## APPELLATE CRIMINAL.

*Before Mr. Justice Fforde and Mr. Justice Agha Haidar*

THE CROWN, Appellant

*versus*

BAHADUR, Respondent.

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Dec. 1.

Criminal Appeal No. 755 of 1927.

*Indian Penal Code, 1860, section 84—Unsoundness of mind*—onus probandi—*absence of motive—whether sufficient proof—Criminal Procedure Code, Act V of 1898, sections 464, 465 and 469—Inquiry into accused's state of mind—whether and when incumbent upon Committing Magistrate.*

*Held*, that the *onus* of proving unsoundness of mind for the purpose of section 84 of the Penal Code is on the accused. That *onus* may be discharged by producing evidence as to the conduct of the accused shortly prior to the offence and his conduct at the time or immediately afterwards, also by evidence of his mental condition, his family history and so forth. But mere absence of motive is not a sufficient ground upon which mania may be inferred.

*Held, also*, that there is no provision of law in India making it incumbent upon a Committing Magistrate to order a medical inquiry into a defence of insanity. It is only in cases where the accused appears to be incapable, by reason of mental infirmity, of taking his trial, that this issue of insanity must be tried before the trial for the offence is proceeded with (*vide* sections 464 and 465 of the Code of Criminal Procedure).

*And*, where the Committing Magistrate finds that the accused is sane at the time of trial he has no alternative but to proceed in accordance with the provisions of section 469 of the Code.

*Appeal from the order of Lt.-Col. J. Frizelle, Sessions Judge, Rawalpindi, dated the 23rd April 1927, acquitting the respondent.*

ABDUL RASHID, Assistant Legal Remembrancer, for Appellant.

NIHAL SINGH, for Respondent.

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JUDGMENT.

FFORDE J.—Bahadur has been tried by the learned Sessions Judge of Rawalpindi for the murder of *Mussammat* Amrit Kaur and Teja Singh, two children, aged seven and four years, respectively. The defence was that at the time the murders were committed Bahadur was insane. The learned Sessions Judge has accepted this defence and acquitted the accused.

The Crown now appeals against this acquittal, contending that Bahadur should have been convicted of murder and sentenced to death. The sole question which arises for determination in this appeal is whether or not Bahadur at the time when he killed *Mussammat* Amrit Kaur and Teja Singh knew that what he was doing was either wrong or contrary to law. The circumstances of the crime are not disputed and may be stated very shortly.

*Mussammat* Maya Devi was living alone with her two children at Turkwal, while her husband was carrying on a shop-keeping business at Kohala. On the morning of the 6th of February, 1927, while *Mussammat* Maya Devi was absent from the house to answer a call of nature, Bahadur entered the room where the two children were, armed with a heavy stick, closed the door by a chain, and then proceeded to batter the small boy to death. The crying of the children brought neighbours upon the scene. The daughter in the meantime had managed to unhitch the chain and was attempting to open the door when Bahadur struck her. A man called Shahana, who had come on the scene on hearing a clamour, finding that Bahadur was inside the room and was refusing to allow anyone to enter, procured a thorn bush, forced the door open, and with the thorn bush in

front of him proceeded to drive the accused back. The accused in the meantime struck blows with his stick at the thorn bush and, while being forced gradually back, tripped over a *charpoy* and fell to the ground. Shahana then snatched the stick from his hand and grappled with him. Other persons came into the room and helped in securing the culprit. By this time the boy was dead, but the little girl was still alive and died shortly afterwards of her injuries. The facts, as I have briefly narrated them, are not disputed.

Counsel for the accused urges that the circumstances of the murder, the fact that no motive for the crime has been proved, and the evidence of two witnesses of certain eccentric conduct on the part of the accused some months prior to the crime, and the further fact that the accused had at one time, not very remote, received some injuries to his head, all go to prove that the accused at the time he committed the act in question was incapable of knowing that he was doing wrong. This is the view which the learned Sessions Judge has adopted; but in my judgment it is a view which cannot reasonably be held on the facts of this case.

Where an accused person relies upon section 84 of the Indian Penal Code to escape the legal consequences of his act, the *onus* is upon him to prove that he was, at the time when the act was committed, by reason of unsoundness of mind, incapable of knowing its nature or that what he was doing was either wrong or contrary to law. That *onus* may be discharged by producing evidence as to the conduct of the accused shortly prior to the offence and his conduct at the time or immediately afterwards; also by evidence of his mental condition, his family history, and so forth.

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If contemporaneous acts of his are proved to have been of such a nature as to indicate that he was quite incapable of forming rational views, that would be a strong element to show that at the time of the crime in question he was not capable of knowing that it was a wrongful act. In the present case, however, no evidence has been produced of any contemporaneous acts of the accused. Nothing has been told us of his behaviour during the days immediately preceding the crime, but some evidence has been produced by which it is sought to prove that he behaved with remarkable eccentricity some time prior to the event in question.

The two witnesses, who have been called to prove this matter, are Nazra and Jahana. Nazra states that the accused had received serious injuries to his head in a fight and had been laid up for several months as a result of these injuries; that, after he had risen from his sickness, he had a drum beaten in the court-yard of his house, a large number of people had collected and he went about carrying a tray with Rs. 100 in it, stating that anyone who had beaten him could help himself to the money. According to this witness, he also got a *Mirasi* to stand on the roof of his house, beat a drum and give a challenge to all people who owned bullocks to bring their animals and have a fight with his cattle. This witness says that nobody accepted this challenge, because everyone knew that the accused was insane. This witness also says that a day prior to the present crime the accused went into a mosque wearing cattle bells round his neck and that people kept him under control as he was mad. This witness gives the date of the first two incidents, as five or six days before the murder and he states that the fight resulting in the injuries to his head occurred "a year ago".

The next witness Jahana, says that the fight took place in April of last year, *i.e.* (1926), that the accused was ill for some months as a result of the injuries to his head and did not return to his work when he recovered. He says that a few days before the crime two *Maulvis* had visited the village, which attracted a large crowd of people from the Jhelum, Rawalpindi and Attock districts and that Bahadur went to the mosque wearing bullock-bells round his neck and created a disturbance. This witness also refers to the incident of the drum beating and the challenge to the owners of cattle, and says it took place five or six days before the murder.

In regard to this evidence I may say, first of all, that the first witness admits that he is a collateral of the accused and the second witness admits that the accused is his son-in-law. Although the circumstances, which these witnesses depose to as showing the insanity of the accused, are alleged to have been of widespread notoriety, not a single independent witness has been produced to corroborate these two persons in respect of the matters which they have alleged. It seems incredible that, if on the day prior to the crime, the accused had entered a public place of worship in a fantastic manner, as he is alleged to have done, causing a public disturbance, not a single person should have been available to give evidence of this fact. According to Jahana also, the incident of the drum beating took place five or six days before the occurrence. In respect of this no person from the neighbourhood has been called to give evidence. In my judgment the evidence of these two witnesses is not worthy of any credit whatsoever, and I cannot help expressing some surprise that it should have been treated seriously by the learned Sessions Judge.

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Another matter which the learned Sessions Judge has relied upon as evidence of insanity is that "the accused behaved like a mad man when he was caught in the house of his victims, as he rained a shower of blows on the thorn bush with which he was being pushed back." It seems to me that the accused in striking at this thorn bush did what a normal person would do who was trying to resist capture and who was being assaulted in such a manner.

The learned Sessions Judge has also considered the evidence upon the head injuries to the accused. There is no doubt that there is a scar on the accused's head showing that some time back he had received a fracture of the skull. But, apart from the evidence of his two relatives, there is nothing to show that these injuries to the head had resulted in any untoward act on the part of the accused or had incapacitated him in any way whatsoever.

The fourth matter relied upon by the learned Sessions Judge as evidence of insanity is the absence of motive for this crime. I may say that the motive alleged by the prosecution, sought to be proved by the mother of the children and by one Gurdial Singh, is not very satisfactory, inasmuch as Gurdial Singh's account of a complaint made to him by *Mussammat* Maya Devi does not tally with the story which she herself has given. It may be that the accused had been importuning *Mussammat* Maya Devi to become his paramour, as she alleged, but I am not satisfied that she did complain of this matter to Gurdial Singh before the crime in question. It must be borne in mind that this kind of conduct towards a married woman, who was living apart from her husband, is not a circumstance which a woman is likely to talk

about, and, although it is quite possible that she is speaking the truth that the accused did molest and importune her, I am not satisfied that she complained of these acts to Gurdial Singh. However, even accepting the learned Sessions Judge's view that no motive for the crime has been proved, that in itself—the mere absence of motive—is not a sufficient ground upon which mania may be inferred. There is no doubt that the fact that a murder has been committed in a particularly brutal and purposeless way for no motive whatsoever, is a circumstance which may be taken into consideration, together with other material to enable a Court to decide whether or not the crime in question was committed at a time when the accused person was in such a state of mind that he was incapable of knowing the nature of his act. As I have said, in the absence of other evidence mere want of motive for the crime is not sufficient to base an inference of unsoundness of mind for the purposes of a defence under section 84, Indian Penal Code.

Mr. Nihal Singh has argued that the learned Committing Magistrate should have ordered an investigation into the state of the accused's mind as soon as the defence of insanity was raised. For this contention I can find no authority. Section 469 of the Criminal Procedure Code provides that when an accused person appears to be of sound mind at the time of inquiry or trial, and the Magistrate is satisfied from the evidence given before him that there is reason to believe that he committed an act which, if he had been of sound mind, would have been an offence, and that at the time of the commission he was, by reason of unsoundness of mind, incapable of knowing the nature of the act or that it was wrong or contrary to law, the Magistrate must proceed with

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the case and commit the accused for trial to the Court of Session or High Court, as the case may be. There is no provision of law in India making it incumbent upon a Committing Magistrate to order a medical inquiry upon a defence of insanity. It is only in cases where the accused appears to be incapable, by reason of mental infirmity, of taking his trial, that this issue of insanity must be tried before the trial for the offence is proceeded with. That is provided by sections 464 and 465 of the Criminal Procedure Code. In the present case it was not suggested that the accused was insane either at the time he came before the Committing Magistrate, or before he took his trial before the Sessions Judge, or at any period in the interval. His whole case is that he was suffering from such a condition of mind at the time of the crime, that he was not capable of knowing the nature of his act or that what he was doing was either wrong or contrary to law. The learned Committing Magistrate refused an application by counsel for the defence to hold an inquiry as to the state of the mind of the accused person. The Committing Magistrate in rejecting this application expressed his view that the accused was sane at that time, and upon that view the Committing Magistrate had no alternative but to proceed in accordance with the provisions of section 469 of the Criminal Procedure Code. The learned Sessions Judge seems to think that there has been some dereliction of duty on the part of the Committing Magistrate in not ordering a medical inquiry. This view of the learned Sessions Judge, is, in my opinion, entirely contrary to the statutory provisions. The learned Sessions Judge also seems to have been of opinion that it was for the Crown to establish the sanity of the accused; but he does not seem to have realised

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that the *onus* was upon the accused to prove that he was suffering from such disability as is indicated in section 84 of the Indian Penal Code. The learned Sessions Judge says that it may be argued that the fact that he was insane when he committed the murders has not been proved conclusively but still there remains the doubt that he may have been mad at the time. This is not a kind of doubt of which the accused may be given the benefit. In order to come within the provisions of section 84 of the Indian Penal Code the accused must not leave the condition of his mind at the time of the commission of the offence in doubt, but must satisfy the Court that it was such that he was incapable of knowing the nature of his act or that what he was doing was either wrong or contrary to law. This, in my judgment, he has wholly failed to establish.

I am satisfied from the admitted facts of this case, from the fact that the accused selected a time when the mother was absent from the house to batter to death these two unfortunate children; the fact that before starting upon his crime he chained the door from inside to prevent any one entering; the fact that he went to the scene having armed himself with a *dang*; and the fact that when he was interrupted in the course of its perpetration he resisted capture—that he knew perfectly well that he was doing a wrongful act. Under these circumstances, I am satisfied that the decision of the learned Sessions Judge is clearly erroneous, and I would accordingly accept the appeal for the Crown, set aside the verdict of acquittal, convict the respondent under the provisions of section 302 of the Indian Penal Code of the murders of *Mussammat* Amrit Kaur and Teja Singh and sentence him to death.

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If it may now be the case that before the sentence is executed it appears to the Jail authorities that the accused is insane, I have no doubt that proper steps will be taken to inquire into his mental condition. This is a matter, however, for the Local Government and not for this Court.

AGHA HAIDAR J. AGHA HAIDAR J.—I agree.

*N. F. E.*

*Appeal accepted.*

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## APPELLATE CIVIL.

*Before Mr. Justice Broadway and Mr. Justice Jai Lal.*

1927

*Dec. 1.*

AGYA SINGH (DEFENDANT) Appellant

*versus*

SUNDAR SINGH (PLAINTIFF) Respondent.

**Civil Appeal No. 2811 of 1926.**

*Court Fees Act, VII of 1870, Schedule II, article 11—Appeal from an order filing an award—whether from a decree—Civil Procedure Code, Act V of 1908, sections 2 (2), 104 (f) and Schedule II, Rule 7—Arbitrator—misconduct—bribery—presumption of.*

*Held*, that an appeal from an order under section 104 (*f*) of the Civil Procedure Code of 1908, is governed by article 11 of the second Schedule of the Court-fees Act.

*Sarwan Pande* v. *Jagat Pande* (1), followed.

*Gauri Shankar* v. *Anant Ram* (2), *Dharam Das* v. *Ajudhia Pershad* (3), *Hari Mohan Singh* v. *Kali Prosad Chaliha* (4), and *Ghulam Khan* v. *Muhammad Hassan* (5), distinguished.

*Held further*, that an agreement on the dissolution of a partnership to refer to arbitration the mutual disputes of the partners relating to the settlement of the partnership accounts, necessarily includes the question as to what contracts were

(1) (1927) 103 I. C. 315.
(2) (1926) 94 I. C. 646.
(3) 70 P. R. 1881.
(4) (1906) I. L. R. 33 Cal. 11.
(5) (1902) I. L. R. 29 Cal. 167 (P.C.).