In Re: Navier Marolle

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Court : Chennai

Decided On : Jun-25-1970

Reported in : (1970)2MLJ466

Appellant : In Re: Navier Marolle

Judgement :

R. Sadasivam, J.

1. Appellant Navier Marolle has been convicted by the First Additional Sessions Judge, Pondicherry, under Section 302 of the Indian Penal Code for having murdered his brother's daughters, Beatrice aged five years, and Pierette aged five months, by smashing them on the floor, at about 10-30 a.m., on 31st October, 1968, and sentenced to imprisonment for life. The fact that the appellant did cause the death of the two children admits of no doubt and, in fact, it was not disputed by the learned Advocate for the appellant. It is, however, necessary to refer to the evidence about the actual occurrence in this case in order to consider the plea of insanity which has been rejected by the trial Court.

2. There is ample evidence in this case to prove that the appellant was insane not only at the time of the occurrence, but also before and after it. He was aged only thirty-five years at the time of the trial. He was employed in the army, but the discharge certificate filed in this case shows that he was discharged from military service on 14th March, 1966 as he was suffering from schizophrenia, that he was

totally indifferent to the whole of his surroundings and that he was bizarre in his behaviour. Even after the occurrence in this case he was under the observation of P.W. 13 Dr. Corunalio, who has given the opinion that the appellant has been suffering from schizophrenia or split type of personality. It is true that on account of some treatment his rapport was partially established, but even then he did not realise the gravity of the crimes committed by him.

3. The crucial point of time for ascertaining the state of mind of the appellant is the time when the offence was committed. But, as pointed out by Subba Rao, J., (as he then was) in Dahyabhai v. State of Gujarat : 1964 CriLJ472 , the question whether the accused was in such a state of mind as to be entitled to the benefit of Section 84 of the Indian Penal Code can only be determined from the circumstances which preceded, attended and followed the crime. There is ample evidence in this case to show that the appellant was insane at the time of the crime. The several witnesses examined in this case have given evidence about the peculiar behaviour of the appellant. It is true that peculiar behaviour by itself may not be sufficient to support the plea that a person is insane or that he has a valid legal defence based on insanity. But it is a relevant circumstance to support the plea of insanity. Thus, there is evidence in this case to show that the appellant would not speak with any person, that he used to move about by himself, that he used to talk loudly, that he used to bring rabbits and fowls, bathe them with soap, dry them and kill them by smashing them on the grounds. It appears that whenever he got such brain disorder he used to get angry.

4. It appears from the evidence of P.W. 6 Alve's Antoine that even the appellant's mother had brain disorder, and this shows that the appellant inherited the mental disease. Even P.W. 10 Miles stated that when he apprehended the appellant he was a bit mad. Even the evidence of the eye-witnesses in this case proves that the appellant was not mentally sound at the time of the occurrence in this case.

5. The learned trial Judge has summed up the evidence in this case in the penultimate paragraph of his judgment and the sixth ground stated in that paragraph is that ' the crime, which the accused committed shall no the excused by its own brutality, through an inference of insanity from the acts committed by

him.' It is true that in several cases the defence of insanity is put forward merely on the basis of the brutal manner in which the murder has been committed or the multiple motiveless murder committed by a person. Thus in the case of Dahyabhai v. State of Gujarat : 1964 CriLJ472 , already referred to, the appellant in that case killed his wife in a ghastly manner by inflicting forty-four knife injuries on her body. But, having regard to the motive for the murder and other circumstances, it was held in that case that the plea of insanity was a belated after-thought and a false one. In the decision in Bhikari v. State of Uttar Pradesh : 1966 CriLJ63 , the appellant in that case attempted to kill his children and wife, but succeeded in killing only one of his children and caused injuries to his wife and other child. It was urged in that case that no man in his senses would go on attacking his children indiscriminately and go to the length of ripping open the chest of an one year old child and that these facts showed that the appellant in that case was insane. This plea was negatived on a review of the facts and circumstances of that case. But the fact that a murder has been committed in a purposeless way, for no motive whatsoever, is a circumstance to be taken into consideration, particularly in cases of multiple murders. Thus, in this case the double murder of the two children clearly supports the other evidence in the case that the appellant committed the murders while he was insane.

6. P.W. 1 Mustafa is a tailor having his shop opposite to the house of the appellant; He deposed that the appellant came from the beach side on a cycle, that the deceased girl, Beatrice was then tapping at the door, that the appellant talked to her in French and she replied in French, that the appellant got down from the cycle, pulled the girl by the hand and after she fell down, lifted her up above the head and dashed her on the pavement. The girl lay senseless on the drain and succumbed to the injuries after she was taken to the hospital. P.W. 2 Marine Navier, the mother of the appellant came to open the door and she saw the appellant shouting and lifting the girl and dashing her on the pavement. P.W. 3 the mother of the child Beatrice left her baby in the upstairs and came down on hearing the alarm. The appellant rushed upstairs, took the baby and dashed it on the ground. P.W. 3 gave varying versions as to whether she actually saw the appellant throwing down the baby, but even assuming that she did not actually see the dashing of her child by the appellant, the circumstantial evidence is sufficient

to prove that it was the appellant who did so. There is no evidence in this case about the nature of the conversation between the appellant and Beatrice just prior to the occurrence, but it is clear that he was in an angry mood, a mood which he gets when he gets fits of insanity. There was absolutely no motive for the appellant to kill his brother's children. The appellant has taken the entire house on rent and he has allowed his brother's family to live in the upstairs free of rent. He is living in the downstairs portion, cooking his own meals, as he is a bachelor. The learned trial Judge has remarked that P.W. 3 appeared light-hearted in giving evidence. It is unlikely that P.W. 3 would try to help her brother-in-law as against her maternal instincts if really her brother-in-law were sane. It is clear from the evidence that on the morning of the date of occurrence the appellant was angry, that at 8 a.m. he dipped a fowl in water, beat it on the ground and killed it and then went away on cycle that he did not know what he was doing and that he subsequently returned only a. the time of the occurrence. In fact, her evidence is that the appellant used to take the children out and purchase sweets for them. Thus, the evidence in this case shows that only during his fit of insanity the appellant committed the motiveless murder of his two nieces.

7. Section 84 of the Indian Penal Code lays down the legal test of responsibility It is not sufficient to prove that a person was not of sound mind at the time of the commission of the offence, to attract the provisions of Section 84 of the Indian Penal Code. It is necessary to prove also that by reason of such insanity he was incapable of knowing the nature of the act or that he was doing what was either wrong or contrary to law. The section is based on the answers given by the Judges in the House of Lords in the famous M' Naghton's case (1843) 10 Cl. 8 Fin. 200 H.L. : 8 E.R. 718. In Section 67 of Maculay's draft code of 1837 there was a similar provision as regards the defence of insanity in the following terms, namely, that nothing is an offence which is done by a person in consequence of his being mad or delirious at the time of his doing it. But having regard to the provision of sections 84 of the Indian Penal Code, mere unsoundness of mind as found by medical men will not be sufficient to enable an accused person to plead insanity unless he is able to show that by reason of such insanity he did not know the nature of the act or that what he was doing was either wrong or contrary to law.

8. The burden of establishing the plea of insanity is, by virtue of Section 105 of the Evidence Act, on the accused. But, as pointed out by Subba Rao, J., (as he then was) in Dahyabhai v. State of Gujarat : 1964 CriLJ472 , the evidence of that falls short of proving insanity may still raise a reasonable doubt about the existence of the requisite intention. At page 1568, Subba Rao, J., has expressed himself in the following terms:

The doctrine of burden of proof in the context of the plea of insanity may be stated in the following propositions : (i) 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 on 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 by Section 84 of the Indian Penal Code; 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 rests upon a party to 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 could be entitled to acquit the accused on the ground that the general burden or proof resting on the prosecution was not discharged.

9. This passage was considered in the subsequent decision of the Supreme Court in Bhikari v. State of Uttar Pradesh : 1966 CriLJ63 . Mudholkar, J., after referring to the above passage, has observed as follows:

If upon the evidence adduced in the case whether by the prosecution or by the accused a reasonable doubt is created in the mind of the Court as regards one or more of the ingredients of the offence including mens rea of the accused he would be entitled to be acquitted. This is very different from saying that the prosecution must also establish the sanity of the accused at the time of commission of the offence despite what has been expressly provided for in Section 105 of the

Evidence Act.

10. In Jayasena v. Reginam (1970) 1. All E.R. 219, the Privy Council had to deal with burden of proof in criminal cases in an appeal from Ceylon, which is governed by Evidence Act and Penal Code similar to those of this country. The above two Supreme Court cases were referred to with approval in this case. These decisions clearly show that, though it is for the accused to establish his plea of insanity, the prosecution will not be absolved from proving the guilt of the accused beyond reasonable doubt, having regard to the plea taken by him and the evidence adduced in the case.

11. The evidence in this case clearly proves that on account of his mental condition the appellant did not know what he was doing or that what he was doing was wrong. It is further clear from the evidence that the appellant used to get unreasonably angry when he gets brain disorder and that at the time of the occurrence he was angry. P.W. 1 stated that the accused did not know what he was doing when he dashed the girl to the ground. Even P.W. 3, the mother of the deceased child has staled that when the accused gets brain disorder he gets angry and then he would kill fowls by dashing them on the ground and would not know what he is doing. The appellant appears to have reacted in the same manner in killing the children Beatrice and Pierette.

12. In order to prove the necessary mens rea the prosecution usually relies on some circumstance or other appearing in the evidence. Thus in several cases the fact that the accused attempted to escape or actually escaped after committing the offence is taken as a strong circumstance as negativing the defence based on the plea of insanity, as such conduct would show that the accused was aware of the fact that what he was doing was wrong. Thus in Clause (7) of the penultimate paragraph of his judgment, the trial judge has referred to the words of Lord Branwell that, 'He would not have yielded to his insanity, if a policeman had been at his elbow' and stated that they applied to the appellant. The learned trial Judge has failed to refer to the evidence in this case to find out whether the words of Lord Branwell really applied to the appellant in this case. It is clear from the evidence in this case that after killing fowls during fits of anger, the appellant would go away

on a cycle. Similarly after killing the children on the morning of the date of the occurrence, the appellant left the place on his cycle. The evidence of P.W. 1 is that the appellant had no intention to escape. P.W. 10 Miles found the appellant sitting on a cycle with one leg on the ground at Roman Rolland and St. Lawrence Streets, and took him to the police station. On the way to the police station he enquired the appellant whether he wanted anything, but the appellant kept quite. The witness gave him a cup of coffee. He admits in his evidence that the appellant did not try to escape when he was secured and when he was taken to the police station. Though in his evidence P.W. 10 stated that he saw the appellant going on a cycle and that he followed him, it is clear from the evidence of the Inspector of Police that P.W. 10 only found the appellant sitting on the saddle of his cycle at the place when he apprehended him and took him from that place. Thus the appellant made no attempt to escape after the occurrence in this case. It is clear from the evidence of P.W. 13, Dr. Corunalio, who examined the appellant, that the appellant did not realise the gravity of the crime. He was not aware of the fact that he had killed his two nieces. During the pendency of this appeal, this Court called for a report from the Superintendent of the Government Mental Hospital, Madras, regarding the mental condition of the appellant. The report shows that the appellant is suffering from schizophrenia for a long time and that he is not aware of the fact that he has murdered his nieces. The report also shows that the appellant does not seem to understand the gravity of the situation in which he is placed and asserts that he is mentally alright. It is clear from the evidence in this case that the appellant is suffering from schizophrenia from his 19th year, and evidently he inherited it from his mother's side.

13. Thus the evidence in this case clearly establishes that the appellant killed his two nieces without any provocation or motive on account of his fit of insanity and that he did not know that what he did was wrong. We have referred to the decisions of the Supreme Court and the Privy Council and pointed out that it is necessary for the prosecution to prove mens rea required for the offence of murder and it could not be said, on the facts of this case, that the prosecution has discharged that burden. There is no circumstance from which it can be inferred that the appellant knew what he was doing or that it was wrong. This is a case in which the appellant is clearly entitled to the benefit of the defence of insanity

allowed under Section 84 of the Indian Penal Code. We find that the appellant did commit the acts alleged against him, namely, that he smashed his two nieces to death on the morning of the date of the occurrence, but that he did so while he was insane. The conviction of the appellant under Section 302 of the Indian Penal Code and the sentence of imprisonment for life imposed on the appellant are, therefore, set aside. But in view of our findings that the appellant committed the acts alleged against him by reason of his unsoundness of mind and that he continues to be in the same state of mind, we direct him to be detained in the Government Mental Hospital, Madras, and the above action taken by this Court shall be reported to the Government under Section 471 of the Criminal Procedure Code in order to enable it to take such further action as contemplated by Section 474 of the Criminal Procedure Code.