

In Re: Kulandai thevar

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SooperKanoon Citation : sooperkanoon.com/796887

Court : Chennai

Decided On : Dec-08-1949

Reported in : AIR1950Mad592

Judge : Govinda Menon and ; Basheer Ahmedsayeed, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 84 and 302; [Code of Criminal Procedure \(CrPC\), 1898](#) - Sections 401

Appeal No. : Ref. Trial No. 85 of 1949 and Cri. Appeal No. 616 of 1949

Appellant : In Re: Kulandai thevar

Advocate for Def. : The Crown Prosecutor for the Public Prosecutor

Advocate for Pet/Ap. : Srimati J. Seethamahalakshamma, Adv.

Judgement :

Govinda Menon, J.

1. The appellant has been sentenced to death by the learned Sessions Judge of Ramnad division for having caused the death of four unfortunate and innocent children and sentenced to terms of imprisonments for having caused grievous hurt etc., under Sections 324 and 326, Penal Code, to eight other persons, namely, P. Ws. 2, 3, 6, 8, 9, 11 and 15 and another. It is unnecessary to dwell at any length about the details of the prosecution story, or the evidence of the witnesses

examined at the trial. For, the appellant has admitted throughout that he has caused the death of the children and has also caused grievous hurt to the witnesses aforesaid. Immediately after the murders, he rushed to the police station with the blood-stained aruval in his hand, surrendered himself and gave the weapon into the hands of the police officer. He made a statement to the police and thereafter he was sent before the Taluk Magistrate of Ramnad who recorded a statement (EX. p. 17) in the nature of a confession. There, the appellant stated that he was hungry on that day as he did not take food and that when he was in that fatigued condition on account of hunger, a Muslim accosted him, saying, 'who are you?' He had an aruval in his hand with which he cut the person who accosted him. Then he ran; when people chased him, he found children there and he cut and killed four children, and also caused injuries on others. The reason ascribed for the senseless and terrible act of his is that he was suffering from hunger; and none of the relatives supported him and that therefore, he did all these things on account of anger caused by hunger. This statement was adhered to in the committing Court as well as before the Sessions Court. The learned Sessions Judge, in spite of his admission before him that the appellant committed the crime, examined the witnesses after recording a plea of 'not guilty' and went in to the case exhaustively; with the result, that he came to the conclusion that the evidence of the witnesses examined justified the confession made by the accused as regards the act. The learned Sessions Judge therefore found him guilty under Section 302, Penal Code, convicted and sentenced him as stated above.

2. We have carefully gone through the evidence of the various eyewitnesses in the case and considered the other circumstances and we are in entire agreement with the learned Sessions Judge that the appellant caused the death of the four innocent children and caused grievous hurt to the witnesses mentioned by us in the earlier portion of the judgment. Srimathi Seethamahalakshamma, appearing for the appellant, does not dispute the facts as outlined by us above nor the conclusion from those facts that it was the appellant who caused the death of the children and the injuries on the witnesses. But the learned counsel argues that the facts of the case come within the ambit of the exception chapter of the Indian Penal Code, namely, Section 84, which says:

'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 he is doing what is either wrong or contrary to law.'

In support of her argument, our attention was invited to *Geron Ali v. Emperor* : AIR1941 Cal129 , *In re Subbigadu* , : (1925)49MLJ598 and *Wazir v. Emperor* , . It seems to us that the circumstances of those cases are not *ad idem* with the facts of the present case. Here, there can be no dispute that the appellant knew that he was causing the death of the four children. It is not as if the appellant was under a hallucination that what he was doing was not the taking away of the life of a human being but that he was probably breaking a pot or some other inanimate object. The appellant fully knew that he was committing homicide and he also knew that the act which he was doing was both wrong and contrary to law, because, he ran to the police station, surrendered himself and produced the weapon with which the crime was committed.

3. On the other hand, the learned Public Prosecutor invited our attention to a decision of the Patna High Court in *Emperor v. Gedka Goala* , : AIR1937 Pat363 . The learned Judges there have exhaustively considered the applicability of Section 84, Penal Code, to similar cases and holding that Section 84 is founded upon the well-known doctrine of English law laid down in the *Mc. Naghten's case*, (1843 10C. & F. 200), by the House of Lords after taking the opinion of the Judges, were of opinion that a person is presumed to be responsible for his action unless the kind of insanity referred to in Section 84 is affirmatively proved. If he is conscious of the nature of his act, he is presumed to have been conscious of its criminality, The learned Judges also referred to *Maniram v. The Crown*, 8 Lah. 114: A.I.R. 1927 Lah. 52: (1927) CrL. L. J. 120 and held that the circumstances such as the absence of motive, absence of secrecy multiple murders, want of prearrangement and want of accomplices were insufficient to support the inference that the person who committed the crime suffered from unsoundness of mind referred to in Section 84, Penal Code. Exactly the same argument which did not find favour with the Lahore High Court in *Maniram v. The Crown*, 8 Lah, 114 : A. I. R. 1927 Lah. 521 : (1927) CrL. L. J. 120 and with the Judges in *Emperor v. Gedka Goala* , : AIR1937 Pat363 has been addressed to us by the learned counsel. We

are in agreement with the proposition of law enunciated in the case just mentioned, and it is therefore unnecessary to elaborate on this theme at all. From the evidence and circumstances of this case, we hold that the appellant knew the nature of the act and also knew that he was doing something wrong and contrary to law. In such circumstances, it seems to us that Section 84, Penal Code cannot be sought in aid to support the plea that the appellant has not committed the crime of murder.

4. We also agree with the learned Judges of the Patna High Court in the last paragraph of their judgment at p. 343 in *Emperor v. Gedka Goala*, : AIR1937 Pat363 where, following the decisions in *Queen Empress v. Lakxman Dagdu*, 10 Bom. 612 and *Queen Empress v. Kader Nasyer Shah*, 23 Cal 604, the learned Judges, after awarding the sentence of transportation for life to the accused in an appeal by the Crown against acquittal, recommended to the Government that he might be dealt with under Section 401, Criminal P. C. in such manner as might be judged fit by the local Government. In such circumstances, it seems to us that the sentence of death need not be inflicted on the appellant and therefore we reduce the sentence of death to one of transportation for life and make a recommendation to the Government under Section 401, Criminal P. C. to deal with the appellant as they deem fit. We confirm the other sentences on the appellant.