I. V. Shivaswamy

Vs

State of Mysore

Criminal Appeal No. 57 of 1968

(S. M. Sikri, V. Bhargava, I. D. Dua JJ)

18.01.1971

JUDGMENT

SIKRI, C.J. -

1. This appeal by special leave is from the judgment of the High Court of Mysore confirming the conviction of the appellant under Sections 302 and 309, I.P.C., but setting aside the sentence of death passed by the learned Sessions Judge and instead imposing on the appellant a sentence of imprisonment for life on both the counts. The High Court also confirmed the sentence under Section 309, I.P.C.

2. Two questions have been raised before us by the learned counsel for the appellant :

> (1) At the time of the occurrence the appellant was by reason of unsoundness of mind incapable of knowing the nature of the act or that he was doing what was either wrong or contrary to law;
>
> (2) The violation of Sections 464 and 465, Cr.P.C. vitiated the commitment of the appellant and the trial.

3. On the first point the learned Sessions Judge came to the conclusion that "neither on March 21, 1966, nor during any day subsequent thereafter including the days on which the accused took his trial before this Court, was the accused in an unsound state of mind". He held that "on the contrary, during all the relevant period, above referred to, he showed himself to be in perfectly sound state of mind". It may be mentioned that the accused had not pleaded any defence under Section 84 of Indian Penal Code before the learned Sessions Judge.

4. In the High Court the first point was not raised but the second point was urged and the High Court held that as the Sessions Judge came to the conclusion that the accused appeared to be perfectly normal in mind it was not necessary, much less incumbent, to hold an enquiry under Section 465, Cr.P.C. The High Court further held that "the mere circumstance that the counsel appearing for the accused made a submission that the accused did not answer him coherently is no ground to hold an enquiry under Section 465, Cr. P.C.".

5. The relevant facts for determining the two points mentioned above may now be stated. The appellant had three brothers and one sister. P.W. 2, Puttaswamagowda, was the son of appellant's deceased father by his first wife. The other two brothers Chandra Gowda, deceased, Ramegowda, P.W. 14, the appellant and their sister were from the second wife, Dyavamma, P.W. 5, Chandra

Gowda's wife was Nagamma, P.W. 4 and one of their children was Sumitra, P.W. 16, aged about 15 or 16 years. Nagamma had a brother Jayaramagowda, who was alleged to have been murdered by the appellant, on March 21, 1966, when the appellant is alleged to have also murdered his brother Chandra Gowda.

6. The appellant was married to Susheela, P.W. 7, daughter of Thammanagowda, P.W. 16. P.W. 2, Puttaswamagowda, P.W. 14, Ramegowda, the appellant and the deceased, Chandra Gowda were all living in Indavara. P.W. 2 had separated himself from the joint family about 20 years ago and was living separately in a portion of the house. The other three brothers effected a partition among themselves about 6 or 7 years ago and began to live separately in different portions of the family house. It was alleged that the appellant was dissatisfied because Chandra Gowda, deceased, was not getting the registration of the partition deed done.

7. The appellant was working as a First Division Clerk in the D.A.C.G. Polytechnic at Chikmagalur. He took casual leave on 16, 17, 18 and 19 of March, 1966. The appellant was admitted as an in-patient in a special ward at about 6-45 p.m. on March 17, 1966, in the General Hospital at Chikmagalur. P.W. 10, Dr. J. K. Paramashivaiah examined the appellant on the morning of March 18, 1966. Ex. P-13, out patient slip of the appellant showed against the heading 'history' chest and back pain. Screening of the chest was ordered and medicine prescribed. No reference was made on that day to the mental condition of the appellant. The hospital case sheet of the accused showed the following particulars :

> "History of present illness : The Patient complains of fever, chest pain, cough since eight days, slight raise of temperature in the evening, chest pain in the lest side."

8. Dr. J. K. Paramashivaiah, P.W. 10, who examined the appellant stated in his examination-in-chief :

> "The provisional diagnosis was that the accused was suffering from pulmonary tuberculosis."

He further stated :

> "My examination of the accused on the morning of 18-3-66 disclosed to me that the accused was sound in mind and was no suffering from any ailment other than what I provisionally diagnosed to be pulmonary tuberculosis. Accused was a normal and sane individual and was in full possession of his senses when I examined him."

In cross-examination he stated :

> "When I examined the accused on the morning of 18-3-66 I found him possessed of normal and rational sense. He did not have any vacant look. He understood my questions and made answers coherently and intelligently. He told me his bodily complaints in clear terms and with precision."

This examination at least shows that on March 18, 1966, the appellant was not insane within Section 84, I.P.C.

9. The appellant was discharged on his request on March 18, 1966. On the same day, the letter, Ex. P-19, was sent by his brother Chandra Gowda, deceased, to the appellant's father-in-law,

Thammanagowda, P.W. 16, that the appellant was not keeping good health since day before and they had got him admitted to the hospital but he had come from there. It was further stated in the letter, and this is the line relied on by the learned counsel for the appellant, that "if his condition is observed, it is found that he behaves foolishly. It appears that he is mentally not all right". On the back of this letter, P.W. 2, Puttaswamagowda, wrote that "it appears that the matter written in this letter may be true". The father-in-law came to Indavara on March 19, 1966, in response to this letter and on enquiring from the appellant, the appellant replied that he was not feeling very well and therefore he left the hospital. The appellant's mother, Dyavamma, P. W. 5, who was living with her daughter at Muradi, also came on March 19, 1966. As the "vasige" ceremony of Sumitra was to take place, deceased Jayaramagowda, elder brother of P.W. 4, Nagamma, also came there. On March 20, 1966, the appellant again made a demand on Chandra Gowda, deceased, to get the partition deed duly registered. On March 21, 1966, the appellant attended the office at 10.30 a.m. but after working for some time he took casual leave for that day. Sometime later an application praying for grant of earned leave for 8 days was given. He also requested that the casual leave granted to him be cancelled and treated as earned leave.

10. The appellant left office at about 11.30 a.m. His wife, Susheela, P.W. 7, gave the appellant some money asking him to fetch something from the market. The appellant, however, did not go to the market but remained in the house.

11. On the night of March 21, 1966, P.W. 5, Dyavamma, and P.W. 6, Sumitra, were sleeping in the hall belonging to Chandra Gowda, and Chandra Gowda deceased, and Jayaramagowda, deceased, were sleeping in the open varandah. The appellant and his wife slept in their room.

12. The prosecution case, which has been accepted by the Sessions Judge and the High Court is that sometime after midnight Nagamma, P.W. 4, woke up hearing some unusual sound. She came to the verandah and was her husband lying dead and her brother lying dead in pools of blood with injuries on their faces and necks. She cried out and all the inmates of the house came to the verandah and found both Chandra Gowda and Jayaramagowda lying dead. P.W. 2, Puttaswamagowda, who was sleeping in the other portion of the house went to the house of P.W. 3, who was the Talwar of the village, and told him about the incident. Both them went to the house and found the dead bodies. P.W. 2, being the Patel of the village wrote the report, Ex. P-3, at the spot and took it to Chichmagalur Police Station. After he left the place, the appellant who was standing in the verandah went to his room and attempted to commit suicide by inflicting injuries on his neck. P.W. 3 prevented the appellant from inflicting further injuries on him.

13. The appellant was got admitted to the General Hospital and was examined by Dr. Shivalingaiah, P.W. 9. Dr. Shivalingaiah deposed that the "history of the accident recorded by me in Ex. P-10(a) was given to me by the accused himself and not by the constable who brought him to me". He further deposed that "the accused who I examined on March 22, 1966 was in full possession of his senses and he was mentally sound. He narrated to me the events that led to the injury on his neck. He spoke clearly and intelligently and he answered my questions equally clearly and intelligently. He was in sound state of mind".

14. It appears that in the course of the investigation the Investigating Officer came to know that the accused had been an in-patient in Chichmagalur Hospital and he requested the District Surgeon to furnish him the details of the appellant's admission to the hospital.

15. The appellant was discharged from the hospital on April 3, 1966 and he was arrested. In the

meantime, however, a constable had been posted at the hospital to watch him.

16. The order sheet of the Committing Magistrate shows that the accused was not produced before the Court on April 15, 1966 as he was an in-patient in the District Hospital from April 14, 1966, as reported by the District Surgeon, but he was produced on April 21, 1966, April 30, 1966, May 13, 1966, May 26, 1966 and May 30, 1966. Again on June 5, 1966, the accused was not produced as he was an in-patient but he was produced on June 7, 1966. After hearing arguments on May 21, 1966, the Committing Magistrate committed the appellant to stand his trial in the Court of Sessions Judge in respect of charges under Sections 302, 449 and 309, I.P.C. The accused stated that he had no witnesses.

17. It cannot be deduced from the record of the proceedings that the Magistrate should have taken steps under Section 464, Cr.P.C. The fact that the appellant was an in-patient on two hearings and was not produced on April 15, 1966, does not show that there was any necessity to hold as enquiry under Section 464. On May 21, 1966, the appellant seems to have answered the questions put to him, under Section 364, Cr.P.C., quite intelligently.

18. On July 5, 1966, two counsel who were appearing for the appellant in the Committal Court put in an application stating that the appellant wanted the services of the Standing Counsel, and they prayed that they may be permitted to retire from the case. This application was granted.

19. The appellant pleaded guilty before the learned Sessions Judge but the Judge was satisfied that the accused should be tried as it was not expedient to act upon his plea of guilty.

20. As mentioned in the judgment of the learned Sessions Judge, it appears that the Standing Counsel stated on July 7, 1966, before the Court that when he met the appellant on July 5, 1966, he did not make Coherent answers. The learned Sessions Judge recorded the following order on this application, the relevant portion of which reads :

> "With a view to satisfy myself whether the accused at his trial is of sound mind or not and whether he is of unsound mind and consequently incapable of making his defence, I questioned the accused elaborately. He made perfectly intelligible answers to all the questions put by me. There can be no doubt whatsoever that the accuse is of sound mind and is consequently capable of making his defence. He understood every question put by me and made rational and sensible answers in an intelligent way. He made his answers both in Kanarese, and in fluent English language, which he speaks easily. When I asked the accused why when the learned Standing Counsel met him yesterday he did not make proper replies, the accused said that he told the Standing Counsel to look into the records to ascertain the details. I am satisfied that the accused is of sound mind, consequently capable of making his defence and is able to thoroughly understand the proceedings before this Court, and I, therefore, direct that the trial should be proceeded with."

21. When the appeal was pending before the High Court an application was put in by the counsel for the appellant for adjourning the appeal by two weeks as the appellant was in the mental hospital undergoing treatment.

22. Coming to the first point, i.e., whether the appellant was insane on the day of the occurrence, the material on the record does not disclose that he was insane at the time of the occurrence. In the

letter, Ex. P-19, it was only stated that he was behaving foolishly. The doctor's evidence quite clearly shows that the appellant was sane on the morning of March 18, 1966 and there is no evidence to show that on March 21, 1966, his condition had changed. His behaviour after the alleged murder also does not show that he was insane.

23. Coming to the second point, no question was raised before the Committing Magistrate that the appellant was insane at the time of the occurrence or trial and his statement before the Magistrate under Section 364, Cr.P.C., clearly shows that he was sane in mind and able to stand trial. It seems that the statement of the Standing Counsel before the Sessions Judge made him look into the matter, and quite rightly, but on questioning the accused the learned Sessions Judge was satisfied that it did not appear to him that the appellant was insane. Section 465, Cr.P.C., requires that there should be an enquiry within the second limb of the section if it appears to the Sessions Judge that the accused was insane, but if it does not appear to him so it is not necessary that he should conduct a regular enquiry under the second limb of the section. It is true that the word "appears" in Section 465 imports a lesser degree of probability than "proof", but this does not mean that whenever a counsel raises a point before a Sessions Judge he has to straightaway hold an elaborate enquiry into the matter. If on examining the accused it does not appear to him that the word "appears" in Section 465 imports a lesser degree of probability than "proof", but this does not mean that whenever a counsel raises a point before a Sessions Judge he has to straightway hold an elaborate enquiry into the matter. If on examining the accused it does not appear to him that the accused is insane it is not necessary that he should go further and send for and examine medical witnesses and other relevant evidence. Of course if he has any serious doubt in the matter the Sessions Judge should hold a proper enquiry.

24. The learned counsel said that the learned Sessions Judge was doubting it all the time and that is why he recorded that order on July 7, 1966, and that is how he dealt with the matter again in the judgment. We do not read the order of the learned Sessions Judge in that way. In his final judgment he had to deal with the point because it must have been argued before him again.

25. In the result the appeal fails and is dismissed.

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