

Madesh Vs. State

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Court : Chennai

Decided On : Nov-07-2013

Judge : S.Rajeswaran

Appellant : Madesh

Respondent : State

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED 07.11.2013
CORAM THE HONOURABLE MR. JUSTICE S. RAJESWARAN AND THE
HONOURABLE MR. JUSTICE P.N.PRAKASH CRL.A.No.453/2011 Madesh ..
Appellant Versus State by The Inspector of Police Nagavalli Police Station Salem
District. .. Respondent Criminal Appeal filed under section 374 Cr.P.C., to call for
the records from the learned Principal Sessions Judge, Salem District in
SC.No.125/2008 and set aside the conviction and sentence ordered by the
learned Principal Sessions Judge, Salem District dated 21.12.2010 and acquit the
appellant/accused. For Appellant : Mr.K.M.Balaji For Respondent :
Mr.V.M.R.Rajendiran Additional Public Prosecutor

JUDGMENT

[Judgment of the Court was delivered by P.N.PRAKASH, J]. This is a case of
infanticide. The sole accused in the Trial Court Madesh, is the appellant before us.
He was tried by the learned Principal Sessions Judge, Salem in SC.No.125/2008
for an offence u/s.302 IPC for committing the murder of his daughter Sandhiya and

for an offence u/s.309 IPC for attempting to commit suicide in the course of the same transaction at around 2.30 p.m. on 09.08.2006. For the first charge, he was convicted and sentenced to undergo life imprisonment and to pay a fine of Rs.5000/- and in default, to undergo 1 year rigorous imprisonment and for the second charge, he was convicted and sentenced to undergo 6 months simple imprisonment by the Trial Court.

2. The case of the prosecution in a nutshell is as follows:- [a]. Madesh, the appellant herein and his wife Bharathi [P.W.1]. were married about 8 years prior to the date of occurrence and they have one child Sandhiya who at the time of the incident was about 5 years old. The couple were initially living in Nagamalai, Karnataka, and 15 days before the incident, they moved into the parental home of P.W.1 in Nariyanoor, Tamil Nadu, since the appellant was physically indisposed and was not going for any work. [b]. On 09.08.2006, the mother of P.W.1 - Rajammal [P.W.2]. had gone for work in the morning hours. She returned home around 2.00 p.m. and was sitting outside the dwelling hut and was talking with her daughter [P.W.1]. At that time, the appellant and his daughter were presumably having an afternoon nap inside the hut. Around 2.30 p.m., P.Ws.1 and 2 heard a scream from inside the hut and when they rushed inside, they found the appellant pulling out a knife [M.O.1]. from the chest of the child and in shock when they approached him, he cut himself in his neck region and fled from the house. The distressed mother [P.W.1]. went to Nagavalli Police Station which is about 8 Kilometres from the scene of occurrence at 4.00 p.m. on the same day and gave a complaint in writing [Ex.P.1]. to M.Valarmathy [P.W.14]., Sub-Inspector of Police, who registered a case in Nagavalli P.S. Cr.No.121/2006 for the offences u/s.302 and 309 IPC and despatched the complaint and the FIR [Ex.P.28]. to the jurisdictional Magistrate who received the same on 10.08.2006 at 4.00 a.m. as could be seen from the endorsement on the printed FIR. [c]. Investigation was taken over by Venkatesan [P.w.16]., Inspector of Police, who visited the place of occurrence at 17 50 hours on the same day and prepared the Rough Sketch [Ex.P.32]. and the Observation Mahazar [Ex.P.6]. and arranged for taking photographs of the place of occurrence. He also seized the blood-stained Mat [M.O.2]., collected the samples of Earth, with and without blood stains [M.Os.4 ad 5]. under the cover of Mahazar [Ex.P.7]. in the presence of witnesses,

Janarthanan [P.W.7]. and Rajendran [not examined].. P.W.16 conducted inquest over the body of Sandhiya at 18 50 hours o 09.08.2006 and the Inquest Report is marked as Ex.P.33. Thereafter, the body was sent for postmortem to the Government Mohan Kumaramangalam Medical College Hospital, Salem where the autopsy was conducted by Dr.Kesavalingam [P.W.5]. who issued the Postmortem Certificate [Ex.P.3].. In Ex.P.3, the doctor has given the following findings:- ".INJURIES:- An oblique gaping stab injury on epigastric region 3.5 x 2 cms through which stomach protruded out 5 cms in length. O/D stab injury over stomach 2 cms in length through and through soot particles oozed out 1.5 x 0.25 cms stab injury on abdominal aorta. Abdominal cavity 650 cc of fluid blood with clots. Stab injury sharp margine angles acute [antemortem]. OTHER FINDINGS:- Heart Chambers and valves normal cavities empty. Larynx, Trachea, Hyoid Bone intact. Both C/S pale. Stomach 50 grams of partly digested cooked food. No specific smell. Mucosa-pale. Liver, spleen and kidneys-all are C/S pale. Bladder-empty utreus infantile empty pelvis membranes spinal column all are intact. Brain-O/s.Pale.". The doctor opined that the deceased died of shock and haemorrhage due to stab injuries. [d]. The appellant was taken to the same hospital by his brother-in-law and one Sadasivam [not examined]. on the next day , i.e., on 10.08.2006 at 12.15 p.m. where he was examined by the duty doctor, Dr.Gopinathan [P.W.8]. who has recorded in the Accident Register [Ex.P.10]. that the appellant inflicted knife injuries to himself on 09.08.2006 at 2.30 p.m. P.W.8 has recorded that the appellant was conscious and oriented and found that he had a cut injury measuring 5x3 cms in the front portion of his neck. He admitted him as an In-patient for treatment. While the appellant was in the Government Hospital, Salem, K.N.Nagalakshmi Devi [P.W.6]., Judicial Magistrate No.5, Salem, went to the hospital for recording the statement of the appellant on the requisition of the Investigating Officer who thought that the appellant may not survive after he inflicted cut injury to his neck. P.W.6 ascertained the general orientation of the appellant and after being satisfied, recorded his statement which is marked as Ex.P.5. This statement, Ex.P.5, cannot be used as a dying declaration since the appellant survived and it can at the most be used as a previous statement, the relevancy of which will be discussed later. The appellant was discharged from the hospital on 23.08.2006 after treatment as could be seen from the discharge

summary [Ex.P.11].. Immediately thereafter, he was arrested by P.W.16 at 19 50 hours. Based on the admissible portion of the appellant's confession to the police [Ex.P.8]., P.W.16 recovered the weapon [M.O.1]. allegedly used by the appellant for committing the offence under the cover of Mahazar in the presence of the witnesses, Janarthanan [P.W.7]. and Rajendran [not examined].. The material objects were forwarded for chemical examination through the Court of the learned Judicial Magistrate [P.W.16].. [e]. Further investigation was continued by Muniyappan [P.W.17]. who gave a requisition [Ex.P.34]. to the Judicial Magistrate to send the appellant for medical examination about his physical and mental condition. Accordingly, the appellant was examined by Dr.K.S.Ravishankar [P.W.15]. attached to the Mental Health Division of the Government Mohan Kumaramangalam Medical College Hospital, Salem. He examined the appellant on 12.09.2006 and admitted him as an In-Patient in the hospital. He was in the said hospital till 26.09.2006 and thereafter, he was sent to the Institute of Mental Health, Kilpauk, Chennai for a period of two months for further treatment. He was diagnosed by the Institute of Mental Health, Kilpauk, Chennai that as suffering from ".Depression".. [f]. Investigation was taken over by Sekar [P.w.18]., Inspector of Police, Jalagandapuram Police Station who examined a few witnesses and filed a final report before the learned Judicial Magistrate No.1, Mettur Dam, who took the same on file in PRC.No.1/2008. On the appearance of the appellant before the learned Magistrate, he was furnished with the copies of the final report and other documents and the case was committed to the Court of Sessions, wherein 2 charges aforesaid were framed to which he pleaded ".not guilty".. [g]. In order to prove the prosecution case, 18 witnesses were examined ; 34 exhibits and 7 material objects were marked. On behalf of the defence, 3 witnesses were examined and 4 exhibits were marked.

3. After analysing the evidence on record, the Trial Court convicted and sentenced the appellant as aforesaid. Aggrieved by which he is now before us in this appeal.

4. Learned counsel for the appellant did not dispute the occurrence as projected by the prosecution. His only contention before us was that the appellant was of unsound mind at the time of occurrence and pleaded for his acquittal by invoking section 84 IPC.

5. Per contra, the learned Additional Public Prosecutor contended that the appellant was not of unsound mind at the time of occurrence and he was fully conscious of what he was upto and hence, he cannot take cover under the general exceptions set out in the Indian Penal Code.

6. We gave our anxious consideration to rival the submissions put forward by either side and also to the materials on record and appreciated the evidence in toto.

7. From the evidence of P.W.1 and her mother [P.W.2]., it has been clearly established by the prosecution that on the fateful day, the appellant was inside the hut with the child and purportedly sleeping while P.Ws.1 and 2 were sitting outside the hut and were talking. At that time, when they heard the noise from inside, they rushed into the hut and found the appellant pulling out the knife from the chest of the child. P.Ws.1 and 2 cogently corroborate each other and the defence was not able to make any serious dent in their testimony. It is also in their evidence that the appellant cut himself in his neck with the same weapon and ran away. The fact that the appellant sustained injuries in the neck has also been established through the evidence of Ramasamy @ Selvam [P.W.4]. and Dr.Gopinathan [P.W.8]., who admitted him as an In-patient on the next day. It was P.W.4 and one Sadasivam who had taken the appellant to the hospital for treatment on the next day. Though there is no reference to the name of P.W.4 in the Accident Register [Ex.P.10]., P.W.4 would himself state in the chief examination that he had taken the appellant along with one Sadhasivam, brother-in-law of the appellant to the hospital and when Sadhasivam stated that he would remain with the appellant, P.W.4 withdrew and this explains the fact as to why the name of P.W.4 does not find place in the Accident Register [Ex.P.10]. From the medical records, the fact remains that the appellant was admitted in the Government Hospital for the self-inflicted injuries on the next day and in the statement given by the brother-in-law of the appellant to the doctor [P.W.8]., he stated that the appellant had inflicted injuries on himself the previous day. This statement has been recorded by P.W.8 in the Accident Register [Ex.P.10].

8. Dr.Gopinathan [P.W.8]., in his evidence has categorically stated that at the time of his examination of the appellant, the appellant was conscious, oriented and in sound state of mind. He was admitted into the ENT Ward as an In-patient for treatment since he has cut his neck, from 10.08.2006 to 23.08.2006 and after the wound was sutured and healed, he was discharged vide Discharge Summary [Ex.P.11].. The injury was categorised as simple injuries by P.W.8 vide Ex.P.11. P.W.1 also identified the knife [M.O.1]. used by the appellant to inflict the fatal injury on the deceased. As stated earlier, the appellant had not seriously disputed the incident either in the Trial Court or before us. Both in the Trial Court and before us, he had taken a plea of insanity and therefore, what remains to be examined by us is whether, would his act fall within the scope of Section 84 of the Indian Penal Code so as to hold that he had no mens rea and that he had committed the act by reason of unsoundness of mind without knowing the nature of the act. The point to be determined is what was his state of mind at the time of commission of the offence and not thereafter. It is settled legal principle that if an accused wants to take shelter under any of the general exceptions in the Indian Penal Code, the burden of proving the existence of circumstances bringing the accused within the said general exceptions will be on the accused as adumbrated in section 105 of the Evidence Act. Illustration A to section 105 of the Evidence Act clearly states 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. ILLUSTRATION [A].:- A, accused of murder, alleges that, by reason of unsoundness of mind, he did not know the nature of the act."

9. In this case, the prosecution has also not rested on its oars by merely collecting evidence vis-a-vis, the actus reus of the appellant. It has also endeavored to collect evidence to find out the mental condition of the appellant by having him examined at various stages by competent Specialists. Dr.Gopinathan [P.W.8]. who examined the appellant on 10.08.2006, has given a positive evidence that the appellant was in sound state of mental health. Dr.Ravishankar [P.W.15]. who is a

Psychiatrist, has also opined that the appellant was suffering from depression at the time of his examination on 12.09.2006. Even the medical records from the Institute of Mental Health, Kilpauk, Chennai shows tha the appellant was suffering only from depression and not from any unsoundness of mind.

10. The learned counsel for the appellant contended that the prosecution had failed to examine any doctor from the Insitute of Mental Health, Kilpauk, Chennai and therefore, the prosecution had failed to prove that the appellant was not in a fit state of mind at the time of occurrence. This argument deserves to be rejected on the short score that the burden is on the appellant to prove and not on the prosecution to disprove as clearly spelt in section 105 of the Evidence Act which has been extracted above. We are fortified in our conclusion that the appellant was of sound mental disposition from the evidence of K.N.Nagalakshmi Devi [P.W.6]., Judicial Magistrate who recorded the statement of the appellant in the hospital. We are not relying on the statement of the appellant [Ex.P.5]. to P.W.6 for the purpose of fastening criminal liability on him because such a statement cannot be used as a confession as the mandates of section 164 Cr.P.C., have not been followed. Nevertheless, from the evidence of the learned Magistrate [P.W.6]. and from the preliminary answers given by the appellant to her, coupled with the certification of the doctor [P.W.8]. under Ex.P.5, we are of the opinion that the appellant was quite conscious, oriented and of stable mind at the time when he gave the statement to P.W.6. Nowhere in the statement he has set the plea of unsoundness of mind which plea he has raised in his examination u/s.313 Cr.P.C. We do not expect him to tell the Magistrate that he was of unsound mind at the time of commission of the offence because we are aware that no mad man will ever confess of his madness. If he had stated to the Magistrate that he is unable to recount what exactly had transpired at the time of the incident, it is somewhat understandable. On the contrary, he has given poverty and indebtedness as the motive for the offence. These are all admissions not amounting to confession which are relevant u/s.21 of the Evidence Act. The appellant filed a written statement before the Trial Court when he was questioned about the incriminating circumstances appearing against him in the evidence. In the said statement, he has stated that on account of his mental illness, he did not know as to what exactly happened to him and that he was told about all that only by his relatives thereafter.

We are unable to buy this contention because there is no shred of evidence to show that the appellant was suffering from any mental illness at the time of the offence or any time prior to the commission of the offence. The fact that after stabbing the child, the appellant attempted to slit his throat and commit suicide, belies all contention that he was not in a mentally fit condition when he committed the murder of his child.

11. The prosecution has also subjected the appellant for medical examination to find out about his mental condition as to whether he was mentally fit to defend himself in the Trial Court as laid down in Chapter XXV of the Code of Criminal Procedure. Dr.K.S.Ravishankar [P.W.15]. examined him on 09.10.2007 and certified by Ex.P.31 that the appellant was mentally fit to defend himself in the Trial Court.

12. Learned counsel for the appellant took us through the evidence of the defence witnesses, namely Dr.Pandarathan [D.W.1]., Pommaiah [D.W.2]. and Nagan [D.W.3].. D.W.1 is a Homeopathy doctor and is not a Psychiatrist. In his evidence, he has stated that on 20.04.2007, he examined the appellant and gave him treatment for mental illness allegedly suffered by him for about 1 = years. Even in his evidence, he stated that the appellant was suffering from major depression and he has given a Medical Certificate [Ex.D.4]. to that effect. In the cross examination, he has admitted that he is not a Psychiatrist and that, he is only a Homeopathy doctor. His evidence is of no use for the defence to show that the appellant was of unsound mind at the time of the occurrence. D.W.2-Pommaiah was a neighbour of the appellant when the appellant lived with his family in Nagamalai in Karnataka. In his evidence, he stated that he knew the appellant from childhood and that after the birth of Sandhya, the appellant developed mental illness. He also stated that he does not know the whereabouts of the appellant's family after they shifted from Nagamalai in Karnataka and settled down at parental home of his wife [P.W.1].. Nagan [D.W.3]. is the brother of the appellant and in his evidence, he stated that after the birth of Sandhya, the appellant became mentally unsound. Apart from the ipse dixit of D.Ws.2 and 3 that the appellant was of unsound mind after the birth of Sandhya, there is absolutely no other material to prove this fact. Had the appellant been suffering from mental illness and displaying aberrant conduct as deposed by

the witnesses, he would have definitely been taken to a Psychiatrist for treatment. It is strange that D.W.3 who is the brother of the appellant, had not taken any steps to give any medical treatment to the appellant. Therefore, we are of the opinion that the evidence of D.Ws.1 to 3 does not inspire confidence in us.

13. Learned counsel for the appellant contended from Ex.D.1 Observation Report dated 16.12.2006 given by the Institute of Mental Health, Kilpauk, Chennai, that the appellant was of unsound mind. A perusal of Ex.D.1 shows that the appellant was diagnosed as suffering from major depression and nothing more. It may be relevant to refer to the Judgment of the Hon'ble Apex Court in SURENDRA MISHRA Vs. STATE OF JHARKHAND reported in [2011]. 3 SCC [Cri.]. 232, wherein the Hon'ble Apex Court has held as follows:- ".9.In our opinion, an accused who seeks exoneration from liability of an act under section 84 of the Indian Penal Code is to prove legal insanity and not medical insanity. Expression ".unsoundness of mind". has not been defined in the Indian Penal Code and it has mainly been treated as equivalent to insanity. But the term insanity carries different meaning in different contexts and describes varying degrees of mental disorder. Every person who is suffering from mental disease is not ipso facto exempted from criminal liability. The mere fact that the accused is conceited, odd, irascible and his brain is not quite all right or that the physical and mental ailments from which he suffered had rendered his intellect weak and affected his emotions or indulges in certain unusual acts, or had fits of insanity at short intervals or that he was subject to epileptic fits and there was abnormal behavior or the behavior is queer are not sufficient to attract the application of section 84 of the Indian Penal Code.". Very recently, in MARIAPPAN Vs. STATE OF TAMILNADU reported in CDJ 2013 SC232 the Hon'ble Apex Court has held, with no uncertain terms, that the crucial date of determination of the plea of insanity for extending the general exception under section 84 IPC is the date of commission of the offence. In this case, the appellant has not produced any credible evidence to show that he suffered from legal insanity and had failed to discharge the burden cast on him by section 105 of the Evidence Act.

14. In fine, the criminal appeal is dismissed and the conviction and sentence imposed on the appellant by the learned Principal Sessions Judge, Salem in

SC.No.125/2008 dated 21.12.2010 is hereby confirmed. [S.R., J.]. [P.N.P., J.].
07.11.2013 Index : Yes Internet : Yes AP S.RAJESWARAN, J.

AND P.N.PRAKASH, J., AP To 1.The Principal Sessions Judge, Salem. 2.The
Chief Judicial Magistrate, Salem. 3.The Judicial Magistrate No.1, Mettur Dam,
Salem. 4.The Inspector of Police Nagavalli Police Station Salem District. 5.The
Public Prosecutor High Court, Madras. CrI.A.No.453/2011 07.11.2013

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