

# WWW.LIVELAW.IN

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE MRS. JUSTICE M.R.ANITHA

WEDNESDAY, THE 9<sup>TH</sup> DAY OF JUNE 2021 / 19TH JYAISHTA, 1943

CRL.A NO. 777 OF 2019

CRIME NO.104/2008 OF Kottiyam Police Station, Kollam

SC 1129/2010 OF SESSIONS COURT, KOLLAM,

APPELLANT/ACCUSED

LALITHA @ LATHA

AGED 46 YEARS

D/O. DEVAKI

CHERUKULATH THAZHAYTHI VEEDU, CHERIKKONAM CHERI,

THRIKKOVILAVATTAM VILLAGE, ( RENTED HOUSE) FROM THADATHIVILA

KIZHAKATHIL PARAMKODU MURI, ELAMADE VILLAGE KOLLAM DISTRICT.

BY ADV P.K.VARGHESE

RESPONDENT/COMPLAINANT

STATE OF KERALA

REPRESENTED BY PUBLIC PROSECUTOR HIGH COURT OF KERALA,

ERNAKULAM 682 031.

BY SMT.AMBIKA DEVI S, SPL.GP ATROCITIES AGAINST WOMEN &

CHILDREN & WELFARE OF W & C

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON  
09.06.2021, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

**JUDGMENT**

Dated : 9<sup>th</sup> June, 2021

M.R.Anitha, J.

1. This Crl.Appeal arise out of the conviction and sentence passed against the appellant/accused in S.C.1129/2010 on the file of Sessions Court, Kollam dated 28.11.2013.
2. Prosecution case is that on 5.2.2008 at about 5.00 pm, accused intentionally caused the death of her mother and two daughters aged 8 and 6 years, by slashing on their neck with M03-knife. Further she attempted to commit suicide by inflicting a deep cut injury on her neck. Due to timely medical intervention she survived.
3. PW1, an immediate neighbour along with his wife-PW4, rushed to the spot along with other neighbours. Accused and two daughters were taken to hospital. Both the daughters were declared dead at the Hospital. Mother Devaki was found dead at the occurrence spot itself; which was the rented house in which the deceased and the accused were residing.
4. PW1 on the same day lodged FIS to PW22, the Sub Inspector, Kottiyam Police Station who registered Ext.P14 FIR originally U/S 174 CrPC. PW23, the Circle Inspector, Chathannoor, took charge of investigation and

filed Ext.P17 report deleting S.174 Cr.P.C and adding Secs 302 and 309 IPC. He questioned the witnesses and completed the investigation and filed final report.

5. During trial PW1 to 23 were examined and Exts.P1 to P32 marked. M.O.1to 23 were identified and marked on the side of prosecution. After the closure of prosecution evidence, accused was questioned under Sec.313 (1)(b) Cr.P.C. She denied all the incriminating facts and circumstances put to her and stated in addition that she had been a mental patient at the time of incident; as also before and after. It is also stated by her that somebody had trespassed into her house and attacked them and that she could not have harmed anybody knowingly. From the defence side, DW1 to 3 were examined and Exts.D1 to D6 were marked. The learned Sessions Judge found the accused guilty under Sec.302 & 309 IPC and sentenced her to undergo imprisonment for life and to pay fine of Rs.10,000/- in default to undergo rigorous imprisonment for one year and sentenced to pay fine of Rs.1000/- under Sec.309 IPC in default to undergo imprisonment for three months.
6. Adv.P.K.Varghese was heard on behalf of the accused and Sri.S.U. Nazar, Senior Public Prosecutor on behalf of the respondent/State. The evidence led before the Lower Court was perused in its entirety.
7. Learned counsel for the accused in his arguments thrust upon the ground of infirmity in the investigation in not

conducting any enquiry as to the mental state of the accused in spite of there being evidence to the factum of the accused having been subjected to treatment for mental problems. The prosecution witness, PW2, the brother of accused during questioning spoke of his sister having suffered from mental illness. PW23, the Investigating Officer also admitted during cross examination about the statement of PW2 regarding the mental illness of the accused. The Investigating Officer also further admitted that PW17, Senior Lecturer at Medical College, Thiruvananthapuram (ENT) who examined and treated the accused on 5.2.2008; immediately after the incident, advised psychiatric consultation for the accused which though provided, nothing was produced as to the result of the same or the diagnosis made from such consultation. He also admits his knowledge of the history of mental illness in the family of the accused. In spite of these overwhelming factors which came out during investigation, the Investigating Officer did not take any effort to subject the accused to medical examination immediately to determine the soundness of the mind of the accused. The various aspects highlighted from the evidence gives rise to a reasonable doubt about the mental condition of the accused at the time of occurrence, which would entitle her for benefit of the exception and consequent acquittal, learned counsel contends. **Shibu v. State of Kerala (2013 KHC 393 : 2013**

- (4) KLT 323), **Devidas Loka Rathode v. State of Maharashtra (2018 KHC 6471 : AIR 2018 SC 3093)**, **Joseph Mathai @ Jose v. State of Kerala (2019 KHC 934 )** were relied on to support his contention.
8. Learned Senior Public Prosecutor on the other hand, would contend that the conviction and sentence passed against the accused by the learned Sessions Judge is perfectly legal and there is no scope for interference.
9. The fact that the death of the deceased persons were homicidal is not in dispute at all. The evidence of PW19, Professor of Forensic Medicine, Medical College, Hospital, Thiruvananthapuram, who conducted postmortem on the body of the deceased, Sreethulal and Sruthilal minor daughters of the accused and Exts.P10 and P11 postmortem certificates respectively prove the death of the girls having been caused due to the cut injuries sustained to their necks. Evidence of PW20, the Lecturer in Forensic Medicine, Medical College Hospital, Thiruvananthapuram, and Ext.P12 postmortem certificate of Devaki, mother of the accused, would also establish that her death too was caused by the cut injury sustained to the neck.
10. It is not in dispute that the accused is the perpetrator of the crime. But for a feeble attempt in the Section 313 statement that there was an attack by outsiders there is nothing to substantiate the same. The witnesses also do not speak of having seen any such intrusion having occurred and in fact even as per the

FIS the accused, her children and mother alone were inhabiting the house on the fateful day. They were together, seen proceeding to the house in the morning and the children playing in the compound in the afternoon. The incident occurred in the evening and the wounded persons were found in the house locked from inside. According to the learned counsel for the accused, there is no *mens rea* for killing the minor daughters and the aged mother of the accused. PW2, the brother of the accused admitted that the accused had mental illness and she had gone to Punaloor Hospital for psychiatric treatment. He stated to the Police that out of mental illness or financial difficulties she might have done these acts.

11. PW1 and 4, husband and wife, are the immediate neighbours of the accused. PW3 is conducting a tea shop nearby. They rushed to the spot immediately on hearing groaning sounds from inside the house of accused. During cross-examination of PW4 and 5, there was a vain attempt from the side of defence to establish that somebody had trespassed into the house and attacked the accused and the deceased persons. As we noticed, accused during her examination also stated that somebody had intruded into their house and attacked them. PW4 stoutly denied any such intrusion having occurred and PW5 too pleaded ignorance of such an occurrence. Moreover PWs 1, 3 and 4 deposed in corroboration that the door was locked from

inside and they looked through the window; the pane of which alone could be opened, to find the accused and two children in a pool of blood. They kicked opened the door and inside the house found Devaki too bathed in blood with cut injuries on the neck.

12. Evidence of PW17 the Doctor, that she treated the accused, with the alleged history of suicidal cut on throat, conducted emergency tracheostomy with neck exploration, repaired the wound on 6.2.2008, discharged on 13.2.2008 and referred to District Hospital, Kollam for tracheostomy care etc. remains unchallenged. PW18 is the ENT Surgeon, District Hospital, Kollam, who examined her on reference from Medical College Hospital, Thiruvananthapuram. The records produced through these witnesses lead to an irresistible conclusion that injury sustained to the accused is one arising from a suicidal act. The evidence adduced in the case eschew any chance of criminal trespass into the house by any other person for commission of the act. Hence, the finding of the learned Sessions Judge that the accused caused the death of her mother and children and she attempted to commit suicide is perfectly in order. We do not find any reason to accept the plea of an attack by unidentified assailants. It has been established beyond reasonable doubt that the incident occurred as has been narrated by the prosecution through their witnesses and the accused having committed the dastardly act of fatally injuring

her own mother and children, also attempted to kill herself.

13. Though protection under Sec.84 IPC was stated as one of the grounds for assailing the conviction and sentence in the memorandum of Appeal, at the time of argument the learned counsel for the accused fairly conceded that the accused could not discharge the burden cast upon her. Under Sec.105 of Evidence Act ,burden to prove that at the time of commission of the offence accused was legally insane by establishing that she was incapable of knowing the nature of act or that what she was doing was wrong or contrary to law is upon the accused.

14. The learned Public Prosecutor also brought to our attention **Dahyabhai Chhaganbhai Thakkar v. State of Gujarat (AIR 1964 SC 1563 = 1964 KHC 596)**, **Kuttappan v. State of Kerala (1986 KLT 364 :1986 KHC 96)**, **Lakshmiah v. State of Karnataka (AIR 2001 SC 3828 : 2001 KHC 963 )**, **Hari Singh Govind v. State of M.P. (AIR 2009 SC 31 : 2008 KHC 4870)**, **Sheralli Wali Mohammed v. State of Maharashtra (AIR 1972 SC 2443 : 1973 KHC 773)** and **Mohammed Anwar v. State (NCT Delhi) (2020 KHC 6491 : AIR 2020 SC 5134)** in a broad angle to distinguish legal insanity and medical insanity and matters which should be weighed by Courts while dealing with Sec.84 IPC which enunciates the fundamental principle of criminal law that in order to constitute an offence *actus reus* and *mens rea* must concur.

15. In **Lakshmiah** the Apex Court held that in cases where Exception under Sec.84 is claimed, the Court has to consider whether at the time of commission of the offence the accused by reason of unsoundness of mind, was incapable of knowing the nature of the act or that he is doing what is either wrong or contrary to law. Entire conduct of the accused from the time of commission of the offence upto the time the Sessions proceedings commence was held to be relevant for the purpose of ascertaining as to whether the plea raised was genuine, bona fide or merely an after thought.
16. In **Hari Singh Govind**, the Hon'ble Supreme Court drew a distinction between legal insanity and medical insanity. Every person who is mentally diseased was held to be not *ipso facto* exempted from criminal responsibility.
17. **Kuttappan v. State of Kerala** discussed the burden of proof upon accused under Sec.105 of Evidence Act for proving the existence of circumstances bringing the case within the exception contemplated in Sec.84 IPC and Sec.4 of Evidence Act. The Division Bench expressed a caution that the absence of circumstances bringing the case within the exception under Section 84 has to be regarded as proved, only if, after considering the matters before it no such circumstance is shown to exist or that it is not at all probable that a prudent man in the circumstances of that particular case would ever come to the conclusion or at least a supposition that such

circumstances does exist. The burden is upon the accused to rebut the presumption by relying on materials already before Court. The Court also visualizes a situation where material so placed before the Court may not sometimes be sufficient to discharge the burden under Sec.105 of Evidence Act; but however it may raise a reasonable doubt in the mind of the Court as regards one or the other of the necessary ingredients of the offence itself, either *actus reus* or *mens rea*, being absent, when also accused would be entitled to the benefit of doubt.

18. In **Dahyabhai**, the Hon'ble Supreme Court laid down the proposition of doctrine of burden of proof in the context of plea of insanity. Paragraph No.7 is relevant to be extracted which reads thus :

“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 Sec.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.”

19. In **Sheralli Wali Mohammed** and also **Mohammed Anwar**, the Apex Court laid down the proposition that to establish that the acts done are not offences under Sec.84 IPC, it must be proved clearly that at the time of commission of act the accused by reason of unsoundness of mind was incapable of knowing the nature of act or that the acts were either morally wrong or contrary to law. In **Mohammed Anwar**, it has also been observed that mere production of OPD card and statement of mother on affidavit have little evidentiary value to prove the defence under Sec.84 IPC.

20. On a close scrutiny of the evidence adduced in this case, we are also of the view that accused has not

discharged the onus of proving the unsoundness of mind at the time of commission of the offence. PW2 the brother of accused admitted to have given a statement to the police that she might have committed the act out of mental illness or financial difficulties. The treatment undergone at Punaloor Hospital for mental illness is also spoken by him. But the period of treatment or the gravity of illness was not revealed through his evidence.

20. PW17, the Senior Lecturer (ENT) to whom accused was referred for emergency tracheostomy with neck exploration for repair of the neck injury on 5.2.2008, immediately after the incident, advised psychiatric consultation. But the records with respect to the psychiatric consultation was not brought in evidence.

21. Evidence of DW1, Psychiatric Consultant in Jayabharatham, Mental Health Centre, Punaloor and Ext.D1 certificate and Ext.D2 case sheet would prove that accused had undergone treatment for delusional disorder. Exts.D1, D2 and evidence of DW1 also prove that the period of treatment was 8.3.2004 to 22.3.2004. Family history of psychosis of father, nephews, maternal sister is also brought out through his evidence. But he was categorical that Ext.D1 will not show the mental status of the patient on 5.2.2008; which is quite obvious and does not, all the same, inhibit this Court from drawing reasonable inferences from the overall aspects revealed

of history of mental illness of the accused particularly and those of her close relatives generally.

22. Evidence of DW2, Consultant Psychiatrist at Mental Health Centre, Thiruvananthapuram and Ext.D3 attested copy of case sheet would show that she had undergone treatment for the period 28.4.2009 to 1.7.2009. Ext.D4 attested copy of case sheet would show that she was again admitted on 19.10.2012 and discharged on 10.11.2012. Ext.D5 is the discharge card. It also would prove that at the time of first admission diagnosis was schizophrenia.

23. DW3, the Assistant Jailor, District Jail, Kollam produced gate register with Ext.D6 copy to prove the details regarding the shifting of accused from District jail to Mental Health Centre.

24. The evidence brought out during trial would prove that she had undergone treatment for delusional disorder before four years of the incident and after one year of the incident she had undergone treatment for schizophrenia. But no evidence is forthcoming about the state of mind of the accused at the crucial point of time, ie: at the time of the incident. The gravity and nature of illness also could not be established. Every person who is suffering from mental illness *ipso facto* is not exempted from criminal liability. There is distinction between legal insanity and medical insanity and Courts are concerned with legal insanity and not

medical insanity. The burden of proof is upon the accused to prove the legal insanity under Sec.105 of Evidence Act, which the accused failed to discharge either by bringing out materials from the prosecution case or from the evidence adduced from the defence side. As stated earlier that fact is fairly conceded by the learned counsel for the defence.

25. The argument of the defence is confined to the entitlement of benefit of doubt to the accused on account of the total absence of enquiry into the mental condition of accused, despite it having come out from investigation that the accused had undergone treatment for mental illness. The nature of the acts also; the mindless killing of an old lady and two minor children that too the mother and daughters of the accused, ought to have cautioned the Investigating Officer and there should have been an enquiry held and the accused subjected to a psychiatric evaluation, immediately after the occurrence.

26. In **Devidas Loka Rathode**, the Apex Court set aside the concurrent findings of guilt against the accused under Secs 302 and 324 IPC upholding his defence under Sec.84 IPC. It has been discussed therein that in view of the previous history of insanity of the accused, it was the duty of an honest investigator to subject the accused to a medical examination immediately and place that evidence before the Court and if it is not done, it

creates serious infirmity in the prosecution case and benefit of doubt has to be given to the accused.

27. In **Joseph Mathai @ Jose** this Court held that if previous history of insanity is revealed during investigation, the Investigating Officer has a duty to subject the accused to a medical examination and place that evidence before Court. Failure of the same creates serious infirmity in prosecution case and benefit of doubt has to be given to the accused.

28. In **Shibu v. State of Kerala** this Court while dealing with Secs 6, 84 and 302 IPC has gone to the extent of holding that in the light of Sec.6, definition of every offence is to be understood subject to the 'General Exceptions'. Therefore investigation shall not be confined to the acts committed by a person. Depending on facts and circumstances of the case many other relevant facts also have to be investigated in the light of the provisions contained in 'General Exceptions'. It is only then, an Investigating Officer will be able to confirm whether the act committed by a person is an offence or not as defined in IPC subject to what is contained in 'General Exceptions'. It is also held in paragraph 43 of the judgment thus:

“In cases in which any inappropriate, extra ordinary or strange behaviour is noticed or the manner in which offence is committed raises any reasonable doubt or belief, or even strong suspicion that

accused must or might have been acting because of some problem in his mental condition or due to unsoundness of mind, Investigating Officer shall inevitably conduct investigation into the mental state of accused. In such cases, he shall ascertain whether accused had any history concerning mental condition . He shall also get accused examined by a Psychiatrist at the earliest opportunity to ascertain whether he was acting under unsoundness of mind at the time of occurrence, without knowing nature of the acts etc.”

29. Now coming to the facts of this case. Matricide and maternal filicide followed by an attempt to commit suicide are the offences proved to have been committed by the accused. Normally a lady will not be able to do such gruesome act solitary or at a stretch. During her examination she specifically stated that knowingly she can not harm even a fly.

30. The incident was on 5.2.2008 at about 5.pm. She was taken to Hospital and had been undergoing treatment for the self injury caused to the throat. After discharge, she was arrested on 14.2.2008. The evidence of PW17, the Doctor who treated her, would prove that psychiatric consultation was given to her, the details of which were not attempted to be brought out in evidence by the Investigating Officer. Ext.P9 certificate issued by PW17 would reveal the factum of psychiatric consultation given to the accused. More over, PW2, the brother of the accused admitted to have given statement to the Police about the mental illness of the accused. Proceedings of the Sessions Court would show that even before framing

charge, a memo was filed stating that accused is a mental patient. Evidence of DW2, the Doctor and Exts.D3 to D5 would further prove that before starting trial from 28.4.2009 to 1.7.2009 and from 19.10.2012 to 10.11.2012, she had undergone treatment at Mental Health Centre, Thiruvananthapuram. The diagnosis on the first admission was schizophrenia. It has been brought out from the medical records that her father, two nephews and mother's sister had mental illness. Further, four months prior to the treatment, her brother committed suicide. PW23, the Investigating Officer attempted to plead ignorance about the mental illness of the accused. But he would admit the statement of PW2 that accused might have committed the offence out of mental derangement or financial difficulties. He admitted to have questioned PW17 Doctor and produced Ext.P9 certificate which specifically states about the psychiatric consultation given to the accused. But a strange explanation has been given by PW23 that accused told him that in order to picture her as a mental patient, her husband had taken her to Punaloor Hospital. But the evidence of DW1 the Psychiatric Consultant at Punaloor Hospital and Ext.D1 certificate and Ext.D2 case sheet would prove that in Ext.D2, narration of the circumstances was by the patient (accused) and her husband. Ext.D2 case sheet shows that it is the accused who was suspicious of her husband and always complained about his illicit relationship with his brother's wife. So the explanation given by PW23 appears to be concocted and fallible.

31. It is very clear that PW23 was quite aware of the

psychiatric treatment undergone by the accused before the incident at Punaloor Hospital and the psychiatric consultation given by PW17 immediately after the incident while undergoing treatment for throat injuries. If the Investigating Officer was fair enough and wanted to bring the true facts before the Court he would have made an enquiry into the aspect of the soundness of the mind of the accused. Peculiar nature of the offence of matricide and filicide of two small daughters coupled with the factors brought out during investigation ought to have been taken into account by the Investigating Officer to subject the accused to medical examination immediately after the incident to ascertain the soundness of mind of the accused at the crucial time of the incident. Failure to do the same creates serious infirmity in the prosecution case which would entitle the accused to benefit of doubt and consequent acquittal. In other words, the evidence adduced from the side of prosecution and defence creates a reasonable doubt in the mind of the Court about the *mens rea* of the accused and the general burden of proof on that aspect resting on the prosecution was not discharged and that would enable the accused to benefit of doubt.

32. In the result, Appeal stands allowed. Conviction and sentence passed against the accused is hereby set aside. She had been under confinement for the last ten years and eight months. It was informed at the time of hearing that the accused is in parole for the time being. Hence we direct the accused to be kept in safe custody as provided under Sec.335(1)(a) Cr.P.C r/w Sec.103 of Mental Health

Care Act, 2017 and the Mental Health Care (State Mental Health Authority) Rules, 2018, after the release on parole, in a Mental Health Care Establishment, or if the same is not established, the accused to be detained in any of the Mental Health Centres. It is open for any friends or relatives of the accused to apply for delivery of the accused under Sec.335(1)(b) & (3) Cr.P.C before this Court which would be considered by this Court in accordance with law. It is also left open to the State Government to direct the appellant to be delivered to any of her relatives or friends as per Sec.339 Cr.P.C or to release her as per Sec.338 Cr.P.C. A copy of the judgment shall be sent to the Director General of Prisons and the Secretary, Home Department, Government of Kerala, in compliance of Sec.335(4) Cr.P.C for further action under Secs 338 and 339 Cr.P.C.

Sd/-

**K.VINOD CHANDRAN, Judge**

Sd/-

**M.R.ANITHA, Judge**

Mrcs/5.6.