State of Maharashtra

Vs

Sindhi Alias Raman

Criminal Appeal No. 158 of 1971

(V. R. Krishna Iyer, R. S. Sarkaria JJ)

19.02.1975

JUDGMENT

SARKARIA, J. -

1. The principal question raised in this appeal by special leave is : Whether Section 465 of the Code of Criminal Procedure, 1898, is applicable to proceedings in reference under Section 374 pending before the High Court for confirmation of the death sentence awarded to an accused by the Court of Session ?

2. It arises out of these circumstances.

3. Sindhi alias Raman was tried, convicted and sentenced to death on August 13, 1969 by the Additional Sessions Judge, Greater Bombay for the double murder of two brothers, Lal Chand Jagannath Yadav and Dullar Jaggi Yadav in Chinchavali Farm at Malad on the night between August 25 and 26, 1968. Sindhi did not appeal against the order of his conviction. But the trial Judge made a reference under Section 374 of the Code to the High Court for confirmation of the death sentence. The reference came up for hearing towards the end of 1969.

4. On October 22, 1969, the prisoner expressed a desire to be present at the hearing of his case before the High Court. Two advocates, namely Shri D. M. Rane with Shri Mengde as the Senior, were appointed as amicus curiae to defend the condemned prisoner in the High Court. After interviewing the prisoner in jail on January 8, 1970 and January 9, 1970, the Advocate reported to the High Court that the accused was not able to communicate with them intelligently and rationally as he appeared to be insane. Counsel submitted an application to the High Court requesting that the accused be got examined by a Board of psychiatrists in order to determine as to whether he was or was not of unsound mind. The application was opposed on behalf of the State inter alia on the ground that Section 465 applies only to a trial before a Court of Session. The High Court rejected this contention, and by its order, dated January 14, 1970, directed the Surgeon General, Bombay to constitute a Special Medical Board of three psychiatrists on the lines indicated in Rule 850 of the Bombay Jail Manual, to examine the accused and determine whether the accused is of unsound mind, and, secondly whether in consequence of his unsoundness of mind, he is incapable of making his defence in the proceedings before us.

The Board was accordingly constituted. The Board deputed Dr. Balakrishna Laxman Chandorkar, Superintendent of the Mental Hospital to interview the accused. Dr. Chandorkar, consequently, had fourteen interviews with the accused and also examined the latter physically. The accused was sent, under Dr. Chandorkar's directions, to several hospitals for special examinations. Dr. Chandorkar

gathered the past history of the accused, also in so far as it was relevant to determine the issue referred to him. The conclusion reached by Dr. Chandorkar, which he reported to the Board on February 28, 1970, was that the accused was suffering from paranoid schizophrenia and was of unsound mind and, in consequence, he was incapable of making his defence. On receiving the report of Dr. Chandorkar, the Special Medical Board also examined and interviewed the accused on five occasions. Their conclusion, as communicated to the High Court, was :

> (1) Sindhi Dalwai alias Raman Raghav (prisoner) is of unsound mind. He is suffering from a psychosis called chronic paranoid schizophrenia or paraphrenia, the latter being an old term for chronic paranoid schizophrenia plus auditory hallucinations. He is dangerous to the society and hence certifiably insane.
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> (2) Sindhi knew the nature of the act, i.e. he knew that he was killing human beings.
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> (3) He did know that what he did was wrong and contrary to the law of the land but he firmly believed that what he was doing was right and in tune with the law of "kanoon" whose law according to him was obligatory for him to follow.
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> (4) There is such a degree of unsoundness of mind resulting in such a degree of defect of reason that he is incapable of co-operating with and instructing his defence counsel in the conduct of the trial and court proceedings and he is incapable of making his defence in the proceedings before the High Court. The reasons for this incapability are :
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> (a) Complete lack of insight into his illness;
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> (b) firm and unshakable delusions that only the law of "Kanoon" matters and the law of this world does not apply to him and hence his inability to participate in the court proceedings;
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> (c) his complete lack of realisation of the gravity of the crime and the seriousness of his death sentence;
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> (d) his judgment is so much influenced by his delusions and hallucinations that he is incapable of rational thinking and behaviour.

5. After examining Dr. Marfatia, the Chairman of the Board and Dr. Chandorkar, the Mental Specialist, as court witnesses, the High Court held :

> The prisoner is clearly of unsound mind and in consequence thereof he is unable to make his defence. Therefore proceedings in the confirmation case will have to be postponed and in the meantime it will be necessary to direct that the State Government do detain the prisoner in safe custody in Yervada Central Prison.

6. It is against this order, dated July 3, 1970, that the State has come in appeal before this Court.

7. Mr. Patel, learned Counsel for the appellant, assails the order of the High Court, postponing the proceedings under Section 465, Criminal Procedure Code, on these grounds :

> (i) The operation of Section 465, is, in terms, confined to the trial stage. The section

> does not apply to proceedings before the High Court, on reference under Section 374, as the same are post-trial proceedings;
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> (ii) The question as to whether the accused person has the mental capacity to defend himself or not, arises only at the pre-conviction stage before the committal Court or the trial Court, because it is only at that stage the accused person has a right to be heard and lead evidence in defence. But in proceedings on reference under Section 374, the accused person has no right of audience before the High Court, not even where the High Court directs a further enquiry or the taking of additional evidence under section 375, nor where any appeal of the accused filed through the jailor under section 420, comes up for hearing along with the reference. It is another matter that the High Court has the power, even in such proceedings to hear the accused. For this argument support has been sought from certain observations of Madgaonkar, A. J. C. in Gul. v. Emperor (AIR 1921 Sind 84).

8. In this connection, learned Counsel has pointed out that at the commencement of the trial before the Court of Session, also, a question was raised as to the mental capacity of the accused and thereupon, the trial Judge after making a due enquiry in accordance with the provisions of Section 465, recorded a clear-cut finding that the accused was then of sound mind and capable of understanding the nature of the proceedings and making a defence. This finding of the trial Judge, it is stressed, was not assailed before the High Court, and still stands unchallenged.

9. Learned Counsel also tried to distinguish the decision of this Court in Vivian Rodrick v. State of W. B. ((1969) 3 SCC 176 : 1970 SCC (Cri) 33) on the ground that in that case the convict had preferred an appeal against the order of his conviction, and, consequently, the observations of this Court in regard to the applicability of Section 465 Cr. P.C. to proceedings in reference are merely obiter. In the alternative, it is submitted that those observations need reconsideration in the light of the arguments now advanced before us.

10. Section 465 of the Code of Criminal Procedure, 1898, runs thus :

> (1) If any person committed for trial before a Court of Session or a high Court - appears to the Court at his trial to be of unsound mind and consequently incapable of making his defence, the jury, or the Court shall, in the first instance, try the fact of such unsoundness and incapacity, and if the jury or court, as the case may be, is satisfied of the fact, the Judge shall record a finding to that effect and shall postpone further proceedings in the case and the jury, if any, shall be discharged.
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> (2) The trial of the fact of the unsoundness of mind and incapacity of the accused shall be deemed to be part of his trial before the Court.

11. It will be seen that Section 465, in terms relates to unsoundness of accused's mind and his consequent incapacity to make defence, at the time of trial only. The question therefore is : Does the trial on a murder charge end with the conviction and pronouncement of death sentence on the accused by the Court of Session ? Or, does it continue till the reference under Section 374, is disposed of by the High Court ? Answer to this question was given by this Court, speaking through Govinda Menon, J., as far back as 1956 in Jumman v. State of Punjab (AIR 1957 SC 469 : 1957 Cri LJ 586) in a telling passage thus :

> It is clear from a perusal of these provisions (Sections 374, 375, 376 and 377, Cr. P.C.) that in such circumstances the entire case is before the High Court and in fact it is a continuation of the trial of the accused on the same evidence and any additional evidence and that is why the High Court is given power to take fresh evidence if it so desires . . . but there is a difference when a reference is made under Section 374, Criminal Procedure Code, and when disposing of an appeal under Section 423, Criminal Procedure Code, and that is that the High Court has to satisfy itself as to whether a case beyond reasonable doubt has been made out against the accused persons for the infliction of the penalty of death. In fact the proceedings before the High Court are a reappraisal and the reassessment of the entire facts and law in order that the High Court should be satisfied on the materials about the guild or innocence of the accused persons. Such being the case, it is the duty of the High Court to consider the proceedings in all their aspects and come to an independent conclusion on the materials apart from the view expressed by the Sessions Judge. (emphasis supplied)

12. The same position was reiterated with emphasis by this Court in Surjit Singh v. State of Punjab (Cri. A. No. 77 of 1968, decided on October 15, 1968).

13. Even in Gul v. Emperor (supra), cited by Mr. Patel, Madgaonkar, A.J.C., expressed himself in a similar strain. What he said more than half a century back still retains its freshness and relevance, and may be extracted :

> The worth and sanctity of human life are a test and mark of civilised societies and are increasingly reflected in the criminal jurisprudence of England and of India. In India, the Legislature has provided in confirmation proceedings a final safeguard . . . . "This may perhaps increase our responsibilities and add to our labours; but no one would shirk the one, or grudge the other" even in a case where the liberty, much more where the life, of the subject is concerned. This duty of judgment is, however, laid in the first instance upon the Jury and the Trial Judge . . . . But equally and with all this weight, this Court in confirmation must finally weigh for itself the whole evidence in the light of all the arguments and confirm or otherwise according to its own final conclusion on the guilt or innocence of the sentenced person in the discharge of the duty laid upon it by law.

14. From the above conspectus, it emerges clear that so far as an accused person sentenced to death is concerned, his trial does not conclude with the termination of the proceedings in the Court of Session. The reason is that the death sentence passed by the Court of Session is subject to confirmation by the High Court. A trial cannot be deemed to have concluded till an executable sentence is passed by the competent court. Viewed from that stand-point, the confirmation proceedings under Sections 374, 375 and 376, Chapter XXVII of the Code of 1898, are in substance a continuation of the trial.

15. Nor is it correct to say that in such confirmation proceedings the High Court can arbitrarily refuse to hear the accused either in person or through Counsel or other agent.

16. In Vivian Rodrick's case (supra), the appellant was convicted under Section 302, Penal Code by the Court of Session and sentenced to death. The Sessions Judge made a reference under Section 374 for confirmation of the death sentence. The convict appealed against the order of his conviction

and sentence. The High Court dismissed the appeal, accepted the reference and confirmed the conviction and the sentence. In an appeal by special leave brought before this Court, it was inter alia contended that the proceedings taken in the appeal before the High Court were void for non-compliance of Section 465. What this Court said in repelling that contention, being equally applicable to what has been canvassed before us on behalf of the appellant, may usefully be extracted [SCC pp. 185-186, paras 26, 28, 29, SCC (CRI) pp. 41-42]

We are of the view that it is not necessary for us, in this case, to express any opinion on the applicability, or otherwise, of the provisions of Section 465, Cr. P.C. to appeals. For, on the facts of the case, we are inclined to accept the alternative contention of Mr. Rana that in the face of the medical evidence and in view of the fact that the appellant was contesting his conviction for murder and the sentence of death imposed on him, it would have been proper if the Division Bench which heard his appeal had postponed the hearing of the appeal till such time as the appellant was declared fit to contest his appeal . . . . Whatever may be the legal position regarding the applicability of Section 465, Cr. P.C. to appeals, we are not inclined to agree with the proposition enunciated by the learned Judges that there is no bar to hearing and disposing of an appeal, even if the accused-appellant is of unsound mind or even insane at the time when the appeal is taken up for hearing . . . . In our opinion, when the report is that an accused-appellant is of unsound mind, it is reasonable to infer that he is incapable of making his defence. The Court, in the circumstances is bound to afford him the same protection to which he would be entitled had been of unsound mind at the time of the trial.

17. In the present case no appeal was filed by the prisoner before the High Court. It is therefore unnecessary for us to examine whether the provisions of Section 465, in terms, or, in principle, apply, to an appeal by the condemned prisoner before the High Court. Suffice it to say that the expression "at his trial" occurring in Section 465 has to be liberally construed in a manner which is not repugnant to the fundamental principle of natural justice conveyed by the maxim audi alteram partem, audiatur et altera pars.

18. In the light of what has been said above we negative the legal contentions raised by the appellant-State.

19. The next contention of Mr. Patel is that the High Court left the decision of both the point viz., (1) whether the accused was of unsound mind, and (2) whether in consequence he was incapable of making his defence, almost entirely to the Medical Board. Such delegation which gives the proceeding the colour of trial by doctors is not permissible under the law. Reference on this point has been made to R. v. Podole (1959 All ER 418). On merits also, it is maintained, the findings on the aforesaid issues, are wrong, as the accused fully knew that he had been tried and sentenced to death for the murders in question. Emphasis has been laid on the fact that the accused had on December 18, 1969 expressed in writing through the jailor, his desire to be present in the High Court at the time of the hearing of his case. Counsel has referred extensively to the statements of Doctor Chandorkar and Dr. Marfatia and contended that everything about the mental condition of the accused even according to these medical experts was normal excepting that he was suffering from the delusion that he had been ordained by some higher "Kanoon" to commit these murders. According to Mr. Patel, insanity judged by clinical standards is different from insanity determined by legal standards. It is urged that since the accused fully knew the nature of the criminal acts he had committed and the proceedings against him, it could not be said that he was incapable of making his defence.

20. It is true that the High Court had by its order dated January 14, 1970, referred both the issues in regard to the mental capacity of the accused to the Medical Board, and has given due weight to their opinion. But it is not correct to say that the High Court accepted the ipse dixit of the medical experts. It examined Dr. Marfatia and Dr. Chandorkar as court witnesses. These experts gave detailed and cogent reasons in support of their opinion. The High Court meticulously considered their evidence and thereafter recorded its own findings on the crucial issues. We have ourselves examined the evidence rendered by these two mental experts in the High Court. We are satisfied that the conclusion arrived at by the High Court in regard to the mental capacity of the accused on the basis of this evidence is correct.

21. In the result, the appeal fails and is dismissed.

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