APPELLATE CRIMINAL.

Before Sen and Roxburgh JJ.

GERON ALI

v.

EMPEROR.*

1940

May 6.

Insanity—*Insanity, how far protects an accused—Indian Penal Code (Act XLV of 1860), s. 84.*

Under s. 84 of the Indian Penal Code, an accused is protected not only when, on account of insanity, he was incapable of knowing the nature of the act, but also when he did not know either that the act was wrong or that it was contrary to law, although he might know the nature of the act itself.

He is, however, not protected if he knew that what he was doing was wrong, even if he did not know that it was contrary to law, and also if he knew that what he was doing was contrary to law even though he did not know that it was wrong.

A direction to the jury to the effect that an accused cannot claim the protection of s. 84 of the Indian Penal Code, if he knew that he was killing somebody, without the further direction that the jury were to consider whether the accused knew that the act he committed was either wrong or contrary to law, is a misdirection.

CRIMINAL APPEAL.

The material facts appear sufficiently from the judgment.

No one appeared for either party.

The judgment of the Court was as follows:—

The appellant has been convicted of murder and sentenced to transportation for life by the Sessions Judge of Tippera. The case against him is as follows: One Khoaz Ali was known to be a *Pir* or holy man in the village of the appellant. He had a mistress, Tayeba, who used to be known as *Pirâni*. The appellant was a disciple of the *Pir* and called him father and the *Pirâni* mother. The *Pir* had become unpopular in the village,

*Criminal Appeal, No. 125 of 1940, against the order of E. S. Simpson, Sessions Judge of Tippera, dated Jan. 19, 1940.

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because of the irregular relationship between him and Tayeba. The appellant was, however, loyal to them and on October 14, 1939, complained to them about the attitude of the villagers. The *Pir* said to him "Take the head of those who dissuade "you and come to your doors". The *Pir* also gave him a *dâo*. In the evening the *Pir* gave the appellant some substance to swallow which the latter did. At this time the *Pirâni* said to the appellant that he would go to heaven if he offered a human head in sacrifice. She also told him that the day was auspicious, as it was the first day of Ramzân. Geron armed himself with a *dâo* and severed the head of one Shaz Ali. He carried the head to his house. He saw his young daughter aged about three years and he cut off her head also. Taking these two heads he approached Khoaz Ali and Tayeba Bibi and said "Father you asked me for one "human head, I present you with two". He gave Khoaz Ali the head of Shaz Ali and the head of his daughter to Tayeba Bibi. When people tried to seize him, he rushed at them shouting "Ma "Kali!" Eventually he was secured and the police were informed. After investigation, Khoaz Ali and Tayeba were sent up on a charge of abetment of murder and the appellant on a charge of murder. The jury by a unanimous verdict found Tayeba not guilty. By a majority of six to three they found Khoaz guilty of the charge of abetment of murder and by a unanimous verdict they found the appellant guilty of murder.

The learned Judge accepting the verdict acquitted Tayeba and convicted Khoaz Ali and the appellant. Khoaz Ali was sentenced to death and the appellant to transportation for life. Khoaz Ali appealed and he has been acquitted. We are concerned with the case of the appellant only.

The defence taken on behalf of the appellant in the Court below was of a two-fold character. First, it was contended that an intoxicating drug

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had been administered to the appellant and that he committed this crime under its influence. Next, it was argued that the appellant was not responsible for his acts, as he was insane at the time. In his petition of appeal, a third defence is taken to the effect that he struck Shaz Ali, as the latter was misconducting himself with his wife. He says that he knows nothing of how his daughter was killed.

There is no substance in the first and last defences. There is no evidence to show that the substance given to the appellant was a drug which caused him to become intoxicated, nor is there any indication given in the Court below that the deceased Shaz Ali was misconducting himself with the appellant's wife.

There is, however, good reason to accept the defence of insanity. A mere narration of the facts relied upon by the Crown establishes that the appellant was insane at the time of the occurrence. He kills his own infant daughter for no assignable reason. His conduct after doing so also establishes that his mind was disordered. The question for consideration is whether this disordered state of mind is sufficient to bring the case within the purview of s. 84 of the Indian Penal Code, which describes the type of insanity which would render a person not liable for his acts. The learned Judge has gone completely wrong in his charge to the jury on this point. He has told the jury that unless they are satisfied that the appellant was incapable of understanding the nature of his acts by reason of insanity at the time of the occurrence he would be liable for the consequences of his acts. He then points out to them that the appellant knew that he was killing somebody and that therefore he could not claim the protection of s. 84 of the Indian Penal Code. This is what he told the jury in express terms. Now, that is certainly not the law. Section 84 of the Indian Penal Code

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is quite clear on the point. It says that if a person, by reason of unsoundness of mind, is incapable of understanding the nature of his acts at the time of the commission of the acts, then such acts will not amount to an offence. The section, however, does not stop there. It goes on to deal with another type of insanity which would also take away from the criminality of an act. It says that if a person does an act and at the time of doing the act by reason of insanity does not know that the act is either wrong or contrary to law, then also he would be protected, even though he knew the nature of the act. This is perfectly clear from the section and it is nothing but sound common sense. A person may be under the insane delusion that he is an executioner and under that delusion he beheads his son thinking that he has been ordered to do so by the king. He knows the nature of his act, but obviously he cannot be held criminally liable inasmuch as he did not know that what he was doing was either wrong or contrary to law. The learned Judge entirely failed to appreciate this portion of s. 84 of the Indian Penal Code.

We are satisfied that the appellant knew the nature of his act; what we have to see is whether he knew that what he was doing was either wrong or contrary to law. If he knew that what he was doing was wrong then he will not be protected even if he did not know that it was contrary to law. If he knew that what he was doing was contrary to law then also he would not be protected, even though he did not know that what he was doing is wrong. The law will punish a man for doing something which he knows to be contrary to the law, whatever his private opinion may be regarding its ethics. Again if an act is contrary to law, ignorance of the law will not protect a man from punishment, when it is shown that the man knew that what he was doing is wrong. In our opinion,

the appellant did not know that what he was doing was wrong. The evidence showed that he considered that he was doing a meritorious act which qualified him for heaven.

We also find that he did not know that what he was doing was contrary to law. His conduct establishes this. He killed these persons without any effort at concealment and he did not try to escape after doing this. We have also no doubt that this frame of mind was brought about by insanity. This is proved by his behaviour both prior to and subsequent to this act. In our opinion, the appellant is entitled to the protection of s. 84 of the Indian Penal Code.

We find that the appellant killed Shaz Ali and his daughter Shazda Banu, but that he was incapable of knowing that what he was doing was either wrong or contrary to law by reason of unsoundness of mind at the time of the occurrence. We, accordingly, set aside the order of conviction and sentence and acquit the appellant. The appeal is allowed. The appellant shall continue in safe custody in the jail in which he is now confined until further orders by the Provincial Government. Let the Government be informed of this.

Appeal allowed. Accused acquitted.

A.C.R.C.