BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.09.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

AND

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CRL.A.(MD).No.209 of 2016

Kali @ Kalidoss @ Kalirajan ... Appellant/Sole Accused

Vs.

The State rep by its,
The Inspector of Police,
Kezhavalavu Police Station,
Keezhavalavu,
Madurai District,
Crime No.196 of 2011 ... Respondent/Complainant

PRAYER: Appeal filed under Section 374 (2) Cr.P.C. to call for the records and set aside the order of conviction and sentence passed in S.C.No.282 of 2013, dated 11.01.2016 on the file of the VI Additional District and Sessions Judge, Madurai, and allow this appeal and acquit the appellant/accused from the charges levelled against him.

For Appellant : Mr.R.Boomirajan

For Respondent : Mr.K.S.Duraipandian
Additional Public Prosecutor

Judgment Reserved on	31.08.2017
Judgment Pronounced on	04/09/17

JUDGMENT

(Judgment of the Court was delivered by **N.SATHISH KUMAR,J.**)

Aggrieved over the judgment of the VI Additional District and Sessions Judge, Madurai, dated 11.01.2016, in S.C.No.282 of 2013, the present appeal has been filed. The Trial Court convicted the appellant/accused for the offences punishable under Sections 302 and 341 IPC and sentenced to undergo life imprisonment and imposed fine of Rs.1,000/-, in default, 6 months simple Imprisonment for the offence under Section 302 IPC and imposed fine of Rs.300/-, in default, 2 months Simple Imprisonment for the offence under Section 341 IPC.

2. The brief case of the prosecution is as follows:-

The accused and the deceased are the resident of Keezhavalavu village at Melur. PW1 is the wife of the deceased and PW4 is the son of PW1 and the deceased. Two days prior to 20.12.2011, the accused cattle grazed the deceased paddy, which was objected by the deceased. Agitated over the same, on 20.12.2011, while the deceased was in his field, the accused hit the deceased on his chest and face repeatedly with MO1/Axe. PW1/wife of the deceased, PW2 and PW3 were eye witnesses to the occurrence. The deceased succumbed to injuries.

ii) PW1 and PW4 immediately rushed to the police station and gave a First Information Report/Ex.P1. PW14, who was the Special Sub Inspector of Police at the relevant time, received Ex.P1 and registered a crime in Crime No.196 of 2011 under Sections 241 and 302 IPC and forwarded the First Information Report to PW13, Head Constable and handed over the case to Inspector of Police PW16.

iii) PW16/The Inspector of Police took up the case for investigation and went to the place of occurrence and prepared observation mahazar/Ex.P14 in the presence of PW7 and PW8 and also drawn rough sketch/Ex.P15 and conducted inquest over the dead body in the presence of Panchayatdars and prepared inquest report/Ex.P16 and gave a requisition to the medical officer to conduct autopsy. He also seized blood stained earth and ordinary earth MO6 and MO7 respectively under Ex.P17 mahazar and examined the witnesses and recorded their statement.

iv) PW12 the Medical Officer attached to the Melur Government Hospital conducted autopsy over the dead body of the deceased and found the following injuries:

> "Moderately nourished body of a male with fingers and toe nails appears to be pale in colour.(1) Lacerated over right side face (10x3 cm x deep) extending to right sided eye ball to right sided mandible. (2) Lacerated wound left sided neck extending upto left clavicle 10 x 2 x deep. Fracture left clavicle 2 x 1 cm. (3) Lacerated wound over the abdomen 13 x 2 x deep. (4) Lacerated wound left thigh 3 x 3 x 1 cm.
>
> O/E:Skull fracture. Frontal bone present 3 x2x1 cm. Haematoma present frontal lobe 3 x 2 cm. Hyoid normal. Pelvis, pericardium normal, heart right fluid left empty. Stomach – 150ml of partially cooked food particles present. No specific smell.(NC) 15 ml of bite stained fluid present."

and issued Ex.P9 postmortem certificate stating that the deceased died due to multiple injuries 4 – 6 hrs prior to autopsy.

v) PW15/Scientific Officer in the Forensic Science department examined the material objects and issued Ex.P12/Chemical Report

and Ex.13/Serologist Report. PW16 in continuation of the investigation recorded the statement of witnesses and on 21.12.2012 at about 9 a.m. arrested the accused in the presence of witnesses and sent the accused to the judicial custody and also recorded the confession and the admissible portion of the confession of the accused is Ex.P7 and seized MO1 under Ex.P8 mahazar and finally laid charge sheet as against the accused for offences as stated earlier.

3. When the above incriminating materials were put to the accused under Section 313 Cr.P.C. on his side insanity was pleaded. During trial, on the side of prosecution as many as 16 witnesses were examined and 18 documents were exhibited besides 7 material objects.

4.On the side of the defence, DW1 and DW2 were examined and two documents were marked. Ex.C1 and Ex.C2 were marked as Court documents. It is the evidence of DW1/Doctor attached to the Prison that when the accused was remanded on 21.12.2011, he was seen with abnormal behaviour and referred to Government Rajiji Hospital, Mdurai for psychiatric treatment. As per the order of the learned Judicial Magistrate, the accused was treated in the hospital from 05.01.2012 to 13.01.2012. Since the feature of schizophrenia has found out by the medical officers, the accused was referred to the Mental Health Hospital, Chennai. As per the orders of the Judicial Magistrate, dated 18.01.2012, the accused was referred to Mental Health Hospital, Chennai for treatment. Accordingly, he was treated there from 27.01.2012 to 17.05.2012. Thereafter, also he was given treatment regularly.

5. DW2 is the father of the accused. According to him since the accused was affected mentally, he could not continue his education and he discontinued VII standard from the year 2005. The accused was treated for mental illness at the Rajaji Government Hospital, Madurai and he was regularly given treatment for mental problem. Even at the time of occurrence, he was not in normal condition and he was in some treatment and he was arrested only from the house. It is his further evidence that the accused another sister also sufferred serious mental illness at the age of 13 and subsequently she died. Immediately the accused another sister also suffered similar mental problem. According to DW2, the family has the history of mental illness.

6. Having considered the above materials, the trial Court held that the accused failed to establish the fact that at the time of alleged occurrence he suffered insanity and found the accused guilty as detailed in the first paragraph of this judgment and accordingly, punished him and that is how the appellant is before this Court with the appeal.

7. Heard the learned Counsel for the appellant and the learned Additional Public Prosecutor for the State and also carefully perused the records.

8. The learned counsel appearing for the appellant submitted that the accused is suffering from schizophrenia from long back and there is evidence and also records to show that even in the year 2005, he was treated for such ailment. The so called eyewitnesses relied upon by the prosecution also clearly established the fact that the accused was suffering from insanity and not capable of understanding the nature of happenings. The Trial Court has not considered these aspects and simply placed the burden on the accused to show that he was suffering from insanity on the date of occurrence. It is the further contention of the appellant that when the accused was arrested and remanded to the judicial custody, in the jail it was found that he was suffering from serious abnormality and therefore he was referred to Rajaji Government Hospital, Madurai. Thereafter, as per the orders of the Judicial Magistrate, he was treated and doctors found that he was suffering from feature of schizophrenia. Thereafter he was referred to the Mental Health Hospital at Chennai and taking treatment there as inpatient. This aspect has been clearly established not only by the oral evidence of DW1, but also by the documentary evidence, Ex.C1 and Ex.C2. However, the Trial Court has not taken into consideration these facts. It is the further contention of the learned counsel that the prosecution side evidence clearly shows that the accused was infact taken from his house and at that time itself he did not show a symptom of normal human being. That being the position, the Trial Court has failed to appreciate the evidence on record properly. Hence submitted that the accused act clearly falls within the exception of Section 84 of Indian Penal Code. Hence, the appellant has certainly entitled to the benefit of doubt.

9. The learned Additional Public Prosecutor submitted that though the accused found with some abnormality and he was treated for schizophrenia, there was no evidence on record to show that on the date of occurrence, the accused was suffering from such ailment. The trial Court taking into consideration of the fact that since the accused has failed to prove the same, the benefit has not been extended to the accused. Hence, it is the contention of the learned Additional Public Prosecutor as the accused has not discharged his burden establishing the fact of insanity, the Trial Court has rightly concluded that the accused not entitled to the benefit of Section 84 of IPC.

10. In the light of the above submissions, now it has to be analysed that whether the prosecution has proved the guilt of the accused beyond all reasonable doubt and whether the accused is entitled to benefit under Section 84 of the Indian Penal Code.

11. PW1 is the wife of the deceased. In her evidence he has stated that two days prior to the occurrence, the accused in view of some previous quarrel with her husband and himself over the grazing of cattle in the field of the deceased, the accused by

using MO1/axe cut her husband indiscriminately over the neck and face and other parts of the body. PW2 and PW3 are also in their evidence clearly spoken about only the accused who cut the deceased at the relevant point of time. PW4, who is the son of the deceased, also spoken about lodging of the complaint with PW1. Eyewitness evidence clearly proves the fact that only the accused had caused indiscriminate cut on the deceased over the trivial issue. Postmortem certificate and the Medical Officer evidence also clearly established the fact that the deceased died due to homicidal violence and all the injuries also possible by using of MO1. From the above facts placed by the prosecution, there cannot be any doubt to hold that it is only the accused who caused the death of the deceased at the relevant time. It is the main contention of the accused that he was not a sane and he was not capable of knowing the act that what was he doing either wrong or contrary to law. It is well settled that to get the protection of Section 84 of IPC, the burden always lies on the accused to establish insanity not only medically but also legally. It must be established that at the time of commission of the act, the accused was labouring under such defect of reason from a disease of mind and that he has not known the nature and quality of the act he was doing or if he did that he did not know what was wrong. The crucial time for deciding the availability of the benefit under Section 84 of IPC is a time when an offence was committed and nature of crime. It is also now well settled that the doctrine of burden of proof in the context of the plea of insanity may be stated in the following preposition:

> (1)The prosecution must prove beyond reasonable doubt that the accused had committed the offence with the requisite mens rea and the burden of proving that always rests on the prosecution from the beginning to the end of the trial.
>
> (2) There is a rebuttable presumption that the accused was not insane, when he committed the crime, in the sense laid down by Section 84 of the 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."

12. From the above proposition, it is well settled that the nature of burden of proof on the accused to prove insanity is no

longer higher than that rests upon a party to civil proceedings. The accused could discharge his burden by showing preponderance of probabilities was in his favour. Onus on the part of the accused can be discharged by producing 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. Behaviour antecedents and subsequent event of the accused may be relevant in finding mental condition at the time of event, but not those remote in time. In the light of the above well settled preposition with regard to the plea of insanity and its proof and burden and discharge, when the evidence of prosecution in this case when carefully analysed the prosecution has projected as if the entire occurrence has taken place in a normal condition and the accused was a normal man at the relevant point of time. Though eye witnesses PW1 to PW3 in their chief examination stated that it is only the accused cut the deceased with MO1, when specific suggestion put to PW1 with regard to the mental condition of the accused, PW1 has showed ignorance about the family history of mental illness. PW2, the other eye witness, who is also the native of the same village, in her evidence when carefully scanned, she has admitted that many members in the accused family were suffering from mental disorder and accused sister committed suicide due to such mental disorder. Similarly another sister of the accused is also having similar problem. Likewise PW2 in the cross examination has categorically admitted that the accused in this case is also not alright and suffering from mental disorder and he did not know what was doing and she was also aware that the accused was treated for mental problem and she has also admitted that on the date of occurrence also the accused infact was not alright and suffering from mental disorder. It is the specific evidence of PW2 that on the date of occurrence, the accused did not have any semblance of feeling as to what was doing at the relevant point of time and even after occurrence, he was in the same position in his house from where the police took him to the custody about 12 Noon. Even when police taking the custody of the accused, the accused was in such condition that he has not even expressed his feelings as an ordinary man. The entire evidence of PW2 in the cross examination clearly shows that the accused was infact not mentally alright and he was not capable of understanding what was the act he was doing at the relevant point of time. Besides the accused family also had a similar history of mental disorder and insanity issues.

13. PW3 another eyewitness has not spoken about the mental condition of the accused. In her cross examination she clearly says that the accused was infact taken to custody from his house on the same day. The evidence of all eyewitnesses in fact clearly falsified the story of the prosecution that the accused was arrested at later point of time and in pursuance to the same, confession was recorded and MO1 was seized. The investigation with regard to the arrest and recovery is highly doubtful in view of

the positive evidence of all the eyewitnesses that the accused was infact taken from his house immediately after the occurrence. PW4 is the son of the deceased. He has stated in his evidence as if one week prior to the date of occurrence there was a quarrel between the deceased and the accused over the grazing of the cattle. This is totally contrary with the prosecution case about the motive, whereas PW1 alleged that two days prior to the occurrence there were a quarrel between the deceased and the accused over the grazing of the cattle which is totally contrary to the evidence of PW4. Therefore the motive aspect putforth by the prosecution is highly doubtful. In the light of the evidence of PW2 about the mental condition of the accused with other evidence by the prosecution carefully perused, the Investigation Officer evidence assumes significance in this regard. In his evidence, during cross examination he has categorically admitted that while remanding the accused, due to unsound mind he was referred to Rajaji Government Hospital and the doctors also opined that he was suffering from schizophrenia. Despite schizophrenia he could be kept in jail. Therefore, he was kept in the jail. Thereafter referred to the Mental Health Hospital, Chennai. Therefore, it is to noted that PW16 during investigation came to know about the fact that accused was not mentally alright and was taking treatment. However, the parents did not give treatment particulars. From the evidence of PW16 one thing is very clear that on the date of remand itself the accused was not alright and he was referred to Rajaji Government Hospital and the doctor found he was suffering from schizophrenia. The above document is conveniently burked by the prosecution for the reasons best known to them. The treatment given for the accused at the time of remand is also not placed by the prosecution.

14. Be that as it may, when the evidence of DW1 when carefully seen, who is none other than the doctor working in the prison. According to him, the accused was lodged in the prison as under trial prisoner on 21.12.2011 and on the same day he was found with abnormal behaviour and he was referred to the Rajaji Government Hospital, Madurai and as per the orders of the learned Judicial Magistrate, he was treated as inpatient in the Rajaji Government Hospital, from 05.01.2012 to 13.01.2012 for observation purpose and the doctors found that the accused has features of schizophrenia. Thereafter the accused was referred to the Mental Health hospital, Chennai and he was admitted and taking treatment from 27.01.2012 to 17.05.2012 as inpatient in the Mental Health Hospital, Chennai. Even now the accused has been given treatment in Hospital. The father of the accused DW2 also in his evidence stated that even from the year 2005, the accused was given treatment. Ex.C1 and Ex.C2 marked as Court documents. Immediately after remand, the Department of Pshychartic, Government Rajaji Hospital, Madurai after observing him more than a week found that the accused had features of schizophrenia, a major type of mental illness. At the time of observation it was found by the doctors

that he had an attention impairment, difficulty in comprehending complex comman, irrelevant talk, loosening of association, abnormal thinking, blunted inappropriate mood, impaired abstract thinking and impairment in judgmental capacity.

15.The above finding of the Psychiatric clearly shows that infact the accused had unsound mind and was not capable of knowing neither of the act nor what was he doing either right or contrary to law. The doctors also opined that details of history of current and past of the accused could not be obtained. There was no reliable information available with him. It is to be noted that according to the prosecution he was arrested on the next day i.e. 21.11.2011 whereas the eyewitness version clearly show that on the date of occurrence, the accused was taken into custody from his house and one of the eyewitnesses version also shows that infact the accused was in his house in a senseless manner and taken to the police station. He was remanded to the custody on 21.12.2011 the next day of the alleged occurrence. At the time of remand itself the Judicial Magistrate as per the evidence of PW16 directed the accused to be examined medically and as per the evidence of DW1, he was also found abnormal behaviour. Therefore he was referred to the medical officer, Psychiatric, Rajaji Hospital Madurai. Ex.C1 clearly show that infact, the accused has a feature of schizophrenia a type of major mental illness and there is also evidence to show that he was in continuous treatment in the Mental Health Hospital Chennai. On the discharge certificate issued by the Institute of Mental Health Hospital at Chennai, also shows that the accused was admitted in the Mental Health Hospital as inpatient on 27.01.2012 and taking treatment till 30.04.2012 and he has also been given treatment in the Madurai Rajaji Government Hospital. He was sent to the prison for further treatment on 30.11.2012. These facts also clearly shows that the accused was in fact, treated in the hospital for unsound mind and schizophrenia. The eyewitnesses evidence and DW2 evidence also clearly indicate that the accused was infact suffered from unsound mind even prior to the occurrence. The father of the accused evidence shows that even in the year 2005, he was given such treatment. It is further to be noted that on the date of occurrence also as per the evidence of PW2, the accused simply went to the residence after the incident and sat senselessly and taken to police station. Though the Investigation Officer has alleged that he was arrested on the next day, eye witnesses infact falsify the statement of the inspector as to the arrest and confession subsequent had. At any event on the date of remand 21.11.2011 he was found with abnormal behaviour and the doctor, psychiatric department of Rajaji Government Hospital observed the accused and found that he has feature of schizophrenia. Therefore, it is strange to contend that the accused was not having any schizophrenia at the time of occurrence on 20.11.2001. It is to be noted that schizophrenia cannot be developed in a single day to contend that on the date of occurrence, the accused was alright.

It is useful to extract the definition of Schizophrenia given in Medical Jurisprudence and Toxicology hereunder:

> "Schizophrenia: Kraepelin, in 1896, named this disease as 'dementia praecox'. In 1911, Eugen Bleuler introudced the term 'schizophrenia' which literally means disintegration of mind. The term dementia praecox was changed because it implied that the disease always ended in dementia, which it did not. The term praecox meant that the disease developed at the time of puberty or adolescence, but in may cases developed outside that period. Since it was thought that the disease always ended in dementia, it meant a hopeless prognosis, which created a spirit of defeatism in the minds of people."

From the above it is clear that impariment cannot be developed in a day or one, in fact it has completed to such a stage after various stages.

16 It is also useful to extract the definition of Paranoid Schizophrenia, Paranoia and Paraphrenia given in Medical Jurisprudence and Toxicology by Justice K.Kannan in page No.898 hereunder:

> "Paranoia is now regarded as a mild form of paranoid schizophrenia. It occurs more in males than females. The main characteristic of his illness is a well-elaborated delusional system in a personality that is otherwise well preserved. The delusions are of a persecutory type. The true nature of the illness may go unrecognised for a long time because the personality is well preserved, and some of these paranoiacs may pass off as social reformers or founders of queer pseudo-religious sects. The classical picture is rare and generally takes a chronic course.
>
> Paranoid schizophrenia, in the vast majority of case, starts in the fourth decade and develops insidiously. Suspiciousness is the characteristic symptom of the early stages. Ideas of reference occur, which gradually develop into delusions of persecution. Auditory hallucinations follow which in the beginning, start as sounds or noises in the ears, but later change into abuses or insults. Delusions are at first indefinite, but gradually they become fixed and definite, to lead the patient to believe that he is persecuted by some unknown person or some superhuman agency. He believes that his food is being poisoned, some noxious gases are blown into his room, and people are plotting against him to ruin him. Disturbances of general sensation give rise to hallucinations, which are attributed to the effects of hypnotism, electricity, wireless telegraphy or atomic agencies. The patient gets very irritated and excited owning to these painful and disagreeable hallucinations and delusions.
>
> Since so many people are against him and re interested in his ruin, he comes to believe that he must be a very

important man. The nature of delusions thus, may change from persecutory to the grandiose type. He entertains delusions of grandeur, power and wealth, and generally conducts himself in a haughty and overbearing manner. The patient usually retains his money and orientation and does not show signs of insanity, until the conversation is directed to the particular type of delusion from which he is suffering. When delusions affect his behaviour, he is often a source of danger to himself and to others.

The name paraphrenia has been given to those suffering from paranoid psychosis who, in spite of various hallucinations and more or less systematised delusions, retain their personality in a relatively intact-state. Generally, paraphrenia beings later in life that the other paranoid psychosis."

From the above also it can be easily held that schizophrenia is a chronic and severe and it is not possible to presume that schizophrenia is only occur in a lucid intervals. Therefore, the contention of the prosecution in this case that the accused has not discharged his burden cannot be countenanced for the simple reason that the accused behaviour on the date of occurrence, at the time of occurrence, on the date of remand and thereafter his continuous treatment in the hospital would establish the fact that the accused infact was unsound mind at the relevant point of time. Once the evidence adduced on the side of accused clearly probabilise the case, this Court has to necessarily to hold that to claim benefit under Section 84 IPC, the accused has discharged his burden. Then the burden shift on the prosecution to show that the accused did not have any such mental disorder on the date of occurrence. The prosecution for the reasons best known to them not adduced any evidence on their side by not even examining the medical officer who treated the accused for mental disorder. At any event the evidence adduced on the side of the accused and the particulars available on the prosecution side clinchingly establish the fact that infact the accused was an insane person at the relevant time and he was not capable of understanding the nature of thing. Therefore his case squarely comes under the exception 84 of IPC. Hence, we have no other option to hold that the accused is certainly entitled to the benefit of doubt.

17. In the result, the appeal is allowed and the conviction and sentence imposed by the learned VI Additional District and Sessions Judge, Madurai, against the appellant in S.C.No.282 of 2013, dated 11.01.2016 are set aside. Fine amount if any paid by the appellant shall be refunded.

18. Now it appears that the appellant after taking treatment in the Mental Health Hospital, Chennai, again lodged into the prison. To satisfy ourselves we also directed the Prison Medical Officer to examine the appellant to give a status report whether

the appellant has completely recovered from the mental disorder and whether he can be set at liberty. The Medical Officer opined that from 27.06.2012, the patient conscious, sleep adequate and no delusion and Hallucination. In view of the same, the jail authorities are directed to set the appellant at liberty forthwith, if he is not required in connection with any other case or proceedings and the parents of the appellant shall monitor and take care of him and not to allow him to cause any injury to 3rd parties.

Sd/-
Assistant Registrar(Writs)

/True Copy/

Sub Assistant Registrar

To

1.The Judicial Magistrate,
Madurai.
2.The Chief Judicial Magistrate,
Madurai.

3.The VI Additional District and Sessions Judge,
Madurai.
4.The Director General of Police,
Mylapore.

5.The District Collector,
Madurai.

6.The Inspector of Police,
Kezhavalavu Police Station,
Keezhavalavu,
Madurai District.

7.The Superintendent,
Central prison,
Madurai.

8.The prison Medical officer, Central prison,
Madurai.

9.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Judgement made in
CRL.A.(MD).No.209 of 2016
04.09.2017

jikr
SDS/SKN:RSK/SAR 2/04.09.2017/11P/10C