

Velusamy Vs. the State

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Court : Chennai

Decided On : Sep-18-1984

Reported in : 1985CriLJ981

Judge : Singaravelu and ;S.A. Kader, JJ.

Appellant : Velusamy

Respondent : The State

Judgement :

S.A. Kader, J.

1. The appellant-accused has been convicted by the Additional Sessions Judge, Tirunelveli under Section 302 of the Indian Penal Code, in that he, on 17-12-1978 at about 4-30 P.M. in the village of Melakadayanallur in Tenkasi taluk, committed the murder of his father Sangili by hitting him with a grinding stone on his head, and sentenced to suffer imprisonment for life.

2. This is a case of patricide in which a wayward son has done to death his aged father for refusing to give him money for his wayward expenses. The accused, his father and his two sisters by name Karuppi and Kaliasammal were living together in the middle street in the Harijan Colony in Kelakadayanallur village in Tenkasi taluk. The mother of the accused died about four years ago. P.W.I is the deceased's younger brother's son and he lives , just west of the house of the deceased and

the accused. P.W.2 is the deceased's wife's brother and lives in the same place. P.W.3 is a neighbour, who lives opposite to the house of the deceased. The accused was always an idler who never went for any work and never earned anything. He was frequently troubling his father for money and, when he refused, the accused used to quarrel with him. The deceased father of the accused was over 70 years of age and was unable to do any work. In fact, the sisters of the accused did agricultural work and supported the family.

3. This unfortunate occurrence took place on 17-12-1978 in the house of the deceased at about 4-30 P.M. The accused and the deceased were alone in the house. The accused's sisters Karuppi and Kaliasammal had gone for agricultural work. At about 3 P.M. that day, P.W.1, while he was in his house, heard some noise in the house of the deceased, and when he went there, he found the accused demanding money from his father and his father refusing to give any money. P.W.1 advised the accused not to pester his father, who was himself unable to earn anything. He then returned home, but, at about 4-30 P.M., there was again a noise in the house of the deceased. P.W.1 immediately went to the house of P.W.2, the maternal uncle of the accused and took him with him to the house of the accused to advise the accused. When P. Ws. 1 and 2 came to the house of the accused, they saw his father, the deceased Sangali lying in the central room of the house placing his head on the doorstep over M.O.2 folded gunny piece. The accused was demanding money from his father. P.Ws.1 and 2 scolded the accused and told him to earn for himself. The accused did not listen to their words and continued to demand money from his father and threatened that if he did not pay he would do him to death. Suddenly the accused took M.O.1 grinding stone (*) kept in the grinder (*) and dropped it on the head of his father, who was lying down. There was profuse bleeding from the nose and ears of the deceased and P.Ws.1 and 2 went near the deceased and found him dead. They caught hold of the accused. P.W.3, who lives immediately opposite to the house of the deceased and several others came there on, hearing the commotion.

4. P. Ws. 1 and 2 took the accused to village chavadi where P.W.6 the village munsif was present, and produced the accused before him. P. W. 1 gave a complaint before the village munsif, who reduced it into writing under Ex. P-I. Ex.

P-2 is the carbon copy. P.W.6, the village munsif prepared the printed form reports under Exs. P-5 and P-6 and sent Exs. P-1 and P-5 to the police station at Kadayanallur through P.W.4 thalayari and Exs. P-2 and P-6 to the Judicial Second Class Magistrate, Tenkasi through another thalayari by name Sankarapandian. The accused was also entrusted to the custody of these two " thalayaris to be produced at the police station.

5. P.W.9, the Sub-Inspector of Police, Kadayanallur received Exs. P-1 and P-5 reports at 6 P.M. He registered it as Cr. No. 263/78 of his station under Section 302 of the Indian Penal Code, prepared first information reports and sent them to the higher police officials and to the Judicial Second Class magistrate, Tenkasi. He also arrested the accused, who was produced by P.W.4 and the other thalayari Sankarapandian.

6. P.W.10, the Inspector of Police, Puliyangudi, received the express report and reached the scene of occurrence at 8 P.M. on 17-12-1978. He then prepared an observation mahazar under Ex. P-7 and a sketch under Ex. P-15. He recovered from the scene M.O.1 grinding stone, M.O.2, gunny piece, M.O.4 bloodstained earth and M.O.3, dhoti on which the deceased was lying. He then conducted inquest over the body of the deceased from 8-30 P.M. till 2 A.M. under Ex. P-16. During the inquest P. Ws. 1,2,6 and others were examined. The body was then sent to the mortuary.

7. Dr. Venkatasubbiah, P.W.5, attached to the Government Hospital at Kadayanallur, conducted autopsy on the body of the deceased Sangili on 18-12-1978 at about 11 A.M. He found on the body

(1) Fracture horizontal 3' in length over the left parietal bone; and

(2) Irregular fracture over the left temporal bone just above the left ear.

On opening the skull he found haemorrhage and laceration of brain tissues corresponding to injuries 1 and 2. There was contre-coupe haemorrhage and damage to brain tissues. In the opinion of the medical officer, the deceased would appear to have died due to shock and haemorrhage and head injuries. According

to him, the death would have been instantaneous and the injuries noticed by him are necessarily fatal, and could have been caused with a stone like M.O.1, M.O.3 dhoti on the body of the deceased was recovered after the post-mortem examination.

8. The material objects were sent for chemical analysis and the reports disclosed the presence of human bloodstains in M.Os.1 to 6. The blood-stains in M.Os.1 to 3, 5 and 6 belonged to group AB.

9. After completion of the investigation, the charge-sheet was filed by P.W.10, the Inspector of Police, on 17-12-1979.

10. When examined under Section 313, Code of Criminal Procedure, the accused denied the evidence appearing against him in all the material particulars. He claimed that on 17-12-1978 when he was standing near a shop, P.W.4 and another maternal uncle by name Sankarapandiyan, took him to the police station at Kadayanallyur and entrusted him to the custody of the police. He denied any complicity in the murder of his father. He did not choose to examine any witness in defence.

11. The learned Additional Sessions Judge accepted the case of the prosecution, found the appellant guilty, convicted him and sentenced as stated above. Hence the appeal.

12. This case of patricide has taken place in the house of the deceased at about 4-30 P.M. on 17-12-1978. The accused, who is the wayward son of the deceased, was always pestering his father for money and quarrelling with him when he refused to pay him. At about 3 P.M. on that day, there was some noise in the house of the deceased and P.W. 1, who is the brother's son of the deceased and who lives next door, came to the house of the deceased and found P.W.1 demanding money from his father and his father refusing to pay anything. P.W.1 advised the accused not to trouble his father who could not earn anything for himself due to his age. P.W.1 returned home but at about 4-30 P.M., he again heard a noise in the house of the deceased. He thought it would be better if he could take P.W.2, the maternal uncle of the accused, to persuade the accused not

to pester his father. He therefore went to the house of P.W.2 and both of them proceeded to the house of the deceased. When they went to the house of the deceased, they found the deceased lying in the central hall with his head on the doorstep over M.O.2 folded gunny piece. The accused was demanding money from his father and the father was not yielding. P.Ws.1 and 2 chastised the accused and asked him to earn for himself. The accused was in no mood to listen to their words. He continued to demand money from his father and threatened that if he did not pay him he would do him to death. At a sudden, the accused took M.O.1 grinding stone and dropped it on the head of the deceased, as a result of which the deceased died instantaneously with profuse bleeding from the nose and the ears. P. Ws. 1 and 2 went near the old man and found him dead. They immediately caught hold of the accused. On hearing the noise from inside the house of deceased, P.W.3, who lives just opposite and others came there. Forthwith P.Ws.1 and 2 took the accused to the village chavadi and produced him before P.W.6, the village munsif. P. W. 1, also gave a complaint before him under Ex. P-1 attested by P.W.2.

13. P.Ws.1 and 2 are the eye-witnesses to this dismal tragedy in which an aged father has met with his end at the hands of his own son. The accused was demanding money, but, his old father, who was not an earning member of the family refused to oblige. The advice of P. Ws. 1 and 2 to the accused not to trouble the father but to earn for himself fell on deaf ears and the accused threatened to kill his father, if he did not pay him money. He followed his threat by dropping M.O.1 grinding stone which was nearby on the head of his father, who was lying down, resulting in his instantaneous death. The testimony of P.Ws.1 and 2 on this aspect is quite clear and convincing. No material discrepancy has been elicited in their evidence. No motive has been ascribed to them. P.W. 1 is the brother's son of the deceased and the cousin of the accused. There is hardly any reason for him to perjure against the accused. P.W.2 is the maternal uncle of the accused. He will be the last person to falsely implicate his sister's son. Their evidence, which does not suffer from any infirmity whatsoever, establishes beyond doubt the crime committed by the accused against his father.

14. Within half an hour of the occurrence, at 5 P.M. that day, the accused has been produced by P.Ws.1 and 2 before the village munsif, P.W.6. P.W.1 has given a complaint before the village munsif under Ex. P-1, which has been attested by P.W.2. Ex.P-1 complaint / fully corroborates the testimony of P.W. 1 and adds assurance to the case of the prosecution. The medical evidence is also in full consonance with the case of the prosecution. P.W.5, Dr. Venkatasubbiah, who has conducted the autopsy on the body of the deceased, has opined that the injuries on the head which have fractured the parietal bone and the temporal bone, could have been caused with a stone like M.O.1. M.O.1 grinding stone has been recovered from the scene and human blood-stains have been detected therein.

15. The motive for the occurrence, though trivial, has been satisfactorily established. The wayward youth has been troubling his father all along for money, and on the day of the occurrence, as the deceased father refused to yield to the demands of his son, he has been done to death.

16. On a consideration of all the aforesaid facts and circumstances, we have no hesitation in agreeing with the court below that it is the accused who has done his father to death by hitting him on his head with a grinding stone.

17. The main argument advanced by the learned Counsel for the appellant is that the accused was at the time of the commission of the offence 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 and hence entitled to the benefit of Section 84 of the Indian Penal Code, which embodies the fundamental maxim of criminal law *actus non facit reum nisi mens sit rea*. (The act itself does not make a man guilty unless his intentions were so.) During the period of remand, the prisoner was found to be suffering from mental ailment and he was under the treatment of the psychiatrist in the Tirunelveli Medical College Hospital at Palayamcottai. The First Additional Sessions Judge, Tirunelveli sent Ex.C-1 requisition dated 11-4-1980 to the Dean, Tirunelveli Medical College hospital for keeping the prisoner under observation in the psychiatric ward and to send a report regarding his mental condition. Dr. Chandrasekaran, psychiatrist attached to the Medical College Hospital at Palayamcottai kept the prisoner under observation

from 18-4-1980 till 28-4-1980 and has issued a certificate under Ex.C-3 finding the accused to be a mental patient suffering from schizophrenia. Dr. Chandrasekaran was examined in Court as C.W.1 on 30-6-1980 and on the basis of his evidence on 30-6-1980 and his certificate the learned Sessions Judge held that the accused was incapable of understanding the proceedings in Court and adjourned the trial. The prisoner was sent to the Institute of Mental Health at Madras for detention and treatment He was admitted there on 20-7-80 and was under treatment. On 7-4-1981 his condition was reviewed, his orientation was found good and he was certified as fit to stand the trial. He was consequently transferred back to Court. The learned Additional Sessions Judge examined Dr. Mathurbutham, Psychiatrist in the Institute of Mental Health, Madras as C.W.2 on 2-12-1982, considered his certificate under Ex. C-5 and found that the accused was capable of understanding the proceedings in Court and proceed with the trial.

18. The law presumes every individual at the age of discretion to be sane and to possess a sufficient degree of reason to be responsible for his criminal acts unless the contrary is proved to the satisfaction of the Court. In criminal cases, therefore, where insanity is raised as a plea of irresponsibility, the burden of proving the same lies on the defence and it must be established that the prisoner was of an unsound mind at the time of committing the offence. The only piece of evidence available in this case on which much reliance is sought by the learned Counsel for the appellant is, the admission made by C.W.2, Dr. Mathurbutham of the Institute of Mental Health, Madras, that the disease noticed in the prisoner might have existed for about 2 to 3 years prior to his examination on 2-12-1982. It is therefore contended that the accused must have been of unsound mind at the time of the commission of this offence on 17-12-1978. But, P.Ws.1 and 2, who are the paternal uncle's son and maternal uncle of the accused, are quite certain that the accused was not suffering from any kind of mental ailment prior to or at the time of the commission of the offence. The suggestion made to them that for about a year prior to the commission of this offence the accused, was of unsound mind, has been stoutly denied by them. They are the persons who would have been closely moving with the accused being his relation, and their testimony is entitled to due credence. The argument built upon the stray admission made by the medical officer in the course of cross-examination that the accused was of unsound mind

for about 2 or 3 years prior to the occurrence cannot be accepted. In all probability, as 'observed by the court below, the accused might have lost his mental balance because of the heinous crime committed by him against his own father. We therefore agree with the court below and hold that there is no material to come to the conclusion that the accused was of unsound mind at the time of this occurrence.

19. Further, it is not every person mentally diseased, who is exempted from criminal responsibility under Section 84 of the Indian Penal Code. Such exemption can be claimed only where the insane person 'is incapable of knowing the nature of the act or that he is doing what was either wrong or contrary to law'. It is by this test as distinguished from the medical test that the criminality of the act is to be determined. There is a good deal of difference between 'medical insanity' and 'legal insanity' and Courts are concerned only with the legal and not the medical aspect of the matter. Medical insanity is of wider amplitude and covers all varieties of mental illness. Legal insanity is a much narrower concept and confined to the impairment of the cognitive faculty of the mind which makes the offender incapable of knowing the nature of the act done by him and if he knew it, then incapable of knowing that it was either wrong or contrary to law. If the prisoner is conscious of the nature of his act, he is presumed to have been conscious of its criminality, and circumstances such as absence of motive, absence of secrecy, multiplicity of murders, want of pre-arrangement and want of accomplices are insufficient to support the inference that the person who committed the crime suffered from unsoundness of mind. A man may be suffering from some form of insanity in the sense in which the words are used by an aganist, but, he may not be suffering from unsoundness of mind as defined in Section 84 of the Indian Penal Code. It is not every kind of frantic humour or something unaccountable in a man's action that points him out to be a mad man to be exempted from punishment. It is not mere eccentricity or singularity ,of manner that would suffice the plea of insanity. Abnormality of mind is not by itself sufficient to show that the accused must have acted while of unsound mind. Even if it is proved that a person charged of murder was conceited, odd or irascible and that his brain was quite all right, it cannot be said that he was incapable of knowing what he was doing. The mere fact that the accused's mind was partially deranged or that he was subject to some

uncontrollable impulse due to insanity is not a valid defence in criminal cases. The mere fact that the crime was attended with uncommon ferocity would alone not suffice for the inference that the accused had a deranged mind. Any queer behaviour will not by itself amount to insanity as contemplated in this section. The law recognises nothing but incapacity to realise the nature and quality of the act that he was doing or if he did know it, that he did not know he was doing what was either wrong or contrary to law. In dealing with this question, the conduct of the accused prior to, at the time of and immediately after the commission of the offence has to be taken into consideration.

20. There is absolutely no record of any abnormality of mind on the part of accused prior to the commission of this offence. He was an idler who did not go for any work and was frequently pestering his father for money for his wayward expenses. P.Ws. 1 and 2 who are his close relations, have refuted the suggestion of any unsoundness of mind, before the occurrence. At the time of the occurrence, the accused has demanded money from his father, but, the old man refused to oblige in spite of his persistence. The accused has then threatened his father to do him to death if he did not pay and when his father remained adamant, the accused has translated his threat into action. The accused had, therefore, a clear motive to attack his father and he has violently attacked him with full knowledge of what he was doing. There is absolutely no scope for inferring that he did not know that 1 what he was doing was either wrong or contrary to law. It is urged that immediately after attacking his father and doing him to death the accused did not try to run away. But there was no scope for the accused to make good his escape for, he was immediately caught hold of by P.Ws.1 and 2. He has been taken to the village munsif and then to the police station and he has not exhibited any sign of mental affliction. There is, therefore, no room whatsoever to give the accused the benefit of Section 84 of the Indian Penal Code.

21. In Navier Marolle, In Re 1970 MLJ (Cri) 718 a Division Bench of this Court had occasion to deal with the plea of insanity. There in that case, the appellant would not speak with any person, he used to bring rabbits and fowls bathe them with soap, dry them and kill them by smashing them on the ground. The evidence established that he killed his two nieces without any provocation on account of his

fit of insanity and he did not know what he was doing was wrong. The appellant was, therefore, rightly held to be entitled to the benefit of defence of insanity under Section 84 of the Indian Penal Code. The facts of this case have no bearing to the facts before us. The accused herein has never before behaved in any manner other than as a normal human being. The attack on his father was motivated for the old man refused to pay him money for his expenses. In *Kandasami Mudali, In Re* , the accused exhibited queer behaviour and killed his child without any motive whatsoever and it was held that the case did not fall within the ambit of Section 84 of the Indian Penal Code. The case on hand is stronger still. The accused herein had never behaved queerly or abnormally. He had grudge against his father for his refusal to pay him money. He threatened his father with death and caused him death immediately when his father did not mind his threats and firmly refused to oblige him. This is, therefore a case where the accused has, in full possession of his senses, attacked his father with a grinding stone and caused his instantaneous death. The offence therefore falls squarely within the ambit of Section 300 of the India Penal Code and Section 84 IPC is not attracted.

22. In the result, we confirm the conviction and sentence imposed upon the appellant and dismiss the appeal.

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