

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.T.SANKARAN
&
THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR
MONDAY, THE 15TH DAY OF JUNE 2015/25TH JYAISHTA, 1937

CRL.A.No. 1757 of 2010

SC 146/2008 of SESIONS COURT, WAYANAAD, KALPETTA

APPELLANT:

ABILASH, S/O.VELAPPAN,
C.NO.8498, CENTRAL PRISON, KANNUR.

BY ADVS.SRI.GRASHIOUS KURIAKOSE (SR.)
SRI.GEORGE MATHEWS

RESPONDENT:

STATE OF KERALA
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM..

BY ADV. GOVERNMENT PLEADER, SHRI.K.K.RAJEEV

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 15-06-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

CR

**K.T.SANKARAN,
&
B.SUDHEENDRA KUMAR, JJ.**

Crl. Appeal No.1757 of 2010

Dated this the 15th day of June 2015

JUDGMENT

Sudheendra Kumar J.

The appellant is the accused in S.C. No.146 of 2008 on the files of the Sessions Court, Wayanad, who in this appeal challenges the judgment of conviction and sentence passed by the trial court under Sections 302 and 316 of I.P.C.

2. The court below awarded a sentence of imprisonment for life and a fine of Rs.25,000/- under

section 302 I.P.C. No separate sentence was awarded for the offence under Section 316 I.P.C.

3. The prosecution case can be briefly stated as follows:- The deceased Kalarani, was the wife of the appellant. The deceased was working as a teacher in the Government School, Kallur during the relevant period. The deceased was residing with her mother and the appellant in a rented house near to the school. On 8.8.2005, the deceased went to the school as usual. The appellant also accompanied the deceased to the school and thereafter, he came back to the house. However, the appellant again went out of the house at about 10 a.m. on that day and he came back along with the deceased for taking lunch. The appellant and the deceased had lunch together. Thereafter, the deceased went to the toilet, which

was situated outside the house. She cried aloud on seeing a snake near to the toilet. PW1, who is the mother of the deceased, went outside the house with a stick. PW2 and PW4 also reached there, on hearing the cry of the deceased. At that time, the appellant was seen standing near to the well situated on the back side of the bathroom. The appellant took the deceased into the house. After some time, the deceased was seen coming out running from the house with fire on the back side of her body. PW1 and others attempted to put out the fire using a jute sack. At that time, the appellant poured petrol on the body of the deceased. However, the fire could not be put out using jute sack. The deceased was immediately taken to the Medical College Hospital, Kozhikode, where she succumbed to the injuries at 5 a.m. on 9.8.2005 while undergoing treatment

in the hospital.

4. The deceased Kalarani had given Ext.P8 First information statement to the Assistant Sub Inspector of Police, Bethery, namely, PW18 at 10.30 p.m. on 8.8.2005 at the Medical College Hospital, Kozhikode. PW18 handed over Ext.P8 statement to PW19, the Sub Inspector of Police, Bathery, who in turn registered Ext.P9 First information report under Section 307 of I.P.C.

5. PW15, the Tahsildar conducted the inquest on the body of the deceased and prepared Ext.P1 Inquest Report. The investigation was taken over by PW20 on 9.8.2005. He prepared Ext.P2 scene mahazar. The appellant was arrested by PW20 on 9.8.2005. During the course of investigation, PW20 filed Ext.P10 report before the Court praying for altering the Section to Section 302 I.P.C.

Thereafter, Ext.P11 report was also submitted by PW20 before the court adding Section 316 I.P.C. to the section of offences. The investigation was thereafter taken over by PW23 on 8.11.2005. After completing the investigation, PW23 laid the charge before the court concerned.

6. After complying with the legal formalities, the learned Magistrate committed the case to the Sessions Court, Wayanad.

7. In the trial, PW1 to PW23 were examined and Exts.P1 to P13 series were marked for the prosecution, besides identifying MO1 to MO18 series. Ext.D1 contradiction in the case diary statement of PW1 and Ext.D2 contradiction in the Case Diary statement of PW3 were marked for the defence during the cross-examination of PW1 and PW3 respectively. After closing the

prosecution evidence, the appellant was questioned under Section 313 Cr.P.C., wherein he denied the incriminating materials appearing in the evidence of prosecution witnesses. Thereafter, since the court below found, after hearing both sides and perusing the evidence, that there was no scope for an order of acquittal under Section 232 Cr.P.C., the court below called upon the appellant to enter on his defence.

8. DW1 and DW2 were examined and Exts.D3 to D30 were marked for the defence.

9. We have heard the learned senior counsel for the appellant, Adv. Shri.Grasious Kuriakose and the learned Public Prosecutor, Shri.K.K. Rajeev.

10. PW11 was the Doctor who examined the deceased immediately on her admission in the Medical College

Hospital and issued Ext.P3 wound certificate. In Ext.P3, PW11 recorded that there was 80% deep burn on the body of the deceased, involving both the face and lower abdominal walls.

11. PW12 was the Doctor, who conducted the autopsy on the body of the deceased and issued Ext.P5 post-mortem certificate. PW12 stated that the deceased died due to burn injuries. It is in the evidence of PW12 and Ext.P5 that the deceased was pregnant for more than four months at the relevant time. Ext.P5 post-mortem certificate would show that the finger nails of the deceased were partially burnt. Dermo epidermal burn was found all over the body of the deceased except top of head, back of head, side of feet, front of lower abdomen, genitalia and over buttocks. The evidence of PW11 and PW12 coupled with Exts.P3 and P5

would prove that the deceased died of burns.

12. Now the question to be considered is as to whether the death of the deceased was a suicide or a homicide. The appellant had a case that the appellant was suffering from mental ailment and due to that, the deceased committed suicide. The learned Public Prosecutor has submitted that there is absolutely no material before the court to indicate that the deceased committed suicide and all the materials available on record would lead to the only inference that the deceased was burnt to death by the appellant.

13. PW1 is the mother of the deceased. PW1 stated that on the fateful day, the deceased and the appellant had lunch together. Thereafter, the deceased went to the toilet for passing urine. However, since the deceased saw a

snake, she cried aloud. Then PW1 and others reached there. At that time, the appellant had taken the deceased into the house. After some time, the deceased was seen coming out running from the house, crying aloud. Fire was seen on the back side of the deceased. The appellant chased the deceased to outside the house and poured petrol on her body. PW1 and others put out the fire. The deceased was immediately taken to the hospital. On the way to the hospital, the deceased told PW1 that the appellant poured petrol on her and set her fire.

14. PW2 is a neighbour, who reached the place at about 1.30 p.m. on the fateful day on hearing the cry of the deceased. He saw the deceased engulfed in fire. PW2 and others put out the fire.

15. PW3 is a person having the business of milk.

While he was waiting for the bus in the bus stop near to the house of the deceased, he heard the cry of the deceased at about 1.30 p.m. on the fateful day. Immediately he rushed to the place. Then he saw the deceased coming out running from the house, engulfed in fire. PW1 to PW3 attempted to put out the fire and at that time, the appellant poured petrol on the deceased. However, the fire could be put out using jute sack. PW3 and others took the deceased to the hospital. PW4 also reached the spot on hearing the cry of the deceased. PW4 stated that when the fire was attempted to be put out, the appellant poured petrol on the deceased. However, the fire could be put out using jute sacks and water. PW4 also accompanied the deceased to the hospital. PW5 was a neighbour, who also joined with others in putting out the fire.

16. The incident was at about 1.30 p.m. on 8.8.2005 and PW11 (Doctor) examined the deceased at 4.40 p.m. on the same day at the Medical College Hospital, Kozhikode. This would show that immediately after the incident, she was taken to the Medical College Hospital, Kozhikode from her house at Wayanaad. PW11 examined the deceased immediately when she was brought to the hospital. PW11 stated that the deceased was conscious to speak and give coherent answers. The deceased had given statement to PW11 that she was set fire by her husband after pouring petrol on her body. The said statement of the deceased was noted by PW11 in Exhibit P3 wound certificate.

17. Thereafter, Ext. P13 dying declaration of the deceased was recorded by PW22, the Judicial Magistrate of

first class, Kunnamangalam at 9.55 p.m. on the same day. PW22 recorded Ext.P13 declaration in the presence of PW21 Doctor. PW21 certified that the patient was fully conscious and was capable of giving coherent answers at the time when she had given Ext.P13 declaration to PW22. After the recording of Ext.P13 declaration, PW21 again examined the patient and found that she was fully conscious at that time also. In Ext.P13 declaration, the deceased inter alia stated that the appellant poured petrol on her body and thereafter, the appellant threw a lighted matchstick at her and thus, she was set fire by the appellant. The deceased stated that the appellant always wanted to have sex. But the deceased was not prepared for the same, as she was carrying during that period. Ext.P13 dying declaration was recorded by PW22 Magistrate, after

complying with the legal formalities.

18. On 8.8.2005 at 10.30 p.m., the deceased had given Ext.P8 statement to PW18, the Assistant Sub Inspector of Police, Sulthanbathery. PW18 stated that the deceased was conscious. The deceased was in a fit state of mind and was capable of giving rational answers to the questions. The evidence of PW1 and PW5 would also show that the deceased was conscious till her death. We are satisfied from the evidence discussed above that the deceased was in a fit state of mind and was capable of giving such a statement when she was examined by PW11 Doctor and also when Exhibits P8 and P13 statements were recorded. The deceased had given Ext.P8 statement to PW18 that the appellant poured petrol on her body and thereafter, he threw a lighted matchstick at her and

thereby, the appellant set fire the deceased.

19. Before discussing the evidenciary value of Exhibits P3, P8 and P13, it would be advantageous to discuss the legal aspects on the subject.

20. In **Bhajju alias Karan Singh v. State of Madhya Pradesh** [2012(4) SCC 327)], the Apex Court observed that if the dying declaration recorded in accordance with law, is reliable and gives a cogent and plausible explanation of the occurrence of the events, then the dying declaration can certainly be relied upon by the Court as the sole piece of evidence to convict the accused.

21. In **Ashabai and another v. State of Maharashtra** [2013(2) SCC 224], the Supreme Court observed thus:-

“There is no particular form or

procedure prescribed for recording a dying declaration nor it is required to be recorded only by a Magistrate. As a general rule, it is advisable to get the evidence of the declarant certified from a doctor. In appropriate cases, the satisfaction of the person recording the statement regarding the state of mind of the deceased would also be sufficient to hold that the deceased was in a position to make a statement. It is settled law that if the prosecution solely depends on the dying declaration, the normal rule is that the courts must exercise due care and caution to ensure genuineness of the dying declaration, keeping in mind that the accused had no opportunity to test the veracity of the statement of the deceased by cross-examination”.

22. The Apex Court in **Ashabai** case (cited supra)

further held that when the Court is satisfied that the dying declaration is voluntary, not tainted by tutoring or animosity, and is not a product of the imagination of the declarant, there is no impediment in convicting the accused on the basis of such dying declaration.

23. In **State of Madhya Pradesh v. Dal Singh & others** (AIR 2013 SC 2059), the Supreme Court held thus:-

“The law does not provide who can record a dying declaration, nor is there any prescribed form, format, or procedure for the same. The person who records a dying declaration must be satisfied that the maker is in a fit state of mind and is capable of making such a statement. Moreover, the requirement of a certificate provided by a doctor in respect of such state of the deceased, is not essential in

every case.”

24. In **Shudhakar v. State of Madhya Pradesh** [2012(7) SCC 569], the Apex Court held that a dying declaration can be oral or in writing and any adequate method of communication, whether by words or by signs or otherwise, will suffice, provided the indication is positive and definite.

25. The above discussion makes it clear that it is not necessary that the dying declaration must be recorded by a Magistrate or a police officer or a doctor. A dying declaration can be made to any person including a close relative of the deceased. The only thing is that the person to whom the dying declaration is made must be satisfied that the declarant was in a fit state of mind and was capable of giving such a declaration. The Court must be further

satisfied that the witness to whom the dying declaration was given is a witness of credence [see **Ashraf and Another v. State of Kerala (2015 (3) KHC 578)**].

26. In this case, there are three dying declarations. Exhibit P3 wound certificate contains the first dying declaration given by the deceased at 4.40 p.m. on the date of incident to PW11 Doctor. The deceased stated to PW11 that she was set fire by her husband after pouring petrol on her body. The statement contained in Exhibit P3 was a short statement given by the diseased to PW11, when she got the first opportunity when she was examined by PW11. The statement contained in Exhibit P3 relates to the cause of death of the deceased and hence the said statement falls under the ambit of Section 32 (1) of the Indian Evidence Act as dying declaration. Exhibit P13 was the

second dying declaration, which was made by the deceased to PW22 magistrate at 9.55 p.m. on the same day. The evidence on record would clearly show that the deceased was in a fit state of mind and was capable of making such a declaration, when the deceased made Exhibit P13 dying declaration. Ext.P13 dying declaration was recorded by PW22 Magistrate, after complying with all legal formalities. The third declaration was Ext.P8 declaration made by the deceased to PW18, the Assistant Sub Inspector of Police, Sulthanbathery at 10.30 p.m. on the same day. Ext.P8 declaration relates to the cause of death of the deceased and hence Ext. P8 declaration also falls under the ambit of Section 32 (1) of the Indian Evidence Act as dying declaration. Exhibit P8 dying declaration made by the deceased to PW18 and Exhibit P13 declaration made by

the deceased to PW22 also contained the statement that the appellant poured petrol on the body of the deceased and thereafter, he threw a lighted matchstick at her body and thereby, the appellant set fire the deceased. There is no vital or material contradiction or inconsistency between Exhibits P13 and P8 declarations. There is no material to indicate that PW11 or PW18 or PW22 had any enmity or hatred or ill-motive to falsely implicate him in a case like this. Having carefully gone through Exhibits P3, P8 and P13 in the light of the evidence of PW11, PW18, and PW22, we are satisfied that the said dying declarations are voluntary, not tainted by tutoring or animosity, and are not the products of the imagination of the declarant. The above dying declarations coupled with the evidence of PW1, PW3 and PW4 would clearly prove that the appellant

set fire the deceased after pouring petrol on her body. Thus, from the evidence on record, we are satisfied that the death of Kalarani was a homicide and not a suicide.

27. The learned counsel for the appellant has argued that the appellant was having mental ailment at the time of the alleged commission of the offence and in the said circumstances, the appellant is entitled to get the protection under Section 84 of I.P.C. Section 84 of I.P.C. 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. In this context, it will be advantageous to discuss the various decisions of the Apex Court on the subject.

28. In **Dahyabhai Chhaganbbai Thakkar v. State**

of Gujarat (AIR 1964 SC 1563), the Supreme Court held in para 7 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 *mensrea*: 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 S.84 of the I.P.C. 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 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 meansrea 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.”

29. In **Sheralli Wali Mohammed v. State of Maharashtra** (AIR 1972 SC 2443), a four Judge bench of the Supreme Court quoted the decision in **Dahyabhai** case (supra) with approval. Their lordships further held thus:-

“The law presumes every person of the age of discretion to be sane unless the

contrary is proved. It would be most dangerous to admit the defence of insanity upon arguments derived merely from the character of the crime. The mere fact that no motive has been proved why the accused murdered his wife and child or, the fact that he made no attempt to run away when the door was broke open, would not indicate that he was insane or, that he did not have the necessary *mensrea* for the commission of the offence.”

30. In **Shrikant Anandrao Bhosale v. State of Maharashtra** [2002(7) SCC 748], the Supreme Court followed the ratio in **Dahyabhai** case (supra). In **Sudhakaran v. State of Kerala** [2010(10) SCC 582], the Apex Court observed in paragraph 28 thus:-

“The medical profession would

undoubtedly treat the appellant herein as a mentally sick person. However, for the purposes of claiming the benefit of the defence of insanity in law, the appellant would have to prove that his cognitive faculties were so impaired, at the time when the crime was committed, as not to know the nature of the act.”

31. Referring to section 84 of IPC, the Supreme Court in **Sudhakaran** case(supra) observed in paragraph 30 thus:-

“A bare perusal of the aforesaid section would show that in order to succeed, the appellant would have to prove that by reason of unsoundness of mind, he was incapable of knowing the nature of the act committed by him. In the alternate case, he would have to prove that he was incapable of knowing that he was doing what is either wrong or

contrary to law.”

32. The Apex Court in **Sudhakaran** case (supra) held that the crucial point of time at which unsoundness of mind should be established is the time when the crime is actually committed and the burden of proving this lies on the appellant.

33. In **Sudhakaran** case (supra), the accused took the defence of paranoid schizophrenia. Their lordships observed that the records did not indicate that the accused was suffering from any such mental disability, which incapacitated him to know of the nature of the acts he had committed. Their lordships declined to accept the contention of the accused in that case that he was entitled to the protection under Section 84 of I.P.C.

34. In **Hari Singh Gond v. State of Madhya**

Pradesh [2008(16) SCC 109], referring to Section 84 of I.P.C., the Supreme Court held in paragraph 13 thus:-

“The mere fact that an accused is conceited, odd irascible and his brain is not quite all right, or that the physical and mental ailments from which he suffered had rendered his intellect weak and had affected his emotions and will, or that he had committed certain unusual acts in the past or that he was liable to recurring fits of insanity at short intervals, or that he was subject to getting epileptic fits but there was nothing abnormal in his behaviour, or that his behaviour was queer, cannot be sufficient to attract the application of this section.”

35. In **Sidhapal Kamala Yadav v. State of Maharashtra** [2009(1) SCC 124], the Apex Court held thus:-

“The law recognises nothing but incapacity to realise the nature of the act and presumes that where a man's mind or his faculties or ratiocination are sufficiently dim to apprehend what he is doing, he must always be presumed to intend the consequence of the action he takes. Mere absence of motive for a crime, howsoever, atrocious it may be, cannot in the absence of plea and proof of legal insanity, bring the case within this section.”

36. The above discussion would make it clear that in order to get the protection under Section 84 of I.P.C., it has to be proved that the appellant was in such a state of mind that he was incapable of knowing the nature of the act or that he was doing what was either wrong or contrary to law, at the time of commission of the offence. When a

plea of legal insanity is set up, 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 was doing what was either wrong or contrary to law. The crucial point of time for ascertaining the state of mind of the accused is the time when the offence was committed. Whether the accused was in such a state of mind as to be entitled to the benefit of S.84 of the Indian Penal Code can only be established from the circumstances which preceded, attended and followed the crime [see **Dahyabhai** case (supra)].

37. The learned counsel for the appellant has submitted that even though the Investigating Officer was having the information with regard to the mental ailment of

the appellant even at the inception of the investigation, the Investigating Officer did not incline to make any investigation with regard to the mental condition of the appellant and in the said circumstances, the appellant is entitled to the benefit of S.84 of the Indian Penal Code. The learned counsel has relied on the decision of this Court in **Shibu v. State of Kerala** (2013(4) KLT 323) to support his argument. In **Shibu** case (supra), this Court held that if during investigation, it comes to the knowledge of the investigating officer from any of the relatives or friends or neighbours that there is something wrong with the accused mentally, the investigating officer shall necessarily conduct the investigation into the mental condition of the accused.

38. In **Bapu Alias Gujraj Singh v. State of**

Rajasthan [2007(8) SCC 66], the Supreme Court held in paragraph 8 thus:-

“The onus of proving unsoundness of mind is on the accused. But where during the investigation, previous history of insanity is revealed, it is the duty of an honest investigator to subject the accused to a medical examination and place that evidence before the court and if this is not done, it creates a serious infirmity in the prosecution case and the benefit of doubt has to be given to the accused. The onus, however, has to be discharged by producing the evidence as to the conduct of the accused shortly prior to the offence and his conduct at the time or immediately afterwards, also by evidence of his mental condition and other relevant factors. Every person is presumed to know the natural

consequences of his act. Similarly every person is also presumed to know the law. The prosecution has not to establish these facts.”

39. In **Bapu** case (cited supra), the Supreme Court further held in paragraph 7 thus:-

“But the term “insanity” itself has no precise definition. It is a term used to describe varying degrees of mental disorder. So, every person, who is mentally diseased, is not ipso facto exempted from criminal responsibility. A distinction is to be made between legal insanity and medical insanity. A court is concerned with legal insanity, and not with medical insanity. The burden of proof rests on an accused to prove his insanity, which arises by virtue of Section 105 of the Evidence Act, 1872 (in short “the Evidence

Act”) and is not so onerous as that upon the prosecution to prove that the accused committed the act with which he is charged.”

40. In **Bapu** case (supra), the contention of the defence was that the accused was having paranoid schizophrenia at the time of commission of the offence. No investigation was conducted by the Investigating Officer with regard to the mental condition of the accused. However, on the facts and circumstances of the case, the Apex Court did not accept the contention of the appellant that the appellant was entitled to the protection under Section 84 of I.P.C.

41. It is settled law that if the Investigating Officer comes to know about the previous history of insanity during the course of investigation, it is the duty of the

Investigating Officer to subject the accused to medical examination and place that evidence before the court. If this is not done, it creates serious infirmity in the prosecution case. However, the onus will be discharged by producing the evidence as to the conduct of the accused shortly prior to the offence, and his conduct and mental condition at the time of the offence or immediately thereafter. Every person is presumed to know the nature and the consequences of his act. The onus of proving unsoundness of mind is on the accused and it is not for the prosecution to establish that fact.

42. In the case on hand, there is no material to indicate that the Investigating Officer had conducted any investigation with regard to the mental condition of the appellant. Now the question to be considered is as to

whether there is any evidence regarding the conduct of the appellant shortly prior to, during and subsequent to the commission of the offence, to show that the appellant was having any mental ailment at the time of commission of the offence. The evidence of PW1 would show that on the fateful day, when the deceased went to the school at 9 a.m. due to extra class, the appellant accompanied her to the school. Thereafter, the appellant came back to the house. On that day, the appellant also insisted that the deceased should wear a particular saree. The appellant again went out from the house at 10 a.m. and came back along with the deceased to the house. The evidence of PW7 would show that the appellant possessed petrol with him when the appellant came back to the house along with the deceased for lunch. Ext.P13 dying declaration would make it clear

that the appellant purchased petrol and poured the same on the deceased. This would show that there was pre-meditation in doing the act. Even though DW1 stated that the appellant was treated in the Government Hospital, Thiruvananthapuram and in Sri Ramakrishna Mission Hospital, Sasthamangalam, and also in Perurkada Mental Hospital, no material is available before the court to indicate that the appellant was ever treated in any of the said hospitals. Exts.D3 to D30 are only prescriptions issued by DW2 and another Doctor, who is said to be no more. There is no family history of mental ailment as far as the appellant is concerned. There is also no material before the court to show that the appellant was regularly treated in any hospital for his mental ailment. Even after the commission of the offence in this case, he was inside

the jail throughout. He did not show any symptom of mental ailment after the commission of the offence or during his detention in the prison till the completion of the prosecution evidence. Thereafter, he was admitted in the hospital, before his examination under Section 313 Cr.P.C., from 22.11.2006 to 11.7.2008. This would show that the appellant exhibited the symptom of mental ailment only after the completion of prosecution evidence and before his examination under Section 313 Cr.P.C.

43. DW2, who issued Exts.D3 to D14, during his examination stated that there could be period of normality in between the period of illness. The evidence of DW2 would further show that the patient told him that he was

going abroad and hence DW2 made prescriptions for medication. After coming back from abroad also, the appellant consulted him. DW2 further stated that under proper medical supervision, the patient could be normal. If the medication is not there, the symptom would be developed gradually and not immediately. There is absolutely no material before the court to indicate that any such symptom of mental ailment was ever developed during the period of the residence of the appellant at the rented house in Wyanaad. Not even a suggestion was also made in the cross- examination with regard to that. That apart, the appellant had a consistent case from the very beginning that the deceased committed suicide, as the appellant had mental ailment. DW1 also stated that the deceased committed suicide. This would show that the

appellant did not take up the plea of protection under Section 84 of I.P.C. at any point of time. There is also no material before the court to indicate that the appellant had any mental ailment at the time of commission of offence. The evidence of PW1, PW2, PW4 and PW5 would show that the appellant did not exhibit any mental ailment at any time. It is true that the deceased had made in Ext.P13 declaration that the appellant had minor schizophrenia prior to his marriage and the marriage was conducted concealing the same. However, the evidence of DW2 itself would show that there were lucid intervals. It is difficult to prove the precise state of mind of the offender at the time of commission of the offence. However, some indication thereof is often furnished by the conduct of the offender while committing the offence or immediately after the

commission of the offence. The conduct of the appellant subsequent to the incident is very important. The appellant did not exhibit any sign of mental ailment at the time of commission of the offence or immediately thereafter or during his detention in prison till the completion of prosecution evidence.

44. The evidence of DW1 and DW2 coupled with Exts.13 dying declaration and the medical records available before the court would show that the appellant was having medical insanity during intervals. However, the evidence on record, including the conduct of the appellant prior to and at the time of commission of the offence and also subsequent to the commission of the offence, would lead to the only inference that the appellant had no legal insanity to bring the case of the appellant within the ambit of

Section 84 of I.P.C. Having meticulously gone through the evidence on record, we are satisfied that there is no evidence to show that the appellant was insane at the time of commission of the offence attributed to him. There is also nothing to indicate that the appellant did not have the necessary *mensrea* for the commission of the offence. In the said circumstances, the appellant is not entitled to the protection under Section 84 of I.P.C. Since there are sufficient materials to prove the circumstances which preceded, attended and followed the crime and also to show the conduct of the appellant shortly prior to the offence and his conduct at the time and subsequent to the offence, the failure on the part of the Investigating Officer in not conducting any investigation with regard to the mental condition of the appellant is not fatal to the

prosecution case on the facts and circumstances of this case.

45. The evidence of PW1 coupled with Exts.P8 and P13 would show that the appellant always wanted to have sex. But the deceased was not prepared for the same as she was carrying during that period. This is stated to be the motive for the incident. In **Sheralli Wali Mohammed** case (supra), the Apex Court held that the mere fact that no motive has been proved why the accused murdered his wife and child or the fact that he made no attempt to run away when the door was broken would not indicate that he was insane. In **Sidhapal** case (supra) also, the Apex Court held that the mere absence of motive for a crime, cannot in the absence of plea and proof of legal insanity, bring the case within section 84 of I.P.C. The above legal proposition

makes it clear that the absence of motive for a crime, cannot in the absence of plea and proof of legal insanity, bring the case within section 84 of I.P.C. However, the prosecution has proved the motive as well.

46. The learned counsel for the appellant has submitted that the Investigating Officer did not collect the jute sack which was used for putting out the fire on the deceased. The Investigating Officer also did not forward any material object for forensic science examination. Thus, there was serious laches on the part of the Investigating Officer in the matter of conducting the investigation and hence the entire prosecution case has to be thrown out on that reason alone.

47. This Court after making survey of various decisions of the Apex Court held in **Dharmarajan v. State**

of Kerala [2014(1) KLD 721] thus:-

“The investigation is only a part of entire process of criminal justice administration. If one wing of the criminal justice administration goes astray, that does not mean that it should result in the acquittal of the accused. Creating doubt for the purpose of doubt is not a reasonable doubt, the benefit of which can not be claimed by the accused. The reasonable doubt should arise on the basis of the facts as such and not on the basis of the contrived or manipulated facts. Should the victim be told by the court that it cannot convict the accused because one or more of the Police Officers and policemen involved in the investigation were dishonest and they did not conduct proper investigation? Would the doubts deliberately created by the accused to the

prosecution case, by influencing the investigating agency, result in raising a reasonable doubt in the mind of the Court so as to enable the accused to claim that benefit? We are of the view that answer to all these questions would be in the negative.”

48. In view of the above legal proposition, we are of the view that the mere failure on the part of the Investigating Officer, in not sending the jute sacks and other material objects for forensic examination, will not by itself be a ground for acquittal, particularly when there are other cogent materials before the court to bring home the guilt of the appellant.

49. The evidence on record would show that the deceased was pregnant for four months. Therefore, along with the deceased, the appellant caused the death of the

child in her womb also. Having meticulously gone through the relevant inputs as discussed above, we are satisfied that the prosecution established that the accused committed the offences under Sections 302 and 316 of I.P.C., and in the said circumstances, we find no reason to interfere with the verdict of guilty, conviction and sentence passed by the trial court under Sections 302 and 316 of I.P.C.

In the result, this appeal fails and is accordingly dismissed.

Sd/
K.T.SANKARAN,
JUDGE

Sd/
B.SUDHEENDRA KUMAR,
JUDGE

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