



Crl.A. No.797 of 2018

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2024:KER:76518

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

&

THE HONOURABLE MR. JUSTICE G.GIRISH

THURSDAY, THE 17TH DAY OF OCTOBER 2024 / 25TH ASWINA, 1946

CRL.A NO. 797 OF 2018

AGAINST THE JUDGMENT IN SC NO.452 OF 2016
DT.10.05.2018 OF ADDITIONAL SESSIONS COURT - V, KOTTAYAM

APPELLANT/ACCUSED:

VIJAYAMMA, AGED 56 YEARS, W/O.K.V.RAJU,
KALATHIL HOUSE, KAREEMANDOM BHAGOM,
AYMANAM VILLAGE, KOTTAYAM (FLAT NO.17A/103,
THANE DISTRICT, VIHAR WEST.P.O,
BOMBAY UNITECH'S WEST END, MAHARASHTRA.

BY ADV SRI.NANDAGOPAL S.KURUP

RESPONDENT/COMPLAINANT:

STATE OF KERALA, REP.BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682031.

SMT. NEEMA T.V, SENIOR PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING COME UP FOR FINAL HEARING
ON 17.10.2024, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



'CR'

J U D G M E N T

Raja Vijayaraghavan. J.

The appellant is the accused in S.C.No.452 of 2016 on the file of the Additional Sessions Judge - V, Kottayam. In the aforesaid case, she was charged under Section 302 of the IPC for committing nepoticide. By judgment dated 10.05.2018, she was found guilty by the learned Sessions Judge and was convicted and sentenced to undergo imprisonment for life and to pay a fine of Rs.1 lakh under Section 302 of the IPC with a default clause. Challenging the judgement, conviction and sentence, this appeal is preferred under Section 374 of the Code of Criminal Procedure.

The summary of the prosecution's version, as reflected in the records, is as follows:

2. Kamalakshi (PW1) and Raghavan (PW2) are octogenarians with four children. Their eldest daughter, Vijayamma, is the accused in this case. The next child is a daughter named Shyla, followed by Shaji (PW4), the father of the deceased, Rahul, a bright 12-year-old boy. Their youngest son by name is



Suresh. Vijayamma worked as a nurse for over three decades. She is married to Raju and has three children, who are all employed. Shaji, a graphic designer, was working in Dubai and he had a strained relationship with Bindu (PW4), his wife. Till January 2012, their son, Rahul, was with Shaji in Dubai. However, his VISA got cancelled and he had to return back to India. Rahul was accordingly enrolled in a school at Kaipuzha and had been under the care of his grandparents.

3. On 2/9/2013, at approximately 5 p.m., Vijayamma arrived from Bombay, where she was then working, at her parental home. She approached her father, Raghavan, and requested Rs.15 lakhs. Raghavan informed her that he has already set apart properties for his two daughters and suggested that she was free to sell her share and secure the amount. Vijayamma had bought chocolates from the shop of Geetha (PW11) to give it to Rahul. That evening, she stayed in the room where the grandmother usually slept with Rahul, while Raghavan, as was his habit, slept on a cot in the sit-out. The door of the room, where Vijayamma and Rahul slept, was locked from the inside by Rahul.

4. At around 3 a.m., when Kamalakshi woke up to quench her thirst, she found that the lights were switched on and heard Vijayamma speaking to someone. When asked what had happened, Vijayamma stated that she had



murdered Rahul and was reporting the incident to the police. According to the prosecution, Vijayamma strangled the boy with her pyjama string while he slept. Though no specific motive is alleged in the court charge, the attempt of the prosecution by letting in evidence was to set up a motive that the accused was very close to Shaji and she was against him reuniting with Bindu. Her father had also acceded to the request of Bindu to build a house near the family house while refusing her request for a loan. This made her vengeful towards Bindu and she felt that if Rahul is eliminated, the prospects of Shaji and Bindu reuniting would be a remote possibility.

Registration of the Crime:

5. The sequence of events is that immediately after strangling Rahul, Vijayamma dialled the police and informed them about the incident as well as the location. The call was received by PW16, the GD in charge, of the Ettumanoor Police Station. He immediately informed PW3, who was on patrol duty. PW3 reached the place and found that PW2 was lying outside. PW2 took the officer in and he found Vijayamma lying on the bed in a prone position by the side of the boy. He locked the bedroom and posted Manoj Kumar (PW14), a Civil Police Officer, on guard duty. The child as well as the accused were taken in the jeep to



the Medical College Hospital, Kottayam. The child was examined by the Doctor and he was declared dead. Vijayamma was also examined by the Doctor. The Duty Medical Officer in the Casualty Department of the Medical College examined Vijayamma and thereafter, she was produced before the Gandhi Nagar Police Station along with Ext.P1 report. On the basis of the said report, Ext.P9 FIR was registered on 03.09.2013 at 6 a.m. by PW19, the Sub Inspector of Police, Gandhi Nagar Police Station as Crime No. 811 of 2013 under Section 302 of the IPC.

Investigation:

6. The investigation was taken over by PW20, the Circle Inspector of Police, Kottayam East Police Station. He arrested the accused at 9 a.m. on 03.09.2013 and she was kept under surveillance. He conducted the inquest on the body and prepared Ext.P2 inquest report. Trace evidence was collected from the hands and the neck of the deceased using cellophane tapes. The clothes worn by the deceased and the bedsheet used to cover the body were seized. He went to the place of occurrence and inspected the room where the murder was committed. A pair of rubber sandals and a Pyjama with no string were seized. The officer sought the assistance of the Scientific expert to collect samples. He produced the accused before the court along with Ext.P11 medical examination



report. The samples seized were forwarded to the Forensic Science Lab and reports were obtained. The accused was taken in police custody from 12.30 p.m. on 09.09.2013 till 12.30 p.m on 11.09.2013 and she was interrogated.

7. While she was in judicial custody, the husband of the accused filed an application before the learned Magistrate requesting that she be provided medicine for her mental ailments. However, no medicines were found in the personal belongings of the accused nor did the husband produce any records showing that the accused was undergoing treatment for mental ailments so as to raise a defence of legal insanity. In the bail application filed by the accused, a contention was taken that the accused was suffering from mental ailments from 1985 onwards. Under the said circumstances, Ext.P15 application was filed on 15.10.2013 seeking to obtain a report as regards the mental status of the accused from the Psychiatry Department of the Medical College Hospital, Kottayam. The said application was allowed by the learned Magistrate. The accused was monitored in the Psychiatry Department of the Medical College Hospital by PW15, the Associate Professor, Psychiatry Department, Government Medical College Hospital, Kottayam. The Head of the Department of Psychiatry, MCH Kottayam, was examined as DW1. In the report submitted by PW15, after



observing and evaluating the accused from 28.10.2013 to 5.11.2013 as impatient and after interacting with her husband, Raju, it is stated that the accused was not suffering from any psychotic disorder and that she is fit to stand trial. After completing the investigation, the final report was laid before the Judicial Magistrate of the First Class, Ettumanoor.

Committal:

8. After following the procedure, the case was committed to the Court of Session. The case was later made over to the Additional Sessions Judge for trial and disposal.

The evidence let in:

9. The prosecution examined PWs 1 to 20 to prove its case and through them, Exts.P1 to P17 were exhibited and marked. Material Objects were produced and identified as MOs 1 to 7 series. After the close of the prosecution evidence, the incriminating materials were put to the accused under Section 313 of the Cr.P.C. She denied the circumstances brought out against her and maintained her innocence. Exts.D1 to D7(a) Case Diary contradictions were brought out from the evidence of the prosecution witnesses. On finding that the



accused could not be acquitted under Section 232 of the Cr.P.C., she was called upon to enter her defence. On her side, DWs 1 to 5 were examined.

The findings of the Trial Court:

10. The learned Sessions Judge, after evaluating the entire evidence, came to the conclusion that the prosecution has successfully proved by examining PWs 1 and 2 that Rahul was sleeping with Vijayamma in a locked room before he was found dead. The evidence of PWs 1 to 3, 16, 19, and 20 was also relied upon to conclude that Vijayamma herself had informed the police of the fact that she had put an end to the life of the child. The uncontroverted testimony of PWs 1 and 7 were also relied upon to hold that Vijayamma had confessed in their presence that it was at her hands that the deceased was murdered. MO1 string found beneath the cot on which the accused and the deceased were lying was found to be taken out from the Pyjama owned by the accused and which was seized as part of MO6 series. Ext.P13 report from the Forensic Science Lab was relied upon as it stated in unmistakable terms that the fibers of MO1 string are identical to the fibers collected from the neck of the deceased and the palms of the accused. It was held that the above circumstances conclusively proved that it was the accused who had perpetrated



the murder of the child and none else. The evidence of PWs 4 and 5 and that of the parents were relied upon to conclude that the prosecution successfully discharged to prove the mens rea on the part of the accused to put an end to the life of the child. The defence of insanity taken by the accused was held not sufficiently proven. Though the medical records and the testimonies of DWs 3, 4, and 5 suggested that the accused had symptoms of depression, the court held that there were no materials to suggest that the accused was suffering from any serious mental disorder that shrouded her reasoning and that she was capable of understanding the consequence of her actions.

Submissions on behalf of the appellant:

11. Sri. Nandagopal S. Kurup, the learned counsel appearing for the appellant, raised the following contentions:

a) The failure of the prosecution to prove any motive is fatal. None of the witnesses have any case that the accused had any grudge or animosity either towards the child or to any other person to commit the murder. In a case wherein, the plea of insanity has been taken and the victim is a near relative, motive assumes importance.



b) It is argued that it is imperative to take into consideration the circumstances and the behaviour preceding, attending and following the crime. The fact that the accused herself intimated the police and made no attempt to hide herself or to destroy the evidence and the fact that she did not make any attempt to flee from the scene are all telltale signs to conclude that the accused was incapable of understanding the nature of her actions due to unsoundness of mind. To substantiate his contention, reliance is placed on **Surendra Mishra v. State of Jharkhand**¹.

c) The evidence let in by DWs 3 to 5 and Exts.D15, 17, and 19 medical records indicated that Vijayamma had symptoms of depression and she was prescribed medications which are typically used for patients with psychotic disorders.

d) The evidence let in by PW3 reveals that the accused was taken to the Medical College hospital and was seen by a Doctor immediately after the incident. Thereafter, the report issued by the Doctor was produced along with Ext.P1 report before the Station House Officer of the Gandhi Nagar Police Station. However, the Medical certificate has not been produced by the

¹ [(2011) 11 SCC 495]



investigating agency along with the final report. The suppression of the aforesaid document by the investigating agency is fatal.

e) Relying on the principles of law laid down in **Reji Thomas @ Vayalar v. State of Kerala**², it is argued that though a special burden is cast upon the accused to make out his defence of insanity if the materials placed before the court in the form of oral and documentary evidence satisfies the test of a prudent man, the accused will have to be treated as having discharged his burden.

Submissions on behalf of State:

12. Smt. Neema K.V., the learned Senior Public Prosecutor submitted that the assailant was the accused and none other has been convincingly proved by the evidence of PWs 1 and 2 and Ext.P17 Forensic report. A reading of the testimony of the witnesses in its entirety would reveal that though the motive may not be very apparent, the fact remains that the actions of the accused were driven by a calculated desire to prevent her brother Shaji from reuniting with his wife Bindu. It has come out from the evidence that Vijayamma despised Bindu

² [2023 KHC 556]



for various reasons. It is further submitted that the behaviour of Vijayamma was rational before and after the incident and all the witnesses stated that she had behaved in a normal manner and engaged in normal conversations. She also pointed out that the appellant has not adduced any evidence to show that she was indeed suffering from any mental disorder of such a nature that she was incapable of knowing the nature of the act by reason of unsoundness of mind. Relying on the principles laid down in **Reji Thomas** (supra), it is urged that it is only unsoundness of mind which naturally impairs the cognitive faculties of the mind can be reckoned as a ground for exemption from criminal responsibility. It is further urged that the mere absence of a motive for the commission of a crime, however atrocious it may be, cannot in the absence of a plea and proof of legal insanity, bring the case within the exception under Section 84 of the IPC. Much reliance is placed on the observations in **Dahyabhai Chhaganbhai Thakkar v. State of Gujarat**³ and in **Riyas v. State of Kerala**⁴ to substantiate her contentions.

Our Evaluation:

13. Was the death of Rahul, a case of homicide by strangulation?

³ [AIR 1964 SC 1563]

⁴ [2024:KER:6052]



Ext.P8 is the postmortem report prepared by PW18, the Assistant Police Surgeon in the Department of Forensic Medicine, Medical College Hospital, Kottayam. He noted a pressure abrasion 29.5 cm slightly oblique all around the neck at the level of thyroid cartilage. He also noted 5 other abrasions on the body of the deceased. He opined that the cause of death was due to strangulation. This finding is not disputed by the defence. Hence, it can be held without any manner of doubt that Rahul had died of strangulation.

14. Whether the prosecution has proved that it was the accused who had committed the murder of Rahul by strangulation?

14.1. It would be worthwhile to mention at this juncture that the accused does not dispute that the death of Rahul may have happened at her hands. However, her primary contention is that, at the time of the commission of the abominable act, she was unable to understand the nature of her actions or the consequences thereof due to unsoundness of mind. In order to properly assess this defence, we are of the view that it is crucial to evaluate the testimony of certain prosecution witnesses to ascertain the circumstances that may have led the accused to commit the crime. Moreover, a proper appraisal of the evidence will aid in determining whether the claim of unsoundness of mind raised by the



accused can be legally sustained.

14.2. PW1, the mother of the accused, was aged about 85 years at the time of tendering evidence. She stated that her daughter, the accused, had been a dutiful and responsible individual from a very young age. Even as a small child, she took care of her siblings in the absence of their parents and helped her mother with household chores. According to PW1, the accused was overly affectionate towards her siblings, and the parents believed that her life's mission was to ensure her younger siblings were well-educated and reached good positions in life. After her primary education, the accused went to Delhi with her friends to pursue nursing studies and, after completing her course, remained in Delhi, after securing employment at a hospital. She subsequently brought her younger sister and brothers to Delhi and ensured that they also completed their education. PW1 stated that it was after much reluctance that the accused agreed to marry Raju, a relative. The efforts of the accused bore fruit and her brothers, after completing their education, secured employment in the Middle East.

14.3. In the meanwhile, the accused gave birth to three children. PW1 emphasised that Vijayamma was very particular that Shaji marry a suitable girl. Bindu was working as a Staff Nurse at the Medical College Hospital when the



proposal for her marriage to Shaji was initiated. The marriage between Shaji and Bindu was solemnised on 14th November 2000, and a week later, Shaji went abroad. Subsequently, Bindu also joined him. On 8th March 2002, their child, Rahul, was born while Shaji was still abroad. Later, while Shaji and Bindu were abroad, Bindu allegedly attempted suicide. Immediately after this incident, she returned to her native place. After Bindu's return, Vijayamma joined Shaji abroad and stayed together until 2011. At that time, Shaji's visa was cancelled, and he had to return to India. PW1 asserted that Vijayamma had no mental health issues and was not on any medication. She described Vijayamma as very loving, particularly towards Shaji and Rahul.

14.4. Referring to the incident, PW1 testified that on 2nd September 2013, at about 5:00 p.m., Vijayamma arrived at her house in an auto-rickshaw. Rahul was playing outside when she came. Vijayamma gave him a chocolate and behaved lovingly towards the child. Later in the evening, PW1's husband, Raghavan, went to sleep in the sit-out. Vijayamma asked her father for some money to cover her son's educational expenses. Her father responded that he had no money to spare and told her that she was free to dispose of the property set apart to his daughters which included the accused. The child, in the



meanwhile, had expressed his desire to sleep with Vijayamma.

14.5. PW1 stated that she watched TV with Rahul while Vijayamma went to sleep in the eastern room. Throughout the evening, Vijayamma would come out intermittently, asking Rahul about the TV programs they were watching. However, Rahul told her that PW1 may not understand English and continued watching the program. Eventually, Rahul joined Vijayamma in the bedroom where PW1 usually slept with him, and they locked the door from the inside.

14.6. At around 3:00 a.m., PW1 woke up to find the lights in the dining room and bedroom switched on and overheard Vijayamma talking to someone. When PW1 inquired, Vijayamma said she was going to the Ettumanoor Court. PW1, finding this unusual, asked why she was making such odd statements, to which Vijayamma replied that she was not crazy and that she had killed Rahul. Vijayamma repeated that she had killed Rahul. Shocked, PW1 rushed to check on Rahul and found him lying face-up with his eyes open. She immediately informed PW2, who had been sleeping in the sit-out. Though PW1 was certain that Rahul was no longer alive, Raghavan insisted on taking the child to the hospital and went to call his nephew, who lived nearby. She then spoke about the arrival of the police and the things that had transpired thereafter.



14.7. PW2, Raghavan, deposed that he became aware of the incident only when PW1 came to the sit-out and informed him of the incident. He found Vijayamma lying on the bed, face down with her head covered by a sheet. PW2 also stated that it was Vijayamma who had called the police to inform them of the crime. He mentioned that he did not know what had led Vijayamma to commit such a heinous act. PW2 further testified that Vijayamma had asked him for a loan of Rs. 15 lakhs, but he refused and told her she could sell the property allotted to her. He also mentioned that Bindu had sought his permission to live near his house and he had advised her to build a separate residence on the property allocated to them, situated near the family property. He added that Vijayamma was aware of this offer made by him to Bindu.

14.8. PW3 is the Additional Sub Inspector of Police Ettumanoor Police Station. He stated that on 2.9.2013, he was on emergency duty. On being informed about the incident by the GD charge at about 3.40 pm, he reached the residence of PW1 and 2 and enquired about Vijayamma, who had made the call to the police station. PW2 was sitting outside and he took the officer inside. He found the boy lying face up on the bed. The accused was also lying face down on the same bed. When the officer called her, she stood up and informed that she



had called the police and that she had murdered the child. By the time PW3 arrived, several neighbours had gathered at the house. The boy's body was taken to the hospital, and with the assistance of PW7 Preethi, PW3 escorted the accused to board the police jeep. He then locked the room and posted PW14, a Civil Police Officer, on guard duty at the scene. The accused was subjected to a medical examination at the casualty department of the Medical College Hospital, Kottayam, and later produced at the Gandhinagar police station. During cross-examination, PW3 stated that he had the accused undergo a medical examination to assess her physical and mental condition before producing her at the Gandhinagar police station. The defence has a contention that though an assessment was made by the Casualty Medical Officer and the said report was submitted along with Ext.P1 report before the Police Station, no such report has been placed along with the final report. This issue can be dealt with at a later stage.

14.9. PW4 is the mother of the Child. She would narrate the entire sequence of events from her marriage to the minor disputes between her and her husband leading to their staying separate after the incident which took place in 2009. She stated that on completion of the IV standard, the child was brought



to India and admission was secured in a School near to the parental home of the father. She stated that one month prior to the incident she had occasion to go and meet the Child. She also stated that PW2 offered to permit her to construct a home near to his property. She stated that the accused was overly possessive towards her husband and she did not like the offer made by her father-in-law. She also stated that Vijayamma was not quite happy with her for insisting that PW4 be granted her rights in the family. She stated that Vijayamma feared that she would miss out on financial help from Shaji and her parents if Shaji and Bindu were to live together. When her case diary statements were put to her and she was asked whether such a statement was made, she stated that she does not remember. Those portions were marked as Exhibit D1 to D4. We are of the view that nothing turns out of those statements.

14.10. PW5 is Shaji, the father of the deceased Rahul. After speaking about the marriage between him and Bindu, he said that the child was with him in Dubai till 12 January 2012. His VISA got cancelled and he had to return back to India. Rahul Joined a School at Kaipuzha. He stated that the accused had worked as a nurse in the All India Institute of Medical Sciences and in Saudi Arabia. She had also worked in Mumbai. She had stayed with PW1 in



Dubai till 2011. Though initially he felt that the relationship between his sister and Bindu was cordial, in the year 2011, he realised that Vijayamma nursed some grievances against his wife. Though he had some issues with his wife, it was not so serious. Vijayamma had told him that she felt bad as Shaji was staying alone. He also felt that Vijayamma did not like the prospects of him and his wife staying together. According to him, he felt that Vijayamma was having a professional jealousy towards his wife, and that had prompted her to commit the grievous crime. Vijayamma had three children, out of which one was a Doctor, the other an Engineer and the third was working in Mumbai after completing his Degree. In cross-examination, he stated that he had settled all his issues with his wife and they were staying together. Exts. D5 to D7 contradictions were brought out while cross-examining PW5. When a specific question was put to Shaji as to whether Vijayamma was suffering from any mental ailments, he denied the same.

14.11. PW7 is a neighbour and a relative of PW2. She was present when the police had arrived at the spot. It was with her assistance that the accused was taken from the scene of occurrence. She was initially taken to the hospital and then to the police station. PW7 overheard Vijayamma stating to the



police that it was she who had killed the boy.

14.12. PW10 is the autorickshaw driver, who took the accused to the house and PW11 is a shop owner, from whose shop chocolate was purchased by the accused. PW13 is the Scientific Assistant who collected cellophane pressings from the palms of the accused and MO1 pyjama string. PW16 is the Associate Professor, Psychiatry Department, Government Medical College, Kottayam. He had examined the accused as per the order of the Court and issued Ext.P6 report stating that the accused was not suffering from any psychotic disorder as on the date of report and that she was fit to stand trial. PW18 is the Police Surgeon who conducted autopsy and issued Ext.P8 Postmortem Certificate. PW19 is the officer who recorded the FIR and PW20 is the officer who conducted the investigation.

14.13. On an evaluation of the evidence of the prosecution witnesses, it can very well be seen that the fact that Rahul had died at the hands of the accused while they were sleeping in the same room has been successfully proven by the prosecution. PWs1 and 7 had stated that the accused had confessed in their presence that it was she who had committed the murder. Ext.P13 report reveals that the fibre of MO1 string is identical to the fibres



collected from the neck of the deceased and from the palms of the accused. We are in the above circumstances convinced that none of the contentions advanced by the appellant will create any doubt in the case of the prosecution that it was the accused who had committed the murder of the deceased.

15. Whether the failure of the prosecution to ascribe a definite motive is fatal?

15.1 The cross-examination of PWs 1, 2, 4 and 5 would reveal that the attempt of the defence was to bring out that the accused did not have any motive to take out the life of her nephew. According to them, it can only be deduced that only a person who is suffering from unsoundness of mind will carry out such a gruesome crime. It would be profitable to bear in mind that the Apex Court in **Bapu Alias Gujraj Singh v. State of Rajasthan**⁵ by relying on the principles laid down in **Sheralli Wali Mohammed v. State of Maharashtra**⁶ had held that a mere absence of motive for a crime, however atrocious it may be, cannot in the absence of plea and proof of legal insanity, bring the case within Section 84 of the IPC.

⁵ (2007) 8 SCC 66

⁶ (1973) 4 SCC 79



15.2. The learned Sessions Judge, after appreciating the entire evidence and the demeanor of the witnesses and the accused, has observed that the accused, who resides in Bombay, came to her parental home for the purpose of securing her father's assent to sell some shares and to amass a sum of Rs.15 lakhs for the needs of her children. The evidence of PWs1 and 2 reveals that the accused spoke with her father and he declined giving his own reasons. He suggested that he had no objection to the appellant selling the property that had been set apart for her share. This conversation had occurred prior to the members of the household going to bed with the child. It can be deduced that the accused could not have been very much pleased with her father for refusing her request. It has come out from the evidence of PWs 1, 2, 4, and 5 that when his daughter-in-law had requested to stay near the school where her son was pursuing his education, PW2 suggested that she could construct a house near his property and live there. The witnesses stated that the accused was aware of this assurance given by PW2 to live in a house to be built on his property, close to the family home. It has come out from the evidence of PW5 that the accused had professional jealousy towards Bindu and that she had on more than one occasion suggested to him to sever the tie. While Bindu was not around, she had



even stayed abroad with PW5 and the child overseas. It is thus quite probable that on being refused financial assistance by PW2, and on being aware of the willingness of her father to provide property to his daughter-in-law, with whom the accused had a strained relationship, she felt betrayed. The feeling of betrayal would have weighed down on her particularly when PW4 had done nothing for the family whereas the accused being a responsible daughter had spent her whole life for the welfare of her family by taking care of her siblings so that they reach a good position in life. As rightly held by the learned Sessions Judge, though such an allegation has not been raised in the charge such feelings and responses can be inferred from the circumstances, as they are in tune with rational human behaviour. Upon analysing these events, it becomes apparent that before going to bed, the accused was likely experiencing considerable stress due to these conflicting emotions. These circumstances could have contributed to forming the alleged motive in the accused's mind—that eliminating the child might prevent its mother from trying to reside near the family property or from reuniting with her husband, or that the accused could continue receiving financial assistance from her brother and father without interference from the child who was having a pride of place in the minds of the aged grandparents.



16. Whether the defence of legal insanity raised by the accused can be accepted to relieve her from criminal liability?

16.1 Now we come to the defence of insanity pleaded by the accused before us. As held in **Sudhakaran v. State of Kerala**⁷, the defence of insanity has been well-known in the English legal system for many centuries. In the earlier times, it was usually advanced as a justification for seeking pardon. Over a period of time, it was used as a complete defence to criminal liability in offences involving mens rea. It is also accepted that insanity in medical terms is distinguishable from legal insanity. Section 84 of the Penal Code, 1860 recognises the defence of insanity. It says 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. A bare perusal of the aforesaid section would show that in order to succeed, the appellant would have to prove that by reason of unsoundness of mind, she was incapable of knowing the nature of the act committed by her. In the alternate case, she would have to prove that she was incapable of knowing that he was doing what is either wrong or contrary to law.

⁷ (2010) 10 SCC 582



16.2. The accused relies on the evidence of PW15 and DWs 1 to 5, to substantiate her contention that she is suffering from unsoundness of mind.

16.3 Before we deal with the evidence of the medical witnesses and the findings arrived at by the Trial Court, it would be appropriate to notice the relevant aspects of the law of the plea of insanity. The Apex Court in **Dahyabhai Chhaganbhai Thakkar v. State of Gujarat**⁸, the much cited judgement on the subject, after referring to Section 299 and Section 84 of the Indian Penal Code, 1860, Sections 4, 101, and 105 of the Indian Evidence Act, had lucidly elucidated the principles by holding as under:

5.....It is a fundamental principle of criminal jurisprudence that an accused is presumed to be innocent and, therefore, the burden lies on the prosecution to prove the guilt of the accused beyond reasonable doubt. The prosecution, therefore, in a case of homicide shall prove beyond reasonable doubt that the accused caused death with the requisite intention described in Section 299 of the Indian Penal Code. This general burden never shifts and it always rests on the prosecution. But, as Section 84 of the Indian Penal Code provides that nothing is an offence if the accused at the time of doing that act, by reason of unsoundness of mind was incapable of

⁸ 1964 SCC OnLine SC 20



knowing the nature of his act or what he was doing was either wrong or contrary to law. This being an exception, under Section 105 of the Evidence Act the burden of proving the existence of circumstances bringing the case within the said exception lies on the accused; and the court shall presume the absence of such circumstances. Under Section 105 of the Evidence Act, read with the definition of "shall presume" in Section 4 thereof, the court shall regard the absence of such circumstances as proved unless, after considering the matters before it, it believes that said circumstances existed or their existence was so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that they did exist. To put it in other words, the accused will have to rebut the presumption that such circumstances did not exist, by placing material before the court sufficient to make it consider the existence of the said circumstances so probable that a prudent man would act upon them. The accused has to satisfy the standard of a "prudent man". If the material placed before the court such, as, oral and documentary evidence, presumptions, admissions or even the prosecution evidence, satisfies the test of "prudent man", the accused will have discharged his burden. The evidence so placed may not be sufficient to discharge the burden under Section 105 of the Evidence Act, but it may raise a reasonable doubt in the mind of a judge as regards one or other of the necessary ingredients of the offence itself. It may, for instance, raise a reasonable doubt in the mind of the judge whether the accused had the requisite intention laid down in Section 299 of the Indian Penal Code. If the judge has such reasonable doubt, he has to acquit the accused, for in that event the prosecution will have failed to prove



conclusively the guilt of the accused. There is no conflict between the general burden, which is always on the prosecution and which never shifts, and the special burden that rests on the accused to make out his defence of insanity.

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7. The doctrine of burden of proof in the context of the plea of insanity may be stated in the following propositions : (1) The prosecution must prove beyond reasonable doubt that the accused had committed the offence with the requisite mens rea, and the burden of proving that always rests on the prosecution from the beginning to the end of the trial. (2) There is a rebuttable presumption that the accused was not insane, when he committed the crime, in the sense laid down by Section 84 of the Indian Penal Code : the accused may rebut it by placing before the court all the relevant evidence oral, documentary or circumstantial, but the burden of proof upon him is no higher than that rests upon a party to civil proceedings. (3) Even if the accused was not able to establish conclusively that he was insane at the time he committed the offence, the evidence placed before the court by the accused or by the prosecution may raise a reasonable doubt in the mind of the court as regards one or more of the ingredients of the offence, including mens rea of the accused and in that case the court would be entitled to acquit the accused on the ground that the general burden of proof resting on the prosecution was not discharged.



16.4. In **Prakash Nayi v. State of Goa**⁹, the Apex Court, after referring to the past precedents, had laid down the principles as under:

3.Section 84 IPC recognises only an act which could not be termed as an offence. It starts with the words "nothing is an offence". The said words are a clear indication of the intendment behind this laudable provision. Such an act shall emanate from an unsound mind. Therefore, the existence of an unsound mind is a sine qua non to the applicability of the provision. A mere unsound mind per se would not suffice, and it should be to the extent of not knowing the nature of the act. Such a person is incapable of knowing the nature of the said act. Similarly, he does not stand to reason as to whether an act committed is either wrong or contrary to law. Needless to state, the element of incapacity emerging from an unsound mind shall be present at the time of commission.

4. The provision speaks about the act of a person of unsound mind. It is a very broad provision relatable to the incapacity, as aforesaid. The test is from the point of view of a prudent man. Therefore, a mere medical insanity cannot be said to mean unsoundness of mind. There may be a case where a person suffering from medical insanity would have committed an act, however, the test is one of legal insanity to attract the mandate of Section 84IPC. There must be an inability of a person in

⁹ [(2023) 5 SCC 673]



knowing the nature of the act or to understand it to be either wrong or contrary to the law.

5. The aforesaid provision is founded on the maxim, *actus non reum facit nisi mens sit rea* i.e. an act does not constitute guilt unless done with a guilty intention. It is a fundamental principle of criminal law that there has to be an element of *mens rea* in forming guilt with intention. A person of an unsound mind, who is incapable of knowing the consequence of an act, does not know that such an act is right or wrong. He may not even know that he has committed that act. When such is the position, he cannot be made to suffer punishment. This act cannot be termed as a mental rebellion constituting a deviant behaviour leading to a crime against society. He stands as a victim in need of help, and therefore, cannot be charged and tried for an offence. His position is that of a child not knowing either his action or the consequence of it.

16.5. The principles laid down by the Apex Court can be encapsulated as under:

It is for the prosecution to prove beyond a reasonable doubt that the accused committed the crime with the requisite *mens rea* and this burden remains with the prosecution from the start to the end of the



trial. In a case of homicide, it is for the prosecution to establish beyond reasonable doubt that the accused had the intention to cause death as defined under Section 299 of the Indian Penal Code (IPC). The law would assume that the accused is sane at the time of committing the offence unless proven otherwise. It would be open to the accused to place relevant evidence - oral, documentary or circumstantial - to rebut this presumption before court. The burden of proof on the accused to establish the plea of insanity would be lower than that of the prosecution. The accused is required to prove that he was non-compos mentis on the balance of probabilities and not beyond a reasonable doubt. Section 84 of the IPC provides for an exception and the accused would be exempted from criminal liability if, at the time of committing the offence, he/she was suffering from unsoundness of mind to such an extent that he/she was incapable of understanding the nature of his/her act, or that what he/she was doing was wrong or contrary to law. Section 105 of the Indian Evidence Act would come into play which provides that the burden of proving this exception lies with the accused. The court presumes the absence of such circumstances unless the



accused provides sufficient evidence to create a reasonable doubt. In a case where the plea of insanity is raised, the accused is required to satisfy the court, on the balance of probabilities, that at the time of the act, he/she was of unsound mind. This can be done even by presenting evidence such as the conduct of the accused before, during, and after the offence. If the court, based on the evidence let in by the accused, entertains a reasonable doubt about the intention of the accused to commit the act due to unsoundness of mind, the accused is entitled to an acquittal. Though the prosecution has the general burden of proving the offence, the accused can rebut the presumption of sanity by providing evidence of unsoundness of mind or by raising a reasonable doubt about his/her mental state at the time of the crime. Legal insanity is to be distinguished from medical insanity. The burden to prove legal insanity is squarely on the accused. The conduct of the accused before, during, and after the commission of the act is crucial in determining the mental condition of the accused. Any evidence showing that the accused has put in an effort to deliberate, prepare and conceal the commission of the crime or thereafter will indicate that the accused was eminently



aware of his/her actions and this would negate the defence of insanity. It is for the accused to demonstrate that he was suffering from unsoundness of mind to the extent that he/she was incapable of understanding the nature of his/her actions. The burden cast upon the accused to substantiate the same is not as stringent as that on the prosecution and it would be on a preponderance of probabilities. Though Section 84 of the IPC provides for an exception, it would not automatically apply in all cases of mental illness. There should be evidence of the mental state of the accused at the time of the offence, based on his/her behaviour before, during, and after the commission of the act. It should be borne in mind that it is not medical insanity but legal insanity that must be proven. It would not be enough to show that the accused was suffering from some mental illness to claim exemption from liability. On the other hand, the materials should suggest that the accused was incapable of knowing the nature of his/her act or that it was wrong or contrary to law. If a history of insanity is revealed during the investigation, it is the responsibility of the investigating officer to subject the accused to a medical examination and provide that evidence



to the court. Failure to do so would weaken the case of the prosecution in no small measure. If the conduct of the accused reveals an awareness of guilt, it would undermine the defence of insanity. If the materials presented by the accused raises a reasonable doubt in the mind of the court about his/her mens rea, the accused is entitled to an acquittal on the ground that the prosecution has failed to discharge its burden of proof.

16.6. With the above principles in mind, we shall evaluate the medical evidence. While tendering evidence, PW20, the investigating officer, stated that in the bail application dated 9.10.2013 submitted by the accused, a contention was raised that she was having mental issues. Based on the said information, Ext.P15 application was filed before the learned Magistrate to assess the mental condition of the accused. The court allowed the application. PW15 (Dr.Saji) the Associate Professor of Psychiatry, Government Medical College Hospital, Kottayam evaluated the appellant from 28.10.2013 to 5.11.2013 as an inpatient in the Department of Psychiatry, MCH, Kottayam. The Head of the Department is Dr. V. Satheesh (DW1). Dr. Saji collected history from the appellant and her husband Raju. He noted that the appellant had worked for three years at AIIMS,



Delhi when she was 24 years of age and she had reported history of Psychiatry Consultation for features suggestive of depressive disorder. She was also prescribed imipramine, an antidepressant medication. At the age of 26 years, she went abroad and worked in Saudi Arabia for a period of five years. Later, she worked in Dubai from 2008 to 2012. When she had reached 27 years of age, she got married. She had Psychiatric consultations in Kerala and in Mumbai in the years 2012 and 2013. He noted that her history suggested Schizoid and Paranoid Personality traits and an impulsive nature. The Doctor's assessment was that the appellant was cooperative and communicative, and was in touch with the surroundings and reality. Her talk was found to be normal with no abnormal emotional changes. Her thought process contains delusions, and she has preoccupying homicidal thoughts. The Doctor was not able to elicit any psychotic or depressive features. She also did not have any hallucinatory experiences and no cognitive impairment was noticed. The Psychiatrist conducted a psychological evaluation for personality assessment and psychometry was performed and the findings were similar to the findings in examination of mental status. The doctor found an impression that the appellant was not suffering from any psychotic disorder as of now. He noted that the history was also suggestive of recurrent



depressive disorder with poor treatment adherence. He stated that though the appellant did not qualify for a diagnosis of psychiatric disorder, criteria-wise, she needs and may benefit from regular psychiatric follow-ups. In cross-examination, suggestive questions were posed regarding patients with severe depression and the likelihood of their experiencing delusions and hallucinations. He also mentioned that on his examination, the appellant was found to have homicidal thoughts. He explained that preoccupying homicidal thoughts are thoughts repeatedly coming to one's mind and occupying one's thoughts. According to the Doctor, the said fact is distressing because the patient knows that it is not a normal act. However, in delusion, such doubt in the patient will not be there, as the patient is sure that what she is thinking is right.

17. DW1 is Dr. V. Satheesh, the Head of the Department of Psychiatry, Govt. Medical College Hospital, Kottayam. He was summoned to produce the O.P. Ticket and other details relating to the appellant. He stated that the records reveal that the appellant was prescribed Sodium Valproate, Quetiapine, and Risperidone, which are mood stabilisers, and those drugs are given to patients with Bipolar Disorder as well. DW1 had not seen the patient.

17.1. DW2 is the Superintendent of the District Jail, Kottayam. He



produced before the court the records showing the treatment imparted to the appellant. According to him, on 08.09.2013, the patient was prescribed the drug Depsonil by the Doctors of the District Hospital, Kottayam.

17.2. DW3 is the Chief Medical Superintendent at Western Railway Hospital. He stated that from 2009 to February 2018, he had been working as Medical Director in the Jagjivan Ram Railway Hospital, Mumbai Central. Ext.D15 document was shown to him. The Doctor admitted that, though the signature seen in the document belonged to him, the document was not written by him. He stated that normally entries were made by students of the institution. As per the O.P.Ticket, the patient was suffering from complaints of sadness in mood, suicidal ideation, and a past history of depression from 1985. The patient had also reported that she had been taking medicines irregularly. He stated that on inquiry, he found that further treatment records were not available in the hospital. While cross-examining the witness, it was brought out by the prosecution that the address of the patient was not mentioned in the OPD Card, and there were also over-writings and scoring of certain words.

17.3. DW4 is the Consultant Psychiatrist of Swami Vivekanand Medical Mission Sanjivani Hospital, Maharashtra. He admitted his signature in Ext.D17



OPD card.

17.4. DW5, is a Professor of Psychiatry and working at the Jubilee Mission Medical College and Research Institute, Thrissur. Ext.D18 is an outpatient prescription issued from Jubilee Mission Hospital to the accused, and Ext.D19 is the case sheet. He produced the information collected from the patient and her husband during consultations in 2017 and 2018. DW5 deposed that Ext.D19 shows that the accused and her husband informed the Doctor that he had treated her while he was working at AIIMS and that they had consulted him at his residence in Kuttanalloor in 1997-1998. He recalled this to be true but stated that he did not have any records from that time. He was unable to make a definitive diagnosis but suspected paranoid psychosis, depression with psychotic features, or paranoid schizophrenia. He stated that a conclusive diagnosis of mental disorder typically requires observing the patient over a period ranging from 10-30 days, and in the case of the accused, no such extended observation had been conducted. The accused first visited him on 23.12.2017, and he had advised a review after two months, but she returned only on 09.03.2018. During cross-examination, it was suggested by the prosecution that the accused approached him after several years of the murder of the child to create a



defence of insanity.

17.5. An evaluation of the evidence of the medical witnesses would reveal that the appellant was not suffering from any mental ailments of such a nature that she was not in touch with the surroundings and reality. Her talk was found to be normal with no abnormal emotional changes. PW15, who had evaluated the appellant for an extended period after getting input from her as well as her husband had stated in unmistakable terms that the appellant was not suffering from any psychotic or depressive features. There was also no history of any hallucinatory experiences and the doctor has also not noted any cognitive impairment. PW15 had conducted a psychological evaluation for personality assessment and psychometry was performed and the findings were similar to the findings in the examination of mental status. The doctor formed an impression that the appellant was not suffering from any psychotic disorder as of now. He noted that the history was also suggestive of recurrent depressive disorder with poor treatment adherence. DWs 1 to 5 have also not stated that the appellant was suffering from a serious form of mental disorder which impaired her ability to understand the consequence of her actions or to distinguish right from wrong. DW3 had only stated that the record reveals that the appellant displayed sadness



in mood, suicidal ideation, and past history of depression. DW5 had examined the patient years after the incident. However, he was not able to come to a definite diagnosis. It cannot be forgotten that the appellant had been a Nurse for over 30 years and if there were any treatment records, she could have easily produced it. We are of the view that recurrent depressive disorder with poor treatment adherence, will not qualify the appellant to enable her to meet the legal threshold for insanity. There is no material to show that the mental depression that the appellant was suffering had significantly impaired her ability to understand the nature of their actions or distinguish right from wrong.

17.6. As held in **Dahyabhai** (supra), there is a rebuttable presumption that the appellant was not insane, when she committed the crime, in the sense laid down by Section 84 of the Penal Code. It is for the appellant to rebut it by placing before the court all the relevant evidence — oral, documentary or circumstantial, but the burden of proof upon him is no higher than that rests upon a party to civil proceedings. The evidence let in by the appellant will only go to show that she was suffering from depression during phases and that she had undergone treatment for the same. She had been living the life of a normal lady and was employed all through her life. None of the family members have



stated that they have noticed anything abnormal about the appellant. Though the appellant has three grownup children and a husband, none of them have mounted the box to state that they are aware that the appellant was suffering from unsoundness of mind and that they had experienced any such behaviour at any point of time. No evidence has been let in, either oral or documentary, to substantiate that the appellant was suffering from any unsoundness of mind and that she was either incapable of knowing the nature of the act committed by her or that she was incapable of knowing that what she was doing was either wrong or contrary to law. The appellant has not been able to even raise any doubt as regards one or more of the ingredients of the offence including mens rea of the appellant. On the day of the incident, the appellant had travelled from Mumbai, interacted normally with her parents and others, and displayed no signs of mental or cognitive impairment. It is 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 was committed as held in **Ratan Lal v. State of M.P.**¹⁰

¹⁰ [(1970) 3 SCC 533



Our Conclusion:

18. We are of the opinion that the appellant though suffered from a mental ailment like depression and schizoid features even before and after the incident but from that, one cannot infer on a balance of preponderance of probabilities that the appellant at the time of the commission of the offence did not know the nature of her act; that it was either wrong or contrary to law. In our opinion, the plea of the appellant does not come within the exception contemplated under Section 84 of the Indian Penal Code.

19. In view of the discussion above, the finding of the Trial Court convicting the appellant of the offence of murder punishable under Section 302 is not liable to be interfered with.

This appeal is dismissed, confirming the judgment rendered by the Trial Court.

Sd/-

**RAJA VIJAYARAGHAVAN V,
JUDGE**

Sd/-

**G. GIRISH,
JUDGE**