

Karma Urang Vs. Emperor

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Court : Kolkata

Decided On : Dec-02-1927

Reported in : AIR1928Cal238,114Ind.Cas.159

Judge : George Claus Rankin, C.J. and ;Chotzner, J.

Appellant : Karma Urang

Respondent : Emperor

Judgement :

Rankin, C.J.

1. The appellant in this case has been tried for the murder of his father on the 12th December 1926 in the morning before 8 o'clock. He has been convicted and sentenced to transportation for life and the real question in this appeal is whether or not he ought to be dealt with under the provisions of the law which apply to a person who, at the time of doing the act, by reason of un-soundness of mind, was incapable of knowing the nature of the act, or that he was doing what was either wrong or contrary to law. That is the test laid down by Section 84, I.P.C.

2. The story is a most extraordinary one. The appellant, his brother and his father were living together and the appellant and his father have been proved to have been on the best of terms. The brother's story is that on the morning in question when he woke up his father and his brother had gone out and it seems clear that soon after leaving the house the appellant with a dao cut off his father's head. He

thereupon picked up the head wrapped it in something and was proceeding along the road to Silchar Court. He was seen by witness Saiyad Ali about the time he had passed the thana. Saiyad Ali having gone and reported to the thana what he had seen, constables overtook the accused who was walking quite in an ordinary way and persuaded him quietly to come back to the thana and to tell his story to the Assistant Sub-Inspector. The story he told was that he had a dream and that in that dream goddess Kali appeared to him and told him that either he would have to kill his father or his father would kill him. It would seem that this dream contained other elements; in particular, it contained the element that his father was a descendant of the goddess Kali and also that his father's tongue was black and that he was to take the head to the Court at Silchar.

3. When the story was first told to the Assistant Sub-Inspector the appellant was taken back to the house. He was taken to the threshing ground where his father's body lay, and the tea garden doctor who has given evidence saw him on that occasion. The accused told him that

the previous night he had dreamt that if he did not kill his father his father would kill him. He said that Kali told him so in his dream. Kali said to him that his father's tongue was black and that his father was a descendent of the goddess Kali. He told me that his father would have killed him and so he killed his father. He told me that he dreamt that he had taken the head of his father to Silchar Court. He said that when he was bringing the head to Silchar he was stopped on the way and could not bring it. He said that his dream could not be realized as he could not take the head to Silchar. He told me this at the threshing floor. He was excited and his eyes were blood shot.

4. On the 13th December, i.e., the day after the occurrence the appellant made a confession before a Magistrate in which he said that unless he killed his father, he would die. He was under the observation of the Civil Surgeon for a considerable time because the occurrence having taken place in December the Magisterial enquiry was in March and the trial was in May. The Civil Surgeon said that the appellant had definite delusion, which passed off after a couple of months, that he could not tell right from wrong, that he was definitely insane and said that he

wanted to dedicate his father's head to the goddess Kali. The Civil Surgeon said that from the story told to him he got the impression that the accused thought that he was ordered by Kali to kill his father. Witness Fagu the appellant's brother said that when the accused was brought to the threshing ground on 12th December he said : 'I offer my father to the goddess Kali.'

5. Now, on such facts as these a question arises which is a very difficult one; but the main ground of the decision of the learned Judge is that he does not think that it is proved that the appellant was under the impression that he was ordered to kill his father. He thinks the position merely is that the man was under a delusion that unless he killed his father his father would kill him; and accordingly, of the three assessors two for that reason, take the view that he was not insane and the learned Judge agrees with that view.

6. It is no doubt plain enough that under the doctrine in *McNaughten's* case there may be cases where the correct application of the law is to hold a man amenable for his action assuming merely that his particular delusion is true; but the proposition which governs the present case in the first instance is that contained in Section 84, I.P.C. We have to see whether this man is shown to have had no knowledge of the nature and quality of his act or, as the statute says:

incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.

7. A very common way of applying that test is to ask, in the circumstances, whether the man would have committed the act if a policeman had been at his elbow. Examining this case from that point of view I think it is very noticeable that this man having committed the deed, immediately picked up the head of his father and was proceeding to Silchar Court. The witness Saiyad Ali, who saw him first, said that he was not running. He did not proceed to run, but when the constables overtook him he came quietly back to the thana. He explained that Ibe was going to Silchar Court and why he was going to Silchar Court, namely because of a dream which he had on the previous night. That seems to me to be the best evidence in this case upon the question whether he knew that what he was doing was 'wrong or contrary to law'; and in view of that evidence, which is supported by

other evidence in the case, particularly by the very strong evidence of the Civil Surgeon who is not only more competent to give but had far more opportunity than anyone else of forming a correct opinion, in my judgment this appeal should be allowed, the conviction and sentence should be set aside, and we should send this case back to the learned Sessions Judge of Cachar with a direction to deal with it under Section 471, Criminal P.C. on the basis that this man was not at the time of doing the act, by reason of unsoundness of mind, capable of knowing the nature of the act, or that he was doing that was either wrong or contrary to law. We come to the finding as required by Section 470, Criminal P.C., that he did the act, but that he was of unsound mind in the sense explained at the time. We accordingly direct that he be detained in safe custody in the Mental Hospital at Tezpur. We direct the Sessions Judge to take the action required by Rule 54 of Assam Government Rules relating to lunatics.

Chotzner, J.

8. I agree.

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