



2024/KER/6621

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

&

THE HONOURABLE MR. JUSTICE JOHNSON JOHN

WEDNESDAY, THE 31ST DAY OF JANUARY 2024 / 11TH MAGHA, 1945

CRL.A NO. 1676 OF 2023

CRIME NO.3827/2015 OF Perumbavoor Police Station,

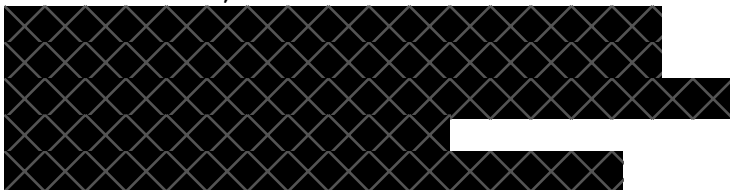
Ernakulam

AGAINST THE JUDGMENT DATED 25.08.2020 IN SC 301/2016 OF

ADDITIONAL DISTRICT & SESSIONS COURT, MUVATTUPUZHA

APPELLANT/ACCUSED:

SHINE KUMAR, AGED 47 YEARS



BY ADVS.
AUGUSTUS BINU
ANJU THOMAS.M
CYRIAC TOM
KARTHIK J SEK HAR

RESPONDENT/COMPLAINANT:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN - 682031

BY PUBLIC PROSECUTOR SMT.SHEEBA THOMAS

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
24.01.2024, THE COURT ON 31.01.2024 DELIVERED THE
FOLLOWING:



Crl.Appeal No.1676 of 2023

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P.B.SURESH KUMAR & JOHNSON JOHN, JJ.

Crl. Appeal No.1676 of 2023

Dated this the 31st day of January, 2024

JUDGMENT

P.B.Suresh Kumar, J.

This is an alleged case of parricide and the defence of the accused is that by reason of his unsoundness of mind, the accused was incapable of knowing the nature of the act. The Court of Session rejected the plea of legal insanity and convicted and sentenced the accused for the offence punishable under Section 302 of the Indian Penal Code (IPC). The accused is aggrieved by the said decision of the Court of Session.

2. The accused is the younger son of his parents. The occurrence took place on 30.09.2015. The accused was aged about 40 years at that time. The father of the accused was a retired company employee and his mother was a retired school headmistress. At about 2.45 p.m. on the date of



occurrence, the brother of the accused left home for getting his computer serviced. The father of the accused was alone at that time with the accused at home as his mother had gone to the treasury for some matter regarding her pension. Immediately after the brother of the accused left home, the mother of the accused returned home. There is a petty stationery shop right in front of the house of the accused which is run by one T.P.Sarojini. At about 5 p.m., one C.V.Sudhi informed the Perumbavoor Police that he saw the accused chasing his mother out of the house and inflicting injuries on her head using a chopper in front of the said stationery shop. On the basis of the said information, a case was registered, and after investigation, a final report was filed alleging commission of the offence punishable under Section 302 IPC by the accused.

3. The accusation in the final report is that on account of the enmity the accused had against his parents for not providing him money for his luxurious life, at about 5.10 p.m., the accused caused the death of his father in the drawing room of their house by hacking on the neck and head of the father using a chopper. It is also the accusation in the final report that when the mother of the accused ran away from the



house seeing the accused causing the death of his father, the accused chased her and caused her death also in front of the stationery shop by hacking her on the head repeatedly using the same weapon.

4. As the accused denied the charge framed and read over to him by the Court of Session when committed for trial, the prosecution examined 15 witnesses as PWs 1 to 15 and proved through them Exts.P1 to P27 documents. MOs 1 and 11 are the material objects identified by the witnesses. The accused was, thereupon, questioned under Section 313 of the Code of Criminal Procedure (the Code) as regards the incriminating circumstances brought out by the prosecution in its evidence and he denied the same and added that he is suffering from mental ailments for about 20 years. As the Court of Session did not find the case to be one fit for acquittal under Section 232 of the Code, the accused was called upon to enter on his defence. The accused, in the circumstances, examined four witnesses on his side as DWs 1 to 4 and proved through them Exts.D1 to D4 documents to establish the plea of legal insanity set out by him at the stage of his statement under Section 313 of the Code. As noted, the Court of Session did



not, however, accept the plea of legal insanity set out by the accused. Instead, on an appraisal of the materials on record, the Court of Session found the accused guilty of the offence punishable under Section 302 IPC and convicted him. The sentence imposed on the accused was imprisonment for life together with fine. The accused is aggrieved by the decision of the Court of Session and hence this appeal.

5. Heard the learned counsel for the accused as also the learned Public Prosecutor.

6. The learned counsel for the accused did not attack the finding rendered by the Court of Session that it is he who caused the death of his parents. Instead, the learned counsel strenuously argued based on the evidence tendered by the witnesses examined by the accused as DWs 1 to 4 and the documents proved through them that it is a clear case of legal insanity and the accused was entitled to be acquitted on that ground.

7. *Per contra*, the learned Public Prosecutor submitted that in order to claim the benefit of Section 84 IPC, it was obligatory for the accused to establish that by reason of his unsoundness of mind, he was incapable of knowing the



nature of the act committed by him at the time of commission of the offence, and there is absolutely no material on record to enable the court to infer the said fact.

8. The point that arises for consideration is whether the conviction entered and sentence passed against the accused by the Court of Session are sustainable in law.

9. Even though the learned counsel for the accused did not challenge seriously the finding rendered by the Court of Session that the case on hand is one of homicides, we have perused the materials on record to satisfy that the said finding is in order. Having perused the materials on record, especially the unchallenged evidence tendered by PW11, the doctor who conducted the autopsy on the bodies of the deceased, that the death of the father of the accused was due to injuries sustained on his neck and head and the death of the mother of the accused was due to head injury, we are satisfied that the finding rendered by the Court of Session that the case on hand is a case of homicides, is perfectly in order.

10. Similarly, even though the learned counsel for the accused did not seriously challenge the finding rendered by the Court of Session that it was the accused who caused the



death of his parents, we have perused the evidence on record to satisfy that the finding to that effect rendered by the Court of Session is correct. PW1 is T.P.Sarojini who runs the stationery shop in front of the house of the accused. PW1 was aged about 70 years at the time of occurrence. PW1 testified that in the afternoon of the date of occurrence, while she was sitting in her shop, she saw the accused hacking on the head of his mother three times using a chopper in front of her shop. PW1 identified the accused in the dock. PW1 also testified that about a year ago, there was a similar incident and at that time, she was able to save the mother of the accused by closing the shop with the mother inside the said shop. PW2 is a lady residing in the neighbourhood. PW2 testified that on the date of occurrence, while she was rinsing rice at the backyard of her house, she saw the accused hacking with a chopper. It was testified by her that as the people in the neighbourhood made noise then, she proceeded to the front side of her house near the road and she then saw the accused hacking his mother. PW2 identified MO4 as the weapon used by the accused to hack his mother. PW2 clarified in cross-examination that the accused is not a person who mingles much with others.



11. PW7 is another neighbour of the accused. PW7 testified that he came to the shop of PW1 on the date of occurrence and while he was chatting with one Sudhi and one Shibi, he saw the accused chasing his mother with a chopper in his hand. PW7 also testified that when the accused was about to hack his mother, she fell down and the accused had then hacked her several times. It was also testified by PW7 that even though Shibi who was present with him, attempted to prevent the accused from hacking his mother, the accused then brandished the chopper and consequently, Shibi could not dissuade the accused from hacking his mother. PW7 also testified that after the occurrence, the accused went back to his house. PW7 also identified MO4 as the chopper used by the accused to hack his mother. PW12, Sudhi is another neighbour of the accused. PW12 is the person who lodged the First Information Statement. PW12 gave evidence on similar lines as the evidence given by PW7. In addition, PW12 testified that after the occurrence, the accused walked towards his house and on seeing his mother still wriggling, the accused then came back and hacked her again. PW12 also added in his evidence that as he did not find the father of the accused in



front of the stationery shop, PW12 peeped through the window of his house and PW12 could then see the father lying dead in the house of the accused. PW12 also testified in cross-examination that the accused is not a person who mingles much with others. PW13, Shibi another neighbour of the accused, gave evidence on similar lines of the evidence given by PW7. PW12 and PW13 also identified MO4 as the weapon used by the accused to hack his mother.

12. PW3 is the brother of the accused. PW3 did not see the occurrence. PW3 testified that when he came back to the house on receiving information that the accused is causing trouble in the house, PW3 saw the body of his mother on the road. PW3 also testified that when he left the house for servicing his computer, the accused and their father were there in the house and his mother had gone to the treasury. PW3 also testified that while having lunch, the accused asked PW3 as to where his mother had gone. PW3 also testified that the accused had no income, and his parents used to give him money whenever he needs. Though PW3 testified that during 2013, when his father refused to give money to the accused, the accused caused bodily injury to his father, PW3 admitted



that the accused maintained love and respect towards his parents. PW3 also testified that the accused had not completed his studies. When PW3 was asked in cross-examination as to whether the accused was undergoing treatment for any mental ailments, the answer given by PW3 was that the accused used to get money from his parents under the guise of one or the other ailments.

13. We have perused meticulously the evidence tendered by PW1, PW2, PW7, PW12 and PW13. All of them are persons who have previous acquaintance with the accused and the members of his family. Among them, PW1 has witnessed the occurrence from her shop and PW2 witnessed the occurrence from her house. There is absolutely no reason to suspect the veracity of the evidence tendered by the said witnesses as regards the occurrence. True, PWs 7, 12 and 13 are persons who were present in front of the shop of PW1 by chance. But, as in the case of PWs 1 and 2, there is no material to doubt the veracity of the evidence given by PWs 7, 12 and 13 as well. Even though there is sufficient evidence to prove that it was the accused who caused the death of his mother, there is no direct evidence to prove that it was the accused



who caused the death of his father. As noted, it has come out from the evidence of PW3 that when he left home, only the accused and his father were there at home at the relevant time. It has come out in evidence that the mother of the accused returned home only after PW3 left from there. The evidence tendered by PWs 1, 2, 7, 12 and 13 referred to above would indicate that the accused had chased out his mother from the house and caused her death. The only person, in the circumstances, who knows how the death of the father of the accused occurred, is the accused. The accused has not offered any explanation as to how his father died, which was proved to be on account of the injury sustained on his neck and head, in the same manner in which the accused caused the death of his mother. In the circumstances, in the light of the provision contained in Section 106 of the Indian Evidence Act, it can certainly be concluded that it was the accused who caused the death of his father. We take this view also in the light of the evidence tendered by PW11 that the injuries found on the body of the father of the accused were injuries that could be caused using MO4 chopper with which, it proved that the accused caused death of his mother also.



14. As regards the motive attributed to the accused, it has come out in evidence that the accused who was aged about 40 years at the relevant time did not have any source of income and that his parents used to give him money whenever he demanded. It has also come out in evidence that the accused was a person who wanders in different places without any motivation to do anything and that he used to go home only to get money from his parents. The parents of the accused being his only source of money, it is difficult to believe that the accused would cause their death for not providing him money for his luxurious life. Even though the motive of the crime has not been proved, inasmuch as satisfactory evidence has been let in by the prosecution to prove that it was the accused who caused the death of his parents, we affirm the finding rendered by the Court of Session in this regard.

15. We have dealt with the principles to be kept in mind while deciding the question relating to the application of Section 84 IPC elaborately in **Aji Devassy v. State of Kerala**, 2023 KHC Online 9420. Paragraphs 9 to 11 of the said judgment read thus:

“9. Let us now deal with the question whether the



accused is entitled to the benefit of Section 84 IPC. Section 84 IPC provides 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 84 embodies the fundamental principle that an act does not constitute guilt unless done with a guilty intention, for in order to constitute an offence under the said section, the intent and act must concur and in the case of insane persons, culpability cannot be fastened, as such insane persons do not have free will. There is no definition for 'unsoundness of mind' in the Indian Penal Code. The term 'insanity' also has no precise definition. It is a term used to describe varying degrees of mental disorder. It is only unsoundness of mind which naturally impairs the cognitive faculties of the mind that can form a ground of exemption from criminal responsibility. The settled position of law is that every man is presumed to be sane and to possess a sufficient degree of reason to be responsible for his acts unless the contrary is proved. Every person who is mentally diseased is not *ipso facto* exempted from criminal responsibility. A distinction needs to be made between legal insanity and medical insanity. Medical insanity refers to all kinds of mental disorders that affect the working of the mind of a person, whereas legal insanity refers to the incapability of a person to know the nature of the act which he performs or that what he is doing is either wrong or contrary to law. What is provided for under Section 84 IPC is legal insanity and not medical insanity. The crucial point of time for deciding the legal insanity is the material time when the offence took place. Since the intent and act must concur to constitute an offence under Section 84 IPC, in every case where the evidence collected would create a doubt as to whether the accused was suffering from any mental ailments, it is incumbent on the investigating officer to conduct a



serious investigation as to whether the accused was suffering from any mental ailments at the time of commission of the offence.

10. If the mental ailment is concealed in the final report, the accused is certainly entitled to prove the existence of circumstances to bring the case within the scope of Section 84. Of course, the question whether the accused has discharged the said burden is to be considered on the principle of 'preponderance of probabilities' and not on the principle 'proof beyond doubt'. The standard to be applied is whether according to the ordinary standard adopted by reasonable men, the act was right or wrong. In **Dahyabhai Chhaganbhai Thakkar v. State of Gujarat**, 1964 SCC OnLine SC 20, the Apex Court has explained the aspect of the doctrine of burden of proof in the context of the plea of insanity in the following words:

“7. The doctrine of burden of proof in the context of the plea of insanity may be stated in the following propositions : (1) The prosecution must prove beyond reasonable doubt that the accused had committed the offence with the requisite mens rea, and the burden of proving that always rests on the prosecution from the beginning to the end of the trial. (2) There is a rebuttable presumption that the accused was not insane, when he committed the crime, in the sense laid down by Section 84 of the Indian Penal Code : the accused may rebut it by placing before the court all the relevant evidence oral, documentary or circumstantial, but the burden of proof upon him is no higher than that rests upon a party to civil proceedings. (3) Even if the accused was not able to establish conclusively that he was insane at the time he committed the offence, the evidence placed before the court by the accused or by the prosecution may



raise a reasonable doubt in the mind of the court as regards one or more of the ingredients of the offence, including mens rea of the accused and in that case the court would be entitled to acquit the accused on the ground that the general burden of proof resting on the prosecution was not discharged.”

11. It is now judicially settled that the mere fact that no motive has been proved for the accused to commit the murder or the fact that he has not made any attempt to run away, would not indicate that he was insane or that he did not have the necessary *mens rea* for the commission of the offence [See **Sheralli Wali Mohd. v. State of Maharashtra**, (1973) 4 SCC 79]. It is difficult to prove the precise state of the offender's mind at the time of the commission of the offence, but some indication thereof is often furnished by the conduct of the offender while committing the offence or immediately after the commission of the same. At the same time, behaviour, antecedent, attendant, and subsequent conduct may be relevant in finding the mental condition of the accused at the time of the event. A lucid interval of an insane person is not merely a cessation of the violent symptoms of the disorder, but a restoration of the faculties of the mind sufficiently to enable the person to soundly judge the act; but the expression does not necessarily mean complete or perfect restoration of the mental faculties to their original condition. So, if there is such a restoration, the person concerned can do the act with such reason, memory, and judgment as to make it a legal act; but merely a cessation of the violent symptoms of the disorder is not sufficient. In dealing with cases involving a defence of insanity, a distinction must be made between cases in which insanity is more or less proved and the question is only as to the degree of irresponsibility, and cases in which insanity is sought to be proved in respect of a person, who for all intents



and purposes, appears sane. In all cases where previous insanity is proved or admitted, the questions whether there was deliberation and preparation for the act; whether it was done in a manner which showed a desire to concealment; whether after the crime, the offender showed consciousness of guilt and made efforts to avoid detection and whether after his arrest, he offered false excuses and made false statements, would be relevant [See **Hari Singh Gond v. State of M.P.**, (2008) 16 SCC 109].”

Having thus reminded ourselves of the law on the point, let us now consider the evidence on record to see whether the accused is entitled to the benefit of Section 84 IPC. Before proceeding to consider this aspect, it is necessary to refer to the evidence tendered by the witnesses examined on the side of the accused as DW1 to DW4 and the documents proved by the accused through them.

16. DW1 is a psychiatrist attached to a hospital named Bethsada Hospital, Vengola since 1992. DW1 testified that the accused was under his treatment for the period from 18.08.1995 to 17.07.1997 as an outpatient for complaints of anxiety and depression. Ext.D1 is the document maintained in the said hospital for the treatment extended to the accused. In cross-examination, DW1 also testified that on 16.05.2013, the accused was admitted for treatment in the hospital again for



one day and he was in an anxious state without any motivation to do anything then. DW2 is also a Psychiatrist attached to Kusumagiri Mental Health Centre, Kakkanad since September, 1994. DW2 testified that the accused was under his treatment for Schizophrenia and mood disturbances from 07.08.1998 onwards till March, 2014. DW2 also testified that the accused was admitted and treated as an inpatient in the said hospital for the period from 23.12.2013 to 31.12.2013. Ext.D2 is the document maintained in the said hospital for the treatment extended to the accused. DW3 was a psychiatrist attached to S.H. Hospital, Paynkulam since 1996. DW3 testified that the accused was his patient during 2014 and 2015 for Paranoid Psychophrenia which is an alternate term of Paranoid Schizophrenia. Ext.D3 is the document maintained in the said hospital for the treatment extended to the accused. DW4 is a Senior Consultant attached to the Government Mental Health Centre, Thrissur. DW4 testified that the accused was admitted in the said hospital on 12.10.2015 and discharged on 16.02.2016. DW4 also testified that the accused was admitted again on 12.08.2016 and discharged on 18.08.2016. Ext.D4 is the document maintained in the said hospital for the treatment



extended to the accused. The diagnosis of the ailment of the accused is shown in Ext.D4 as Psychosis. The evidence tendered by DWs 1 to 4 would indicate beyond doubt that the accused was under treatment for mental ailments right from his childhood and he was taking medicines for Paranoid Schizophrenia till 11.05.2015. Similarly, it has come out in evidence that the accused was admitted and treated in the Government Mental Health Centre, Thrissur immediately after the occurrence for the period from 12.10.2015 till 16.02.2016 and later, for the period from 12.08.2016 till 18.08.2016.

17. *Modi's Medical Jurisprudence and Toxicology (24th Edn., 2011)*, describes Paranoid Schizophrenia thus:

“Paranoid schizophrenia, in the vast majority of cases, starts in the fourth decade and develops insidiously. Suspiciousness is the characteristic symptom of the early stage. Ideas of reference occur, which gradually develop into delusions of persecution. Auditory hallucinations follow which in the beginning, start as sounds or noises in the ears, but later change into abuses or insults. Delusions are at first indefinite, but gradually they become fixed and definite, to lead the patient to believe that he is persecuted by some unknown person or some superhuman agency. He believes that his food is being poisoned, some noxious gases are blown into his room, and people are plotting against him to ruin him. Disturbances of general sensation give rise to hallucinations, which are attributed to the effects of hypnotism, electricity, wireless



telegraphy or atomic agencies. The patient gets very irritated and excited owing to these painful and disagreeable hallucinations and delusions.

Since so many people are against him and are interested in his ruin, he comes to believe that he must be a very important man. The nature of delusions thus, may change from persecutory to grandiose type. He entertains delusions of grandeur, power and wealth, and generally conducts himself in a haughty and overbearing manner. The patient usually retains his money and orientation and does not show signs of insanity, until the conversation is directed to the particular type of delusion from which he is suffering. When delusions affect his behaviour, he is often a source of danger to himself and to others."

(underline supplied)

18. As noted, the crucial question is whether the accused, by reason of unsoundness of mind, was incapable of knowing the nature of the act performed by him or that what he is doing is either wrong or contrary to the law. As already indicated, as far as cases in which previous insanity is either proved or admitted, the question aforesaid has to be resolved by appreciating the conduct of the accused while committing the offence or immediately after the commission of the offence. Behaviour, antecedent, attendant and subsequent conduct of the accused would also be relevant in finding the mental condition of the accused at the time of event. It has come out in evidence that though the accused is not a person



who mingles much with others, and used to wander around various places without any motivation to do anything, he is a person who loves and respects his parents. The prosecution has not established the motive of the accused to cause the death of his parents. Similarly, the accused has not made any attempt to run away from the scene after causing the death of his parents. Even though the mere fact that no motive has been proved for the accused to cause the death of his parents and the very fact that he had not made any attempt to run away would not indicate by itself that he was insane, according to us, in the peculiar facts of this case, the same are also to be taken note of in the matter of deciding the entitlement of the appellant the benefit of Section 84 IPC. If the facts aforesaid are appreciated in the nature of the ailment for which the accused was undergoing treatment namely Schizophrenia, according to us, it can certainly be concluded that it is a case where the accused was incapable of knowing the nature of the acts committed by him at the time when he caused the death of his parents. If that be so, he is entitled to the benefit of Section 84 IPC. We take this view also for the reason that there was no investigation on the mental condition of the accused



despite the fact that he was treated as an inpatient in Mental health Centre, Thrissur immediately after the occurrence. Needless to say, the accused is liable to be acquitted under Section 334 of the Code.

19. In view of the provisions of Section 335 of the Code which provides for detention in safe custody of a person acquitted on the ground of unsoundness of mind and Section 339 which empowers the State Government to deliver a person of unsound mind, detained under Section 335, to any relative or friend of the person upon application and on giving security that the person delivered will be taken care of properly and produced for inspection of such officer, at such times and places, as the State Government may direct, we deem it appropriate to direct the appellant to be kept in safe custody as provided under Section 335 of the Code in one of the mental health establishments in the State in accordance with the rules, if any, framed by the State Government. Ordered accordingly. A copy of this judgment shall be sent to the Director General of Prisons and the Secretary, Home Department, Government of Kerala in terms of Section 335(4) of the Code for taking further action in terms of Section 338 of



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the Code.

In the result, the Criminal Appeal is allowed and the sentence imposed on the accused by the trial court for the offence punishable under Section 302 IPC is set aside and the accused is acquitted under Section 334 of the Code subject to Section 335(1)(a) of the Code.

Sd/-
P.B.SURESH KUMAR, JUDGE.

Sd/-
JOHNSON JOHN, JUDGE.

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