

APPELLATE CRIMINAL.

Before Mr. Justice Zafar Ali and Mr. Justice Tek Chand.

TOLA RAM—Appellant,

versus

THE CROWN—Respondent.

Criminal Appeal No. 228 of 1927.

Indian Penal Code, 1860, section 84—Unsoundness of mind—four elements—necessity for proof of—Antecedent and subsequent conduct—relevancy of—Paroxysm of insanity and fit of anger contrasted—Criminal Procedure Code, Act V of 1898, section 401—Recommendation for mercy—fit case.

The accused, who was charged with murder, but pleaded insanity had been subject both before and after the occurrence to occasional fits of epilepsy and melancholia, but it was found that, though physical and mental ailments from which he suffered had affected his emotions and will, it could not be said that his cognitive faculties had been impaired. On the day of the crime he had no epileptic fit but, on the contrary, had acted like a sane man until being asked by his mother to wait before he could get certain articles for which he had asked her he became angry, hit her, and upon his father's remonstrance lost self control and hit him five or six times on the head with a stick causing immediate death.

Held, that in order to bring the case within section 84 of the Indian Penal Code, all the following elements must be proved, namely, that—

- (a) *at the time of committing the offence,*
- (b) *the accused was labouring under a defect of reason,*
- (c) *which had been caused by unsoundness of mind,*
- (d) *such as had rendered him incapable of knowing the nature of the act or that he was doing what was either wrong or contrary to law.*

M'Naghten's Case (1), followed.

Held also, that the accused's condition antecedent and

subsequent to the commission of the crime was relevant *only* in so far as might assist the Court in coming to a conclusion as to his mental capacity at the time when he struck the fatal blow.

Held further, that as it was clear that on the occasion in question the accused struck the deceased not in a paroxysm of insanity but in a fit of anger, and as it could not be said that he was *non compos mentis* at that particular time, his conviction under section 302 of the Indian Penal Code must be affirmed.

In re Edward Arnold (1) per Tracy J., followed.

But, that the case was a fit one for a recommendation for mercy to be made to the Local Government under section 401 of the Criminal Procedure Code.

Ramzan v. Crown (2), *Emperor v. Lachhman* (3), and *Queen-Empress v. Kader Nasyer Shah* (4), relied upon.

Appeal from the order of Khan Bahadur Munshi Rahim Bakhsh, Sessions Judge, Mianwali, dated the 21st December 1926, convicting the appellant.

NEMO, for Appellant.

D. R. SAWHNEY, Public Prosecutor, for Respondent.

JUDGMENT.

TEK CHAND J.—Tola Ram, appellant, aged 25, of Musa Khel, has been convicted by the Sessions Judge, Mianwali, under section 302, Indian Penal Code, for having murdered his father Ganda Ram on the 11th of November 1926 and sentenced to transportation for life. He has appealed from jail and is not represented by counsel before us. We have carefully gone through the record and heard the Public Prosecutor in support of the conviction.

(1) 16 St. Tr. 695, 764.

(2) 30 P. R. (Cr.) 1918.

(3) (1923) I. L. R. 46 All. 243.

(4) (1896) I. L. R. 23 Cal. 604.

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It has been established beyond doubt that the deceased Ganda Ram died as a result of the injuries inflicted on him by the appellant in the manner described by the prosecution witnesses. It appears that the appellant is a melancholiac who has been subject to occasional fits of epilepsy and was at the time suffering from vertigo. On the morning of the occurrence he went to *Hakim* Ram Singh (P. W. 14) and asked him to venesect him. As the *Hakim* was himself unwell at the time, he told the appellant that he was unable to comply with his request. The appellant went again to him in the afternoon and repeated his request. The *Hakim* told him to go to his shop and bring the lancet and knives so that the venesection might be performed. It appears that the appellant went to the shop, took the lancet and knives and then came home to take a bandage. His father Ganda Ram had been suffering from fever for a number of days and was lying on a *charpai* and his mother Asa Devi (P. W. 7) was busy spinning her wheel. She states that the appellant came in an excited mood and asked her to supply him with a bandage. She asked him to wait as she was spinning. On this the appellant kicked her twice. The deceased reprimanded the appellant and said "why are you beating your mother, who cooks food for you". He also said to the appellant "Be you dead, be you dead! Get away—You have caused a good deal of trouble to us." On this the appellant got angry, caught hold of his father by the neck, threw him down from the *charpai*, sat on him and was going to throttle him, when *Mussammat* Asa Devi raised a hue and cry and removed the appellant's hand from the deceased's throat. The appellant then got up, took hold of a *sota* and gave *Mussammat* Asa Devi a blow on the head. He got more excited and gave his

father Ganda Ram five or six blows on the head. Hearing the cries of *Mussammāt* Asa Devi, Tara Chand (P. W. 8) arrived on the scene, while the appellant was still beating his father. He caught hold of the appellant and snatched the *sota* from him. Nota Ram (P. W. 9) and Ganda Ram (P. W. 10) also reached the spot and helped Tara Chand in getting hold of the appellant and dragging him outside in the compound. They tied his hands and feet with his turban and sent word to the Police. Tara Chand states that at that time the appellants' eyes were red with anger and that if they had not reached the spot, he would have murdered his mother also. Ganda Ram died immediately as a result of the injuries inflicted on him. His body was taken to the mortuary at Mianwali and Dr. Rahmat Ilahi (P. W. 1), Assistant Surgeon, conducted the *post-mortem* examination. He discovered six injuries on the head, and removing the scalp found the frontal bone fractured into 12 pieces. The right and the left parietal bones, the upper jaw and the left molar bone were also fractured. On the evidence, I have no doubt whatever that the deceased died as a result of the injuries inflicted by the appellant on his head with a *sota* in the manner described above.

The appellant, when questioned by the Committing Magistrate whether he had killed his father and inflicted injuries on him with the intention of causing death, replied that he had "an attack of insanity at the time and, therefore, could not say whether he inflicted any injuries to his father or not." He stuck to this statement in the Sessions Court and stated that he was "somewhat in his senses when he asked his mother for a bandage", but he did not remember whether he kicked his mother. He stated that when

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his mother told him to wait he sat down on the *charpai* but does not remember what happened further.

The question to be decided is whether at the time of the attack on his father, the appellant was, by reason of unsoundness of mind, incapable of knowing the nature of the act or knowing that he was doing what was either wrong or contrary to law. If the answer to the question is in the affirmative, the appellant's case will come within the exemption described in section 84 of the Indian Penal Code. If not, his conviction, under section 302, must be upheld.

Dr. Manohar Lal (D. W. 2), Sub-Assistant Surgeon, Mianwali, who was in charge of the Civil Dispensary at Musa Khel from 1920 to 1925 has deposed that the appellant used to go to him as an outdoor patient and twice he gave him soothing injections of phoscine hydro-bromide as he used to scream and cry out. As an outdoor patient he used to complain of constipation and vertigo. From September 1922 to December 1923 he worked in the hospital as a water-carrier, where his "laborious work" was done by his father. "At night he used to cry and fall down from the *charpai* and used to get injuries on the head. He used to be unconscious at the time. He had a weak memory and never had sound sleep." In the presence of the witness he once threw a stone on one Behari at slight provocation. The witness also stated that he saw the appellant in a violent maniacal fit, when he went to treat him at his house. Data Ram (P. W. 6) deposed that about a year before the occurrence he once saw the appellant lying in the *bazar* "in convulsions and foaming at the mouth" and that 5 or 6 months later he found him in the jungle in a fit of epilepsy. *Mussammatt* Asa Devi (P. W. 7), who is the

mother of the appellant, deposed to his having suffered from giddiness. She stated that at first he suffered from melancholia but later on got fits of epilepsy, when he used to go into convulsions and to foam at the mouth. She however admitted that on the day of the occurrence he had no fit of epilepsy. Tara Chand (P. W. 8) and Nota Ram (P. W. 9) also deposed to his having suffered from melancholia and epilepsy. Gopal Dass (P. W. 12), who is the elder brother of the appellant, stated that in 1919 when he was studying in the seventh standard, he, all of a sudden, threw his books aside and began to shriek. Later on he used to fall down from his *charpai* at night. He used to abuse people and give slaps to them and had fits of epilepsy usually after a month and sometimes at shorter intervals. Dr. Parma Nand (D. W. 1), Sub-Assistant Surgeon, who was in charge of the Mianwali Jail, where the appellant was confined after his arrest, stated that the jail register showed that on the 16th November, 1926, the appellant got an attack of epilepsy, that he "was not in his senses and was speaking irrelevantly". On the 19th he had another epileptic fit and was furious and dangerous. On the 23rd there was an epileptic fit and post-epileptic mania. The register showed that he had fits of epilepsy on the 29th November and 12th of April. Dr. Hottinger (P. W. 3), Civil Surgeon, stated that the appellant was under his observation on different dates after the 13th of November. He was reported to have epileptic fits on five different days, but the witness did not personally see him in a fit or in a state of post-epileptic maniacal excitement. On the occasion when the Civil Surgeon visited him, he always found him depressed and morose, his expression being dull and his speech slow and deliberate. On one occasion he

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gave irrelevant answers to his questions, but the witness thought that he was feigning at the time. Dr. Hottinger gave his considered opinion that the appellant had suffered from epileptic fits and owing to epilepsy he was of irritable temper liable to lose self-control on the most trivial provocation.

The above is a resumé of the evidence relating to the mental and physical condition of the appellant. It must, however, be borne in mind that his condition, antecedent and subsequent to the commission of the crime is relevant only in so far as it might assist the Court in coming to a conclusion as to his mental capacity at the time when he struck the fatal blow. The mere fact that on former occasions the appellant had been occasionally subject to insane delusions or had suffered from derangement of the mind, or that subsequently he had at times behaved like a mentally deficient person is *per se* insufficient to bring his case within the exemption. As laid down by the Judges in answer to the questions put to them by the House of Lords in the celebrated *M'Naghten's case* (1), to establish a ground of "insanity it must clearly be proved that *at the time of committing the act* the party accused was labouring under such a defect of reason from disease of the mind as not to know the nature and quality of the act he was doing or as not to know that what he was doing was wrong". This exposition of the law has since 1843 been accepted by the Courts in England and is the basis of the law in India as embodied in section 84, Indian Penal Code. A case can be brought within that section, only if it is proved, that—

(a) at the *time of committing* the offence,

- (b) the accused was labouring under a defect of reason,
- (c) which had been caused by unsoundness of mind,
- (d) such as had rendered him incapable of knowing the nature of the act or that he was doing what was either wrong or contrary to law.

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Can it be said that these four elements are present in the present case? A careful consideration of the evidence and the circumstances under which the crime was committed leads me to the conclusion that while it must be held that the appellant was subject to occasional fits of epilepsy and melancholia and suffered from giddiness of the head, which had affected his nervous system so as to make him very irritable, it cannot be said that the cognitive faculties of his mind had been impaired to such an extent that he was *non compos mentis* at the time. He had no epileptic fit on the day of the occurrence, he wanted the *Hakim* to let out his blood, and had, like a sane man, gone to the *Hakim's* shop and brought the lancet and knives. When he came home to take a bandage from his mother he was in his senses, but when his mother asked him to wait he became angry and hit her and then when his father remonstrated with him, he at once lost self-control and began to beat him in the manner described above.

It might be that the physical and mental ailments from which he suffered had rendered his intellect weak and had affected his *emotions* and *will*, but it cannot be said that his *cognitive faculties* had been impaired to a degree which is described in the last part of section 84. On the occasion in question the loss of the

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power of self-control was not due to the want of consciousness of the nature and quality of his act, brought about by a diseased state of the mind, but was obviously the result of the sudden rousing of passions, which he was unable to subdue at the time. It is clear that he struck the deceased not in a *paroxysm of insanity* but in a *fit of anger*. An act, otherwise criminal, does not cease to be so, if committed under such circumstances. As observed by Tracy J. in *re Edward Arnold* (1), "it is not every kind of frantic humour or something unaccountable in a man's actions that points him out to be such a mad man as is to be exempted from punishment; it must be a man that is totally deprived of his understanding and memory and doth not know what he is doing, no more than an infant, than a brute or a wild beast". It is only such persons who are not the object of punishment.

I must, therefore, hold that the appellant is not exempt from criminal liability by reason of unsoundness of the mind and his case does not fall under section 84. I must affirm his conviction under section 302, Indian Penal Code.

At the same time I feel bound to say that this is a fit case in which a recommendation should be made to the Local Government under section 401, Criminal Procedure Code, to exercise the prerogative of mercy and effect a substantial reduction in the sentence of transportation for life passed against him. Numerous cases will be found in the law reports in which Courts have made similar recommendations in favour of persons found guilty under similar circumstances.

(1) 16 St. Tr. 695, 764.

(*vide inter alia* *Ramzan v. Crown* (1), *Emperor v. Lachhman* (2), and *Queen-Empress v. Kader Nasyer Shah* (3).

I would, therefore, dismiss the appellant's appeal but would, if my learned brother agrees, direct that a copy of this judgment be sent to the Local Government for taking action under section 401, Criminal Procedure Code.

ZAFAR ALI J.—I agree.

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Appeal dismissed.

APPELLATE CIVIL.

Before Mr. Justice Fforde and Mr. Justice Tek Chand.

GURAN DITTA AND OTHERS (DEFENDANTS)

Appellants

versus

POKHAR RAM AND ANOTHER (PLAINTIFFS)

Respondents.

1927
March 24.

Civil Appeal No. 3002 of 1922.

Civil Procedure Code, Act V of 1908, Schedule II, para. 15 (c), and para. 16 (2)—Arbitration—Award—decree passed in accordance with—Appeal—whether competent—Hindu Law—sons of parties—impleaded during pendency of suit—whether reference by father and award thereon binding on sons.

Held, that under the Civil Procedure Code, 1908, no appeal lies against a decree passed in accordance with an award, even though the award is attacked as being void *ab initio*.

(1) 30 P. R. (Cr.) 1918. (2) (1923) I. L. R. 46 All. 243.
(3) (1896) I. L. R. 23 Cal. 604.