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In Re: Pappathi Ammal

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Court : Chennai

Decided On : Oct-27-1958

Reported in : AIR1959Mad239; 1959CriLJ724

Judge : Somasundaram and ;Ramaswami, JJ.

Acts : Indian Penal Code (IPC), 1860 - Sections 84 and 302; Evidence Act, 1872 - Sections 105

Appeal No. : Criminal Appeal No. 204 of 1958

Appellant : In Re: Pappathi Ammal

Advocate for Pet/Ap. : G. Gopalaswami and ;V. Gopinathan, Advs.;Public Prosecutor

Judgement :

Ramaswami, J.

1. This is an appeal preferred against the convictions and sentences by the learned Sessions Judge of Madurai Division in Sessions Case No. 163 of 1957.

2. The facts are brief. The accused Pappathi Animal is the wife of P.W. 1. They have been living with their children in a compound where there arc 4 or 5 hours, Pappathi Ammal had been confined within four weeks before the commission of this offence. It would also appear that she was unwell from diarrhoea and fever

after child birth. On account of the poverty and inability to secure other help she had to do her household chores. Therefore, she seems to have been depressed and fed up with her life.

3. On the night of 28-10-1957 the landlady P.W. 2 heard the noise of a splash and she woke up and found lights burning in the house of the accused. Therefore, she went and woke up P.W. 1, the husband of the accused, and told him what she had heard. They found the accused missing. They started searching the compound. Then they heard a noise from within the well. They found the accused within the well. They raised an alarm. A crowd of people gathered. A ladder was brought and set inside the wed.

The accused came out of the well climbing the ladder. On coming out of the well she was enquired about the child. The accused stated that the child was inside the well. Thereupon P.W. 1 made a written report to the Police at 7-30 A.M. in the morning. The Police came to the spot, took out the child whose legs were protruding over the surface of the water in the well. Inquest was held and Investigation followed. The accused was charge sheeted for the murder of the! child and for attempt-ling to commit suicide.

4. These facts are spoken to by the husband Of the accused P.W. I, the landlady P.W. 2 and the other people who came there P.Ws. 3 to 5 and the Doctor P.W. 6 who spoke to the death of the child due to asphyxia due to drowning.

5. The case set up for the accused was that she was a sleep walker or somnambulist, that during such sleep walking she must have walked into the well with the child and that by reason of that somnambulism when the offence was committed, the accused would be entitled to the benefit of section 84 I.P.C.

6. The learned Sessions Judge disbelieved as a fact the somnambulism attributed to the accused and secondly that somnambulism would not amount to that unsoundness of mind and incapacity of knowing the nature of the act or knowing what she or he was doing was either wrong or contrary to law, contemplated under Section 84 I.P.C. The learned Sessions Judge therefore convicted the accused under Section 302 I.P.C. and sentenced her to imprisonment for life. He also

convicted her under Section 309 I.P.C. and sentenced her to simple imprisonment for one year. The sentences were made to run concurrently.

7. Three points which fall for determination in this appeal are: whether the accused was a somnambulist at the time of the commission of the offences; secondly, whether somnambulism would amount to that insanity contemplated under Section 84 I.P.C. and thirdly, the scope and extent of the plea of insanity open to the accused in the circumstances of this case.

8. Point 1:-- It has not been shown as a fact that the accused was a somnambulist or a sleep walker. P.W. 1 the husband of the accused first stated in chief-examination:

'My wife had been possessed by bad devils in 1953. She was treated by magician and she became alright. After that she used to get bewitched at intervals. When she is treated she would get better. She was 'alright after delivery till about 4 days before the incident. From four days before the incident she was not alright in her mind and had fever'.

Then he was treated as hostitle and cross-examined by the Public Prosecutor. Then he stated:

I have not stated therein (Ex. P-1 the complaint) that the accused was possessed by devils .....I told the petition writer even before writing that my wife was insane, He omitted to write it. ....It is not true to say that after delivery my wife was suffering from diarrhoea and was taking medicine as out-patient. I did not say so in my statement to the Police. (He has stated). It is not true to say that in order to save the accused from punishment that I say her mind was not alright and she had been possessed by devils'.

The idea of suggesting sleep-walking came after the cross-examination by the Public Prosecutor was over. To the questions put on behalf of the accused P.W. 1 stated:

'She (accused) used to carry the child and go out during nights even when she was sleeping .... Two or three days before the incident, the accused carried away

the baby during a night. After that I was not giving the child to her ..... I used to bring her back and the child'.

This is all the evidence regarding the sleep walking of the accused and it cannot be said that the accused has been shown to be a somnambulist. It was not mentioned in the earliest report which would have been the case if it were true. In fact even before PW. 1 became hostile this idea did not emanate. It was only after he turned hostile and on the wife's instructions questions were put to P.W.1 and the learned advocate for the accused was armed with a copy of Modi's medical jurisprudence in the Sessions Court for the first time this suggestion came to be made. If really this accused had been a somnambulist it would have been known to others and that has not been the case here. Therefore, it may be taken as established that the somnambulism of the accused has not been proved as a fact.

Point 2 : Somnambulism is the unconscious state known as sleep walking and its characteristics are thus set out in Modi's Medical Jurisprudence and Toxicology, Twelfth Edition, page 399:

"This is an abnormal mental condition, and means walking during sleep. In this condition the mental faculties are partially active and are so concentrated on one particular train of ideas that a somnambulist is capable of performing most remarkable and incredible pieces of work, which would have baffled his intelligence during his waking hours. A somnambulist may thus solve a very difficult problem or may commit theft or murder. A parson who is the victim of a somnambulistic habit has generally no recollection of the events occurring during the fit after he awakes. In some cases he remembers the events of one fit in subsequent fits and follows them with exact precision, though he forgets them in the normal state.

Somnambulism forms a very good plea of defence for exemption from criminal liability, if it can be proved that the accused committed the offence during the fit.....'

R.C. Ray's Outlines of Medical Jurisprudence (with special treatment of toxicology and insanity), Sixth Edition, at page 455 has the following to say:

'This condition is common in childhood and youth, and it may also be induced by hypnotism. While in this condition the higher (intellectual) centres activate partially to one train of impressions, the result being elaborate physical and intellectual feats, performed in perfectly rational manner, the brain being inactive to other impressions. Homicides and suicides may thus be effected. Their eyes are open and pupils dilated, the individual perceiving object in very scanty light. The tactile sense becomes acute, though there may be analgesia and somnambulists may hear and respond to verbal sounds. Somnambulists remember their dreams, but not their motor acts; whereas, after recovery from insanity, events may be partly recalled. No responsibility attaches to their acts. To rouse them from their state, resort to flagellation, venesection, faradism.'

M, A. Kamath's Medical Jurisprudence, Fifth Edition (M. L. J. publication) at p. 375 :

'Somnambulism (or walking in sleep) is an abnormal condition allied to epilepsy and the artificially induced state of mesmerism or hypnotism. In this condition the higher or intellectual nerve centres appear to be in a state of partial activity only; or, as in the higher form of somnambulism, in a state of full activity to one particular train of impressions, but inactive as regards others. In this condition while bent on in accomplishing one object very elaborate acts may be performed and dangerous ground traversed heedlessly, which would ordinarily baffle his intelligence in the waking state. Hence the mere fact of the performance of such an act does not of itself indicate that the higher or intellectual nerve centres were in full activity at the time of its performance. This is obviously of much medicolegal importance, seeing that such acts, done during a condition of partial activity only of these higher centres, may result in the death or injury of others, and form the subject of a criminal inquiry.

A person who is the victim of a somnambulistic habit has generally no recollection of the events occurring during the fit after waking up.

A question has been raised as to the responsibility of the somnambulist for acts committed during the fit, on the ground that what is done in the fit being often only the accomplishment of a project formed while awake, he ought to be held

responsible, This is a gratuitous assumption that cannot be seriously entertained, till some fact shall have been advanced in its support. If such a question of responsibility should arise, it ought to be shown that the somnambulism was not feigned and that the accused was subject to it. And if somnambulism be proved the accused is exonerated from responsibility for any criminal act; and this is also the case if the person (the somnambulist) be suddenly roused from a deep sleep.'

(See also Dr. Sir Hari Singh Gour's The Indian Penal Code, 6th Edition, Vol. I Topic-Somnambulism (22) at page 322),

9. Bearing these medical observations in mind, though there is no decided case-law on the, subject, somnambulism if proved will constitute that unsoundness of mind, attracting the application of Section 84, I. P. C,

10. Though the law relating to insanity as a defence in England, America and in India stemmed from the same source and was crystallised in the Mcnaughton Rules, important variations have developed now.

11. In legard to the law prevailing in England before the Homicide Act of 1957, the following information can be gathered regarding insanity as a defence from Dr. Kenny's Outlines of Criminal Law, Fifteenth Edition, page 58 and following. English law, even in its harshest days, recognised insanity as a possible defence. On the other hand, it has never held (as a popular error imagines it to hold) that the mere existence of any insanity whatever will Suffice to exempt the insane person from criminal responsibility.

Only insanity of a particular and appropriate kind will produce exemption. For lunatics are usually capable of being influenced by ordinary motives, such as the prospect of punishment; hence they usually plan their crimes with care, and take means to avoid detection. Hence English Criminal Law divides insane persons into two classes; (a) those over whom the threats and prohibition of the criminal law would exercise no control, and on whom therefore it would be gratuitous cruelty to inflict its punishment; and (b) those whose form of insanity is only such that to use Lord Bramwell's apt test --'they would not have yielded to their insanity if a policeman had been at their elbow.'

But the very difficult question as to where the line of demarcation should be drawn between the two classes, is one upon which the law has undergone grave though gradual changes, Two centuries ago a view prevailed that no lunatic ought to escape punishment unless he were so totally deprived of understanding and memory as to be as ignorant of what he was doing as a wild beast. But ever since the epoch-making speech of Erskine in defence of Hadfield, a move rational view has prevailed; which bases the test upon the presence or absence of the faculty of distinguishing right from wrong in the crime committed.

This modem view has acquired a degree of authoritative precision unusual for any common law doctrine; through its formulation in art abstract shape, in 1843, by a set of answers delivered by the judges in reply to questions propounded to them by the House of Lords. One Daniel Mc Naughton had aroused public excitement by the murder of a Mr. Drummond, the Private secretary of Sir Robert Peel, in mistake for that statesman.

The acquittal of McNaughton on the ground of insanity provoked such widespread dissatisfaction that it became the subject or debate in the House of Lords (though the case never came before the House in its judicial capacity). In consequence of the debate, the Lords submitted to the judges certain abstract questions respecting persons afflicted with insane delusions. The replies given by the judges may be summed up thus:

(i) 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 the statisfaction of a jury.

(ii) To establish a defence on the ground ot insanity, it must be clearly shown that, at the time of committing 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 quality of the act he was doing, or (if he did know this) not to know that what he was doing was wrong morally.

(iii) As to his knowledge of the wrongfulness of the act, the judges say: 'If the accused was conscious that the act was one which he ought not to do and if that

act was at the same time contrary to the law of the land, he is punishable. Thus the test is the power of distinguishing between right and wrong, not, as was once supposed, in the abstract, but in regard to the particular act committed.

(iv) Where a criminal act is committed by a man under some insane delusion as to the surrounding facts, which conceals from him the true nature of the act he is doing, he will be under the same degree of responsibility as if the facts had been as he imagined them to bo. He may, for instance, kill under the imagination either that he is an executioner lawfully carrying out a judicial sentence; or on the other hand, merely that the person killed had once cheated him at cards.

'The test of criminal responsibility laid down in McNaughten's Rules,'' as pointed out in the Report of the Royal Commission on Capital Punishment (1949-1953) published by her Majesty's Stationery Office, London, as Command Paper 8932, at page 79 and following was strongly attacked almost as soon as it was formulated, mainly by members of the medical profession, but also by lawyers, notably by Fitzjames Stephen, and it has been subjected to constant criticism ever since.

A more detailed account of the history of this controversy will be found in Appendix 8(d). It may here suffice to say that the objections of doctors with experience of mental disease have remained in substance unchanged throughout the last hundred years. Briefly, they have contended that the McNaughton test is based on an entirely obsolete and misleading conception of the nature of insanity, since insanity docs not only, or primarily affect the cognitive or intellectual faculties, but affects the whole personality of the patient, including both the will and the emotions.

An insane person may therefore often know the nature and quality of his act and that it is wrong find forbidden by law, but yet commit it as a result of the mental disease. He may, for example, be overwhelmed by a sudden irresistible impulse; or he may regard his motives as standing higher than the sanctions of the law; or it may be that in the distorted world in which he lives, normal considerations have little meaning or little value. Most medical men would take the view that in the violent acts of an insane man his insanity has been, as a general rule, an essential

and predominant cause, and that therefore he should not be judged by the same standards as normal men.

The medical view was well put as long ago as 1883 by Stephen:

'A delusion of the kind suggested never, or hardly ever, stands alone, but is in all cases the result of a disease of the brain, which interferes more or less with every function of the mind, which falsifies all the emotions, alters in an unaccountable way the natural weight of motives of conduct, weakens the will, and sometimes, without giving the patient false impressions of external facts, so enfeebles every part of his mind, that he sees and feels, and acts with regard to real things as a sane man does with regard to what he supposes himself to see in a dream.'

Stephen indeed maintained that a person who is prevented by mental disease from controlling his own conduct cannot be said, in the true sense of the words, to 'know the nature of his acts', and that he is therefore not criminally responsible under the existing law as formulated in the McNaughten Rules. This somewhat strained and artificial interpretation of their language has not, however, found favour with the judiciary, or with members of the legal profession generally.

Most lawyers have consistently maintained that the concept of an 'irresistible' or 'uncontrollable' impulse is a dangerous one, since it is impracticable to distinguish between those impulses which are the product of mental disease and those which are the product of ordinary passion, or where mental disease exists, between impulses that may be genuinely irresistible and those which are merely not resisted. They have held that such cases are not covered by the existing taw and that it would be undesirable to enlarge the M'cnaughten formula so as to exempt them from responsibility.

Yet although case-law and the general trend of legal discussions have firmly rejected Stephen's interpretation, the courts have developed in practice an elasticity of the sort he was seeking. As long ago as 1896, a committee of the Medico-Psychological Association observed that the judges generally have not hesitated so to interpret the law as to bring within its exonerating scope cases in which its narrow literal interpretation would have had a different result, and where

it is clear that the prisoner is insane and that his crime was due to his insanity, the Rules have often been so construed or so avoided as to dispose satisfactorily of the cases which come before the courts.

Whatever modifications of practice there may have been, the law has remained in substance unchanged since 1843. The M'Naghten Rules were accepted by the courts, in a number of nineteenth century cases, as laying down the law of England with regard to the relation between insanity and criminal responsibility. In the present century the Court of Criminal Appeal has consistently upheld the validity of the Rules and refused to approve their extension to cover the 'irresistible' or 'uncontrollable' impulse: R. v. Smith, (1910) 5 Cr. App. Rep. 123; R. v. Alexander, (1913) 9 Cr. App Rep. 139; R.v. True, (1922) 16 Cr. App Rep. 164; R. v. Quarmby (1921) 15 Cr. App Rpp. 163; R. v. Kopsch, (1925) 19 Cr. App Rep. 50; R. v. Flavell, (1926) 19 Cr. App Rep. 141; Soderman v. R. (1936) WN 190; R. v. Windle, (1952) 36 Cr. App Rep. 85. The Court has also declined to enlarge their interpretation in other respects. Thus it has held that the words 'the nature and quality of the act' must be taken to refer only to the physical character of the act and not to distinguish between its physical and moral aspects, and that 'wrong' means in effect 'punishable by law'.

In one respect., however, the apparent rigour of the Rules has been relaxed, or at all events the law has been clarified to the advantage of the accused. The M'Naughten Rules require that the defence of insanity 'must be clearly proved'. It has since been laid down that the burden of proof which rests on the accused is not as heavy as that which rests on the prosecution, but may be stated as not being higher than that which rests on a party in civil proceedings. It may therefore be discharged by evidence satisfying the jury that on a balance of probabilities he was insane within the meaning of the M'Naghten Rules. (1936) WN 190; R. v. Carr-Briant, 1943 KB 607: (1943) 29 Cr. App Rep. 76.

In 1022 the Lord Chancellor appointed a committee, with Lord Atkin as Chairman 'to consider and report upon what changes, if any, are desirable in the existing law, practice and procedure relating to criminal trials in which the plea of insanity as a defence is raised, and whether any and, if so what changes should be made in the

existing law & practice in respect of cases falling within the provisions of Section 2 Sub-section (4) of the Criminal Lunatics Act, 1864.'

Tho other members were all _ distinguished lawyers or civil servants. The committee received memoranda from the British Medical Association and the Royal Medico-psychological Association and heard evidence from their representatives. The Committee recommended that it should he recognised that a person charged criminally with an offence is irresponsible for his act when the act is committed under an impulse which the prisoner was by mental disease in substance deprived of any power to resist', which might require legislation, but that otherwise the 'M'Naghten Rules should be maintained,

In support of this recommendation they said they were satisfied that 'there are cases of mental disorder where the impulse to do a criminal act recurs with increasing force until it is, in fact, uncontrollable; but the only specific example of such cases which they cited was that of mothers who have been seized with the impulse to cut the throats of or otherwise destroy their children to whom they are normally devoted,' and they added that in practice in such cases the accused was found to be guilty but insane; Report of the committee on insanity and crime (C and 2005). The Government did not introduce legislation to carry out these recommendations and when in 1924 Lord Darling brought forward a Bill to do so, it was strongly opposed by the judges and in the House of Lords, by the Lord Chancellor, the Lord Chief Justice and other speakers. The Bill failed to obtain a second reading.

The Royal Commission on Capital Punishment (1949-1953) considered insanity and mental abnor-mality, so far as criminal responsibility is concerned, in Chapters 4 to 6 of their Report (pages 73 to 157) and made the following recommendations in regard to insanity as a defence:

'It has for centuries been recognised that, if a person was, at the time of committing an unlawful act, mentally so disordered that it would be unreasonable to impute guilt to him, he ought t,ot to be held liable to conviction and punishment under the criminal law. We assume the continuance of this ancient and humane principle.

Any test of criminal responsibility must take account of the fact that, where a grave crime is committed by a person who is grossly disordered mentally that he could properly be certified as insane, the presumption that the crime was wholly or largely caused by the insanity, is in ordinary circumstances, overwhelmingly strong, and there is an equally strong presumption in the case of the grosser forms of mental deficiency and of certain epileptic conditions.

We consider (with one dissentient) that the test of responsibility laid down in England by the M'Naghtn Rules is so defective that the law on the subject ought to be changed.

If an alteration were to be made by extending the scope of the Rules, we suggest that a formula on the following lines should he adopted :--

'The jury must be satisfied that, at the time of committing the act, the accused, as a result of disease of the mind or mental deficiency, (a) did nut know the nature and quality of the act or (b) did not know that it was wrong or (c) was incapable of preventing himself from committing it.'

Although this formula might not prove wholly satisfactory, we consider (with one dissendent) that it would be better to amend the Rules in this way than to leave them as they are.

We consider (with three dissentients) that a preferable amendment of the law would be to abrogate the M'Naghten Rules and leave the jury to determine whether at the time of the act the accused was suffering from disease of the mind or mental deficiency to such a degree that he ought not to be held responsible.'

It may be noted here for information that the Criminal Law of Scotland which is different in many respects from the Criminal law in England, embodied the doctrine of diminished responsibility (sec page 489 Glaister's Medical Jurisprudence, Ninth Edition).

12. In 1957 the Homicide Act of 1957 was passed as a result of the Report of the Royal Commission on capital punishment, though it carried out the recommendations of the commission only in sonic respecis. Section 2 introduces

the doctrine of diminished responsibility into the law of murder. It provides :

'(i) Where a person kills or is a party to the killing of another, he shall not be convicted of murder if he was suffering from such abnormality of mind whether arising from a condition of arrested Or retarded development of mind or any inherent causes or induced by disease or injury as substantially impaired his mental lesponsibility for his acts and omissions in doing or being a party to the killing .....

(iii) A person who but for this section would be liable whether as principal or as accessory, to be convicted of murder shall be liable instead to be convicted of manslaughter.'

On this, it may be said that the introduction of the doctrine was not recommended by the Royal Commission unless it could he applied to responsibility for all crimes, and then only after consideration by some specially appointed body. And indeed, it is difficult to see why abnormality of mind should reduce a man's responsibility for murder, but not for other crimes, especially now fhat most murders aro not capital offences even if committed by someone with full responsibility.

It will be remembered that the defence of insanity, as regulated by the McNaghten Rules, always applied to all crimes, although of course it was usually pleaded only in murder cases. The mental abnormality contemplated by Section 2 appears to cover kinds of insanity embraced by the McNaghten Rules and to extend to lesser degrees of affliction not covered by those Rules.

13. In regard to defence of insanity in the United States of America, Underhill's Criminal Evidence. Fifth Edition, Vol. 2, (The Bobbs -- Merrillcompany Inc Publishers Indianapolis), Cha. 34, p. 1128 has the following to say ;

'Insanity is everywhere a defence to a charge of crime, for without a sound mind there can be no criminal intent. The existence, character and extent of insanity are ordinarily questions of fact for the jury, and a defendant who has offered proof of his insanity is entitled to an instruction that he may be found not guilty by reason of insanity.

The authorities are not agreed on the legal test for determining insanity. Most of the states have adopted the 'right and wrong' test, as set forth by the House of Lords in the leading case of M'Naghten in 1843. The M'Naghten opinion states : '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 quality of the act ho was doing or, if he did know it, that fee did not know what he was doing was wrong. The right and wrong test is the exclusive test today in 29 states. The test has been much criticized.....

An additional test is the irresistible impulses test, which holds that the right and wrong test is not sufficient in all cases and that a person who knew that the act he was committing was both morally and legally wrong may still not be held responsible if he lacked the power to resist the impulse to commit it.

The irresistible impulse test has been adopted In at least 14 States. It is an additional test to the right and wrong test, that is, an accused in a State which has adopted the irresistible impulse test should be acquitted if he meets either that test or the right and wrong test.

Under the irresistible impulse test, the impulse must be the product of mental disease rather than the uncontrollable passion or fury of a sane man, Similarly, moral and emotional insanity are not considered as defences, whether the courts do or do not admit irresistible impulses as a defence.' Davis v. United States (1895) 160 US 469 : 40 Law Ed. 499.

In regard to burden of proof the American law is the same as in England and in India. The law presumes that every one charged with crime is, same, and thus supplies in the first instance the required proof of capacity to commit crime. It authorises the jury to assume at the outset that the accused is criminally responsible for his acts. The presumption, which is rebuttable, is justified by the general experience of mankind as well as by considerations of public safety.

All courts adhere to it : Lee v. United States, (1937) 302 US 745: 82 Law Ed. 576; Mcdonald v. Hydspeth, 109 Fed. (2nd) 943; Asley v. Pessor, 147 Fed. (2d) 318;

Tatum v. United States, 88 App D. C. 386 : 190 Fed. (2d) 6I2; Holloway v. United States, 148 Fed. (2d) 665; Queenan v. Oklahama, (1903) 190 US 548 : 47 Law Ed 1175; Matheson v. United States, (1913) 227 US 540.

14. The law in India regarding the defence ef insanity may be summed up as follows. The defence of insanity is raised mostly in cases where the accused has been charged with offences under Section 302 or 304, Indian Penal Code. Insane individuals seem to display a marked propensity for the commission of the atrocities of crimes.

Their objects of attack have usually been those whom they had loved and cherished. The authors of the Penal Code, in dealing with this class of criminal, merely enacted the rule of English law as laid down in Macnaughton's case. The following propositions were laid down in that case : (a) Notwithstanding the accused did the act complained of, with a view, under the influence of insane delusion, of redressing or revenging some supposed grievance or injury, or of producing some public benefit, he is, nevertheless, punishable, according to the nature of the crimes committed, if he knew at the time of committing such crime, that he was acting contrary to law. (b) and (c) Every man is to be presumed to be sane and to possess a sufficient degree of reason to be responsible for his crimes, until the contrary is proved and to establish a defence on the ground of insanity it must clearly be proved that, at the time of committing the act, the accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or if he did know it, he did not know he was doing what was wrong, (d) A person under an insane delusion as to existing facts must be considered in the same situation as to responsibility as if the facts with respect to which the delusion exists were real, (e) It is for the jury to decide as to whether the accused was insane or not at the time he committed the crime.

Section 84 of the Indian Penal Code provides : '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 be is doing what is either wrong or contrary to law.'

It is necessary for the application of the section to show that (a) the accused was of unsound mind, (b) he was of unsound mind at the time he did the act and not merely before or after the act, (c) as a result of unsoundness of mind he was incapable of knowing the nature of the act or that he was doing what was either wrong or contrary to law. If unsoundness of mind is urged as a ground of exemption from liability, it is for the person who seeks the exemption to prove it. The accused must not leave the condition of his mind at the time of the commission of the offence in doubt, but must satisfy the Court that it was such that he was incapable of knowing the nature of the act or that what he was doing was either wrong or contrary to law. Accused's condition, antecedent and subsequent to the commission of the crime is relevant only in so far as it might assist the Court in coming to a conclusion as to his mental capacity at the time when he did the act.

The more fact that on former occasions, the accused had occasionally been subject to insane defusions or had suffered from derangement of the mind or that subsequently he had at times behaved like a mentally deficient person is per se insufficient to bring his case within Section 84. 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 insanity such as will relieve a person from criminal responsibility, any defence in law.

It is not mere eccentricity or singularity in 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 may be negatived. A prisoner trying to escape arrest after he had committed the act in question shows that he has committed an act which in law is criminal.

Inadequacy of motive standing by itself is no proof of insanity. Where the accused murdered his wife and child and it was proved that he was somewhat of unbalanced mind on different occasions and showed characteristics many of which were not normal it was held that these facts coupled with lack of motive

were not sufficient to bring the accused under Section 84, I. P. C. Where the accused was riot insane before or after the crime but the murder was motiveless, it was hold that this by itself was not sufficient and that the accused was guilty of murder.

Where the accused killed three of his children, and there was no apparent motive for the crime, it was held that some mental derangement must he inferred, but that by itself was not sufficient to bring his case within Section 84. Where the accused, an affectionate father, killed his two children, for no apparent motive, and it was in evidence that shortly before the occurrence the accused was mad and used to talk incoherently and abusively to all, it was held that the accused was guilty of murder.

If there is evidence of premeditation and design coupled with an attempt to evade or resist arrest the plea of unsoundness of mind may be negatived. The mere fact that the accused had a weak or defective intellect is not sufficient to bring his case within Section 84. The fact that the murder was committed at the bidding of a spirit or to propitiate a godess will not bring the case within Section 84. An insane delusion will not justify homicide. The accused, in such cases, must be considered in the same situation as to responsibility as a sane person would be, it the facts with regard to which the delusion exists were true.

There is a clear distinction between medical and legal insanity. Courts are concerned with the legal and not with the medical view of the question. A man may be suffering from some form of insanity in the sense in which the term is used by medical man but may not be suffering from un-soundness of mind as described in Section 84. If the fact showed that the accused knew that he had done something wrong, it did not matter how, though he might be insane from the medical point of view, he could not be exonerated under Section 84.

The Indian cases embodying these principles are ; Kalicharan v. Emperor, AIR 1948 Nag 20 : (1948) Cri LT 377; Ashiruddin Ahmed v. Emperor, , Pancha v. Emperor : AIR1932 All233 ; Hemu v. The State, AIR 1951 Sau 19 : (1951) Cri LJ 369; In re, Sankappa Shetty : AIR1941 Mad326 ; Subbigadu v. Emperor, AIR 1925 Mad 1238; In re Govindaswami Padayachi, : AIR1952 Mad174 , In re Rajagopala Ayyangar, : AIR1952 Mad289 ; Baswant Rao v. Emperor, , Kulandai Thear v.

Emperor, 1950 Mad WN Cri 95 : : AIR1950 Mad592 ; Kashiram v. The State, AIR 1957 Madh 104 : 1957 Cri LT 370; Chenna Basappa v. The State of Mysore, : AIR1957 Kant68 ; Nitai Naick v. The State, (S) : AIR1957 Ori168 ; Kherajmal v. The State, ; Hagroo v.The State, AIR 1953 Nag 255; Emperor v. Gedka Goala, : AIR1937 Pat363 .

15. Bearing these principles in mind if we examine the facfs of this case, we find that it is possible that the accused was suffering from some sort of puerperal disorder and concerning which the following information can be culled from standard books on forensic medicine.

Gonzales, Vance, Helpern and Umberger in their Legal Medicine, Pathology and Toxicology, Second Edition (U. S. A.) at p. 936 :

'Puerperal insanity is the condition of insanity! which follows child-birth and is doubtless referable to the action on the brain by the toxemia of pregnancy. A woman with puerperal insanity may manifest the condition after child-birth, and it may take a great variety of forms, the most common of which is mania, sometimes of the homicidal type. This may express itself by suicidal or homicidal acts.'

Taylor's Principles and Practice of Medical Jurisprudence, Eleventh Edition, Vol. I, p. 585 ;

"The puerperium, pregnancy, lactation, and other affections of the female generative organs are known occasionally to produce a mental condition in which a mother may not be responsible for her acts; puerperal mania is frequently associated with homicidal violence inflicted on a child. The killing of the child is usually either the result of a sudden fit of delirium or a sudden impulse, with a full knowledge of the wickedness and illegality of the act. The legal test of responsibility can be applied to such cases only on the assumption that insanity already exists. Women have been known to ask that the child may be removed, but afterwards seized an opportunity for killing it. Such cases are distinguished from deliberate child-murder by the fact that there is no motive, no attempt at concealment, and no denial of the crime. In this connexion the merciful provisions of the Infanticide Act should be borne in mind.'

Sydney Smith and Fiddes in their 'Forensic Medicine' Tenth Edition at p. 391 :

'Lactational insanity comprises all cases which occur from six weeks after confinement. It occurs most frequently in cases in which lactation has been unduly prolonged, and is usually of a depressed deconfusional type with ideas of unworthiness and delusions affecting the husband and child. Suicide or infanticide may occur as a result of these conditions.'

16. But unfortunately in this case there has been no expert examination or colletion of evidence in the light of medical knowledge of puerperal disorders and the specific defence incumbent on the accused has not been set up. We cannot, therefore guess that this is a case of puerperal insanity, constituting a va'id defence under Section 84 of the Indian Penal Code.

17. Therefore, we confirm the convictionsand sentences which we do and recommend to theGovernment that the period of imprisonment bereduced to a period of six months, which mightmean practically the immediate discharge of theaccused. We recommend also to the Governmentthat the accused might be kept under observationand examined and if homicidal and suicidal tendencies are discernible, appropriate steps may betaken for the treatment of the criminal lunatic andshe might be discharged taking security for herproper custody.

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