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Before Mr. Justice Birdwood, Mr. Justice Jardine and Mr. Justice Candy.

QUEEN-EMPRESS *v.* SAKHARAM VALAD RAMJI.*

[25th February, 1890.]

Practice—Procedure—Plea of guilty—Murder—Indian Penal Code (Act XLV of 1860), ss. 84 and 302—Legal test of responsibility in cases of alleged unsoundness of mind.

The accused, who was an habitual *ganja*-smoker, was charged with the murder of his wife and infant son. In his confession he stated that he had killed his wife, because she quarrelled with him and objected to go to another village, where he proposed a change of house on account of their poverty. He adhered to this statement when placed for trial before the Court of Session. The Sessions Judge treated this statement as a plea of guilty on the charge of murder, convicted the accused and sentenced him to death, subject to confirmation by the High Court.

Held, (*per* JARDINE and CANDY, JJ.,) that the accused's statement did not amount to a plea of guilty on the charge of murdering his wife. He alleged a sudden provocation: he ought, therefore, to have been put on his trial, in order that the Court might ascertain whether the provocation was grave and sudden enough to prevent the offence from amounting to murder.

Held, (*per* BIRDWOOD and JARDINE, JJ.) that, unless the accused's habit of smoking *ganja* had induced in him such a diseased state of mind as to make him incapable of knowing the nature of his act or its criminality, s. 84 of the Indian Penal Code did not apply in his favour.

Queen-Empress v. *Lakshman Dagdu*(1) distinguished.

[F., 13 Ind. Cas. 916=7 N.L.R. 185; Rat. Unr. Cr. Cas. 532; R., 20 B. 215 (221); 17 C.P.L.R. 113 (117); Rat. Unr. Cr. Cas. 766 (769); Rat. Unr. Cr. Cas. 818.]

[565] REFERENCE to the High Court under s. 374 of the Criminal Procedure Code (Act X of 1882) for confirmation of the sentence of death passed upon the accused by E. H. Moscardi, Sessions Judge of Khandesh.

The accused was in the habit of smoking *ganja*, which made him exceedingly irritable. On the 24th of October, 1889, he killed his wife and an infant son. Two days after the murder he made a confession before a Third Class Magistrate, in which he gave the following reason for killing his wife and child:—"I said to her, I cannot pull on well here at this place; let us, therefore, go and live at some other village. My wife, however, would not consent, and so we quarrelled and I killed her. * * * * * First I struck her a blow on her temple with a hatchet. She fell down. She was struggling violently, and as I saw that her life would not soon be extinct I struck her more blows and ended her life, and as the child then began to cry, I killed it, too, with the hatchet."

The accused thereupon was charged with murder, under s. 302 of the Indian Penal Code.

Before the committing Magistrate as well as before the Court of Session the accused adhered to the statements contained in his confession.

Upon these statements the Sessions Judge recorded a plea of guilty on the charge of murder, convicted the accused under s. 302 of the Penal Code, and sentenced him to death.

*Confirmation Case, No. 24 of 1889.

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The case was referred to the High Court for confirmation of the sentence of death.

V. G. Bhandarkar, for the accused.—The Sessions Judge has misunderstood the prisoner's plea. He pleaded that his wife had given him provocation. It was the duty of the Sessions Judge to find whether the provocation was grave and sudden. To ascertain this fact the accused ought to have been put on his trial; *Empress* v. *Vaimbilee* (1); *Netai Luskar* v. *Queen-Empress* (2); *In the matter of the petition of Gopal Dhanuk* (3).

[566] *Shantaram Narayan*, Government Pleader, for the Crown.—The confession is a clear admission of the prisoner's guilt as regards both heads of the charge. And this confession is not retracted in the Sessions Court. The Court was, therefore, right in treating it as a plea of guilty.

The Court (JARDINE and CANDY, JJ.) passed the following order on the 17th December, 1889:—

"After considering the cases cited by the pleader for the prisoner, *viz.*, *Empress* v. *Vaimbilee*(1), *Netai Luskar* v. *Queen-Empress* (2), and *Empress* v. *Gopal Dhanuk* (3), we are of opinion that the statements made by the prisoner when pleading to the first head of charge do not amount to an admission of the offence of murder. He appears to have alleged a sudden provocation. We think, on consideration of all the circumstances, that he ought to have been put on his trial, in order that the Court might ascertain whether the provocation was grave and sudden enough to prevent the offence from amounting to murder. If this course had been adopted, the Court would have been in a better position to judge whether if the trial had resulted in a conviction for murder there were any reasons for passing a sentence less than capital. It sometimes becomes essential that the state of the mind of the prisoner should be inquired into. The cases of *Queen-Empress* v. *Lakshman Dagdu* (4) and *Queen-Empress* v. *Venkatasami* (5) are instances in point.

"We now set aside the conviction and sentence passed on the first head of the charge, and we direct that he be tried thereupon by the Court of Session, his plea being recorded as a plea of not guilty."

In accordance with this order the accused was put on his trial on the first head of the charge, *viz.*, the murder of his wife. In pleading to the charge the accused repeated what he had stated before in his confession, and added that his wife had addressed **[567]** him in the second person singular instead of in the plural number, which provoked him to murder.

The Sessions Judge found that the accused did not kill his wife under such grave and sudden provocation on the part of the deceased as to render the accused at the time unable to control himself, that he was not insane at the time of committing the act, and that though he was an habitual *ganja*-smoker, there was nothing to show that he smoked *ganja* to excess, or that he was under the influence of the drug when he killed his wife.

The Sessions Judge, therefore, convicted the accused of murder, and sentenced him to death, subject to confirmation by the High Court.

The accused appealed to the High Court against the conviction and sentence.

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(1) 5 C. 826. (2) 11 C. 410. (3) 7 C. 96.
(4) 10 B. 512. (5) 12 M. 459.

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V. G. Bhandarkar, for accused.

Shantaram Narayan, Government Pleader, for the Crown.

JUDGMENT.

BIRDWOOD, J.—The accused killed his wife by striking her repeatedly on the head with an axe; and about the same time he killed his infant son in the same way. He made no attempt to escape; but before he was arrested, he collected some wood in the room where the dead bodies were, and after fastening the door of his house on the inside, he set fire to the wood, evidently with the intention of destroying the house and himself. The roof was, however, taken off by the villagers and the fire put out.

The accused has been a *ganja*-smoker for two years or more and there is evidence to show that he had been smoking *ganja* on the morning of the day on which he killed his wife and child. The Assessors think that the crime was committed while he was in a state of intoxication; but this opinion cannot, I think, be accepted as correct; for the medical witness (the Civil Surgeon of Dhulia), after saying that "*ganja*-smoking makes a man intoxicated and like a madman," adds that a man would not be able to remember what occurred while he was intoxicated; whereas the accused is able to describe in some detail the [568] circumstances of his crime. He could not, therefore, have been completely under the influence of *ganja* at the time.

Nor does the evidence warrant our finding that the accused's habit of smoking *ganja* had induced a diseased state of mind so as to make him incapable of knowing the nature of his act or its criminality. According to the Civil Surgeon, he has not the appearance of a heavy *ganja*-smoker or the peculiar appearance about the eyes which excessive *ganja*-smoking produces. He has "a somewhat depressed look," which the Civil Surgeon attributes to "his pecuniary state and the double murder that he has committed;" but the Civil Surgeon has been unable to discover that his state of mind was different from that of an ordinary person.

His confirmed habit of smoking *ganja* has apparently made the accused unwilling or unable to work. It has brought him to poverty and misery; and it seems also to have induced or intensified a state of mental irritability which has rendered him unable to resist the temptation to resent with brutal violence the slightest disrespect or opposition to his wishes. If his own story is to be believed,—and probably there is truth in it,—he killed his wife because she addressed him in the second person singular instead of in the plural number, and because she objected to go to another village when he proposed a change of home on account of their poverty. There was no such sudden and grave provocation here as to make the offence less than murder, as supposed by the Assessors.

The present case can be distinguished from *Queen-Empress* v. *Lakshman Dagdu* (1), though there are some points of resemblance between them. In that case, the accused had been suffering from fever, which had made him irritable and sensitive to sound, and he killed his two children, of whom he was said to be very fond, on a sudden impulse, on hearing them cry. In that case, we upheld the conviction of murder, but passed only a sentence of transportation for life, because, though on the application of the legal test of responsibility in cases of unsoundness of mind, as laid down in s. 84 of the Indian Penal Code, it was [569] impossible

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to acquit the accused, yet there was good ground for classing the case with some well-known cases which, in the opinion of so high an authority as Dr. Taylor, fairly established the occasional existence of a state of homicidal mania in which the mental condition of the accused persons, at the time of perpetrating the acts of murder, was such as to justify their acquittal on the ground of insanity. In the present case, the accused's state of mind, so far as it was altered at all from its normal state, was due to his vicious habit; and though the act of which he has been convicted was, in one sense, unpremeditated, it was still a vindictive act done to avenge a fancied slight. There appear to be no legal grounds for a commutation of the sentence of death passed by the Sessions Judge.

Such considerations as have, with much fairness, been suggested by the Government Pleader as a reason for passing on the accused a secondary sentence, can most appropriately, in our opinion, be dealt with in the present case by the Government to whom the papers will, in due course, be sent.

We dismiss the appeal and confirm the sentence of death passed upon the accused Sakharam valad Ramji by the Sessions Judge.

JARDINE, J.—I concur in the Sessions Judge's estimation of the evidence, which is the same as that of the two Assessors, except as to the application of Exceptions 1 and 4 of s. 300 of the Indian Penal Code and to the question whether the prisoner was intoxicated and not merely angry when he did the murders. About those exceptions I think the Assessors are wrong. Exception 4 does not apply, as the prisoner admittedly acted in a cruel and unusual manner when he hacked his wife's skull. There is no evidence of grave and sudden provocation: the prisoner has several times stated what it was that provoked him, and I do not think Excep. 1 applies.

The prisoner's statements to his daughter, to Somji, and to the Patel immediately after the morning dawned on the murders, to the Third Class Magistrate at Jalgaon next day, and to the other Courts later show ordinary reasoning power, memory and the [570] existence of a feeling of responsibility. He told the Third Class Magistrate that his reason for trying to kill himself by burning was a desire to escape punishment at the hands of the law.

I am of opinion that s. 84 of the Penal Code does not apply in his favour. We have considered whether the proved habit of smoking and drinking *ganja* has so weakened the prisoner's brain as to cause a disease such as would absolve him in circumstances under which the existence of *delirium tremens* induced by a habit of taking intoxicants may absolve the killer of another from responsibility to the criminal law. On this point we referred to Mr. Justice Stephen's charge in *Reg.* v. *Davis* (1). This is not asserted by the prisoner, and I agree with the Sessions Judge that it is not proved that "by one or more such practices (of taking intoxicants) an habitual or fixed frenzy" was caused, of which it may be said, in the words of Lord Hale, whom I am quoting, "though this madness was contracted by the vice and will of the party, yet the habitual and fixed frenzy caused thereby puts the man in the same condition as if it were contracted at first involuntarily:" 1 Hale, 32; 1 Russell on Crimes, 114 (5th ed.). The facts of this case are very different to those in

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Queen-Empress v. *Lakshmnn Dagdu* (1), which has been followed by the High Court of Madras in the case of *Queen-Empress* v. *Venkatasami* (2). I think, therefore, the prisoner was rightly convicted of murder, agreeing with the Sessions Judge and both Assessors that he was not insane.

I am of opinion that the Sessions Judge and both Assessors are right in the view they all take of the state of mind of the prisoner when he killed his wife, except as to his being intoxicated at the time. The prisoner has never said he acted under intoxication, and there is no evidence of that. He is proved to have been an idle, quarrelsome *ganja*-smoker, living on what his wife earned, and often getting drunk. I think it is probable that his vices had induced a very irritable and unreasonable habit of mind, and I concur with the Sessions Judge in finding that he killed the woman on provocation, which is very common in all countries—I mean the [571] use of rather disrespectful words to him, those words not amounting to abuse. Idle drunken men often have scolding wives.

Mr. Vasudev, who has appeared for the prisoner before us, has not argued that the conviction is wrong: he has confined himself to asking the Court to commute the capital sentence. The cases at p. 115 of 1 Russell show that we ought not to confirm without full consideration of the view expressed by the Assessors who thought that the prisoner was intoxicated at the time, and intended to hurt, and not to kill. I have considered *Rex* v. *Carrol* (3) and *Rex* v. *John Thomas* (4) in this connection. In the former of these cases, Park, J., said: "There is no doubt that the prisoner was in a great fury: but the question at law is, was there sufficient provocation to excite it?" I do not think there was any thing of the sort.

The prisoner pleaded guilty to the murder of his son, the child Ganpat. He told the Third Class Magistrate that he killed his child, because there would be nobody left to nurse him and because he began to cry. He told the committing Magistrate he killed him, because he was afraid the child would tell. There is evidence that he also wounded another child.

I think the learned Judge has used a right discretion in passing the capital sentence, and that sufficient cause for commutation has not been shown us. A drunken irritable man ought to place greater restraint on himself than more sober people do. The provocation given the prisoner by the wife was of the slightest sort, on his own showing. The child had given no provocation at all. In order to maintain the equal administration of the law, I would, therefore, confirm the convictions and sentences: any mitigation should, I think, be sought from the Government, which, while protecting the public order, is empowered to use the prerogative of mercy.

Conviction and sentence confirmed.

(1) 10 B. 512. (2) 12 M. 459. (3) 7 C. & P. 145. (4) 7 C. & P. 821.