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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CRL.A[MD].No.357 of 2018
and
CrI.M.P.(MD)No.6327 of 2018

Stanly : Appellant/Sole Accused

Vs.

State through
The Inspector of Police,
Arumanai Police Station,
Kaniyakumari District.
(In Crime No.40 of 2010). : Respondent/Complainant

PRAYER: Appeal is filed under Section 374 of the Code of Criminal Procedure praying to call for the entire records connected to the judgment in S.C.No.78 of 2011 on the file of the Sessions Court, Kanyakumari Division at Nagercoil, dated 02.06.2016 and set aside the conviction and sentence imposed against the appellant.

For Appellant : Mr.R.Alagumani
For Respondent : Mr.S.Chandrasekar,
Additional Public Prosecutor

JUDGMENT

**[Judgment of the Court was delivered
by N.SATHISH KUMAR, J.]**

Aggrieved over the conviction and sentence imposed by the Sessions Court, Kanyakumari Division at Nagercoil, dated 02.06.2016, in S.C.No.78 of 2011, the present appeal came to be filed by the appellant.

2. The brief facts leading to the prosecution case are as follows:

2.1. P.W.1-Thangamoni and one Natarajan and others were working under one Abubucker as Timber Merchants. The accused is a resident of ~~same village~~ ~~same village~~. The deceased Aruldas was working as a Watchman under Abubucker. On 11.02.2010, the accused came and picked some fire wood, which was objected by the deceased Watchman. Thereafter,



on 12.02.2010, at about 06.30 a.m., P.W.1 and others found the deceased dead with burn injuries. P.W.1 informed the same to the Villagers and Abubucker. At that time, the accused came there and cut the dead body indiscriminately using M.O.1 and M.O.2. Thereafter, P.W.1 laid Ex.P.1.

2.2. P.W.2 also witnessed such occurrence.

2.3. P.W.12 - Sub-Inspector of Police, Arumanai Police Station, at the relevant point of time, received Ex.P.1 and registered a case in Crime No.40 of 2010 under Section 302 IPC under Ex.P.13 and forwarded the same to the Court and a copy to the Inspector of Police.

2.4. P.W.13-Inspector of Police took up the case for investigation and prepared an Observation Mahazar-Ex.P.6 and rough sketch-Ex.P.14 and seized the Material Objects from the place of occurrence and conducted inquest over the dead body and prepared inquest report Ex.P.15. Thereafter, on 13.02.2010, at 06.00 a.m., he arrested the accused and recorded his confession and seized match box and M.O.2 under Ex.P.10-Mahazar.

2.5. In the meanwhile, P.W.3-Rajesh, the Medical Officer, attached to the Government Hospital, Kanyakumari, conducted autopsy over the dead body and found the following post-mortem injuries:

"1. Two horizontal cut injuries seen parallel and 1 cm close each other noted over the lower aspect of back of neck measuring 7 x 1/2 x 1/2 cm and 10 x 1/2 x 1cm.

2. Two horizontal cut injuries seen just below the previous injury overlapping each other measuring 17 x 2 x 2cm and 20 x 1/2 x 2cm.

3. 1 x 1/2 x 1/2 cm cut injuries seen over the back of left shoulder.

4. 4 x 2 x 3 cm vertical incised punctured wound seen over the middle of lower back.

5. 13 x 3 x 3cm horizontal cut injury seen over the left side of back of abdomen.

6. Two horizontal cut injury seen overlapping each other noted over the lower 1/3 of back of left thigh.

7. 5 x 2 x 2cm horizontal cut injury seen over the back of lower end of right thigh.

2.6. P.W.3 also found the following ante-mortem injuries:

"1. Epidermo dermal burns seen all over the body except both palms and soles of feet. It is deep over the left great toe. Peeling and blackening of skin noted all over the burnt area in a scattered manner. Partial singeing of scalp hair, eyebrows, eyelashes, axillary hair and pubic hair noted. Base of the burnt area is reddish in colour.

2. 2 x 1 x 1/2 cm laceration seen over the left side of eyebrow.

O/D Chest - Fracture of 2 to 6 ribs on left side in



their front with surrounding contusion noted.
O/D Scalp skull and dura:
Left temporalis muscles found bruising.

and opined that the deceased would appear to have died of burn injuries.

2.7. P.W.4-Litty, who is the daughter of the deceased, has also seen the dead body of her father.

2.8. P.W.5-Prasath also has seen the deceased dead due to burn injuries on 12.02.2010.

2.9. P.W.6-Rajan has also seen the dead body lying with burn injuries.

2.10. P.W.8-Saji witnessed the confession said to have been given by the accused to the police and recovery of the Material Objects.

2.11. According to P.W.9, on 11.02.2010, at about 09.45 p.m., the accused came with Machete (btl;Lf;fj;jp) and informed P.W.9 that he has killed the deceased on the same day.

2.12. P.W.13, in continuation of the investigation, gave a requisition to the Court to send the Material Objects to the Forensic Lab and examined the Medical Officers and other witnesses and thereafter, he was transferred.

2.13. P.W.15-Inspector of Police continued the investigation and laid final report as against the accused for the offences punishable under Sections 302 and 506(ii) of the Indian Penal Code.

2.14. Based on the above materials, the trial Court framed charges for the offences under Sections 302 and 506(ii) of the Indian Penal Code against the accused. The accused denied the same. In order to prove the charges, on the side of the prosecution, P.W.1 to P.W.15 were examined and Exs.P.1 to P.22 and MOs.1 to 15 were marked.

2.15. When the Trial Court examined the accused under Section 313 of the Code of Criminal Procedure in respect of the incriminating evidences available against him, he denied the same as false. However, he neither choose to examine any witnesses nor to mark any document.

2.16. However, the defence of the accused before the Trial Court was that he had been under treatment for mental illness and, therefore, he has not committed the murder of the deceased Aruldhhas. In view of the above, during the course of trial, the Trial Court referred the accused for medical examination. Accordingly, Dr.Jeeva Credom Victory was examined as C.W.1 and Exs.C.1 and C.2 were

marked. Thereafter, Exs.C.3 and C.4 were also marked.

2.17. The trial Court, after considering the oral and documentary evidence, has found the accused guilty and accordingly, convicted the accused under Sections 302 and 506(ii) IPC and sentenced him to undergo life imprisonment for the offence under Section 302 IPC and to undergo two years rigorous imprisonment for the offence under Section 506(ii) IPC. However, considering his health conditions, instead of sending the accused to Central Prison, a direction was issued to send him to the Institute of Mental Health, Kilpauk, Chennai, for treatment for the rest of his period of sentence. He shall be set at liberty, if the Director of Institute of Mental Health, is advised specifically that releasing the accused will not be dangerous to the Society. Challenging the said conviction and sentence, the appellant/sole accused has come up with this appeal.

3. The learned counsel appearing for the appellant would contend that the prosecution has not proved the guilt of the accused. Admittedly, the deceased died due to burn injuries. There are no evidences available on record to show that how the deceased sustained burn injuries. Further, the injuries noted by the Medical Officer are only post-mortem injuries and not ante-mortem injuries. The evidence of P.W.1 and P.W.2 and other witnesses, who have allegedly seen the accused causing injuries, after the death of the deceased, is also highly doubtful. The alleged extra-judicial confession said to have been given to P.W.9 by the accused, which is also attached with artificiality, cannot be relied upon. At any event, it is the contention of the learned counsel that the accused is suffering from mental insanity and has permanent Schizophrenia. The evidence of Court witness and Court documents established the same. Further, the report now received from the Director, Institute of Mental Health, Kilpauk, Chennai-10, dated 17.10.2018, also clearly indicates that he was treated for Schizophrenia continuously and now his condition is improved. All these facts clearly indicate that the accused is mentally ill at the time of alleged occurrence. Thus, he should be given benefit of doubt and he is entitled for acquittal.

4. The learned Additional Public Prosecutor would submit that the evidence of P.W.1 clearly indicates that after the death of the deceased, the accused caused post-mortem injuries. The manner in which the injuries were caused on the deceased after his death, in fact, clearly probabilise that the accused was mentally ill person at that point of time. The Court evidence and the Medical Officers' reports also clearly prove the above said fact. Hence, it is submitted that now the health condition of the accused is improved and he left the matter for discretion of the Court.

5. In the light of the above submissions, now, it has to be analyzed whether the prosecution has proved the guilt of the accused beyond all reasonable doubt?

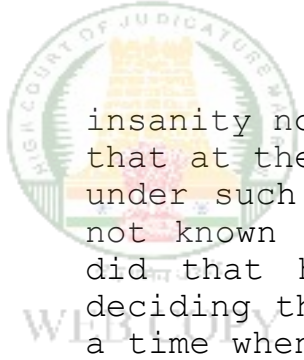


6. The deceased one Arulldhas, who was engaged as Watchman in a Rubber Estate, had died out of burn injuries. The death due to burn injuries was clearly spoken to by P.W.3-the Medical Officer. Post-mortem Certificate is Ex.P.3. The Medical Officer's evidence clearly proves the fact that in fact, the deceased died only due to burn injuries. It is curious to note that after the death of the deceased, several cut injuries were caused. The Medical Officer's evidence clearly shows that those cut injuries were post-mortem injuries and not ante-mortem injuries. In this regard, the evidence of P.W.1 and P.W.2, when carefully seen, they, in fact, have stated that the accused is also a resident of the same Village. There was some quarrel between himself and the deceased on the previous day when the accused tried to collect the fire wood, which was objected by the deceased. Thereafter, P.W.1 and others went to the Estate and on the next day morning, they found the deceased already dead due to burn injuries. They informed the same to others. At that time, the accused came there and caused injuries. The post-mortem injuries found on the body of the deceased said to have been caused by the accused clearly indicate that the accused is not a normal person at the relevant point of time.

7. It is the case of the prosecution that the deceased already died due to burn injuries. Causing injuries on the dead body, that too, severe injuries, clearly indicates that the accused is not a normal person and he is suffering from mental insanity. This fact is further fortified by the subsequent examination of the Medical Officer-C.W.1 and Exs.C.1 and C.2. The evidence and reports clearly indicate that the accused is not a normal person from the very beginning and he is suffering from Schizophrenia.

8. Even after the directions of this Court, the Director, Institute of Mental Health, Kilpauk, Chennai, examined the accused. He has also found that the accused is suffering from major mental illness, Schizophrenia. At present, his illness is under remission. However, he needs continuous treatment and supervised medication intake and regular follow up in nearby Psychiatric Hospital as an outpatient. This report coupled with Exs.C.1 and C.2 and the evidence of C.W.1, makes it clear that the accused is, in fact, is suffering from mental illness from the very beginning. The evidence of P.W.1 and P.W.2 to the effect that the accused caused cut injuries over the dead body, in fact, fortified the fact that he is not a normal human being at the time of occurrence. Though there was no evidence available on record to show that at the time of occurrence before or immediately after, he was suffering from mental illness, the fact remains that while he was in the custody, he was subjected to treatment as per the directions of the Sessions Court. All these facts clearly show that the accused is mentally ill person.

9. It is well settled that to get the protection under 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:

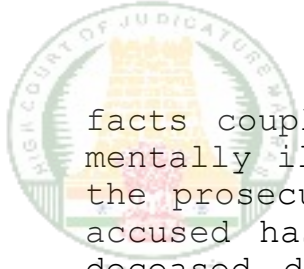
"(1) The prosecution must prove beyond reasonable doubt that the accused had committed the offence with the requisite mens rea and the burden of proving that always rests on the prosecution from the beginning to the end of the trial.

(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."

10. 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.

11. Whereas, the evidence of P.W.1 clearly indicates that the accused has, in fact, inflicted injuries on the dead body. Those



facts coupled with the medical evidence clearly show that he is a mentally ill person. Be that as it may, it is curious to note that the prosecution has not adduced any evidence to show that only the accused has committed the murder of the deceased. Admittedly, the deceased died due to burn injuries as per the medical evidence. There is no evidence available on record to show that the accused set fire on the deceased. In this regard, the prosecution has relied upon only P.W.8 and P.W.9 the so-called confession witnesses. P.W.8, in his evidence, has spoken about the alleged confession given by the accused admitting the guilt before the police. Such alleged confession has no relevance at all and it cannot be given much importance. Such statement given before the police cannot be used as against the accused. Hence, the trial Court relying on the evidence of P.W.8 is against law. Similarly, the prosecution relied upon P.W.9, who is said to have heard the alleged extra-judicial confession of the accused. It is the evidence of P.W.9 that on 11.02.2010 at about 9.45 p.m., itself, the accused allegedly confessed him that he killed the deceased. It is the specific evidence of P.W.9 that such information was given by the accused while P.W.9 was in the company of P.W.8 one Saji. But, P.W.8 never whispered anything about such alleged confession of the accused. Therefore, the alleged extra-judicial confession spoken to by P.W.9 is highly doubtful. This doubt is further fortified for the simple reason that the alleged confession cannot be true at all. The Medical Officer's evidence clearly indicates that the time of death of the deceased was only after 05.15 a.m., on 12.02.2010. When that being the position, the accused committing death of the deceased on 11.02.2010 at 09.45 p.m., as spoken to by P.W.9, is highly doubtful and the alleged extra-judicial confession cannot be true at all. At any event, the very conduct of the accused allegedly causing injuries on the dead body itself shows that he was not a normal person at the relevant point of time. Therefore, anything uttered by the accused cannot be construed as confession. Hence, this Court has no other option except to reject the evidence of P.W.8 and P.W.9. Further, there is no other material available on record implicating the accused for causing burn injuries on the deceased.

12. Considering the entire aspects, this Court is of the view that the possibility of sustaining burn injuries due to petrol and castor-oil kept in the place of occurrence to use the saw machine in cutting the timbers cannot be ruled out. P.W.1's evidence also clearly indicates that the petrol and other inflammable oils were kept in the Watchman room for the purpose of use in cutting the timbers. Thus, this Court is of the view that the accused is certainly entitled to benefit of doubt.

13. In the result, the Criminal Appeal stands allowed and the conviction and sentence imposed on the appellant/Sole Accused, by Judgment dated 02.06.2016, made in S.C.No.78 of 2011, on the file of the Sessions Court, Kanyakumari Division at Nagercoil, are set aside. The appellant/Sole Accused is acquitted of all the charges levelled against him. The appellant/Sole Accused is directed to be



released forthwith, unless his custody is required in connection with any other case. Consequently, the connected miscellaneous petition is closed.

14. On acquittal, the family members of the accused shall take care of the accused and take him to the regular check up to the nearby Psychiatric Hospital as an out patient, as suggested by the Medical Officer, Institute of Mental Health, Chennai.

Sd/-

Assistant Registrar (Records)

/True Copy/

Sub Assistant Registrar (CS-III)

To

1. The Principal Sessions Judge, Sessions Court,
Kanyakumari Division at Nagercoil.
2. The Judicial Magistrate No.1, Kuzhithurai.
3. The District Collector, Kanyakumari District at Nagercoil.
4. The Director General of Police, Mylapore, Chennai-4
5. The Superintendent, Central Prison,
Palayamkottai, Tirunelveli.
6. The Inspector of Police,
Arumanai Police Station,
Kaniyakumari District.
7. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
8. The Record Keeper,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

SML

TE/SV/SAR-3 : 19/12/2018 : 8P/10C

Judgment made in
CRL.A[MD].No.357 of 2018
Dated: 29.10.2018