

Sabu Vs. State of Kerala

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Court : Kerala

Decided On : Feb-28-2014

Judge : Honourable Mr.Justice V.K.Mohanan

Appellant : Sabu

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE V.K.MOHANAN & THE HONOURABLE MR. JUSTICE B.KEMAL PASHA FRIDAY, THE 28TH DAY OF FEBRUARY 2014 9TH PHALGUNA, 1935 CRL.A.No. 1872 of 2009 ----- [AGAINST THE

JUDGMENT

IN SC2032008 of ADDL.SESIONS COURT (ADHOC)-I, KOTTAYAM DATED 0703-2009] APPELLANT(S)/APPELLANT: ----- SABU, S/O.RAJAPPAN, C.NO.3747, CENTRAL PRISON, TRIVANDRUM. BY ADV. SRI.GRASHIOUS KURIAKOSE RESPONDENT(S)/RESPONDENT: ----- STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR, HGIH COURT OF KERALA, ERNAKULAM. BY PUBLIC PROSECUTOR SRI.GIKKU JACOB. THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 1702-2014, THE COURT ON 2802-2014 DELIVERED THE FOLLOWING: V.K.MOHANAN & B.KEMAL PASHA, JJ.

JUDGMENT

Mohanani,J: The above appeal is directed against the judgment dated 7.3.2009 in S.C.No.203 of 2008 of the court of Sessions, Kottayam at the instance of the sole accused therein, who is convicted under Section 302 of I.P.C. and sentenced to undergo imprisonment for life and fine of `5000/- and in default, to undergo rigorous imprisonment for two months and convicted under Section 326 I.P.C. and sentenced to undergo rigorous imprisonment for five years and to pay fine of `5000/- and in default, to undergo rigorous imprisonment for two months and also convicted for the offence under Section 307 I.P.C. and sentenced to undergo rigorous imprisonment for five years and to pay fine of `5000/- and in default, to undergo rigorous imprisonment for two months. The appellant is undergoing Crl.A.No.1872 of 2009 :-2-: incarceration pursuant to the above judgment.

2. The prosecution case is that PW2 Sasikala was given in marriage to the appellant 16 years back to the date of occurrence and she was a house wife. A daughter viz., Malu @ Deepamol was born in the wedlock, and they were residing in the house bearing Door No.III/250 of Kurichy Panchayat at the place Kanakakkunnu along with the appellant. That being so, at 9.30 p.m. on 4.2.2008, inside the house of the accused, he caused grievous hurt to his wife Sasikala by inflicting cut injury with chopper, thereby attempting to commit murder of his wife and that he had also committed the murder of his daughter, who was at the age of 14 years, by inflicting cut injury with chopper. PW2 Sasikumar who is the brother of Sasikala, went to Chingavanam Police Station and furnished an information before the Sub Inspector of Police, Chingavanam Police Station, who was examined as PW12 and he reduced the same into writing, on the basis of which, the said Police Crl.A.No.1872 of 2009 :-3-: Officer registered an FIR in Crime No.60/08 of Chingavanam Police Station for the offences punishable under Sections 302 and 324 of IPC. Thus when PW12 was examined, Ext.P1(a) FIR was marked through her.

3. After the registration of FIR, PW12 went to the Kottayam Medical College Hospital and prepared the inquest on the body of the deceased Deepamol at about 8 a.m. on 5.2.2008. He had identified the signature in Ext.P2 inquest report. On completing the inquest, the body of the deceased was sent for postmortem examination. According to PW12, during the time of the inquest, he seized a petticoat, underwear, and a skirt found on the body of deceased Deepamol, which he respectively identified as MOs.3, 4 and 5. Thereafter, PW12 went to the house of the accused and about 2.30 p.m. on 5.2.2008, he prepared the scene mahazar in the presence of witnesses and he identified Ext.P3 scene mahazar. As per Ext.P3 scene mahazar, PW12 had seized certain material objects that found at the scene of crime. Thus he had identified CrI.A.No.1872 of 2009 :-4-: MO6 pillow and MO7 bed sheet which were recovered from the scene of occurrence. He had seized clotted blood stained cotton from the place of occurrence. According to PW12, he obtained the service of Scientific Assistant and collected materials from the place of occurrence and the same were produced before the court in four packets. He had also questioned the witnesses on the same day. According to PW12, he placed the accused under arrest at about 5.30 p.m. on that day itself, from the house of the younger brother of the accused. After the arrest of the accused, he was taken to the Police Station and while questioning him in the Station, he stated that, "I had concealed the chopper in between the stones among the haystack lying on the back side of the house and I will show the chopper if I am taken." According to PW12, on the basis of the above disclosure statement, as lead by the appellant, he reached near the haystack and the accused took and produced the knife from the gap in between the stones and the same was seized by preparing a mahazar, in the presence of CrI.A.No.1872 of 2009 :-5-: witnesses, which contains the signatures of witnesses and PW12, and the same was marked as Ext.P4. The relevant portion of the disclosure statement of the appellant is marked as Ext.P4(a). PW12 has identified the chopper, which had been recovered and seized as per Ext.P4, as MO1. PW12 had filed a report to continue the investigation by incorporating Sections 307 and 326 of IPC. After collecting the materials from the doctor who conducted the postmortem examination, the same was produced before the court. The further investigation was undertaken by PW11/the then Circle Inspector of Police, Changanassery, on 14.2.2008.

According to PW11, the material objects collected by PW12 from the place of occurrence were produced before the court and he had prepared a forwarding note for sending the material objects for chemical analysis. He had also got the service of Village Officer of Kurichi Village and got prepared the site plan of the scene of occurrence. As the Village Officer who prepared the site plan had expired, the site plan was marked through PW11 as Ext.P9. PW11 has CrI.A.No.1872 of 2009 :-6-: identified the report that obtained after chemical examination of the material objects and the same is marked as Ext.P12.

4. Thereafter, the investigation was undertaken by PW13, who was then working as Circle Inspector of Police, Changanassery, and he laid the final report.

5. When the appellant appeared before the trial court, his counsel filed an application with a prayer to stop the proceedings on the ground that the accused is not mentally fit to stand the trial. On the basis of the above petition, the learned Judge of the trial court referred the appellant for examination by a doctor. Accordingly, a senior Lecturer, Department of Psychiatry, Medical College Hospital, Kottayam, has examined the accused and issued a certificate stating that the accused was mentally fit to stand the trial. Thereafter, the said doctor was examined in the trial court as CW1 during which, the certificate issued by her is marked as Ext.X1. The court below then framed a formal charge against the appellant for the offences punishable under Sections 326, 307 and CrI.A.No.1872 of 2009 :-7-:

302. of IPC which when translated and read over and explained to him, he pleaded not guilty. Consequently, the trial was proceeded further, during which, the prosecution adduced its evidence by examining PWs.1 to 13 and producing Exts.P1 to P10 documents. The material objects MOs.1 to 7 were also produced and marked.

6. On completing the prosecution evidence, the appellant was examined under section 313 of Cr.P.C., during which, the incriminating circumstances and evidence brought against the appellant at the time of the prosecution evidence were put to him and the answer given by the appellant to all the questions that put to him, was that, "I do not know". When he was questioned as to whether he had

to state anything further, he said that he was innocent and had not committed any offence. As the learned Judge of the trial court has found no ground to acquit the appellant under section 232 of Cr.P.C., he was asked to enter on his defence. At the time of the defence evidence, Exts.D1 and D2 were produced which were marked through DW1, the witness who was examined Crl.A.No.1872 of 2009 :-8-: from the side of the defence. Thereafter, the learned Judge of the trial court heard the prosecution as well as the defence. According to the learned Judge, in order to attract Section 84 of IPC, the accused has to prove that at the time of doing the act, by reason of unsoundness of mind, he was incapable of knowing the nature of the act or that he was doing what was either wrong or contrary to law. So, at the material time, the unsoundness of mind should exist. According to the learned Judge, the fact that the accused was under treatment for mental illness was one of the factors in favour of the accused, but that itself was not sufficient to prove the case of the accused. Thus the learned Judge of the trial court has concluded that, the accused could not prove that at the time of inflicting injuries on the body of the deceased and PW2, due to unsoundness of mind, he was incapable of knowing about his act and therefore, he is not entitled to get benefit under section 84 of IPC. Thus after having considered the other evidence, the learned Judge has come to the conclusion that the postmortem certificate Crl.A.No.1872 of 2009 :-9-: would show that the child sustained incised wounds on the head, which indicates that the accused inflicted injuries with the intention to cause death and the doctor has also deposed that injury nos.1 to 5 were sufficient to cause of death in the ordinary course of nature. So, none of the exceptions to Section 300 of IPC, are applicable in the present case. Thus it was found that the appellant/accused has committed murder of his daughter. It was also found that the injury found on PW2 was on the vital part of the body of PW2 and doctor opined that in the ordinary course of nature, the injuries are sufficient to cause death and accordingly, the appellant has attempted to commit murder of PW2. On the basis of the above findings, the learned Judge by the impugned judgment has held that the appellant is guilty of the offences under sections 302, 326 and 307 of IPC and accordingly, he is convicted thereunder and sentenced as above mentioned. When the appellant was heard on the question of sentence, he stated that he has been under treatment for unsoundness of mind for some time and he Crl.A.No.1872 of

2009 :-10-: was living under the protection of his father and mother, and he had not committed any offence and pleaded for apology and mercy.

7. Heard Sri.Grashious Kuriakose, the learned Senior counsel appearing for the appellant and Sri.Gikku Jacob, the learned Public Prosecutor for the State.

8. The learned senior counsel appearing for the appellant, after taking us through the depositions of PWs.1, 2, 3 and 6 and the defence evidence consists of the testimony of DW1 and Exts.D1 and D2 documents, has submitted that the appellant is entitled to get an acquittal under section 334 of Cr.P.C., since the time at which the appellant was alleged to have committed the offence, he was mentally insane and was undergoing treatment and he was incapable of knowing the nature of the act that alleged by the prosecution, to constitute an offence. The learned Public Prosecutor, out of his fairness and on the basis of the medical evidence, particularly in view of the admitted case of the Crl.A.No.1872 of 2009 :-11-: prosecution witnesses as well as the defence evidence on record, did not controvert the submission made by the learned Senior counsel for the appellant. However, the trial court as per the impugned judgment, has rejected the plea of the appellant and the trial court was not prepared to extend the benefit in terms of Section 6 and Section 84 covered by Chapter IV of IPC, in favour of the appellant. Therefore, the question to be considered is whether the trial court is justified in its finding and convicting the appellant for the offence under sections 302, 326 and 307 of IPC and the further question to be considered is whether the trial court is correct in not extending the benefit under section 84 of IPC in favour of the appellant.

9. As we have indicated earlier, the Police machinery was set in motion on the basis of the first information furnished by PW1, which was marked as Ext.P1. In Ext.P1, it is stated that Molamma, PW1's sister was given in marriage about 16 years back to the appellant and she is a house wife. Their daughter Deepamol, the Crl.A.No.1872 of 2009 :-12-: deceased, was studying in VIIIth standard at the time of alleged incident. On the previous day, ie., on 4.2.2008 at about 10.15 p.m., one Valsala from Kanakakkunnu, had telephoned to PW1's house and asked him to go immediately to the Medical College Hospital as Molamma and her daughter were

taken to the hospital. Accordingly, himself, father, mother and younger brother, by hiring a car, went to the Medical College Hospital and when they reached at the Casualty, they saw Molamma admitted in the Casualty. There were serious injuries on the head and neck of Molamma and when enquired about Deepamol, they had seen her lying in a bed in the Casualty and she was found dead due to the grievous injuries on her head. According to PW1, at about 9.30 p.m. on the previous day ie., on 4.2.2008, the appellant by using a chopper inflicted stab injuries on Molamma and Deepamol and on hearing their hue and cry, their neighbours rushed to the house in question and removed them to the Medical College Hospital and before reaching the hospital, Deepamol died. It was also stated CrI.A.No.1872 of 2009 :-13-: that Molamma was shifted to the operation theater and PW1 does not know the reason why Sabu, the appellant, had inflicted stab injuries on them by using the chopper. When PW1 was examined, he had deposed that he had given a statement in the Chingavanam Police Station with respect to the incident by which his sister Sasikala and her daughter Deepamol died during the night on 4.2.2008. According to PW1, the statement was given at about 2 a.m. on 5.2.2008 and he identified his signature in the statement shown to him and thus, Ext.P1 FIS was marked through PW1. PW1 came to know about the injuries sustained by Sasikala and about the death of daughter Deepamol by 10 O' clock in the night, when he went to Kottayam Medical College Hospital and seen Sasikala in the injured state and her daughter lying dead in the cot. He had also seen the injuries sustained by them. According to PW1, he came to know that the injuries were inflicted by the husband Sabu, the appellant, who is standing in the box. The injuries were noted behind the head and near to the Pinna. The CrI.A.No.1872 of 2009 :-14-: injuries on the deceased Deepamol were found on the head as well as on the neck. According to PW1, he realised that the injuries were sustained by them after 9.30 p.m, in their house. During the cross examination, it was brought on record that about 17 years are over after the marriage of his sister and there was no quarrel between the appellant and the injured as well as the deceased before the incident. During the time of the marriage, the appellant was working in Electro-Chemical company and about 6 years prior to the incident, he lost his job and thereafter he was doing coolie work. PW1 has categorically stated that the appellant was in good terms with his wife

and daughter. It was suggested as to whether the appellant was mentally weakened due to the loss of job, he answered, he denied it. But he had also stated that the share of his property was not given and the doctor told that he had mental illness connected with the same. PW1 has also stated that the accused was under treatment for such mental illness. It was further stated by PW1 that the appellant was under treatment for mental Crl.A.No.1872 of 2009 :-15-: illness for 6 months prior to the incident. It was also deposed by PW1 that Dr.V.K.Radhakrishnan, Changanasseri, has treated the appellant and before that the appellant was taken to Dr.Basheer and it was PW1, who had taken the appellant for treatment and he has direct knowledge about those facts. The appellant was treated for one week under Dr.Basheer. It has also deposed by PW1 that the appellant was treated as an inpatient for one week under the treatment of Dr.Radhakrishnan and the appellant was taking medicine.

10. PW2 is the wife of the appellant and the sister of PW1. According to PW2, she is a house wife and in the house at Kurichi, she herself and daughter were living along with her husband. She deposed that her husband was doing coolie work and before that he was working in Electro-chemicals. On 4.2.2008, her daughter died and herself sustained injuries. According to PW2, on that day, her husband went for coolie work and came back by 6 o' clock. By 9.30 p.m., she went to bed. Her daughter was sleeping Crl.A.No.1872 of 2009 :-16-: on the cot lying in the northern room. According to PW2, while she was sitting in the cot, the husband asked for oil bottle and she replied that the same was lying beneath the fridge, since the bottle rolled towards the bottom of the fridge. Her husband had gone inside, stating that he will bring the same. But instead of bringing the oil bottle, he brought a chopper. Thereafter, stating that she herself has removed the same, he inflicted cut injuries on her neck by using the chopper. When he repeated the blow, a pillow which was used by her daughter, was taken and she tried to prevent the blow. According to PW2, she simultaneously cried and warded off the blow and at that time, the daughter woke up and came, requesting her father not to cut. According to PW2, at that time, the husband inflicted cut just above the pinna on the left side of her daughter. She asked the daughter to run away and accordingly the daughter ran towards the kitchen. Thereafter, she was cut 2-3 times and she fell down and thereafter she does not know anything. According to PW2, thereafter, she heard

the knocking Crl.A.No.1872 of 2009 :-17-: sound from the door. She heard about the utterance made by the younger brother of the husband, Saji, through the window not to cut. According to PW2, the local people smashed the door and took her out of the house. Then she told them that daughter was also there inside and thus she was taken to Medical College hospital. She came to know about the death of her daughter after 5-6 days. According to PW2, the chopper used by the appellant belonged to the family house of the husband. She identified MO1 weapon. During the chief examination, PW2 was asked why oil was asked by her husband. She answered that he came after taking bath and asked for oil to create a ground for altercation. According to PW2, one month prior to the incident, her husband demanded to bring his parents to the house. Pursuant to the same, there was a small quarrel. PW2 opined to her husband that, there were only two rooms in the house and therefore there was no facility for accommodating more people and hence, after constructing an additional room, the parents could be brought Crl.A.No.1872 of 2009 :-18-: there. That was the reason for the quarrel. During the cross examination, she had admitted that her husband had worked in Electro-Chemicals and the job lost due to the closure of the company. Thereafter he used to go for coolie work, but he was not going for such work daily. It was suggested whether he had not gone for the coolie work because of the mental ailment, she answered in the negative. According to PW2, on the date of occurrence, when the appellant came after work, she provided him tapioca and fish curry. Thereafter, the appellant took bath after using oil which was kept on the table. At that time, there was no quarrel. During the cross examination of PW2, she has admitted that before the incident, the appellant was under treatment of Dr.Basheer in his hospital for mental disease and he was admitted there for 6 days and thereafter he was taking medicine. Altogether for 12 days he was under treatment. He was taken to the Psychiatrist, Changanasseri, namely Dr.Radhakrishnan, and PW2 was specific in her deposition that the appellant was under Crl.A.No.1872 of 2009 :-19-: treatment of Dr.Radhakrishnan for the last 6 months, prior to the occurrence and he was taking medicine regularly.

11. PW3 is the neighbour of the appellant and PW2 and the deceased Deepamol. He is also an attestor to the inquest prepared by the Police on the body of the deceased Deepamol. He identified the signature in the inquest report and the

same is marked through him as Ext.P2. During the cross-examination, he reiterated that he is the neighbour of the appellant. To a pointed question as to whether the appellant has insanity, he answered positively. He was again asked whether the appellant had the tendency to take out quarrel and to scold persons, those who have come across with him. There also, his answer was positive. When it was suggested that the said person was not calling the appellant for any work, which required the use of any instrument or weapon, he admitted the suggestion as correct. It is also suggested to PW3 that the appellant was not called for work on the apprehension that he was likely to attack with weapon when he becomes violent. CrI.A.No.1872 of 2009 :-20-: There also, PW3 answered positively. PW3 had also answered that for the above reason, he was not taking the appellant for any job either before the incident or thereafter. PW3 has also deposed that he was aware of the incident by which the appellant chased his mother to attack her before the incident in which Deepamol died. He had also deposed that he cannot say as to when the appellant becomes violent and according to him, the appellant was undergoing treatment for the same. During the re-examination, it is asked whether PW3 has got any direct knowledge about the madness of the appellant. The answer was that the appellant is his neighbour and PW3 did not deny the suggestion. During the re- examination, PW3 has also stated that before the present incident, the appellant had attempted to kill his wife and on that occasion, PW3 interfered and separated them and took him to the hospital. It was three years before the date of his examination and though he had not accompanied him to the hospital, he assisted in sending him in the car. PW4 is an attester to the scene mahazar prepared CrI.A.No.1872 of 2009 :-21-: by the police and he had identified his signature and thus, Ext.P3 scene mahazar is marked through him. PW5 is an attester to the recovery mahazar prepared by the Police by which MO1 knife is seized and he had identified his signature and thus, Ext.P4 mahazar is marked through PW5. During the cross-examination, he had deposed that the contents of the mahazar were not read over to him and he put his signature without understanding the contents of the same.

12. PW6 is the brother of the appellant and he is residing in a house situated within 15 metres from the house of the appellant and his parents are residing with him. According to PW6, the incident, by which Deepamol died and PW2 sustained

injuries, took place one year back. He had deposed that he does not know as to how Deepamol died. He had also deposed that he did not see the injuries. According to him, he came to know from others that the death was due to the injuries inflicted by using a chopper. According to PW6, he had taken the wife of the appellant Crl.A.No.1872 of 2009 :-22-: to the hospital from their house. According to PW6, PW2 was lying inside the house and he entered into the house after smashing the door and PW2 was seen in the room and Deepamol was found lying in the kitchen. Both PW2 and Deepamol were lying in a pool of blood. According to PW6, when he entered into the room after having demolished the door, his brother was found inside the house and he was holding a chopper in his hand. PW6 identified MO1 chopper. According to PW6, in both the rooms, there was blood and the pillow was found scattered in the bed room.

13. During the cross-examination, PW6 has deposed that the appellant was having mental disease. When it was asked what were the signs he observed, his answer was that the family members were threatened on several occasions showing chopper and in the house of the appellant, his sister (PW2) was threatened saying that she would be killed. He had also taken quarrel with the co-workers at the place of work and physically abused them. The appellant used obscene words against the local people and Crl.A.No.1872 of 2009 :-23-: neighbours. According to PW6, he was not permitted to enter into the house by the appellant and on several occasions, the appellant threatened him that he would kill him. According to PW6, the appellant had no contact with others for a few days before the incident and at that time, he had maintained serious suspicion. PW6 has also stated that the appellant chased their mother stating that she would be finished off and prevented her from entering into the house and the mother escaped by running away from the place. It was asked whether the appellant has the character of attacking others, he answered that he will approach fastly towards them to attack. PW6 was again asked whether any problem occurred in the company and his answer was that it was on that account, the appellant lost his job. According to PW6, the appellant was taken for treatment. PW6 has also deposed that he does not know how Deepamol died. According to PW6, the appellant was standing in the kitchen with the chopper near to the daughter and the appellant approached PW6 for cutting him. But, suddenly, he laughed Crl.A.No.1872 of 2009

: -24-: loudly. PW6 has further deposed that on that day also, he was continuing his treatment. He had also deposed that the accused was undergoing treatment for insanity before and after the incident. According to PW6, the appellant had no animosity towards his wife and daughter and he was in good terms with them. During the re-examination, he deposed that he had stated before the Police about the attack from the part of the appellant and also about the treatment undertaken by the appellant. He has deposed that he had not stated before the Police about the laugh of the appellant. He has also deposed that no complaint was lodged before any authority either by the family members or the local people or the neighbours. During the re-examination, PW6 has also stated that it was he, who took the appellant for treatment, and at that time, he had informed about the character of the appellant of attacking others and the appellant was taken to the Chethippuzha Hospital. He had also deposed that regarding the exact time, the appellant was taken to the hospital, before the Crl.A.No.1872 of 2009 : -25-: incident, he had no direct knowledge, and the reason for losing the job of the appellant. He had also deposed that at Chethippuzha, the appellant was under the treatment of Dr.Radhakrishnan. On completing the re-examination, the court put the following question, as to whether the appellant/accused has the character of attacking others. The answer was 'yes'. The court again asked what were the steps taken against the above character of the appellant. He answered that the appellant was taken to the Doctor for treatment and the appellant had been isolated in the house.

14. PW7 is the Doctor, who conducted the postmortem examination on the body of the deceased Deepamol while he was working as Assistant Professor, Forensic Medicine, Medical College, Kottayam and he issued Ext.P5 postmortem certificate in which he noticed the following antemortem injuries:- "1. Incised wound 13x3.5-4 cm, bone deep obliquely placed across the back of head, its left upper and 3 cm behind pinna of ear. Corresponding to it the occipital bone of skull showed cut fracture 11 cm long. Crl.A.No.1872 of 2009 : -26-:

2. Incised wound 5x1 cm bone deep. Oblique on the left side of back of head, adjoining the above injury No.1, separated by a tag of skin, 4x0.5cm its upper outer and 3 cm behind pinna of ear.

3. Incised wound 4x1 cm, muscle deep horizontal on the left of back of head 1cm above top of ear.
4. Incised wound 9x1 cm, bone deep horizontal across of back of head adjoining injury No.1, separated by a tag of skin 4x1cm., its midpoint 8cm above root of neck. Corresponding to the injury the occipital bone of skull showed cut fracture with fragmentation over an area 4x2 cm.
5. Incised wound 10x1-1.5cm., bone deep obliquely placed across back of neck 4cm above root of neck and 2.5 cm below above injury No.4. Its left outer end had a tag of skin 2x0.5 cm., and a side cut directed obliquely upwards 1x0.2cm at its upper edge. Dura was intact. Brain showed bilateral subdural and subarachnoid haemorrhage.
6. Incised wound 2x1 cm, muscle deep horizontal on right side of neck, its outer and 4 cm below right ear lobule and 3 cm above root of neck.
7. Incised wound 3x1 cm, muscle deep horizontal on the left side of back of chest, its inner end 4 cm below top of shoulder and 10cm outer to midline.
8. Incised wound 2x0.5 cm muscle deep horizontal on the left side of back of chest 6 cm below top of Crl.A.No.1872 of 2009 :-27-: shoulder and 7 cm outer to midline.
9. Incised wound 2x0.3 cm on the back of right hand 3 cm below wrist.
10. Contusion 13x2-3cmx0.2cm involving right lobe of liver." According to PW7, the cause of death is due to the injury sustained to the head, and injury Nos.9 and 1 to 5 are sufficient to cause death in the ordinary course of nature.
15. PW8 was then working as Lecturer in the Kottayam Medical College and he had examined Deepamol at about 11 p.m. on 4.2.2008, who was brought to the casualty with the injuries. According to PW8, he issued intimation to the S.I. of Police, Gandhinagar Police Station and he identified his signature in the said intimation and marked the same as Ext.P6. According to him, he had also informed the Police about the death of Deepamol and the death intimation is identified as Ext.P7. He had also issued Ext.P8 discharge certificate to PW2 which

he identified as Ext.P8. According to PW8, he treated PW2 Molamma, who was admitted Crl.A.No.1872 of 2009 :-28-: on 4.2.2008 and relieved on 14.2.2008. He had also noted the injuries found on PW2. According to PW8, PW2 has sustained cut injury on the neck, which is transverse and the size was 3x10 cm on the left side of the neck and the same was beneath the mandible cutting the skin, platysma, submandibular gland and facial vessels. He had also stated that the patient had undergone artificial respiratory support till 6.2.2008. She had fracture on mandibular region. According to PW8, the injuries are grievous in nature and he had also stated that the injuries could be caused by using MO1 weapon and the said injuries may cause death and in the ordinary course of nature, it is sufficient to cause death.

16. PW9 was then working as Scientific Assistant, FSL Unit, Kottayam and he examined the scene of occurrence in Crime No.60 of 2008 and collected items from there and the same were sealed and handed over to the S.I. Of Police, Chingavanam for sending the same for a detailed examination and he prepared a report for the same. These are the evidence and materials produced Crl.A.No.1872 of 2009 :-29-: from the side of the prosecution.

17. During the time of the defence evidence, the defence had examined DW1 namely, Dr.V.K.Radhakrishnan, who is a Psychiatrist by profession and conducting clinic near the Railway Station at Changanassery. According to DW1, he was also working in the C.N.K.Hospital. According to DW1, he issued the certificate dated 9.2.2008, which contained his signature and the same is marked as Ext.D1. DW1 has deposed that Sabu (appellant) was under his treatment from 18.9.2003 onwards for psychosis. The record connected with the treatment is also marked as Ext.D2. According to DW1, he had treated the appellant on 3.2.2008 and also deposed that he was irregular in attending the clinic and the said fact has been shown in the certificate. He had also deposed that if the medication is irregular, there is every possibility for the disease to aggravate. If the patient has got the disease, there is every possibility of his becoming violent. According to DW1, in case of psychosis, the patient is incapable Crl.A.No.1872 of 2009 :-30-: of knowing the nature of the act done by him. DW1 has also identified the appellant as his patient Sabu. During the cross- examination, DW1 has stated that after

8.8.2006, the appellant came before him for treatment only on 3.2.2008 and on 3.2.2008, he did not notice any sign to admit him and treat as an inpatient. But, he noticed the signs of the disease. He had also deposed that the disease is unpredictable. During the further cross-examination, he had also deposed that the signs of disease shown on the previous day could have been aggravated on the next day and he had also stated that he did not treat the appellant on 9.2.2008. On completing the cross-examination, certain questions were put by the court and the first question as to what are the signs of Psychosis. DW1 answered that absence of insight and reality and presence of delusion and hallucination and personality also will be affected. Then, the court asked that the persons, those who are having such signs, are likely to become violent. The answer was positive. Then the court again asked, whether such a person can CrI.A.No.1872 of 2009 :-31-: be released to the society and the answer was that in certain circumstances, such a person cannot be released and they should be admitted and at that time, if there were strong delusions. The court further asked whether there would be any signs before becoming violent and it was answered that there was likelihood of sleeplessness and irritation. During the re-examination with permission, DW1 has deposed that the disease can be controlled by strict follow-up medication.

18. On a consideration of the above evidence of the prosecution, particularly the evidence of PW2/the injured, and the medical evidence on record, it can be seen that the prosecution has succeeded in proving the incident under which PW2 and the deceased received injuries from the appellant and the overt act of the appellant in inflicting such injuries on them. It is relevant to note that the defence took shelter under Section 84 of I.P.C. It appears that there was no serious challenge from the part of the defence against those evidence of prosecution with respect to the CrI.A.No.1872 of 2009 :-32-: incident. The specific plea taken by the defence is that at the time of the alleged incident, the appellant was insane and overt act done by him was due to his mental illness, which was beyond his control and therefore, the act done by the appellant is not an offence since at the time of doing such act, by reason of unsoundness of mind, he was incapable to know the nature of the act.

19. However, the trial court was not inclined to accept the above defence of the appellant for the reason which we have already referred to. Therefore, the further question to be considered is whether the trial court is justified in its finding and in convicting the appellant for the offences under Sections 302, 307 and 326 of I.P.C. and whether the trial court is justified in not extending the benefit under Section 84 of I.P.C. in favour of the accused.

20. As rightly pointed out by the learned Senior counsel for the appellant, the loyal witnesses of the prosecution CrI.A.No.1872 of 2009 :-33-: particularly PWs.1, 2, 3 and 6 in their deposition have categorically stated about the mental disorder of the appellant and the treatment given to him for his mental illness. Those witnesses have also stated about the conduct and character of the appellant when he was affected by such psychiatric disorder. PW1, during the chief examination itself, has stated that during the period of the marriage of the appellant, he was working in an Electro chemical company, but that job was lost, and thereafter he was doing the coolie work. According to PW1, the appellant was good, cordial, and affectionate to his wife and daughter and loved them and he was mentally shocked due to the loss of job. However, according to PW1, the Doctor told him that the appellant was having mental ailment as he has not received his share from the family property, and that the appellant was treated for his mental ailment. PW1 has specifically deposed that the appellant was under mental treatment for six months just prior to the incident. He had also stated that the appellant was under the treatment of Dr.Radhakrishnan and CrI.A.No.1872 of 2009 :-34-: Dr.Basheer and the appellant had undergone treatment as an inpatient for one week in the hospital run by Dr.Radhakrishnan, and he was taking medicines. PW2, who is none other than the wife of the appellant, has also stated about the job of her husband, during the time of the marriage. According to her, as the company was in lock out, he lost his job and thereafter, he was going for coolie work. During the cross-examination of PW2, she has deposed that before the incident, the appellant was admitted in the hospital of Dr.Basheer for mental treatment and the appellant had been undergoing treatment as an inpatient for six days in that hospital and subsequently, the appellant took medicine. Altogether for 12 days, the appellant was under treatment as inpatient. PW2 has also stated that after the above treatment, the appellant was taken to Dr.Radhakrishnan, Psychiatrist at

Changanassery. The appellant was under the treatment of Dr.Radhakrishnan prior to six months of the incident and he was taking medicines. The attester to Ext.P2 inquest report, who is the neighbour of the CrI.A.No.1872 of 2009 :-35-: appellant, has also deposed about the psychiatric disorder of the appellant. He had also narrated about the behaviour of the appellant when he is affected by the mental ailment. PW3 has also deposed about the treatment given to the appellant for his mental disease. PW6 is the brother of the appellant, who deposed before the court in detail about the mental illness of the appellant and the treatment given for the same to the appellant. He had deposed various instances whereby the appellant created problems to the local people and the neighbours and also against the family members. The above evidence of the loyal prosecution witnesses about the mental illness of the appellant are not properly challenged and in effect, it appears that the prosecution has accepted the same.

21. In the present case, as we have indicated earlier, the specific defence taken by the appellant is under Section 84 of I.P.C. As any other criminal trial, the appellant/accused, to substantiate his defence, need not prove the defence case beyond CrI.A.No.1872 of 2009 :-36-: reasonable doubt as in the case of a prosecution and in the case of accused, he can successfully establish the defence by preponderance of probabilities. When an accused takes a contention that he was insane at the time of the alleged incident, and he takes shelter under Section 84 of I.P.C., he can discharge such burden by establishing a probable case by preponderance of probabilities. In the present case in the light of the evidence of the loyal witnesses, which we referred to above, it can be seen that the appellant is a mental patient and he was undergoing treatment for such mental disorder and prior to six months of the incident, he was under the treatment of Dr.Radhakrishnan, a Psychiatrist at Changanacherry. We are of the opinion that, on the basis of the materials and evidence brought on record, going through the prosecution witnesses, the defence had succeeded in making out a probable case and therefore, the court is bound to accept the same and to uphold the defence set up by the accused.

22. It is further relevant to note that besides the evidence CrI.A.No.1872 of 2009 :-37-: brought at the instance of the defence while examining the prosecution

witnesses, the defence had also adduced independent evidence consisting of the testimony of DW1 and Exts.D1 and D2. As per the deposition of DW1, it is crystal clear that the appellant was under his treatment for mental disorder viz., Psychosis and he treated the appellant for the said mental illness right from 18.9.2003. Exts.D1 and D2 documents further corroborate the evidence of DW1. Further, the evidence of DW1 supported by the contemporaneous documents like Exts.D1 and D2 show that just prior day to the incident, i.e. on 3.2.2008, DW1 had treated the appellant and the appellant was irregular in attending treatment in the clinic, and the said fact is stated in Ext.D1 certificate. DW1 has also deposed that if the medication is irregular, there is every possibility of the patient becoming violent, and also deposed that if the disease is aggravated, the patient is likely to become violent. According to DW1, a patient affected by the disease Psychosis is incapable of knowing the nature of the act, and is doing the same CrI.A.No.1872 of 2009 :-38-: without aware of its consequence. According to DW1, the disease is unpredictable. The signs of the disease shown on the previous day are likely to be aggravated on the next day.

23. At this juncture, it is also relevant to note that the court after considering the petition filed on behalf of the appellant stating his mental ailment and examined CW1, who was then working as Senior Lecturer, Department of Psychiatry, Medical College, Kottayam. CW1 has deposed that the appellant was admitted from 20.11.2008 to 2.12.2008 and during the period of observation, he had decreased psycho motor activity and he did not move around in the ward. He is oriented to time, place and person and objectively his mood was restricted. In the light of the above expert evidence and opinion, we are of the view that the appellant was having Psychiatric disorder, which was in a decreased state when he was under the observation of CW1.

24. Psychosis is a major mental disorder of organic or emotional origin characterised by extreme derangement or CrI.A.No.1872 of 2009 :-39-: disorganization of the personality, often accompanied by severe depression, agitation, regressive behaviour, illusions, delusions and hallucinations that so greatly impair perception, thinking, emotional response and personal orientation that the individual loses touch with reality and the patient is incapable of

functioning normally in society. As we indicated earlier, in the deposition of PW6, he had mentioned various instances, in which the appellant behaved abnormally to the family members, neighbours and local people. PW11 as well as PW6 quoted the incident in which the appellant chased his mother to kill her. In this connection, it is relevant to refer to the evidence of PW2, the wife of the appellant. As per her evidence, on the date of the incident, the appellant took quarrel with her on a trivial issue based upon the disappearance of the oil bottle. An employee, who was working in an Electro chemical company, is not likely to behave in such a fashion, if he is normal. The prosecution has not suggested any reasonable ground for such quarrel. No motive is alleged against the appellant CrI.A.No.1872 of 2009 :- 40-: to commit the offences against his own wife and daughter. Even as per the prosecution case, the sole daughter of the appellant was brutally attacked for no reason. According to PW1, the appellant was a loving husband and father. PW6, in his deposition, has categorically stated that when he entered the house, he found the appellant laughing. The above conduct of the appellant positively suggests that the appellant was in mental disorder and he was a psychiatric patient at the time of the alleged incident. The defence evidence consists of the deposition of DW1 and Exts.D1 and D2. The deposition of DW1 shows that on the date of the incident i.e., on 4.2.2008, the appellant was undergoing treatment for Psychosis and he was irregular in attending the clinic and medication and the same are sufficient to accelerate a patient to become violent. The prosecution evidence as well as the defence evidence positively establish the said fact. Thus, it can be seen that at the time of the alleged incident, particularly, at the time while he was doing the said overt acts, the appellant by reason of his unsoundness of CrI.A.No.1872 of 2009 :-41-: mind, was incapable of knowing the nature of the act or that he was doing either wrong or contrary to law and therefore, it cannot be said that the appellant was having requisite mens rea to commit the offences alleged against him. So, we are of the opinion that the appellant has succeeded in establishing his defence under Section 84 of I.P.C. and the court below ought to have found that the appellant, at the time of doing that act, by reason of unsoundness of mind, was incapable of knowing the nature of the act. Even though it stands proved that the appellant has committed the act alleged against him by the prosecution, it has to be presumed under Section 6 read with 84 I.P.C.

that the appellant has not committed any offence.

25. In the light of the above discussion and in view of the evidence and materials on record, we are of the opinion that the trial court is not justified in convicting the appellant for the offences under Sections 302,307 and 326 of I.P.C. and imposing sentence thereon on the appellant and accordingly, we set aside CrI.A.No.1872 of 2009 :-42-: such conviction and sentence by extending the benefit under Section 84 of I.P.C. in favour of the appellant and thus, the appellant is acquitted under Section 386(b)(i) read with Section 334 of Cr.P.C.

26. Since we have already found that the appellant is mentally an insane person and undergoing treatment for Psychosis and he is acquitted under Section 386(b)(i) read with Section 334 of the Cr.P.C., he is liable to be released from the jail, but to detain in safe custody in view of Section 335(1) of the Cr.P.C. Accordingly, the Superintendent of Jail in which the appellant is undergoing imprisonment is directed to produce the appellant forthwith before the Superintendent, Mental Health Centre, Peroorkada.P.O.,Thiruvananthapuram for safe custody and for treatment till his mental illness and incapacity are over and he can be released, only in accordance with law and also subject to the terms and mandates contained in Section 335(3) of Cr.P.C. The Registry is directed to forward a gist of this judgment to the CrI.A.No.1872 of 2009 :-43-: Superintendent of the concerned Jail where the appellant is undergoing incarceration forthwith for appropriate action. This Criminal Appeal is allowed as above. sd/- V.K.MOHANAN, Judge sd/- B.KEMAL PASHA, Judge MBS/ami -true copy- P.S.TO JUDGE.

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