BEFORE THE MADURAI BENCH OF THE MADRAS HIGH COURT

Reserved on : 13.11.2017
Pronounced on : 13.12.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Criminal Appeal (MD) No.317 of 2016

Paneerselvam .. Appellant/Sole Accused

Versus

State represented by
The Inspector of Police,
Chinnamanoor Police Station,
Theni District. .. Respondent/Complainant

Appeal filed under Section 374 of Code of Criminal Procedure against the Judgment dated 24.09.2007 passed in S.C. No. 87 of 2006 on the file of Additional District and Sessions Judge, Fast Track Court No.4, Periyakulam.

For Appellant : Ms.C.Jaya Indra Patel
For Respondent : Mr.C.Ramesh
Additional Public Prosecutor

JUDGMENT

R. SUBBIAH, J

The appellant herein was the sole accused in S.C. No. 87 of 2006 on the file of the Additional District and Sessions Judge, Fast Track Court No.4, Periyakulam. The appellant stood charged for the offence punishable under Section 302 (two Counts) read with Section 307 of IPC. By Judgment dated 24.09.2007 passed in S.C. No. 87 of 2006, the appellant was found guilty of the charges. As regards, sentence, the appellant was sentenced to undergo imprisonment for life for the offence under Section 302 (two counts) with fine of Rs.10,000/- failing which to undergo rigorous imprisonment of one year. The trial Court also sentenced the accused/appellant to undergo rigorous imprisonment for a period of seven years for the offence under Section 307 of IPC together with fine of Rs.5,000/- failing which to undergo rigorous imprisonment for a period of six months. However, the appellant was ordered to undergo the sentences for the aforesaid offence concurrently.

2. The deceased in this case was Indira (hereinafter referred to as D-1) and Veera Chinnu @ Pushpam (hereinafter referred to as D-2). D-1 is the wife of PW1. The case of the prosecution is that on 01.07.2005 at 5.30 am, near a public tap in Erasakkanayakkanur Village within the Police limit of Chinnamanoor, D-1 was fetching water. At that time, PW1 was standing near his house. The accused came there with a wooden log and starred at one Amsamary, Wife of Antony (PW2) who came to the public tap to fetch water. Apprehending danger, PW2 went inside her house. Thereafter, the accused came near D-1. When D-1 questioned the accused as to why he starred at Amsamary, he attacked D-1 with the wooden log on her head and face indiscriminately and she fell down. The deceased then ran towards Northern side. One Durai Raj Naidu and his son Gopal (PW3) have also witnessed the occurrence. On seeing the occurrence, PW1 rushed towards his wife/D-1 by raising an alarm and on hearing the same, one Jeyamani and Murugan came to the scene of occurrence. Thereafter, PW1 and others started chasing the accused by shouting to catch him. On hearing the same, Veera Chinnu @ Pushpam (D-2) a resident of Valluvar Street waylaid the accused. At that time, the accused gave a blow on the head and other vital parts of the body of D-2 with the very same wooden log. Unable to sustain those blows, D-2 fell down. When the accused was waylaid by one Selvam (PW6), Son of Paramasivam, he was also assaulted by the accused with the wooden log on the back side of his head and he sustained injuries. Thereafter, the accused ran away with the wooden log and he was chased by the Villagers. At that point of time, PW1 stopped chasing the accused and returned to his home at 6.00 am and saw that his wife (D-1) died due to the injuries sustained by her. Similarly, PW1 also learnt that Veera Chinnu @ Pushpam (D-2) also died due to the injuries caused by the accused. In connection with this incident, PW1 has given a complaint at 7.30 am and on receipt of the same, PW13, Women Sub-Inspector of Police attached to Chinnamanoor Police Station, registered a a case in Crime No. 186 of 2005 against the accused for the offences punishable under Section 302 and 307 of IPC. The copies of the first information report, Ex.P18 was sent to higher officials.

3. On receipt of Ex.P18, PW16, Inspector of Police reached the scene of occurrence at 9.00 am where D-1 was lying dead. PW16 prepared a observation mahazar attested by Mr. Rajasekara Pandian, Village Administrative Officer (PW8) and Mr. Paraman. He also drew a rough sketch on the spot. He also recovered sample soil and blood stained soil at the scene of occurrence. Thereafter, at about 9.30 am he proceeded to the occurrence spot where D-2 was lying dead and in the presence of the same witnesses, he prepared observation mahazar and rough sketch. PW16 also conducted inquest over the dead bodies between 10.00 am and 12.00 Noon in the presence of Panchayatars and prepared inquest reports. The inquest reports were marked as Ex.P31 and P32 respectively. Thereafter, he arranged to send the dead bodies for postmortem and accordingly, he gave requisition letters under Exs. P7 and P8 addressed to the Medical Officer, Uthamapalayam Government Hospital and sent the dead bodies

through Head Constable, PW15 for postmortem PW16 also recorded the statement of Gopal, Angamuthu and Jeyamani. At about 3.15 pm on that day, PW16 went to the spot where Selvam, PW5 was assaulted by the accused and conducted an enquiry. PW16 also recorded the statement of Rajasekara Pandian (PW8), and Selvam (PW6) and Paraman and also drew a rough sketch there. When PW16 returned to the Police Station, the accused was handed over to the Police Station by Thangamuthu (PW4), Gopal (PW3) and one Jayamani. PW16 thereafter arranged to send the accused to remand and also recovered the blood stained wooden log under Form No.95. PW16 thereafter remanded the accused to judicial custody.

4. During the course of investigation, PW16 received Ex.P5, Postmortem report of D-1 and Ex.P6, Postmortem report of D-2. In Ex.P5, Postmortem report, it was stated as under:-

> "External : Body of female lies on back. Both eyes closed. Tongue within the oval cavity. Both hands clenched and flexed at the ebbow. Both legs extended. Clotted blood stains seen over the head, face, nose and mouth. Fluid blood seen oozing from the right ear,mouth and both nostrils.
>
> Injuries:-
>
> 1. A lacerated wound 8 cm X 5 cm X bone deep on the right scalp
>
> 2. A lacerated wound 3 X 1 X 1 cm on the middle of nose
>
> 3. A lacerated wound 4 X 1 X 1 cm on the left side of mandible
>
> Internal:
>
> On opening the scalp, about 150 gms of clotted blood seen inside the right scalp. Right parietal and right temporal bones fractured vertically and depressed size 8 X 3 X 3 cm corresponding to injury No.1
>
> On Opening the skull:
>
> Brain coverings severely congested. Brain substances severely congested. About 100 ml of fluid blood seen inside the cranial cavity. Hyoid bone intact. Both lungs collapsed and pale. Heart all chambers empty. Liver spleen and kidneys pale. Stomach, intestines empty. Bladder empty. Uterus empty.
>
> Postmortem concluded at 4.30 pm on 01.07.2005
>
> Opinion as to cause of death:
>
> The deceased would appear to have died due to shock and haemmorrhage due to head injury sustained.
>
> Death would have occurred 10-12- hours prior to autopsy.

5. Similarly, in Ex.P6, Postmortem Certificate relating to D-2, it was stated as follows:-

> "External : Body of female lies on back. Both eyes closed. Tongue within the oval cavity. Blood stains clotted linear seen over the face, nose, mouth and left

ear. Both arms close to the body. Both legs extended.

Injuries:-

1. A lacerated wound 6 cm X 4 cm X bone deep on the left side of scalp below the left ear

2. A lacerated wound 2 X 1 X 1 cm on the left ear upper end

3. A lacerated wound 3 X 1 X 1 cm on the left side of nose

Internal:

On opening the scalp, about 100 gms of clotted blood seen inside the scalp. Left temporal bone fractured vertically 5 X 1 X 1 cm. On opening the skull, brain coverings severely congested. Brain substances severely congested. About 200 ml of fluid blood seen inside the cranial cavity. Hyoid bone intact. Both lungs collapsed and pale. Heart – all chambers filled with fluid blood. Liver, spleen and kidneys pale. Stomach intestines – empty. Bladder empty. Uterus – empty.

Postmortem concluded at 5.40 pm on 01.07.2005

Opinion as to cause of death:

The deceased would appear to have died due to shock and haemmorrhage due to head injury sustained.

Death would have occurred 11-13- hours prior to autopsy."

6. During the course of investigation, PW16, on receipt of the personal belongings of D-1 and D-2, from Head Constable Dharmaraj prepared form No.95 and sent it to the Court. On 02.07.2005, PW16 recorded the statement of Dharmaraj, Head Constable (PW10); Veera Samy, Head Constable (PW15), Paraman, Balraj Nadar, Steephen, Pandi and Vijaya. On 04.07.2005, PW16 recorded the statement of Dr. Karunagaran (PW7) as well as the statement of Tamilarasan and Aadhimoolam. On 18.10.2005, PW16 recorded the statement of Dr. Gopalakrishnan (PW14). On 20.10.2005, he recorded the statement of Dr. Chellapandi (PW11) and Dr. Ramanujam (PW12). On 21.10.2010, he recorded the statement of Women Sub-Inspector of Police (PW13), who registered the first information report. After completing all the formalities, PW16 filed the charge sheet as against the accused on 21.10.2005 for the offences punishable under Section 302 and 307 of IPC.

7. In order to prove the guilt against the accused, during the course of trial, prosecution has marked as many as 33 documents as Exs. P1 to P33, examined 16 witnesses as Pws 1 to 16 and 21 material objects. When the accused was questioned under Section 313 of the Code of Criminal Procedure with respect to the incriminating materials made available against him, he pleaded not guilty. However, the accused did not examine any witness or marked document

on his side. The trial Court, upon perusal of the oral and documentary evidence produced on behalf of the prosecution, has held that the prosecution has proved the guilt of the accused beyond doubt and therefore, convicted and sentenced him as narrated above. Challenging the Judgment dated 24.09.2007 passed in S.C. No. 87 of 2006, the present appeal is filed.

8. The learned counsel appearing for the accused/appellant brought to the notice of this Court that at the time of remand of the accused/appellant on 01.07.2005, the learned Judicial Magistrate, Uthamapalayam observed that the accused/appellant is not in a sound and disposing state of mind and therefore, the accused was directed to be produced before the Government Rajaji Hospital, Madurai for observation and to report about his behavioural pattern. Accordingly, on 02.07.2005, the accused was produced before Dr. Ramanujam, PW12, who observed the behavioural pattern of the accused from 02.07.2005 till 07.07.2005. After examining the accused, PW12 observed that his behavioural pattern is erratic and it is not normal. It is stated by PW12 that when specific questions were asked, the accused tendered irrelevant answers. He was also in the habit of talking continuously even in the absence of any one around him. Therefore, he opined that the accused is suffering from severe mental health called as "Paranoid Schizophrenia". Therefore, PW12 reported that the accused be referred for further observation at Institute of Mental Health, Kilpauk, Chennai. The report given by PW12 was marked as Ex.P17. On the basis of Ex.P17, the learned Judicial Magistrate, Uthamapalayam wrote a letter dated 13.07.2005, Ex.P19, addressed to the Medical Officer, Institute of Mental Health, Kilpauk, Chennai through the Superintendent of Central Prison, Madurai to examine the accused. Accordingly, the accused was taken to the Hospital at Chennai for treatment and observation on 19.07.2005. After observing the accused, Dr. Gopalakrishnan, PW14 has issued a discharge summary to the accused/appellant on 07.10.2005 (Ex.P20) concluding that the accused is fit enough to stand for trial in the criminal case. However, an observation was made therein that he has to be examined by a Psychiatrist from Government Rajaji Hospital, Madurai atleast once in fortnight.

9. The learned counsel appearing for the accused/appellant would vehemently contend that even at the time of occurrence, the accused was not in a sound mental condition and he does not have control over his acts and deeds. The mental status of the accused, at the time of occurrence, was spoken to by PW12, who examined him immediately after the occurrence namely on 02.07.2005. PW12 also observed the behavioural pattern of the accused from 02.07.2005 to 07.07.2005 and concluded that the accused is suffering from psychiatric related problems and recommended him to be admitted in Institute of Mental Health, Kilpauk, Chennai. PW14, Assistant Medical Officer attached to Institute of Mental Health, Kilpauk, Chennai has stated that he treated the accused from 19.07.2005 to 07.10.2005 and during such treatment, the deceased was in the habit of speaking for himself and laughing at others without any reason.

He was senseless at the time of treatment. Even though PW14, based on the report of the committee of Doctors opined that the accused can stand the test of trial in the criminal proceedings, it is not his opinion that the accused has fully recovered from his illness. Therefore, based on such medical evidence, the learned counsel for the appellant would submit that the deceased was suffering from paranoid schizophrenia and he is not a person who can take a decision of his own. In this context, the learned counsel for the appellant placed reliance on the Judgment dated 11.01.2013 of the Division Bench of this Court in Referred Trial (MD) No.1 of 2012 (*Maruthu @ Maruthupandian vs. State, rep. By Inspector of Police, Ponnamaravathi Police Station, Pudukottai District)* wherein the Division Bench of this Court held as follows:-

> "27. It is only based on the above report of the Team of Doctors, we concluded that the accused is fit to stand trial and accordingly, we have heard the Referred Trial as well as the Criminal Appeal. Though the doctors have certified that the accused, as of now, is fit to stand the trial, they have not opined that the accused is fully cured. From the standard medical books, we could see that paranoid schizophrenia is an illness that lasts all the way through the individual's life. It is a chronic condition. Patients with paranoid schizophrenia, require treatment on a permanent basis, even when symptoms seem to have receded a tempting time for schizophrenia patients to say they are fine and need no more help. Treatment is basically the same for all forms of schizophrenia. There are variations depending on the severity and types of symptoms, the health of the patient, his/her age, as well as some other factors. A team of health care professionals will be involved in treating a person with paranoid schizophrenia. Schizophrenia can affect many areas of the patient's life. Thus, the team will include a wide range of dedicated professionals. Therefore, we cannot allow him to be set at free so as to move in public, as, due to chronic nature of the disease, the accused may indulge in similar activities in future. The accused requires treatment on permanent basis.

10. The learned counsel for the appellant also relied on the decision of the Honourable Supreme Court in the case of (**Sheila Kaul through Deepa Kaul vs. State Through Central Bureau of Investigation)** reported in **2014 (12) SCC 453** wherein it was held as follows:-

> "9. The report of the medical board also prima facie suggested that the plea raised by the appellant was not wholly without any basis. The trial Court had despite that report and the deposition of Dr. Khandelwal come to the conclusion that the appellant was not of 'unsound mind' nor was she incapacitated by her age and illness. All the same since the said finding had been specifically

questioned by the appellant the High Court should have adverted to that aspect of the matter also. Whether or not the appellant can be described to as a person of unsound mind would largely depend upon the value which the High Court attached to the report submitted by the medical board and the deposition of Dr. Khandelwal. Suffice it to say that the process of appreciation of material concerning the medical condition of the appellant and her alleged incapacity to make her defence was inevitable. In as much as the same has escaped the attention of the High Court, the order passed by it is rendered unsustainable.

In the result, we allow these appeals set aside the order passed by the High Court in so far as the same dismissed Crl. M.C. No.1816 of 2012 qua order dated 9th May, 2012 passed by the trial Court and remit back the matter to the High Court for a fresh disposal of the matter in accordance with law. We express no opinion as to whether the appellant can be said to be of unsound mind within the meaning of Section 329 of the Cr.P.C. as also the question whether the provisions of Section 318 Cr.P.C. can be invoked in case the appellant cannot be said to be of unsound mind. It follows that the High Court shall be free to take an appropriate view in the matter after hearing learned counsel for the parties.

11. Since the trial of other accused persons is also delayed on account of the pendency of the present proceedings, the High Court is requested to expedite the disposal of the matter and pass orders as far as possible within a period of three months from today.

11. The learned counsel for the accused/appellant also invited the attention of this Court to the provisions contained under Section 24 of the Mental Health Act in which procedures were laid down for production of mentally ill person. Inviting the attention of this Court to Section 335 (2) of the Code of Criminal Procedure, the learned counsel for the appellant would contend that this Court is empowered to pass a reception order under the Mental Health Act and to issue appropriate orders to keep the accused in any one of the licensed Psychiatric Nursing Home run by the Government.

12. On the other hand, the learned Additional Public Prosecutor would contend that it is not as though the accused was suffering from any mental illness or his behavioural pattern is erratic. In order to ascertain the mental soundness of the accused, he was directed to be examined by the Doctors attached to Institute of Mental Health, Kilpauk, Chennai. Accordingly, the accused was examined by PW14, Assistant Medical Officer attached to Kilpauk Mental Health Hospital. PW14, in his opinion, has clearly stated that the accused is in a position to stand the test of trial. Further, during re-examination of PW14, a specific question was put to him as to whether he knew that the accused had repented for the

acts committed by him and in such an event whether he can be treated as a person of unsound mind. The said suggestion was denied by PW14 by stating that neither the Investigation Officer stated so nor he has stated so in his report. At any rate, it is not for the prosecution to establish the the accused was capable of knowing or assessing that an act done by him was right or not. By placing reliance on Section 105 of The Indian Evidence Act, the learned Additional Public Prosecutor would contend that the burden of proving that unsoundness of the accused is on the accused and such burden cannot be shifted on the prosecution. To buttress this argument, the learned Additional Public Prosecutor placed strong reliance on the decision of the Honourable Supreme Court in the case of (**Shrikant Anandrao Bhosale vs. State of Maharashtra**) reported in (**2002) (7) Supreme Court Cases 748** wherein it was held as follows:-

> "17. Undoubtedly, the state of mind of the accused at the time of commission of the offence is to be proved so as to get the benefit of the exception.
>
> 18. We have already noticed earlier that unsoundness of mind preceding the occurrence and following the occurrence stands proved. It has rightly not been questioned by the learned counsel for the State. Regarding the state of mind of the accused at the time of commission of offence, in our opinion, ordinarily that would be an aspect to be inferred from the circumstances. Further, as earlier noticed, the nature of the burden of proof on the accused is no higher than that which rests upon a party to civil proceedings."

13. By placing reliance on the above decision, the learned Additional Public Prosecutor would contend that in the present case the burden of proving the unsoundness of mind of the accused is on the accused and prosecution cannot be called upon to prove it. In such circumstances, the learned Additional Public Prosecutor would only contend that the conviction and sentence imposed on the appellant need not be interfered with by this Court.

14. We have given our anxious consideration to the rival submissions and perused the materials placed on record.

15. When the above Criminal Appeal was taken up for hearing, it was brought to our notice that the accused faced trial in connection with the murder of his own mother in S.C. No. 465 of 2004 on the file of Principal Sessions Judge, Madurai and he was acquitted by the Judgment dated 01.03.2005, however, the copy of the said Judgment was not available on the file of the respondent police. Therefore, by order dated 10.11.2017, we have directed the Registry to call for the copy of the Judgment in S.C. No. 465 of 2004 on the file of Principal Sessions Court, Madurai delivered on 01.03.2005. Accordingly, a copy of the Judgment dated 01.03.2005 in S.C. No. 465 of 2004 was produced for our perusal.

16. On perusal of the Judgment dated 01.03.2006 passed in S.C.

No. 465 of 2004, it is seen that the accused/appellant herein stood charged for the offence under Section 302 of IPC for having committed the murder of his own mother in the early morning of 04.08.2003 at 3.30 am by hitting her with a small axe out of delusion that she is a ghost. In that case, the Sessions Judge, while acquitting the appellant made an observation that the appellant is a psychiatric patient, earlier he was admitted in Institute of Mental Health, Kilpauk, for treatment, however he escaped from the hospital on 01.12.2003 and was later secured on 05.12.2003 by the Police. Once again, the appellant was directed to be given treatment in the said hospital and ultimately, the appellant was discharged from the hospital on the basis of the opinion rendered by the Visitors Committee on 01.01.2004 with a direction that the appellant has to continue the treatment from any of the nearby Government Mental Hospital for his mental health. Having regard to the above facts, the learned Sessions Judge acquitted the appellant on the ground that at the time of commission of the offence he was suffering from serious mental illness, mental instability besides being an insane.

17. In the present case, on appreciation of the view, we are of the view that there is no dispute that it is the accused/appellant who is the aggressor and it is he who caused the death of D-1 and D-2. It is also an admitted fact that the occurrence was witnessed by PW1, 2, 3 and 4 and they have clearly spoken to about the overtact of the accused. The evidence adduced by the prosecution witnesses is natural, cogent and corroborative with each other. Therefore, we are not examining the overt act attributed against the accused in this case in the commission of offence.

18. The only argument advanced in this case is the accused was not in a sound and disposing state of mind at the time of occurrence and thereafter. The accused was suffering from mental disorders and mental imbalance. The accused is not in a position to ascertain what is right and wrong. In this context, useful reference can be made to Section 84 of IPC, which reads as follows:-

> "84. Act of a person of unsound mind – 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 act, or that he is doing what is either wrong or contrary to law."

19. Therefore, as per Section 84 of the Indian Penal Code, if a person, who is not in a sound and disposing state of mind at the time of committing an act, which is contrary to law or wrong, he cannot be punished for such offence. In other words, offences committed by a person of unsound mind is exempted from the purview of the Indian Penal Code from being punished. However, it has to be examined as to whether the person who has committed an offence is of unsound mind at the time of occurrence by examining not only the oral evidence of the prosecution witness but also on appreciation of medical evidence.

20. In this context, the medical evidence collected in this case can be examined. Soon after the occurrence, when the accused was produced before the learned Judicial Magistrate, Uthamapalayam for remand, his behavioural pattern was not quite normal and therefore, in order to assess the status of mind of the accused, he was sent to Government Rajaji Hospital, Madurai where he was examined by PW12 – Dr. Ramanujam, Assistant Professor of Psychiatry, Government Rajaji Hospital, Madurai. According to PW12, he examined the accused and/or observed his behavioural pattern for a period of about 6 days from 02.07.2005 to 07.07.2005. After such examination, he concluded that he was not in a fit state of mind and is suffering from severe mental disorder. To this effect, he had sent his report dated 07.07.2005 under Ex.P17 wherein it was stated as follows:-

> "Mr. Paneerselvam, Son of Seetharaman, referred to, in the above communication, was admitted in Psychiatry annexe under Ward 104 on 02.07.2005 and observed till 07.07.2005 (both days inclusive) IP No. 368828.
>
> During the time of observation, patient was found to be preoccupied, muttering, smiling to himself. His attention and concentration was not adequate. His talk was relevant at times and became irrelevant He hears voices of people ordering him. He was suspicious, guarded, impulsive and violent at times. His mood is inappropriate to the situaiton.
>
> Detailed clinical psychiatric evaluation reveals that this patient is suffering from split mind type of mental illness – SCHIZOPHRENIA.
>
> Since he is a dangerous psychiatric patient, I have certified and recommended admission at Institute of Mental Health, Chennai. I have enclosed form III, Medical History sheet for the mentally ill and fitness to travel."

21. On receipt of the report from PW12 suggesting to send the accused for further observation with Institute of Mental Health, Kilpauk, Chennai, the learned Judicial Magistrate, Uthamapalayam had sent a letter dated 13.07.2005, Ex.P19 addressed to the Assistant Medical Officer, Institute of Mental Health, Kilpauk through the Superintendent of Prison, Madurai for observing the accused in the hospital. Accordingly, the accused was admitted on 19.07.2005 in Institute of Mental Health, Kilpauk, Chennai where he was examined by Dr. Gopalakrishnan, PW14. The case summary issued by PW14 was marked as Ex.P20. In Ex.P-20, it was stated as follows:-

> "This patient showed improvement with the restarting of treatment. He is able to understand the crime and he is able to state that his case has to be tried through the Court. On 31/08/2005, the visitor's committee has approved his fitness to stand trial. This patient requires continuation of the present treatment without any omission. This patient has to be reviewed by nearby Government Psychiatrist atleast once in fortnightly."

22. During the cross-examination of PW14, he has categorically stated that when the accused was examined by PW12, he was suffering from mental disorder, as could be seen from the report given by PW12. PW14 further deposed that even when he examined the accused, he was not normal and his behavioural pattern was erratic. He admitted that a person of such mental disturbance could not know what he is doing. However, PW14, on the basis of the opinion rendered by a Committee which has assessed the mental status of the accused, opined that the accused is fit enough to stand the trial in the criminal case.

23. On a cumulative reading of the evidence of PW12 and PW14, coupled with the report under Exs. P17 and P20, this Court could come to an irresistible conclusion that at the time of occurrence, the accused was not in a sound state of mind. He was suffering from mental disturbance. There was no motive for the accused to cause the death of D-1 and D-2. Even the prosecution has not brought out any evidence to show the motive on the part of the accused to cause the death of D-1 and D-2. In this context, the Division Bench of this Court in an identical circumstances, concluded that that the appellant therein was suffering from mental disorder and disturbance and he could not assess what he is doing and whether it is right or not. Useful reference to the aforesaid Judgment can be made which reads as follows:-

> 28. In this background, now, let us refer to Chapter 25 of the Code of Criminal Procedure, which contains the provisions as to accused persons of unsound mind. Section 335 of the Code of Criminal Procedure reads as follows :-
>
> "335. Person acquitted on such ground to be detained in safe custody. -
>
> (1) whenever the finding states that the accused person committed the act alleged, the Magistrate or Court before whom or which the trial has been held, shall, if such act would, but for the incapacity found, have constituted an offence,-
>
> (a) order such person to be detained in safe custody in such place and manner as the Magistrate or Court thinks fit; or
>
> (b) order such person to be delivered to any relative or friend of such person.
>
> (2) No order for the detention of the accused in a lunatic asylum shall be under clause (a) of sub - section (1) otherwise than in accordance with such rules as the State government may have made under the Indian Lunacy Act, 1912 (4 of 1912).
>
> (3) No order for the delivery of the accused to a relative or friend shall be made under clause (b) of sub-section (1), except upon the application of such relative or friend and on his giving security to the

satisfaction of the Magistrate or Court that the person delivered shall -

(a) Be properly taken care of and prevented from doing injury to himself or to any other person;

(b) Be produced for the inspection of such officer, and at such times and places, as the State Government may direct.

(4) The Magistrate or Court shall report to the State Government the action taken under sub-section (1)."

29. It needs to be mentioned that indian lunacy act, 1912, as referred to in sub-section (2) of section 335, stands repealed by the mental health act, 1987. section 24 of the mental health act 1987, reads as follows:-

"24. Procedure on production of mentally illperson-(l).lf& person is produced before a Magistrate under sub-section (2) of section 23, and if, in his opinion, there are sufficient grounds for proceeding further, the Magistrate shall -

(a) examine the person to assess his capacity to understand,

(b) cause him to be examined by a medical officer, and

(c) make such inquiries in relation to such person as he may deem necessary.

(2) After the completion of the proceedings under sub-section (1), the Magistrate may pass a reception order authorising the detention of the said person as an inpatient in a psychiatric hospital or psychiatric nursing home, -

(a) if the medical officer certifies such person to be a mentally ill person, and

(b) if the Magistrate is satisfied that the said person is a mentally ill person and that in the interests of the health and personal safety of that person or for the protection of others, it is necessary to pass such order."

30. As per section 335(2)(a) of the code of criminal procedure, it is the duty of this Court to pass an appropriate order to detain the appellant in safe custody. As per section 24 of the mental health act, 1987, this Court is empowered to pass a reception order under the Mental Health Act, 1987, directing the person to be kept in any one of the Licensed Psychiatric Nursing Homes run by the Government. Therefore, we are inclined to issue a reception order to the effect that the Superintendent of Police, Central Prison, Trichirappalli, shall set the

accused at liberty and hand him over to the respondent - Inspector of Police, who shall, in turn, hand over the accused to the Kilpauk Institute of Mental Health, Chennai. Thereafter, the learned Judicial Magistrate, Thirumayam, having jurisdiction, shall deal with the accused as per the provisions of the Mental Health Act, 1987, without any reference to this Court.

24. Ultimately, the Division Bench of this Court allowed the Referred Trial (MD) No.1 of 2012 and also disposed of the Criminal appeal with the following direction:-

> 31. In the result, R.T.(MD). No. 1 of 2012 is disposed of and Criminal Appeal (MD). No. 136 of 2012 is allowed in the following terms: -
>
> (i) we annul the conviction and sentence imposed on the appellant and acquit him of all the charges framed against him.
>
> (ii) On releasing the appellant from the prison, the Superintendent, Central Prison, shall hand over the accused to the respondent - Inspector of Police, who, in turn, shall hand over the accused to the Kilpauk Institute of Mental Health, Chennai, for safe custody and treatment.
>
> (iii) The operative portion of this order shall be treated as a reception order passed under the Mental Health Act, 1987.
>
> (iv) After the accused is admitted in the Kilpauk Institute of Mental Health, Chennai, it shall be for the learned Judicial Magistrate, Thirumayam, having jurisdiction, to deal with the accused, as per the provisions of the Mental Health Act, 1987, without any further reference to this Court. The Criminal appeal allowed."

25. The decision rendered by this Court in the aforesaid Judgment squarely applies to the facts of this case. Following the decision rendered by the Division Bench of this Court mentioned supra, we are inclined to set aside the Judgment and Decree passed by the trial Court subject to the directions mentioned hereinbelow:-

> There will be an order of reception issued to the Superintendent of Police, Central Prison, Madurai, who shall set the accused at liberty and hand him over to the respondent - Inspector of Police, Chinnamanur Police Station, who shall, in turn, hand over the accused to the Kilpauk Institute of Mental Health, Chennai. Thereafter, the learned Judicial Magistrate, Uthamapalayam, Theni District, having jurisdiction, shall deal with the accused as per the provisions of the Mental Health Act, 1987, without any reference to this Court.

26. Accordingly, subject to the aforesaid observation, the Criminal Appeal is disposed of and the Judgment and Decree dated

24.09.2007 passed in S.C. No. 87 of 2006 on the file of Additional District and Sessions Judge, Fast Track Court No.4, Periyakulam shall stand set aside.

Sd/-
Assistant Registrar (T&P)

/True Copy/

Sub Assistant Registrar

To

1. The Additional District and Sessions Judge,
   Fast Track Court No.4, Periyakulam,
   Theni District.

2. The Judicial Magistrate,
   Uthamapalayam,
   Theni District.

3. The Chief Judicial Magistrate, Theni.

4. The Inspector of Police,
   Chinnamanoor Police Station,
   Theni District.

5. The District Collector, Theni.

6. The Superintendent, Central Prison,
   Madurai.

7. The Director General of Police,
   Mylapore, Chennai.

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

9. The Section Officer,
   Criminal Section Record,
   Madurai Bench of Madras High Court,
   Madurai.

+ 1 CC TO Ms.C.JEYA INDRA PATEL, ADVOCATE IN SR No. 92758

RSH
TE/MR-KKR/SAR-4 : 28/12/2017 : 14P/11C