



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.06.2018

CORAM:

THE HONOURABLE Mr. JUSTICE C.T.SELVAM
and
THE HONOURABLE Mr. JUSTICE A.M.BASHEER AHAMED

Cr1.A.(MD)No.526 of 2017

K.Hasina ... Appellant/Sole Accused

Vs.

The State of Tamil Nadu
Represent by its
The Inspector of Police,
Erwadi Dargah Police Station,
Ramanathapuram District.

... Respondent

PRAYER: The Criminal Appeal filed under Article 226 of the Constitution of India, Section 374(2) of Criminal Procedure Code, to call for the records of the order, dated 13.06.2017 passed in S.C.No.227 of 2009 on the file of the Principal District and Sessions Court, Ramanathapuram in Cirme No.9 of 2009 dated 24.01.2009 on the file of the respondent.

For Appellant : Mr.I.Robert Chandrakumar
for Mr.G.Prabhua Rajadurai

For Respondent : Mr.R.Anandaraj, APP

JUDGMENT

(Judgment of the Court was delivered by C.T.SELVAM,J.)

This Criminal Appeal has been filed against the Judgment, dated 13.06.2017 passed in S.C.No.227 of 2009 by the Principal District and Sessions Court, Ramanathapuram.

2.Prosecution case is that suspecting illicit intimacy between the appellant's husband and a widow, namely, Barhana Parveen, disputes arose between appellant and the family members of the said Barhana Parveen, due to which, at 6.45 p.m. on 24.01.2009, appellant entered into the house of Mumtaj, where students were at tuition, poured kerosene upon the students and set the on fire and that one Ulsalma Beevi, Abdul Ali, Bharghana Parveen, Ansari Banu, Simrin Kaseebha, Sulthana Fathima, Satheeka Bathima, Mumtaj Begham and Syed Musthafa sustained injuries and



thereafter, all but Mumtaj Begham and Syed Musthafa died at hospital. The two had sustained injury.

3. We have heard learned counsel for appellant as also learned Additional Public Prosecutor for respondent.

4. The appellant was admitted in the Institute of Mental Health, Psychiatric Hospital, Kilpauk, Chennai on 04.02.2009 and diagnosed as suffering from Schizophrenia, a major mental illness. She had secured bail on 29.05.2009 but discharged by the hospital authorities on 29.02.2016 and thereafter, the case against her was put to trial from 25.04.2016.

5. Ex.D1 dated 02.02.2009 reads as follows:

"As per reference cited above, Ms. Haseena, 27/09, w/o. Kunju Mohamed, admitted in Psychiatry ward, Annexe-104, Govt. Rajaji Hospital, Madurai, and observed regarding her psychiatric status. Date of Admission: 28.01.2009, Date of Discharge: 02.02.2009 (Both days inclusive) Inpatient Number: 7153

Identification Marks:

- 1. A Black Mole over right Thumb.*
- 2. A Black mole over Left Check.*

During the period of observation, she showed features of poor self care, excessive irrelevant talk, abnormal thinking and thought processes like delusion of persecution, delusion of grandiosity, bizarre in nature, auditory hallucination, inappropriate mood, and impaired judgmental capacity.

She was investigated (blood analysis and urine analysis) and all investigations found to be normal. Clinically patient did not have any neurological deficits. She was subjected to Psychological testing by Clinical Psychologist. The Psychometric test profile indicates that she is under Schizophrenic illness with predominant delusions. Detailed clinical examination and Psychiatric examination suggest that this patient has features of SCHIZOPHRENIA a form of major mental illness. She is not in a position to understand Court proceedings and defend herself. She needs custodial management.

Herewith we are submitting Form-3, Medical History sheet and Fitness to travel."

6. In such position, Section 84 of IPC would be relevant. The same reads as follows:

<https://hcservices.ecourts.gov.in/hcservice> **§ 4. 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 the act, or that he is doing what is either wrong or contrary to law."

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7. Sections 334 and 335 Cr.P.C. read as follows:

"334. Judgement of acquittal on ground of unsoundness of mind. Whenever any person is acquitted upon the ground that, at the time at which he is alleged to have committed an offence, he was, by reason of unsoundness of mind, incapable of knowing the nature of the act alleged as constituting the offence, or that it was wrong or contrary to law, the finding shall state specifically whether he committed the act or not.

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.

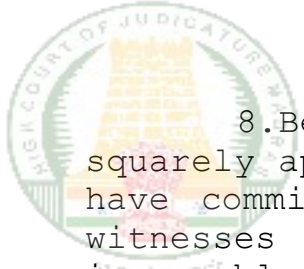
(2) No order for the detention of the accused in a lunatic asylum shall be made under clause (a) of sub-section (1) otherwise than in accordance with such rules as the State Government may have made under the Indian Lunacy Act, 1912 (4 of 1912).

(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)."



8. Being of the view that the above reproduced sections squarely apply in this case, the appellant who clearly is found to have committed the offending act, spoken to by some of the eye witnesses shall stand acquitted of all charges against her as one incapable of having committed an offence at the time of occurrence.

9. The affidavit of the appellant's husband reads as follows:

"I am the husband of the appellant herein. Presently, the appellant is in the Government Mental Health Centre at Kuthiravattam, Kozhicode, Kerala State under treatment, as per the order of this Hon'ble High Court dated 09.01.2018 passed in the above Criminal Appeal.

2. I submit that the appellant was convicted by the order dated 13.06.2017 passed in S.C.No.227 of 2009 on the file of the Hon'ble Principal Sessions Court, Ramanathapuram under Section 302 and 324 of IPC and further directed the appellant to undergo treatment at Institute of Mental Health, Psychiatric Hospital, Kilpauk, Chennai for her mental illness / Schizophrenia and further directed the appellant to pay a sum of Rs.2,00,000/- as a fine as well as compensation.

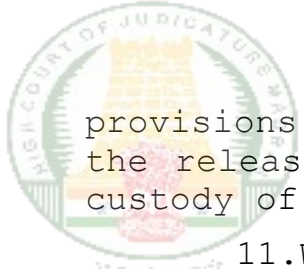
3. I submit that accordingly, I have borrowed the amount from 3rd parties for interest and paid the said fine amount of Rs.2,00,000/- before the Hon'ble Principal Sessions Court, Ramanathapuram.

4. I submit that we have been married for over 20 years now and have two children. My wife suffers from the mental ailment Schizophrenia for more than 20 years now due to which, she came to be implicated in this case. She has been treated in the past for the said ailment at various hospitals like NIMHANS, Bangalore, Private Mental Health Hospital, Kozhicode, Kozhicode Government Hospital and Mosques.

5. I submit that on acquittal, I undertake to get the appellant admitted for expert treatment at a private hospital in Kozhikode, where she previously received treatment and had shown marked improvement. I further undertake to provide her with all support and expenses and keep her in the safe custody of my family comprising of myself and my two children.

I therefore, pray that this Hon'ble Court may be pleased to accept this undertaking affidavit and render justice."

10. We find that the affidavit of the husband namely, Kunju Mohammed @ Mohammed Shukkur is sufficient compliance with the



provisions of Section 335 Cr.P.C. Accepting the same, we direct the release of the appellant from where she now is housed to the custody of her husband namely, Kunju Mohammed @ Mohammed Shukkur.

11. We also record that he will not seek refund of the sum of Rs.2 lakhs as a consequence of this order. Such amount shall be paid as compensation to the victims as apportioned by the Court below. The affidavit shall form part of the record. This Criminal Appeal shall stand allowed.

Sd/-

Assistant Registrar(w)

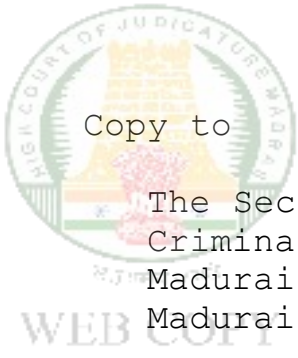
/True Copy/

Sub Assistant Registrar(CS-III)

Encl: Xerox copy of Affidavit.

To

1. The Judicial Magistrate No.2
Ramanathapuram.
2. -Do- thro The Chief Judicial Magistrate,
Ramanathapuram.
3. The Principal District and Sessions Judge,
Ramanathapuram.
4. The Inspector of Police,
Erwadi Dargah Police Station,
Ramanathapuram District.
5. The Superintendent,
Special Prison for Women, Trichy.
6. The Superintendent of Police,
Ramanathapuram.
7. The District Collector,
Ramanathapuram.
8. The Director General of Police, Mylopore, Chennai.
9. The Superintendent Government Mental Health Centre
at Kuthiravattam, Kozhicode, Kerala State.
10. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



Copy to

The Section Officer, (2 copies)
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.G.Prabhua Rajadurai, Advocate Sr.No.69308

NBJ

VB/KAK/SAR3/14.08.2018/6P/14C

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