

MARIAPPAN  
v.  
STATE OF TAMIL NADU  
(Criminal Appeal No. 926 of 2009)

APRIL 18, 2013

[P. SATHASIVAM AND M.Y. EQBAL, JJ.]

*Penal Code, 1860 – ss.84, 299, 302 and 449 – Murder – Defence of insanity – Accused-appellant repeatedly assaulted his paternal aunt with a ‘aruval’ and thereby caused her death – Conviction of appellant by trial court and High Court – Challenged – Plea of insanity by appellant seeking protection u/s.84 IPC – Held: Physical and mental condition of the accused at the time of commission of offence, is paramount for bringing the case within purview of s.84– In the case on hand, no evidence as to the unsoundness of mind of the appellant-accused at the time of the occurrence – Appellant had come to the house of the deceased one day prior to the occurrence, demanded money and threatened the deceased of grave consequences and on the next day, when the demand was not fulfilled, he trespassed into the house, pushed away PWs 1 and 2, bolted the door from inside and inflicted repeated ‘aruval’ blows on the deceased which resulted into her death – All these aspects also show that at the relevant time, appellant was not insane as claimed by him – Further, appellant was examined as a defence witness and according to the trial Judge, as a witness, he made his statement clearly and cogently and meticulously followed the court proceedings – The trial Judge, after noting appellant’s answers in respect of the questions u/s. 313 CrPC concluded that he could not be termed as an “insane” person – Burden of proving an offence is always on the prosecution and never shifts, however, existence of circumstances bringing the case within exception u/s.84 IPC lies on the accused – Appellant*

A *failed to discharge the burden as stated in s.105 of the Evidence Act – Evidence Act, 1872 – s.105.*

B The prosecution case was that on account of a land dispute the accused-appellant repeatedly assaulted his paternal aunt with a ‘aruval’ and thereby caused her death. The trial court as well as the High Court convicted the appellant under Sections 449 and 302 of IPC and sentenced him to undergo RI for 5 years under Section 449 of IPC and RI for life for the offence under Section 302 of IPC.

C In the instant appeal, the appellant raised the plea of insanity seeking protection under Section 84 of the IPC. The appellant placed reliance on the evidence of DW-1- the Doctor who stated that the accused was suffering from Paranoid Schizophrenia. The other material relied on in support of the plea of insanity is Ex. D-2, the termination order of the Inspector General of Police, Northern Sector, CRPF, New Delhi wherein it is stated that the appellant was medically unfit for service in CRPF due to Paranoid Schizophrenia.

F The question which therefore arose for consideration was whether at the time of the alleged incident, i.e., on 05.11.2001, the accused-appellant was suffering from “Paranoid Schizophrenia” and, hence, he was entitled to the benefit of exception under Section 84 of IPC.

Dismissing the appeals, the Court

G HELD: 1. In the instant case, from the materials analyzed, discussed and concluded by the trial Court and the High Court, it is clearly established that it was the accused-appellant who committed the murder. [Para 8] [281-E]

H 2. Section 84 IPC makes it clear that a person, who, at the time of doing it, by reason of unsoundness of

mind, commits anything, he is permitted to claim the above exception. In other words, insanity or unsoundness of mind are the stages when a person is incapable of knowing the nature of the act or unable to understand what is wrong or right and must relate to the period in which the offence has been committed. Further Section 105 of the Indian Evidence Act, 1872 makes it clear that though the burden of proving an offence is always on the prosecution and never shifts, however, the existence of circumstances bringing the case within the exception under Section 84 IPC lies on the accused. On a reading of Sections 84 and 299 IPC and Sections 105 and 101 of the Evidence Act, it is clear that "when a person is bound to prove the existence of any fact, the burden of proof lies on that person". At the time of commission of offence, the physical and mental condition of the person concerned is paramount for bringing the case within the purview of Section 84. [Paras 10, 11 and 15] [282-B, C-E, G; 284-H; 285-A-D]

*Shrikant Anandrao Bhosale vs. State of Maharashtra* (2002) 7 SCC 748: 2002 (2) Suppl. SCR 612 and *Sudhakaran vs. State of Kerala* (2010) 10 SCC 582: 2010 (12) SCR 873 – relied on.

*Modi's Medical Jurisprudence and Toxicology*, 22nd Edition, paras 10 and 11 and *Modi's Medical Jurisprudence and Toxicology*, 23rd Edition, paras 26 and 28 – referred to.

3.1. In the case on hand, though the Doctor (DW-1) attached with the Government Rajaji Hospital, Madurai, who treated the accused from 11.07.2001 to 08.08.2001 has stated that the appellant-accused was suffering from paranoid schizophrenia, it is not in dispute that after 08.08.2001, there is no material or information on record that he was suffering from the same. It is relevant to mention that the date of occurrence was 05.11.2001 i.e.

A nearly after three months of the treatment by DW-1. In the  
same way, Ex. D-2, the termination order of the Inspector  
General of Police, Northern Sector, CRPF, New Delhi is  
also not helpful because of the language used in Section  
84 of IPC. As a matter of fact, DW-2, father of the accused-  
B appellant has not stated anything about the behaviour of  
the deceased. He has also not stated anything that he is  
a mentally ill person and not able to do his routine works  
properly. In fact, from Ex. D-2, which is a letter from the  
Department, it is seen that the appellant-accused made  
C a written request for rejoining stating improvement in his  
health. [Para 16] [285-E-H; 286-A]

3.2. It is also relevant to note that the appellant came  
to the house one day prior to the occurrence, demanded  
money and threatened the deceased of grave  
D consequences and on the next day, when the demand  
was not fulfilled, he trespassed into the house, pushed  
away PWs 1 and 2, bolted the door from inside and  
inflicted repeated aruval blows on the deceased resulted  
into her death. All these aspects also show that at the  
E relevant time, he was not insane as claimed by him. [Para  
17] [286-A-C]

3.3. Another factor which goes against the appellant-  
accused is that he himself was examined as a defence  
F witness No.3. According to trial Judge, as a witness, he  
made his statement clearly and cogently and it was also  
observed that he was meticulously following the court  
proceedings, acting suitably when the records were  
furnished for perusal. The trial Judge has also pointed  
G out that during the entire proceedings, the accused has  
nowhere stated that he was insane earlier to the date of  
incident. The trial Judge, after noting his answers in  
respect of the questions under Section 313 CrPC has  
concluded that the accused could not be termed as an  
“insane” person. [Para 18] [286-C-E]

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4. In view of the materials placed and the decision arrived at by the trial Court and of the fact that there is no evidence as to the unsoundness of mind of the appellant-accused at the time of the occurrence, namely, on 05.11.2001 and also taking note of the fact that the accused-appellant failed to discharge the burden as stated in Section 105 of the Evidence Act, the conclusion arrived at by the trial Court and affirmed by the High Court is confirmed. [Para 19] [286-E-G]

**Case Law Reference:**

2002 (2) Suppl. SCR 612      relied on      Para 13

2010 (12) SCR 873              relied on      Para 14

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 926 of 2009.

From the Judgment & Order dated 17.10.2006 of the High Court of Madras, bench at Madurai in CrI. A.No. 1556 of 2003.

Anil Shrivastav for the Appellant.

M. Yogesh Kanna, A. Santha Kumaran, Sasikala for the Respondent.

The Judgment of the Court was delivered by

**P. SATHASIVAM, J.** 1. This appeal has been filed against the final judgment and order dated 17.10.2006 passed by the Madurai Bench of the Madras High Court in Criminal Appeal No. 1556 of 2003, whereby the High Court dismissed the appeal filed by the appellant herein and confirmed the order dated 29.08.2003 passed by the Additional District and Sessions Judge (Fast Track Court No. IV), Madurai at Periakulam in S.C. No. 390 of 2002.

**2. Brief facts**

(a) The case on hand relates to the death of a woman in

A her house over a land dispute by the appellant-accused, claiming the plea of insanity under Section 84 of the Indian Penal Code, 1860 (in short 'the IPC'). Parvathi @ Kili (the deceased), her husband Parasivam Chettiar (PW-6) and their grand daughters viz., Chellakili (PW-1) and Parmala (PW-2)  
B were living together at Ammapatti village. The deceased was the paternal aunt of the appellant-accused.

(b) There was a dispute between the family of the appellant-accused and the deceased over a portion of land belonging to one Chinnamanur Pillayar Kovil, which was taken  
C on lease by PW-6 through one Chinnamanur Karuvaya Pillai. The family of the appellant-accused claimed that the said land was only leased out to them. When the family of the appellant-accused demanded to handover the disputed land, PW-6, in  
D turn, after the death of the said Chinnamanur Karuvaya Pillai, handed over the land to one Karuppaya Pillai (PW-11), son of Karuvaya Pillai which resulted in strained relationship between both the families as the appellant-accused was demanding money for the same.

(c) One day prior to the date of occurrence, i.e., on  
E 04.11.2001, when PWs 1 and 2 were also at home, the appellant-accused came to the house of the deceased and questioned about the whereabouts of PW-6 and also told her that they have taken their land and money and threatened to  
F kill them. At that time, PW-5, brother-in-law of PW-6 came there and pacified the appellant-accused. Thereafter, the appellant-accused left the place by saying that he would come again tomorrow and warned that if the money is not paid, he would kill her and her husband.

(d) On 05.11.2001, at 8.00 a.m., while the deceased was  
G in the kitchen, the appellant-accused entered into the house and closed the door from inside. When PWs 1 & 2 asked about the conduct of the appellant-accused, he said that if the  
H deceased and her husband are not paying his money, he is going to kill them and went to the kitchen. Thereafter, the

appellant-accused pulled the tuft of the deceased in his left hand and gave a cut on her neck with Aruval and when she warded off with her right hand, it resulted into injuries to her fingers. At that time, PWs 1 & 2 requested the accused to leave her. Again, the accused caught hold of the tuft of her in his left hand and gave repeated Aruval blows on her head as a result of which she died instantaneously. Thereafter, the accused left the place with Aruval in his hand and after opening the door he said that he is going to kill PW-6 also. On raising hue and cry by PWs 1 & 2, the neighbors came there. PW-1 along with PW-5 went to the Uthamapalayam Police Station and after recording the statement given by PW-1 the sub-Inspector of Police (PW-16) registered a case being Crime No. 386 of 2001 for the offence punishable under Section 302 of the IPC. On the same day, at 4.30 p.m., the appellant-accused was arrested and the dead body was also sent for post mortem. After completion of the investigation, a charge sheet was filed and the case was committed to the Court of Additional District and Sessions Judge, (Fast Track Court No. IV) Madurai at Periakulam and numbered as Sessions Case No. 390/2002.

(e) The Additional District and Sessions Judge, by order dated 29.08.2003, convicted the appellant-accused under Sections 449 and 302 of IPC and sentenced him to undergo RI for 5 years under Section 449 of IPC along with a fine of Rs.5,000/-, in default, to further undergo RI for 1 (one) year and to undergo RI for life for the offence under Section 302 of IPC alongwith a fine of Rs.10,000/-, in default, to further undergo RI for 5 years.

(f) Aggrieved by the said order, the appellant filed an appeal being Criminal Appeal No. 1556 of 2003 before the Madurai Bench of the Madras High Court. By impugned judgment dated 17.10.2006, the High Court dismissed the appeal and confirmed the order dated 29.08.2003 passed by the Additional District and Sessions Judge (Fast Track Court No. IV), Madurai.

A (g) Against the said order, the appellant-accused has filed this appeal by way of special leave petition.

B 3. Heard Mr. Anil Shrivastav, learned counsel for the appellant and Mr. M. Yogesh Khanna, learned counsel for the respondent-State.

C 4. The one and only contention projected by learned counsel for the appellant-accused is that at the time of the alleged incident, the accused was suffering from "Paranoid Schizophrenia" and, hence, he is entitled to the benefit of exception under Section 84 of IPC.

**Discussion:**

D 5. Before considering the above issue, it is to be noted that whether the prosecution has established the guilt against the accused by examining PWs 1 and 2, the grand daughters of the deceased Parvathi, as eye-witnesses. It is the evidence of PW-6 – husband of the deceased that one day before the date of incident, when PWs 1 and 2 were at home along with his wife-Parvathi, the appellant-accused came to their house and demanded money and also threatened her before leaving the place that he would come again tomorrow and if money is not paid, he would kill both the deceased and her husband PW-6. It is also stated by PWs 1 and 2 that on the next day, at 8.00 a.m., when the deceased was cooking food in the kitchen, the accused trespassed into the house, bolted the door from inside and, thereafter, caused fatal injuries to the deceased with the Aruval. It is further stated that on raising hue and cry, PWs 3 and 4, the neighbours, came at the spot and saw the accused running from the house with aruval.

G 6. The evidence of PWs 3 and 5-the neighbours, proves the occurrence that had happened one day prior to the date of the incident and also the shoutings of the accused-appellant threatening and demanding money. PW-6 has also explained in his evidence about the dispute relating to the lease of the

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temple land through one Chinnamanur Kuruvaya Pillai and handing over the said land to PW-11, son of the said Chinnamanur Kuruvaya Pillai. According to PW-6, because of the said land, there were strained relationship between the two families for more than 10 years and the appellant-accused used to quarrel with him and his wife as to how the land leased out to their family could be handed over to PW-11 and was demanding money for the same.

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7. The evidence of PWs 1 and 2 – the eye-witnesses, the evidence of PWs 3 and 4, who saw the accused running after the occurrence with Aruval (M.O.1) and the recovery of the weapon at the instance of the accused which was found to be stained with human blood of “O” group, as per the serologist report (Ex.P.12), tallied with the blood group of the deceased as the clothes of the deceased viz., M.O.s 1 to 4 were also stained with human blood “O” group clearly prove the case of the prosecution. Further, the medical evidence through PW-9-the Doctor, who conducted the post mortem and issued the report (Ex.P-3) strengthened the version of PWs 1 and 2.

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8. From the materials analyzed, discussed and concluded by the trial Court and the High Court, it clearly establishes that it was the accused-appellant who committed the murder.

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9. Coming to the only contention put-forward by the appellant-accused that the accused was suffering from Paranoid Schizophrenia, learned counsel for the appellant placed reliance on the evidence of DW-1-the Doctor attached to Government Rajaji Hosital, Madurai who treated the accused from 11.07.2001 to 08.08.2001. In his evidence, DW-1 has stated that the accused was suffering from Paranoid Schizophrenia. The other material relied on in support of the plea of insanity is Ex. D-2, the termination order of the Inspector General of Police, Northern Sector, CRPF, New Delhi wherein it is stated that the accused is medically unfit for service in CRPF due to Paranoid Schizophrenia. It is further contended that the appellant has also relied on the statement of PW-2,

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A grand-daughter of the deceased, that the wife of the accused obtained divorce on the ground that the accused was mentally ill.

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

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

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

11. It is also useful to refer Section 105 of the Indian Evidence Act, 1872 which reads as under:

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

Though the burden of proving an offence is always on the prosecution and never shifts, however, the existence of circumstances bringing the case within the exception under Section 84 IPC lies on the accused.

12. With these provisions, let us examine whether at the time of the incident, the accused was suffering from unsoundness of mind, i.e., on 05.11.2001.

13. Learned counsel for the appellant-accused heavily relied on the decision of this Court in *Shrikant Anandrao Bhosale vs. State of Maharashtra*, (2002) 7 SCC 748 wherein this Court considered the similar issue. A reference made from Modi's Medical Jurisprudence and Toxicology, 22nd Edition, as quoted in paras 10 and 11 are relevant, which reads thus:

“10. What is paranoid schizophrenia, when it starts, what are its characteristics and dangers flowing from this ailment? 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 afterwards 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 many 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 memory and orientation and does not show

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A 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. (*Modi's Medical Jurisprudence and Toxicology, 22nd Edn.*)

B 11. Further, according to Modi, the cause of schizophrenia is still not known but heredity plays a part. The irritation and excitement are effects of illness. On delusion affecting the behaviour of a patient, he is a source of danger to himself and to others."

C 14. It is useful to refer the decision relied on by learned counsel for the State i.e. *Sudhakaran vs. State of Kerala*, (2010) 10 SCC 582. The facts in that case are identical to the case on hand. Here again, this Court referred to Modi's Medical Jurisprudence and Toxicology, 23rd Edition about paranoid schizophrenia. The following statement in paras 26 and 28 are relevant:

E "26. 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. In most cases, in India, the defence of insanity seems to be pleaded where the offender is said to be suffering from the disease of schizophrenia.

F 28. The medical profession would undoubtedly treat the appellant herein as a mentally sick person. However, for the purposes of claiming the benefit of the defence of insanity in law, the appellant would have to prove that his cognitive faculties were so impaired, at the time when the crime was committed, as not to know the nature of the act."

G 15. After adverting to Sections 84 and 299 IPC and H Sections 105 and 101 of the Evidence Act, this Court

concluded that “when a person is bound to prove the existence of any fact, the burden of proof lies on that person”. This Court also held as under:

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

“It is now well settled that the crucial point of time at which unsoundness of mind should be established is the time when the crime is actually committed and the burden of proving this lies on the [appellant].”

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

16. In the case on hand, though the Doctor (DW-1) attached with the Government Rajaji Hospital, Madurai, who treated the accused from 11.07.2001 to 08.08.2001 has stated that the appellant-accused was suffering from paranoid schizophrenia, it is not in dispute that after 08.08.2001, there is no material or information on record that he was suffering from the same. It is relevant to mention that the date of occurrence was 05.11.2001 i.e. nearly after three months of the treatment by DW-1. In the same way, Ex. D-2, the termination order of the Inspector General of Police, Northern Sector, CRPF, New Delhi is also not helpful because of the language used in Section 84 of IPC. As a matter of fact, DW-2, father of the accused-appellant has not stated anything about the behaviour of the deceased. He has also not stated anything that he is a mentally ill person and not able to do his routine works properly. In fact, it was brought to our notice that in Ex. D-2,

A which is a letter from the Department, it is seen that the appellant-accused made a written request for rejoining stating improvement in his health.

B 17. It is also relevant to note that the appellant came to the house one day prior to the occurrence, demanded money and threatened the deceased of grave consequences and on the next day, when the demand was not fulfilled, he trespassed into the house, pushed away PWs 1 and 2, bolted the door from inside and inflicted repeated aruval blows on the deceased resulted into her death. All these aspects also show that at the relevant time, he was not insane as claimed by him.

C 18. Another factor which goes against the appellant-accused is that he himself was examined as a defence witness No.3. According to learned trial Judge, as a witness, he made his statement clearly and cogently and it was also observed that he was meticulously following the court proceedings, acting suitably when the records were furnished for perusal. The trial Judge has also pointed out that during the entire proceedings, the accused has nowhere stated that he was insane earlier to the date of incident. The trial Judge, after noting his answers in respect of the questions under Section 313 of the Code of Criminal Procedure, 1973 has concluded that the accused could not be termed as an "insane" person.

D 19. In the light of the above discussion and in view of the materials placed and the decision arrived at by the trial Court and of the fact that there is no evidence as to the unsoundness of mind of the appellant-accused at the time of the occurrence, namely, on 05.11.2001 and also taking note of the fact that the accused failed to discharge the burden as stated in Section 105 of the Evidence Act, we fully agree with the conclusion arrived at by the trial Court and affirmed by the High Court.

E 20. Consequently, the appeal fails and the same is dismissed.

F B.B.B.

G Appeal dismissed.

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