

In Re: Balagopal

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Court : Chennai

Decided On : Feb-23-1976

Reported in : 1976CriLJ1978

Judge : Kailasam and ;Paul, JJ.

Appellant : In Re: Balagopal

Judgement :

Paul, J.

1. The appellant Balagopal stands convicted by the learned First Additional Sessions Judge of Madras Division of offences punishable under two counts of Section 302, I.P.C. for having on 14-1-1971 at about 12.15 P. M. at his house in the I. C. F. Colony committed the murders of his wife Padmavathy and his son Prasob by cutting them with a knife and has been sentenced to imprisonment for life under each count.

2. The appellant joined the Integral Coach Factory as a Peon and after some years of service he was promoted as materials clerk. He married Padmavathy, the only daughter of P.W. 16. The appellant and his wife were living at door No, 166/5, I. C. F. Colony. Padmavathy went to the house of her mother P.W. 16 for her second confinement,' leaving her husband Balagopal at 'Madras. Subsequently after the birth of the second child, the appellant went to Tellichery to the house of his mother-in-law P.W. 16, stayed there for a week and returned with his wife and

the child to Madras. P.W. 16 has testified that the married life of the appellant with Padmavathy was quite happy and the appellant was behaving in a very friendly manner towards his wife and during his visits to P.W. 16's house at Tellichery the appellant never quarrelled with his wife and P.W. 16 found no abnormality in the behaviour of the appellant towards his wife.

3. On 14-1-1971 at about 12.15 P. M. P.W. 3 who is working as a Rakshak in the I. C. F. and who was residing at door No. 166/4, adjacent to the house in which the appellant was living with his wife Padmavathy and his child Prasob, heard at about 12.15 P. M., somebody shouting from the appellant's house [Original in Tamil omitted-Ed.] whereupon he came out and looked through the window of the appellant's house and saw the appellant's wife kneeling on the floor and the appellant standing near her with the bill-hook M. O. 1 in his hand. P.W. 2 who lives opposite to the house of the appellant at door No. 165/6 was standing in front of his house at that time. P.W. 3 called out to P.W. 2 and told him that he heard some noise in the house of the appellant and asked him to go and see. P.W. 2 thereupon went to the appellant's house, looked through the window and saw the appellant cutting his child with the arval M. O. 1 and he saw the appellant's wife with cut injuries lying on the floor. The door of the appellant's house was bolted from inside. P.W. 2 thereupon raised an alarm shouting that Balagopal was cutting his child. P.W. 2, however, without doing anything further ran into his house. P.W. 1 who resides at door No. 166/2 in the I. C. F. Colony and who works in the Railway Protection Force was at that time going from his house to report for duty. P.W. 3 told him that the appellant had cut his wife and his child and they were both lying in a pool of blood. P.W. 1 thereupon went to the appellant's house and looked through the window and saw the appellant's wife and child lying in a pool of blood and the appellant with the Aruval M. O. 1 in his hand going round and round the bodies. P.W. 1 then proceeded to the Police Station and gave the complaint Ex. P-1 to P.W. 18 the Inspector of Police who was on duty at that time. Meanwhile, P.W. 3 also looked through the window of the appellant's house.

4. P.W. 4 who resides three houses away from the appellant's house, on hearing the noise, came out and he also looked through the window of the appellant's house and saw the appellant with the arval M. O. 1 in his hand and the

appellant's wife and child lying on the floor in a pool of blood.

5. P.W. 18 registered a crime on the basis of Ex. P-1 and went to the scene occurrence at 1 P. M. He was able to persuade the appellant to come out of the house by opening the door. He arrested the appellant and seized M. O. 1 from the possession of the appellant in the presence of P.W. 10 and another and took the appellant to the Villivakkam Police Station where he recovered the dhoti M. O. 4 and the banian M. O. 5 which the appellant was wearing under the Mahazar Ex. P-2 attested by P.W. 8 and another. Since the occurrence was within the jurisdiction of the Ayanavaram Police Station, P.W. 18 informed the Inspector of Sembium about the occurrence and P.W. 19 the Inspector of Police on receiving the information at 2 P. M., went to the Villivakkam Police Station, taking the A. S. I. with him and there he received a copy of the F. I. R. and took charge of M. Os. 4 and 5 and he returned to the Ayanavaram Police Station and registered a case under Section 302, I.P.C. and sent express F. I. Rs. He went to the scene of the occurrence, prepared an observation mahazar and then held the inquest over the dead bodies of Padmavathy and Prasob between 5 P. M. and 7.30 P. M. He seized from the scene of the occurrence a number of blood stained articles.

6. The autopsy on the dead body of Padmavathy was conducted by P.W. 9 the Associate Professor of Forensic Medicine, Madras Medicial College, Madras on 15-1-1971. P.W. 9 found on the dead body as many as 29 external injuries all of which were incised wounds and cut injuries. One of those injuries was a gaping incised wound on the upper part of the middle of the back 10x5x7 cms., severing the oesophagus, the left coronary artery and the trachea. The doctor opines that that injury was necessarily fatal and that all those injuries could have been caused by means of M. O. 1. She then conducted the autopsy on the dead body of Prasob aged about 1 1/2 years and she found on the child as many as 15 injuries all of which were incised wounds. Of these one was a gaping incised wound on the lower part of the back 22X6 cms. communicating with the abdominal cavity by cutting the 2nd lumbar vertebra and completely severing the spinal cord and exposing coils of intestines and also cutting the right lobe of the liver and the lower pole of the left kidney and severing the right kidney into two halves. Another was an incised wound behind the left ear lobe cutting the cervical vertebra and

severing the spinal cord. These two injuries according to the doctor were necessarily fatal and death would have been instantaneous and that all the injuries could have been caused by means of a weapon like M. O. 1.

7. Though the appellant was sent to the Sixth Presidency Magistrate for recording a confessional statement, the appellant did not give a confession.

8. P.W. 13 who is the Head Clerk of the Personnel Branch of the Shell in the I. C. F. testified that the appellant was working as a materials clerk in shop No. 41 and he produced Ex. P-11' the leave account of the appellant which showed that during 1968 the appellant was on leave for 63 1/2 days and during 1969 he was on leave for 39 days and during 1970 he was on leave for 9 days and had 9 days sick leave and in 1971 he did not avail himself of any leave and during 1970 between 9-11-1970 and 17-11-1970 (both days inclusive) he was on sick leave. P.W. 11 who was working in the office of the Joint Chief Controller of Imports and Exports and who had known the appellant and who was undergoing treatment under P.W. 6. Dr. Paul testified that he took the appellant in the month of November 1970 to P.W. 6 since the appellant was complaining of insomnia, lack of appetite and a sense of apprehension. P.W. 6 testified that on 3-11-1970 P.W. 11 brought the appellant to him and he examined the appellant and issued the prescription Ex. P-3 prescribing 25 mg. of Sarotine twice a day, 25 mg. of Largactil twice a day, Mandra at bed time and Becozyme C Forte tablets and the appellant after taking the medicines for 5 or 6 days came and told him that he was not attending the office and he P.W. 6 found his condition improved and he told the appellant that he could go to the office since he would be more comfortable if he did so and he also advised the appellant to bring back his wife to live with him. P.W. 6 states that he diagnosed the illness of the appellant as schizophrenic reaction paranoid.

9. The occurrence took place on 14-1-1971. Subsequently the appellant was sent to the Government Mental Hospital where P.W. 1 the Assistant Surgeon there observed him in the out-patient department from 1-4-1971 to 24-7-1971 and D. W. 1' certified that the appellant was suffering from mental illness and could not stand the trial and then the appellant was admitted as an under trial prisoner in-patient in

the Government Mental Hospital on 24-7-1971 and after observing the appellant, D. W. 1 came to the conclusion that the appellant was suffering from schizophrenia paranoid type and on 17-12-1973 since the appellant had recovered in his mental condition he was discharged; and then the committal enquiry was held and the appellant took his trial.

10. The appellant when examined under Section 342, Criminal P. C. by the trial Court denied all knowledge of the occurrence and stated that he did not know anything.

11. The defence put forward on behalf of the appellant was one of insanity. The learned Sessions Judge relying on the testimony of P.Ws. 1 to 4 found that the appellant had committed the murder of his wife and child by cutting them with an aruval. After considering the plea of insanity put forward by the appellant he came to the conclusion that that plea had not been substantiated and that Section 34 of the Indian Penal Code would not come to the rescue of the appellant for it had not been proved that at the time of the commission of the murders the appellant by reason of unsoundness of mind was incapable of knowing the nature of his act or that he was doing what was wrong or contrary to law. He therefore convicted the appellant of offences punishable under two counts of Section 302 of the Indian Penal Code and sentenced him as stated above,

12. Before us also the plea of insanity was strenuously pressed by the learned Counsel for the appellant. Since the testimony of D. W. 1, the Assistant Surgeon of the Government Mental Hospital, to which we have already referred, was not categorical with regard to the question whether the appellant could have been insane at the time when he committed the crime, we recalled the doctor and examined him. He stated during such examination that on the basis of his observation of the appellant both as an out patient as well as an inpatient in the Mental Hospital he came to the definite conclusion that the appellant would not have been in a position to understand whether he committed a particular act which was wrong or contrary to law. He further stated that it was probable that the appellant would have committed the crime due to mental illness and that his inference was more definite because the symptoms and signs which he had

observed showed that the crime might be due to the mental illness itself.

13. There can be no doubt whatsoever that it was the appellant who literally hacked to death his wife and child by means of an aruval in his house in the I. C. F. colony at about 12.15 P. M. on 14-1-1971. P.W. 3 was the first person who heard the cry [Original in Tamil omitted-Ed.] of the appellant's wife and he asked the neighbour P.W. 2 to go and see and when P.W. 2 looked through the window of the appellant's house he saw the appellant cutting his child with an aruval and the appellant's wife lying with cut injuries. It might be noted that the door of the house was bolted from the inside P.W. 1 also looked through the window and at that time he saw the appellant's wife and the child lying in a pool of blood and the appellant with an aruval M. O. 1 in his hand going round and round the dead bodies of his wife and child. P.W. 4 also looked through the window and found the appellant's wife and child lying on the ground in a pool of blood and the appellant standing there inside the house with M. O. 1 in his hand. P.W. 1 immediately went to the police and gave the complaint Ex. P-1 and when P.W. 18 the Inspector turned up he persuaded the appellant to open the door of the house and then the appellant came out with the aruval M. O. 1 that Aruval as well as his banian and dhoti (M. Os. 5 and 4 respectively) were seized from him. At that time, only the appellant, his wife and his child were inside that house, the door of which had been bolted from the inside.

14. The banian and dhoti of the appellant when later sent to the Serologist were found to have been stained with human blood although its group could not be determined. The aforesaid evidence clearly establishes that it was the appellant who inflicted the fatal injuries on his wife and child with the aruval M. O. 1.

15. Coming to the plea of insanity raised on behalf of the appellant, Section 84, I.P.C. states that nothing is an offence which is done by a person who, at the time of doing it, by reason of unsound-ness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law. Therefore it would not be 'sufficient merely to show in order to substantiate the plea of insanity that the appellant was mentally unsound at the time of the commission of the crime. As has been held by this Court in re. Govindaswami merely establishing

that some time prior to the occurrence and some time after the occurrence the appellant suffered from derangement of mind will not bring the case under Section 84 of the Indian Penal Code. It must be dearly proved to establish a defence on the ground of insanity 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, that he did not know he was doing what was wrong. The antecedent and subsequent conduct of the accused is relevant only to show the state of his mind at the time the act was committed and the Court is only concerned with the state of mind of the accused at the time of the act. The fact that the accused had an attack of insanity before the occurrence or another one during the period between his arrest and the enquiry before the committing Magistrate does not mean that the accused committed the act in a fit of insanity.

16. In this case however there are circumstances appearing in the evidence which do render highly probable the contention that at the time when the crime was committed the appellant 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. First of all, the evidence of P.W. 16 itself shows that the appellant was living very amicably with his wife and his behaviour towards his wife was very friendly and there was nothing abnormal in it. There is also no suggestion that the murder was committed by the appellant on account of any motive. Immediately after the occurrence when P.W. 1 looked through the window he saw the appellant with the blood-stained aruval in his hand, going round and round the dead bodies of his wife and child; and subsequently the investigating officer knocked at the door persuaded him to come out whereupon the appellant came out with the aruval in his hand and was arrested. '

17. The two murders were of a brutal nature and the appellant had literally hacked to death his wife and his tender child for no apparent reason whatsoever. We have already stated there were as many as 29 injuries on Padmavathy and on the child Prasob there were as many as 15 injuries. All these circumstances coupled with the testimony of P.W. 6 who treated the appellant for five or six days from 8-11-1970 for schizophrenic reaction paranoid and the testimony of D.W. 1 Dr.

Ramadas who observed and treated* the appellant from 1-4-1971 to 24-7-1971 as an outpatient and thereafter until 17-12-1973 as an inpatient and came to the conclusion that the patient was suffering from schizophrenia paranoid type and opined, when he was examined again before us, that on the basis of his observation he 'came to the definite conclusion that the appellant would not have been in a position to understand whether he has committed a particular act which was wrong or contrary to law', are sufficient to substantiate the plea of insanity put forward on behalf of the appellant. As has been held by the Supreme Court in re. Dahyabhai : 1964 CriLJ472 the legal position regarding the burden of proof in the context of the plea of insanity may be stated in the following propositions: (1) The prosecution must prove beyond reasonable doubt that the accused had committed the offence with the requisite mens rea; and the burden of proving that always rests upon the prosecution from the beginning to the end of the trial. (2) There is a rebuttable presumption that the accused was not insane, when he committed the crime, in the sense laid down in Section 84; the accused may rebut it by placing before the Court all the relevant evidence - oral, documentary or circumstantial, but the burden of proof upon him is no higher than that which rests upon a party in civil proceedings. (3) Even if the accused was not able to establish conclusively that he was insane at the time he committed the offence, the evidence placed before the Court by the accused or by the prosecution may raise a reasonable doubt in the mind of the Court as regards one or more of the ingredients of the offence, including mens rea of the accused and in that case the Court would be entitled to acquit the accused on the ground that the general burden resting on the prosecution has not been discharged.

18. In the case now before us there is every indication that the appellant when he committed these murders by reason of unsoundness of mind was incapable of knowing the nature of the act or that he was doing what is either wrong or contrary to law. We therefore allow this appeal and set aside his conviction of an offence punishable under Section 302, I.P.C. and the sentence of imprisonment for life meted out to him for that offence and acquit him of that offence, and under Section 335, Criminal P. C. order the accused be kept in the mental hospital.

