



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 18.12.2019

Pronounced on : 22.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

and

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.A.(MD)No.168 of 2018

and

Crl.M.P.(MD)No.2717 of 2018

Sakthivel ... Appellant / Sole Accused
Vs.

State rep. by
The Inspector of Police,
Kadaiyam Police Station,
Tirunelveli District.
Cr.No.95 of 2014 ... Respondent/ Complainant

PRAYER: Appeal filed under Section 374 of the Code of Criminal Procedure, to call for the entire records connected to the judgment in S.C.No.157 of 2015 on the file of the 4th Additional District and Sessions Court, Tirunelveli, dated 18.01.2016 and set aside the conviction and sentence imposed against the appellant.

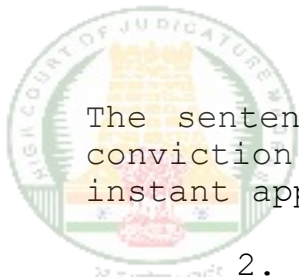
For Appellant : Mr.R.Alagumani
For Respondent : Mr.K.K.Ramakrishnan
Additional Public Prosecutor

JUDGMENT

B. PUGALENDHI, J. ,

This Criminal Appeal is preferred by the appellant / accused as against the conviction and sentence imposed by the learned IV Additional District and Sessions Judge, Tirunelveli, in S.C.No.157 of 2015, dated 18.01.2016. The appellant was charged for the offence under Sections 342, 302, 294(b), 307 & 506(ii) IPC. The trial Court, in conclusion of the trial, though acquitted him for the offence under Sections 342 & 294(b) IPC, has found him guilty, convicted and sentenced him as under:

Section of Law	Punishment imposed
302 IPC	To undergo imprisonment for life and to pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for a period of six months.
307 IPC	To undergo rigorous imprisonment for a period of seven years and to pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for a period of six months.
506(ii) IPC	To undergo rigorous imprisonment for six months.



The sentences are ordered to run concurrently. Aggrieved over the conviction and sentence imposed, the appellant has preferred the instant appeal.

2. The brief facts of the case, as projected by the prosecution, are as follows:

2.1. The deceased in this case, namely, Sureshkannan [6 years old] is the son of the appellant / accused and PW1. It is alleged that on 29.03.2014, at about 04.00 pm, the accused caused a cut injury on the back side of the neck, a stab injury above the naval and left knee of the deceased, using a knife [MO1] and caused the death of his son. It is further alleged that when his seven year old daughter, Sakthikala [PW2] attempted to prevent the attack, the accused abused her with filthy language and caused a cut injury above the left ear using the same weapon. PW1, the wife of the accused, went outside to dump the waste and when she returned, she witnessed the accused causing cut injuries to the deceased / her son. When she [PW1] and her another son, Rajavel [PW3] attempted to secure the accused, the accused put the knife [MO1] down and took an Aruval [MO2] from the house and intimidated them. He also caused cut injuries in his right side neck and left wrist using the weapon [MO2] and thereafter, flew away from the scene of occurrence.

2.2. On hearing the hue and cry, PW4, Kavitha, took PW1 and PW1's sister, namely, one Sarasvathi to Kadayam Police Station in an Auto, belonging to PW6 and PW1 lodged a complaint [Ex.P1] before the Sub-Inspector of Police [PW14], on the same day at about 05.15 pm. On receipt of the complaint, PW14 registered a case in Crime No.95 of 2014, for the offence under Sections 294(b), 342, 307, 302 & 506 (ii) IPC. The printed First Information Report is marked as Ex.P15.

2.3. In the interregnum period, PW3 called 108 Ambulance and took his sister PW2 to Government Hospital, Tenkasi, at about 05.20 pm. Dr.Ferozkhan [PW10] of Government Hospital, Tenkasi, attended PW2, gave first aid treatment and referred her to Government Medical College Hospital, Tirunelveli, for further treatment. Before the Doctor [PW10], PW2 has stated that at about 04.20 pm, her father attacked her with a knife. He has found a deep lacerated wound of 10 x 5 x 4 cm with muscle and bone exposed. He has also issued a Wound Certificate. According to the Doctor, since PW2 was vomiting and was feeling drowsy, he failed to mention the location of PW2's injury in the Wound Certificate. The Accident Register issued by PW10 is marked as Ex.P7. On the same day, at about 05.35 pm, the accused was taken to the Government Hospital, Tenkasi by 108 Ambulance and the Doctor [PW10] attended and gave first aid treatment to the accused. The Doctor has found a lacerated wound of 5 x 2 x 1 cm; 1 x 1 x 1 cm on the right neck back side and a lacerated wound of 2 x 1 x 1 cm on the left forearm. He has also issued a Wound Certificate. Before him, the accused has stated that he attempted to commit suicide and the injuries are self inflicted one. The Doctor [PW10] has referred



Register issued by him is marked as Ex.P8.

2.4. The Inspector of Police [PW15], Kadayam Police Station, namely, Thiru Madasamy, on receipt of the intimation about the case, went to the place of occurrence, prepared an observation mahazar [Ex.P4] and a rough sketch [Ex.P18]. He conducted inquest on the body of the deceased, in the presence of the Panchayatars and the inquest report is marked as Ex.P19. According to him, he found a cut injury on the back side of neck with bone exposed, a stab injury above the naval and in the left knee of the deceased. PW15 has also recovered the knife [MO1], earth with and without bloodstain [MOs.4 & 5 respectively], under a cover of mahazar and has sent the body of the deceased for postmortem.

2.5. Dr.Ilayaraja, Government Hospital, Ambasamudram, Tirunelveli [PW12] conducted postmortem on the body of the deceased on 30.03.2014 at about 12.10 pm. He has found the following external injury on the deceased:

"1) Cut injury 11 x 8 x 6 cm over the posterior aspect of neck, muscles, vertabral bone and cervical spinal cord are out."

The Doctor [PW12] gave his final opinion that the deceased would appear to have died due to the injury on the cervical region of spinal cord, 10 to 12 hours prior to Autopsy. The postmortem certificate issued by him is marked as Ex.P10.

2.6. Thiru Murugan, Inspector of Police, Kadayam Police Station [PW16] conducted the further investigation in this case. He recorded the statements of the witnesses and sent the material objects for chemical analysis. On 02.04.2014, at about 05.00 pm, he arrested the accused near Kelaiyapillaiyur water tank railway gate, in the presence of witnesses PW7 and another. In the police station, the accused gave a voluntary confession statement and the admissible portion of the statement is marked as Ex.P2. Based on the same, PW16 has recovered the Aruval [MO2], under the cover of the Mahazar Ex.P3. In conclusion of the investigation, he laid the final report as against the accused for the offence under Sections 342, 294(b), 307, 302 & 506(ii) IPC.

2.7. During the trial, on the side of the prosecution, 16 witnesses were examined and 21 documents were marked, besides 8 material objects.

3. The available evidences from the prosecution witness are as follows:

i) PW1, Tmt.Rajakili, is the wife of the accused; PW2, Sakthikala, is the daughter of PW1 & accused; PW3, Rajavel, is the son of PW1 & accused. All of them have witnessed the occurrence and they were examined as eye witnesses. PW1 has lodged the complaint [Ex.P1]. PW2 is an injured eye witness and she was taken to the Government Hospital, Tenkasi, for treatment, by her brother [PW3].



ii) PW4, Ms.Kavitha, took PW1 and PW1's sister, namely, Saraswathi, to Kadayam Police Station in an Auto belonging to PW6, where PW1 has lodged the complaint [Ex.P1].

iii) PW5, Thiru Kasimani, is a neighbour and when he returned from work to his residence at about 04.45 pm, he witnessed the accused with an Aruval [MO2] and injuries in his neck and hand.

iv) PW7, Thiru Karupasamy, is examined as witness to the arrest of the accused and recovery of weapon - Aruval [MO2].

v) PW8, Thiru Dharmaraj, is examined as witness to the observation mahazar [Ex.P4], rough sketch [Ex.P18], weapon - Knife [MO1].

vi) PW9, Thiru Paramasivan, is the Photographer, who took photographs on the scene of occurrence, at about 05.00 pm. The photographs taken by him (4 nos.) were marked as MO7 and the C.D. is marked as MO8.

vii) PW10, Dr.Ferozkhan, is the Doctor at Government Hospital, Tenkasi, who attended both PW2 and the accused, at 04.10 pm and 05.35 pm, respectively. He gave first aid to them and issued Accident Registers in Ex.P7 & Ex.P8, respectively.

viii) PW11, Thiru Radhakrishnan, is the then Head Constable of Kadayam Police Station, who handed over the body of the deceased for postmortem.

ix) PW12, Dr.Ilayaraja, is the Doctor at Government Hospital, Ambasamudram, Tirunelveli, who conducted postmortem on the body of the deceased.

x) PW13, Thiru Balamurugan, is the Scientific Analyst. The chemical analysis report given by him is marked as Ex.P13.

xi) PW14, Ms.Selvi, is the then Sub-Inspector of Police, Kadayam Police Station, who received the complaint [Ex.P1] from PW1 on 29.03.2014 at about 05.15 pm and registered the case in Crime No.95 of 2014.

xii) PW15, Thiru Madasamy, is the then Inspector of Police, Kadayam Police Station, who conducted the preliminary investigation.

xiii) PW16, Thiru Murugan, is the then Inspector of Police, Kadayam Police Station, who conducted the further investigation, arrested the accused and laid the final report.

4. After the prosecution evidence was closed, the incriminating materials were put to the accused under Section 313 Cr.P.C and the accused denied the same. Though the accused has stated there are evidences in support of his case, neither oral nor documentary evidences were marked.

5. In conclusion of the trial, the trial Court found the appellant / accused guilty, convicted and sentenced him as stated supra. As against the same, the appellant has preferred the instant appeal.

6. Heard Mr.R.Alagumani, learned Counsel appearing for the appellant / accused and Mr.K.K.Ramakrishnan, learned Additional

<https://hccourtservices.in>



7. Mr.R.Alagumani, learned Counsel for the appellant has made his submissions in the following lines:

7.1. PWs 1 to 3 could not have witnessed the occurrence for the reason that the Doctor, who conducted postmortem on the body of the deceased [PW12] has noted down only one external injury on the deceased, whereas all the three eye witnesses, in a parrot like version, have stated as if the accused assaulted the deceased Sureshkannan on his back neck, stomach and left leg ankle.

7.2. The accused sustained injury on the date of occurrence and was also treated at the Government Hospital, Tenkasi, by the Doctor [PW10], who has also issued the Accident Register [Ex.P8]. When he was undergoing treatment for the injuries sustained by him, the subsequent arrest and confession made on 02.04.2014 at about 05.00 pm from a different place would show that the arrest and recovery is a false one.

7.3. The appellant was in unsound mind, suffering from Paranoid Schizophrenia. Even in the Accident Register [Ex.P8], the Doctor [PW10] who attended the appellant on the date of occurrence has referred that the appellant has a psychiatric problem and the Doctor [PW10] in his evidence has also admitted that he recommended for a psychiatric treatment to the appellant.

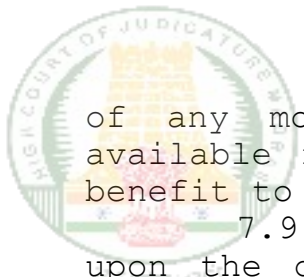
7.4. The learned Counsel also relied upon the evidence of PW2 / the son of the appellant that his father often sitting in his house alone and scolding others and he was treated separately by his mother.

7.5. From 14.05.2014 to 20.06.2014, the appellant undergone treatment for Paranoid Schizophrenia in the Psychiatry Ward of Tirunelveli Medical College Hospital and was also referred to the Institute of Mental Health, Kilpauk, Chennai, for further psychiatric treatment from 13.06.2014 to 31.07.2014, based on the recommendations of the learned Judicial Magistrate, Ambasamudram.

7.6. Even now, the appellant is undergoing treatment for Paranoid Schizophrenia in Palayamkottai Central Prison Hospital and he also relied upon the medical certificate dated 18.11.2019 issued by the Medical Officer, Central Prison Hospital, Palayamkottai. He also relied upon the psychiatric assessment report submitted by the Department of Psychiatry, Tirunelveli Medical College Hospital, dated 23.11.2019, wherein, it is stated that the appellant is suffering from Paranoid Schizophrenia for about seven years.

7.7. Since the Counsel who conducted the trial, failed to mark the medical certificates pertaining to the treatment provided to the appellant for Paranoid Schizophrenia, the trial Court found him guilty and convicted for life imprisonment and as per the medical records and the available evidence, the appellant is eligible for the benefit of exemption under Section 84 of the Indian Penal Code.

7.8. Moreover, the deceased is the son of the appellant and the prosecution has failed to establish any motive for this



of any motive, the trial Court ought to have considered the available medical history of the appellant and have extended the benefit to the appellant under Section 84 IPC.

7.9. In support of his contention, the learned Counsel relied upon the decision of the Hon'ble Supreme Court in **Devidoss Loka Rathod v. State of Maharashtra**, reported in **AIR 2018 SC 3093**. He has also relied upon the following decisions of this Court:

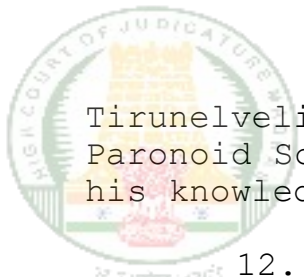
- i) **Velan @ Velarasan v. State of Tamil Nadu**, reported in **(2016) 4 MLJ (Crl.) 364**;
- ii) **Kali @ Kalidoss @ Kalirajan v. State of Tamil Nadu**, reported in **(2017) 4 MLJ (Crl.) 257**;
- iii) **Paneerselvam v. State of Tamil Nadu**, reported in **(2018) 1 MLJ (Crl.) 502**; and
- iv) unreported decision in **Kumar @ Selvakumar v. State of Tamil Nadu** (Crl.A.(MD)No.313 of 2017, decided on 24.10.2019).

8. Per contra, the learned Additional Public Prosecutor submitted that PW1 is the wife of the appellant / accused and PW2 is the daughter of the accused, who is also an injured eye witness and PW3, another son of the accused have categorically stated about the manner of occurrence taken place in this case. The occurrence was taken place in the house of the accused and the close relatives of the accused themselves have come forward to depose against him. The deceased in this case has died due to the injury on his spinal cord on the cervical region and the weapon [M01] was also recovered at the instance of the accused. The human blood group [O-group] was detected from the weapon [M01] and therefore, the prosecution has established the case against the accused beyond any reasonable doubt and in the absence of any concrete evidence that the accused was suffering from Paranoid Schizophrenia at the time of occurrence, he is not entitled to have the benefit of exemption under Section 84 IPC and prays for dismissal.

9. This Court has paid it's anxious consideration to the rival submissions and also perused the documents placed on record.

10. The deceased Sureshkannan in this case is the son of the accused as well as PW1. The occurrence was taken place in the house of the accused and PW1. The witnesses in this case are non-other than the wife, daughter and son of the accused. Though different defence have been taken by the accused that PWs 1 to 3 could not have witnessed the occurrence and that the arrest and recovery on 02.04.2014 is false, since the accused sustained injury and also took treatment in the Government Hospital, Tenkasi, the primordial submission made by the learned Counsel for the appellant is with regard to the mental illness of the appellant / accused.

11. The learned Counsel for the appellant mainly relied upon the medical certificate issued by the Doctor [PW10] in Ex.P8 and the report dated 23.11.2019 of Dr.B.Bhuvaneshwaran, Assistant Professor of Psychiatry, Government Tirunelveli Medical College Hospital,



Tirunelveli and submitted that the accused was suffering from Paranoid Schizophrenia for around seven years and therefore, without his knowledge, he committed the offence.

12. A general exemption is provided under Chapter 4 of the Indian Penal Code and under Section 84, the act of a person of unsound mind is not an offence. For better appreciation, Section 84 IPC is extracted as under:

"84. Act of a person of unsound mind –

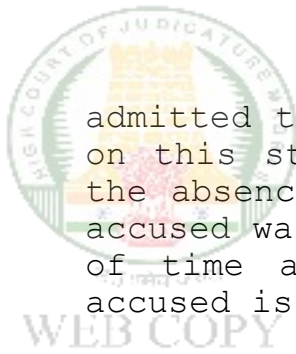
Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law."

13. This Court has called for a detailed report from Dr.B.Bhuvaneshwaran, Assistant Professor of Psychiatry, Government Tirunelveli Medical College Hospital, Tirunelveli, and the Doctor by his report dated 13.12.2019 submitted that as per the medical records, the patient was continually on psychiatric treatment for Paranoid Schizophrenia in prison regularly and therefore, he issued the report dated 23.11.2019.

14. The occurrence was taken place on 29.03.2014, wherein the accused caused the fatal injury on his six years old son Sureshkannan and when his daughter [PW2] Sakthikala, aged about seven years prevented him from causing the injury, he also assaulted her using the knife [MO1] and caused a deep lacerated wound [10 x 5 x 4 cm] with muscle and bone exposed. The occurrence was taken place at about 04.20 pm in their residence and immediately both PW2 and the accused were taken to the Government Headquarters Hospital, Tenkasi. The Doctor [PW10] who treated both PW2 and the accused, issued the Accident Registers in Ex.P7 and Ex.P8, respectively. In the Accident Register [Ex.P7] of Sakthikala [PW2], it is specifically mentioned that 'assaulted by a known person [father] using a knife on 29.03.2014 at about 04.20 pm in her residence'. In the Accident Register [Ex.P8] of the accused, the Doctor [PW10] has noted that 'assaulted by himself on 29.03.2014 at about 04.10 pm in his home'. The Doctor [PW10] has specifically noted that the accused was '**conscious and answering the questions**' (emphasis supplied). In his evidence, the Doctor [PW10] has stated that since the accused attempted for committing suicide by inflicting injury, he referred him for a Psychiatric opinion. But, it appears the psychiatric opinion was neither collected nor placed before the Court.

15. PW1 in her evidence has denied that her husband was taking any treatment for mental illness. Similarly, PWs.2 & 3 have also denied that their father was taking any treatment for mental illness. No records were placed before this Court that prior to the occurrence, the accused has taken treatment for any mental illness.

<https://hcservices.ecourts.gov.in/hcservices/> 16. During the cross examination, PW3 the son of the accused



admitted that his father would talk to himself at times. But, based on this stray answer made by PW3 during the cross examination, in the absence of any medical records, it cannot be concluded that the accused was suffering with some mental illness at the relevant point of time and therefore, we are of the considered view that the accused is not eligible for the exemption under Section 84 IPC.

17. PWs 1 to 3 have specifically mentioned about the manner of occurrence and immediately after the occurrence, PW2 was taken to the Tenkasi District Headquarters Hospital, where she has stated that she was assaulted by her father using a knife. The knife [MO1] was also recovered on 02.04.2014 from the place of occurrence and the blood group found in the knife [MO1]; drowser of the deceased [MO3] and the earth with blood recovered from the place of occurrence [MO4] and the bloodstain found in the mixie-jar [MO6] tally with the blood group of the deceased [O-group].

18. Since the evidence of PWs.1 to 3 are cogent and explicitly refers to the accused for the commission of offence, in the absence of any material that he was suffering from Paranoid Schizophrenia on the date of occurrence, this Court is not inclined to interfere with the order passed by the learned IV Additional District and Sessions Judge, Tirunelveli in S.C.No.157 of 2015, dated 18.01.2016 and the same is accordingly, confirmed.

In fine, this Criminal Appeal stands dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

gk

To

1)The IV Additional District and Sessions Judge, Tirunelveli.

2)The Inspector of Police,Kadaiyam Police Station,
Tirunelveli District.

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

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

Judgment made in

Crl.A. (MD)No.168 of 2018

22.07.2020