

**APPELLATE CRIMINAL.**

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*Before Young C. J. and Blacker J.*

GHUNGAR MAL—Appellant,

*versus*

THE CROWN—Respondent.

**Criminal Appeal No. 785 of 1938.**

*Indian Penal Code (Act XLV of 1860), SS. 84, 302 —  
Murder — Insanity — Legal meaning thereof — not the  
same thing as insanity from medical point of view.*

The accused was anxious to get the deceased in his service as a cow-herd but the deceased's father refused to let him undertake the duty. Thereupon the accused came up to a group of children who were working as graziers and asked where the deceased was. Shortly afterwards some of these boys going towards the ' *bela* ' saw the accused catch hold of the deceased, fell him to the ground and beat him on the head with stones till he died. The accused then ran away and was seen cleaning his blood-stained hands with sand in the river. Seeing the witnesses coming up, he ran away. He subsequently hid himself in his *kotha* and attempted to prevent the people coming in by placing stones against the door. After his arrest the plea of insanity was raised on his behalf and he was certified insane and committed to the Punjab Mental Hospital from where after a certain period he was discharged as cured and then stood his trial. There was some evidence of his eccentric behaviour shortly before the day on which the occurrence took place.

*Held*, that, in the circumstances of the case, the accused was not insane within the meaning of s. 84 of the Indian Penal Code, as in killing the deceased he knew that he was doing something wrong. It did not matter how insane he might be from the medical point of view; he could not be exonerated under s. 84 of the Indian Penal Code.

*Mani Ram v. The Crown* (1), relied upon.

*Appeal from the order of Sardar Kartar Singh, Sessions Judge, Hoshiarpur Division at Dharamsala Camp, dated 30th July, 1938, convicting the appellant.*

1938  
 GHUNGAR MAL  
 v.  
 THE CROWN.

JAWALA PARSHAD, for Appellant.

MOHAMMAD MONIR, Assistant to the Advocate-General, for Respondent.

The judgment of the Court was delivered by—

BLACKER J.—Ghungar Mal has been convicted under section 302 of the Indian Penal Code, and sentenced to transportation for life by the learned Sessions Judge of Hoshiarpur, for the murder of a boy named Thenchu on the 14th of April, 1938.

The facts of this case are simple and are not disputed. The only question is whether the appellant can be held to have been legally insane at the time of the murder. It appears that he wished to get Thenchu as a cow-herd. Thenchu's father refused to let him undertake this duty—he finally refused on the 13th of April, 1938. The next day the appellant came up to a group of children who were working as graziers and asked where Thenchu was. He was told that Thenchu had gone to get food. Shortly afterwards some of these boys going towards the *bela* saw the accused catch hold of Thenchu, fell him on the ground and beat him on the head with stones till he died. The appellant then ran away and was seen cleaning his blood-stained hands with sand in the river. Seeing witnesses coming up, the accused ran away. He subsequently hid himself in his *kotha* and attempted to prevent people coming in by placing stones against the door.

After his arrest the plea of insanity was raised on behalf of the appellant and he was certified insane

1938  
 GHUNGAR MAI.  
 v.  
 THE CROWN.

and committed to the Punjab Mental Hospital, from which after a certain period he was discharged as cured and then stood his trial. There is some evidence as to his eccentric behaviour shortly before the day on which the occurrence took place.

In deciding this appeal it is necessary to state clearly the law of insanity in this country. That is laid down in section 84 of the Indian Penal Code, which runs as follows :—

“ 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.”

The language of this section follows fairly closely what was laid down in the famous *Mc Naughten's* (1) case in which it was held that if the accused were conscious that the act was one which he ought not to do, and if the act was contrary to the law of the land, he was punishable. His liability would not be diminished if he did the act under the influence of insane delusion for redressing or revenging some supposed grievance, if he knew that he was acting contrary to law. The question has also been dealt with in a judgment of this Court in *Mani Ram v. The Crown* (2). There it was pointed out that where the facts showed that the accused knew that he had done something wrong, it did not matter how insane he might be from the medical point of view, he could not be exonerated under section 84 of the Indian Penal Code.

Those facts appear to us to be present in this case. There is no doubt that medically there is a history of insanity; but there is also no doubt in our minds from

(1) (1843) 1 C. & K. 130.

(2) I. L. R. (1927) 8 Lah. 114.

the facts found by the learned Sessions Judge that the appellant knew that in killing Thenchu he was doing something wrong. This is shown clearly by the fact that after the murder he attempted to conceal the evidence of the murder by washing his hands in the sand. It is also shown by the fact that on the approach of witnesses he ran away. It is further shown by the fact that he concealed himself and shut himself up in his *kotha* in an attempt to prevent his arrest.

We are therefore satisfied that the learned Sessions Judge has come to the right conclusion in holding that legal insanity has not been established. The lesser penalty was inflicted by the learned Sessions Judge and there are no grounds on which we can interfere. The appeal is accordingly dismissed.

A. N. K.

*Appeal dismissed.*

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**APPELLATE CIVIL.**

*Before Din Mohammad J.*

DAULAT RAM-MOHAN DASS THROUGH  
BHAGWAN DASS (PLAINTIFF)

Appellant,

*versus*

VERA MALL-KEWAL RAM THROUGH DHARAM  
DASS (DEFENDANT) Respondent.

**Regular Second Appeal No. 112 of 1938.**

*Trade mark — a “ passing off ” action — Basis of — Plaintiff himself using labels of other traders — Whether can succeed.*

The plaintiffs manufactured black mulls with a trade mark of their own which consisted of the name of the Firm in English at the top followed by a pictorial label containing the picture of a motor bus with several passengers enjoying a ride therein and a tram car in the back ground. Underneath the

1938

GHUNGAR MAL

THE CROWN.

1938

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