

Bail Slip

A. Steepen, Accused S/o. P. Agustian aged 30 years enlarged on Bail by the order of this court in MP.NO.1 of 2012 in Crl.A.NO.106 of 2012 dated 22.2.2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 16.03.2016

CORAM

THE HONOURABLE MR. JUSTICE M. JAICHANDREN

AND

THE HONOURABLE MR. JUSTICE S. NAGAMUTHU

CRL.A.No.106/2012

A.Steepen

.. Appellant/Sole accused

Versus

The State represented by
The Inspector of Police
R6 Kumaran Nagar Police Station
Chennai.

...Respondent

Appeal filed under section 374 Cr.P.C., against the judgment of the learned Additional Sessions Judge, Fast Track Court No.4, Chennai in SC.No.348/2009 dated 24.06.2010.

For Appellant : Mr.D.Selvam

For Respondent : Mr.M.Maharaja

Additional Public Prosecutor

JUDGMENT

[Judgment of the Court was delivered by S. NAGAMUTHU, J,]

The appellant, the unblessed son of a poor family, educated by his poor parents, on becoming an Engineer, secured a decent job, earned hand full of money, fell in love with one Sangeetha, married her with the wishes of both families, blessed with a male child, took care of his old village parents and lived a life with full of joy and jubilation, would not have even imagined that a severe blow to his life was fast approaching to make a complete topsy turvy.

2 He was living with his loving wife and five years old son, in a rental house at West Mambalam, Chennai. His aged parents were living in a remote village near Vellore. His

father is an Ex-serviceman with no other property. His parents-in-law were residing at No.21, Dhanapal Street, West Mambalam, Chennai.

2a. On 20.10.2008, the appellant received a message that his father had fallen ill. As a responsible son, in order to take him for treatment, he immediately rushed to his native place in his car along with his wife and the child after taking leave for few days from office. When he was in his village, with his father, on 21.10.2008, he received an urgent message from his office asking him to return immediately, as there was some urgent work in the office. In response to the same, he decided to rush back to Chennai. On 22.10.2008, early morning, he started his journey in his car along with his wife and son from his native place. When he was on his way to Chennai, unfortunately, the car met with a major accident. It dashed against a roadside tree. His loving young wife, died on the spot. The appellant suffered multiple fractures on his both legs and other parts of the body. His son also sustained serious injuries including fractures. Someone from that locality, shifted these two injured persons and admitted them at CMC Hospital. As the story goes, the hospital authorities wanted Rs.30,000/- to be paid immediately even to commence the treatment for both. The appellant's friends, who rushed to the hospital, managed to pay the said amount. Within few hours, some more huge amount was demanded by the hospital authorities to continue the treatment. On getting message about the accident, the appellant's father-in-law [P.W.1] and other relatives from his wife's side, had rushed to the hospital. It appears that the landlord of the appellant paid the medical bill. The appellant and his son remained unconscious for some time and they underwent treatment as In-patients. A case was registered in connection with the said accident. The body of his wife was taken for postmortem and thereafter, it was handed over to his father-in-law [P.W.1] and other relatives. They brought the body back to Chennai and in the absence of the appellant, they cremated the dead body.

2b. The appellant claims as follows:-

After several days of treatment in the hospital, the appellant returned to Chennai. By the time, it came to light that more than Rs.2.5 lakhs had been spent for the treatment on him and his son. With a view to settle the same, he decided to take Rs.1.80 lakhs, which was kept in the bureau and 50 sovereigns of gold jewels besides silver vessels. When he opened the bureau, to his shock, he found that nothing was there. On enquiry, he came to know that on the day of incineration of the dead body of his wife, his father-in-law and other relatives from his wife's side had opened the house and removed all the above valuables including cash and jewels. The

appellant requested them to return the jewels and also the cash, so that he could reimburse the hospital expenditure, which ran to more than Rs.2.5 lakhs. They roughly declined to do so. He found a complete indifferent attitude of his father-in-law and other relatives towards him. In stead of returning the gold jewels and cash, according to him, they demanded from him a sum of Rs.80,000/- which was spent for the incineration of his wife. The appellant somehow managed to pay that amount also. There was a LIC Policy and a PLI Policy standing in the name of the appellant's wife. The in-laws of the appellant managed to encash those policies by playing deception on the appellant. They paid only Rs.1.50 lakhs to the appellant and took away the balance amount.

2c. The story further goes that the life of the appellant had become difficult. Everyday went on with extreme grief and agonies. There was nothing in his hands to spend even to meet out the family expenses and to continue treatment to him and the child. On one side, his poor, old parents were to be maintained who had no income except the pension amount ; on the other side, to continue the treatment for him and his son, he had no wherewithal. He lost his job as he was completely immobilised due to the multiple fractures of both legs as well as the other parts of the body. Even to go for a walk to a small distance, he has to use the crutches. The horror experienced by him in his life is unbearable and intolerable. It all developed a kind of depression in him.

2d. When things went thus, it is alleged that on 08.07.2009, at about 14.45 hours, the accused, driven by the horror and depression, gave sleeping tablets to his son and he also consumed the same. He came to the house of his father-in-law with the child, forced entry into a room with the child and bolted the same from inside. His mother-in-law, who was alone in the house, informed her husband who was away. In the room, the accused left behind a "Death Note" addressed to the Superintendent of Police, West Mambalam, Chennai [vide Ex.P.2]. In that letter, he narrated all his woes and sufferings and at the end, he stated that he had decided to commit suicide with his son. Shortly, his son slipped into coma due to the excessive consumption of sleeping pills.

2e. The appellant telephoned to the Police Control Room by dialling the number "100". P.W.15-Mr.Seenivasan, a Grade-I Police Constable, attached to the Police Control Room of Egmore Police Station, picked up the phone. The appellant/accused, who spoke from the other end, introduced himself as "Steeper". The further conversation between the appellant/accused and P.W.15 runs as follows [vide Ex.P.9]:-

"Police : Sir?
 Accused : I am speaking from No.21,
 Dhanapal Chetty Street, West
 Mambalam, Chennai.
 Police : What is your problem?
 Accused : I have left behind a letter.
 Police : What?
 Accused : 8 months before, my wife died in
 an accident. My legs were fractured.
 My father-in-law had cheated me.
 Therefore, I am going to commit
 suicide.
 Police : What Sir?
 Accused : My wife died in an accident.
 Police : Where are you talking from?
 Accused : In the next 10 minutes everything
 would be over.
 Police : Why are you talking like this?
 Accused : Everything is over.
 Police : Have you got a child?
 Accused : Everything is over.
 Police : What are you talking?
 Accused : I am speaking from my father-in-
 law's house.
 Police : Where are you?
 Accused : No.21, Dhanapal Chetty Street,
 West Mambalam, Chennai.
 Police : Have you got children?
 Accused : Come and see. I have left behind
 a letter.
 Police : Tell your address? Hello ! Hello !
 "

Thereafter, the accused / appellant disconnected the telephone line. P.W.15 tried to revive the connection by calling "Hello ! Hello !". But, there was no reply.

2f. It is stated that, thereafter, the accused, with a view to commit suicide, hanged himself by using a ligature from the fanhook. At about 17.30 hours, P.W.1 [father-in-law of the accused], heard from his wife that the accused came along with his son and went into the room. P.W.1 rushed to the house and tried to open the room. The police had also arrived. The door was bolted from inside. P.W.1, with the help of the police, broke open the same and rushed into the room. The child was found in an unconscious state, holding a knife in his hand. The accused was also lying and there was a ligature around his neck. He was also unconscious. Immediately, he took the deceased child and the accused to a private hospital, situated near their house. The doctor, on examination of the child, declared him as

dead. The appellant was rushed to the Government Royapettah Hospital. P.W.1, then went to the Kumaran Nagar Police Station and made a complaint under Ex.P.1 at 21.30 hours on 08.07.2009. On receipt of the same, P.W.19 [Mr.Charles Sam Durai], the Inspector of Police [Law and Order], registered a case in Cr.No.592/2009 for the offences u/s.302 and 309 IPC. Ex.P.23 is the printed F.I.R. He forwarded both the documents to the Court concerned, which were received by the learned Metropolitan Magistrate at 12.00 noon on 09.07.2009.

2g. P.W.16-Dr.Suresh, the Casualty Medical Officer in the Government Royapettah Hospital, examined the accused on 08.07.2009 at about 18.45 hours. He was brought in 108 Ambulance. There was nobody accompanying the accused. The doctor enquired the person employed in the Ambulance as to what had happened to the accused. He told the doctor that on 08.07.2009 at about 15.45 hours, the accused, at the house of his father-in-law, attempted to commit suicide by hanging. When P.W.16 examined him, he found a ligature mark around his neck. He admitted him as an In-patient. Ex.P.13 is the Accident Register of the appellant/accused.

2h. On the same day, at 19.00 hours, the dead body of the deceased Jose @ Arun was brought to the said hospital. When P.W.16 [Dr.Suresh] enquired, he was informed by P.W.1 that the deceased was found dead in his house. He made entries in the medical records and forwarded the body to the Mortuary. Ex.P.14 is the Accident Register of the deceased child.

2i. P.W.19 took up the case for investigation and recovered the Death Note [Ex.P.2] from P.W.1 along with the complaint [Ex.P.1]. At 22.00 hours on the same day, he proceeded to the occurrence spot and prepared an Observation Mahazar [Ex.P.3] and a Rough sketch [Ex.P.25] in the presence of P.W.6 and one Balasubramaniam. Then, he recovered a Rexine bag [M.O.4], a plastic tumbler [M.O.5] and an empty brandy bottle [M.O.2] ; an empty bottle with the marking "Himalaya Liv 52" [M.O.7] ; a knife [M.O.1] ; a tie with a knot [M.O.3] and the portion of the ligature which was tied to the ceiling fan [M.O.3 series] and a briyani packet [M.O.6] under a cover of Mahazar [Ex.P.4] in the presence of the same witnesses. Thereafter, he went to the Government Royapettah Hospital and held inquest on the dead body of the deceased between 09.00 hours and 11.15 hours on 09.07.2009 in the presence of the panchayatdars and other witnesses. He forwarded the dead body of the deceased for postmortem.

2j. P.W.8 [Dr.Baskar], who was the Professor of Forensic Medicine, attached to the Government Royapettah Hospital, conducted autopsy on the body of the deceased on 09.07.2009, at 12.30 hours. He found the following injuries:-

"injuries:-

No external injuries seen anywhere on the body.

On Dissection:-

- Contusion of scalp tissue 3x2 cms over right parietal prominence.
- Cranial vault and meninges intact.
- Brain grossly appear normal.
- Neck structure:Hyoid bone and Thoraci cage intact.
- Heart Normal in size. Chambers contained fluid blood.
- Lungs c/s congested
- Stomach contained 150 gms of well discernible food material. Mucosa normal.
- Liver, spleen and kidneys c/s congested
- Intestines distended with gas.
- Bladder empty
- Pelvis and spinal column intact."
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Ex.P.5 is the Postmortem Certificate. He opined that the viscera was sent for chemical examination. The Report revealed that there was no poison in the internal organs. The doctor finally gave opinion that "the cause of the death of the deceased could be consistent with poisoning, the chemical nature of which could not be established."

2k. P.W.14-Dr.Ranjani, attached to the Government Royapettah Hospital treated the accused in the hospital. On the request made by the doctor in the said hospital, C.W.1 [Dr.A.P.Mythili], a Senior Resident, Department of Psychiatry, Kilpauk Medical College and Hospital, Chennai, went to the Government Royapettah Hospital and examined the accused on 15.07.2009. The accused was then kept in the "Convict Ward" as he had already been arrested by P.W.19 on 10.07.2009 itself. According to her, the accused was alone in the Convict Ward and there was no one, either the relatives or the friends, to help him and to support him. On her examination, she found that the accused was in a "severe mental depression". He narrated his woes to the doctor including the death of his wife, the cash taken by his father-in-law and also about the jewels taken away by the relatives. C.W.1 [Dr.Mythili] found that the accused had ideas of worthlessness and hopelessness. He had no perceptual disturbances. Since he was under severe depression, she advised the hospital authorities to have strict vigil on him because he had suicidal tendency and the severe depression which may lead him to attempt to commit suicide again. She also prescribed drugs for the said disease. When the accused was undergoing treatment, C.W.1 [Dr.Mythili] again visited him on 21.07.2009. At that time, she found that there was some reduction in the

degree of severity of the disease. She further prescribed medicines for few weeks and then advised the accused/patient to take continuous treatment for the said disease, viz., "major depressive disorder". The accused was finally discharged from the hospital by P.W.14 on 01.08.2009.

2l. On 09.07.2009, at 12.08 hours, at the request of P.W.19, the learned XVIII Metropolitan Magistrate, recorded the statement of the deceased in the hospital as the dying declaration wherein he has simply narrated the events as he had mentioned in the Death Note. The said statement has been marked as Ex.P.21. Though this statement would not fall within the scope of section 32[1] of the Evidence Act, it can be used in favour of the accused.

2m. P.W.19, the investigating officer, for the purpose of comparing the handwriting of the accused, obtained sample handwritings and finger prints of the accused. They were sent for comparison, which proved that the Death Note was written by the accused in his handwriting. On completion of the investigation, he laid the charge-sheet against the accused on 10.10.2009.

2n. Since it was found that the accused was fit to face the trial, the Trial Court [the learned Additional Sessions Judge, Fast Track Court, No.IV, Chennai] proceeded to frame charges against the accused. On 01.03.2010, the Trial Court, framed two charges, one for committing murder of his son by administering some unknown poison [section 302 IPC] and for having attempted to commit suicide by hanging [section 309 IPC]. The accused denied the same.

2o. In order to prove the case on the side of the prosecution, as many as 19 witnesses were examined, 27 documents and 12 material objects were also marked.

2p. Out of the said witnesses, P.W.1 is the father-in-law of the accused/appellant [father of the wife of the accused]. He has spoken about the love affair between the deceased and the accused, their marriage and their living together happily, birth of the child and lastly about the accident, in which, his daughter [wife of the accused] was killed. Insofar as the occurrence is concerned, he has stated that on 08.07.2009, at about 17.00 hours, he received a phone call from his wife [P.W.2] that the accused came to his house along with the child, went into the room, locked it from inside. But, the accused did not open it thereafter. By the time he reached the house, police personnel were present and all broke open the door and found the deceased as well as the accused in an unconscious state. When he took the child to the nearby hospital, the child was declared dead. The accused was

hospitalised. Thereafter, P.W.1 had further stated that he did not care to attend on the accused. P.W.2 [mother-in-law of the accused/grandmother of the deceased] has stated about the same facts. She has further stated that on the date of occurrence, the accused came with the child, entered into the house, went into the room and bolted the same from inside and thereafter, did not come out. When she peeped into the room through the window, she found it was so dark and the child alone was lying. On hearing the alarm raised by her, the neighbours came to the house and they found that there was no response from inside. Someone had informed the police and on arrival of the police, the room was broke open and the deceased was found dead ; whereas the accused was found unconscious. P.W.3 is a neighbour, who has stated that P.W.2 came to his house weeping and asked him to see the room in which the accused and the child were there. He went into the house and found that the room was bolted from inside and since there was no response from the room, they informed the police and the police came. P.W.4 is the brother-in-law of P.W.1. He has spoken about the earlier incident where the accused sustained injuries. P.W.5 is the son of P.W.1, who has also stated about the same facts. P.W.6 has spoken about the preparation of the Observation Mahazar and the Rough Sketch and the recovery of the material objects from the place of occurrence. P.Ws.7 and 12 are the police personnel who were on patrol duty. On receipt of the information that the room was found locked and there was no response, they rushed to the place of occurrence and along with P.W.2 and the other neighbours, they broke open the door. P.W.8 has spoken about the postmortem conducted by him and his final opinion regarding the cause of death of the child. P.W.9-photographer, who took photographs at the place of occurrence, has spoken about the same vividly. P.W.10 is the Police Constable, who has stated that he took the dead body of the deceased child to the hospital for postmortem. P.W.11 is the Forensic Expert, who has stated that in the visceral remains of the deceased, there was no poison detected. P.Ws.12 and 13 are the police constables in the Egmore Police Control Room. They have stated that the accused had spoken to the Police Control Room and informed that he was going to commit suicide. The entire conversation was recorded in the Computer device. They further stated that the accused had abruptly disconnected the phone call and thereafter, they informed P.Ws.7 and 12, the police personnel who were on Patrolling duty, about the same. P.W.14 [Dr.Ranjani], has spoken about the treatment given to the accused at the Government Royapettah Hospital and his discharge. P.W.16 [Dr.Suresh] has spoken about the same facts. P.W.17, the Handwriting Expert has stated that the handwriting in the Death Note [Ex.P.2] tallied with the admitted handwriting of the accused. P.W.18, learned Magistrate has stated that on receiving intimation from the Government Royapettah Hospital, she rushed to the said hospital at 11.40 hours on 09.07.2009 and

at 12.05 hours, she recorded the statement of the accused. The same has been marked as Ex.P.22, wherein the accused had admitted that he attempted to commit suicide out of frustration. P.W.19 has spoken about the registration of the case and the investigation done by him and filing of the final report.

3 When the above incriminating materials were put to the accused u/s.313 Cr.P.C., he denied the same as false. On his side, the family photographs of the accused and his wife and child have been marked as Ex.D.1. However, he did not choose to examine any witness on his side.

4 Having considered all the above, the Trial Court, by judgment dated 24.06.2010, convicted the appellant herein for the charges u/s.302 and 309 IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.1000/-, in default, to undergo simple imprisonment for six months for the offence u/s.302 IPC and to undergo rigorous imprisonment for one year and to pay a fine of Rs.500/-, in default, to undergo simple imprisonment for one month for the offence u/s. 309 IPC. Challenging the said conviction and sentence, the appellant/accused is before this Court.

5 We have heard the learned counsel for the appellant and the learned Additional Public Prosecutor appearing for the State and we also perused the materials placed on record carefully.

6 When this appeal came up for hearing on 14.03.2016, the learned Counsel for the appellant and the learned Additional Public Prosecutor made their submissions. When we went through the records, we noticed that there was an entry in Ex.P.11 [Medical Certificate] issued by P.W.14 [Dr.Ranjani], Government Royapettah Hospital, Chennai, that the accused was under "severe depression [psychiatry opinion]". But, there was no further evidence collected in respect of the mental condition of the accused at the time of occurrence. The medical records pertaining to the treatment given to the accused had not been collected by the Investigating Officer and proved in evidence. From this entry, we had a doubt as to whether the accused would have been under any mental illness at the time of commission of the crime as well as at the time, when he faced the trial because the cognitive faculty of the accused was very relevant and it should have been stable and normal both at the time of the commission of crime as well as at the time of trial. So, we decided to ascertain the said fact. Therefore, in exercise the power of this Court under section 391 Cr.P.C., and section 311 Cr.P.C., we summoned Dr.Rajani [P.W.14], Medical Officer, attached to the Government Royapettah Hospital, where the accused underwent treatment for few weeks and also Dr.Mythili, attached to the Kilpauk Medical College and

Hospital, from the Department of Psychiatry, who treated the accused when he was in the Government Royapettah Hospital.

7 Accordingly, when this appeal came up again for hearing today [16.03.2016], Dr.Ranjani and Dr.Mythili, made appearance before this Court. We examined Dr.A.P.Mythili as Court Witness-1 [C.W.1]. In her evidence she has stated that on 15.07.2009, on receiving a call from the Government Royapettah Hospital, she visited the accused who was then in the Convict Ward. She examined him and found that he was under "severe mental depression". She has further stated that the accused was suffering from a disease known as "major depressive disorder". She gave warning to the hospital staff to have a close vigil on the accused as there was every likelihood of him attempting to commit suicide on account of the above disease. She prescribed drugs for the said disease. Again, she visited him on 21.07.2009 and found that because of the treatment, the degree of depression was reduced considerably. But she advised him to continue the medicines. After discharge, she instructed the accused to continue the drugs. She has very elaborately stated about the effects of the said disease. She has also stated that the said depression would have occurred to him from the date of the accident in which his wife, in whom he had lot of love, died with a child in her womb. To a specific query made by this Court, she has stated that on the date of occurrence, the accused would not have been in a position to know the consequences of his act. The medical records pertaining to the treatment has been marked as Ex.C.1 series containing 53 pages. Though opportunity was afforded, neither the prosecution nor the defence counsel cross-examined the said witness disputing any fact spoken by her.

8 In order to satisfy the fair procedure, as contemplated under section 313 Cr.P.C., we examined the accused in respect of the evidence of C.W.1. The accused did not dispute the facts spoken by the doctor about his mental health. Thereafter, we heard the learned Counsel for the appellant and the learned Additional Public Prosecutor who made extensive and elaborate arguments. We have also gone through the records carefully.

9 From the facts narrated thus far, it is crystal clear that on the date of occurrence, the accused came to the house of P.W.1 with his son/deceased, entered into the room, bolted it from inside. Thereafter, there was no response from inside. P.W.2, through the window, peeped into the room and found that there was total darkness. She could notice the deceased / child alone lying unconscious. Then she cried for help. The police also came and broke open the door and barged into the room. They found the accused with a ligature around

his neck. The other piece of ligature was found in the fan hook, thereby indicating that the ligature had snapped due to the weight of the accused. The child was immediately taken to the nearby hospital, where he was declared dead. The doctor, who conducted the postmortem on the deceased, has opined that the death of the deceased / child, due to poison, cannot be ruled out. But, according to the Forensic expert, there was no poison detected in any of the internal organs of the deceased. From these facts, it has been clearly established by the prosecution that the death of the deceased had been caused only by this accused. Similarly, this accused, in an attempt to commit suicide, hanged himself.

10 Now, the question that arises for our consideration is whether the above act of the accused would amount to any offence warranting punishment for him.

11 Insofar as the death of the child is concerned, the circumstances speak that the death was caused by this accused by administering some kind of poison, though precisely, the nature of the poison could not be detected. It is not every homicide which is made punishable under the Indian Penal Code. It is only a culpable homicide which is punishable. The culpability as defined under section 299 IPC is to be established by the prosecution. The first limb of section 299 IPC speaks of the intention to cause death. The second limb of section 299 IPC speaks of the intention to cause bodily injury, which is likely to cause death and the third limb speaks of the knowledge on the part of the accused that his act is likely to result in the death. In all these three limbs, fundamentally what is required of is that the accused should have had the intention or knowledge which are traceable to the cognitive faculty of the accused. A person, who is of unsound mind, cannot have any intention or knowledge in terms of section 299 IPC. A person with unsound mind, as defined in section 84 IPC, who does not know the consequences of the act that he does, cannot be attributed either with intention or knowledge as is required under section 299 IPC.

12 Similarly, for having made an attempt to commit suicide, what is required of, is mens rea on the part of the accused. Here again, it is essential that the cognitive faculty of the accused should have been stable to know the consequences of the act. If he had attempted to commit suicide, not under the control of the cognitive faculty, then it is not an offence.

13 In this regard, we may refer to section 84 IPC. The introduction of section 84 in the Indian Penal Code has got its own interesting history. In England, the plea of insanity, for the first time, was approved in a "Mc' Naghten case".

Later, it came to be known as "Mc' Naghten Rule". Though the said Mc' Naghten rule brought into several criticisms by various advocates and jurists, the same ruled the criminal jurisprudence of England. When a Bill for the Indian Penal Code was floated, Lord Macaulay wanted to have two different sections to deal with the said subject, "one stating that nothing is an offence which is done by a person in a state of idiocy and the other, stating that nothing is an offence which a person does in consequence of being made or delirious at the time of doing it to deal with insanity". Later, the Commissioners, in replacing these two provisions by section 84 in the Indian Penal Code, have adopted a brief and succinct form of Mc' Naghten. Section 84 uses the term "unsoundness of mind" instead of "insanity". In order to invoke section 84 IPC, it must be proved that at the time of commission of the offence, the accused was suffering from unsoundness of mind and it was of such a degree, making him incapable of knowing the nature of the act and secondly, that the accused was precluded by this unsoundness of mind from understanding that what he was doing, was wrong or contrary to law. Section 84 IPC came to be dealt with very elaborately in DAHYABHAI CHHAGANBHAI THAKKER Vs. STATE OF GUJARAT reported in AIR 1964 SC 1563, wherein the Hon'ble Apex Court, after having considered the scope of section 84 IPC in the light of section 105 of the Evidence Act, has very succinctly held as follows:-

"It is a fundamental principle of criminal jurisprudence that an accused is presumed to be innocent and, therefore, the burden lies on the prosecution to prove the guilt of the accused beyond reasonable doubt. The prosecution, therefore, in a case of homicide shall prove beyond reasonable doubt that the accused caused death with the requisite intention described in s. 299 of the Indian Penal Code. This general burden never shifts and it always rests on the prosecution. But, as s. 84 of the Indian Penal Code provides that nothing is an offence if the accused at the time of doing that act, by reason of unsoundness of mind was incapable of knowing the nature of his act or what he was doing was either wrong or contrary to law. This being an exception, under s. 105 of the Evidence Act the burden of proving the existence of circumstances bringing the case within the said exception lies on the accused; and the court shall presume the absence of such circumstances. Under s. 105 of the Evidence Act, read with the definition of "shall presume" in s. 4 thereof, the court shall regard the absence of such circumstances as proved unless, after considering the matters before it, it believes that said circumstances existed or their existence was so probable that

a prudent man ought, under the circumstances of the particular case, to act upon the supposition that they did exist. To put it in other words, the accused will have to rebut the presumption that such circumstances did not exist, by placing material before the court sufficient to make it consider the existence of the said circumstances so probable that a prudent man would act upon them. The accused has to satisfy the standard of a "prudent man". If the material placed before the court, such as, oral and documentary evidence, presumptions, admissions or even the prosecution evidence, satisfies the test of "prudent man", the accused will have discharged his burden. The evidence so placed may not be sufficient to discharge the burden under s. 105 of the Evidence Act, but it may raise a reasonable doubt in the mind of a judge as regards one or other of the necessary ingredients of the offence itself. It may, for instance, raise a reasonable doubt in the mind of the judge whether the accused had the requisite intention laid down in s. 299 of the Indian Penal Code. If the judge has such reasonable doubt, he has to acquit the accused, for in that event the prosecution will have failed to prove conclusively the guilt of the accused. There is no conflict between the general burden, which is always on the prosecution and which never shifts, and the special burden that rests on the accused to make out his defence of insanity."

14 The Hon'ble Supreme Court, in the above said judgment, has further held as follows:-

"What is said of s. 80 of the Indian Penal Code will equally apply to s. 84 thereof. A Division Bench of the Patna High Court in Kamla Singh v. The State (1) invoked the same principle when the plea of insanity was raised. A Division Bench of the Nagpur High Court in Ramhitram v. State(1) has struck a different note inasmuch as it held that the benefit of doubt which the law gives on the presumption of innocence is available only where the prosecution had not been able to connect the accused with the occurrence and that it had nothing to do with the mental state of the accused. With great respect, we cannot agree with this view. If this view were correct, the court would be helpless and would be legally

bound to convict an accused even though there was genuine and reasonable doubt in its mind that the accused had not the requisite intention when he did the act for which he was charged. This view is also inconsistent with that expressed in Nanavati's case(3). A Scottish case, H.M. Advocate v. Fraser(4), noticed in Glanville Williams' "Criminal Law", The General Part, 2nd Edn., at p. 517, pinpoints the distinction between these two categories of burden of proof. There, a man killed his baby while he was asleep; he was dreaming that he was struggling with a wild beast. The learned author elaborates the problem thus:

"When the Crown proved that the accused had killed his baby what may be called an evidential presumption or presumption of fact arose that the killing was murder. Had no evidence been adduced for the defence the jury could have convicted of murder, and their verdict would have been upheld on appeal. The burden of adducing evidence of the delusion therefore lay on the accused. Suppose that, when all the evidence was in, the jury did not know what to make of the matter. They might suspect the accused to be inventing a tale to cover his guilt, and yet not be reasonably certain about it. In that event the accused would be entitled to an acquittal. The prosecution must prove beyond reasonable doubt not only the actus reus but the mens rea."

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 s. 84 of the (1)A.I.R. 1955 Pat. 209. (2) A.I.R. 1956 Nag. 187. (3)[1962] Supp. 1 S.C.R. 567. (4) (1878) 4 Couper 70."

15 Applying the above broadly stated principle to the facts of the case on hand, now, we have to examine as to what was the mental state of the accused at the time of the

occurrence. P.W.1, the father-in-law of the accused, during cross-examination, has stated in clear terms that from the date of the accident in which the wife of the accused was killed, the accused was highly depressed and he was not in his normal sense. C.W.1 [Dr.Mythili] has even recorded in Ex.C.1 that on the date of examination, he was under "severe depression". She had recommended a strict vigil on the accused as he was likely to attempt to commit suicide. She has recorded the history of the patient to diagnose the nature of the disease. The accused has stated to her that in October 2008, there was an accident, in which his wife died and he and his son sustained injuries including fractures and from that day onwards, he would have been under "severe mental depression". This is what has been positively stated by P.W.1 in his evidence. The doctor [C.W.1] has further stated that there were no family members near the accused in the hospital when he was undergoing treatment. The doctor has further stated that the said depression in medical terms is known as "Major depressive disorder". She has also stated that if not treated or attended or if there is no family support/social support, the patient would undergo any type of risk, such as suicidal attempt or homicidal attack. She has further stated that the accused was also frustrated and depressed. She has further added that if the said frustration turns inward, then the patient would attempt to commit suicide and if the frustration turns outward, he would try to attack others and cause death.

16 To make our understanding more precise, let us now extract few questions posed by this Court to C.W.1 and her answers:-

"Q:-Could you say as to what was the cause for the depression?"

A:-We call this depression as mood disorder-major depressive disorder. If not treated or attended or family support/social support is not given, the patient could have undergone any type of risk, such as, suicidal attempt or homicidal attack. The patient was also frustrated and depressed. If frustration turns inward, then he would try to commit suicide and if frustration turns outward, he would try to attack others and cause death.

Q:-In the case of Stephen, whether his killing his son by administering sleeping pills and attempting to commit suicide could be attributed to the depression?

A:-Certainly. Stephen could have killed his son and attempted to commit suicide, because of the mental disorder called major depressive disorder.

Q:-Whether a person with this kind of depression and disorder would know about the consequences of his act?

A:-A person with this kind of major depressive disorder would not know about the consequences of his act at that moment. In other words, when he is acting out of depression we can say that it is not intentional [impulsive]. Since, the patient Stephen, had acted out of the above mental disorder, namely, major depressive disorder, I can certainly say that he would not consciously intended to kill his son and to make an attempt to commit suicide. Certainly, it was due to the above illness and at that moment, he would not have known the consequences of his act.

Q:-Have you brought the treatment records pertaining to the patient Stephen?

A:-I have brought the treatment records pertaining to the patient Stephen maintained by the Government Royapettah Hospital, Chennai, which contains my prescription and diagnosis and the same is marked as Ex.C.1 [series] containing 53 pages."

17 From these explanatory and explicit answers and opinion given by C.W.1, it is crystal clear that the cognitive faculty of the accused was not under his control and he was not conscious of the consequences of his act. Thus, from the medical evidence, it has been clearly established that the accused was suffering from unsoundness of mind at the time of occurrence in terms of section 84 IPC and therefore, the act of the accused in causing death of his son/the deceased as well as in attempting to commit suicide, would not make out any offence, either under section 302 IPC or under section 309 IPC. Thus, we hold that the accused is entitled for acquittal. As has been stated by C.W.1, after treatment, he has become mentally sound. Thus, when he was put up for trial, he was of sound mind and so, the trial of the accused was in accordance with law. Thus, we are inclined to acquit the appellant/accused.

18 In the result, the criminal appeal is allowed and the conviction and sentence imposed on the appellant [Stephen] for the offences under section 302 and 309 IPC by the Trial Court in SC.No.348/2009 dated 24.06.2010 are hereby set aside and the appellant is acquitted of all the charges levelled

against him. Bail bonds, if any, shall stand terminated. Fine amount, if any paid by the appellant, shall be refunded to him.

Sd/-
Assistant Registrar(CO)

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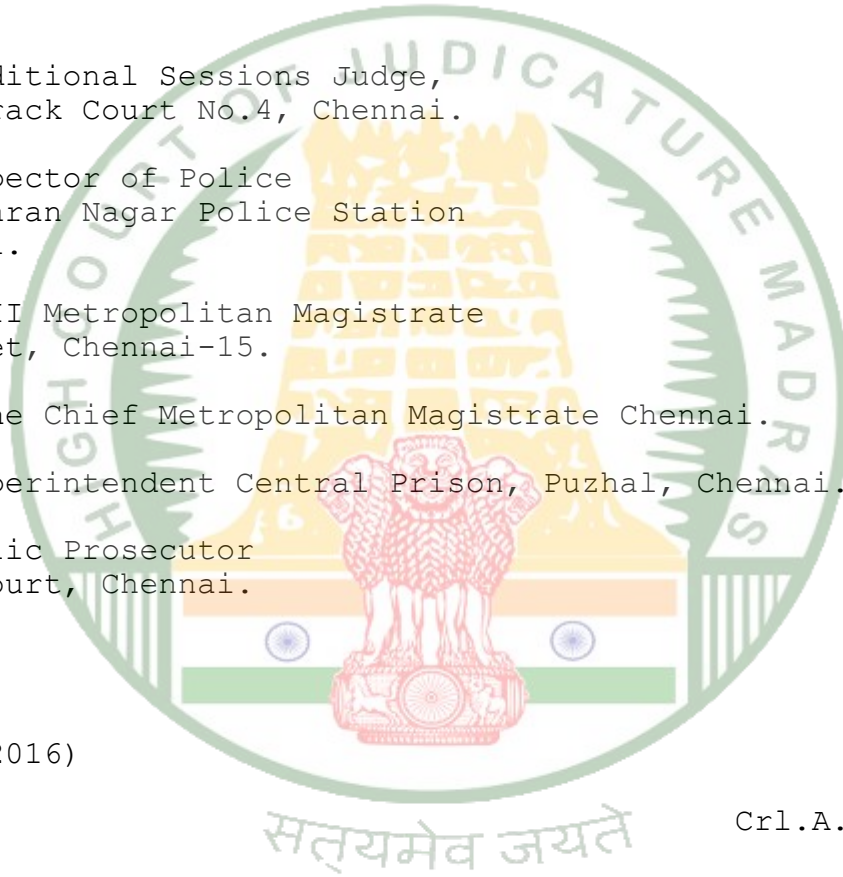
Sub Assistant Registrar

AP

To

- 1.The Additional Sessions Judge,
Fast Track Court No.4, Chennai.
- 2.The Inspector of Police
R6 Kumaran Nagar Police Station
chennai.
- 3.The XXIII Metropolitan Magistrate
Saidapet, Chennai-15.
4. Thro'The Chief Metropolitan Magistrate Chennai.
5. The Superintendent Central Prison, Puzhal, Chennai.
- 6.The Public Prosecutor
High Court, Chennai.

PPA(CO)
EU(05/04/2016)



Cr1.A.No.106/2012

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