

In Re: Govindaswami

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Court : Chennai

Decided On : Jul-16-1964

Reported in : 1965CriLJ44

Judge : Anantanarayanan and ;Natesan, JJ.

Appellant : In Re: Govindaswami

Judgement :

Natesan, J.

1. One Govindaswami, who has been convicted and sentenced to imprisonment for life under Section 302, I. P. C. for the murder of his father, Kondathu Gounder, is the appellant.

2. That Kondathu Gounder died of homicidal violence at the hands of the accused prisoner, is established beyond reasonable doubt by the evidence on record. The real question for consideration, however, is whether the appellant is entitled to the benefit of the exemption provided in Section 84, I. P. C.

3. The deceased, Kondathu Gounder, first married one Kaveri, by whom he had two daughters, Venkatammal and Saraswathi, and two sons, Govindaswami (accused) and Gopal (P. W. 5). The daughters are not yet married, On the death of Kaveri about 10 years prior to the occurrence, he married her sister, Rajammal (P. W. 1). P. W. 1 speaks to the relevant circumstances preceding the occurrence.

The deceased is stated to have sold about 13 acres of fertile land of the family out of the 30 acres owned to P. W. 1, and this was resented by the accused. P. W. 1 states that the accused beat her on two or three occasions, and her husband, the deceased not being able to control the accused, she left for her father's house at Sadimugai, 12 miles from Kothamangalam. Proposals for the marriage of the two daughters had been made. The eldest daughter was to be married to her brother and the next one was to be married to P. W. 2, The deceased and his children were living at Karachikori near Kothamangalam about one mile from Chakkilian Thottam which had been sold to P. W. 1. There is evidence that the accused used to pester P. W. 1 even at her father's place, and a week before the occurrence he had stayed there for about 3 or 4 days worrying her for his share in the Chakkilian thottam and desiring that he should be got married. P. W. 1 appears to have pacified him, promising to do the needful after the daughters were got married. P. W. 1 deposes that the accused left the place with threats of violence to her and her husband.

4. P. W. 2, who is an eye-witness to the occurrence, speaks to his being with the accused and the deceased at Chakkilianthottam on the night of the occurrence, He had gone to meet the deceased for settling the marriage, and, all the three went to the Thottam to sleep there. On the way, the accused demanded of his father (the deceased) his share. P. W. 2 states that the deceased said that he would give a share after the two daughters were married and not before. The demand of the accused for a sum of Rs. 2,000 to start a tea and biscuit shop was also overruled by the deceased, who asked him to work on the land till the two daughters were married. All the three, the deceased, the accused and P. W. 2, went to bed at the Kalam in Chakkilian thottam. There was an electric light burning. The deceased slept on a mat north of the place where the accused went to bed, about 6 feet from the accused. P. W. 2 slept on a cot about six feet to the south of the accused.

At about 4 a.m. he heard a noise and waking up saw the accused cutting the deceased with an aruval at the place where the deceased was sleeping. He saw him deliver two cuts on the neck of the deceased. P. W. 2 deposes that, when questioned, the accused moved towards him with the aruval, and getting

frightened he took up a stick, M. O. 1, and wielding it ran away to the Shalai in a field about 1 1/2 furlongs away and woke up P. W. 3 and P. W. 4. At day break, P. W. 2 came to the scene of occurrence along with P. W. 3 and P. W. 4 and found the deceased lying dead with injuries. The accused was not there. Immediately P. W. 2 met P. W. 5, another son of the deceased and informed him of what all happened. Then he gave information to the village munsif of Bagadathorai, P. W. 10. The first cousin of the deceased, P. W. 6, came to know of the occurrence from P. W. 5 at about 7 a.m. and he reported the occurrence to the village munsif of Kothamangalam (P. W. 7).

5. It is needless to refer to the further steps taken by the authorities in the matter of investigation and apprehension of the accused. The accused was arrested by P. W. 11 the next day, i.e., 31-10-1963 at Cithailaikutti forest. On autopsy conducted by P. W. 8, the Medical Officer attached to the Government Hospital Satyamangalam, seven incised wounds and two lacerated wounds were found on the body of the deceased. Injury No. 6, a lacerated wound 5' X 4' X 3/4' on the left side of the neck showed that internally the external jugular vein, the internal jugular vein, external and internal carotid arteries had been cut. There was also fracture of the 4th and 5th cervical vertebrae and those bones had been broken into multiple pieces. P. W. 8 deposes that injury No. 6 is necessarily fatal and death would have been instantaneous.

6. In the committal Court, the accused admitted that he cut his father. He admitted that on the way to Chakkoliah thottam, he had asked for partition of the shares and for money to open a shop and that he (deceased) refused. When questioned in the Sessions Court, under Section 342, Crl. P. C. he stated that the deceased was not his father, that the deceased had told him that he should go away and do work, that the deceased gave him trouble and said that he was mad, and that he took him to Tirumugan temple and kept him there and wanted him to be killed and that he was found to be sane. He, however, admits that he had asked the deceased to provide him with a shop, but would state that the deceased said that the accused was not in proper senses and should be taken to Kuriamuthur. The accused admits all the three (P. W. 2, the deceased and the accused) going to bed at the kalam on the night of the occurrence, However, he says that, at about 8 p.m. P. W.

2 and the deceased brought an aruval and woke up the accused and that the deceased aimed a cut at him and that he snatched the aruval from the deceased and cut him. The deceased got up and pushed him and P. W. 2 went to the Shalai; and he went to Karachikorai and then to Chithalakuttai forest. He states that when he cut the deceased, he was not dead, that the deceased pushed him aside and that he did not know other things. He would have it that his father was one Kandaswami Gounder, that he was no more and that the deceased was the Pannaiyal of his father.

7. It may be noticed here that there was no suggestion to P. W. 1, the sister of Kaveri who was admittedly the mother of the accused, that the deceased was not the husband of Kaveri. No such suggestion has been made to P. W. 5, the brother of the accused, and in the committal Court, the accused admitted that the deceased was his father. That apart for the consideration of the question whether the accused is guilty under Section 302, I. P. C. it is immaterial whether the deceased was the father of the accused or not. Equally unsubstantiated is the other new case attempted at the trial that the deceased tried to strike the accused with an aruval and that the accused snatched the aruval and cut the deceased. P. W. 2, who is admittedly an eye witness to the occurrence, has not been put any question on this aspect of the matter; and this case also does not find a place in the answers given by the accused, when examined in the committal Court. P. W. 2, the eye witness, and P. W. 3 and P. W. 4, who affirm P. W. 2's reporting to them about the occurrence, have no ill-will towards the accused to perjure against him and to implicate him for the offence of murder. On the facts established, P. W. 2 had ample opportunity to witness the occurrence. An electric light was burning near the scene of occurrence and even admittedly he had gone to bed with the accused and the deceased.

8. To take up for consideration the question whether the accused was mentally unsound; P. W. 1, in cross-examination, admits that 7 or 8 months previously the accused used to run away from the house, while he was demented. She states that she was not an eye-witness to that. P. W. 1 deposes that the accused was chained in some coil and given some theertham but no medicines were given and that she had not been there. She states that the, accused went to her house one

week before the occurrence, when he was in a sound state of mind. P. W. 2 denies that the deceased stated 'he (accused) is mad, he should be driven away'. To the only question put to P. W. 3, in cross-examination, he has stated that the accused and his father were on good terms, so far as he knew. The only other person who has been questioned about the sanity of the accused is P. W. 5, the brother of the accused, aged about 20. He states that the accused has studied upto S. S. L. C. class. He deposes, in cross-examination, that 7 or 8 months prior to his giving deposition (prior to January 1964) the accused was demented, that he had been taken to the kovil that he was not put in chains, that he was demented for 1 1/2 months, that he was not taken to a doctor and that he was slightly better than before. He states that the accused was doing attakasa and was going away and coming back and would not sleep well. He admits that he cannot say that the accused is half-mad. He did not know whether the accused would get beating, from others.

9. The learned Sessions Judge remarks that the accused looked a little saturnine but was certainly sane. Now all that is found in the evidence is that, about several months back, the accused was in a demented condition and had been taken to Thirumuruganpoondi and kept there for a time. According to P. W. 5, he was demented for about 1% months, 7 or 8 months prior to his giving deposition in January 1964. That takes one to June 1963. The occurrence was on 30th October 1963, and, at any rate, on the evidence of P. W. 5, by August the accused had got better. The evidence is not clear as to what exactly was the mental condition of the accused, during the period of dementia. The evidence does not show that at any time immediately preceding the occurrence, the accused was of unsound mind, and there is nothing on record to show that the subsequent mental history of the accused is anything not normal.

10. To attract the provisions of Section 84, I. P. C. it must be established that the person, at the time of doing the act, was, by reason of unsoundness of mind, incapable of knowing the nature of the act or that he was doing what was either wrong or contrary to law. It must be clearly established that, when the act was committed, the accused was labouring under such a defect of reason as not to know the nature and quality of the act he was doing or if he did know it, that he did

not know he was doing what was wrong. Merely establishing that sometime prior to the occurrence the accused had suffered from derangement of the mind and that even subsequently he had behaved in a strange manner or had been taciturn, moody or saturnine will not be sufficient to bring his case under the exemption. In *Queen Empress v. Katlar Nasyer* ILR 23 Cal 604 , it was made out in evidence that the accused had been suffering from mental derangement for some months prior to the day of the occurrence that he was often complained of pain in his head and that on one occasion he was seen eating potsherds. It also appeared from the evidence that, when the enquiry, preliminary to the commitment, was taken up, he was found not to be in a fit state of mind to be able to make his defence and the enquiry had to be resumed after more than a year. The murder, it was found, was committed without any sane motive.

After referring to the burden of proof under Section 105 of the Evidence Act, with reference to Section 84, I. P. C. it was observed as follows;

This provision of our law, which is in substance the same as that laid down in the answers of the Judges to the questions put to them by the House of Lords in *McNaghten's* case shows that it is only unsoundness of mind which materially impairs the cognitive faculties of the mind that can form a ground of exemption from criminal responsibility, the nature and the extent of the unsoundness of mind required being such as would make the offender incapable of knowing the nature of the act, or that he is doing what is wrong or contrary to law. Instances of unsoundness of mind of this description would be such as these : A person strikes another, and in consequence of an insane delusion thinks he is breaking a jar. Here he does not know the nature of the act. Or he may kill a child under an insane delusion that he is saving him from sin and sending him to heaven. Here he is incapable of knowing by reason of insanity that he is doing what is morally wrong. Or he may under insane delusion believe an innocent man whom he kills to be a man that was going to take his life; in which case, by reason of his insane delusion, he is incapable of knowing that he is doing what is contrary to the law of the land.

On the facts of the case, it was held, that it had not been shown that the accused, at the time he killed the child, was, by reason of unsoundness of mind, incapable of knowing the nature of the act In State of Madhya Pradesh v. Ahmadulla : [1961]3SCR583 , it was affirmed that the burden of proof that the mental condition of the accused was, at the crucial point of time such as is described by Section 84 lay on the accused who claimed the benefit of this exemption. Their Lordships quoted with approval a passage in Henry Perry, 14 Cr. Ap, Rep. 48, the decision of the Court of Criminal Appeal in England, where the learned Chief Justice said:

Every man is presumed to be sane and to possess a sufficient degree of reason to be responsible for his acts unless the contrary is proved To establish insanity it must be clearly proved that at the time of committing the act the party is labouring under such defect of reason as not to know the nature and quality of the act which he is committing, that is, the physical nature and quality as distinguished from the moral or, if he does know the nature and the quality of the act he is committing that he does not know that he is doing wrong.

Judged in the light of the above principles, there is no basis, on the evidence in this case, for a finding that, at the time of the occurrence, the accused was of unsound mind incapable of knowing what he was doing or that he was doing wrong, The evidence makes it clear that the accused perfectly understood what he was about. The learned Additional Sessions Judge observed that the accused looked a little saturnine; if by that it is meant that he was grave or gloomy it means little. He has been guilty of a heinous offence-patricide, and remorse must be on him. He has attempted to cover up the enormity of the crime by stating that the deceased was not his father. 'P. W. 1 and P W. 2 are emphatic about the sane mental condition of the accused, about the time of the occurrence.

11. We are satisfied that, the circumstances attending the murder, which have been established, go to show that the accused, who had been denied, an immediate partition and also denied Funds for starting some business and who had a grouse against his step-mother in whose favour his father had transferred valuable lands, has deliberately committed the crime knowing what he was about and that he was doing wrong.

12. The conviction under Section 302, I. P. C. and the sentence of imprisonment for life, which is the only sentence besides the sentence of death which the law prescribes for an offence under that section, are both confirmed, and the appeal is dismissed.

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