



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 22.10.2021

Delivered on : 29.10.2021

CORAM

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN
AND

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

CRL.A (MD) No.504 of 2018
 and CrI.M.P. (MD) No.7688 of 2021

Krishnan @ David

... Appellant/Sole Accused

-vs-

State through
 The Inspector of Police,
 Pappakudi Police Station,
 Tirunelveli District.
 (Crime No.301 of 2012).

... Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374 of the Code of Criminal Procedure against the judgment of the learned I Additional District and Sessions Judge, Tirunelveli in S.C.No.175 of 2013, dated 16.10.2015.

For Appellant	::	Mr.R.Alagumani
For Respondent	::	Mr.A.Thiruvadikumar Additional Public Prosecutor

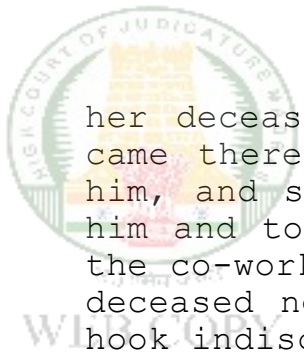
J U D G M E N T

(Judgment of the Court was delivered by V.BHARATHIDASAN, J.)

The appellant, a sole accused, in S.C.No.175 of 2013, on the file of the learned I Additional District and Sessions Judge, Tirunelveli, stood charged for the offences under Sections 294(b), 506(ii) and 302 I.P.C. and convicted for the offences under Sections 506(ii) and 302 I.P.C., sentenced to undergo Life Imprisonment and to pay a fine of Rs.1,000/-, in default to undergo one year Rigorous Imprisonment for the offence under Section 302 I.P.C. and sentenced to undergo six months Rigorous Imprisonment for the offence under Section 506(ii) I.P.C. Challenging the aforesaid conviction and sentence, the appellant is before this Court with this Criminal Appeal.

2.The case of the prosecution in brief is as follows:

The deceased in this case, namely, Moses, a four years old boy, son of the accused and P.W.1. The accused and P.W.1 married five years prior to the occurrence and they were living together. There were minor issues between the husband and wife in respect of paying of the wages of the accused to his parents. On 01.12.2012, P.W.1 was engaged in a coolie work in a village tank, and she took



her deceased son along with her. At about 1.00 p.m., the accused came there, abused P.W.1 stating that she is not affectionate to him, and she was showing affection only to his son and neglecting him and took the deceased boy with him. P.Ws.2 and 3, who are all the co-workers of P.W.1, chased him. However, the accused took the deceased near a Sudalaimadan Temple and attacked him with a pill-hook indiscriminately and caused his death. Immediately, P.W.1 went to the police station and filed a complaint at about 2.30 p.m.

3.P.W.16, Sub-Inspector of Police, registered the F.I.R. based on the complaint for the offences under Sections 294(b), 302 and 506(ii) I.P.C. and immediately sent the F.I.R. to the Judicial Magistrate and copies to the Inspector of Police and other higher officials.

4.P.W.17, Inspector of Police, on receipt of the F.I.R. commenced the investigation and proceeded to the scene of occurrence, where he prepared observation mahazar (Ex.P.11) and rough sketch (Ex.P.12) and collected bloodstained soil (M.O.5) and sample soil (M.O.6) from the scene of occurrence. Then, at 4.15 p.m., he conducted the inquest on the dead body in the presence of witnesses and prepared inquest report (Ex.P.14) and sent the body of the deceased to Government Hospital, Ambasamuthiram, for conducting postmortem autopsy.

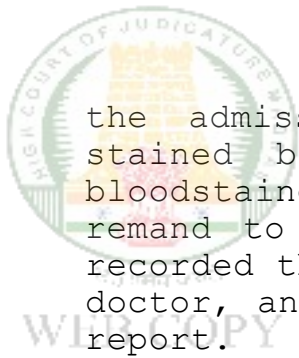
5.P.W.12, Doctor, working in the Government Hospital, Ambasamuthiram, conducted postmortem autopsy and found as many as 9 cut injuries and has issued a postmortem report (Ex.P.7), wherein he noted the following injuries:

"External Examination:-

- 1.A cut injury 10cm x 2cm x 1/2cm in the forehead centre.
- 2.A cut injury 4x2x1/4cm length in the left eyebrow in eye - left.
- 3.A cut injury 12x1x1/4cm in the face left extending from eye to ear (including).
- 4.A cut injury 7x1x1/4cm left mandible lower area.
- 5.A cut injury 5x1x1/4cm in the Rt. Mandible (lower) area).
- 6.A cut injury 8x3x4cm in the neck just 1cm below the angle of mandible rt.
- 7.A cut injury 10x2x3cm in the centre of neck just 1cm above lobra stand horder (nc).
- 8.Abrasion 1x1cm in the left shoulder.
- 9.A cut injury 3x2x3cm in the umbilical area."

He was of the opinion that the deceased died of shock and hemorrhage on account of the fatal injuries.

6.P.W.17, after recording the statements of witnesses, at about 7.00 p.m., arrested the accused and on such arrest, the accused and his family come forward to give a confession and based on



the admissible portion of the confession, he recovered blood stained bill-hook (M.O.1), bloodstained T-shirt (M.O.2) and bloodstained inner garment (M.O.3) of the accused and sent him for remand to judicial custody, P.W.17, continued the investigation, recorded the statement of other witnesses, including the postmortem doctor, and after completing the investigation, he filed the final report.

7.Considering the above materials, the trial Court framed charges for offences under Sections 302, 294(b) and 506(ii) I.P.C. and the accused denied the same as false. In order to prove its case, the prosecution examined as many as 17 witnesses, marked 16 documents and also produced 8 material objects.

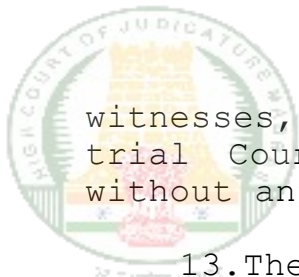
8.Out of the witnesses examined, P.W.1 is the wife of the accused and mother of the deceased, she is an eyewitness to the occurrence. According to her, the accused and P.W.1 were living together with their deceased son, who was four years old. There were petty quarrels between the husband and wife and on the date of occurrence also there was a quarrel, P.W.1 took the deceased child along with her to the village tank, where she was working. The accused went there and took the child to a temple and indiscriminately cut him and caused his death. Immediately, she filed a complaint before the respondent police.

9.P.Ws.2 and 3, who are said to be the other eyewitnesses to the occurrence, turned hostile. P.Ws.4 to 11, who are neighbours of P.W.1 also turned hostile. P.W.12, is the doctor, who conducted postmortem autopsy. P.W.13, village menial, witness to the arrest of the accused and recovery of M.Os.1 to 4. P.W.14 is the head constable. He handed over the F.I.R. to the Judicial Magistrate Court. P.W.15 is the Special Sub-Inspector of Police, who identified the body for postmortem. P.W.16 is the Sub-Inspector of Police, who registered the F.I.R. P.W.17 is the investigation officer, who conducted inquest, arrested the accused and recovered the material objects and after completing the investigation, he filed the final report.

10.When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. The accused did not chose to examine any witness nor did he mark any documents on his side.

11.Having considered all the above, the trial Court found the accused/appellant guilty under the above said charges and accordingly sentenced him as detailed in the first paragraph of this judgment. Challenging the conviction and sentence, the accused has filed this appeal.

12.Mr.R.Alagumani, learned counsel appearing for the appellant <https://www.hccourtsonline.org> that except P.W.1, wife the accused, all the other



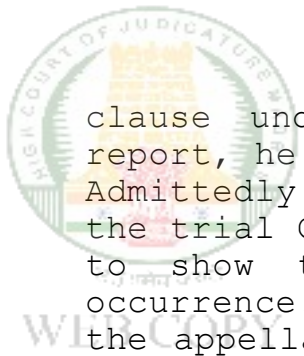
witnesses, including the two eyewitnesses, turned hostile. But, the trial Court believing the sole interested testimony of P.W.1, without any corroborating evidence, convicted the appellant.

13.The learned counsel further submitted that there is no reason for the accused to murder his only child and no strong motive has been attributed against him. Both the deceased and the accused were living together and there is no serious issues between them and without considering those circumstances, the trial Court has erroneously convicted the appellant.

14.The learned counsel for the appellant also submitted that at the time of occurrence, the accused was suffering from mental illness and he was incapable of knowing the act that was done. Hence, the act of the accused will fall under Section 84 I.P.C. The learned counsel would further submit that, at the time of occurrence, the accused was suffering with seizure disorder with status epileptics, immediately after he was arrested and remanded to judicial custody, the jail authorities filed application before the trial Court, seeking for psychological evaluation and the accused was subjected to medical examination by the psychiatrist at Tirunelveli Medical College Hospital, and he was diagnosed seizure disorder with status epileptics. But, unfortunately, those documents were not marked before the trial Court, though the medical reports were available before the trial Court. In those circumstances, Crl.M.P.(MD) No.7688 of 2021 has been filed under Section 391 r/w 311 Cr.P.C. to call for those medical records and to examine the doctors, who have treated him to prove the mental illness of the accused.

15.Opposing the same, Mr.A.Thiruvadikumar, learned Additional Public Prosecutor, submitted that the accused is the father of the minor child. He committed brutal murder by indiscriminately cutting the four year old boy. Even though the other eyewitnesses turned hostile, P.W.1, who is none other than the wife of the accused clearly stated that only this accused attacked the minor boy indiscriminately and caused his death. According to him, immediately after the occurrence, the F.I.R. has been registered and the same was sent to the Court immediately. The medical evidence also corroborating the evidence of P.W.1 and there is no reason for disbelieving the same. Considering the same, the trial Court rightly believed the testimony of P.W.1 and convicted the accused.

16.So far as the plea of insanity, the learned Additional Public Prosecutor would submit that the occurrence took place in the year 2012, but, the accused was subjected to medical examination only in the year 2014, two years after the occurrence, and there is no material available on record to show that at the time of occurrence the accused was mentally ill. He would further



clause under Section 84 I.P.C. Even according to the medical report, he is only suffering from seizure disorder with epileptics. Admittedly the accused did not raise the plea of insanity before the trial Court, and there is no other material available on record to show that the accused was mentally ill at the time of occurrence. Hence, the accused cannot raise the plea of insanity at the appellate stage, and the same has been raised only to get the benefit under Section 84 I.P.C.

17. We have considered the rival submissions and perused the materials available on record.

18. P.W.1, is the one and only witness available to support the case of the prosecution. Law is now settled that the Court can convict the accused based on the testimony of single eyewitness without any corroboration, provided that the testimony is reliable, trustworthy and free from any suspicion. In **Vadivelu Thevar Vs. State of Madras** reported in **AIR 1957 SC 614**, the Hon'ble Supreme Court has held as follows:

"11. In the first category of proof, the court should have no difficulty in coming to its conclusion either way - it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court, equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial. There is another danger in insisting on plurality of witnesses. Irrespective of the quality of the oral evidence of a single witness, if courts were to insist on plurality of witnesses in proof of any fact, they will be indirectly encouraging subornation of witnesses. Situations may arise and do arise where only a single person is available to give evidence in support of a disputed fact. The court naturally has to weigh carefully such a testimony and if it is satisfied that the evidence is reliable and free from all taints which tend to render oral testimony open to suspicion, it becomes its duty to act upon such testimony. The law reports contain many precedents where the court had to depend and act upon the testimony of a single witness in support of the prosecution. There are exceptions to this rule, for example, in cases of sexual offences or of the testimony of an approver; both these are cases in which the oral testimony is, by its very nature, suspect, being that of a participator in crime. But, where there are no such exceptional reasons operating, it becomes the duty of



the court to convict, if it is satisfied that the testimony of a single witness is entirely reliable. We have, therefore, no reasons to refuse to act upon the testimony of the first witness, which is the only reliable evidence in support of the prosecution."

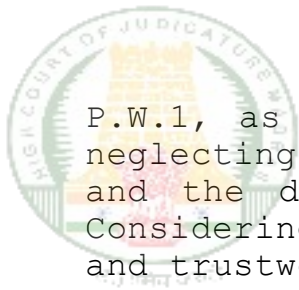
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19.Keeping those principles in mind, let us now examine the testimony of P.W.1. She is the mother of the minor boy/deceased aged about 4 years. On the date of occurrence, she was employed in de-silting work in the village tank and she took the boy along with her. The accused went there, abused her, stating that P.W.1 was showing more affection to the deceased and she is not showing any care to the accused, and took the child along with him. P.W.1 along with her co-workers chased him and finally the accused took a bill-hook and attacked him indiscriminately and caused his death, when the other witnesses tried to catch him, he criminally intimidated them and escaped.

20.The motive is stated that, the accused has grievance with P.W.1 as she was not affectionate to him and not taking care of him, and she was more affectionate with the deceased boy, hence the accused was very jealous with the boy. That apart, there was a quarrel between the husband and wife earlier before the occurrence, and the accused was very upset with P.W.1. Immediately after the occurrence, P.W.1 herself filed the complaint before the respondent police and the F.I.R. has been registered at about 2.30 p.m. and the F.I.R. reached the Court on the very same day. The medical evidence is also corroborating the evidence of P.W.1, that, the deceased suffered cut injuries all over the body.

21.The accused was also arrested on the same day at about 7.00 p.m. and based on his disclosure statement, bloodstained bill-hook (M.O.1), bloodstained shirt (M.O.2) and bloodstained under garment (M.O.3) of the accused were recovered by P.W.17, investigating officer. P.W.13, village menial, is a witness to the arrest and recovery of material objects. Serological Report (Ex.P.16) also shows that the material objects contained human blood of AB group. All those materials leading to one hypothesis that only this accused has caused the death of his own son and the prosecution has clearly established it beyond reasonable doubt.

22.It is the contention of the learned counsel appearing for the appellant that when all other eyewitnesses to the occurrence have turned hostile, based on the sole testimony of P.W.1, the conviction cannot be recorded. P.W.1, being the mother of the deceased and wife of the accused, there is no strong reason for her to falsely implicate the accused. As stated earlier, at the time of occurrence, P.W.1 and accused were living together and there was no serious dispute between them, there were only petty quarrel between the husband and wife. From her evidence, it could be seen that the accused was highly possessive, and he had a grievance against



P.W.1, as she is showing more affection to the child and she was neglecting the deceased, and he developed animosity against P.W.1 and the deceased, which has ultimately resulted in the murder. Considering these circumstances, the testimony of P.W.1 is reliable and trustworthy, we find no reason to disbelieve her evidence.

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23.The next question arises for consideration is whether the appellant has proved the existence of circumstances, bringing the case under Section 84 I.P.C. When the plea of legal insanity is raised, the Court has to consider whether at the time of commission of offence, the accused was a person of under unsoundness of mind, incapable of knowing the nature of the act, or that he was doing what is either wrong or contrary to law. The crucial point of time to ascertain the state of mind of the accused is the time when the accused committed the offence. The burden to prove that the accused was of unsound mind at the time of occurrence is on the accused.

24.Section 84 I.P.C. is one of the general exceptions in Chapter IV of I.P.C., which 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. It is useful to refer Section 84 I.P.C., which reads as follows:

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

The burden of proving the existence of circumstance, bringing the case within Section 84 I.P.C., lies upon the accused under Section 105 of the Indian Evidence Act, 1872, which reads as follows:

"105. Burden of proving that case of accused comes within exceptions.—When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code, (45 of 1860), or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances."

25.The Hon'ble Supreme Court in ***Mariappan v. State of Tamil Nadu [(2013) 12 SCC 270]***, held that, while seeking protection under Section 84 I.P.C., the accused should prove that he is mentally insane at the relevant point of time. That apart, to consider the case under Section 84 I.P.C., the totality of the circumstance should be examined, and if the Court found that if the crime was committed under anger and not as a result of unsoundness of mind, then, the accused is not entitled to the protection under Section 84 I.P.C.



26. In **Mariappan** (supra), the Hon'ble Supreme Court held as follows:

"16. Since the appellant has raised the plea of insanity seeking protection under Section 84 of the IPC, it is useful to refer the same:

"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."

The above section makes it clear that a person, who, at the time of doing it, by reason of unsoundness of mind, commits anything, he is permitted to claim the above exception. (emphasis supplied). In other words, insanity or unsoundness of mind are the stages when a person is incapable of knowing the nature of the act or unable to understand what is wrong or right and must relate to the period in which the offence has been committed.

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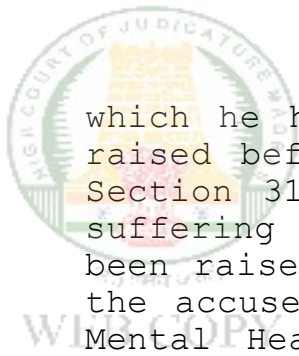
21. After advertent to Sections 84 and 299 IPC and Sections 105 and 101 of the Evidence Act, this Court concluded that: (Sudhakaran v. State of Kerala, (2010) 10 SCC 582, p.592, para 33) "when a person is bound to prove the existence of any fact, the burden of proof lies on that person". This Court also held as under: (Sudhakaran case, SCC p. 593, para 35)

"35. It is also a settled proposition of law that the crucial point of time for ascertaining the existence of circumstances bringing the case within the purview of Section 84 is the time when the offence is committed. We may notice here the observations made by this Court in Ratan Lal v. State of M.P. [(1970) 3 SCC 533]. In para 2 of the aforesaid judgment, it is held as follows: (SCC p.533)

"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 [appellant]."

As concluded, we also reiterate that at the time of commission of offence, the physical and mental condition of the person concerned is paramount for bringing the case within the purview of Section 84."

27. Keeping the above principles in mind, we will examine whether the accused was in unsoundness of mind at the time of occurrence and he was incapable of knowing the nature of the act,



which he has committed. Admittedly, the plea of insanity was not raised before the trial Court. Even during the questioning under Section 313 Cr.P.C., the accused has not even stated that he is suffering from mental illness, and for the first time the plea has been raised in the appeal. Admittedly, after committing the crime, the accused was referred for psychological evaluation, as per the Mental Health Act, 1987 and he was examined in the Government Medical College Hospital, Tirunelveli, wherein, the doctors were of the opinion that, he was suffering from seizure disorder. But those medical records were not marked before the trial Court. Now, an application under Section 391 r/w 311 Cr.P.C. was filed to mark these medical records. The entire records of the trial Court are available and on a perusal of the same, it could be seen that the appellant was sent for psychological evaluation on 16.06.2014 and he was examined by psychiatrist and neurologist and given a report as follows:

"As per the above reference Mr.Krishnan @ David, 30yr male S/O. Mr.Pramanayagam, R.P.No.6775 was admitted in the Department of Psychiatry, Tirunelveli Medical College Hospital on 04/06/2014 and was discharged on 16/06/2014 (IP No.30333). Neurologist opined that he has Seizure Disorder with status epileptics. Based on the above finding he is suffering from SEIZURE DISORDER WITH POSTICIAL PSYCHOSIS. He has no feature suggestive of primary PSYCHITRIC ILLNESS. Hence he is advised to follow up in Neurology OPD."

28.From the report, it is seen that the accused was suffering from seizure disorder with posticial psychosis and he has no feature suggestive of primary Psychiatric illness. That apart, he has undergone medical test nearly two years after the occurrence, and absolutely there is no material available on record to show that at the time of occurrence, he was suffering from mental illness. Hence, relying upon those medical reports, the accused cannot claim any benefit under Section 84 I.P.C. As already held, the accused has committed the offence out of extreme anger and not as a result of unsound mind. In the said circumstances, we are of the considered view that the accused has failed to prove that at the time of occurrence, he was suffering from mental illness, and committed the crime, without knowing the nature of the act. On the other hand, the prosecution has proved the guilt of the accused beyond any reasonable doubt.

29.At this juncture, learned counsel appearing for the appellant would submit that since the appellant was convicted for murdering a child, he may not be in a position to avail the benefit of pre-mature release or remission of sentence, and necessary direction may be issued to the Government to consider the case of the appellant for seeking the benefit of remission of sentence or pre-mature release. As the accused has been convicted only in the

<https://hcservices.ec2.us-east-1.amazonaws.com/hcservices/>



not arise now. However, it is open to the accused to approach the Government and sought for such relief and it is for the Government to consider the same and pass suitable orders in accordance with law.

30. In the result, Crl.M.P.(MD) No.7688 of 2021 and Crl.A.(MD) No.504 of 2018 are dismissed and the conviction and sentence imposed on the appellant/accused, by the learned I Additional District and Sessions Judge, Tirunelveli in S.C.No.175 of 2013, by the judgment dated 16.10.2015, are confirmed. The sentences imposed on the appellant shall run concurrently and the sentences already undergone shall be given set off under Section 428 Cr.P.C. As ordered by the trial Court, after the expiry of appeal time or appeal the material objects are ordered to be destroyed.

Sd/-

Assistant Registrar (CS II)

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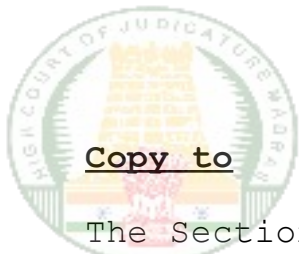
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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The I Additional District and Sessions Judge,
Tirunelveli.
- 2.The Judicial Magistrate,
Cheranmadevi.
- 3.The Chief Judicial Magistrate,
Tirunelveli.
- 4.The Inspector of Police,
Pappakudi Police Station,
Tirunelveli District.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



Copy to

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

**Judgment in
Criminal Appeal No. (MD) No.504 of 2018
29.10.2021**

**TP (CO)
RS/JGB (18.11.2021) 11P 8C**