Sheralli Wali Mohammed vs The State Of Maharashtra on 9 August, 1972

Equivalent citations: AIR1972SC2443, 1972CRILJ1523, (1973)4SCC79, 1973(5)UJ204(SC), AIR 1972 SUPREME COURT 2443, 1973 4 SCC 79, 1972 ALLCRIR 578, 1972 MPLJ 1015, 1972 SCD 976, 1972 MAH LJ 903, 1973 SCC(CRI) 726

Bench: S.M. Sikri, K.K. Mathew, P. Jaganmohan Reddy, A.N. Ray

JUDGMENT

Mathew, J.

1. Sheralli Wali Mohammed was charged with offence under Section 302 of the Indian Penal Code for having caused the death of his wife Saifulla and his female child Shama in his chawl at Mazagaon, Greater Bombay, on March 8, 1968, and was tried for the offences by the Sessions Judge for Greater Bombay. The accused was found guilty of the offences and he was sentenced to imprisonment for life on each of the counts; the two sentences were to run concurrently.

2. The accused filed an appeal against the convictions and sentences before the High Court of Bombay. The High Court dismissed the appeal.

3. This appeal, by special leave, is directed against the judgment of the High Court.

4. The prosecution case was as follows. The accused was residing in Room No. 16 of Noorudin Abrahim Baithi Chawal at Sitafali Wadi Road in Mazagaon, with his wife and four children. At about 4 a.m. on March 8, 1968, P.W. 4, Hyderali Wali Mohammed, a brother of the accused, who was staying in the opposite chawl, was awakened from his sleep and was informed that his brother Sheralli was shouting. He, therefore, went to the room of the accused and found the accused outside the room, beating his head with his hands and shouting "Save my wife, save my children, call the police". P.W. 4 went to the Byculla Police Station in a taxi and gave information as to what he saw and heard to Constable Dhandiba Jotiba Vallam, P.W. 7 who was on duty. The said constable accompanied by constable Shankar Sunder Ubale, P.W. 9 and P.W. 4 proceeded to the spot. When they reached the room of the accused, they saw a crowd of 15 to 20 persons on the verandah attached to the chawl. The crowd was asking the accused to open the door of the room. At the room was not opened, a person from the crowd broke open the door with an axe. When the door was opened, the accused was standing near the door with a chopper in his hand and his wife Saifulla and female child Shama were lying on the ground with bleeding injuries. The chopper was stained with blood and so also were the hands and the clothes worn by the accused. As that time, P.W. 6, the

mother of the accused, came to the room and took the injured persons out of the room. By the time, P.W. 2, disarmed the accused and the chooper was handed over to P.W. 7, who in turn, gave it to constable Ubale, PW 9. Very soon, a police van arrived and P.W. 9 took the accused in the van to the police station. The accused was produced before PW 26, the Investigating Officer. Thereafter, the Investigating Officer recorded the first information statement of PW 2.

5. The injured persons were taken to J.J. Hospital by PW 7. Constable Dhandiba. PW 16, the Medical Officer at J.J. Hospital, examined the wife and the child at about 5.30 A.M. and he found certain fresh injuries on their persons. He described the nature of the injuries in his notice in the Casualty Register (Exhibits 28 and 29). Saifulla died at 6.40 A.M. and Shama at about 7 A.M. on the same day. The post-mortem examination of the body of the child by PW 20. PW 14 found 8 external injuries including an incised wound on the scalp. They were all ante-mortem. PW 20 found 5 external injuries on the body of the child. They included an incised wound starting from middle of nose going vertically upwards on frontal region. They were all fresh and ante-mortem. PWs 14 and 20 have stated that the injuries were sufficient in the ordinary course of nature to cause death.

6. The plea of the accused at the trial was that at the time when the injuries were alleged to have been caused by him was not in the room but was sleeping on the terrace of the nearby house of his sister and that he did not know anything about the incident.

7. All the witnesses for the prosecution except PWs 7 and 9, the Police Constables, and the doctors, turned hostile. The trial court discussed the evidence of PWs 7 and 9 and found it to be worthy of credence. The Court, therefore, came to the conclusion that it was the accused who caused the injuries found on the bodies of the deceased. The Court also found that the accused was in a sound state of mind when he committed the acts which caused the death of the deceased and that he was guilty of the offences charged against him.

8. In the appeal filed by the accused against the conviction and sentences, the High Court agreed with the findings of the trial Court that the evidence of PWs 7 and 9 could be believed and that the accused was in a sound state of mind when he committed the acts.

9. Two submissions were made on behalf of the appellant before us : (1) that there was no evidence to show that it was the accused who caused the injuries on the persons of the deceased and, (2) that even if it was the accused who caused the injuries, he was not in a sound state of mind at the time he committed the acts.

10. As already stated, the evidence of PW 7 and PW 8 was believed by the trial Court and the High Court, PW 7 has deposed that PW 4 came to Byculla Police Station at about 4.30 a.m. on March 8, 1968, and informed him that the accused was shouting in his room under the influence of liquor, that he along with PW 9 and PW 4, came to the spot, that a crowd had collected outside the room of the accused, that the front door of the room was chained from inside, that inspite of repeated demands, the door was not opened by the accused, that someone from the crowd broke open the door with an axe, that he then found the accused standing in the room with a chopper in his hand, that his hands and the clothes worn by him as well as the chopper were bloodstained and that his

wife and the female child Shame were lying on the floor with bleeding injuries.

11. The evidence of PW 9 was also to the same effect. As no one else had access to the room, the only conclusion possible on the basis of the evidence of these witnesses was that it was the accused who caused the injuries which caused the death of the deceased. We, therefore, find that there was evidence to support the finding that it was the accused who caused the injuries which caused the death of the deceased.

12. To establish that the acts done are not offences under Section 84 of the Indian Penal Code, if must be proved clearly that, at the time of the commission of the acts, the appellant, by reason of unsoundness of mind, was incapable of either knowing the nature of the act or that the acts were either morally wrong or contrary to law. The question to be asked is, is there evidence to show that, at the time of the commission of the offences, he was labouring under any such incapacity ? On this question, the state of his mind before or after the commission of the offence in relevant. The general burden of proof that an accused person is in a sound state of mind is upon the prosecution. In Dahuabhai Chhaganbhai Thakkar v. The State of Gujarat (1), Subba Rao, J., as he then was, speaking for the Court said :

> (1) The prosecution must prove beyond reasonable doubt that the accused had committed the offence with the requisite mens rea and the burden of proving that always rests on the prosecution from the beginning to the end of the trial. (2) There is a rebuttable presumption that the accused was not insane, when he committed the crime, in the sense laid down by Section 84 of the Indian Penal Code : the accused may rebut it by placing before the Court all the relevant evidence-oral, documentary or circumstantial, but the burden of proof upon him is no higher than that rests upon a party to civil proceedings. (3) Even if the accused was not able to establish conclusively that he was insane at the time he committed the offence, the evidence placed before the Court by the accused or by the prosecution may raise a reasonable doubt in the mind of the Court as regards one or more of the ingredients of the offence, including mens rea of the accused and in that case the Court would be entitled to acquit the accused on the ground that the general burden of proof resting on the prosecution was not discharged.

13. With this in mind, let us consider the evidence to see whether the accused was in an unsound state of mind at the time of the commission of the acts attributed to him. PW 3, one of the brothers of the accused stated that the accused used to become excited and uncontrollable, that sometimes he behaved like a mad man, and that he was treated by Dr. Deshpande and Dr. Malville. PW 4, Hyderali, also a brother of the accused, has stated that the accused used to suffer from temporary insanity and that he was treated by Dr. Deshpande and Dr. Malville. The evidence of these two witnesses on the question of the insanity of the accused did not appeal to the trial Court and the Court did not, we think rightly place any reliance upon it. No attempt was made by the defence to examine the two doctOrs. There was, therefore, no evidence to show that, at the time of the commission of the acts, the accused was not in sound state of mind. On the otherhand, PW 8, Rustom Mirja, has stated in his deposition that the accused has been working with him as an

additional motor driver for the last 8 or 10 years and that his work and conduct were normal. He also stated that the accused worked with him on March 6, 1968, till 4 p.m. PW 16, Dr. Kaloorkar, who examined the accused at 7.20 a.m. on the day of the occurrence, has stated in his deposition that he found that the accused was in normal condition. His evidence has not been challenged in cross-examination. We think that not only is there no evidence to show that the accused was insane at the time of the commission of the acts attributed to him, but that there is nothing to indicate that he had not the necessary mens rea when he committed the offence. The law presumes that every person of the age of discretion to be sane unless the contrary is proved. It would be most dangerous to admit the defence of insanity upon arguments derived merely from the character of the crime, The mere fact that no motive Has been proved why the accused murdered his wife and child or, the fact that he made no attempt to run away when the door was broke open, would not indicate that he was insane or, that he did not have the necessary mens rea for the commission of the offence. We see no reason to interfere with the concurrent findings on this point either.

We dismiss the appeal.