
(1984) 09 BOM CK 0019
In the Bombay High Court
Case No : Criminal Appeal No. 663 of 1983

Budha Dattu Umavane

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 06-09-1984

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 84

Citation : (1985) 1 BomCR 508

Hon'ble Judges : V.V. Vaze, J;V.S. Kotwal, J

Bench : Division Bench

Judgement

Vaze, J.—In the village Chariv, taluqua Shahapur, district Thane lives Dattu Kamlu Umavane in a small hut which has two parts; first part is used as kitchen-room and another as ota. Dattu has five sons and he along with his wife Devaka bai reside in the hut. They have a small holding of about an acre which they cultivate.

2. The sons take up agricultural jobs to eke out a supplement to the family income which is a meagre one. One of the sons had left for Bhiwandi as the one acre holding was too small for that family. On 16-12-1982 Budha, 20. One of the brothers had a quarrel over a minor issue with his elder brother Dharma who was in his early thirties about the manner of cultivation of the family field. Both the sons refused to partake meals and Dharma slept on a cot in the house while Budha went out. As the hut is small one all the five sons could not be accommodated and it appears that Budha had to leave the hut seeking lodging in the houses of relatives and on that evening went to his cousin Ambo Panse.

3. Next day i.e. on 17-12-1982 Dattu and his wife Devaka bai got up early as usual in the morning. Devaka bai went out, started cleaning the cattle shed and Dattu was preparing tea on the chulah of the kitchen. Dharma was sleeping on the cot and as it was a cold December night he had enveloped himself with a quilt 6 "x 2 1/2" stitched by twine string and blanket 7" x 2 1/2". Budha returned from his cousin's place where he had spent the night equipping himself

with an axe. Dattu enquired about the new acquisition to which Budha replied that he wanted to go out for work of wood cutting with one Sawkar. Immediately after the conversation Budha went near the bed where Dharma was sleeping and delivered a blow on the left portion of the neck with his axe and ran away leaving the axe near the victim's cot. Seeing the above Dattu rushed near Dharma and so did his wife. Neighbours gathered, Dharma was put in a bullock-cart borrowed from one Govind Krishna and carried to Kanvali hospital. Dharma was declared to be dead by the doctor. An inquest panchanama Exh. 10 was prepared and the corpse was found to have an injury 4" x 1" x 1 1/2" on the right side of his face. P.W. 4 Dr. Marathe who carried out the autopsy found a 4" incised wound extending from lateral angle of right eye to 1/2" below the jaw and opined that death was due to shock as a result of hemorrhage. When the axe article 9 was shown to Dr. Marathe he was of the opinion that the injury on the body of the deceased Dharma was possible by the axe.

4. The accused was arraigned before the Additional Sessions Judge, Thane who convicted him for an offence punishable under S. 302 of the Penal Code and sentenced him to undergo imprisonment for life. The accused appeals.

5. The backdrop of the prosecution case consists of the evidence of P.W. 1 Dattu, the unfortunate father of the accused as well as the deceased and P.W. 2 Devaka bai, the mother who were in the house at the relevant time. Having lost one son in a brutal manner it must have been agonising experience for the parents to enter the witness box to depose about the fratricide, but the cross-examiner could do precious little to cast any doubt about the veracity of the deposition of the parents. An attempt has been made in the cross-examination to show that as the father Dattu was preparing tea his back was towards the cot where Dharma was sleeping and hence Dattu's claim that he has seen the accused delivering the blow might be an overstatement. Dattu has admitted that his back was towards the cot and that his eyesight is somewhat weak. Even assuming that for a moment his attention was diverted towards the chula where he was preparing tea, the fact remains that Dattu saw the accused entering the house with an axe, had a talk with him about his day's work schedule and heard the screams of Dharma. When the blows of axe were delivered, and saw the accused entering the house with an axe, had a talk with him about his day's work-schedule and heard the screams of Dharma when the blows of axe were delivered, and saw the accused Budha running away from the scene immediately after the incident. Same is true about Devakabai who admits that her attention was attracted towards Dharma when he had screamed and hence could not have seen the actual delivery of the blow. Here again the sequence of events is deposed to by the parents in such a coherent manner that the conclusion is unescapable that it was the accused Budha and Budha alone who delivered the fatal blow on his sleeping brother Dharma.

6. The defence counsel urged at the bar that the accused Budha who admittedly had borrowed the axe from his cousin was handling the same in a playful manner

and while doing so the handle of the axe slipped out to his grip and landed on the skull of the deceased. The panchanama of the scene of offence brings out the fact that the deceased had pulled a blanket as well as quilt over his body and according to the parents Dharma had covered his person right from head to toe with the blanket. As an accidental slip of the axe would naturally give propulsion to the heavier portion of the blade which is attached to the handle it is in the highest degree improbable that such an axe will land with the blade in a vertical plane - as if a chisel is being driven in - on the skull of the deceased. The fluffy blanket and quilt would naturally take the impact and turn the sharp edge of the blade away. The injury noted by Doctor is such that the blunt ring portion of the iron blade is not likely to cause the deep incision found in autopsy.

7. That brings us to the main plank of the defence which is predicated upon the evidence of D.W. 1 Doctor Kulkarni, the chief medical officer of Thane jail. According to Dr. Kulkarni the accused Budha was admitted to the jail hospital on 28-2-1983 i.e. when he was under trial prisoner, for treatment as he had an attack of epileptic fits. The accused remained an indoor patient from 28-2-1983 to 1-4-1983 and was again received there on 13-7-1983 to be treated for another five days as an indoor patient. Dr. Kulkarni diagnosed the case as "grand mal" epilepsy which is a graver form of epileptic fits for which sedatives were being administered to the patient. According to the doctor, after the epileptic attack the patient becomes normal but that tension on his mind may invite a recurrence of the attack.

8. As Dr. Kulkarni, the Chief Medical Officer of Thane, has opined that the accused was suffering from "grand mal epilepsy" - albeit, after the incident it would be necessary to delve into the question whether the accused was incapable of knowing the nature of the act viz. hitting his brother with the axe at the time of doing it by reason of unsoundness of mind within the meaning of S. 84 of the Penal Code.

9. In a recent case one Sullivan, a man of blameless reputation had the misfortune to have been a life-long sufferer from epilepsy. Formerly he was subject of major seizure known as grand mal but thanks to the medical treatment which he was receiving from 1976 onwards, the major seizures had been reduced by 1979 to seizures of less severity known as "petit mal" or psychomotor epilepsy. On 8th May, 1981 Sullivan was visiting a neighbour Mrs. Killick, an old lady aged 86 for whom he was accustomed to perform regular acts of kindness. Another common friend Mr. Payne aged 80, was also visiting Mrs. Killick and the three of them were chatting in the drawing room. Sullivan got a fit of psychomotor epilepsy and Payne, though himself aged 80, got up from the chair to help Sullivan. Sullivan does not remember what happened immediately thereafter but he saw his friend Payne lying on the floor with injuries on his face. He asked Mrs. Killick as to what has happened to Payne and the old lady told him that he had kicked Payne adding; "you not well, Pat". During trial, Sullivan said that he had no memory of what had happened though Mrs. Killick deposed to the

fit which seized Sullivan, how Payne got up to help Sullivan when the latter kicked him about the head and body in consequence of which Payne suffered injuries enough to require hospitalisation. The medical evidence showed that the epileptic in Sullivan had shown aggressiveness towards anyone trying to help him when he was having a fit and it was more in the nature of pushing away helpers rather than doing violence to them.

10. Sullivan was put on probation for three years on his plea to guilty to assault subject to the condition that during that period he submitted to treatment under the direction of Dr. Fenwick at the Maudsley Hospital. In the Court of Appeal, *Regina v. Sullivan* (1983) 2 WLR 392 it was urged that the trial Judge should have permitted Sullivan to rely on a defence of automatism and not a defence of insanity. The Court of Appeal observed :

"It follows that his appeal must be dismissed. To some, this may seem a harsh decision; but it should be remembered that person who, through diseases, cause injury to others and may do so again, are a potential danger to all who may come into contact with them. It is in the public interest that they should be put under medical care for as long as is reasonably necessary for the protection of others, but no longer. The modern form of order for confinement following a special verdict gives the Secretary of State a wide discretion as to the kind of hospital to which a defendant should be sent and how long he should stay there.

As we have already said, this appellant could have sought a verdict of not guilty by reason of insanity. Indeed, on the undisputed evidence and on the ruling of the trial judge, which we have held to be correct, perhaps such would strictly have been the right verdict. The acceptance by the judge and the prosecution of a plea of guilty to assault occasioning actual bodily harm might accordingly be said to have been illogical but merciful. However, in the particular circumstances of this case, it was entirely proper and, in our opinion, as in that of the trial judge, enabled justice to be done."

11. As a certificate that point of law of general public importance is involved, the matter came up before the House of Lords, *Regina v. Sullivan* (1983) 3 WLR 123. On the basis of medical evidence the House of Lords described (at p. 125) the effects of psychomotor epilepsy thus :

"The evidence as to the pathology of a seizure due to psychomotor epilepsy can be sufficiently stated for the purposes of this appeal by saying that after the first stage, the prodrome, which precedes the fit itself, there is a second stage, the ictus, lasting a few seconds, during which there are electrical discharges into the temporal lobes of the brain of the sufferer. The effect of these discharges is to cause him in the poetical stage to make movements which he is not conscious that he is making, including, and this was a characteristic of previous seizures which Mr. Sullivan and suffered, automatic movements of resistance to anyone trying to come to his aid. These movements of resistance might, though in practice they very rarely would, involve violence."

12. The House of Lords referred to the M^{Naghten} Rules viz. that to establish a defence on the ground of insanity, it must be clearly proved that at the time of the committing of the act, the appellant/accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing; or, if he did know it, that he did not know he was doing what was wrong, which have been used as a comprehensive definition for this purpose by the courts for the last 140 years. The House noted that Dr. Fenwick who had appeared as an expert in the trial Court himself accepted the M^{Naghten} formulation as an accurate description of Sullivan's mental state in the poetical stage of a seizure, and observed : (at p. 129).

"The audience to whom the phrase in the M^{Naghten} Rules was addressed consisted of peers of the realm in the 1840's when a certain rotundity of diction had not yet fallen out of fashion. Addressed to an audience of jurors in the 1980's it might more aptly be expressed as "He did not know what he was doing."

The House dismissed the appeal though they felt reluctant to attach the label of insanity to a sufferer from psychomotor epilepsy.

13. A similar plea though predicated on a different disease of automatism was raised by Bailey (1983) 1 WLR 760. Bailey was a diabetic and had been so for some 30 years. He was required to take insulin to control his condition. Bailey was upset that a woman with whom he had been living left his and formed association with one Harrison. Enraged, Bailey visited Harrison at his home, had a cup of tea and discussed the matter about the woman. After some 15 minutes of discussion, Bailey told Harrison that he is feeling unwell and asked him to make some sugar and water which he drank. He then told Harrison that he has misplaced his glove and when Harrison bent down to look for the glove by the side of the chair where Bailey was sitting, Bailey stuck him on the back of the head with an iron bar 18" long. Bailey remained there holding the iron bar but the victim Harrison, who later required 10 stitches, ran away from the house.

14. Bailey gave evidence that he was a man of good character; that he had no intention to harm Harrison and what he did was in state of automatism. Bailey gave evidence that he was advised to take food within a short period of taking insulin failing which it could produce symptoms of hypoglycemia, which might develop more aggressive tendencies accompanied by loss of memory. The Crown accepted that it is theoretically possible that sudden transient loss of consciousness or awareness may occur in an acute state of hypoglycemia when a patient does not take food after a heavy dose of insulin. But Crown argued and its submissions were accepted by the Court that it was extremely unlikely on the facts of the case that such an episode could follow some five minutes after taking sugar and water. This was based on the opinion of the general practitioner who was treating the accused that the effect of taking sugar and water would be to help bring back the sugar level within five to ten minutes. Such being the case, the general practitioner thought it unlikely that the accused could have

developed aggressive tendencies and loss of memory as claimed by him in defence. (For a comment on these cases see "Epileptic action and Criminal Responsibility" (1983) Vol. 99 Law of Quarterly Review, P. 507; Automatism and Diabetes ibid at P. 511).

15. The Supreme Court in State of Madhya Pradesh Vs. Ahmadullah, has held that the crucial point of time at which epileptic insanity exists should be the time of commission of the act. In our case the parents of the accused have deposed that there was a very trivial quarrel between brothers on the issue of cultivation of the field; that the brothers did not take their meals; that the accused in a huff went out to sleep with his cousin but came in the morning in normal condition. He brought an axe with him and gave a normal answer to his father that he wanted to go out in the woods; till that stage the father did not notice even a scintilla of abnormal behaviours. Leave alone an extreme attack of epileptic fit where the person would be unconscious with froth coming from his mouth, the accused was not even in a pre-epileptic fit condition or an aura which benumbs the senses and renders the patient incapable of knowing the results of his acts. At best the accused was smarting under a possible rebuke from his elder brother about cultivation of the field. Over sensitiveness of the mind or character would not equate itself with insanity or automatism. The ordinary stresses and disappointments of life which are the common lot of mankind do not constitute a defence because the outburst of the accused must be considered as having its genesis. In the quarrel a day before. The pre-meditation on part of the accused is writ large on his conduct in fetching the axe from his cousin Renubai Umavane P.W. 3, sharpening it on the grinding wheel and delivering a forcible blow on the helpless and defenceless brother who was sleeping with a blanket over his head. So forceful was the delivery and so accurate was the blow on the skull that it made its way into the folds on the skull that it made its way into the folds of a blanket and quilt and resulted in 4" deep incisor. We do recognise that in certain given conditions as obtained in Sullivan discussed above a patient of Grand Mal Epilepsy may be thrown in a fit of automatism but it would be an affront to commonsense to suggest that a person like the accused was so seized when the victim Dharma who was sleeping peacefully had made no attempt to come near the accused (as was done by the victim Payne in Sullivan's case) which action might have triggered off a reaction in the patient.

16. We regret that on these facts the appeal has to be dismissed but dismissed it must be as neither the plea of insanity nor that of accidental loosening of the grip over the axe handle can survive, Appeal dismissed.

17. Appeal dismissed.