



BAIL SLIP

The Appellant/Accused Viz., Durairaj S/o.Kuppusamy was directed to be released on bail in and by the order of this court dated 24.10.2018 made in Crl.MP(MD).6573 of 2018 in Crl.A.(MD)No.374 of 2018.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 10.01.2022

Delivered on : 21.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
and
THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.A. (MD)No.374 of 2018

Durairaj, S/o.Kuppusamy ... Appellant / Sole Accused

-vs-

State through
The Inspector of Police,
Uppilliyapuram Police Station,
Thuraiyur, Trichy District.
(Crime No.79 / 2015)

... Respondent / Complainant

Prayer:- Appeal filed under Section 374 (2) of Cr.P.C., to call for the records relating to judgment in S.C.No.70 of 2016, dated 06.01.2018, on the file of the learned Principal Sessions Judge, Tiruchirappalli and set aside the same and acquit the appellant/accused from the charge levelled against him.

For Appellant : Mr.A.V.Arun

For Respondent : Mr.S.Ravi
Additional Public Prosecutor

JUDGMENT

Dr. G.JAYACHANDRAN, J.

This Criminal Appeal is filed assailing the conviction of life sentence imposed on the appellant for the offence punishable under Section 302 of I.P.C. in S.C.No.70 of 2016, on the file of the learned Principal Sessions Judge, Tiruchirappalli.

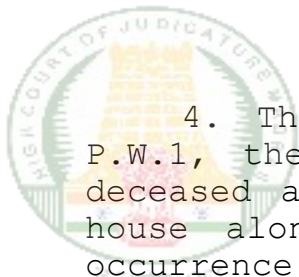


2.The gist of the prosecution case is that on 23.03.2015 at about 20.00 hours, Saroja [P.W.1], wife of Kuppusamy, came to the respondent Police Station and informed that her elder son namely, Durairaj, a B.E. graduate, who is married and unemployed, living along with them, since his wife estranged and living with her parents at Salem due to family dispute. P.W.1's husband used to reprimand him for idly sitting at home and advised him to go for work, whereas her son used to pressurize her husband to arrange for job. On the date of incident, at about 04.45 pm., her husband and her elder son were quarrelling regarding seeking employment and thereafter, her husband went to the room to take rest. After sometime, his son Durairaj went to the room and took the grinding stone and beat her husband on his head and fled from the home. She and her daughter were shocked and the residents nearby came to her house and found her husband dead. The said statement was reduced into writing [Ex.P.1] and based on the statement, First Information Report in Crime No.79 of 2015 was registered against the accused Durairaj by T.Jayachithra, Sub-Inspector of Police, Uppiliyapuram Police Station [P.W.16].

2.1. The investigation was taken up by M.Chezhian, Inspector of Police, Thuraiyur Circle [P.W.17]. Express F.I.R. [Ex.P.16] was forwarded to the learned Judicial Magistrate, Thuraiyur, at about 23.30 hours and the same was received by the learned Judicial Magistrate in the early morning of 24.03.2015 at 01.35 am. The Investigating Officer visited the residence of the complainant and prepared rough sketch [Ex.P.17] and Observation Mahazar [Ex.P.2] in the presence of witnesses K.S.Sivakumar [P.W.6] and S.Sasikumar [P.W.7]. The grinding stone [M.O.1], blood stained wooden log [M.O.2], blood stained cement plaster [M.O.3] and ordinary cement plaster [M.O.4] were recovered from the scene of crime under seizure Mahazar [Ex.P.3].

2.2. On 25.03.205 at about 07.30 am. the accused was arrested at Thuraiyur bus stand in the presence of witnesses T.Natesan [P.W.8] and A.Mohammed Eliyas [P.W.9]. The postmortem was conducted by Dr.Abirami [P.W.11] and the postmortem report is marked as Ex.P.6 and her opinion for the cause of death is marked as Ex.P.7. The grinding stone [M.O.1], blood stained wooden plank [M.O.2], blood stained cement plaster [M.O.3] were sent to Forensic Laboratory for biological test, where the presence of human blood was confirmed. However, in the serology test, the result of grouping found inconclusive. The said report is marked as Ex.P.14.

3. The prosecution to prove the guilt, examined 17 witnesses. Marked 18 exhibits and 8 material objects. On the side of the accused, the insanity as a defence was pleaded and two Doctors were examined and 8 exhibits marked through them.



4. The trial Court, on appreciation of evidence, held that P.W.1, the wife of the deceased and P.W.2, the daughter of the deceased are the witnesses to the occurrence. There were in the house along with the deceased and the accused at the time of occurrence. P.W.3, P.W.4 and P.W.5 are the witnesses, who have seen the accused running from the house, which is a relevant fact to prove the subsequent conduct of the accused under Section 8 of the Indian Evidence Act, 1872. Hence, held that the prosecution has proved the case against the accused through the witnesses to the occurrence and witnesses to the subsequent conduct. Relying upon the evidence of P.W.7, who is a witness to the recovery of material objects M.O.1 to M.O.4 and the evidence of P.W.8, who is the witness to the confession statement of the accused, had concluded that the injuries found on the deceased were caused by the accused using M.O.1 grinding stone as a weapon. Regarding the defence of insanity, from the evidence of D.W.1 - Dr.S.Malini and D.W.2 - Dr.S.Nakkeeran and Ex.D.1 to Ex.D.8, the trial Court concluded that on the date of occurrence, there is no proof that the accused was suffering from any sort of illness for extending exemption under Section 84 of I.P.C.

5. For better appreciation of the trial Court judgment in this regard, the reasoning of the trial Court as found in Paragraph 27 of the judgment, is extracted below:-

'27. Whether the accused has suffered from Paranoid Schizophrenia at the time of occurrence? In this regard, this Court has gone through the evidence of D.W.1, it shows that on requisition letter received from Judicial Magistrate, Thuraiyur, the accused produced before her on 07.05.2015. Then the accused was admitted in hospital as inpatient for taking treatment from 07.05.2015 to 13.05.2015. During the said period, D.W.1 found that the accused is suffered Paranoid Schizophrenia illness. The requisition letter was marked as Ex.D.1, D.W.1 report is marked as Ex.D.2. Both the documents are not established that at the time of occurrence, the accused suffered Paranoid Schizophrenia. In cross examination, D.W.1 has revealed that on fermentation given from the accused relatives, the accused suffering the Paranoid Schizophrenia. Further, D.W.1 has deposed in his evidence from 07.06.2014 to 11.06.2014 the accused taking treatment as outpatient. But, D.W.1 did not know what kind of disease, the accused taking treatment from that period. Further, another Doctor was examined by the accused as D.W.2. D.W.2 deposed his evidence the accused has taken treatment two times in Government Mental Hospital at Kilpauk. Further, D.W.2 deposed in his evidence prior to the



occurrence, the accused taking treatment from 07.06.2014 to 11.06.2014. Further, D.W.2 admitted in his evidence when the patient was completing cure of the disease, at that time only discharge from the hospital. Further, he deposed in his evidence, there is no document available to prove that the accused brought to the hospital in second time. Further, the accused is discharged from hospital on 27.05.2015 at the time, the accused is in good condition. Further, D.W.2 deposed in his evidence, he did not ascertain the accused's mental condition in between 07.06.2014 and 07.06.2015. The overall evidence of D.W.1 and D.W.2 and Ex.D.1 to Ex.D.8 not shows that on the date of occurrence, the petitioner is suffering from paranoid schizophrenia.''

6. Aggrieved by the conviction for the offence under Section 302 of I.P.C. and sentence of life imprisonment with fine of Rs.3,000/-, in default, four years rigorous imprisonment, the present Criminal Appeal is preferred on the ground that the Court below failed to see that the accused is suffering from **Chronic Paranoid Schizophrenia** prior to the occurrence and was under treatment during the period of occurrence and thereafter. The documentary evidence reflecting the medical history of the appellant and the oral evidence of D.W.1 and D.W.2 were not properly considered by the trial Court. Since the appellant has discharged his initial burden under Section 105 of the Indian Evidence Act through the witnesses viz., D.W.1 - Dr.S.Malini and D.W.2 - Dr.S.Nakkeeran and also through Ex.D.1 to Ex.D.8, it is the burden of the prosecution to prove the contrary. The prosecution has failed to place any material to show that on the date of occurrence, the appellant was normal and not under the influence of seizure.

7. The appellant herein, pending appeal, filed an application to summon his medical records from Athma Hospitals, Tiruchirappalli and Institute of Mental Health, Kilpauk, Chennai, as additional evidence. This Court allowed the said application on 20.12.2021. Accordingly, the Dean, Athma Hospital, Tiruchirappalli and the Dean, Institute of Mental Health, Kilpauk, Chennai, had produced the medical records through the learned Additional Public Prosecutor. While allowing the said application, this Court has observed as below:-

''2. In this case, the Court is bound to allow this petition for the reason that, in the Trial, defense of insanity has been taken by the accused and in fact, Ex.D4 been marked which indicates the accused/appellant had an medical history since 07.04.2014 and he was also a voluntary boarder in Kilpauk Hospital and diagnosed as schizophrenia. The date of occurrence is on 23.03.2015. Since there was



no supporting documents except the discharge summary-Ex.D4 which indicates that the patient was admitted on 07.06.2015, much after the occurrence. This was pursuant to the direction of the Magistrate while the accused was in judicial custody. The trial Court has held that on the date of occurrence, there is no medical record to show the accused was under any mental illness.

3.To ensure whether the appellant/accused really had medical history prior to the occurrence, it is necessary for this Court to call for the records sought under this petition to ensure and satisfy about the actual mental condition of the appellant/accused on the date of occurrence. Hence, this petition is allowed.''

8. The medical records produced by the Athma Hospital, Tiruchirappalli, in respect of the appellant Durairaj commences from 23.10.2004. A perusal of the medical records produced by Athma Hospital shows that the appellant was suffering from Paranoid and Persecutory Delusion since 2004. The medical records produced by the Dean, Institute of Mental Health, Kilpauk, Chennai, indicates that the appellant has been treated as inpatient from 07.06.2015 to 27.09.2015 and thereafter, from 18.09.2016 to 05.02.2017 and from 23.09.2018 to 03.11.2018. The records indicates that D.W.2 - Dr.S.Nakkeeran was summoned by the trial Court to appear on 16.08.2017 along with records to adduce evidence. In his deposition, he had stated that from 07.06.2014 to 11.06.2014, the appellant was taking treatment as outpatient and prior to that, from 12.04.2008 to 22.04.2008, he was taking treatment at Sowmanasya Hospital, Tiruchirappalli. The said version of D.W.2 on verifying with the records of Athma Hospital, Tiruchirappalli, proves to be correct. In this case, the occurrence took place on 23.03.2015. The medical records marked on the side of the defence as well as the evidence of D.W.1 and D.W.2 clearly indicates that the appellant was suffering from serious mental illness, known as Paranoid Schizophrenia at the time of occurrence.

9. Section 105 of the Indian Evidence Act, 1872 casts burden of proof on the accused to prove the legal insanity to claim exception under Section 84 of I.P.C. In the case on hand, the accused through the evidence of D.W.1 and D.W.2 as well as through Ex.D.1 to Ex.D.8, had shown the preponderance of probability in his favour. Having discharged his onus by producing medical records about his insanity prior to the occurrence as well as subsequent to the occurrence, it is to be presumed that at the time of occurrence, he was not normal and was under the influence of Paranoid Schizophrenia. To presume anything contrary, the prosecution ought to have produced medical records. In fact, even according to the prosecution, the accused,



after the occurrence, has not fled or absconded, but was sleeping in the Bus Stand when he was arrested and he was not in good orientation of mind.

10. This Court visualizes that an Engineering graduate, after causing death of his father, lying on the Bus Stand Bench, must be taken as an indication of his mental illness. This Court summoned the medical records from the Hospitals to satisfy whether the evidence of D.W.1 and D.W.2 regarding the mental illness of the appellant even prior to the occurrence is correct. Since the trial Court had no advantage of perusing that record, it has concluded that there is no document available to prove that the accused was brought to the Hospital for the second time and he was suffering from Paranoid Schizophrenia prior to the occurrence. The failure of the Doctor to bring the entire records and produce before the Court when he was summoned to produce the same before the Court, cannot be prejudiced to the appellant, who in fact, had been suffering from the said disease for a long time even prior to the occurrence.

11. Chapter XXV of the Criminal Procedure Code lays down the procedure in the case of accused being a lunatic / unsound mind. In the present case, the learned Judicial Magistrate, before whom the accused was remanded, had entertained reasons to believe that the accused is not of sound mind. Based on the information from the prison authorities, the learned Judicial Magistrate has referred the appellant to the Government Hospital, Thuraiyur, for treatment and he had been treated as inpatient from 07.05.2015 to 13.05.2015. This proceeding form part of the Court record. Under Section 328(1) of Cr.P.C., the learned Judicial Magistrate ought to have conducted an enquiry regarding the mental health of the accused person and pending enquiry, the accused should have been treated in accordance with the provisions of Section 330 of Cr.P.C.

12. The relevant provision of the Code of Criminal Procedure is extracted below for better appreciation.

'328.Procedure in case of accused being lunatic.

(1) When a Magistrate holding an inquiry has reason to believe that the person against whom the inquiry is being held is of unsound mind and consequently incapable of making his defence, the Magistrate shall inquire into the fact of such unsoundness of mind, and shall cause such person to be examined by the civil surgeon of the district or such other medical officer as the State Government may direct, and thereupon shall examine such surgeon or other officer as a witness, and shall reduce the examination to writing.



330.Release of person of unsound mind pending investigation or trial.-

(1) Whenever a person is found under section 328 or section 329 to be incapable of entering defence by reason of unsoundness of mind or mental retardation, the Magistrate or Court, as the case may be, shall, whether the case is one in which bail may be taken or not, order release of such person on bail:

Provided that the accused is suffering from unsoundness of mind or mental retardation which does not mandate in-patient treatment and a friend or relative undertakes to obtain regular out-patient psychiatric treatment from the nearest medical facility and to prevent from doing injury to himself or to any other person.

(2) If the case is one in which, in the opinion of the Magistrate or Court, as the case may be, bail cannot be granted or if an appropriate undertaking is not given, he or it shall order the accused to be kept in such a place where regular psychiatric treatment can be provided, and shall report the action taken to the State Government:

Provided that no order for the detention of the accused in a lunatic asylum shall be made otherwise than in accordance with such rules as the State Government may have made under the Mental Health Act, 1987 (14 of 1987).

(3) Whenever a person is found under section 328 or section 329 to be incapable of entering defence by reason of unsoundness of mind or mental retardation, the Magistrate or Court, as the case may be, shall keeping in view the nature of the act committed and the extent of unsoundness of mind or mental retardation, further determine if the release of the accused can be ordered:

Provided that—

(a) if on the basis of medical opinion or opinion of a specialist, the Magistrate or Court, as the case may be, decide to order discharge of the accused, as provided under section 328 or section 329, such release may be ordered, if sufficient security is given that the accused shall be prevented from doing injury to himself or to any other person;

(b) if the Magistrate or Court, as the case may be, is of opinion that discharge of the accused cannot be ordered, the transfer of the accused to a



residential facility for persons of unsound mind or mental retardation may be ordered wherein the accused may be provided care and appropriate education and training.''

13. From the case records, this Court finds that neither the learned Judicial Magistrate nor the trial Court had followed this procedure in letter and spirit. Since they were convinced that the appellant is normal in view of the treatment and he is fit to be tried, the trial Court had gone to the extent of disbelieving that on the date of occurrence, he was suffering from insanity.

14. Modi's Textbook of Medical Jurisprudence and Toxicology explained Paranoid Schizophrenia in the following lines:-

'Paranoid Schizophrenia, Paranoia and Paraphernia.- Paranoia is now regarded as a mild form of paranoid schizophrenia. It occurs more in males than females. The main characteristic of this 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 pseudo-religious 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 stage. 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 rise to hallucinations, 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 may 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.'

15. In the case on hand, the trial Court had presumed that the accused enjoying lucid period, since there was cessation of the symptoms of insanity. In fact, Experts had opined that a lucid interval of an insane person is not merely a cessation of the violent symptoms of the disorder, but a restoration of the faculties of the mind sufficiently to enable the person soundly to judge the act; but the expression does not necessarily mean complete or perfect restoration of the mental faculties to their original condition. So, if there is such a restoration, the person concerned can do the act with such reason, memory and judgment as to make it a legal act; but merely a cessation of the violent symptoms of the disorder is not sufficient **[Bapu @ Gajraj Singh Vs. State of Rajasthan 2007 (8) SCC 66]**.

16. This Court is of the view that the trial Court has not properly appreciated Ex.D.4 Letter of the Director of Institute of Mental Health, Kilpauk, Chennai, addressed to the Jail Superintendent, Central Prison, Tiruchirappalli, extracting the discharge summary of the appellant, wherein a reference about the patient being admitted as voluntary boarder and diagnosed as Schizophrenia [a major mental illness] on 07.06.2014. The trial Court for want of supporting document to this fact, had disbelieved the case of the defence that he is a Paranoid Schizophrenia patient. However, after perusal of the documents produced, this Court is satisfied what is stated in Ex.D.4 is correct. From Ex.D.2, the proceedings of the learned Judicial Magistrate is also clear that the appellant was sent to the Institute of Mental Health, Kilpauk, Chennai, for treatment, since he was diagnosed with Paranoid Schizophrenia. Though there is ample medical record produced by the defence to show that the appellant is suffering from Paranoid Schizophrenia since 2006 and under irregular treatment, the trial Court had gone wrong in holding that there is no evidence to show



that on the date of occurrence, there is no proof that the appellant was suffering from Paranoid Schizophrenia.

17. As pointed out earlier, Paranoid Schizophrenia literally means disintegration of mind and includes hallucination and delusion. On considering the evidence of P.W.1 and P.W.2, it is clear that the appellant was jobless, though he was a B.E. Graduate and he was idly sitting in the house, due to depression, after resigning his job as Lecturer in the College coupled with disturbed marital life, which has aggravated his mental illness. Just before the occurrence, he had quarrelled with his father and he had thrown the grinding stone on his father's head. P.W.1 mother of the appellant, in the cross-examination, had denied the fact that the appellant was suffering from mental illness. She even denied the fact that her son was employed as Lecturer in St. Joseph Engineering College for some time, however, in the medical records, it is shown that she had accompanied him to the Hospital. On considering the medical issue of the appellant and in the light of the evidence of D.W.1 and D.W.2, this Court is of the view that the trial Court had not considered the medical history of the appellant in proper perspective. By preponderance of probability, the appellant had established through his medical records that at the time of occurrence, he was suffering from Paranoid Schizophrenia, a serious mental illness. In view of this fact, the appellant is entitled to the benefit of exception under Section 84 of I.P.C.

18. A Division Bench of this Court, which was led by one of us (**SVNJ**) had elaborately discussed the scope of Section 84 of IPC in the following cases, in consonance with the proposition laid down by the Hon'ble Supreme Court in Accused '**X**' **vs. State of Maharashtra**, reported in **LNIND 2019 SC 349**:

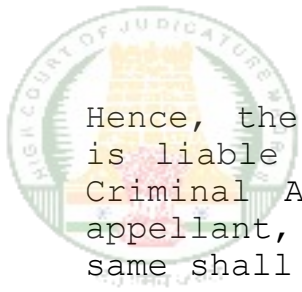
i) **Kumar @ Selvakumar vs. State**, reported in **(2019) 4 MLJ (Crl) 724**;

ii) **Vellapandi vs. State**, reported in **(2020) 2 MLJ (Crl) 233**.

19. In the former case, it was duly established by the medical records that the accused therein was in a state of mental disorder even prior to the date of occurrence and also after date of occurrence and therefore, this Court had acquitted the accused from the charges by setting aside the conviction and sentence imposed against him. Insofar as the latter case is concerned, finding no such materials in favour of the accused, the judgment of conviction and sentence passed against him was confirmed.

20. In the present case on hand, as stated supra, in terms of Section 105 of the Indian Evidence Act, the accused has clearly discharged his onus through medical evidence to avail the benefit of Section 84 of IPC.

21. On re-appreciation of evidence, this Court holds that the appellant is entitled for protection under Section 84 of I.P.C.



Hence, the conviction and sentence imposed on the appellant herein is liable to be set aside. Accordingly, it is set aside and the Criminal Appeal is allowed. Bail bond, if any executed by the appellant, shall stand discharged and fine amount, if any paid, the same shall be refunded to the appellant.

22. In the light of Section 335 of Cr.P.C., the custody of the appellant shall be given to his wife. According to the learned counsel for the appellant, the wife of the appellant is providing proper care and support to the appellant and the same is recorded.

Sd/-

Assistant Registrar (CS-I)

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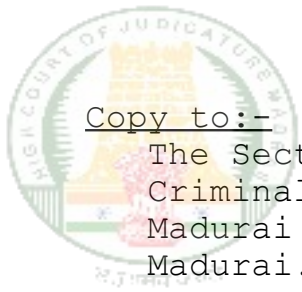
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Sub Assistant Registrar(CS)

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To

- 1.The Principal Sessions Judge,
Tiruchirappalli.
- 2.The Judicial Magistrate,
Thuraiyur.
- 3.-do-Through The Chief Judicial Magistrate,
Trichy.
- 4.The Superintendent of Police,
Central Prison,
Trichy.
- 5.The Inspector of Police,
Uppilliyapuram Police Station,
Thuraiyur, Trichy District.
- 6.The District Collector, Trichy District.
- 7.The Director General of Police,
Mylapore, Chennai.
- 8.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



Copy to:-

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

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