

Perera
v.
Republic of Sri Lanka

COURT OF APPEAL.

COLIN-THOME, J., RODRIGO, J. AND TAMBIAH, J.

S.C. 89/78.

DECEMBER 12, 1978.

Charge of murder—Plea of insanity taken by defence—Evidence in support of such plea—Burden of proof on accused.

Held

Where in a charge of murder the plea of insanity is set up the burden is on the accused to prove it to the satisfaction of the jury on a preponderance or balance of evidence in support of the plea. This burden the defence had discharged and the verdict of the jury in finding the accused guilty of murder, was therefore unreasonable and could not be supported by the evidence.

Cases referred to

(1) *R. v. Podola*, (1959) 2 W.L.R. 718.

(2) *The King v. Don Nikulas Buiya*, (1942) 43 N.L.R. 385.

APPEAL from the High Court, Kandy.

H. R. Herat, for the accused-appellant.

D. S. Wijesinghe, Deputy Solicitor-General, for the State.

Cur. adv. vu't.

January 23, 1979.

COLIN-THOME, J.

The accused-appellant was indicted in the High Court of Kandy for having committed the murder of U. Don Loku Appuhamy on 23.5.1975.

The trial commenced in the High Court on 20.12.1976, but in view of the evidence of the psychiatrist that the accused-appellant was of unsound mind the learned trial Judge ordered the accused-appellant to be kept in safe custody in a mental hospital pending an order by the Minister of Justice.

Subsequently, on 3.8.1977 in view of the evidence of Dr. M. A. S. Rajakaruna, M.B.B.S. (Cey.), M.R.C. Psych. (Lond) and D.P.M. (England), that the accused-appellant was now aware of the nature of the charge against him and able to assist counsel in presenting his defence and that he was fit to plead and stand his trial the case proceeded to trial. The trial was concluded the next day on 4.8.1977. The jury by an unanimous verdict found the accused-appellant guilty of murder and he was sentenced to death.

The case for the prosecution was that on 23.5.1975 at about 7 a.m., the deceased who was the elder brother of the father of the accused-appellant was standing near his house talking to one Kiribanda when suddenly the accused-appellant appeared on the scene with a gun and shot the deceased twice. There was no motive alleged for this senseless act nor did any kind of altercation precede the shooting of the deceased. The defence did not contest the facts but was content to plead insanity at the time of the commission of the act.

Dr. Rajakaruna stated at the trial that he kept the accused-appellant under observation from 20.12.1976 at the Angoda Mental Hospital. After sometime he observed that the accused-appellant was suffering hallucinations of hearing. His mood was very inappropriate, and he attempted to commit suicide in the ward. This observation indicated that he was suffering from a mental disorder and required treatment and since then he received active treatment in the ward. The history of the accused-appellant was that he had been mentally ill from 1973 and this mental illness has gone on for a long time off and on as he had not taken treatment regularly. Considering his history it was very probable that he could have been mentally ill at the time he committed the alleged offence. It was very probable that at the time the offence was committed the accused-appellant was by reason of unsoundness of mind incapable of knowing the nature of his act or that what he was doing was either wrong or contrary to law.

Don Stephen Perera, the father of the accused-appellant, stated that his son was mentally ill and had been admitted on a number of occasions to the Psychiatric Unit of the Kandy Hospital. He had also set fire to their house.

Loku Banda Heekanda, Sub-Post Master, Munwatte and N. Pediris, a cultivator, stated that the accused-appellant had a reputation for being insane in the village.

In spite of the evidence that the accused-appellant had been several times to hospital for psychiatric treatment, had attempted suicide and had set fire to his house which indicated that he had a long history of mental illness and was in all probability insane at the time of the commission of the alleged act, the jury not only found him guilty of murder but also stated that he was not insane.

In *Rex v. Podola* (1), it was held that if the contention that the accused was insane was put forward by the defendant, and contested by the prosecution, there was a burden upon the defence to satisfy the Jury of the accused's insanity, which burden was discharged if the jury was satisfied on the balance of probabilities that the insanity was made out.

The law is the same in Sri Lanka. In *The King v. Don Nikulas Buiya* (2), Howard, C.J. held, having in mind both section 77 of the Penal Code read with section 105 of the Evidence Ordinance, that where in a charge of murder a plea of insanity is set up, insanity must be clearly proved to the satisfaction of the jury. The burden is discharged by an accused person who tenders a preponderance or balance of evidence in support of such a plea.

In our view on the material available at the trial this burden on a balance of probabilities had been discharged by the defence. We, therefore, hold that the verdict of the jury was unreasonable and cannot be supported with regard to the evidence.

Acting under section 350 (7) of the Administration of Justice Law, No. 44 of 1973, as it appears to us that although the accused-appellant was guilty of the act charged against him, he was at the time the act was done incapable by reason of unsoundness of mind of knowing the nature of the act or that it was wrong or contrary to law, we, therefore, quash the sentence passed at the trial and order that the accused-appellant be kept in safe custody at the Mental Hospital, Angoda, and that a copy of this judgment be forwarded for the orders of the Minister of Justice.

RODRIGO, J.—I agree.

TAMBIAH, J.—I agree.

Sentence quashed.

G. G. Ponnambalam (Jnr.),
Attorney-at-Law.