APPELLATE CRIMINAL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, and Mr. Justice Muttusami Ayyar.

QUEEN-EMPRESS

1889. April 15.

v.

VENKATASAMI.*

Penal Code, s. 84—*Plea of insanity in criminal cases—Legal test of responsibility in cases of alleged unsoundness of mind.*

The accused stabbed a child (his brother's wife) with a sword and killed her. He was charged with murder, and plea of insanity was set up at the trial. No motive could be assigned for his attack on the child, in which he persisted in the presence of other persons: and it appeared that he had been in the habit of treating the child kindly and affectionately. He was suffering from fever and want of food at the time, and the medical evidence showed it was possible that the act was committed under a sudden attack of homicidal mania. It was in evidence that he had abused some of his relations a short time before,—the abuse being probably due to irritability of mind caused by fever. He confessed the crime to the Village Magistrate and answered questions put to him rationally, but before the committing Magistrate and the Sessions Judge he denied that he had killed the child. He was convicted of murder:

Held, that as the accused was not proved to have been by reason of unsoundness of mind incapable of knowing the nature of his act or that he was doing what was wrong or contrary to law, the conviction was right. *Queen-Empress* v. *Lakshman Dagdu* (I.L.R., 10 Bom., 512) approved.

CASE referred to the High Court under section 374 of the Code of Criminal Procedure for the confirmation of the sentence of death passed on the accused by H. H. O'Farrell, Acting Sessions Judge of Kurnool.

The accused was convicted of the murder of a child (his brother's wife) under the circumstances set out in the judgment of the Court. In support of the plea of insanity, the medical officer of the district was called and gave the following deposition:—

"The prisoner before the Court has been under my observation in the district jail since 4th of February in consequence of a requisition addressed to me from this Court. So far as my observation has gone while the prisoner was in the jail, I have no reason to believe that he is insane; but if the medical evidence is

* Referred Case No. 7 of 1889.

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required on the whole merits of the case, this opinion might be modified.

"I have been present in Court the whole of to-day, and have heard the evidence given by the witnesses. I find from the evidence that the prisoner had been sick of fever for six days previous to the occurrence; that he had had very little food during that period; and that whilst in this enfeebled condition, he had fever on the night previous to the deed, and that during the period when he was supposed to have had fever he used words in a manner which renders it possible that he was then suffering from delirium. I consider that the abusive tendency taken by the delirium is a matter of great importance. He was evidently suffering from the opinion that some one had injured him, and I find that the prosecution offers no theory of intention whatever. It is shown that the sword or swords with which the deed was committed were in the same hut. It is also admitted that he lived affectionately with the child he killed, and that none of the abuse of the previous evening was directed towards her. It is an established fact that during and after paroxysms of intermittent fever, there occasionally arises a want of mental control known as *post febrile lunacy*. I consider that the chances are that the prisoner was laboring under the impression that some one had injured him and under this opinion and incited thereto by the fact of the sword being at hand without in all probability knowing that this was a child had started at unknown enemies. The fact of the goat having been wounded also helps the theory to some extent, especially if the Head Constable's theory is correct that the wound was not caused by a slash but by a thrust. A thrust would show more deliberate intention to kill what was in reality only a harmless goat. Had he slashed the goat, the theory that the Head Constable suggested that he missed the girl and hit the goat would be more tenable. The prisoner is now in feeble state of health, and has an enlarged spleen, from which I infer that he has suffered from malarial fever recently. He has also suffered from fever in jail.

"*By Court.*—I have had no reason to suppose that the prisoner had suffered from epileptic fits; but if he had been subject to them, it would greatly favor the theory of a homicidal impulse: and such impulse would be greatly aggravated by the existence of fever at the time. If the prisoner had committed the deed in

a state of febrile delirium, it is quite consistent that after the delirium had left him he would be aware of what he had done. It depends greatly on the degree of delirium: but it would quite consist with delirium that he should know what he had done."

Mr. *Subramaniyam* for the accused.

The *Acting Government Pleader* (*Subramanya Ayyar*) for the Crown.

The Court (Collins, C.J., and Muttusami Ayyar, J.) delivered the following

JUDGMENT:—We are not satisfied that at the time the appellant committed the act, he was by reason of unsoundness of mind incapable of knowing the nature of the act and did not know that the act was wrong or contrary to law. No motive has been suggested for his killing the child. The appellant was suffering from fever and had taken little food for some days. When the Village Magistrate arrived, he asked the appellant—Who killed the girl? and the appellant replied "I killed her," and answered the questions the Magistrate put to him rationally. The appellant undoubtedly acted very strangely a short time before the murder. He abused his father and brother for not returning from the hills where they had gone some days before, and he also abused some women the same morning. The wounding of the goat is strange, but the circumstances under which he stabbed the goat are not fully explained or can be accepted as sufficient evidence of insanity. We observe that there is no positive evidence that the appellant was suffering from delirium at the time he committed the murder, or that he was unconscious of the nature of the act he had committed.

The abuse of his relations was most likely due to irritability of mind caused by the fever he was suffering from. The medical officer's evidence does not amount to more in our opinion than that there is the possibility of a sudden attack of homicidal mania; but judging the evidence by the ordinary judicial tests which we are bound to apply, we cannot say that it warrants a finding that the appellant did not know that what he was doing was wrong within the meaning of section 84 of the Indian Penal Code. The case of *Queen-Empress* v. *Lakshman Dagdu*(1) cited by the Acting Government Pleader contains, in our opinion, the points

(1) I.L.R., 10 Bom., 512.

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of law to be decided in such cases. While, however, confirming the conviction, we decline to confirm the sentence of death, and direct that in lieu thereof the appellant be transported for the term of his natural life; and we direct that the evidence in the case and this judgment be brought to the notice of His Excellency the Governor in Council in order that he might, if he think fit, reduce the sentence under the special circumstances of this case.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Parker.

* 1889. March 13.

MAHALINGA (DEFENDANT No. 1), APPELLANT,

v.

MARIYAMMA AND OTHERS (PLAINTIFFS), RESPONDENTS.*

Aliyasantana law—Yajaman—The rights of the senior member of the family being a female.

The senior member of an Aliyasantana family, if a female, is *primâ facie* entitled to the yajamanship: and in the absence of a special family custom or a binding family arrangement to the contrary, the management of the family affairs by another member is to be presumed to be by the sufferance of the yajaman for the time being.

SECOND APPEAL against the decree of J. W. Best, District Judge of South Canara, in appeal suit No. 140 of 1886, confirming the decree of C. Venkobacharyar, Subordinate Judge of South Canara, in original suit No. 37 of 1885.

The plaintiff as senior member of an Aliyasantana family sued to remove her younger brother, defendant No. 1, from the management of the family and to recover possession of the family property.

Both the Subordinate Judge and, on appeal, the District Judge decreed as prayed by the plaintiff. Defendant No. 1 preferred this second appeal.

Ramasami Mudaliar for appellant.

Ramachandra Rau Saheb for respondents.

The facts of the case and the arguments adduced on this second appeal appear sufficiently for the purpose of this report from the judgment of the Court (Muttusami Ayyar and Parker, JJ.).

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* Second Appeal No. 73 of 1888.