PATNA HIGH COURT

Kamla Singh

Vs

State (Patna)

Criminal Appeal No. 417 of 1953

(Ahmad and Imam, JJ.)

23.12.1954

JUDGMENT

Ahmad, J.

1. The appellant Kamla Singh has been convicted under Section 302, I.P.C., for having committed the murder of his two brothers Kailash Singh and Veyas Singh and has been sentenced to transportation for life. The trial was held with the aid of three assessors, one of whom opined that the accused was guilty and the other two that he was not.

2. The occurrence is said to have taken place on 2-10-1952, at about 10 p.m. in the family house of the appellant in village Kesrahi within the jurisdiction of police station Daudnagar, which is at a distance of about four miles from it. All the family members including the appellant, his two deceased brothers and his mother were then living in that house. The house is closed all round with an entrance door on the north. Within the house there is a courtyard and on the east and south of the courtyard are the two closed verandahs. There are in all four rooms therein leaving the 'dwara' where the entrance door is fitted. One of the rooms is situated on the southwest corner of it and is connected with the closed verandah on the south. That room, it appears, is generally used by the family as a cow-shed and pegs are fitted therein to tether animals. It is this room wherein the appellant is said to have assaulted his two brothers with a 'lota' on their heads which caused instantaneous death to Kailash and fatal injury to Veyas Singh who ultimately died soon thereafter as a result thereof.

3. The facts leading to the murder have not been in this case challenged. What was pleaded at the trial and argued in this Court in defense was that at the time of the occurrence the accused was insane and he had lost his cognitive faculties and therefore his case falls within the provisions of Section 84, I.P.C., and as such he cannot be said in law to have committed any offence.

4. The admitted facts of the case are that the accused who at the time of the occurrence was aged about twenty-five years, while still a student in Class XI in the Daudnagar H.E. School, developed symptoms of insanity and so he was then put into Kanke Hospital on 14-12-1950. Before his admission into the Kanke Hospital, it is said, the appellant used to tear his clothes,

walk naked and ease with clothes on indiscriminately at all places. In Kanke Hospital he improved soon and was discharged from there on 12-1-1951. For some time after the discharge, he remained quite normal but soon thereafter he again started behaving abnormally. About a year and a hall before the present occurrence, he had assaulted one Kayast gentleman of his village. Due to the abnormalities in his conduct, the accused in his house during night time was usually kept locked in the cow-shed by the family members in order to avoid any untoward incident which he might resort to then. His mental disquietness aggravated very much since some three months before the occurrence. On the day of occurrence it is admitted that he became still more wild and his two brothers apprehending some danger from him put fetters round the feet of the appellant and that day he was mostly kept outside the house on the verandah. His fetters were, however, partially loose and so he could move about at least in his own house. And then his hands were also free. It is said that on being chained by his two brothers, his mental condition got all the more violent and he goaded by that idea began shouting in the house and abusing his brothers. At noon he refused to take food and kept behaving abnormally. In the night at about meal time the appellant was brought to the zenana house with fetters on his feet and while he was there in the cow-shed he suddenly threw a brickbat at his mother Deobarat Kuer (P.W.2). This hit her on her head and she fell down on the ground and became unconscious. Seeing her falling Kailash Singh rushed to help his mother. As he entered the cowshed, the appellant lifted a lota from the angan and struck him straight on his head. At this his other brother Veyas Singh rushed to the aid of Kailash Singh. On his head too the appellant struck a 'lota' and began shouting and crying. Mst. Jageshwari (P.W.4), wife of Kailash Singh, being terrified at the sight raised hulla. On her cry a number of neighbours including Chandrama Singh (P.W.3), Kedarnath Panday (P.W.5), Jaddu Singh (P.W.6), Madheswar Singh (P.W.7) and others who were all then at the house of Kedarnath Panday at a distance of 20 banses from the house of the appellant attending the recitation of the Ramayan rushed to the darwaza of the accused. Among them the Ghaukidar Basdeo Dusadh (P.W.9) was also one who had arrived from his house. At the darwaza they met Mst. Jageshwari (P.W.4) and there they learnt from her that the appellant had killed her husband and Veyas Singh. As P.Ws.3 and 6 entered the house they saw the accused coming out with a blood-stained 'lota'. Seeing them the appellant shouted "Du go ke ham mar deli, toomleg ke bhi marbawa" and abused them. It is said that the appellant in fact rushed at them also with the lota in his hand. The neighbours thereupon tried to snatch it but in the course of that attempt the accused dropped that lota on the ground. His hands were then got tied by the villagers behind his back. Thereafter they brought out Veyas Singh and the dead body of Kailash Singh from the cowshed. Veyas was then still gasping for breath. But soon thereafter he died. Subsequently the accused was put back in the cow-shed and locked up. He was at that time wearing a dhoti and a half shirt which were all found then by the villagers stained with blood. The chaukidar having seen all these went to the thana and there on his statement station diary entry No.32 marked Exhibit 10 was recorded by Tej Narain Jha, the station writer (P.W.13). On the information received by him, Tej Narain Jha sent a man to the Sub-Inspector who was at that time out in the moffusil. Getting that information the Sub-Inspector first came to the police station on 3-10-1952, at about 5 a.m. and there having drawn the first information report on the basis of the station diary entry first examined Basdeo Dusadh then and there and thereafter left for the place of occurrence at 5.30 a.m. and reached there on the same day at about 7 a.m., which is, as already stated, at a distance of four miles from the police station. There he found the dead bodies of Kailash Singh and Veyas Singh lying in the zenana courtyard. While he was despatching them to the hospital he heard somebody shouting from inside the cow-shed "Kholo kholo hamko keon band kia hai". At that he went near the room and opened it with a key which he got from the

widow of Kailash Singh. The appellant was then tied with chains in his feet and his hands were tied with a string. The Sub-Inspector untied the string and found one bleeding injury near the right eye of the accused. The dhoti and shirt which the appellant was wearing were found by the Sub-Inspector too stained with blood. It appears from the evidence of the Sub-Inspector that at that time he recorded some statement of the accused also. In the course of that statement the appellant is said to have given rational answers and did not behave then in an abnormal manner. On the examination of the appellant the Sub-Inspector despatched him to the Sub-Divisional Officer Aurangabad with a note which read "He is a bit insane. He should be kept under segregation". The Sub-Inspector at the trial deposed that the cow-shed when seen by him was fitted with strong doors with chains and hooks. The length of this room was eight cubits from north to south and six cubits from east to west. It had three pegs in it for tethering the cattle. On the northern side of the room was a cot lying there. In the course of his investigation the Sub-Inspector further found a huge quantity of blood on the floor in the southern and eastern corners. He scraped that blood and also some other which he found in the angan. Outside the door he saw a lota with blood stains on it and brickbats at some distance away from the lota. He then met Deobarat Kuer, the mother of the appellant. She had then some injury on her person and he, therefore, sent her to the medical officer, Daudnagar, for report and treatment.

5. In the meantime the appellant on his admission in the jail on 3-10-1952 was examined by Dr. Kamleshwari Prasad (P.W.12), Civil Assistant Surgeon, Auransabad, who was also then the Superintendent of Sub Jail there. He kept the accused under observation for some time. His statement at the trial was that

> "He used to become excited and violent at times and as such he could not be kept in the general ward with other prisoners", and as there was no arrangement for segregation, he requested the Sub-Divisional Officer, Aurangabad, to transfer the accused to the Gaya Central Jail on 7-10-1952. He further deposed that when the accused was admitted into the jail, he was found having four minor injuries on his person. They were:
> "1. Lacerated wound 1" x ¼" x ¼" on the right side of forehead just over orbit.

2. Abrasion of pea size on middle of inner border of right forearm.

3. Abrasion 3" x ¼" over back of left forearm.

4. Abrasion ¼" x ¼" over back of left forearm."

In his opinion, these injuries might have been caused by hard blunt substance within 24 hours of the time of his examination. On the request of the doctor, the accused was transferred to the Gaya Central Jail and there also he was kept under observation by the Civil Surgeon Dr. S. Prasad (P.W.11) from 20-10-1952 to 3-12-1952. His statement at the trial was that during this period of his stay in the Central Jail the accused did not show any sign of violence but presented a dull and a vacant look.

6. By this time the investigating officer had completed his investigation. On the receipt of all these reports, the investigating officer submitted a charge-sheet against the appellant on a charge under Section 302, I.P.C. In the commitment proceeding the learned Magistrate, who held the

enquiry, in order to satisfy himself as to his sanity had at the very inception of the proceeding on 19-12-1952, put certain questions to the accused which he, it is said, replied cogently and with sense. This convinced the learned Magistrate that he was in a position to understand the proceedings of the Court and hence he conducted the enquiry as laid down in Chapter XVIII, Criminal Procedure Code and on its conclusion committed him to the Court of Session to stand his trial on the charge under Section 302, I.P.C.

7. The trial was held at Gaya before Mr. A.K. Saran. In his judgment he has said:

> "In order to ascertain whether the accused was in a fit condition to understand proceedings of the Court, I examined him. Prom the questions put and the answers given it was clear that the accused was in a normal state of mind and able to follow the proceedings. The accused stated that while yet a student his mind became abnormal, that he was admitted as a patient in the Kanke Mental Hospital where he stayed for 1¼ months and he had not killed his brothers."

In view of what was found by him, the learned Sessions Judge held that the trial in accordance with the usual procedure laid down for the trial of sane prisoners and on a survey of the entire evidence on the record found him guilty under Section 302, I.P.C. and sentenced him to transportation for life as stated above. He further gave the direction that

> "A letter of recommendation will be sent to the State Government along with a copy of the judgment under Section 401, Criminal Procedure Code stating that as the accused committed murders; apparently without any motive and in an unsound state of mind the accused may be kept under observation for such a length of time as may bring about his radical cure from the mental disease he is suffering from and that he may be discharged after expiry of this period. Of course I am fully alive to the danger that even after the lapse of his lucid interval if the accused runs amock he may in a fit of homicidal frenzy commit other barbarous acts. These facts will be taken into consideration by the State Government at the time of passing orders."

The appeal in this Court has been argued amicus curiae by Mr. Naseem Ahmad. He has not challenged the occurrence or the prosecution evidence on the record and I think rightly. The occurrence, as stated above, stands fully proved by the evidence deposed to by the witnesses which I think there is no reason to disbelieve. Mt. Jageshwari (P.W.4), the solitary eye-witness of the occurrence deposed in detail as to how the incident took place. Her evidence has been accepted by the trial Court and that in my opinion gives the correct story of the occurrence. Her evidence is fully corroborated by what was stated by a number of neighbours, namely, Chandrama Singh (P.W.3), Kedarnath Panday (P.W.5), Jaddu Singh (P.W.6), Madheshwar Singh (P.W.7) and the chaukidar Basdeo Dusadh (P.W.9), who arrived in the house soon after the occurrence. Then there is a chain of circumstantial evidence found by the Sub-Inspector of Police on his arrival at the place of occurrence and is followed by the report of the chemical examiner who on analysis found that the clothes of the accused and the lota found there were stained with human blood. They all fully lend support to the evidence of Mt. Jugeshwari. Therefore, there can

be no doubt that the learned Sessions Judge was right in holding that it was the accused who killed Kailash and Veyas by assaulting them with the lota in his hand.

8. The only point, as already stated, that in this case substantially deserves consideration and which alone in fact was canvassed at the bar is as to whether the appellant can be held guilty for murder in view of his defence of insanity pleaded by the accused.

9. In the course of discussion on this point, the learned Sessions Judge has in his judgment said:

> "It must be stated at the outset that under Section 105, Evidence Act, burden of proof is upon the accused to establish that his case comes within the general exceptions laid down in the Indian Penal Code, that is to say, the onus always lies on the accused to establish the ingredients laid down in Section 84, I.P.C. The accused is not entitled to any benefit of doubt on this point - *'Baswantrao Bajirao v. Emperor[1]',*

Now it follows from a plain reading of Section 84, I.P.C. that the accused in order to bring his case within the purview of this section has to establish in the first instance that at the time of committing the act he was of unsound mind. If he succeeds in the preliminary issue he has then to establish that the unsoundness of mind was of a degree and nature so as to satisfy one of the knowledge tests laid down by the section (Vide observation of Bennett J. in - *'Narain Sahi v. Emperor[2]',)*." Having said what is quoted above, the learned Sessions Judge dealt with the previous and contemporaneous acts, statements and demeanour of the appellant and other evidence on the record deposed to by the witnesses on the point of his insanity and also on the opinion given by the Civil Surgeon on the basis of the facts given to him in cross-examination by the advocate appearing for the defence and held:

> "A perusal of the evidence of the inmates of the house of the accused and that of his co-villagers shows that there can be no doubt that the accused by his actions was, on the day of occurrence, exhibiting symptoms of an abnormal mind. As the Civil Surgeon stated that symptoms referred to him showed that at the time of occurrence the mind of the accused must have been extremely in an abnormal state, I can only hold this much that the accused was of unsound mind at the time he killed his brothers."

This finding was on the first part of the law laid down in Section 84, I.P.C., that is, as to whether at the time of committing the act the appellant was of unsound mind. Next he discussed the second point, namely, as to whether the accused by reason of unsoundness of mind "was incapable of knowing the nature of his act or that he was doing what was either wrong or contrary to law" and said:

> "The authorities have laid down that unless it is established that the accused was at the material time completely deprived of his understanding and memory, he cannot escape liability." (Vide Russel on Crimes 1950 Edition Vol.I P.48 and AIR 1949 Nagpur 66).

Applying this principle to the facts of the present case he made specific reference to the statement made by the accused to the villagers when they arrived in the house at the hulla raised

by Mt. Jageshwari (P.W.4). That was to the effect: "I have killed two and now I will kill you people". Then he also referred in this connection to the answer given by the appellant in his statement under Section 342, Criminal Procedure Code before the committing Magistrate. That was to the effect:

> "For the last three to four years my temper remains hot. I had also been sent to Kanke. I remained there for one and a half month and came back again. In the evening five to six persons put fetters on me and I was out of my senses and in that unsound state of mind I made the assault on my brothers Veyas and Kailash and my mother. Then villagers assaulted me. Had I not been in a lunatic and unsound state of mind, I would not have assaulted my brothers and mother. I shall make my further statement, if any, before the Sessions Judge."

There is no doubt that the statement referred to above by the learned Sessions Judge in his order was made by the accused to villagers. That fact is fully supported by the evidence on the record. The only question that in fact in this connection arises, if any, is as to what is the inference to be drawn from this statement as also from the statement made by him before the committing Magistrate under Section 342, Criminal P.C, about the condition of his mind. On this point the learned Sessions Judge referred to the case of - *'Emperor v. Gedka Goala'*[3], and that of AIR 1949 Nagpur 66. In the light of the observations made in those cases he came to the conclusion that:

> "......the accused at the time he killed his brothers knew about the nature of the act and that at that time his cognitive faculties were not completely paralysed so as to bring this case within the exception laid down in Section 84, I.P.C. The accused is, therefore, guilty under Section 302, I.P.C., for the murder of each of his two brothers."

10. In appeal it has been argued that the learned Sessions Judge having held that the appellant was of unsound mind at the time he killed his brothers, he should have also held in the light of the evidence on the record that he was then incapable of knowing the nature of his act or that he was doing what was either wrong or contrary to law. In the alternative it was further argued on behalf of the appellant that the evidence on the record and the finding given by the learned Sessions Judge that he was of unsound
mind at the time he killed his brothers in any case make it doubtful as to whether the act of the appellant in killing his brothers was one which was voluntary and done with malice and as such he was at least entitled to benefit of doubt.

11. The first question is purely a question of fact and has to be answered in the light of the evidence on the record. The second question is a question of law relating to onus. Section 84, I.P.C. reads:

> "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." As to who will prove this plea of insanity and other pleas that fall under the Chapter of "General Exceptions" in the Indian Penal Code,

S. 105, Evidence Act, says:

"When a person is accused of any offence, the 'burden of proving the existence of circumstances' of bringing the case within any of the General Exceptions in the Indian Penal Code, or within any special exception or proviso contained in any other part of the same Code, or any law defining the offence, is upon him, and the court shall presume the absence of such circumstances'."

By the side of this provision we have to keep in view the basic principle of criminal jurisprudence as administered in our country that it lies on the prosecution to prove the charge against the prisoner beyond reasonable doubt. The law in this respect is the same as that in England. In the well-known recent decision of the House of Lords in - *'Woolmington v. Director of Public Prosecution'*[4], Viscount Sankey L.C. in answer to a question as to whether it is correct to say that there may arise in the course of criminal trial a situation at which it is incumbent upon the accused to prove his innocence gave his answer in the following words with which all other Law Lords agreed:

"Throughout the Web of the English Criminal Law one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner's guilt subject to what I have already said as to the defence of insanity and subject also to any statutory exception. If, at the end of and on the whole of the case, there is a reasonable doubt, created by the evidence given by either the prosecution or the prisoner, as to whether the prisoner killed the deceased with a malicious intention, the prosecution has not made out the case and the prisoner is entitled to an acquittal. No matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law of England and no attempt to whittle it down cannot be entertained. When dealing with a murder case the Crown must prove (a) death as the result of voluntary act of the accused and (b) malice of the accused. It may prove malice expressly or by implication.

For malice may be implied where death occurs as the result of a voluntary act of the accused which is (i) intentional and (ii) unprovoked. When evidence of death and malice has been given (this is a question for the jury) the accused is entitled to show, by evidence or by examination of the circumstances adduced by the Crown the act on
his part which caused death was either unintentional or provoked. If the jury are either satisfied with his explanation or, upon a review of all the evidence, are left in reasonable doubt whether, even if his explanation be not accepted, the act was unintentional or provoked, the prisoner is entitled to be acquitted. It is not the law of England to say, as was said in the summing up in the present case; 'if the Crown satisfy you that this woman died at the prisoner's hands then he has to show that there are circumstances to be found in the evidence which has been given from the witness-box in this case which alleviate the crime so that it is only manslaughter or which excuse the homicide altogether by showing it was a pure accident." This case did not involve a plea based on insanity. Their Lordships, however, while dealing with the principle of onus referred also to the 'M'Naughton's case' (1843) 4 St. Tr. (NS) 847, and observed:

" 'M'Naughton's case, stands by itself. It is the famous pronouncement on the law bearing

> on the question of insanity in cases of murder. It is quite exceptional and has nothing to do with the present circumstances. In 'M'Naughton's case, the onus is definitely and exceptionally placed upon the accused to establish such a defence. See - *'Rex v. Oliver Smith'*[5], where it is stated the only general rule that can be laid down as to the evidence in such a case is that insanity, if relied upon as a defence, must be established by the defendant. But it was added that all the Judges had met and resolved that it was not proper for the Crown to call evidence of insanity, but that any evidence in the possession of the Crown should be placed at the disposal of the prisoner's counsel to be used by him if he thought fit".

The same is the principle that has been laid down in Section 105, Evidence Act. Under that section Court shall presume that the prisoner was not then of unsound mind and knew the nature of the act alleged against him when he did it. This law in S.105 provides the prosecution with an additional support to establish its case beyond reasonable doubt but with an option to the defence to deprive the prosecution of this additional support and then to make it stand exclusively on the strength of its own evidence leaving the presumption provided under Section 105 out of consideration.

12. In a case, therefore, where insanity is pleaded, two principles of onus run side by side but counter to each other; one covering the general principles of onus on the prosecution to prove the case beyond reasonable doubt and the other demanding from the accused to prove his special plea of insanity, that is, his case falls within the General Exception of law laid down in Section 84, I.P.C. These two principles having opposite reactions, it is interesting to visualise as to where they meet and where the zone of one ends and the zone of the other begins. In my opinion, they operate simultaneously in the common zone from the inception of the trial to its closure and that even when special plea of insanity is pleaded and Section 105, Evidence Act, comes into operation, the principle of general onus has still to discharge its obligation and in no less degree than when no such plea is pleaded. That being so, the prosecution will succeed only when it is found at the end of the trial that the circumstances necessary to prove the case beyond reasonable doubt are not in any way weakened by those in favour of the special plea of insanity. This test, if correct,
suggests that the quantum of onus that is contemplated by Section 105, Evidence Act, against the prisoner is that which should be enough to make the premise doubtful on the basis of which the prosecution has to discharge the onus, namely, that the prisoner was not of unsound mind and that he was capable of knowing the nature of the act alleged against him. In other words, the onus laid down in S.105 does not demand that the evidence of insanity if pleaded should be proved beyond reasonable doubt as it is required to be done by the prosecution in proving its case. Section 105, Evidence Act, in my opinion, in substance lays down three propositions; firstly, that the prosecution case shall be judged on the presumption that no exception existed; secondly, that presumption is rebuttable and thirdly that the fact, if any, sufficient to rebut that presumption has to be proved by the defence. That being so, the moment that presumption is rebutted by the defence and the Court is brought to a point where it becomes doubtful of the fact or when it cannot positively hold that the prisoner was then not of unsound mind and that he was capable of knowing the nature of the act alleged against him, the onus under Section 105, in my opinion, has to be taken as discharged; for by reason of the neutralisation of the force of presumption, the

prosecution is thrown back to its original position where it has to discharge its onus beyond reasonable doubt. It follows from it that the defence has not to prove affirmatively beyond reasonable doubt that the prisoner was of unsound mind and that by reason of unsoundness of mind was incapable of knowing the nature of the act. What it has to prove is that the presumption under Section 105, Evidence Act, against the prisoner that he was then not of unsound mind and that he knew the nature of the act alleged against him is not sustainable on the evidence on the record. In other words, defence has only to demolish the aforesaid presumption laid down against the prisoner under Section 105 and not to prove beyond reasonable doubt the opposite of that presumption. This question of onus in the case of plea based on insanity directly came for discussion in the case of - *'Sodeman v. R.'*[6], *(G)*. In that case Viscount Hailsham, L.C. observed:

> "The other point is that the trial judge in directing the jury as to the burden of proof, having stated that it was for the Crown to establish its case beyond reasonable doubt, went on to say that the burden of proof in a case of insanity rested upon the accused, and the suggestion made by the petitioner was that the jury may have been misled by the judge's language into the impression that the burden of proof resting upon an accused to prove insanity is as heavy as the burden of proof resting upon the prosecution to prove the facts which they have to establish. In fact there is no doubt that the burden of proof for the defence is not so onerous. It has not been very definitely defined. The Canadian case of - *'R. v. Clark'*[7], was referred to, but even there the Judges were not able to find a very satisfactory definition but, it is certainly plain that the burden in case in which an accused has to prove insanity may fairly be stated as not being higher than the burden which rests upon a plaintiff or defendant in civil proceedings."

This case, therefore, also lays down that the onus under Section 105, Evidence Act, means the weighing on one side of the presumption laid under it and on the other the facts relied upon by the defense to rebut that presumption. This question of onus under Section 105 in relation to the plea of right of private defence once came for discussion in the case of - *'Parbhoo v. Emperor'*[8], before a Full Bench of seven Judges in the Allahabad High Court. The question mooted was:

> "Whether, having regard to Section 96, Penal Code, and Section 105, Evidence Act, in a case in which any general exception in the Penal Code is pleaded by an accused person and evidence is adduced to support such plea, but such evidence fails to satisfy the Court affirmatively of the existence of circumstances bringing the case within the general exception pleaded, the accused person is entitled to be acquitted, if, upon a consideration of the evidence as a whole (including the evidence given in support of the plea of the said general exception), a reasonable doubt is created in the mind of the Court whether the accused person is or is not entitled to the benefit of the said exception?"

The learned Chief Justice on a discussion of this question held:

> "My answer to the question referred therefore is that the accused person is entitled to be acquitted, if upon a consideration of the evidence as a whole (including the evidence

> given in support of the plea of the said general exception) a reasonable doubt is created in the mind of the Court whether the accused person is or is not entitled to the benefit of the said exception."

This view was accepted by three other Judges of the Court along with the learned Chief Justice who constituted the majority. In this case also, therefore, the rule of law laid down was the same as stated above.

13. Relying on these principles, I think the learned Sessions Judge was wrong to state the law in the form that

> "the onus always lies on the accused to establish the ingredients laid down in Section 84, I.P.C. The accused is not entitled to any benefit of doubt on this point."

In my opinion, what he should have stated is that

> "the prisoner is entitled to be acquitted, if, upon a consideration of the evidence as a whole (including the evidence given in support of the plea of the said general exception), a reasonable doubt is created in the mind of the Court whether the accused person is or is not entitled to the benefit of the said exception".

That being so, the second finding arrived at by the learned Sessions Judge is based on a wrong approach to the problem. In the present case the learned Sessions Judge did find that "the accused was of unsound mind at the time he killed his brothers". This
finding taken along with the history of the case as stated above definitely makes it doubtful for me to hold that in spite of the unsoundness of mind the prisoner was capable of knowing the nature of the act or that he was doing what was either wrong or contrary to law. I, therefore, think that on that ground alone he is entitled to benefit of doubt.

14. The other question, which is a question of fact, raised by Mr. Naseem Ahmed was that the facts on the record not only rebut the presumption that he was capable of knowing the nature of the act or that he was doing what was either wrong or contrary to law; on the other hand, they conclusively prove that the prisoner by reason of unsoundness of mind was incapable of knowing the nature of the act or that he was doing what was either wrong or contrary to law. I think this contention is not without force. The learned Sessions Judge in coming to a finding contrary to this has relied on the statement made by him on the arrival of the neighbours to the effect that "I have killed two and now I will kill you people" and also on the statement made by him under Section 342 before the committing Magistrate which has been quoted above in extenso and came to the conclusion that "the accused at the time he killed his brothers knew about the nature of the act". In my opinion, that by itself is not sufficient and that he should have also found he was capable of knowing that he was doing what was either wrong or contrary to law. Perhaps the learned Sessions Judge did not apply his mind to this aspect of the question. The statement of the prisoner referred to above may suggest that he was capable of knowing the nature of his act but I think that does not suggest that he was capable of knowing that he was doing what was either wrong or contrary to law. The history of the case to my mind suggests that the mind of the

prisoner at the time he committed the assaults was completely deprived of the very conception of wrong either from the moral point of view or from the legal point of view, though he might be alive that his act resulted in finishing the lives of two persons. That being so, the prisoner has not only rebutted the presumption under Section 105, Evidence Act, but has also proved affirmatively that his case was covered by the exceptions laid down in Section 84, I.P.C., and, therefore, the appellant cannot be held guilty for the offence alleged against him.

15. In the result, therefore, I think the appeal is to be allowed and the conviction and sentence imposed upon the appellant have to be set aside.

16. But, in view of what I have stated above, I direct that the appellant should be detained in safe custody and a copy of the Judgment should be sent to the State Government for taking such action under Section 401, Criminal Procedure Code, as may be deemed necessary.

Imam, J.

17. I agree.

Appeal allowed.

Cases Referred.

[1] AIR 1949 Nag 66
[2] AIR 1947 Pat 222 at p.224 Column 2
[3] AIR 1937 Pat 363
[4] (1935) AC 462
[5] (1910) 6 Cr App R 19
[6] (1936) 2 All ER 1138
[7] (1921) 61 SCR 608
[8] AIR 1941 All 402 (FB)