
(1989) 04 AP CK 0021

In the Andhra Pradesh High Court

Case No : Criminal Appeal No. 665 of 1988

Elkari Shankari

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 21-04-1989

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 334
Penal Code, 1860 (IPC) — Section 302, 84

Citation : (1990) CriLJ 97

Hon'ble Judges : N.D. Patnaik, J;K. Jayachandra Reddy, J

Bench : Division Bench

Advocate : P. Raghava Reddy, for the Appellant; Public Prosecutor, for the Respondent

Judgement

N.D. Patnaik, J.—This appeal is filed by the accused in Sessions Case No. 159 of 1987 on the file of the Sessions Judge, Adilabad. Aggrieved by the judgment dated 15-4-1988 convicting him under S. 302, I.P.C. and sentencing him to suffer imprisonment for life.

2. The case against the accused is that on 26-8-1986 at about 3.30 p.m. he took his son by name Sriramulu into the paddy fields and killed him by stabbing with a knife on the chest. A charge under S. 302, I.P.C. was framed against the accused to which he pleaded not guilty.

3. The prosecution examined 9 witnesses. P.W. 1, who is the grand-father of the accused deposed that the accused had two sons by name Venkanna and Sriramulu. On the date of the death of the deceased Sriramulu in the evening while he was at his house Torra Ramaiah came to him and told him that the accused stabbed the deceased Sriramulu and killed him in the fields and that the accused was holding the knife and threatening that he would kill the other members of the family and he was coming towards the house. Later the accused came to his house holding the knife. Then he caught hold of the accused with his hands and Torra Ramaiah and Tomorrow Bapu removed the knife from the hands

of the accused. Dubbula Nanaiah also came behind the accused saying that the accused killed the boy Sriramulu. They all went to the field and saw the deceased lying dead with stab injuries. He gave the report Ex. P-1 at the police station at Kagaznagar. P.W. 2 stated that the accused is related to him. Sriramulu is youngest son of the accused. On the date of the death of the deceased the accused and the deceased went to the fields. He (P.W. 2) was also following them to go to the fields. At about 4.00 p.m. he washed his face and hands and feet in the Vagu. After getting out of the Vagu he went into the adjoining fields. Then he heard a cry appeared to be that of a boy. He ran into the direction of the cries and found the deceased boy with bleeding injuries and struggling. The accused was holding a blood-stained knife in his hands. He was singing that "Sriramuni Sankarudu Khatam Chesinadu" and was dancing and was going towards the village. Then he called Torra Ramaiah and Nichadi Ushanna who were nearby in the field and they came and they all saw the deceased boy. He was struggling. The accused was going towards the Village saying that he would kill the inmates of the house. Then he told Torra Ramaiah to go to the house of the accused and inform the inmates of the house of the accused to go away from the house of the accused as the accused may kill them. The accused went to his house. P.W. 1 and others caught hold of the accused and removed the knife from his hands. P.W. 3 deposed that on the date of the incident in the evening he was in his fields grazing his bulls. P.W. 2 called him from the direction of the fields. He and one Ushanna ran towards the direction of P.W. 2 who told them that the accused stabbed Sriramulu with a knife and took them and showed. At that time the accused was going towards the Village saying that Sankar stabbed Sriramulu. The accused was having a blood stained knife in his hands. They saw the deceased Sriramulu lying on the ground with bleeding injuries. The accused ran towards the village with a knife in his hands saying that he would kill all the inmates of his house. P.W. 4 deposed that on the date of the incident while he and Torra Nanaiah were staying in the house of P.W. P.W. 3 came running saying that the accused was coming armed with a knife. Meanwhile the accused came there with a knife in his hands, which was blood stained. Then he and P.Ws. 1 and 3, Nanaiah caught hold of the accused and removed the knife from his hands. From the evidence of these witnesses it is established that the accused took his son by name Sriramulu to the fields on the afternoon of 26th August 1986 and stabbed him with a knife. P.W. 9 the Doctor who conducted the post mortem examination found three stab injuries on the left side of the chest of the deceased Sriramulu, a boy aged 12 years and a cut injury on the left side of the abdomen. He opined that the death could have occurred on account of shock and hemorrhage due to multiple stab injuries and injury to lung and heart and that the injuries are sufficient to cause death in the ordinary course. Therefore, we have no hesitation in holding that the accused caused the death of his son Sriramulu by stabbing him with a knife.

The learned Counsel for the accused contended that the conduct of the accused would show that he was not mentally sound and that he had committed the

offence while he was insane. He, therefore, contended that the accused is entitled to the benefit of S. 84 of the Indian Penal Code, which says that 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 is doing what is either wrong, or contrary to law. The learned counsel for the accused has pointed out that the accused killed his son aged 12 years and then he was dancing saying that "Sankarudu Sriramuni Khatamu Chesinadu". It may be noted that the name of the accused is Sankari and the name of the deceased boy is Sriramulu. It is also in evidence that the accused went to his house threatening to kill the inmates of the house holding the blood stained knife. From these circumstances the learned counsel for the accused pointed out that it can be concluded that the accused was of unsound mind at the time of commission of offence. Therefore, we have called for a medical report regarding the mental condition of the accused. The Superintendent of the institute of Mental Health, Hyderabad in his report dated 17-3-1959 stated that Sri Sankari i.e. the accused was admitted and observed in the hospital as an inpatient from 28-2-1989. He is found to be suffering from major mental illness for which he needs treatment and care for 4-6 weeks. The learned counsel for the accused contended that even on the date of the report the accused was suffering from major mental illness for which he requires treatment. This report coupled with the circumstances i.e., the accused was dancing with the knife after stabbing his son saying that "Sankarudu Sriramuni Khatamu Chesinadu" supports the contention of the learned counsel for the accused that the accused was of unsound mind at the time of killing the boy and therefore he is entitled to the benefit of S. 84, I.P.C. which says that 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. Section 334, Cr.P.C. provides that whenever any person is acquitted upon the ground that, at the time at which he is alleged to have committed an offence, he was, by reason of unsoundness of mind, incapable of knowing the nature of the act alleged constituting the offence, or that it was wrong or contrary to law, the finding shall state specifically whether he committed the act or not. We have already found that on the evidence it is established that the accused killed his son Sriramulu by stabbing him with a knife in the fields. But on account of the unsoundness of the mind he is incapable of knowing the nature of the act or that he is doing what is either wrong or contrary to law and therefore we find that he is entitled to acquittal on that ground. The appellant is therefore acquitted of the charge.

4. The next question to be considered is about the further order to be passed regarding the detention of the accused. Section 335(1), Cr.P.C. provides that the court shall (a) order such person to be detained in safe custody in such place and manner as the Magistrate or Court thinks fit, or (b) such person to be delivered to any relative friend of such person. Sub-section (2) provides that no order for the detention of the accused in a lunatic asylum shall be made under Clause (a)

of sub-section (1) otherwise than in accordance with the rules as the State Government may have made under the Indian Lunacy Act. Section 3(4) of the Indian Lunacy Act defines "Criminal Lunatic" as any person for whose detention in, or removal to, an asylum, jail or other place of safe custody an order has been made in accordance with the provisions of S. 466 or S. 471 of the Code of Criminal Procedure or S. 30 of the Prisoners Act, 1900 or S. 103-A of the Indian Army Act. Section 471 sub-section (1) of the Cr.P.C. of 1898 corresponds to S. 335 of the Criminal Procedure Code of 1973. So, the accused comes within, the definition of "Criminal Lunatic". Section 24 of the Indian Lunacy Act provides that an order under S. 466 or Section 471, Cr.P.C. 1898 or under S. 30 of the Prisoners Act or S. 103A of the Indian Army Act directing the reception of a criminal lunatic into any asylum which is prescribed for the reception of criminal lunatics shall be sufficient authority for the reception and detention of any person in such asylum or in any other asylum to which he may be lawfully transferred. Section 27 of the Mental Health Act of 1987 which is the corresponding provision in the new Act is also to the same effect.

5. We, therefore, direct that the appellant accused shall be detained in the Institute of Mental Health, Hyderabad till such time as he is cured of his mental disease and is found to be mentally in a sound condition by the Superintendent of the Institute of Mental Health and is fit to be discharged from the hospital.

6. The appeal is allowed accordingly.

7. Appeal allowed.