

Sundaram Vs. the State

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Court : Kolkata

Decided On : Mar-12-1958

Reported in : AIR1960Cal395,64CWN1015

Judge : J.P. Mitter and ;Debabrata Mookerjee, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 374, 423, 466 and 561A

Appeal No. : Death Reference No. 11 and Appeal No. 669 of 1956

Appellant : Sundaram

Respondent : The State

Advocate for Def. : A.C. Roy, Adv.

Advocate for Pet/Ap. : Ajoy Kumar Basu, Adv.

Judgement :

Mitter, J.

1. The appellant, Sundaram, was tried upon a charge under Section 303 of the Indian Penal Code by the learned Sessions Judge of Andaman and Nicobar Islands, without the aid of a jury. The learned Judge found the appellant guilty of the offence and sentenced him to death.

2. The prosecution case was that the appellant had been previously convicted of an offence under Section 302 of the Indian Penal Code and sentenced to undergo life imprisonment. While in jail, serving the sentence, the appellant often fell ill and frequently complained of divers ailments, he also complained of insufficient medical attention. On August 12, 1955, the District Magistrate visited the jail and made the following remarks in the Visitors' Book :

'Life convict, Sundaram, complains of pain in the head and chest. The Superintendent, Cellular Jail, says that nothing physically wrong could be detected, but appears to be a case of neurosis,'

In the early morning of August 14, 1955, the appellant along with certain convicts were put to work in the jail premises. While the appellant and some of these convicts were engaged in work allotted to them, the appellant suddenly, and apparently for no reason at all, struck convict Velu violently with a spade on the head and thereafter on the temple. At the time Velu was also working. Someone shouted 'Sundaram Velu Ko Mar Dala', When the appellant was caught hold of, he let go the spade. As the appellant was still resisting arrest, a warder, by name Ganga Prasad, gave him a lathi blow, whereupon the appellant said 'Hum Velu Ko Mar Deeya Hum Ko Maro'. Velu died the same day of the head injuries sustained by the blow which the appellant had given him.

3. The investigation which followed ended with a charge-sheet against the appellant being laid on December 23, 1955, but he could not be brought to trial until July, 1956, as, in the opinion of the doctors who had examined him from time to time, he had been of unsound mind and thus incapable of making his defence.

4. It is not clear from the materials before us what led to the decision to place the appellant upon his trial. In the Court of the Committing Magistrate the appellant did not offer any explanation for the incident, except to say that he did not remember anything about it. At the trial before the learned Sessions Judge, the appellant was provided with a Counsel at the expense of the State. Counsel intimated to the Court that he had sought instructions from the appellant as to his defence, but had failed to get any response. Thereafter, the appellant was questioned by the Court. According to the learned Judge, the appellant could understand the questions put

to him, except those relating to the particular incident. As a result of this interrogation, the learned Judge took the view that the appellant was not of unsound mind (and?) was capable of defending himself, if he chose to do so. Accordingly, the trial was proceeded with and the appellant was convicted and sentenced as aforesaid.

5. After the appeal had been filed and the reference made, the appellant, who has since been confined in the Presidency Jail, was stated to be of unsound mind. By diverse orders made by this Court the appellant was directed to be placed under medical observation and periodical reports as to his mental condition were called for. By an order of January 20, 1958, Dr. N. De, an Alienist, was directed to examine the appellant and thereafter to depose in Court as to the mental condition of the appellant. On February 11, 1958, Dr. De deposed Before us to say that having examined the appellant he was of the opinion that the appellant was of unsound mind and was not likely to become normal again.

6. We are satisfied that the appellant has been, for some time past, at any rate, and still is, of unsound mind and is, therefore, incapable of giving any instructions as to the appeal and the Reference which are now pending. The question is whether in the present state of the appellant's mental condition the appeal as well as the reference can be heard and disposed of.

7. Mr. A. C. Roy, learned Deputy Legal Remembrancer, has referred us to Chapter XXXIV of the Code of Criminal Procedure for saying that the Court's power to postpone the trial of a person found to be of unsound mind and consequently incapable of making his defence is confined only to an enquiry or a trial and does not extend to the hearing of an appeal or a reference such as this. It is to be observed that the appeal as well as the reference involves the determination of questions of fact and the instructions which the appellant may give to his lawyer as to the hearing of the appeal and the reference may well prove to be vital. Even if the appeal were from a jury trial, the appellant's lawyer would still need to be instructed and the result of such instructions might well be vital to the appellant's case. By reason of his unsoundness of mind and the consequent inability on his part to instruct his lawyer in the conduct of his appeal and in dealing with the

Reference, the Court is bound to afford him the same protection to which he would have been entitled, had he been of unsound mind at the time of the trial in the court below. The appeal and the reference cannot be disposed of without giving the appellant a hearing, but how can he make himself heard, either in person or through a lawyer, if he is of unsound mind? In our view, we have inherent power, *ex debito justitiae*, to postpone the hearing of the appeal and the reference until such time as the appellant should be found to be of sound mind again and thus capable of making his defence.

8. We would accordingly postpone the hearing of the appeal and the reference until such time as the appellant should be found and reported to this Court to be of sound mind again and direct that in the meantime he be detained in safe custody, the manner and the place of detention being left to the decision of the State Government. Until further orders the State will cause to be sent to this Court a medical report as to the mental condition of the appellant every six months.

Debabrata Mookerjee, J.

9. I agree.

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