



BAIL SLIP

The Appellant/Accused viz, Kumar @ Selvakumar, S/o. Murugiah, was released on bail granted as per order of this court dated 22.09.2017 made in CRL MP(MD).7317 of 2017 in CRL A(MD).313 of 2017.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 03.10.2019

DELIVERED ON : 24.10.2019

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

AND

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Criminal Appeal (MD)No.313 of 2017

Kumar @ Selvakumar

... Appellant/Sole Accused

Vs.

State by

The Inspector of Police,
Shencottai Police Station,
Tirunelveli District.
[Cr.No.200 of 2009]

... Respondent/Complainant

Prayer : Appeal filed under Section 374 of the Code of Criminal Procedure, against the judgment and order passed in S.C.No.482 of 2009, dated 20.02.2014, by the learned Principal Sessions Judge, Tirunelveli.

For Appellant : Dr.R.Alagumani

For Respondent : Mr.S.Chandrasekar

Additional Public Prosecutor

* * * * *

JUDGMENT

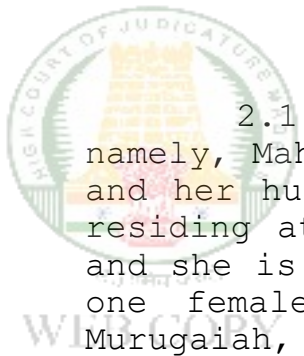
S.VAIDYANATHAN, J.

AND

N.ANAND VENKATESH, J.

The appellant is the sole accused in S.C.No.482 of 2009 on the file of the learned Principal Sessions Judge, Tirunelveli and he stood charged and tried for the commission of the offence under Section 302 I.P.C. The trial Court, vide impugned judgment dated 20.02.2014, has found him guilty of the said charge and convicted and sentenced him to undergo rigorous imprisonment for life and to pay a fine of Rs.500/- (Rupees Five Hundred only), in default, to undergo rigorous imprisonment for six months and he was also granted set off under Section 428 Cr.P.C. The appellant/sole accused aggrieved by the conviction and sentence awarded vide impugned judgment, had filed this appeal.

2. Facts leading to the present appeal, relevant for the disposal and briefly narrated, are as follows:



2.1. P.W.1 - Santhanamari, is the wife of the deceased, namely, Mahesh. P.W.2 - Kannan is the brother of the deceased. P.W.1 and her husband - deceased Mahesh, along with their children, were residing at Indira Colony, Vallam. Her husband was a coolie worker and she is also a coolie. They had one male child, aged 6 years and one female child, aged 3 years. The accused - Kumar, son of Murugaiah, residing at Kalaignar Nagar, Vallam, frequently demanded money from her husband, who would also give the same and when her husband refused to give money, the accused used to threaten him with dire consequences. On 26.06.2009 at about 08.30 p.m., the deceased - Mahesh, the accused - Kumar @ Selvakumar, P.W.2 - Kannan, P.W.7 - Thon Pitchai, Thangamari and some other persons were chatting near the house of the accused at Kalaignar Colony, Vallam and on coming to know about the same, she went to the said place to bring her husband for dinner. At that time, the accused demanded a sum of Rs.50/- (Rupees Fifty only) from her husband, who told that he had no money and the accused scolded him and attacked him with M.O.1 - aruval on the left side of the neck of the deceased and thereafter, the deceased fell down and the accused fled away from the scene of occurrence. P.W.1 and P.W.2 took the deceased to Government Hospital, Tenkasi and her husband died on the way to the hospital. P.W.1 along with P.W.2 went to Shencottai Police Station and lodged Ex.P.1 - complaint, based on which, P.W.13 - Sub Inspector of Police attached to Shencottai Police Station, registered a case in Cr.No.200 of 2009 under Section 302 I.P.C., at about 00.30 hours on 27.06.2009 and the printed F.I.R., was marked as Ex.P.19. P.W.13 despatched the original of Ex.P.1 - complaint and Ex.P.19 - F.I.R., through P.W.12 - Head Constable to the jurisdictional Magistrate Court and forwarded the copies to his official superiors.

2.2. P.W.14, upon receipt of the copy of the F.I.R, proceeded to the scene of crime on the same day, i.e., on 27.06.2009 and in the presence of P.W.4 - Kuttiraj and P.W.9 - Mariappan, prepared Ex.P.3 - Observation Mahazar and Ex.P.20 - Rough Sketch and from the scene of crime, recovered blood stained earth and sample earth under a cover of mahazar marked as Ex.P.4. P.W.14 continued with the investigation and conducted the inquest on the body of the deceased at the Mortuary of Tenkasi Government Hospital in the presence of Panchayatdars at 07.00 a.m., and the inquest report was marked as Ex.P.21. Thereafter, P.W.16 examined P.W.1, P.W.2, Pitchaiah, Thangamari, P.W.4, P.W.9, P.W.10 and recorded their statements. P.W.14 for the purpose of finding out the cause of death, has entrusted the dead body of the deceased to P.W.10 along with Ex.P.7 - requisition for conducting the post-mortem on the body of the deceased.

2.3. P.W.6 received the body of the deceased at 11.50 a.m., on 27.06.2009 and commenced the post-mortem at about 12.00 noon on 27.06.2009 and during the course of the post-mortem, noted the following features:

"Appearances found at the post-mortem:

Body lies on back Rigor mortis present.



Eyelid closed. Tongue inside mouth. Hyoid bone intact.

Injuries:

1. Deep incised wound 15x10x5 cm left side neck extending back of neck completely exposing soft tissues, nerves vessel of cutting Spinal cord along under lying Vertibra also (nc).
2. Small abrasion on left side elbow.
3. Small abrasion on the left side forehead.

Internal Examination:

Stomach contains 20 gms rice, Liver, Spleen, brain pale. Intestine contains foul smell of gas, kidney pale. Interval between Death and PM - 12.00 to 16 hours."

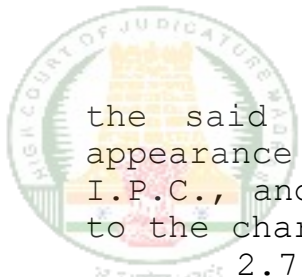
[extracted as such]

After completion of the post-mortem, P.W.6 opined, "The deceased would appear to be died of injury by sharp instrument producing spinal cord injury severe blood loss."

2.4. P.W.14 continued with the investigation and at about 16.00 hours, on 27.06.2009 effected the arrest of the accused in the presence of P.W.5 and P.W.7 and the accused voluntarily came forward to give confession statement and the admissible portion of his confession statement was marked as Ex.P.5, which led to the recovery of M.O.1 - aruval and the clothes worn by the deceased and all the material objects were recovered under a cover of mahazar marked as Ex.P.22. P.W.14 has also recorded the further statements of witnesses and sent the material objects for chemical analysis to find out whether M.O.1 - aruval and the clothes worn by the deceased were stained with human blood and if so, which group of human blood and as per Ex.P.17 - Chemical Analysis Report, M.O.1 to M.O.4 were tainted with blood and as per Ex.P.18 - Serology Report, the blood stains found in M.O.1 to M.O.3 were human blood of "B" Group.

2.5. On 05.07.2009, P.W.14 continued with the investigation and examined P.W.3, P.W.10 and P.W.13 and recorded their statements and on 07.08.2009, he examined P.W.6 - Doctor, who conducted autopsy on the body of the deceased and recorded his statement. On 16.08.2009, P.W.14 examined P.W.8 - Doctor who treated the deceased and intimated the death of the deceased and P.W.12 - Head Constable who despatched the F.I.R., to the jurisdictional Magistrate Court and recorded their statements. P.W.14 after completion of the investigation, has filed the final report/charge sheet charging the accused under Section 302 I.P.C.

2.6. The Court of Judicial Magistrate, Shencottai, took it on file in P.R.C.No.50 of 2009 and the Committal Court, upon filing of the final report, issued summons to the appellant/accused and on his appearance, furnished to him the documents under Section 207 of the Code of Criminal Procedure, 1973. The Committal Court having found that the case is exclusively triable by the Court of Session, committed the case to the Principal Sessions Court, Tirunelveli and



the said Court took it on file in S.C.No.482 of 2009 and on appearance of the accused, framed the charges under Section 302 I.P.C., and questioned him. The appellant/accused pleaded not guilty to the charge framed against him and prayed for trial of the case.

2.7. The prosecution in order to sustain their case, examined P.W.1 to P.W.14, marked Exs.P.1 to P.22 and also marked M.O.1 to M.O.5.

2.8. While the appellant/accused was under trial prisoner, he was referred to Chennai Government Mental Ill Health Centre wherein C.W.1 - Dr.Aravindan, examined the appellant/accused and he was under the observation of C.W.1 in that hospital. Again, the appellant/accused was produced before C.W.1 on 02.07.2011 and thereafter, he was under observation from March 2012 to 17.05.2012. It also came to know that the appellant/accused was taking treatment in the month of October 2010 and it was found that the appellant/accused was suffering from mental ill health and a medical report was also given on 07.01.2011 in that regard and it was marked as Ex.C.1 - series. After his recovery, he was sent to Palayamkottai Central Prison on 24.02.2011 and thereafter, he was admitted in the hospital on 02.07.2011 for continuous treatment. Later, the Medical Board recommended that the appellant/accused was improving in mental health and he was able to face the trial and hence, he was discharged from the hospital and sent to Central Prison, Palayamkottai, on 17.05.2012. Ex.C.2 is the discharge summary issued by the hospital.

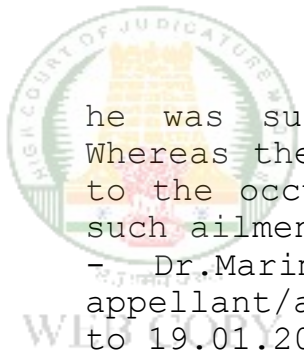
2.9. The appellant/accused was questioned under Section 313 (1)(b) of the Code of Criminal Procedure, 1973, with regard to the incriminating circumstances made out against him in the evidence tendered by the prosecution and he denied it as false.

2.10. On behalf of the accused, D.W.1 - Doctor was examined and Ex.D.1 - Treatment chart issued by the Government Hospital, Tenkasi, was marked.

2.11. The trial Court on consideration of the oral and documentary evidence and other materials, found him guilty under Section 302 I.P.C., and convicted and sentenced the appellant/accused as stated above and challenging the legality of the conviction and sentence awarded vide impugned judgment, the appellant/accused has preferred this Criminal Appeal.

3. Dr.R.Alagumani, learned Counsel for the appellant/accused, though raised many grounds challenging the impugned judgment, has drawn the attention of this Court to the testimony of D.W.1 - Dr.Marimuthu and Ex.D.1 - Treatment Chart issued by the Government Hospital, Tenkasi and restricted his arguments only with regard to the acquittal of the appellant/accused under Section 84 I.P.C. as under:

3.1. The appellant/accused is suffering from schizophrenia for about a decade and there is evidence and also records to establish the fact that even in the year 2010, he was treated for such illness. The trial Court has failed to consider the said aspect and the burden on the appellant/accused to prove that



he was suffering from such illness on the date of occurrence. Whereas the appellant/accused was suffering from schizophrenia prior to the occurrence in the year 2008 and he was taking treatment for such ailment and the said aspect has been clearly spoken to by D.W.1 - Dr.Marimuthu stating that he had given medicines to the appellant/accused for schizophrenia for the period from 19.11.2008 to 19.01.2009 and the date of occurrence was on 26.06.2009.

3.2. Further, while the appellant/accused was under trial prisoner, he was referred to Chennai Government Mental Ill Health Centre, where C.W.1 - Dr.Aravindan examined him and found that the appellant/accused was taking treatment during the month of October 2010 for his mental illness and C.W.1, after observing the appellant/accused for some period, issued a medical report under Ex.C.1 - series. Though the appellant/accused was sent to Palayamkottai Central Prison on 24.02.2011, on 02.07.2011, he was again admitted in the hospital for his continuous treatment.

3.3. However, the trial Court has not taken into consideration these facts and convicted the appellant/accused as stated supra and hence, prayed for acquittal of the appellant/accused by extending the benefit under Section 84 I.P.C.

3.4. In support of his contentions, the learned Counsel for the appellant/accused relied on the following decisions:

- **Shrikant Anandrao Bhosale v. State of Maharashtra** reported in **AIR 2002 SUPREME COURT 3399.**
- **Vidhya Devi v. State of Rajasthan** reported in **2004 CRI.L.J. 2332.**
- **State of Jharkhand v. Lakhan Rai** reported in **2007 CRI.L.J. 2410.**
- **Kali @ Kalidoss @ Kalirajan v. State** reported in **(2017) 4 MLJ (Cr1) 257.**

4. *Per contra*, Mr.S.Chandrasekar, learned Additional Public Prosecutor appearing for the State would submit that though the appellant/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 appellant/accused was suffering from such illness. The trial Court taking into consideration the fact that since the appellant/accused has failed to prove the same, the benefit has not been extended to him. Therefore, the learned Additional Public Prosecutor appearing for the State contended that as the appellant/accused has not discharged his burden establishing the fact of insanity, the trial Court has rightly concluded that the appellant/accused is not entitled to the benefit of Section 84 I.P.C.

5. This Court has carefully considered the arguments advanced by the respective learned Counsel for the appellant/accused and the learned Additional Public Prosecutor appearing for the State and also perused the materials available on record and analysed the oral and documentary evidence and other materials and also gone through the original records.



6. The questions that arise for consideration, are:

(i) Whether the prosecution through the testimonies of witnesses, exhibits and material objects marked, is able to prove it's case beyond reasonable doubt?

(ii) Whether the appellant/accused is entitled to the benefit under Section 84 I.P.C?

Question Nos. (i) & (ii):

7. Since the learned Counsel for the appellant/accused has restricted his submissions only to the extent that the appellant/accused is entitled to the benefit of Section 84 I.P.C., we deem it appropriate to consider the said issue alone in the light of the oral and documentary evidence let in by the prosecution.

8. At the outset, we would like to refer to the decision of the Honourable Supreme Court in **Devidas Loka Rathod v. State of Maharashtra** reported in **CDJ 2018 SC 678**, wherein, the Honourable Supreme Court, while dealing with the doctrine of burden of proof in the context of plea of insanity, has observed at paragraphs 10 to 13, as under:

"10. The law undoubtedly presumes that every person committing an offence is sane and liable for his acts, though in specified circumstances it may be rebuttable. The doctrine of burden of proof in the context of the plea of insanity was stated as follows in as stated in **Dahyabhai Chhaganbhai Thakkar v. State of Gujarat, (1964) 7 SCR 361:**

"(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 Indian 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



WEB COPY

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."

11. Section 84 of the IPC carves out an exception, that an act will not be an offence, if done by a person, who at the time of doing the same, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or what he is doing is either wrong or contrary to law. But this onus on the accused, under Section 105 of the Evidence Act is not as stringent as on the prosecution to be established beyond all reasonable doubts. The accused has only to establish his defence on a preponderance of probability, as observed in *Surendra Mishra vs. State of Jharkhand*, (2011) 11 SCC 495, after which the onus shall shift on the prosecution to establish the inapplicability of the exception. But, it is not every and any plea of unsoundness of mind that will suffice. The standard of test to be applied shall be of legal insanity and not medical insanity, as observed in *State of Rajasthan vs. Shera Ram*, (2012) 1 SCC 602, as follows:

"19. ... Once, a person is found to be suffering from mental disorder or mental deficiency, which takes within its ambit hallucinations, dementia, loss of memory and self-control, at all relevant times by way of appropriate documentary and oral evidence, the person concerned would be entitled to seek resort to the general exceptions from criminal liability."

12. The crucial point of time for considering the defence plea of unsoundness of mind has to be with regard to the mental state of the accused at the time the offence was committed collated from evidence of conduct which preceded, attended and followed the crime as observed in *Ratan Lal vs. State of Madhya Pradesh*, (1970) 3 SCC 533, as follows:

"2. It is now well-settled that the crucial point of time at which unsoundness of mind should be established is the time when the crime is actually committed and the burden of proving this lies on the accused. In *D.G. Thakker v. State of Gujarat* it was laid down that "there is a rebuttable



WEB COPY

presumption that the accused was not insane, when he committed the crime, in the sense laid down by Section 84 of the India 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 which rests upon a party to civil proceedings."

13. If from the materials placed on record, a reasonable doubt is created in the mind of the Court with regard to the mental condition of the accused at the time of occurrence, he shall be entitled to the benefit of the reasonable doubt and consequent acquittal, as observed in *Vijayee Singh v. State of U.P.*, (1990) 3 SCC 190."

9. Further, the Honourable Supreme Court in **Accused 'X' v. State of Maharashtra** reported in **CDJ 2019 SC 601**, at paragraph 66, has observed as follows:

"66. 'Severe Mental Illness under the 'International Classification of Disease (ICD)', which is accepted under Section 3 of the Mental Health Care Act, 2017, generally include-

1. schizophrenia and delusional disorders;
2. mood (affective) disorders, including depressive, manic and bipolar forms;
3. neuroses, including phobic, panic and obsessive-compulsive disorders;
4. behavioural disorders, including eating, sleep and stress disorders;
5. personality disorders of different kinds."

(emphasis added.)

From the above, it is, no doubt, very clear that schizophrenia is a severe mental illness as per the 'International Classification of Disease (ICD)', which is accepted under Section 3 of the Mental Health Care Act, 2017.

10. In this context, it is also useful to extract hereunder the definition of Schizophrenia given in Medical Jurisprudence and Toxicology:

"Schizophrenia": Kraepelin, in 1896, named this disease as 'dementia praecox'. In 1911, Eugen Bleuler introduced 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 many 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."

Therefore, it is amply clear that impairment cannot be developed in a day or one, in fact, it has completed to such a stage after various stages.

11. In **Shrikant Anandrao Bhosale v. State of Maharashtra** reported in **AIR 2002 SUPREME COURT 3399**, the Honourable Supreme Court has held that the question whether a person has proved the existence of circumstances bringing the case within the purview of Section 84 I.P.C., will have to be examined from the totality of the circumstances and 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 and further observed as follows:

"13. The burden to prove that the appellant was of unsound mind and as a result thereof he was incapable of knowing the consequences of his acts is on the defence. Section 84 IPC is one of the provision in Chapter IV IPC which deals with "general exceptions". That section provides that 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. The burden of proving the existence of circumstances bringing the case within the purview of Section 84 lies upon the accused under Section 105 of the Indian Evidence Act. Under the said section, the Court shall presume the absence of such circumstances. Illustration (a) to Section 105 is as follows :

"(a) A, accused of murder, alleges that, by reason of unsoundness of mind, he did not know the nature of the act.

The burden of proof is on A."

14. The question whether the appellant has proved the existence of circumstances bringing his case within the purview of Section 84 will have to be examined from the totality of circumstances. The unsoundness of mind as a result whereof one is incapable of knowing consequences is a state of mind of a person which, ordinarily can be inferred from the circumstances. If, however, an act is committed out of extreme anger and not as a result of unsoundness of mind, the accused would not be



entitled to the benefit of exception as contained in Section 84 IPC. In fact, that is the contention of the learned counsel for the State. It was contended that the prosecution evidence has established that the appellant by nature was an angry person and under the fit of extreme anger, he committed the murder of his wife as there was fight between them that morning and there is nothing to show that at the relevant time the appellant was under an attack of paranoid schizophrenia.

15. At this stage, it is necessary to notice the nature of the burden that is required to be discharged by the accused to get benefit of Section 84 IPC. In *Dahyabhai Chhaganbhai Thakker v. State of Gujarat* [(1964) 7 SCR 361] this Court has held that 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 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. The burden of proof on the accused to prove insanity is no higher than that rests upon a party to civil proceedings which, in other words, means preponderance of probabilities. This Court held that : "The doctrine of burden of proof in the context of the plea of insanity may be stated in the following propositions : (1) The prosecution must prove beyond reasonable doubt that the accused had committed the offence with the requisite mens rea; and the burden of proving that always rests on the prosecution from the beginning to the end of the trial. (2) There is a rebuttable presumption that the accused was not insane, when he committed the crime, in the sense laid down by S.84 of the Indian 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."

16. In support of the contention that the crucial point of time for ascertaining the existence of circumstances bringing the case within the purview of Section 84 IPC is the time when the offence is committed, the learned counsel relied upon the following passage from the aforementioned case:

"When a plea of legal insanity is set up, the court has to consider whether at the time of commission of the offence the accused, by reason of unsoundness of mind, was incapable of knowing the nature of the act or that he was doing what was either wrong or contrary to law. The crucial point of time for ascertaining the state of mind of the accused is the time when the offence was committed. Whether the accused was in such a state of mind as to be entitled to the benefit of s.84 of the Indian Penal Code can only be established from the circumstances which preceded, attended and followed the crime."

12. In **Vidhya Devi v. State of Rajasthan** reported in **2004 CRI.L.J. 2332**, the Rajasthan High Court while observing that certain elements must be present to establish that an act done cannot be said to be an offence as covered by Section 84 I.P.C., held as follows:

"26. A fundamental principle of criminal law is that mens rea (guilty mind) is an essential element in every offence and no crime can be said to have been committed if the mind of the person doing the act is not guilty. Since criminal act is an indispensable element in every crime, a person incapable of entertaining such intent cannot incur legal guilt. Idiots and lunatics are, therefore, not liable in criminal law for their acts. It has been said that a mad man is best punished by his own madness. (*Furiosus furore suo punier*); or that a mad man has no will (*Furiosus nulla voluntus est*); or a mad man is like one who is absent (*Furiosus absentis loco est*).



27. To establish that an act done cannot be said to be an offence as covered by Section 84 IPC, the following elements must be present:-

- (i) the accused was of unsound mind at the time of commission of the act; and
- (ii) by reason of unsoundness of mind, the accused was incapable of knowing the nature of the act or that he was doing what was either wrong or contrary to law.

28. Apart from this, there are certain principles to be borne in mind before applying Section 84 IPC and they are as follows:-

(a) every type of insanity is not legal insanity; the cognitive faculty must be so destroyed as to render one incapable of knowing the nature of his act or that what he is doing is wrong or contrary to law;

(b) the Court shall presume the absence of such insanity'

(c) the burden of proof of legal insanity is on the accused though it is not as heavy as on the prosecution to prove an offence;

(d) the Court must consider whether the accused suffered from legal insanity at the time when the offence was committed;

(e) in reaching such a conclusion, the circumstances which preceded, attended or followed the crime are relevant consideration; and

(f) the prosecution in discharging its burden in the face of the plea of legal insanity has merely to prove the basic fact and rely upon the normal presumption of law that everyone knows the law and the natural consequences of his act.

29. There are four kinds of persons, who may be said to be non compos mentis (not of sound mind):

- (i) an idiot;
- (ii) one made non compos by illness;
- (iii) a lunatic or madman; and
- (iv) a drunkard i.e. one who is drunk.

30. A lunatic is one who is, as described by older English writers, "afflicted by mental disorder only at certain periods and vicissitudes; having intervals of reason. Such persons during their frenzy are criminally as irresponsible as those whose disorder is fixed and permanent.

31. To establish a defence on the ground of insanity it must clearly be proved that at the time of committing the act, the party accused was labouring under such a defect of reason, from



disease of the mind, as not to know the nature and quality of the act he was doing or if he did know it, that he did not know he was doing what was wrong or contrary to law. The first aspect refers to the offender's consciousness of the bearing of his act on those who are affected by it and the second and third, to his consciousness of its relation to himself. If he did not know it, he was responsible. The crucial point of time at which unsoundness of mind should be established is the time when the crime is actually committed. The mere fact that on former occasions the accused had been occasionally subject to insane delusions or had suffered from derangement of the mind or that subsequently he had at times behaved like a mentally deficient person is per se insufficient to bring his case within the exemption. However, in a generality of cases, it may not be possible to prove unsoundness of mind at the exact time of commission of the offence. In order to ascertain whether the accused was insane at the time of commission of the offence, it may be relevant to consider the state of such person's mind immediately preceding as well as subsequent to the commission of the offence. The state of mind before and after the act is relevant though not conclusive. Generally speaking, the pattern of crime, the circumstances under which it was committed, the manner and method of its execution, and the behaviour of the offender before or after the commission of the crime furnish some of the important clues to ascertain whether the accused had no cognitive faculty to know the nature of the act or that what he was doing was either wrong or contrary to law.

Unsoundness of mind

32. The Code does not define 'unsoundness of mind'. But to exempt a man from criminal liability, unsoundness of mind, must reach that degree which is described in the latter part of this exception. It is not every person suffering from mental disease that can avoid responsibility for a crime by invoking the plea of insanity.

An idiot or a lunatic, even if he is conscious of his act, has no capacity to know its nature and quality, he is not responsible. Mad men, especially those under the influence of some delusion, may have capacity enough to know the nature of the act, but unless they also know that they are doing "what is either wrong or contrary to law" they are not responsible. A common instance is,



where a man fully believes that the act he is doing, e.g. killing another man, is done by the immediate command of God.

It is only unsoundness of mind which materially impairs the cognitive faculties of the mind that can form a ground of exemption from criminal responsibility, the nature and the extent of the unsoundness of mind required being such as would make the offender incapable of knowing the nature of the act, or that he is doing what is wrong or contrary to law.

33. There is no dispute on the point that the accused appellant was suffering from the disease "schizophrenia" and it is one of the types of insanity.

Schizophrenia

34. The disease "schizophrenia" has been defined in the Medical Dictionary for Lawyers by Bernard S. Maloy (third edition) in the following manner:-

"schizophrenia (skiz-o-fre'ne-ah) (Gr. schizein, to divide + phren, mind). Dementia praecox, or adolescent insanity, an affection marked by melancholia and self-absorption, terminating in mental weakness."

35. Schizophrenia has been defined in Livingstone's Medical Dictionary as a group of mental illness characterised by disorganisation of the patient's personality, often resulting in chronic life long ill-health and hospitalization. In its simple form the patient is dull, withdrawn, solitary and inactive.

36. Schizophrenia is one of the forms of insanity. Each case of schizophrenia has to be considered on its own merits. It is an illness of slow insidious onset developing over years. There may be report of strange, odd inappropriate behaviour.

37. In *State of Mohinder Singh*, (1983) 2 SCC 274, where the evidence disclosed that the accused was suffering from schizophrenia and this state existed before and after the occurrence, it was held that the defence of insanity had been established."

13. In ***State of Jharkhand v. Lakhan Rai*** reported in **2007 CRI.L.J. 2410**, the Jharkhand High Court dealt with the importance of Section 84 I.P.C., and laid down as under:

"13. In order to test the submission of the

<https://hcservices.ecourts.gov.in/hcservices/>



learned Counsel appearing for the appellant it is necessary to notice the relevant provisions. Section 84 of the Indian Penal Code envisages as under:-

"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 the act, or that he is doing what is either wrong or contrary to law."

14. From perusal of the above quoted provisions of law it appears that to bring a crime under the exception of Section 84 I.P.C., the following essential ingredients, of Section 84 I.P.C. are to be fulfilled:

(a) The act must be done by a person who is incapable of knowing; (i) The nature of the act, or

(ii) That what he is doing is either wrong or contrary to law.

(b) Such incapacity must arise by reason of unsoundness of mind.

(c) Such incapacity must exist at the time of doing the act.

15. The object of Section 84 of the Indian Penal Code is that the fundamental principle of criminal law is that mens rea (guilty mind) is an essential element in every offence and no crime can be said to have been committed if the mind of the person doing the act is not guilty. But before applying the said principle of law the following things are to be borne in mind:

(a) Every type of insanity is not legal insanity.

(b) The court shall presume the absence of such insanity

(c) The burden of prove of legal insanity is on the accused, though is not as heavy as on the prosecution to prove an offence.

(d) The court must consider whether the accused suffer from legal insanity at the time when the offence was committed.

(e) In reaching such a conclusion, the circumstances, which preceded, attended or followed the crime, are relevant consideration, and

(f) The prosecution in discharging this burden in the face of the plea of legal insanity has merely to prove the basis fact and rely upon the normal presumption of law that everyone knows the law on the natural consequence of his act.



16. Reference in this regard may be had to the case of Dahyabhai Chhaganbhai Thakkar v. State of Gujarat, reported in AIR 1964 SC 1563 and to the case of Bhikhari v. State of Uttar Pradesh, reported in AIR 1966 SC 1.

17. Section 329 of the Code of Criminal Procedure reads as under:

"329. Procedure in case of person of unsound mind tried before Court- (1) If at the trial of any person before a Magistrate or Court of Session, it appears to the Magistrate or Court that such person is of unsound mind and consequently incapable of making his defence, the Magistrate or Court shall, in the first instance, try the fact of such unsoundness and incapacity, and if the Magistrate, or Court, after considering such medical Page 0590 and other evidence as may be produced before him or it is satisfied of the fact, he or it shall record a finding to that effect and shall postpone further proceedings in the case.

(2) The trial of the fact of the unsoundness of mind and incapacity of the accused shall be deemed to be part of his trial before the Magistrate or Court."

18. From bare perusal of Section 329 Cr.P.C., it appears that it contemplates two stages of procedure. The first stage is that it must appear to the Magistrate or Court of Sessions that the accused was of unsound mind and consequently incapable of making defence. The second stage consists of an enquiry into the unsoundness of mind and, incapacity of the accused when the accused appears before the Court of Sessions appears to be of unsound mind or such a plea is raised before the trial then a preliminary enquiry, as to whether the accused is or is not capable of standing trial must be enquired first before proceeding any further.

In the present case it appears from the records of the trial court that the plea of insanity/unsoundness of mind of the appellant was raised before the trial court and the court for its satisfaction put several questions to the accused to which he answered fully and on being asked, the accused expressed that at present he was mentally fit and sound and he was fully understanding the facts and circumstances of the case. This fact appears from the order sheet of the trial court dated 23/12/2003.



19. In this view of the matter, in my view, the learned trial court made preliminary enquiry under Section 329 Cr.P.C. and then on being satisfied that the accused was mentally sound and fit to stand the trial and then he proceeded further and, therefore, the trial of the case did not vitiate on account of non-fulfillment of the requirement envisaged under Section 329 Cr.P.C.

20. The main point, which has to be considered in the present, appeal is as to whether the appellant was suffering from insanity or unsoundness of mind on the date and time when the alleged offence was committed by him and as to whether he is entitled to the benefit of exception of Section 84 of the Indian Penal Code.

21. In the case of *Jai Lal v. Delhi Administration*, the Supreme Court has held that to establish that the act done are not offence under Section 84, it must be proved clearly that at the time of the commission of the act, the appellant by reason of unsoundness of mind was incapable of either knowing that the acts were either morally wrong or contrary to law.

22. The question is whether the appellant was suffering from such incapacity at the time of commission of the acts. The Supreme Court in this case further held that on this question the state of his mind, before and after the crucial time is relevant, to be considered. If a person 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 he cannot be guilty of the criminal intent. Such a person lacks the requisite mensrea and is entitled to acquittal.

23. In this context it is also very relevant to notice the decision of the Supreme Court in the case of *Dahyabhai Chhaganbhai Thakkar v. State of Gujrat*. The law laid down by the Supreme Court in this decision in this regard is extracted herein below:

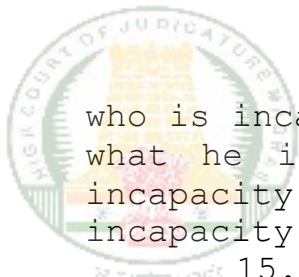
"It is fundamental principle of criminal jurisprudence that an accused is presumed to be innocent and, therefore, the burden lies on the prosecution to prove the guilt of the accused beyond reasonable doubt. The prosecution, therefore, in a case of homicide shall prove beyond reasonable doubt that the accused caused death with the requisite intention described in Section 299 of the Indian penal code. This general burden never shifts and it



always rests on the prosecution. But, Section 84 of the Indian penal Code provides that nothing is an offence if the accused at the time of doing that act, by reason of unsoundness of mind was incapable of knowing the nature of his act or what he was doing was either wrong or contrary to law. The being an exception, under Section 105 of the Evidence Act the burden of proving the existence of circumstances bringing the case within the said exception lies on the accused, and the court shall presume the absence of such circumstances. Under Section 105 of the Evidence Act, read with the definition of "shall presume" in Section 4 thereof, the court shall regard the absence of such circumstances as proved unless, after considering the matters before it, it believes that the said circumstances existed or their existence was so probable that a prudent man ought under the circumstances of the particular case, to act upon the supposition that they did exist. To put it in other words, the accused will have to rebut the presumption that such circumstances did not exist, by placing material before the court sufficient to make it consider the existence of the said circumstances so probable that a prudent man would act upon them. The accused has to satisfy the standard of a "prudent man". If the material placed before the court, such as, oral and documentary evidence, presumptions, admissions or even the prosecution evidence, satisfies the test of "prudent man" the accused will have discharged his burden. The evidence so placed may not be sufficient to discharge the burden under Section 105 of the Evidence Act, but it may raise reasonable doubt in the mind of a judge as regards one or other of the necessary ingredients of the offence itself. It may, for instance, raise a reasonable doubt in the mind of the judge whether the accused had the requisite intention laid down in S. 299 of the Indian Penal Code. If the judge has such reasonable doubt he has to acquit the accused, for in that event the prosecution will have failed to prove conclusively the guilt of the accused. There is no conflict between the general burden, which is always on the prosecution and which never shifts, and the special burden that rests on the accused to make out his defence of insanity."

14. Thus, it is crystal clear that to bring a crime under the exception of Section 84 I.P.C., the essential ingredients of Section 84 I.P.C. to be fulfilled, are **(a)** The act must be done by a person

<https://hcservices.ecourts.gov.in/hcservices/>



who is incapable of knowing; (i) The nature of the act, or (ii) That what he is doing is either wrong or contrary to law; **(b)** Such incapacity must arise by reason of unsoundness of mind and **(c)** Such incapacity must exist at the time of doing the act.

15. Further, the object of Section 84 of the Indian Penal Code is that the fundamental principle of criminal law is that mens rea (guilty mind) is an essential element in every offence and no crime can be said to have been committed if the mind of the person doing the act is not guilty. But before applying the said principle of law the things to be borne in mind, are, (a) Every type of insanity is not legal insanity; (b) The court shall presume the absence of such insanity; (c) The burden of prove of legal insanity is on the accused, though is not as heavy as on the prosecution to prove an offence; (d) The court must consider whether the accused suffer from legal insanity at the time when the offence was committed; (e) In reaching such a conclusion, the circumstances, which preceded, attended or followed the crime, are relevant consideration, and (f) The prosecution in discharging this burden in the face of the plea of legal insanity has merely to prove the basis fact and rely upon the normal presumption of law that everyone knows the law on the natural consequence of his act.

16. In **Kali @ Kalidoss @ Kalirajan v. State** reported in **(2017) 4 MLJ (Cr1) 257**, the Division Bench of this Court held that once evidence adduced on the side of the accused probablise case, the Court has to necessarily hold that to claim benefit under Section 84, the accused discharged his burden and in paragraphs 11 to 16, it is further held as follows:

"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 9 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 proposition 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 in fact 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 in fact 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 put forth 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 in fact 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, 17 eye witnesses in fact 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 many 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 impairment 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 pseudoreligious sects. The classical picture is rare and generally takes a chronic course. Paranoid schizophrenia, in the vast majority of cases, 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



WEB COPY

rise to hallucinations, 19 which are attributed to the effects of hypnotism, electricity, wireless telegraphy or atomic agencies. The patient gets very irritated and excited owing to these painful and disagreeable hallucinations and delusions. Since so many people are against him and are 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 begins later in life than 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 20 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 probabalise 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



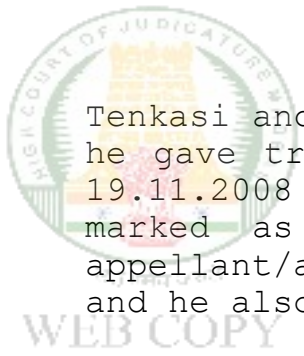
best known to them not adduced any evidence on their side by not even examining the medical officer who treated the accused for mental disorder. At any event the evidence adduced on the side of the accused and the particulars available on the prosecution side clinchingly establish the fact that in fact 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."

(emphasis supplied.)

17. In the light of the dicta laid down in the aforesaid decisions, we would like to examine the case on hand. Here, it is the case of the prosecution that the appellant/accused often used to demand money from the deceased and on the date of occurrence, i.e., on 26.06.2009 at about 08.30 p.m., while the deceased was in the company of the accused - Kumar @ Selvakumar, P.W.2 - Kannan, PW.7 - Thon Pitchai, Thangamari and some other persons, the appellant/accused demanded a sum of Rs.50/- (Rupees Fifty only) from the deceased, for which, he replied that he had no money and being enraged by the same, the appellant/accused attacked the deceased with M.O.1 - aruval on the left side of the neck of the deceased. The deceased fell down and the appellant/accused fled away from the scene of occurrence. P.W.1 and P.W.2 took the deceased to Government Hospital, Tenkasi and her husband died on the way to the hospital. Thereafter, P.W.1 along with P.W.2 returned to Shencottai Police Station and lodged Ex.P.1 - complaint and after investigation, the Investigating Officer filed the final report charging the appellant/accused under Section 302 I.P.C. Challenging the same, the present appeal has been filed by the appellant/accused mainly on the ground that since the appellant/accused has been suffering from schizophrenia, he is entitled to the benefit of Section 84 I.P.C.

18. The main contention of the learned Counsel for the appellant/accused is that even prior to the occurrence and during the course of the trial also, the appellant/accused was taking continuous treatment for schizophrenia and he was under observation for treating such an ailment. Despite the availability of oral and documentary evidence let in by the defence, the trial Court has miserably failed to take into consideration the same and convicted the appellant/accused for the offence under Section 302 I.P.C., which warrants interference at the hands of this Court.

19. The learned Counsel for the appellant/accused has drawn the attention of this Court to the testimony of D.W.1 - Dr.Marimuthu and Ex.D.1 - Treatment Chart issued by the Government Hospital,



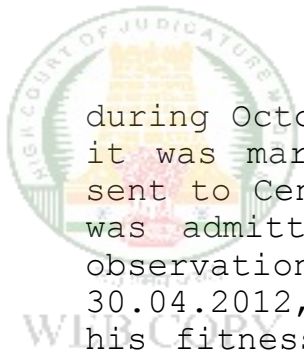
Tenkasi and submitted that in the evidence of D.W.1, he deposed that he gave treatment for the appellant/accused for schizophrenia from 19.11.2008 and 19.01.2009 and the prescription of medicines has been marked as Ex.D.1, in which, the medicines prescribed to the appellant/accused were found place for treatment of schizophrenia and he also deposed about the effects of such mental illness.

20. Further, the attention of this Court was also drawn to the testimony of C.W.1 - Dr.Aravindan, who treated the appellant/accused after the occurrence as a under trial prisoner and in the cross-examination of C.W.1, he had clearly spoken that it is seen from the medical records of the appellant/accused that he was suffering from schizophrenia for nearly about 7 ½ years and when a person is suffering from schizophrenia, he did not know as to what he is doing.

21. At this juncture, we deem it proper to analyse the evidence of D.W.1 and C.W.1 to see as to whether the appellant/accused was suffering from schizophrenia even prior to the date of occurrence and also after the incident. D.W.1 - Dr.Marimuthu, in his chief examination, has clearly deposed that the appellant/accused was taking treatment for schizophrenia prior to the date of occurrence and the treatment chart given to the appellant/accused was marked as Ex.D.1, which contains the details of medicines prescribed to the appellant/accused from 19.11.2008 to 19.01.2009. Further, he deposed that the appellant/accused on informing him on 01.12.2008 that he had more anger, he prescribed high dosage medicines to the appellant/accused and the persons suffering from schizophrenia would like to remain lonely and they would not talk to anybody and if proper medications are not taken, such persons would not know as to what they are doing and without there being any motive against anybody, they would imagine as if he had motive against them and after 19.01.2009, the appellant/accused did not come for further treatment.

22. In the cross-examination, D.W.1 - Dr.Marimuthu deposed that since the appellant/accused informed him that he had more anger, he prescribed high dosage medicines to him and he denied the suggestion that there is a chance for the appellant/accused to lie and there are three categories in the disease of schizophrenia, of which, 33% of patients would normally get cured; 33% of patients would get cured on taking proper medications and the remaining 33% of patients would not recover from such illness and on continuous observation of the appellant/accused alone, he could analyse as to which category the appellant/accused falls within.

23. C.W.1 - Dr.Aravindan, in his evidence, had spoken to the effect that the appellant/accused was suffering from schizophrenia even after the date of occurrence and in the chief examination, he deposed that the appellant/accused was under his observation from 17.05.2012 and he had already been under treatment



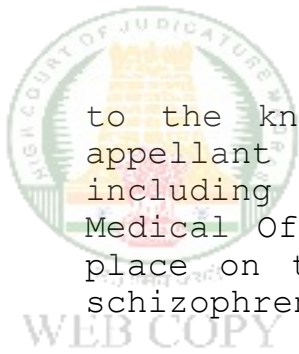
during October 2010 and a medical report was given on 07.01.2011 and it was marked as Ex.C.1. After recovery from his illness, he was sent to Central Prison, Palayamkottai, on 24.02.2011. Thereafter, he was admitted for treatment on 02.07.2011 and he was kept under observation and continuous treatment for his mental illness and on 30.04.2012, he was produced before the Medical Board for examining his fitness and on the basis of the recommendation of the Medical Board, he was discharged from the hospital and again sent to Central Prison on 17.05.2012.

24. In the cross-examination, C.W.1 - Dr.Aravindan, had categorically deposed that the appellant/accused was suffering from schizophrenia for nearly about 7 ½ years and the person suffering from such illness would not know as to what he is doing.

25. From the careful scrutiny of the above oral testimonies of D.W.1 and C.W.1, this Court is of the considered opinion that the appellant/accused was suffering from schizophrenia even prior to the date of occurrence and also after the date of occurrence. Therefore, it cannot be stated that the appellant/accused was not suffering from schizophrenia at the time of occurrence on 26.06.2009 and such mental illness cannot be developed in a single day to contend that on the date of occurrence, the appellant/accused was alright.

26. Keeping in mind the principles laid down in the aforesaid decisions and on analysis of the materials available on record, we are of the considered opinion that in the case on hand, the appellant/accused has proved the existence of circumstances bringing his case within the purview of Section 84 I.P.C, through the testimonies of D.W.1 and C.W.1 and also the treatment chart marked as Ex.D.1 on the side of the defence. Moreover, the evidence adduced on the side of the appellant/accused and the materials available on the side of the prosecution would clearly establish the fact that the appellant/accused has been suffering from schizophrenia at the relevant point of time and he was not capable of understanding the nature of the act or that he is doing what is either wrong or contrary to law and hence, he is entitled to the benefit of Section 84 I.P.C.

27. In the result, this Criminal Appeal is allowed and the judgment passed in S.C.No.482 of 2009, dated 20.02.2014, by the learned Principal Sessions Judge, Tirunelveli, is set aside and the appellant/accused is acquitted of the charge framed against him. This Court, vide order dated 22.09.2017, had suspended the substantive sentence of imprisonment imposed on the appellant and he was on bail. The bail bonds executed by the appellant shall stand cancelled. Considering the nature of psychological illness being suffered by the appellant, we direct the wife/family members of the appellant to monitor and take care of him and not to allow him to cause any injury to third parties. Further, we direct that proper medication shall be given to the appellant for his mental illness and in any difficulty, the same shall be immediately brought



to the knowledge of the police authorities, who shall take the appellant for treatment to the Government Hospital, Tirunelveli, including admission, if any, required as per the advice of the Medical Officers. This will ensure that no untoward incident takes place on the act of the appellant as he has been suffering from schizophrenia.

28. Before parting with this case, we are inclined to observe the following considering the seriousness of the effects of mental illness including schizophrenia and the mental turmoil being undergone by the patients of such illness:

- Mental illness can be caused by traumatic experiences that involve abuse, neglect or violence. Other factors may include genetic predisposition, biochemical imbalances or excessive stress brought on by debilitating medical conditions. Some of the mental illnesses are:
 - Bipolar disorder.
 - Eating disorders.
 - Major depression.
 - Obsessive-compulsive disorder.
 - Panic disorder.
 - Personality disorders.
 - Phobias.
 - Post-traumatic stress disorder (PTSD).
 - Schizophrenia.
- The patients affected by such mental illness including schizophrenia shall be looked after by minimum two persons as they would behave like a child for sometime and later, they may be aggressive as they would suspect the persons around them.
- Since the said mental illness can be diagnosed only with the help of the Doctors, the caretakers should be in a position to identify such symptoms as early as possible.
- The schizophrenia patients shall not be isolated in homes and they should be encouraged, motivated and involved in all social functions.
- Medications shall not be discontinued without the diagnosis of the Doctors and they have to be taken for periodical mental health check-ups.
- There are chances for mood swings, schizophrenia patients shall be monitored and be given regular treatment for such illness.
- The caretakers of the patients with mental illness may require to adopt the following strategies:
 - Assess a patient's mental state.
 - Establish good communication with the patient.
 - Build a relationship with the patient.
 - Use language that shows consideration.
 - Provide sensitive patient-centered care.
 - Consult with knowledgeable mental health professionals.
 - Refer a patient to community services.



- There are some simple strategies that will help the caretakers to connect with the persons in distress:
- introduce themselves calmly and clearly;
 - explain why they are there;
 - be polite and non-threatening but also be honest and direct;
 - listen to what they are saying in a non-judgmental way;
 - avoid confrontation;
 - ask them what they see as the main problem;
 - do not attempt physical contact, except to prevent serious assault or suicide attempts;
 - encourage them to talk to a mental healthcare professional;
 - follow up difficult experiences with counselling for themselves.
- In order to provide good support to the patients with mental illness, the caretakers shall try to:
- talk openly and encourage them to be honest with their friends and family about how they are;
 - read about the mental illness from reputable websites, such as Government or health organisation websites or books by specialists;
 - encourage them to take an active role in their mental health recovery, get out and see people and enjoy a healthy lifestyle;
 - set limits and let them know what they can do for them and what they are not able to provide;
 - find out about any local or online training courses for mental health carers;
 - join a mental health support group to meet other people in a similar situation;
 - take any talk of suicide or self-harm seriously and speak to a mental health care professional about it as soon as possible;
 - put plans in place as a back-up in case you go on holiday, have to leave town or you are not able to care for them for any reason.
- Above all, the caretakers shall be aware of their own safety and trust their instincts when caring for someone with a severe mental illness. If they ever feel threatened or unsafe, it is important that they shall remove themselves (and any children) from danger straight away. They can always call emergency services from somewhere else if they need to get help immediately.



- Lastly, but not least, the caretakers/attendants of such patients must create a second line to ensure that even in their short absence, the next person in the line is able to afford the same care and attention to the patients, so that, the patients do not feel that they are ignored and isolated.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar (CS)

rsb

To

1. The Principal Sessions Judge, Tirunelveli.
2. The Judicial Magistrate, Shencottai, Tirunelveli District.
3. Do through the Chief Judicial Magistrate, Tirunelveli.
4. The Superintendent, Central Prison, Palayamkottai.
5. The Superintendent of Police, Tirunelveli District.
6. The Inspector of Police,
Shencottai Police Station, Tirunelveli District.
7. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Copy to

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

JUDGMENT MADE IN
Cr1.A (MD) No. 313 of 2017
24.10.2019

scr (CO)

TR(08.11.2019) 32P 10C