

AshiruddIn Ahmed Vs. the King

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Court : Kolkata

Decided On : Aug-20-1948

Reported in : 1949CriLJ255

Judge : Roxburgh and ; Blank, JJ.

Appellant : AshiruddIn Ahmed

Respondent : The King

Judgement :

Roxburgh, J.

1. This is an appeal by an accused who has been convicted under Section 302, Penal Code, for the murder of his five-year old son and sentenced to transportation for life.
2. The only question that arises for consideration is whether the learned Judge gave correct directions on the question whether the accused was entitled to the protection of the provisions of Section 84, Penal Code.
3. The prosecution case was that the accused sacrificed his son as korbani in the mosque and having done so went straight and informed his uncle Mafizuddin p W.
2. The police were duly informed and the accused was taken into custody, and confessed.

4. His story in his confession was this:

I have sacrificed my son Jinu aged 5 or 5 1/2 years. On the expiry of the day of Sunday I dreamt a dream at night that I had been in heaven. As I had got up two steps I heard 'Your sacrifice (korboni) was of no use; you will have to sacrifice your own son,' In the following morning I searched for a castrated goat with a view to sacrifice a castrated goat also along with the son. Thereafter I thought that I had no necessity of a goat when I would sacrifice my son. I bathed my son at about 1 prohar of the day and bathed myself also. I kept the knife in the mosque of our village before bathing. The son came home after he had bathed in the tank. He was playing, I called him and brought him to the mosque. I asked the son to lie down, and he lay down. I asked him to shut his eyes and he shut his eyes. I too shut my eyes. Taking the knife in my right hand and thrusting it into son's throat, I sacrificed him. He was left there. After closing the door of the mosque I spoke every thing to my maternal uncle Asiruddin. Thereafter I went to the house of my brother-in-law Basiruddin and on the very day I returned home.

5. As is customary when the case came on for trial, presumably under legal advice, the accused, retracted his confession. However, so far as this part of the case is concerned, no challenge is offered before us and the jury were no doubt right in acting on the confession together with the evidence of the accused's conduct in going to his uncle and saying what he had done.

6. Indeed, the confession and the accused's conduct are both evidence to establish what the accused did and also to establish, if at all, that he was entitled to protection under Section 84, Penal Code. How his learned lawyer thought that he was going to establish the latter by advising the accused to retract the confession is a matter of some mystery.

7. Plainly the accused's story was, and his defence now must be, that believing that he had been so directed by someone in paradise, he had made a sacrifice of his son to god. He clearly therefore knew the nature of his act, the sacrifice was to be made by killing his son. The only question for consideration by the jury really was whether he was prevented by unsoundness of mind from knowing what he was doing was either (a) wrong, or (b) contrary to law.

8. The learned Judge in giving his directions on this point appears to have failed to understand the law and to have considered that in order to obtain the benefit of the provisions of Section 84, the accused had to establish that by reason of unsoundness of mind he was prevented from knowing that the act was both (a) wrong and (b) contrary to law. Indeed he expressed his own opinion that the accused knew what he was doing 'was wrong and contrary to law'. For this he referred to the fact that the accused after committing the crime went straight to his uncle and finding a Chowkidar hereby took the uncle to a tank at some distance and slowly told him the story. Apparently, the view the learned Judge took was that in so far as this showed that the accused was avoiding making statement in the presence of a limb of the law, he must have known that what he was doing was contrary to law. But even if we accept this view as correct, the question still remains whether the accused knew what he was doing was wrong. In our opinion, the whole point of his confession and his whole story to his relations show that he thought that what he was doing was right, that he was commanded by someone in paradise and because his previous korbani had been 'no good'. At any rate this was the point which should have been clearly put to the jury. Of the three elements necessary to be established under Section 84, any one of which must be established by an accused to obtain the benefit of the provisions, it appears that first, the nature of the act, was clearly known to the accused; secondly, that he knew that the act was contrary to law, or we have said this was probably known to him. But third element on which the case really turned is whether the accused knew that the act was wrong. This point has not been properly put to the jury, nor indeed was it apparent to the Judge himself. In our opinion, he clearly misunderstood the law on the point.

9. Our own opinion is that had the matter been properly put to the jury together with the direction that the standard of proof required by the accused was not the standard of proof required from the prosecution, it is highly probable that they would have found in favour of the accused under Section 84, Penal Code, and the learned Judge's misdirection on this point there has been failure of justice.

10. In our opinion the correct view is that the accused was clearly of unsound mind and that acting under the delusion of his dream he made this sacrifice believing it

to be right.

11. The result is that we allow the appeal, set aside the conviction under Section 302, Penal Code.

12. We find that the accused committed the act alleged, namely, the act of causing the death of his son by cutting his throat but by reason of unsoundness of mind he was incapable of knowing that his act was wrong. The accused is therefore acquitted of the charge under Section 302, Penal Code.

13. We direct that the accused be detained in safe custody in the jail where he is now. A report shall be sent to the Provincial Government under Section 471, Criminal P. C.

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