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AMRIT BHUSHAN GUPTA

v.

UNION OF INDIA AND ORS.

November 29, 1976

B [A. N. RAY, C.J., M. H. BEG AND JASWANT SINGH, JJ.]

Penal Code—S. 84—*Person convicted and sentenced to death turning insane afterwards—If execution should be stayed till he became sane.*

A petition under Art. 226 of the Constitution was filed in the High Court on behalf of the appellant, who was sentenced to death, praying that, since the appellant was insane the State should be restrained from carrying out the sentence. The High Court dismissed the petition holding that if the appellant C were really insane, the appropriate authorites would take necessary action.

In appeal to this Court, it was contended that a convicted person who became insane after conviction and sentence could not be executed until he regained sanity.

Dismissing the appeal,

HELD : (1) (a) Courts have no power to prohibit the carrying out of a sentence of death legally passed upon an accused person on the ground either D that there is some rule in the common law of England against the execution of an insane person sentenced to death or for some theological religious or moral objection to it. Our statute law on the subject is based entirely on secular considerations which place the protection and welfare of society in the fore-front. [249 B]

(b) What the statute law does not prohibit or enjoin cannot be enforced, by means of a writ of *mandamus* under art. 226 of the Constitution, so as to set at naught a duly passed sentence of a court of justice. [249 C]

E (2) (a) Section 30 of the Prisoners Act, 1900 has nothing to do with the powers of courts. It only regulates the place and manner of confinement of a person, who appears to be a lunatic, when his detention or imprisonment is either during the trial or during the period when, after the sentence, he is undergoing imprisonment. In the case of a person condemned to death, no question of keeping him in prison would arise except for the period elapsing between the passing of the sentence of death and its execution. [243 F]

F (b) Insanity, to be recognised as an exception to criminal liability must be such as to disable an accused person from knowing the character of the act he was committing when he commits a criminal act. If, at the time of the commission of the offence, the appellant knew the nature of the act he was committing, he could not be absolved of responsibility for the grave offence of murder. [245 B-D]

Jagmohan Singh v. *The State of U.P.* [1973] 2 S.C.R. 541 referred to.

G In the instant case, the whole object of the proceedings in the High Court and before this Court seems to be to delay execution of the sentence. In view of the number of times the appellant had unsuccessfully applied the powers of the High Court and of this Court ought not to have been invoked again. [244 A]

CRIMINAL APPELLATE JURISDICTION : *Criminal Appeal No.* 383 of 1976.

H (With Criminal Misc. Petitions Nos. 62 and 380 of 1976.)

(Appeal by Special Leave from the Judgment and Order dated 22-8-1975 of the Delhi High Court in Crl. Writ Petition No. 135/75).

S. K. Sinha, for the Appellant. A

V. P. Raman and Girish Chandra, for the Respondents.

Tek Chand Chanana (In person) for the applicant—Intervener.

The Judgment of the Court was delivered by

BEG, J.—A petition under Article 226 of the Constitution was B filed in the High Court of Delhi, seeking a writ in the nature of Mandamus "or any other appropriate Writ, direction or order", to restrain the respondents from carrying out the sentence of death passed against Amrit Bhushan Gupta, a person condemned to death for having committed culpable homicide amounting to murder. The petition was filed by Smt. Shanti Devi, purporting to act on behalf of her son Amrit Bhushan Gupta, who was alleged to be insane. A C Division Bench of the Delhi High Court passed the following order on it :

> "We have no doubt in our minds that if the petitioner is really insane, as stated in the petition, the appropriate authorities will take necessary action. This petition, at this stage, we feel, does not justify invocation of the powers of D this Court under Article 226 of the Constitution. Criminal Writ is dismissed."

Before the grant of special leave to the petitioner on 27th August, 1976 an application for intervention in the matter had been filed by Tek Chand Chanana supported by an affidavit stating the following facts which have not been controverted :

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> "Amrit Bhushan Gupta was sentenced to death for burning alive three innocent sleeping children aged 14, 8 and 5 years at Sriniwas Puri on the midnight of 21st June, 1968 by the learned Dist. & Sessions Judge Delhi under Section 302 and 7 years R.I. u/s. 307 for attempting to murder Tek Chand Chanana (Petitioner) on 6th June, 1969 with the remarks 'even the extreme penalty of death may appear F too mild for the gruesome murder of three children by burning them alive.' Delhi High Court confirmed the death sentence on 23rd September, 1969. Amrit Bhushan Gupta's relatives made the plea of insanity to the High Court but the Hon'ble High Court refused even to entertain this petition of the accused, some dates are given below :
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> Writ petition dismissed on 20th July, 1971..... G
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> Petition dismissed.....20th August, 1975. H
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> Supreme Court had dismissed the various petitions of Amrit Bhushan Gupta noted below :

Special leave petition dismissed on	3rd April, 1970.
Petition dismissed on	12th Sept. 1970.
Petition dismissed on	30th April, 1971.
Writ Petition filed on 11 May 1971 was withdrawn on	2nd August, 1976.
Petition dismissed on	8th January, 1976

Rashtrapati had also rejected several mercy petitions of the accused some dates are given below :

1. 10th August, 1970.
2. 6th December, 1970.
3. 8th November, 1971.
4. February, 1972.

Government of India had fixed various dates for execution, details given below :

1. 18th December, 1970.
2. 25th August, 1975 and 19th December, 1975.

Amrit Bhushan Gupta and his relatives have been delaying the matter on one excuse or the other. Their latest plea is nothing new. It is repetition of their *modus operandi*. The petitioner and his wife have been under constant torment since the day their three innocent children were gruesomely murdered in 1968 and the punishment awarded to the accused in 1969 is being postponed on the making of the accused."

This Court when granting special leave in this case was obviously not aware of the facts stated above which were concealed. Learned Counsel for the appellant, when asked to state the question of law which called for the invocation of the jurisdiction of this Court under Article 136 of the Constitution, could only submit that the provisions of Section 30 of the Prisoners Act, 1900, should be applied to the petitioner. This section reads as follows :

"30. Lunatic Prisoners how to be dealt with.—
(1) Where it appears to the State Government that any person detained or imprisoned under any order or sentence of any Court is of unsound mind, the State Government may, by a warrant setting forth the grounds of belief that the person is of unsound mind, order his removal to a lunatic asylum or other place of safe custody within the State there to be kept and treated as the State Government directs during the remainder of the term for which he has been ordered or sentenced to be detained or imprisoned, or, if on the expiration of that term it is certified by a medical officer that it is necessary for the safety of the prisoner or others that he should be further detained under medical care or treatment, then until he is discharged according to law.

(2) Where it appears to the State Government that the prisoner has become of sound mind, the State Government shall, by a warrant directed to the person having charge of the prisoner, if still liable to be kept in custody, remand him to the prison from which he was removed, or to another prison within the State, or if the prisoner is no longer liable to be kept in custody, order him to be discharged.

(3) The provisions of Section 9 of the Lunatic Asylums Act, 1858, shall apply to every person confined in a lunatic asylum under sub-section (1) after the expiration of the term for which he was ordered or sentenced to be detained or imprisoned; and the time during which a prisoner is confined in a lunatic asylum under that sub-section shall be reckoned as part of the term of detention of imprisonment which he may have been ordered or sentenced by the Court to undergo.

(4) In any case in which the State Government is competent under sub-section (1) to order the removal of a prisoner to a lunatic asylum or other place of safe custody within the State, the State Government may order his removal to any such asylum or place within any other State or within any part of India to which this Act does not extend by agreement with the State Government of such other State; and the provisions of this section respecting the custody, detention, remand and discharge of a prisoner removed under sub-section (1) shall, so far as they can be made applicable, apply to a prisoner removed under this sub-section."

Thus, at the very outset, the section invoked relates to the powers of the State Government. It has nothing to do with powers of Courts. It only regulates the place and manner of the confinement of a person, who appears to be a lunatic, when his detention or imprisonment is either during the trial or during the period when, after the sentence, he is undergoing imprisonment. In the case of a person condemned to death no question of keeping him in prison would arise except for the period elapsing between the passing of the sentence of death and its execution. A special provision for a person sentenced to death is to be found in Section 30 of the Prisons Act 1894, which lays down :

"30. Prisoners under sentence of death.—

(1) Every prisoner under sentence of death shall, immediately on his arrival in the prison after sentence be searched by, or by order of, the Jailor and all articles shall be taken from him which the Jailor deems it dangerous or inexpedient to leave in his possession.

(2) Every such prisoner shall be confined in a cell apart from all other prisoners, and shall be placed by day and by night under the charge of a guard."

A The whole objection of the proceedings in the High Court and now before us seems to be to delay execution of the sentence of death passed upon the appellant. In view of the number of times the appellant has unsuccessfully applied, there can be little doubt that the powers of the High Court and of this Court ought not to have been invoked again. The repeated applications constitute a gross abuse of the processes of Court of which we would have taken more serious B notice if we were not disposed to make some allowance for the lapses of those who, possibly out of misguided zeal or for some other reason, may be labouring under the belief that they were helping an unfortunate individual desperately struggling for his life which deserves to be preserved. A bench of this Court too was persuaded to pass orders for observation of the convict and obtaining certificates of C experts on the mental condition of the convict.

Dr. P. B. Buckshey, Medical Superintendent and Senior Psychiatrist, Hospital for Mental Diseases, Shahdara Delhi, certified as follows :

> "After careful consideration of the entire mental state of the accused, including his behaviour, I am of opinion that D Shri Amrit Bhushan Gupta is a person of unsound mind suffering from Schizophrenia. Schizophrenia is a basically incurable type of insanity characterised by remissions and relapses at varying intervals.
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> Shri Gupta was also severely and overwhelmingly depressed and appeared to have lost interest in life."

E Dr. S. C. Malik, Assistant Professor of Psychiatry, G. B. Pant Hospital, New Delhi, gave a more detailed certificate as follows :

> "Amrit Bhushan Gupta remained mute throughout the ten days period of observation. He however started communicating to me through writing on 3rd day of encounter. He exhibits gross disturbance in thinking and his emotional F life appears to be disorganised. He is suffering from delusion that he is the incarnation of Christ and that I come to his kingdom or 'Palace'. He does not mutter to himself but at times keeps on staring vacantly in space. He is unable to write coherent meaningful sentences. He coins new words and when asked to explain he says it is 'Technologem of meself as CHRIST'. He also had G hallucinations e.g. that Russian planes are shooting his Bunkers and that I should be helping him to drive them away. He exhibited depressive and suicidal tendencies towards later period of my observation period and broke off all communication as I did not give him potassium Cyanide 'Poison' so that he (Christ) may go back to his Kingdom.
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> In my opinion he is suffering from 'SCHIZOPHRENIA' H (Chronic) which is a serious mental derangement. He is thus considered to be of unsound mind under the Indian Lunacy Act, 1912."

We have not even got any appeal from a conviction and sentence before us. We assume that, at the time of the trial of the appellant, he was given proper legal aid and assistance and that he did not suffer from legal insanity either during his trial or at the time of the commission of the offence. Insanity, to be recognised as an exception to criminal liability, must be such as to disable an accused person from knowing the character of the act he was committing when he commits a criminal act. Section 84 of the Indian Penal Code contains a principle which was laid down in England in the form of Macnaughten Rules. The section provides :

> "84. 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."

If at the time of the commission of the offence, the appellant knew the nature of the act he was committing, as we assume he did, he could not be absolved of responsibility for the grave offence of murder. A Constitution Bench of this Court has upheld the Constitutional validity of the death penalty in *Jagmohan Singh* v. *The State of U.P.*(1). We have to assume that the appellant was rightly convicted because he knew the nature of his acts when he committed the offences with which he was charged. The legality or correctness of the sentence of death passed upon him cannot be questioned before us now. So far as the prerogative power of granting a pardon or of remitting the sentence is concerned, it lies elsewhere. We cannot even examine the facts of the case in the proceedings now before us and make any recommendation or reduce the sentence to one of life imprisonment.

The contention which has been pressed before us, with some vehemence, by learned Counsel for the appellant, is that a convicted person who becomes insane after his conviction and sentence cannot be executed at all at least until he regains sanity.

In support of this contention learned Counsel has quoted the following passage from *Hale's Pleas of the Crown* Vol. I—p. 33 :

> "If a man in his sound memory commits a capital offence, and before his arraignment he becomes absolutely mad, he ought not by law to be arraigned during such his phrenzy, but be remitted to prison until that incapacity be removed; the reason is, because he cannot advisedly plead to the indictment; and this holds as well in cases of treason, as felony, even the delinquent in his sound mind were examined, and confessed the offence before his arraignment; and this appears by the Statute of 33 H. 8 Cap. 20 which enacted a trial in case of treason after examination in the absence of the party; but this statute stands repealed by the statute of 1 and 2 Phil & Mr. cap. 10 cv. P.C. p. 6 And, if such person after his plea, and before his trial, become of non sane memory, he

(1) [1 73] 2 S. C. R. 541.

A shall not be tried, or, if after his trial he becomes of non sane memory he shall not receive judgment; or, if after judgment he becomes of non sane memory, his execution shall be spared; for were he of sound memory, he might allege somewhat in stay of judgment or execution".

He also cited a passage from *Coke's Institutes,* Vol. III, p. 6, which B runs as follows :

"It was further provided by the said act of 33 H. S. that if a man attained of treason became mad, that notwithstanding he should be executed; which cruel and inhuman law lived not long, but was repelled, for in that point also it was against the common law, because by intendment of law the execution C of the offender is for example, ut poena ad paucos, metus and omnes perveniat, as before is said; but so it is not when a mad man is executed, but should be a miserable spectacle, both against law and of extreme inhumanity and cruelty, and can be no example to others".

The following passage from Blackstone's Commentaries on the Laws of D England Vol. IV, page 18 and 19 was also placed before us :

"The second case of a deficiency in will, which excuses from the guilt of crimes, arises also from a defective or vitiated understanding, *viz.,* in an idiot or a lunatic. For the rule of law as to the latter, which may easily be adapted also to the former, is that 'furiosus furore solum punitur'. In criminal cases, therefore, idiots and lunatics are not chargeable for E their own acts, if committed when under these incapacities; no, not even for treason itself. Also, if a man in his sound 'mind' commits an offence, and before arraignment for it he becomes mad, he ought not to be 'called on to plead to it, because he is unable to do so' with that advice and caution that he ought. And, if after he has pleaded, the prisoner becomes mad, he shall not be tried; for how can he make F his defence ? If, after he be tried and found guilty, he loses his senses before judgment, judgment shall not be pronounced; and if after judgment, he becomes of non sane memory, execution shall be stayed; for paradventure, says the humanity of the English law, had the prisoner been of sound memory, he might have alleged something in stay of judgment or execution. Indeed, in the bloody reign of Henry the Eighth, a G statute was made, which enacted that if a person, being compos mentis, should commit high treason, and after fall into madness, he might be tried in his absence, and should suffer death, as if he were of perfect memory. But this savage and inhuman law was repealed by the statute 1 & 2 Ph. & M.c. 10. For, as is observed by Sir Edward Coke 'the execution of an offender is, for example, ut poena ad paucos, metus H ad omnes perveniat; but so it is not a miserable spectable, both against law, and of extreme inhumanity and cruelty. and can be of no example to others".

A passage from a modern work, *'An Inroduction to Criminal Law"*, by *Rupert Cross,* (1959), p. 67, was also read. It reads as follows : A

> "In conclusion it may be observed that there are two other periods in the history of a person charged with a crime at which his sanity may be relevant. First, although there may be no doubt that he was sane when he did the act charged, he may be too insane to stand a trial in which case he will be B detained during the Queen's pleasure under the Criminal Lunatics Act, 1800 and 1883, pending his recovery. Secondly, if he becomes insane after sentence of death he cannot be hanged until he has recovered. In each of these cases, the question of sanity is entirely a medical question of fact and is in no way dependent on the principles laid down in C M'Naghten's case.
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> The rule that insanity at the time of the criminal act should be a defence is attributable to the fact that the idea of punishing a man for that which was due to his misfortune is revolting to the moral sense of most of the community. The rule that the accused must be fit to plead is based on the undesirability of trying someone who is unable to conduct D his defence, or give instructions on the subject. The basis of the rule that an insane person should not be executed is less clear. Occasionally, the rule is said to be founded on theological grounds. A man should not be deprived of the possibility of a sane approach to his last hours. Sometimes, the rule is said to be based on the fact that condemned men must not be denied the opportunity of showing cause by E why they should not be reprieved".

Shri S. K. Sinha, learned Counsel for the appellant, has, industriously, collected a number of statements of the position in English law from the abovementioned and other works of several authorities such as *Theobald on Lunacy* (p. 254), and *Kenny's Criminal Law* (p. 74).

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On the other hand, learned Additional Solicitor General has relied on the following statement of a modern point of view contained in a book by *Mr. Nigel Walker* on *"Crime and Insanity in England"* (Vol. I : The Historical Perspective)—at p. 213-214 :

> "Home Secretaries have been even more cautious in offering justifications for the practice of reprieving the certifiably insane or the mentally abnormal. Shortt, though G he cited Coke, Hale, Hawkins, Blackstone, Hawles, and Stephen to prove that he was bound by the common law, refrained from dwelling on their explanations of it. which are, as we have seen, far from impressive. The Atkin Committee, being lawyers, were more respectful to the institutional writers, and argued that 'many (sic) of the reasons given for the merciful view of the common law continue to H have force even under modern conditions. Everyone would revolt from dragging a gibbering maniac to the gallows'. If

A they had reflected they would surely have conceded that 'modern conditions' greatly weakened two out of the three traditional reasons. The abolition of public executions made Coke's argument irrelevant as well as illogical; and Hale's argument—that if sane the condemned man might be able to produce a sound reason why he should not be hanged—was greatly weakened now that the condemned B man's interests were so well looked after by his lawyers. As for Hawles' argument that an insane man was spiritually unready for the next world (which not even Hawles regarded as the main objection)—were the Committee such devout Christians that they set store by it ? Equally odd was their remark that 'everyone would revolt from dragging a gibbering maniac to the gallows', which sounded as if it was meant C as an endorsement of one or more of the traditional justifications, but if so could hardly have been more unfortunately phrased. Why should it be more revolting to hang a 'maniac' than a woman, a seventeen-year-old boy or a decrepit old man ? Must the maniac be 'gibbering' before it becomes revolting ?

A more logical justification was suggested by Lord D Hewart, who opposed Lord Darling's attempt to legislate on the lines recommended by the Atkin Committee (see Chapter 6). Lord Hewart suggested that the medical inquiry should be concerned only with a single, simple question : 'If this condemned person is now hanged, is there any reason to suppose from the state of his mind that he will not understand why he is being hanged ?' Although this suggestion E would have appealed to Covarrubias, it had little attraction either for the Home Office or for humanitarians in general, for it was clearly intended to reduce the number of cases in which the inquiry led to a reprieve. Nevertheless, given certain assumptions about the purpose of the death penalty, it was at least more logical than the traditional justifications which the Atkin Committee had so piously repeated. If, as F Covarrubias and Hewart no doubt believed, the primary aim of a penalty was retributive punishment, it could well be argued that the penalty would achieve its aim only if the offender understood why it was being imposed. This argument is not open, however, to someone who believes that the primary aim of a penalty such as hanging is the protection of society by deterrence or elimination. The Atkin Com- G mittee would have been more realistic if they had contented themselves with the observation that for at least four hundred years it had been accepted that common law forbade the execution of a mad man, although the institutional writers' explanations were obviously speculative and odd : and that since 1884 certifiable insanity had been accepted as the modern equivalent of 'madness'. Any further attempt H to justify the practice would have involved them in one sort of difficulty or another, as Lord Goddard was to argue to the Gowers Commission".

Interesting as the statements on and origins of the Common Law rules on the subject in England, against the execution of an insane person, may be, we, in this country, are governed entirely by our statute law on such a matter. The Courts have no power to prohibit the carrying out of a sentence of death legally passed upon an accused person on the ground either that there is some rule in the Common Law of England against the execution of an insane person sentenced to death or some theological, religious, or moral objection to it. Our statute law on the subject is based entirely on secular considerations which place the protection and welfare of society in the forefront. What the statute law does not prohibit or enjoin cannot be enforced, by means of a writ of Mandamus under Article 226 of the Constitution, so as to set at naught a duly passed sentence of a Court of justice.

The question whether, on that facts and circumstances of a particular case, a convict, alleged to have become insane, appears to be so dangerous that he must not be let loose upon society, lest he commits similar crimes against other innocent persons when released, or, because of his antecedents and character, or, for some other reason, he deserves a different treatment, are matters for other authorities to consider after a Court has duly passed its sentence. As we have already indicated, even the circumstances in which the appellant committed the murders of which he was convicted are not before us. As the High Court rightly observed, the authorities concerned are expected to look into matters which lie within their powers. And, as the President of India has already rejected the appellant's mercy petitions, we presume that all relevant facts have received due consideration in appropriate quarters.

We think that the application to the High Court and the special leave petition to this Court, in the circumstances mentioned above, were misconceived. Accordingly, we dismiss this appeal.

We also dismiss Criminal Miscellaneous Petition No. 62 of 1976, an application for summoning of the original record, as it could be of no use, but we allow Criminal Miscellaneous Petition No. 380 of 1976, the application for intervention, whose contents we have quoted above. Stay of execution order is vacated.

P.B.R. *Appeal dismissed.*