In Re: Kandasami Mudali

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SooperKanoon Citation : sooperkanoon.com/805387

Court : Chennai

Decided On : Dec-24-1959

Reported in : 1960CriLJ930

Judge : Ramaswami and; Anantanarayanan, JJ.

Appellant : In Re: Kandasami Mudali

Judgement :

Ramaswami, J.

1. This appeal is preferred against the conviction and sentence by tile learned Sessions Judge of Coimbatore Division in Sessions Case No. 91 of 1959.

2. The accused aged about 22 at the time of the trial, married P.W. 2 Suppayal in 1956 or 1957. P.W. 2 continued to live with her father in Perunthalayur on account of the fact that the accused was a peripatetic cook. The accused was employed in Gobichettipalayam as a cook under D.W. 1 and used to visit his wife off and on.

3. On Monday (30-3-1959) the accused visited his wife and remained in his father-in-law's house in the night. On the morning of Tuesday (31-3-1959) his father-in-law went out for work. The accused, P.W. 2, her younger sister Kannal (P.W. 11) and the deceased female child aged about seven months were in the house. The accused asked P.W. 2 to go with him and P.W. 2 replied that she would do so after her father returned. Then the accused asked P.W. 2 to prepare hot water.

P.W. 2 therefore went out to fetch water from the river, two miles away, and P.W. 11 went out to play with her playmates. On P.W. 2 returning home, she found the accused and the child missing.

4. P.W. 2 searched for her husband and the child high and low. They were not to be seen. On Wednesday (1-4-1959) Marimuthu (P.W. 3), Ponnayal (P, W. 4) and P.W. 2 went to the accused's native place, Kanjikoil, The accused was there. On being questioned, the accused kept quiet for a time and then told them that he handed over the child to some one in Kavimdanpatti but he would neither give the name nor even the description of person viz., whether that person was a male or a famale even. P, Ws. 2 to 4 then went to Kavundanpatti. On their way they were informed that a dead child was floating in a well in Chettikattu Thottam. P.Ws. 2 to 4 went to the well and found the child lying dead, covered with straw, on the steps of the well.

5. How this came to light was in thiswise. On 81-3-1959 in the evening P.W. 7, Elaya Goundan, had seen a female child floating in the well in his Chettikathi Thottam. He did not know whose child it was. Therefore, he took the child and laid it on the steps, covered her with straw and went and reported the matter to the village Munsif of Pallapalayam, P.W. 8; vide Ex. P-2. The village munsifsent the usual reports to the Police and Magistracy. The Sub Inspector of Police (P, W. 13) who had received the report at 9-40 A. M. on 1-4-1959, visited the scene at 12 noon and saw the child on the steps covered with straw, held the inquest and handed over the body for post-mortem examination. He arrested the accused at 5-30 p. m. on the same day and traced Kuppayammal (P.W. 6) on the information given by the accused. P.W. 6 tells us that the accused went to her house on the date of occurrence (31-3-1959) and fed the child with the milk given by P.W. 6.

The Police also traced P.W. 5 who, on Tuesday (date of occurrence) at 10 A. M. while returning from Kavuiidiipadi Hospital, saw the accused going with the child, carrying her on his shoulder. On 1-4-1959 at 9 A. M. the accused had gone to Muthuswami Goundan (P.W. 9) a respectable agriculturist and in the presence of P.W. 10 confessed to him (P.W. 9) that he had thrown the child in the well and when questioned by P.W. 9 why he did so, the accused replied that, he used to be

deranged in his mind twice or thrice in a week and did not know what he did. But there is no doubt that when P.W. 13 arrested the accused on 1-4-1959 he was perfectly normal and gave information leading to the discovery of P.W. 6.

6. This is all the prosecution case and the accused has admitted that he was in his father-in-law's house on die night of 30-3-1959 and, that he fed the child with the milk given by P.W. 6. He stated that he does not know what took place on this morning of Tuesday in his father-in-law's house or what he told P.W. 9 and does not remember what he told P.Ws. 2, 3 and 4. He denies having pointed out P.W. 6 to P.W. 13 and added that he does not know if he was normal when he was questioned by P.W. 13.

7. The accused also examined his former master as D.W. 1 who stated that about one year back the accused was found not to sleep or take food and sold his wife's jewels and kept the money without spending tile same and would not answer questions Or would monotonously repeat that he does not know anything. Then the accused is said to have become normal after Doctor Sehgottayan treated him. But naturally this witness cannot say anything regarding the mental condition of this accused after he left his service in November 1958. This occurrence had taken place at the end of March 1959.

8. The prosecution has proved beyond reasonable doubt that the accused has committed the murder of his own child by throwing it into the well in Chettikattu Thottam and it is unnecessary to repeat the evidence which has been set out above and which conclusively brings home the guilt to the accused.

9. The only point for determination is whether the accused is entitled to the benefit of Section 84 IPC There can be no doubt that the accused was perfectly sane when he was arrested and secondly, when he was kept under medical observation in the Central Jail after the committal and before trial in the Sessions Court and during the trial in the Sessions Court. But this does not solve our problem, because we must find out whether the accused was sane or insane at the time of the commission of the offence. There is no rule that once insane always insane or that now sane, he must have been sane before. But unfortunately there are no materials in this easel whatsoever for making out the plea of insanity so as to

attract the provisions of Section 84 IPC

The burden of proof Under Section 84 IPC is clearly on the accused. No doubt this plea can be I made, out not only by independent evidence but also by circumstantial evidence and admissions elicited from the P.Ws. It is necessary for the application of Section 84 IPC to show that (a) the accused was insane (b) he was insane at the time when he did the act and not merely before or after the act and (c) as a result of the unsoundness of the mind he was incapable of knowing the nature of the act or that he was doing what was really wrong or contrary to law. In this case the evidence of D. W. 1 shows that he does not know the mental condition of the accused after November 1958. It is true that the wife of the accused says that when she and others questioned the accused regarding the child he appeared not to be in his senses. But this was alter the commission of the offence.

The wife no doubt obligingly adds that the accused was not in a normal condition when he asked her to prepare hot water and that the accused on the previous night had not taken food. But this is clearly a development because if that were so, she would not have left the child solely in the custody of the accused and left fur the river, two miles away. On the other hand, she would have made arrangements for an elderly person to do what is called baby-sitting. In regard to the accused not taking food on the previous night, there has been no mention of it earlier. On the other hand, the suggestion of the wife is that some sort of love-potion deranging the mind might have been administered in the food given by her cousin Lakshmi to this accused, who is said to have been taking food in her house and with whom, the wife says, she was not on talking terms.

The sum total of tile evidence of the wife is that the accused was behaving queerly. But this queer behaviour will not amount to insanity contemplated Under Section 84 IPC In fact, it is to meet such contingencies that the English Homicide Act, 1957, has introduced the principle of diminished responsibility and conviction for manslaughter and lesser penalties. The learned Sessions Judge is undoubtedly correct in holding that he cannot say that in the circumstances the accused has brought himself within the ambit of Section 84 IPC The point is

concluded by authority. Inadequacy of motive no doubt standing by itself is no proof of insanity. In Ram Sundar Das v. Emperor (1919) Cri LJ 383 : A.I.R. 1919 Cal 248 and Dewa Ram v. Emperor (1937) Cri LJ 893 : A.I.R. 1937 Lah 486 it was held that where an accused murdered his wife and child and it was proved that he was of somewhat unbalanced mind on different occasions and showed characteristics, many of which were not normal, these facts coupled with a lack of motive were not sufficient to bring the case of the accused Under Section 84 IPC

In Inayat v. Emperor 29 Cri LJ 1006, where the accused was not insane before or after the crime but the murder was motiveless, it was held that this by itself was not sufficient to bring the case Under Section 84 IPC and that the accused is guilty of miirder, In Local Government v. Sitrya , 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 be inferred but that by itself would not be sufficient to bring his case within Section 84 IPC In Mitha v. Emperor A.I.R. 1933 Lah 123 and Emperor v. Bahadur A.I.R. 1928 Lah 796 where an 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.

10. Therefore we confirm the conviction and sentence. The learned Sessions Judge has recommended to the Government in the exercise of their prerogative Under Section 401 Cr.PC, to reduce the sentence. We support the recommendation and also suggest that the accused may be kept in the Mental Hospital for a period in order to find out whether .it would be safe to release him on such terms as ' the Government may think fit so that we may be assured that further lives may not be endangered by such homicidal fits. On the basis of the medical report the sentence may be reduced.