



Crl. A(MD)No.546 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 13.07.2022

DELIVERED ON : 25.07.2022

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

AND

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

CRL.A.(MD)No.546 of 2019

A.Balamurugan

: Appellant

Vs.

The State through the
The Inspector of Police,
Erwadi Dargha Circle,
Ramanathapuram District,
Crime No.153/2015

: Respondent

PRAYER: Criminal Appeal filed under Section 374 (2) of the Code of Criminal Procedure, seeking to call for the records in S.C.No.68/2016 on the file of the District and Sessions Judge, Ramanathapuram and set aside the judgment and order dated 15.12.2017 of the Trial Court and acquit the appellant / accused from the charges levelled against him.



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For Appellant : Mr.K.Samidurai
Legal Aid Counsel
For Respondent : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

JUDGMENT

P.N.PRAKASH, J.

This criminal appeal is filed against the judgment and order dated 15.12.2017 in S.C.No.68/2016 on the file of the District and Sessions Judge, Ramanathapuram.

2.The prosecution story runs thus:

2.1.The appellant who was 22 years old at the time of the occurrence, hailed from Thiruthuraipoondi in Thiruvavarur District. He was suffering from mental illness. Therefore, he was left in the Erwadi Dargha which normally houses people with mental illness as it is widely believed by people cutting across religious faiths, that the Hazrat Sultan Syed Ibrahim Shaheed Shrine, colloquially referred to as Erwadi Dargha, has mystical powers to cure mental illness.

2.2.Similarly, the deceased Naser @ Abdul Naser [for brevity “Naser”], who is a Keralite from Palakkad was also suffering from



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mental illness and he was brought to Erwadi Dargha by his brother Bahrutheen Ali [P.W.4] and left there to be an inmate.

2.3.While so, around 08.30 p.m. on 02.09.2015, a quarrel arose between the appellant and Naser as the latter was asking for tea in his native tongue, Malayalam, 'chaya chaya', which infuriated the appellant and the appellant is said to have hit him with a palm reeper which was lying nearby. This was witnessed by Syed Sirajudhin [P.W.2], Vice-President of the Dargha, Syed Farooq Alim [P.W.3], Secretary of the Dargha, Bahrutheen Ali [P.W.4], Naser's brother and Velmurugan [P.W.5], watchman of the Dargha. These people intervened and separated the appellant and Naser. Since Naser had suffered injuries, he was immediately rushed to the Primary Health Centre, Pudumadam, where he was examined by Dr.Balasubramanian [P.W.18] at 10.00 p.m. on 02.09.2015.

2.4.At the time of examination, it was reported to the doctor that while Naser was kept chained in the Dargha, someone had hit him with a tile and had caused injuries to him. Dr.Balasubramanian [P.W.18] found a contusion on the back of his head and also observed that blood was oozing from the ear and nose. Therefore,



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Dr.Balasubramanian [P.W.18] sent Naser to the Government Rajaji Hospital, Madurai for better treatment. Naser was admitted as an inpatient in the Government Rajaji hospital on the same day and he died on 06.09.2015 at 05.30 a.m.

2.5.In the meanwhile, on a complaint [Ex.P.1] given by Amjad Hussain [P.W.1], President of the Dargha, Murugan [P.W.17], Special Sub-Inspector of Police registered a case in Erwadi Dargha Police Station in Crime No.153/15 under Section 324 I.P.C., at 11.00 a.m. on 03.09.2015 and prepared the printed FIR [Ex.P.8] which reached the jurisdictional Magistrate only on 06.09.2015 at 01.00 p.m., as could be seen from the endorsement thereon, after the death of Naser at 05.30 a.m. on the same day.

2.6.Investigation of the case was taken over by Palpandi [P.W.20], Inspector of Police, who went to the place of occurrence and prepared the observation mahazar [Ex.P.2] and rough sketch [Ex.P.9]. Inquest was conducted over the body of Naser at the Government Rajaji Hospital Madurai and inquest report is marked as [Ex.P.7].



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2.7.Thereafter, Dr.Chandrasekar [P.W.15] performed autopsy on the body of Naser and issued the Postmortem certificate [Ex.P.6] and final opinion [Ex.P.7], wherein he has stated as follows:

*“The deceased would appear to have died of
Cranio Cerebral Injuries”*

2.8.The appellant was arrested by the police on 14.10.2015 at 07.30 p.m. and based on his police confession, a 3 ft. wooden frame [M.O.3] was recovered under the cover of a mahazar [Exs.P.3 & P.10].

2.9.After examining various witnesses and collecting various reports, the Investigating Officer completed the investigation and filed a final report in P.R.C.No.8/2016 in the Court of the Judicial Magistrate II, Ramanathapuram, for the offence under Section 302 IPC against the appellant.

3.On appearance of the appellant, the provisions of Section 207 Cr.P.C. were complied with and the case was committed to the Court of Session, Ramanathapuram, in S.C.No.68 of 2016 for trial. The trial Court framed a charge under Section 302 IPC and when questioned, the appellant pleaded “not guilty”.



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4.To prove the case, the prosecution examined 20 witnesses and marked 15 exhibits and 3 material objects. When the appellant was questioned under Section 313 Cr.P.C., on the incriminating circumstances appearing against him, he denied the same.

5.From the side of the appellant, Dr.Periyar Lenin was examined as D.W.1, through whom, the medical records [Ex.D.1] were marked, in order to establish that the appellant was under treatment for his mental illness in Erwadi from 26.05.2015 onwards continuously for chronic Schizophrenia. Thus, before the Trial Court the appellant took a defence under Section 84 IPC. However, the trial Court rejected the same and convicted the appellant of the offence under Section 302 IPC. Strangely, the trial Court did not pass any substantive sentence of imprisonment, but sentenced the appellant to pay a fine of Rs.10,100/-, out of which, a sum of Rs.10,000/- was directed to be paid as compensation under Section 357 Cr.P.C. to the family of Naser and the remaining amount of Rs.100/- was directed to be paid to the Government. The trial Court did not stop with that. It further directed that the appellant be lodged in the Institute of Mental Health, Kilpauk, Chennai [for brevity "the IMH"] for treatment without specifying the



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period of treatment. Pursuant to that, the appellant continues to be in the Institute of Mental Health, Kilpauk, Chennai, till date.

6.No appeal was filed by the appellant and therefore, the High Court Legal Services Authority nominated Mr.K.Samidurai, to take up the case of the appellant. Accordingly, Mr.K.Samidurai, took up the case and filed an application in Crl.M.P.(MD)No.9549 of 2019 under Section 5 of the Limitation Act for condoning the delay of 557 days in filing the appeal, which was allowed by this Court on 05.11.2019 after which, the present appeal was numbered and heard.

7.Heard Mr.K.Samidurai, learned Legal Aid Counsel for the appellant and Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor for the respondent.

8.This appeal deserves to be allowed on the very short ground that there are overwhelming materials on record to show that the appellant was suffering from chronic Schizophrenia and Bipolar Disorder which is evident and manifest from the fact that he was lodged in Erwadi Dargha and was taking treatment for his mental illness with Dr.Periyar Lenin [D.W.1]. Amjad Hussain [P.W.1], Syed



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Sirajudhin [P.W.2], Syed Farooq Alim [P.W.3], Bahrutheen Ali [P.W.4] and Velmurugan [P.W.5], all say that the appellant and Naser were suffering from mental illness and they were inmates of the Erwadi Dargha.

9.In this case, we have a very serious doubt about the lodging of the complaint [Ex.P.1]. The incident in this case had taken place on 02.09.2015 around 8.30 p.m. and Naser was first examined by Dr.Balasubramanian [P.W.18] at 10:00 p.m. on 02.09.2015. Even at that time, it was stated to the doctor that Naser @ Abdul Naser was kept in chains because of his acute mental illness. No complaint was given on 02.09.2015 by the Dargha authorities. On the contrary, according to Amjad Hussain [P.W.1] and Murugan [P.W.17], the complaint was given on 03.09.2015 at 11.00 a.m. Whereas, the complaint [Ex.P.1] and the FIR [Ex.P.8] reached the jurisdictional Magistrate only on 06.09.2015 at 01:00 p.m., by which time, Naser had passed away at the Government Rajaji Hospital at 05.30 a.m. The most crucial aspect is, after the arrest of the appellant, he was produced before the learned Judicial Magistrate II, Ramanathapuram District at 05:30 p.m. on 14.10.2015 and at that time, the learned Magistrate has recorded as under in the remand report:



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“Accused produced. Accused explained no complaint against police. Records perused. The alleged offence under Section 302 IPC necessity of arrest satisfied. Legal remedies explained. Remanded up to 28.10.2015 in the remand hearing. It is stated that the accused is in psychiatric ailment. Hence the jail authorities directed to give the accused proper & necessary medical treatment.”

10.The complaint [Ex.P.1], FIR [Ex.P.8] and the remand report disclosed that both the appellant and Naser were suffering from mental illness and were inmates of the Erwadi Dargha and there, they had fought. Thus, when it was obvious to the Magistrate that there was something wrong with the mental health of the appellant, he should have conducted an enquiry as required under Section 328 Cr.P.C. Instead of doing so, the learned Magistrate had directed the prison authorities to give proper treatment to the appellant.

11.The report dated 15.07.2022 that was submitted to this Court by the Superintendent, Central Prison, Madurai shows that after the appellant was remanded by the learned Judicial Magistrate, Ramanathapuram, he was brought to the Central Prison, Madurai on 14.10.2015. At the time of his admission, when he was examined by



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the prison doctor, he was not coherently speaking and therefore, on the advice of the prison doctor, the appellant was kept on observation in the Rehabilitation Centre attached to the prison. From there, the appellant was taken to the Psychiatric Ward in Government Rajaji Hospital, Madurai, where he was examined by a Psychiatrist on 23.01.2016. After medically examining the appellant, the Psychiatrist had directed the prison authorities to obtain a detention order from the Magistrate for admitting the appellant in the Psychiatric Ward. Therefore, the prison authorities addressed a letter dated 27.01.2016 to the Judicial Magistrate, Ramanathapuram, in this regard. In the meanwhile, it appears that the appellant was released on bail by the learned Judicial Magistrate II, Ramanathapuram in C.M.P.No.270 of 2016 on 01.02.2016, pursuant to which, the appellant was discharged from the prison on 11.02.2016.

12.Dr.Periyar Lenin [D.W.1] has stated that he is a Psychiatrist attached to the Government Hospital, Erwadi; he has been treating Balamurugan, son of Arunachalam from Thiruthuraipoondi from 29.07.2015 onwards for his mental illness. Further, he has specifically stated as follows:

“மனநலம் பாதிக்கப்பட்டிருப்பதால் தான் என்ன
செய்கிறோம் என்று அறியாத நிலையில் இருந்து வருகிறார். நான்



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29.07.2015லிருந்து இன்று வரை ஏதிரி மாலமுருகனுக்கு
மனநோய்க்கு சிகிச்சை அளித்து வருவதற்கான மருத்துவ
குறிப்பு சான்றிட்ட நகல் எ.த.சா.ஆ.1 ஆகும்.”

13.The medical records [Ex.D.1] show that the appellant was under treatment under the District Mental Health Programme, Ramanathapuram, in the Government Hospital, Erwadi, from 29.07.2015 onwards. In the medical records [Ex.D.1], it is clearly stated as 'chronic Schizophrenia' and the following drugs have been prescribed to the appellant:

*“T.Haloperidol - 5mg.
T.Sodium Valproate - 200 mg.
T.Chlorpromazine - 25 mg.
T.Trihexyphenidyl - 2 mg.”*

14.The medical records [Ex.D.1] also show that the appellant was suffering from Bipolar Disorder for over two years. It is nobody's case that the appellant had any previous motive against Naser. Naser who was himself suffering from mental illness was pestering the appellant saying 'chai chai chai', which was viewed by the appellant as a nuisance, to abate to which the appellant took a reeper that was lying nearby and hit Naser. Though it is indeed very unfortunate, there are no materials to show that the appellant had the necessary



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intention or knowledge that his act would result in the death of Naser. Therefore, on facts, we are convinced that the appellant had hit Naser with a palm reeper on the fateful day. Yet, overwhelming materials show that the appellant would be entitled to the exception under Section 84 IPC. In this regard, it may be relevant to allude to a Coordinate Bench judgment of this Court in ***Vijay Pratap Singh Vs. State represented by the Inspector of Police, [2021-2-L.W. (Crl). 777]***, in which, one of us [PNPJ] was a member and where the entire law relating to Section 84 IPC and Sections 328 and 329 Cr.P.C. have been elaborately discussed. It may be apposite to extract the following paragraphs from ***Vijay Pratap Singh*** [supra]:

“35.Coming to the applicability of Section 84 IPC to an accused suffering from schizophrenia, the issue is no longer res integra in the light of the judgment of the Supreme Court in Shrikant Anandrao Bhosale vs. State of Maharashtra [2003-2-L.W.(Crl.) 682 = (2002) 7 SCC 748]. We also notice that schizophrenia is a classified as a “severe mental illness” under the International Classification of Diseases (ICD) which is an accepted standard for determination of mental illness under Section 3 of the Mental Healthcare Act, 2017 [See Accused 'X' v State of Maharashtra (2019) 7 SCC 1].



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36.*The next seminal question that requires an answer is how does an accused dislodge the onus under Section 105 of the Evidence Act and satisfy the Court that when he committed the criminal act, he was incapable of understanding the nature of the act.*

37.*There are certain exceptions in Chapter IV of the Indian Penal Code like Section 96 - "Things done in private defence" - where it is possible for the accused to positively lead evidence and testify on oath that he had committed the criminal act in the exercise of his right of private defence. We are afraid that if such an approach is adopted for availing the exception under Section 84 IPC, it would lead to illogical results. No lunatic, having an advisor in his proper senses, would put himself in the box to plead a positive case of insanity.*

38.*In Dahyabhai Chhaganbhai Thakkar v. State of Gujarat [AIR 1964 SC 1563], the Supreme Court held that the benefit of Section 84 IPC can only be established from a totality of proved circumstances which preceded, attended and followed the crime. The test is essentially inferential, and must rest on reliable material and not mere ipse dixits. K.Subba Rao, J., (as he then*



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was) in his inimitable style, has observed as under:

“9. 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 Section 84 of the Indian Penal Code can only be established from the circumstances which preceded, attended and followed the crime.” (emphasis supplied).

39. *What is the quality of proof that the appellant is required to adduce for discharging the onus under Section 105 of the Evidence Act in order to avail the exception under Section 84 IPC? The answer to this question is that the Court, from the totality of the proved circumstances before it, entertains a reasonable doubt, judged from the stand point of an ordinary prudent man, that the criminal act was committed by the accused by reason of unsoundness of mind without knowing*



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the nature of the act or that he was doing what was either wrong or contrary to law.”

15.Thus, the evidence on record clinchingly shows that two acutely mentally ill patients quarrelled in the Erwadi Dargha, in which one of them assaulted the other resulting in the death of the latter. In such circumstances, the case of the appellant would fall within the general exceptions under Section 84 IPC and therefore, this appeal is allowed and the judgment and order of conviction and sentence dated 15.12.2017 passed by the Trial Court in S.C.No.68 of 2016, is set aside. However, it is made clear that the appellant cannot be, just like that, released from the IMH, where he is presently lodged, pursuant to the judgment and order of the trial Court.

16.Mr.K.Samidurai, learned Legal Aid Counsel has filed an undertaking affidavit sworn to by M.Arunachalam, the father of the appellant who has stated that he would take care of the appellant, if he is discharged from the hospital. Therefore, we give liberty to Arunachalam to approach the trial Court under Section 335(1)(b) r/w. 335(3) Cr.P.C., and file an application for the custody of the appellant. The trial Judge may obtain a report from the IMH and after he is satisfied that the appellant would be kept safely by his father, so that



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he does not harm himself or others, may order the appellant to be delivered to him on his giving security u/s. 335(3) Cr.P.C. The Trial Court, if it is satisfied that the appellant may need continuous treatment in the IMH, Kilpauk, it may pass appropriate orders and keep him there as an inpatient and not as a convict prisoner. In the event of discharging him from IMH, Kilpauk, the provisions of Section 98 of the Mental Healthcare Act, 2017 may be followed.

17.Before parting with the matter, we place on record our appreciation to Mr.K.Samidurai, learned Legal Aid Counsel, for effectively conducting the appeal and we direct the High Court Legal Services Committee, Madurai, to pay him a sum of Rs.10,000/- (Rupees Ten Thousand only) as remuneration.

[P.N.P., J.] & [R.H., J.]

25.07.2022

Index : Yes/No

Internet : Yes

MR



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To

- 1.The District and Sessions Judge,
Ramanathapuram.
- 2.The Inspector of Police,
Erwadi Dargha Circle,
Ramanathapuram District.
- 3.The Additional Public Prosecutor
Madurai Bench of Madras High Court,
Madurai.
- 4.The Record Keeper,
Vernacular Records Section,
Madurai Bench of Madras High Court,
Madurai.
- 5.The Director,
Institute of Mental Health,
Kilpauk,
Chennai – 10.
- 6.The Secretary,
High Court Legal Services Committee,
Madurai.



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P.N.PRAKASH, J.
and
R.HEMALATHA, J.

MR

PRE-DELIVERY JUDGMENT MADE IN
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25.07.2022