lal for the murder of Ramnarain cannot therefore be sustained.

8. Coming to the second argument our attention has been drawn by the learned Counsel for the appellant to the observations of the Learned Judges in *Ratan Lal v. The State Madhya Pradesh* : 1971 CriLJ654 , *Dahyabhai Chhaganbhai Thakkar v. State of Gujrat* : 1964 CriLJ472 . *Mst. Shanti Devi v. The State* : AIR1968 Delhi177 . *Unniri Kanan v. The State* : AIR1960 Ker24 , and *Choteylal v. State* AIR 1956 Bhopal 57 to show that the appellant should have been declared insane at

the time of the incident, In this connection the statement of PW 13 Shri Manna Dass was pointedly read out to us. This witness was examined by the prosecution as a motbir witness to prove the recovery of the axe Ex P. 12. In his cross examination Manna Das has stated that Ram Lal was known to him from before and it was in his knowledge that he used to have fits of insanity twice or four times in a month the also deposed that accused in the stage of insanity h d also killed a lady in the past by pelting stone at her. The people of village used to put him in a closed door for 4 or 5 days when be used to have the fits of insanity. It is also there in his statement that on the day of incident Ram Lal was kept in a closed room but he managed to come out from that room by jumping the roof and killed Omprakash. He however male it clear that he had not seen himself the accused jumping from the roof. PW 5 Nanda has stated in his cross examination that he did not know whether the accused used to have epileptic fits or not, but on the day of the incident he had seen the accused running towards his house striking his axe against the ground. On the basis of these two statements it has been urged by Mr. Tikku that the conduct of the accused before and after the incident clearly indicated that he was not a sane man when be committed the crime and it was on account of toe insanity that without understanding the consequence or his action the accused dealt a kulhari blow on the head of Omprakash.

9. Learned Public Prosecutor vehemently opposed the plea of Insanity and brought to our notice the statements of some of the near relatives of the accused who have categorically stated that the accused on the day of incident was in his senses. P W 7 Shri Gheesi who has categorically stated that Ramlal was in his senses and he was never observed to be having epileptic fits. PW 9 Kajori alias Unkar who is the maternal aunt of the accused has unequivocally deposed that Ramlal was never found insane nor did he suffer from epileptic fits. Similarly PW 10 Suraj Mal has deposed that he had never seen the accused in state of insanity.

10. This matter came up before Lodha, J. In chamber on 10.8.1972 and he called for the report of the medical expert on mental disease after having a closer and careful examination of the accused who her the convict has ever been the victim of epileptic insanity during the period of his undergoing the sentence. Dr. G.S. Sharma Psychiatric Centre Jaipur has vide his report dated 23 3 1976 certified that

Ram Lal is a case of Epilepsy with Mental Retardation. His M.A. is 5 years and I.Q. is 35 and falls into the category of Severe Subnormality. During the course of his treatment Ram Lal was sent to the Mental Hospital as a mental case but there it was found that he did not require any psychiatric treatment. This report provided a clue to the learned Counsel for the appellant to submit before us that It is a case of epileptic insanity and therefore, conviction of the accused should be quashed.

11. Dahyabhai Chhaganbhai v. State of Gujrat : 1964 CriLJ472 is the basic authority of the Supreme Court on the question as to when the plea of the insanity should be accepted by the Courts under Section 84 of the Penal Code, the learned Judge observed:

that when a plea of the 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 of 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.

12. This Principle was reiterated by their Lordships of the Supreme Court in Ratan Lal v. State of Madaya Pradesh : 1971 CriLJ654 . In the light of these observations of the Supreme Court we examined the conduct of the accused prior and also soon after the incident, and we found that there is nothing on the record to show that accused had suffered in any manner with insanity and behaved like an insane person on the day of the occurrence. No doubt PW 13 MannaDas has stated that the accused had previously hit a lady with a stone and killed her but he did not disclose the Dime of that lady nor did he furnish any detail about that incident. Mere mentioning of such an incident in a vague manner cannot provide any example of the previous conduct of the accused which may show that he really acted like an insane person. Even after the incident there is nothing on the record to suggest that the incident had taken place during the insanity of the accused On the contrary we find that Ram Lal after hitting his victim with his axe ran away to

his own village situated at a distance of 2 furlongs, and while doing so he threw his kulhari the Jungle with a view to screen the easily available evidence against him. This act of the accused shows that he was conscious of the fact that the kulhari could be used as an evidence against him and therefore he threw it in the jungle. This circumstance demolish is the theory of insanity pleaded by the accused. The statement of PW 13 Manna Das does not inspire any confidences and cannot therefore be relied to establish the plea of insanity.

13. It was next argued that the prosecution has filed to prove any motive on the part of the accused to kill Om Prakash a lad of 8 years only, and therefore, the absence of motive leads to no other inference 'except that the act of murder was committed by the person who was not sane. In support of this plea reliance has been placed on Mst. Shanti Devi v. The State : AIR1968 Delhi177 , Unniri Kanan v. The State : AIR1960 Ker24 . In Sjanti Devi's case : AIR1968 Delhi177 the mother had killed her child. In the circumstance of that case the absence of motive on the part of mother killing her child can of course give indication that the mother was not acting as a sane person while killing her own child & therefore the observation of the learned Judges in the circumstances of that case could hardly be of any avail to the accused appellant Similarly in the case of Unniri Khana v. The State AIR 1960 Kerala (Kerala Case) the son had killed his mother & therefore the relationship of the mother and the son did provide a clue to the court to hold that in the absence of any motive the act could be committed only by an insane person. In the instant case we do not find any such relationship between the victim and the killer and therefore, the absence of motive would hardly play any role to lead to the conclusion that the act of the accused was that of an insane person. In Chhotey Lal v. State AIR 1956 Bhopal 57, the prosecution witnesses made statement favourable to the accused showing that the accused was cot mentally fits. In this circumstance the learned Judge held that it was wrong to dicard the statement of the prosecution witnesses on a mere supposition that they may be helping the accused. In the instant case except PW 13 Shri Manna Dass who was examined by the prosecution to prove the recovery memo Ex. P 12, no other prosecution witness has given out that the accused was an insane person. No doubt the doctor's observation of the conduct of the accused in jail shows that the accused was a patient of ton epileptic fits but this fact alone is not sufficient to

hold him insane at the time of the commission of heinous crime. There is no evidence worth the name to show that the accused was acting in a state of hallucination or under the influence of epileptic insanity.

14. Modi in his book Medical Jurisprudence describes the nature of epileptic insanity thus:

The disease is generally characterised by short transitory fits of uncontrollable mania followed by complete recovery. The attack shows ever become more and more frequent. Lastly there is general impairment of the mental faculties with loss of memory and self-control. At the same time hallucinations of sight and bearing occur and are followed by delusions of a persecuting nature.

Epileptic insane persons are deprived of all moral sensibility, are given to the lowest forms of vice and sexual excesses and are sometimes dangerous to themselves as well as to others. In many long standing cases there is usually feeble-mindedness leading to progressive dementia of the most degraded character.

True epileptic insanity is that which is associated with epileptic fits. This may occur before or after the fits, or may replace them, and is known as pre-epileptic insanity, post epileptic insanity and masked or psychic insanity.

Pre-Epileptic insanity is very common and may replace the epileptic aura, lasting in some cases for hours or even days. It is characterized by violent fits of maniacal excitement or by depression, fustian, suspiciousness and general malaise. Hallucinations of various kinds are experienced and, owing to delusions, the patient may commit violent assaults, or may bring false charges against innocent persons. Sometime, the patient may refuse to take any food.

15. There is not an iota of evidence on the record to show that pre-epileptic insanity had taken ever the accused before the incident took place. In these circumstances, we are not convinced by the argument advanced by Mr. Tikku that whatever was done by the accused was the influence of the epileptic Insanity.

16. The accused had himself admitted in his examination under Section 342 Cr. P.C. that he had inflicted head injury on the deceased Omprakash. This fact has also been established beyond all reasonable doubt by the prosecution witnesses. In these circumstances, he cannot escape the consequences of what he has consciously done.

17. The appeal therefore, fails and is hereby dismissed. The appellant is however acquitted of a charge for committing the murder of Ram Narain.

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