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In Re: Sankappa Shetty

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Court : Chennai

Decided On : Aug-05-1940

Reported in : AIR1941Mad326

Appellant : In Re: Sankappa Shetty

Judgement :

Gentle, J.

1. The appellant has been convicted by the learned Sessions Judge of South Kanara of the offence of murder under Section 802, Penal Code, and has been sentenced to death. The appellant is Sankappa Shetty and the deceased was his wife, Kaveri. They had been married for eight years and had four children, issues of the marriage, of the ages, between seven years and 18 months. The offence is alleged to have taken place in the house of Honnaya Hegde who is the uncle of the mother of the deceased. P.W. 2, Hoovamma, is the wife of Honnaya Hegde. In the community to which the accused and the deceased belonged, it is the custom for the husband to bear the expenses of the wife's confinement. Eighteen months before the death of the deceased, as her parents were dead, the deceased went to the house of P.W. 2 in Kuthavoor village for her confinement. The appellant was unable to bear the cost of the confinement or for his wife to return to him at his own village about 11 miles distant, and during the period of 18 months following her last confinement she remained at her relation's house where he visited her from time to time.

2. On 28th November 1939, the appellant arrived at the house. The deceased, P.W. 2 and her son, P.W. 3, were then present. He spent the night with his wife and children in a room in the house. On 29th November 1939, P.Ws. 2, 3 and 5, the brother of the deceased who also lived in the house but had been absent the previous night, took their food with the appellant and the deceased at about 10 A.M. The appellant asked the deceased to give him Rs. 25 and she replied that if he returned her jewellery which he had previously taken, she would let him have that amount. It was said that upon her marriage she had jewellery worth about Rs. 200 which the appellant had taken and upon which he had raised some money. About noon, P.Ws. 2, 3 and a servant, P.W. 4, went to a building about 45 feet away from the room which the deceased, the appellant and their children occupied, in order to pound paddy. About two hours later, these three witnesses heard the deceased cry 'killing' and the children shouting 'father is killing mother.' They went to the room in the house and found the door shut and bolted or locked from inside. P.Ws. 2 and 3 went to an open window and saw the appellant inflicting a blow with a plank, upon which food was served, upon the deceased's temple. P.W. 5 was not then in the house, having gone out. P.W. 2 immediately raised an alarm which brought two neighbours, P.Ws. 6 & 7. P.W. 3 fetched P.Ws. 9 and 10 who were working near-by. P.W. 6 forced open the door with a crowbar. The deceased was lying dead on the floor, and the appellant was seized, brought out and secured. He appears to have offered but little, if any, resistance and some of the witnesses said he appeared dazed. Communication was made to P.W. 16, the village patel, who sent his report to the police and the police-officer arrived later.

3. On 1st December 1939 P.W. 1, the medical officer in charge of the Local Fund Hospital at Mulki, performed the post mortem examination upon the body of the deceased. He found 20 injuries of which 10 were on the head and the others on the various parts of her body. Seventeen of the injuries could have been caused by the plank with which P.Ws. 2 and 3 had seen him striking the deceased, two of the head injuries would have occasioned death within five minutes. Learned Counsel on behalf of the appellant stated that he was unable to suggest that the evidence of the above witnesses could in any way be attacked or disputed. There is nothing which shows that these witnesses were unreliable or their evidence

unacceptable, and that it is beyond doubt that the appellant caused the death of the deceased by striking her with a wooden plank which, in the way he used it, was a dangerous weapon. The defence which was put forward before the learned Sessions Judge and which has been argued before us is that at the time he killed his wife, the appellant was insane. Section 84, Penal Code, provides as follows:

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.

4. The question of the sanity of the appellant was not raised or suggested to be in doubt until the trial in the Sessions Court which commenced in February 1940, about three months after the occurrence. In the statement which he made before the committing Magistrate on 10th January 1940 the appellant said he did not know anything and that the rest, he would tell in the higher Court, he had no witnesses to be examined in that Court, it was not possible for him to give a list of witnesses at that stage, as he would produce them in the Sessions Court. The facts and circumstances which are relied upon to substantiate the plea of the insanity are (1) the matters given in evidence in the Sessions Court by P.Ws. 1 and 14 and D.W. 1; (2) that the deceased and the appellant throughout their married life had lived upon affectionate and friendly terms; (3) that there was no motive to cause the appellant to take the life of the deceased and (4) that when the prosecution witnesses went to the scene of occurrence, the appellant appeared to be dazed and offered no resistance when he was seized and secured. All the witnesses who were acquainted with the deceased and the appellant said they were always upon affectionate terms together.

5. Prior to the happenings on 28th November 1939, there is no doubt that the appellant was in some financial embarrassment. He was also concerned in regard to some property belonging to his wife or in which she was entitled to a share and which he described as 'our' property. The ejaman of the deceased's family is the husband of P.W. 2, a mortgage was subsisting upon this property and the ejaman had not kept up payment of the interest and some amount in respect both of principal and interest was outstanding. Some approaches to, or negotiations with,

a bank in Mangalore had taken place to borrow the necessary funds to discharge the mortgage debt, but these had not been successful. On 23rd November 1939 six days before the occurrence, P.W. 15, a Sub-Inspector of Police had questioned the appellant regarding a piece of jewellery which was stolen and examined him as a witness who had some knowledge of the theft. The relevancy of these two matters will appear later.

6. It is now convenient to refer to the testimony of the three witnesses upon which the defence relies. P.W. 1, the medical officer who performed the post-mortem upon the body of the deceased, was asked about the mental condition of the appellant when he was cross-examined before the learned Sessions Judge. He said that from the nature and the number of the injuries which he found the attack was very brutal. There must be some deep seated motive for a man to cause so many injuries and if the deep-seated motive was absent, then the assailant must be an insane man especially when he is the husband of the victim. In reply to further questions by the learned advocate for the appellant, he then gave the following evidence. One or two days before the death of the deceased, he travelled in a bus with the appellant. Both of them alighted at a village called Mulki. A little later, he said, he saw the appellant prostrating himself before a man who had been a passenger in the bus and talking incoherently to him, that his behaviour was not quite normal and that he was excited. In one part of his evidence he said he could not make out what the appellant was saying. Later he stated he did not pay any attention to what exact words were uttered, but corrected himself and said that he heard now and then some of the words which the appellant spoke to the passenger and which were 'you are my saviour,' 'had it not been for you I would have been ruined,' and 'a telegram must be sent to Mangalore' and later still the witness said he did not catch the subject-matter of the talk. The appellant bent his head and touched the feet of the passenger several times. He did not say that the passenger resented the attentions of the appellant or that he tried to get rid of or escape from him, and added that whilst this man was a stranger to the witness, he was not sure that he was a stranger to the appellant.

7. The appellant is a villager and conduct of this kind is not an unique way for such a man expressing his thanks and appreciation for help and services rendered by another who might be in a higher station in life. If, as he said, he did not know what the subject was of the remarks made by the appellant and heard only the words which are set out above, it is difficult to see how he could say the appellant was talking incoherently. Hearing only three short disjointed sentences of a conversation without knowing the remainder or the subject of the remarks should not lead to an inevitable conclusion that the words which were heard must be incoherent, that is to say, inconsistent. The sentences seem to me to be more compatible with consistency than with incoherence. The witness said that it was the words he heard and, being incoherent, made him understand the appellant was not in his senses. As a general proposition, one cannot accept the opinion which this witness expressed that in the absence of what he {described as a deep-seated motive, the brutal assault must have been committed by an insane man. P.W. 1 said that later he went to the house of one Raman Shetty where he saw P.W. 14, Jayarama Shetty, and told him of the incident of the appellant behaving 'like a mad man.' P.W. 14 said he had been so informed.

8. P.W. 14, Jayarama Shetty, in examination-in-chief said that he knew the appellant, who had stayed in his house at Mulki from 26th to 28th November, and that it was the custom of the appellant to do this whenever he was in that village. During this particular visit, the appellant told him that there was a debt upon 'our' property, Rs. 1000 was due which it was necessary to pay and to do this, application had been made to a bank in Mangalore for a loan which at first was promised but subsequently it had not been sanctioned. P.W. 5, the deceased's brother, who lives at the house of P.W. 2, said in cross-examination that there was a mortgage upon their family property the amount of which had been reduced to Rs. 3000, it was decided to raise a loan to discharge this, and the appellant had been to a bank in Mangalore to obtain a loan. He apparently was not asked and did not say whether the bank declined to grant it. There is no suggestion that the evidence of P.W. 5 was incorrect and therefore the statements by the appellant in regard to the mortgage and the attempts to obtain a loan are substantially correct. The appellant also told P.W. 14 that on account of financial difficulties he had not been able to cultivate his land and had let it out on lease, although no evidence

was forthcoming about this, as the appellant was in straitened circumstances, it is likely to be correct. In re-examination, P.W. 14 said that when the appellant discussed financial matters, he talked like a sane man. From this part of this evidence, there is nothing from which it can be contended that the appellant was not in possession of his senses. Reliance is placed upon the evidence which this witness gave in his cross-examination. In this part of his testimony, P.W. 14 said that P.W. 1 had told him of a man behaving like a mad man, and that he, P.W. 14, guessed that P.W. 1 was referring to the appellant. On the night of 26th November 1939, the appellant stayed in his house, his behaviour was not quite normal, he was talking much, which talk was incoherent and nonsense. He expressed the fear he was going to die, that 'Tharnma' (younger brother or cousin) had given him some medicine which had made him ill and that he felt a strange sensation in his head. It was this talk which the witness said caused him to guess that the appellant was the man to whom P.W. 1 had referred as the former told him he had arrived by bus.

9. On 27th November 1939, P.W. 14 said the appellant was acting or behaving like a mad man on the road, someone informed him that a man who had stayed at his house the previous night was behaving in this way and on going up to a large crowd found the appellant, he ascertained that some rupees had been scattered on the road which had been picked up by a Konkani, except two, which the witness secured and took the appellant back to his house. He did not see the appellant throwing money on the road. At about 8-30 that evening the appellant suddenly got up and struck him a blow, attempted to run away, and with the help of two other persons who were present he ?was caught, brought back and made to sit down. He wept like a child and when asked why he struck the witness he said 'When I looked at you, you appeared frightful. So I. beat you. I am sorry for having, beaten yon.' Later that evening he the appellant ran from an upper storey in the house saying that he would jump into a well. On the morning of 28th November 1939, P.W. 14 said the appellant was all right. He took him to the bus station, obtained a ticket for him to Kimmigowli which he gave to the appellant and asked some man in the bus to arrange for two people to go with him. At the conclusion of his evidence, he, the witness, said that only occasionally the appellant would go off his head and that for most part of the time during his stay,

the appellant was all right, by which the witness must mean he was behaving normally. There can be little doubt, indeed, the learned Public Prosecutor said that he would concede, that at times the appellant's conduct and behaviour were peculiar, but the expressions of regret which the appellant made to P.W. 14 after he had struck him indicate that he realized what he had done and that it was wrong. The incoherency and nonsense mentioned by P.W. 14 appear to refer to the appellant saying he feared he might die and blamed 'Thamma' for having given him some medicine which made him feel ill and that he felt a strange sensation, in his head. The evidence does not establish it was the appellant who threw money on the road; the defence suggests this should be inferred. The incident when he said he would jump into a well, if it occurred, reflects a suicidal and not a homicidal tendency. The effect of his evidence, whilst it shows the appellant's actions and conduct were strange and eccentric does not establish either that he did not know what he was doing or did not realize what he had done was wrong.

10. P.Ws. 1 and 14 both described the appellant's conduct as not quite normal which is not unsoundness of mind of the degree required by Section 84, Penal Code. Neither P.W. 1 nor P.W. 14 mentioned any of the matters to which I have just referred when they gave evidence before the committing Magistrate and they were disclosed for the first time in the Sessions Court. Whatever might excuse P.W. 14 not referring earlier to the conduct of the appellant, P.W. 1 is a gentleman of education and a doctor, and one would have thought that if he had formed the opinion that the appellant was not responsible for his actions, he might have mentioned it earlier and not wait until he gave evidence in the Sessions Court. Mr. Ethiraj, the learned Public Prosecutor, however, stated that he did not wish that the position of the appellant should be adversely affected by the failure of these two witnesses to disclose the matters to which they spoke, would make no observations regarding the belated nature of their evidence but confine himself to criticising their testimony. He submitted it did not establish that the appellant, at the time he inflicted the injuries upon his wife, did not know what he was doing, or if he did not know that it was wrong or unlawful.

11. D.W. 1, Sridhara Shetty, did not give evidence until the trial in the Sessions Court. He said that he knew the appellant and saw him at the end of November in

Kimmigowli sitting on a bench in a coffee hotel. There were other people present including a man named Degu Bhandari, who gave some rupees to the appellant. The witness said that he told the appellant that P.W. 14 had sent word that he (the appellant) should be sent to his house escorted by two other persons and asked him whether he was going to his wife's house at Kodappa (this is the name of the house where the deceased was living with P.W. 2). The appellant replied that he had been drugged, krutrima has been done to him and went on talking. The witness said he paid no attention to this. Upon being asked again where he intended to go, the appellant informed him that he was going to Kodappa. The witness said that he told two men, Isthu and Babu, who were not called to give evidence, to take the appellant and leave him at Kodappa. Incidentally, P.Ws. 2 and 3 when cross-examined said that the appellant arrived alone. D.W. 1 did not remain long at the hotel or talk to him much. When the appellant said he would go to his relations at Kodappa he spoke rationally, that he was now and then all right and talked properly. The only matter to which this witness deposed showing abnormality was the appellant's reference to drugs and krutrima and as he remained only a short time his statement that the appellant was all right now and then, suggesting at other times he was not, carries little, if any, weight.

12. In the Sessions Court, the appellant made a lengthy statement in the course of which he said that prior to the occurrence he was not well and felt that his enemy had administered evil drugs to him. At that time a man named Aga Kala Dasu Chetty had stolen a jewel. He had informed the Sub-Inspector who was responsible for the theft and ten days afterwards his illness grew worse and he had some fear and a sensation in his stomach. On one occasion when in the dark he felt as though he saw an apparition like a big man. In the journey to Mulki In the bus he felt a sort of fear and was unwell. He lost some rupees which he had on arrival and asked P.W. 14 and others where they had gone. The next day he felt better. He referred to his stay with P.W. 14 and the visit to the hotel of Kinmigowli where he had taken food. He said two persons accompanied him to the house where his wife was, one a Christian and the other a dark man. He felt a chill and was shivering as if he had fever. On arrival at the house, his wife and P.W. 2 asked him if he had fever. They applied some medicine to his head and gave him a bath. The next clay he said that P.W. 2 and his wife told him that there was

some talk that he had stolen the jewel. Later he said his wife alone told him this. At noon his wife roused him from his sleep and asked him to take some food and then inquired about the stolen jewellery and at that time he was not well. The statement then continues that he was unaware after this if he beat his wife or not. There was no disagreement between them he did not ask his wife for money; she had none; and that whenever she needed any he gave it to her. The next day he was told by the police that he had killed his wife and he said that he had no recollection of doing so. P.W. 2 and her son P.W. 3 bore feelings of enmity against him arising out of a mortgage loan to be obtained from a bank, a disagreement over a marriage and a dispute regarding money, and they had given evidence against him on account of this animosity. He added that he first became aware of his surroundings during the night when he was in the yard with his legs and hands tied. The learned Sessions Judge put to the appellant a large number of questions which more resembles cross-examination than an examination under Section 342, Criminal P.C.

13. P.Ws. 2 and 3 denied the appellant was brought to the house by two men, that he was ill on arrival and had been given treatment and a bath. These two witnesses and P.W. 5 said that he was in his senses and alright. The evidence regarding the occurrence is given by P.Ws. 2 and 3; it was not suggested they were not speaking other than the truth. There is no reason to reject their testimony upon the appellant's state and condition of mind. The case for the appellant is that his conduct and behaviour during the three days prior to and on the day of the occurrence shows that he was of unsound mind to a degree that he was unable to distinguish between right and wrong. According to his own statement, he underwent a 'black out' at the time of the attack upon the deceased and his memory of that event is a complete blank. There was no evidence, indeed there was no suggestion, that previous to the period covered by the occurrence and the three days prior thereto or at any time since, the appellant has shown any signs of mental derangement, his un-soundness of mind being limited to those few days. In his statement, he gives the places to which he went during that time and his arrival at Kodappa house. His statement is at variance with the evidence of P.Ws. 2 and 3 regarding his arrival with two persons and being given treatment and a bath, but a conflicting statement is not necessarily a sign of insanity. He therefore had a

recollection of his movements during this period. His reference to the loss of some money at Mulki and his enquiries of P.W. 14 what had become of it doubtless refers to the affair in the road to which this witness spoke and the inference is sought to be drawn that his mind is a blank in respect of that incident. Whilst this incident may have occurred, one is dependent upon the accused's own statement that he has no recollection of it, the suggestion being that this freak of memory is similar to his want of recollection of the occurrence in the room where his wife was killed. If he was suffering from unsoundness of mind, it is unlikely it would have been manifest only during the period of four days and terminated immediately after the attack upon his wife, when, for a short time, the suggestion is that he became a homicidal maniac.

14. Even accepting the whole of the evidence of P.Ws. 1, 14 and D.W. 1 of whom the first two witnesses described the conduct of the appellant as not quite normal, it shows he was strange and eccentric, he was under a delusion that a brother or cousin had given him drugs and that krutrima had been done to him, and putting it at the highest, was acting upon some insane impulse when he struck P.W. 14, but nevertheless, his expression of regret shows he must have known he was then doing what was wrong. P.W. 14 said that when he told him of his financial troubles, he talked like a sane man and it would seem with substantial accuracy. P.W. 1 said he spoke rationally when he said he was going to his relations at Kodappa house. His cognitive faculties were therefore not absent. When a man is worried with his affairs or distracted about money matters, as the appellant was, slight annoyance may rouse his anger which at other times would be left unperturbed and may cause him to lose his temper and do an act even of violence. Can it be said that such a parson is insane to a degree the section requires? The appellant and the deceased were in the room for two hours prior to the occurrence. Their young children were with them but are too young to give evidence of what transpired. Whilst there is no apparent motive for the appellant's act, it is not without some significance that the door was bolted from inside the room at the time and although there is no evidence who secured the door the attack was made at a time when entry into the room was obstructed and prevented. This factor is relevant also when considering the appellant's knowledge. The absence of motive and the violence used to cause the death of

another alone are not sufficient to establish that the assailant was insane at the time : see Emperor v. Gedka Goala ('37) 24 : AIR1937 Pat363 and the cases cited in the judgment.

15. The last two matters requiring consideration are that the appellant appeared dazed and offered no resistance when he was secured after the occurrence. It is likely that he would be dazed when he realized what; he had done and as five men broke into the room, in such circumstances a man who is not out of his senses would appreciate the futility of offering resistance. If the appellant had exhibited violence to, and fought with, these men, such conduct might well reflect a disordered mind. If an inference is to be drawn from his behaviour at this time, it is that he appreciated what he had done and knew that resistance was useless.

16. Upon consideration of all the evidence, facts and circumstances, including the absence of an apparent motive and the appellant's conduct both before and after the occurrence, it is not established that he did not understand the nature and quality of his act. Although his behaviour may have been unusual and strange, he was not suffering from unsoundness of mind so as to be incapable of knowing the nature of his act or that he was doing what was either wrong or contrary to law when he put his wife to death. The defence under Section 84, Penal Code, should therefore fail.

17. The appellant inflicted grievous injuries upon his wife with a wooden plank which was, by the way in which it was used, a dangerous weapon. The persistence of the attack evidenced by the number of injuries and the grievous nature of at least two of] them show that when he was beating his wife he intended to kill her. Therefore the} offence which he committed is murder. The absence of an apparent motive is material when the question of sentence is considered. The offence which the appellant committed was not premeditated in any way and must have been the result of impulse and temper. In these circumstances, I consider that although the assault was a violent one, the proper sentence is one of transportation for life. I would therefore affirm the conviction but reduce the sentence.

Patanjali Sastri, J.

18. I regret I am unable to agree with my learned brother in the conclusion he has arrived at. I would accept the appellant's plea of insanity and set aside his conviction. The facts of the case have been fully stated in the judgment of my learned brother which I have had the advantage of reading and it is unnecessary to recapitulate them here. I would content myself with briefly indicating the grounds of my decision. The appellant's plea is based upon Section 84, I.P.C., and the onus of establishing it is on the appellant : see Section 105, illustration (a), Evidence Act. The question for determination therefore 0is whether the appellant has succeeded in proving, that when he killed his wife, he was incapable, by reason of unsoundness of mind, of knowing the nature of the act or that he was doing what was either wrong or contrary to law. It may be observed at once that the appellant was not placed under any medical observation soon after the occurrence and we have thus no expert medical evidence relating to the cognitive faculties of his mind during the period immediately following the occurrence. There is, however, sufficient evidence, in my opinion, to establish the appellant's plea of insanity.

19. In the first place, there is such a complete lack of apparent motive and the act of killing was done with such needless fury and violence that it is difficult to regard it as the act of a person in the unimpaired possession of his cognitive faculties, especially as the deceased was the appellant's wife and it is abundantly proved by the prosecution evidence itself that they were living on quite affectionate terms. Some attempt was no doubt made by the prosecution to suggest a motive of a sort, namely that the appellant had previously taken and sold the jewels of the deceased for his own purposes and when he asked her on the morning of the day of occurrence to give him Rs. 25, the latter replied that if he returned what he took from her previously, meaning the jewels, she would pay the sum required. This is said to have so enraged the appellant that he killed her in a fury. P.Ws. 2, 3 and 5 speak to this incident in the morning but the story is very thin and the witnesses themselves admit that even after the appellant took away the jewels of the deceased, they were living on very affectionate terms. P.W. 2 the grandaunt of the deceased said:

Yes, the accused was showing great affection to her. Kaveri never complained to me or to my husband about the accused. They were loving each other very much. Even about his having taken away her jewels, she never complained to me or to any of us. The accused was also loving his children very much.

20. P.W. 5, the brother of the deceased, said:

Kaveri did complain to me about the accused having sold away her jewels and having himself utilized the proceeds. Yes, in spite of that both husband and wife were loving each other. Up till that Wednesday I have not known of any instance of the accused having beaten or ill-treated Kaveri on any other occasion.

21. This evidence clearly shows that there was no ill-feeling or misunderstanding due to the appellant having sold away his wife's jewels and it could not have possibly served as a motive prompting the perpetration of the deed. Then as to the appellant having asked his wife for Rs. 25, on the morning of the day of the occurrence, it is difficult to accept the evidence as it was admitted by P.W. 5 that the deceased had no money at the time and that the appellant also knew that she had no money, and, in any case, it has been elicited from P.W. 2 that the appellant did not show any signs of having got irritated by his wife's alleged answer to his demand for money. The attempt, therefore, on the part of the prosecution to make out that the appellant's act of killing his wife was prompted by a rational motive must be held to have completely failed and indeed, the learned Public Prosecutor made no such attempt before us.

22. We have thus the spectacle of a loving husband and an affectionate father who had never been known to have beaten or ill-treated his wife on any previous occasion suddenly killing her by battering her head and body with a sitting plank inflicting as many as twenty wounds and bruises. The post mortem certificate (EX. K) describing the injuries shows that the appellant must have been seized with a frenzy of violence which led him to deal blow after blow indiscriminately all over the body, and the doctor (P.W. 1) who conducted the autopsy gave it as his deliberate opinion that from the nature and number of the injuries which he had examined, there must have been either some deep-seated motive or the man must have been insane. Comment was made that this was a mere matter of

opinion. I did not however understand the Public Prosecutor to argue that it is inadmissible in evidence. In M'Naghten's case (1843) 10 Cl. & F. 200 the learned Judges who were consulted by the House of Lords expressed the view that a medical man who had been present in Court and heard the evidence might be asked as a matter of science, whether the facts, assuming them to be true, showed a state of mind incapable of distinguishing between right and wrong. If so, I do not see why the opinion of P.W. 1, who was a medical man and had himself seen the injuries on the body of the deceased, should be rejected as inadmissible. Even apart from this opinion of P.W. 1, I consider that the nature and circumstances of the appellant's act justify the inference that it must have been committed under an insane impulse when he was incapable of understanding what he was doing. This inference is supported by the evidence in the case relating to the abnormal behaviour of the appellant spoken to by P.Ws. 1 and 14 during the two days immediately preceding the occurrence. P.W. 1 said that one or two days before the death of the deceased, he saw the appellant at Mulki 'behaving like a mad man.' He deposed:

I saw this accused prostrating before a passenger (in the bus) and talking incoherently to him. His behaviour that day was not quite normal. He was excited. I could not make out what he was saying to the passenger.... I told him (P.W. 14) about this incident--the accused behaving like a mad man.

23. In re-examination he added:

The accused's prostrating to the passenger was on the road. He did not lie flat on the ground. He simply stooped and bent his head and touched the feet of the passenger so many times. He said 'You are my saviour and so on'.... He would say some words, now and then, touch the feet of the passenger arid then keep quiet and then he would say some words. The words that I caught now and then, while he talked, were incoherent and they made mo understand that he was not in his senses.

24. It is true that this witness did not refer to this incident when he was examined before the committing Magistrate. But it must be remembered that he was not cross-examined on behalf of the appellant in that Court and though he might have

voluntarily placed the information that he possessed before the Magistrate, no inference against his veracity could, in my opinion, be drawn from his omission to do so. It might well be that he thought that it is none of his business to bring it to the notice of the Court. It might also be that he did not want to run the risk of his statement being discounted or disbelieved as something volunteered on account of his supposed interest in the appellant. The learned Public Prosecutor stated quite fairly before us that he would not question the veracity of this witness on the ground that he failed to refer to this incident when he gave evidence before the committing Magistrate and argued only that taking his evidence to be true, it was not sufficient to support a plea under Section 84, Penal Code. P.W. 14 also gave evidence as to the accused's state of mind during the same period, i.e. the two days prior to the occurrence. He is a resident of Mulki and he said that whenever the appellant came there, he used to take his food in an hotel but stay in the witness's house during the nights. This witness was examined for the prosecution to show the financial condition of the appellant at about the time of the occurrence. In cross-examination, however, certain important incidents throwing light on the appellant's state of mind have been elicited. The witness said that on the night of the 26th, when the appellant came to his house, the appellant was talking incoherently and even talked nonsense. He expressed some fear and was saying that he was going to die. He said that 'Thamma' (younger brother or cousin) had given him some medicine and after that he had been keeping ill and was feeling a strange sensation in his head. On 27th November the witness saw the appellant acting and behaving like a mad man on the road in Mulki. Some one told the witness that the man who had slept in his house on the previous night was behaving like a mad man on the road, whereupon the witness went and saw a large crowd round the appellant on the road where he noticed rupees lying scattered. Some of the coins had been picked up by a Konkani and the witness picked up two which had been left on the road and took the appellant to his house. The witness also said that on hearing his voice, the appellant sat down on the road.

25. After the appellant was taken to the house, at about 8-30 in the night, he suddenly got up and gave the witness a blow when the latter was talking to certain other persons in the room. After the appellant gave the blow, he attempted to run

and the witness and another caught hold of him and brought him back to the house. When asked why he beat the witness, the appellant did not talk at all for an hour; then he wept like a child and said that he was sorry, explaining that he beat the witness as the latter 'appeared frightful' to look at. Later, in the course of the night, the appellant ran down from the upper storey saying that he would jump into a well. The next morning, however, the appellant was all right and left the house of the witness saying that he would go to his place. The witness accompanied him to the bus station and bought him a ticket to Kinmigowli where the appellant wanted to go. Finding one Deju Shetti also going to Kinmigowli, the witness asked him to take the appellant to one Shridhara Shetti there and to request the latter to arrange for two men to escort the appellant to this place. In view of these statements of the witness the prosecution obtained permission to cross-examine him and all that was elicited in such cross-examination to shake his credit was that he did not refer to these incidents when he was examined before the committing Magistrate. He explained the omission by saying that the prosecuting inspector in that Court did not ask him what all talks passed between him and the appellant but asked him only to say what the appellant told him about his financial difficulties and to answer only questions that were put to him. The witness denied that the appellant was his particular friend.

26. He added that only occasionally the appellant would go off his head and would think and think and talk incoherently, but most of the time during his stay on that occasion, the appellant was all right. As in the case of P.W. 1, the learned Public Prosecutor said that he was not prepared to impeach the testimony of this witness on the ground of his failure to refer to those incidents before the committing Magistrate but only urged that it did not assist the appellant any more than the evidence of P.W. 1 to bring himself within the exemption under Section 84, Penal Code.

27. The learned Public Prosecutor contended, placing reliance upon Emperor v. Gedka Goala ('37) 24 : AIR1937 Pat363 that it is only unsoundness of mind which materially impairs the cognitive faculties of the mind that can form a ground of exemption under Section 84 and that neither the apparent lack of motive nor the particulars of the appellant's behaviour as described by P.Ws. 1 and 14 on the two

days immediately preceding the occurrence are sufficient to bring the case within that section. It is no doubt well settled that unless the unsoundness of mind pleaded is such as to render the accused incapable of understanding the nature of the act with which he is charged or that what he was doing was wrong or contrary to law, he is not excused from criminal responsibility. It is also true to say that a mere lack of apparent motive for the deed does not necessarily or always lead to an inference of intellectual aberration or insanity, but a total lack of an apparent motive may in some cases taken along with other facts legitimately give rise to an inference that the act was done under an insane impulse : see Subbigadu v. Emperor ('25) 12 A.I.R. 1925 Mad. 1238. Similarly, it is true to say, as was said by the learned Judges in the case referred to above, that a crime is not excused by its own atrocity. This indeed is a truism. But can it be said that the nature of the act or the mode of perpetrating it can under no circumstances be taken into account in considering a plea of insanity? It may be that as a rule of prudence, Courts will be slow to infer from such material that the person committing the act was not conscious of its criminality. But I can see no warrant for laying down, as a rule of evidence that one must look outside the act itself for the evidence as to how much the accused knew about it. The truth is that in dealing with all such cases no general rule can be applied and the only proper course to adopt is to decide each case on its own peculiar facts bearing in mind, of course, that the point for determination is whether the evidence before the Court is sufficient to establish that the person charged with the offence was not conscious of the nature of the act he was doing or that he was doing what was wrong or contrary to law. It will be seen that in the case referred to above, the evidence showed that at the time he committed the offence, the accused

knew what killing was and meant to do it, knew what he had done already, knew who was his brother and his sister-in-law and where they lived and the way to that place.

28. In the present case, not only is there nothing to show that the appellant was aware of what he was doing but the extracts given above from the evidence of P.Ws. 1 and 14 as well as the conduct of the accused immediately after the occurrence would seem, to my mind, to show that the accused was incapable by

reason of his mental aberration of knowing the nature of his act. Hi incoherent talk to a passenger in the bus which led P.W. 1 who was a medical man himself, to think that the appellant 'was not in his senses,' and his abnormal behaviour to repeatedly stooping and touching the feet of the passenger on a public road 'so many times,' hailing him as his saviour certainly show that his reason was affected at the time, and his conduct in throwing rupees on the road is a strong indication that he was not conscious of what he was doing. No doubt, P.W. 14 said that he did not see the appellant throwing rupees on the road but his evidence leaves no reasonable doubt that the act of scattering the rupees which had attracted a crowd round the appellant on the road was an act of the appellant. The learned Public Prosecutor urged that the impression formed by P.W. 1 about the mental condition of the appellant cannot be accepted as correct as it is not warranted by what the witness said he observed and heard with reference to the behaviour and utterances of the appellant. It was said that the appellant's conduct towards the passenger is not an uncommon way among villagers of expressing gratitude for help rendered and that the words which the witness said he heard from the appellant did not indicate that the appellant's talk was incoherent or that he was not in his senses. I cannot agree with this criticism. Surely it is a strange way, either for villagers or townsfolk to express gratitude by stooping and touching the feet of a helper 'so many times' on a public road with intervals of silence; and as for incoherent talk the witness does not say that the words he was able to quote from his recollection throe months later were all the words he heard the appellant utter on the occasion of such a casual incident. The impression which the witness says definitely he formed from the conduct and utterances of the appellant that the latter was 'behaving like a mad man' and 'was not in his senses' goes a, long way, in my judgment, to support the appellant's plea of insanity.

29. The learned Public Prosecutor also laid stress on the statement of P.W. 14 that the appellant attempted to run after beating him and later expressed regret, as indicating the appellant's consciousness that what he did was wrong. But it is significant that when the appellant was asked why he beat the witness, he did not give any reply at all for an hour and then wept like a child and expressed regret saying that lie struck the witness because he was frightful to look at. The attempt to run away might have been therefore due to the 'frightful appearance' of P.W. 14

in the eyes of the appellant, and the expression of regret which followed only after an hour of dazed silence in spite of questioning, is more consistent with the absence of cognitive faculties at the time when he struck the blow than with possession of such faculties.

30. Turning next to the appellant's conduct on the day of the occurrence, he said in the course of his examination by the learned Sessions Judge that after his wife roused him at about noon when he was sleeping and served him food and questioned him about some stolen jewels, his mind became a perfect blank and when he became aware of his surroundings in the night he found himself placed in the yard, his hands and legs tied, with people crowding round him and talking. The appellant also stated that he did not know if the door of the room in which the deceased was killed was bolted from inside or not, or if the door was forced open or not, and that he was not aware whether Bogga Shetty (P.W. 7) and others caught hold of him, tied his hands and feet and kept him in the yard. This statement of the appellant receives some support from the admission of several prosecution witnesses in cross-examination that when the appellant came out of the room and was tied after the occurrence, he did not offer any resistance. P.W. 6 said:

When the accused came out after I forced open the door, he did not try to run away. He quietly submitted when we tied him and did not offer resistance. I did not ask the accused why he beat his wife.

31. P.W. 10 said:

When we caught and tied the accused after he came out after the door was broken open, he did not offer resistance. He made no attempt to escape from our hold and to run away. We ourselves tied him to avoid his escaping and running away. We tied him up, because we were afraid that he might beat somebody else.

32. P.W. 7 no doubt spoke to some resistance on the part of the appellant at the time but in the face of the clear admissions of P.W. 6 and P.W. 10 in their cross-examination, it must be taken that the appellant offered no resistance when his hands and feet were tied and he was taken and placed in the yard of the house

where he remained until the Sub-Inspector of Police came and arrested him in the afternoon of the next day. It is no doubt true that there were so many persons present when the appellant came out of the room and his attempt to resist would have been ineffectual and though it is possible that the non-resistance might be due to the realization of this fact, I think it is more probable that it was due to a blank mind, for, it would be a natural instinct of a sane person in the situation of the appellant to try to escape without pausing to think whether such an attempt would be effectual or otherwise. And it is somewhat remarkable that if the appellant was quite all right, as the prosecution witnesses would have the Court believe, that none of the persons who came on the scene ever attempted to question him regarding his apparently unaccountable conduct in killing his wife. Even the brother of the deceased, (P.W. 5) did not ask him the reason why he beat his wife to death. He said:

It struck me as strange that the accused should have beaten and killed her, knowing that he and his wife were affectionate before that. Yet, I did not ask the accused. What I am to ask, after he has killed her

33. None of the witnesses said that he asked the appellant why he committed the deed. This somewhat strange conduct lends countenance to the suggestion made for the defence that the prosecution witnesses were aware at that time that the appellant did the act when he was not in his senses and that they tied him hand and foot lest he should inflict injury on others, though they denied this at their examination. The learned Public Prosecutor drew attention to the circumstance that the appellant had bolted the door of the room before committing the crime and argued that this was an act of preparation showing that the appellant was conscious of the criminality of the act he was about to perpetrate. The argument would have force if there was clear evidence to show that the appellant bolted the door from inside just prior to the act by way of preparation for it. All that the evidence discloses, however, is that the appellant and the deceased had been in the room for about two hours before the occurrence and that the room was found bolted from inside when other persons came to the spot on hearing the cries of the deceased. It may well be that the deceased bolted the door for privacy or that the appellant did so for the same reason before the idea of killing his wife ever

occurred to him. This circumstance cannot therefore be relied upon as definitely pointing to the appellant's knowledge of the nature of the act.

34. Lastly, the Public Prosecutor referred to the evidence of P.W. 15, the Sub-Inspector, who said the appellant appeared quite normal when he was examined as a witness in the course of investigation of a theft case about six days prior to the occurrence, and also from the time when the witness arrived at the scene of occurrence till the time he got the appellant remanded, and argued that the appellant's case of mental aberration only during the three or four days about the time of the occurrence was highly improbable. I am unable to see any force in this contention. Temporary fits of insanity which come all of a sudden and disappear after a short while are by no means uncommon. Indeed, the evidence of P.Ws. 1 and 14 shows that even during this period the appellant had perfectly lucid intervals. The evidence of P.W. 15 and of some of the other prosecution witnesses who say that he appeared all right when they saw him either before or after the occurrence is not therefore necessarily inconsistent with the truth of the appellant's case. On the whole I am of opinion that the appellant must be held to have killed the deceased under an insane impulse without understanding the nature of his act, and must therefore be acquitted.

On difference of opinion between Gentle and Patanjali Sastri JJ. the case was posted before King, J.

King, J.

35. The accused in this case, one Sankappa Shetty, has been convicted by the learned Sessions Judge of South Kanara for the murder of his wife, Kaveri, on 29th November last and has been sentenced to death. He is about 35, she was about 24 years of age. They had been married for eight years' and had four children of which the youngest was about 18 months old. That child had been born in the house of Kaveri's family in Kuthethur and since its birth the husband and wife had not been living together. The evidence however is that this fact was not due to any estrangement, but to financial reasons, and that the accused frequently came and stayed with his wife for some days. It was on such a visit that accused

last went to Kuthethur on 28th November. On the early afternoon of the 29th, accused and his wife were alone in a locked room together. Cries were heard coming from the room and when the witnesses broke open the door they found Kaveri still alive, and her body covered with injuries, found at the post mortem to be twenty in number, ten of them being on the head. Accused was seized and kept tied up until in due course report was made to the village Munsif and the police arrived. Kaveri died within a very short time. The accused did not deny at his trial that he was alone with his wife at the time when she was killed but put forward the plea of insanity and stated that he had no recollection whatever of what happened. The learned Sessions Judge has rejected this plea. Whether he was right or wrong in this rejection is the only point at issue before me.

36. The burden of proving insanity is cast upon the accused by Section 105, Evidence Act, and under Section 84, Penal Code, he must prove that at the time of the killing he was by reason of unsoundness of mind, incapable of knowing the nature of his act or that he was doing what was wrong or contrary to law. His case is sought to be made out in the following way : (i) by a consideration of the circumstances attending upon the actual offence; (ii) by medical evidence; (iii) by the evidence of P.W. 14; (iv) by the evidence of D.W. 1; and I will deal with each of these in turn. In regard to the first point stress is laid upon the lack of motive or of adequate motive, the exceptionally brutal nature of the attack, and upon the fact that upon discovery the accused made no serious attempt to escape. That there was lack of adequate motive is clear, but everyone who has to do with the administration of criminal justice in this country is unfortunately aware that the commission of crimes of violence, including murder, as the result of the most trivial quarrels is all too common. It is also clear that accused might well have achieved his purpose with a lesser degree of violence, but here again experience amply proves that once sin offender has lost control of his temper he gives way unrestrainedly to his passion, without any thought for what may or may not be precisely necessary to carry out his intention. That the accused made no serious attempt to escape on discovery was no doubt due to the fact that five men were there to seize him and the weapon he had used was no knife, but only a wooden footstool. It is further argued for the accused that he appeared to be dazed, but this, I think, is natural enough upon any view of accused's state of mind when he

committed the act. No doubt there is nothing positive in the evidence relating to accused's conduct to prove conclusively that he was able to think of his position and make rational decisions--but this evidence standing alone, is equally inconclusive in favour of accused's plea.

37. The medical evidence was given by P.W. 1, the officer in charge of the Local Fund hospital at Mulki. So far as it deals with insanity as a branch of medical jurisprudence it is of no value whatever. He quotes no text books but gives it as his opinion that a husband who inflicts so many injuries without a deep-seated motive must be insane--and he says this without any reference to the knowledge referred to in Section 84. He however also describes an incident which occurred on 26th November when he saw the accused prostrating himself before a man and talking incoherently to him. I do not think P.W. 1's evidence--which may be accepted as true--is of any assistance to the accused. 'Whether talk is incoherent or not is a matter of opinion. P.W. 1 heard only snatches of the conversation and the statements which he heard are by no means incoherent. These statements and accused's action are quite consistent with the theory that accused was deeply grateful to another man for help rendered, and was expressing his thanks to him. There is no evidence at all to show that the man was a stranger, or the help rendered a delusion.

38. P.W. 14 is a landholder of Mulki. His evidence is that accused came to him on the evening of 26th November and stayed until the morning of the 28th. He says that during this time the accused frequently talked incoherently; once accused a relation of having given him medicine which made him ill; once gave him a blow and fell to weeping and did not reply for an hour when asked why he had done so, and said finally it was because the witness looked frightful. He also said he would jump into a well, and once on the 27th took out Rs. 17 and scattered them on the roadside. When he left, the witness bought a bus ticket for him, and gave him in charge to one Deju Shetti with instructions to see that he got safely home. Now this evidence, if believed, certainly reveals some measure of eccentric conduct on the part of the accused but the learned Sessions Judge does not believe it. He points out, that according to the witness himself accused was able to speak quite rationally about his cultivation and his financial difficulties and that the witness took

no steps to inform others about or protect himself against possible further violence from the accused. For these and for other reasons which I shall mention later, I agree that the learned Sessions Judge was right in rejecting this evidence however respectable the social position of the witness may be.

39. D.W. 1 is a cultivator of Mennakettu, and the president of the Panchayat Court in that village. His evidence is that he arranged on what must have been 28th November to send accused to his wife's house. He was told by one Degu Bandari that accused was unwell. He called two men Isthu and Babu, and told them to take accused to his wife's house and to tell its inmates that he was sick, Accused told him that he was the victim of witchcraft, but the witness paid very little attention to his remark, and was unable to say positively whether accused's talk in general was coherent or not. Neither Degu Bandari nor Isthu nor Babu was called as a, witness to support him. In these circumstances it is not surprising that the learned Sessions Judge thinks his evidence of no importance.

40. I may now state that, apart from the lack of corroboration to which reference has already been specifically made I am unable to believe P.W, 14 or D.W, 1 in so far as they seek to establish insanity because if their evidence were true, further corroboration should inevitably have been available. If we take the evidence for the accused at its best, we have in this case proof of delusions, and of some degree of eccentric conduct extending over the extremely short period of three days (26th to 28th November). There is no proof of any form of insanity or eccentricity before 26th November; no proof of any accident or shock or any other event which might have brought on insanity; and no indication whatever of anything abnormal during the police investigation, the period of accused's detention in jail, the preliminary inquiry, or the trial. I do not wish to be too dogmatic on the very difficult subject of insanity, but I feel convinced that it is impossible for manifestations of an insanity so serious as to result in the killing of a wife, to be confined to these comparatively trivial incidents over a period of only three days--and for the witnesses to such incidents to be confined to comparative strangers. And even oh 28th and 29th November themselves it is to be noted, we get no indications at all (apart, of course from the murder) of eccentric conduct on the part of the accused as it appeared to his wife and her relations. The Kuthethur

witnesses are unanimous on this point. It is argued that they are so determined to see that accused suffers the penalty for his crime that they are wilfully suppressing evidence which would help him to establish his plea. I am unable to take this view of their evidence and must point out on the contrary that all are anxious to emphasize that accused and his wife were on good terms.

41. For the reasons which I have given I am thus of opinion that the learned Sessions Judge was justified in not accepting the evidence of P.W. 14 and D.W. 1. Even if it were accepted as true, it would still in my opinion be insufficient to prove accused's plea. Delusions about the witchcraft and poisonous medicine may have been mentioned--there is nothing whatever to connect these with accused's wife. Accused himself does not say who it is who has practised witchcraft upon him. Surely if insanity be the cause of this crime it is explicable only on the hypothesis that accused was actuated by homicidal mania, or killed his wife under the delusion that she was not his wife at all, or that he was bound to kill her for some reason or other. Of homicidal mania there is really no trace in the evidence. The 'blow' to P.W. 14, if given, must have been a trivial one. Of any delusion concerning the identity or actions of accused's wife, there is clearly no trace, I find accordingly that the accused has been rightly convicted for murder. I think however that this is a case which does not call for the extreme penalty of the law. There cannot have been any pre-meditation--and I feel sure that the accused, must have received what he felt to be considerable provacation before he attacked his wife in the way he did. I accordingly in confirming the conviction commute the sentence into one of transportation for life.

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