APPELLATE CRIMINAL.

Before Mr. Justice O'Kinealy and Mr. Justice Banerjee.

1896 *April* 15.

QUEEN-EMPRESS *v.* KADER NASYER SHAH. *

Penal Code (Act XLV of 1860), section 84—Unsoundness of mind—Criminal liability—Legal test of.

A person subject to insane impulses, but whose cognitive faculties appear to be unimpaired, is not by virtue of section 84 of the Indian Penal Code exempt from criminal liability.

Semble.—In extreme cases it is difficult to say that the cognitive faculties are not affected when the will and the emotions are affected. It may therefore be said that under the provisions of section 84 of the Penal Code exemption from criminal liability by reason of unsoundness of mind extends as well to cases where insanity affects the offender's will and emotions as to those where it affects his cognitive faculties.

Queen-Empress v. *Lakshman Dagdu* (1), *Queen-Empress* v. *Venkatasami* (2), and *Queen-Empress* v. *Razai Mia* (3), followed.

THE appellant Kader Nasyer was tried by the Sessions Judge of Rungpur on a charge of murder for causing the death of a boy named Abdul. In defence the plea of insanity was urged. It appeared from the evidence that since his house was burnt the accused neglected house and field work, and frequently complained of pain in the head and spoke to himself; when the pain was particularly severe he did not answer when spoken to; on one occasion he was seen eating potsherds; he played and went about with children much more than was to be expected from a man of his age; the murder was committed without any sane motive; the accused was fond of the boy and he had no quarrel with the father of the boy; when the enquiry, preliminary to the commitment, was taken up, he was found not to be in a fit state of mind to be able to make his defence, and the enquiry was not resumed until somewhat more than a year after. On the other hand, the accused observed some secrecy in committing the murder; he tried to conceal the corpse and hid himself in a

* Criminal Appeal No. 167 of 1896.

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jungle; his recollection of the act was full and clear. The two assessors were for acquitting the accused on the ground of unsoundness of mind. The Sessions Judge disagreeing with them convicted him of murder and sentenced him to transportation for life.

Babu *Hem Chunder Mitter* for the appellant.

Mr. *Leith* (*Offg. Deputy Legal Remembrancer*) for the Crown.

The judgment of the High Court (O'KINEALY and BANERJEE, JJ.) is as follows:—

The appellant, Kader Nasyer, was tried before the Sessions Court of Rungpur on a charge of murder for causing the death of a boy named Abdul, aged about eight years. His plea was that he "was mad when he strangled the boy." The two assessors were both for acquitting him on the ground of unsoundness of mind, but the learned Sessions Judge disagreeing with them has convicted him of murder and sentenced him under section 302 of the Indian Penal Code to transportation for life.

Two questions arise for determination in this appeal: First, whether the appellant killed the boy; and, second, whether, if he did so, he is guilty of murder, or is entittled to be acquitted on the ground of unsoundness of mind.

The evidence for the prosecution consists of the depositions of Jalad Mahomed, the father of the boy Abdul, Kakum and Khanullah, two neighbours, and Gopal Chunder Chowdhury, the Police Head Constable, examined before the Sessions Court, of two depositions of the Civil Surgeon examined in the course of the preliminary enquiry and of the statements of the accused. The two depositions of the Civil Surgeon should be left out of consideration, as one of them was taken when the accused, as the committing Magistrate's remarks go to show, was not in a fit state of mind to be able to make his defence, or to cross-examine witnesses, and the other was taken by commission and not in the presence of the accused, as required by section 509 of the Code of Criminal Procedure which makes depositions of medical witnesses taken before the committing Magistrate admissible at the Sessions trial. Jalad, the father of the boy Abdul, says that he left his son in his house in company with the accused in the morning, when he went

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to his zemindar's *cutchery* on business ; that on his return home late in the afternoon he did not find either the boy or the accused ; and that on making a search he found the dead body of the boy in a deserted house not far from his own, and the next day he found the accused hiding himself in a jungle at a short distance. The witness Kakum says that on the day of the occurrence he saw the accused carrying a dead body in his arms in the direction of the deserted house, in which the corpse was subsequently discovered. The witnesses, Khanullah and Gopal Chunder, depose to what transpired in the course of the police investigation ; and as nothing of importance occurred in the course of that investigation, we need not refer to their evidence in detail.

For the defence three neighbours were examined. Their evidence does not touch the question as to who killed the child, and it is directed only towards showing that the accused had been in an unsound state of mind for some months preceding the occurrence ; it being suggested that his unsoundness of mind was the result of the shock received by him from the destruction of his house and property by fire.

The evidence of the witnesses examined before the Sessions Court taken with the two statements of the accused before the committing Magistrate, in one of which he stated that he had a feeling in his head and he killed the child by pressing his throat, and in the other, that he was in a state of insanity and did not know what he did, and taken also with his plea before the Sessions Court, goes clearly to show that the accused caused the death of the boy Abdul ; and so the first of the two questions stated above must be answered in the affirmative.

The answer to the second question, however, is not equally easy. It is no doubt clear from the evidence that the accused had been suffering from mental derangement for some months previous to the date of the occurrence and since the destruction of his house and property by fire ; that on one occasion he was seen eating potsherds ; and that he often complained of pain in the head. It also appears that when the enquiry preliminary to the commitment was taken up, he was found not to be in a fit state of mind to be able to make his defence ; and the enquiry was not resumed, until somewhat more than a year after when

he was pronounced fit to be able to take his trial. The murder, moreover, was committed without any apparent sane motive. The evidence shows that the accused was fond of the boy, and he had no quarrel with the boy's father. On the other hand, however, it must be borne in mind that the accused observed some secrecy in committing the murder. He tried to conceal the corpse, and he hid himself in a jungle.

Are the circumstances then sufficient to exempt the ...sed from responsibility for the crime? The act done by him, u... s he is shown to be exempted from criminal responsibility, is evidently murder, and it lies upon the accused under section 105 of the Evidence Act to show that he is exempted from criminal responsibility by reason of unsoundness of mind. It must also be borne in mind that it is not every form of unsoundness of mind that would exempt one from criminal responsibility.

The law on the subject is that laid down in section 84 of the Indian Penal Code which enacts that "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." This provision of our law, which is in substance the same as that laid down in the answers of the Judges to the questions put to them by the House of Lords in McNaghten's case shows that it is only unsoundness of mind which materially impairs the cognitive faculties of the mind that can form a ground of exemption from criminal responsibility, the nature an... extent of the unsoundness of mind required be... ...ab... make the offender incapable of knowing ... or that he is doing what is wrong or contr... of unsoundness of mind of this descript... these: A person strikes another, and in ... insane delusion thinks he is breaking a ... not know the nature of the act. Or he ma... an insane delusion that he is saving h... ing him to heaven. Here he is incapable ... of insanity that he is doing what is ... may under insane delusion believe ... kills to be a man that was going to

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case, by reason of his insane delusion, he is incapable of knowing that he is doing what is contrary to the law of the land.

We learn, however, from medical and legal authorities who have considered the subject of responsibility in mental disease (see Maudsley's Responsibility in Mental Disease, Ch. III, Bucknill and Tuke's Psychological Medicine, p. 269, and Stephen's History of the Criminal Law of England, Vol. II, ch. XIX) that insanity affects not only the cognitive faculties of the mind which guide our actions, but also our emotions which prompt our actions, and the will by which our actions are performed. It may be that our law, like the law of England, limits non-liability only to those cases in which insanity affects the cognitive faculties; because it is thought that those are the cases to which the exemption rightly applies, and the cases, in which insanity affects only the emotions and the will, subjecting the offender to impulses, whilst it leaves the cognitive faculties unimpaired, have been left outside the exception, because it has been thought that the object of the criminal law is to make people control their insane as well as their sane impulses, or to use the words of Lord Justice Bramwell in *Reg* v. *Humphreys* (1) (see Taylor's Manual of Medical Jurisprudence, 10th Edition, p. 745) "to guard against mischievous propensities and homicidal impulses." Whether this is the proper view to take of the matter, or whether the exemption ought to be extended as well to the cases in which insanity affects the emotions and will as to those in which it affects the cognitive faculties, is a question which it is not for us here to [illegible]. There are no doubt eminent authorities who are in [illegible] the exemption to those cases, but our duty is [illegible] we find it. It might be said of our law [illegible] of the law of England by Sir J. Stephen [illegible] Criminal Law of England, Vol. II, ch XIX, [illegible] stands, the law extends the exemption as [illegible] sanity affects the offender's will and emo- [illegible] it affects his cognitive faculties, because [illegible] ons are affected by the offender being sub- [illegible] t is difficult to say that his cognitive faculties [illegible] reme cases that may be true; but we are [illegible] view as generally correct that a person

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is entitled to exemption from criminal liability under our law in cases in which it is only shown that he is subject to insane impulses, notwithstanding that it may appear clear that his cognitive faculties, so far as we can judge from his acts and words, are left unimpaired. To take such a view as this would be to go against the plain language of section 84 of the Indian Penal Code, and the received interpretation of that section. See the cases of *Queen-Empress* v. *Lakshman Dagdu* (1), *Queen-Empress* v. *Venkatasami* (2) and *Queen-Empress* v. *Razai Mia* (3).

Applying then the law as we understand it to the facts of this case, we must say we are unable to hold that it has been shown that the accused, at the time he killed the child, was, by reason of unsoundness of mind, incapable of knowing the nature of his act, or that he was doing what was either wrong or contrary to law. The circumstances attending the murder go to show that he could not have been devoid of such knowledge, though they go to show that he must at that time have been suffering from mental derangement of some sort. We must therefore dismiss the appeal and confirm the conviction for murder and the sentence of transportation for life which is the only sentence besides the sentence of death which the law prescribes for that offence. But at the same time we think we ought to take the course that the Bombay High Court took in the case just cited, *Queen-Empress* v. *Lakshman Dagdu*, which was somewhat similar to this; and we accordingly direct that the proceedings be forwarded to His Honour the Lieutenant-Governor with a copy of our judgment and our recommendation that the case may be dealt with by the local Government under section 401 of the Code of Criminal Procedure in such manner as it thinks fit. We make no special recommendation as to how the prisoner should be dealt with; but we deem it right to observe that, though having regard to the language of section 84 of the Indian Penal Code we must hold that the accused is not entitled to be acquitted, we think that the murder was committed without any apparent sane motive; that the accused was at the time suffering from mental derangement of some sort; and that he is therefore entitled to every indulgent consideration.

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