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Court : Himachal Pradesh

Decided On : May-12-1972

Reported in : 1973CriLJ829

Judge : R.S. Pathak, C.J. and D.B. Lal, J.

Appellant : The State

Respondent : Lal Din

Judgement :

R.S. Pathak, C.J.

1. The accused, Lal Din, was charged with the murder of his wife and three children on the night between February 26 and 27, 1969. The learned Additional Sessions Judge. Kangra, who tried the accused, has acquitted him. The State appeals.

2. The facts may be set out briefly. The accused lived with his wife. Nurbibi, aged about 35 years and his sons Basheer, Nazir and Sharif, aged 15, 10 and 5 years respectively. It appears that on the morning of February 27, 1969, Fakir Mohammad P.W. 8, a brother of the accused, came to his house to enquire about his health. He found the accused sitting in the verandah by the side of the hearth where a fire was burning. The door of the room of the house was open, and Fakir Mohammad saw two children of the accused dead. Upon enquiry, the accused told him that he had put an end to his entire family. The cries of Fakir Mohammad

attracted Alia Bux, maternal uncle of the accused, his wife Mogdi, Chhemo P.W. 5, son-in-law of Alia Bux, and Chhemo's wife. Gulzaro, the wife of Fakir Mohammad, had also arrived. Hoshiara Ram P.W. 1. Pradhan of the Rainaear Gram Fancha-vat, was informed and he came accompanied by Nudhu Ram P.W. 10. a member of the Panchavat. Hoshiara Ram enquired of the accused why he had murdered his family, and the accused told him that his wife was in the habit of abusive the children when she served them meals and as she did not desist from doing so, he had out an end to them. The bodies were found inside the room. The clothes and the bedding were blood stained. The shirt and the trouser worn by the accused at the time were also blood stained. A blood stained Kulhari was found underneath one of the cots. According to the Medical Officer, Dr. Rai Kumar. P.W. 7, who Performed a post-mortem on the bodies on February 28, 1969. the death in the case of all the persons was brought about by intensive hemorrhage and shock due to multiple injuries and was in each case instantaneous. In his opinion, the duration between the death and the postmortem was less than 48 hours. He was also of the view that the Kulhari could have caused the various injuries.

3. During the investigation of the case, the accused expressed a desire to make a confessional statement The statement was recorded by Shri Shamsher Singh, Magistrate. First Class, on March 4, 1969.

4. The committing Magistrate found a prima facie case made out against the accused under Section 302, Indian Penal Code. He was tried by the Additional Sessions Judge, Kangra. The learned Additional Sessions Judge found that the accused murdered his wife and three children in the early hours of February 27, 1969, but he took the view that the accused could not be said to have committed the murders with the intention or with the knowledge defined under Section 299. Indian Penal Code. He held that the acts were done by the accused when he was of unsound mind and was incapable of knowing the nature of the acts or that what he was doing was either wrong or contrary to law. Accordingly, he save the accused the benefit of Section 84, Indian Penal Code and acquitted him. He further added a direction, apparently by reference to Section 471, Code of Criminal Procedure, that the accused should be detained in safe custody and the matter be reported to the State Government for taking such further action as may be deemed

necessary.

5. It seems to us that the learned Additional Sessions Judge is right in holding that the accused murdered his wife and children. We have been taken through the evidence, and in our opinion, no other inference is reasonably possible. The statements of Hoshiara Ram, P.W. 1, Sat Pal P.W. 2, Chhemo P.W. 5, Nazab Din P.W. 6, Fakir Mohammad P.W. 8, Chain Singh P.W. 9, Nudhu Ram P.W. 10, the confessional statement by the accused before Shri Shamsher Singh. P.W. 15, as well as the circumstances in which the bodies and the Kulhari were discovered, the blood stained clothes of the accused, all constitute material conclusively showing that the accused had murdered his wife and children. His denial in the statement made before the learned Additional Sessions Judge during the trial is unconvincing.

6. But we are not satisfied that the learned Additional Sessions Judgie is right in holding that Section 84. Indian Penal Code is attracted. Section 84 provides:

Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.

In our opinion, it cannot be said that when the accused murdered the members of his family, he was suffering from unsoundness of mind, so that he was incapable of knowing the nature of his acts, or that he was doing what was either wrong or contrary to law. Fakir Mohammad, P.W. 8, was the first to reach the scene, and he found the accused sitting in the verandah of his house with a fire burning in the hearth. The accused told him that he had 'finished his entire family'. Hoshiara Singh, P.W. 1, who arrived three hours later, was told by the accused that his wife was in the habit of abusing his children when she served meals to them and that despite his persuading her not to do so, she had continued abusing them and therefore, he had decided to put an end to the entire family. He was further told by the accused that after he murdered his wife and children, he had decided to commit suicide by lumping from a tree, but as his courage failed him, he came down. Thereafter, he climbed an electric pole near his house with the same object but, came down from that also. According to the statement of Sat Pal, P.W. 2, it is

true that the accused had told him that what he had done was the will of God and it was done when he was not in his senses. But subsequently he also said that he knew well that he could not be saved and therefore, he had climbed a tree with the intention of jumping down and putting an end to his life. Thereafter, the accused returned to his house and lit a fire to warm himself. Then, he attempted to climb an electric Dole, apparently with the intention of electrocuting himself, but because of some barbed wire round the pole he was compelled to come down. Upon enquiry made by Sat Pal. the accused told him that he had murdered his entire family because he was unwell and that his wife used to abuse the children when she served meals to them, that he used to dissuade his wife from abusing them but on the night of the occurrence she had again abused the children and that he was enraged and therefore, he murdered his wife and children in the early hours of the morning. Substantially to the same effect is the testimony of Chhemo, P.W. 5. Nazab Din, P.W. 6, Chain Singh. P.W. 9 and Nudhu Ram, P.W. 10. It will be seen from this that the acts of the accused were the result of conscious and deliberate decision. There can be no dispute, it seems to us, that the accused knew what he was doing when he murdered his wife and children.

7. An attempt has been made to show that the accused was of unsound mind at the time. Hoshiara Ram, P.W. 1, on cross-examination says that he had heard that the accused had gone mad about 15 years before and had remained in jail for about six months, but he goes on to state that he had no personal knowledge about it. It is pointed out on behalf of the accused that Chhemo P.W. 5 deposed that the accused, upon being asked why he had murdered his family, lamented his bad luck. In further support of the submission that the accused was of unsound mind it is urged that the accused was not animated by any hostile motive against his wife and children. In our opinion, it is not because of unsoundness of mind that the accused did away with the members of his family. There is material on the record to show that the accused had been ailing for a considerable time, and that he was ill even during the time when the offence took Place. It seems to us that the burden of his illness and the constant domestic bickering and unhappiness at home took the accused to the point of ultimate despair when he decided that he could take no more. That culminated In the decision to put an end to himself and his family. Psychologists would perhaps have a word for this morbid state of mind.

But that is still along wav from the finding that he was of unsound mind when he murdered his wife and children. The statements made by him to the different witnesses clearly show that he knew the nature of his acts.

8. Reference has been made to the testimony of Nudhu Ram, P.W. 10 that the accused said that his family had received salvation through his hands and that he had celebrated Id thereby. It is urged that what he did was done in a moment of religious obsession, we are unable to accept that submission. After the explanation given by the accused to the different witnesses setting out the circumstances persuading him to murder his family. his remark that they had obtained salvation through his hands does not support that submission. We are not satisfied that what hp did was done by him in a fit of religious fervor or that he was seized by any religious obsession at the time of committing the murders.

9. In our opinion, the evidence on the record decisively - shows that the accused knew the nature of his acts. It shows that he knew that what he was doing was wrong and also contrary to law. We have already pointed out that one of the reasons given by him for attempting to commit suicide was that he knew that he could not be saved after having murdered his wife and children.

10. The learned Additional Sessions Judge appears to have been impressed by the Plea of insanity raised in the arguments on behalf of the accused before him. No such plea was taken previously be the accused. The learned Additional Sessions Judge has placed some reliance on the case that the accused had suffered a fit of insanity some years before. But there is no concrete material on the basis of which he could have come to that conclusion. The testimony to that effect is wholly vague and at best hearsay. The circumstances in which the accused was found in his verandah in the morning still wearing the blood stained clothes, making no attempt to remove the clothes or other incriminating evidence or to run away, does not necessarily lead to the conclusion that he was of unsound mind. On the contrary, it is wholly consistent with the case that the accused had decided to put an end to his life also. The learned Additional Sessions Judge has also Pointed out that there was no motive for the crime. He has also referred to the remark of the accused that the family had got salvation at his hands and that he

had celebrated Id. According to the learned Additional Sessions Judge this constituted material militating against the case that the conduct of the wife in abusing the children was responsible for the crime. We see no inconsistency whatever. If all the circumstances to which we have referred are taken into account the different versions fit into one comprehensible whole.

11. There is nothing to show that the cognitive faculties of the accused had been impaired, so that he could not judge the consequences of what he was doing. In our opinion, the learned Additional Sessions Judge erred in applying Section 84, Indian Penal Code. The accused caused the death of his wife and children with the intention of causing their death and in our judgment. he is liable to be punished under Section 302, Indian Penal Code.

12. The provisions of Section 84. Indian Penal Code, have been considered by the courts in a number of cases. In Dahyabhai Chhaganbhai Thakkar v. State of Gujarat : 1964 CriLJ472 the Supreme Court observed:

When a plea of legal insanity is set up. the court has to consider whether at the time of commission of the offence the accused, by reason of unsoundness of mind, was incapable of knowing the nature of the act or that he was doing what was either wrong or contrary to law. The crucial point of time for ascertaining the state of mind of the accused is the time when the offence was committed. 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 established from the circumstances which preceded, attended and followed the crime.

In Jai Lal v. Delhi Administration : 1969 CriLJ259 the Supreme Court said:

To establish that the acts done are not offences under Section 84 it must be proved clearly that at the time of the commission of the act the appellant by reason of unsoundness of mind was incapable of either knowing that the acts were either morally wrong or contrary to law. The question is whether the appellant was suffering from such incapacity at the time of the commission of the acts. On this question, the state of his mind before and after the crucial time is relevant. If a person by reason^ of unsoundness of mind is incapable, of knowing the nature of

the act or that he is doing what is either wrong or contrary to law he cannot be quality of any criminal intent. Such a Person lacks the requisites mens rea and is entitled to an acquittal. Reference has been made on behalf of the accused to a number of cases but, in our opinion, they are all distinguishable our opinion, they are all distinguishable Ashiruddin Ahmed v. The King AIR 1949 Cal 182 : 50 Cri LJ 255 was clearly a case where the accused was acting under the delusion of a dream and by murdering his son believed that he had made a sacrifice required of him by a heavenly voice. It was held that he was of unsound mind and therefore Section 84 applied. In Kanbi Kurji Duba v. State : AIR1960 Guj1 it was found that nothing had happened on the day of the incident to provoke the accused to commit the brutal act of killing his wife and his eldest son, that he killed them under the hallucination that he was pureblooded Suryavanshi. that he was 'Arjun' of the Mahabharat and addressing the SarPanch of the village as 'Bhishma Pitamah' he told him that he had killed 'Bhangdi' (referring to his wife) and 'Karna' (referring to his son). It was held that he was of unsound mind when he committed the offence. So also in Mst. Shanti Devi v. State : AIR1968 Delhi177 the conduct of the accused in murdering her infant child with a razor in broad day light was taken into account alone with the circumstance that upon being surprised by witnesses she sat quietly showing neither excitement nor sorrow, and the court held that she was of unsound mind.

13. The circumstances which obtain in the case before us are wholly different from the cases cited on behalf of the accused.

14. In our judgment. the appeal must prevail.

15. The appeal is allowed. The judgment and order of the learned Additional Sessions Judge are set aside. The accused is convicted under Section 302, Indian Penal Code for the murder of his wife and children. Having regard to the circumstances of the case, we impose the lesser sentence, and accordingly sentence him to imprisonment for life.

D.B. Lal. J.

16. I agree.

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