

Jaison Vs. State of Kerala, rep. by Public Prosecutor

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Court : Kerala

Decided On : Jan-08-2016

Judge : P. Bhavadasan & V. Raja Vijayaraghavan

Appeal No. : CRL. A. No. 1843 of 2011 (A)

Appellant : Jaison

Respondent : State of Kerala, rep. by Public Prosecutor

Judgement :

V. Raja Vijayaraghavan, J.

1. The life of Gopakumar, a 23 year old canteen supervisor working at the canteen attached to the Westfort Hi-Tech Hospital at Thrissur, was snuffed out at 8.p.m on 12.01.2003. The appellant, who was working as a supplier in the same canteen, was charged for having committed the crime. He was tried by the Additional Sessions Judge, Thrissur, (Fast Track Court - No.II - Ad hoc) for having committed offence punishable u/s 302 of IPC and as per judgment dated 10.07.2009, was found guilty and was convicted and sentenced to undergo imprisonment for life and to pay a fine of Rs.5,000/- with a default clause. The above finding of guilt, conviction and sentence is challenged in this appeal.

2. A brief resume of the prosecution case is as follows :-

Deceased Gopakumar and the appellant were working in the canteen attached to the Westfort Hi-Tech Hospital, Ponkunnam Trissur. While the deceased was working as a supervisor, the appellant was the waiter. Their relationship was quite cordial till 12.1.2003, on which day an innocuous incident which involved the appellant and some nurses attached to the hospital took place inside the canteen. PW1 Rajimol, who is a nurse attached to the hospital came to the canteen, along with some other nurses for having their Dinner. It was the appellant who had served them their food. Raji mol, in view of a stomach ailment suffered by her, placed her legs on top of a chair. This irked the appellant and he demanded that she sit in a more appropriate manner. Raji mol readily put her leg down but her friend Sheeba took umbrage of the comments and there occurred a wordy altercation between the two. Deceased Gopakumar, hearing the noisy exchange, intervened and escorted the appellant to the kitchen and asked the appellant not to quarrel with the staff nurses . The appellant got enraged and questioned the authority of Gopakumar. There arose a scuffle between the two , and they were separated by PW 2 to 4 , the employees working in the same canteen. The prosecution further alleges that the appellant lost his cool and picked up a fork found at arms length and attempted to inflict a stab. Gopakumar was able to wrest the knife from the hands of the accused. Minor injuries were suffered by the accused as a result . Thereafter the deceased and the appellant were separated. Gopakumar went and stood near a half wall inside the kitchen and appellant took him unawares and took a knife lying nearby and stabbed Gopakumar on the left side of his neck . Gopakumar attempted to block the appellant and took evasive action , as a result of which his hands struck the face of the accused and he fell down on a table placed nearby, consequent of which the appellant suffered a fracture of his nasal bone . The appellant dropped his knife and left the scene of crime in a jiffy.

3. The FIR which is marked as Ext.P1(a) was registered at 9.30 p.m on the same day itself by PW10, the Sub Inspector of police, based on the statement furnished by PW2, Rajesh, the assistant cook working in the same hospital canteen. It reveals that the injured was initially taken to the Westfort Hi Tech Hospital by PWs 2, 3 and 4, where he was attended to by PW6, who had issued Ext.P3 wound certificate. Owing to the seriousness of the injuries, the injured was referred to the

nearby Westfort hospital, but his life could not be saved and was declared dead on arrival by PW7. PW16, the Circle Inspector of Police, took over investigation and prepared Ext.P8 inquest over the body of the deceased. MO3, 4 and 6 to 12 were seized. Thereafter, Ext.P17 scene mahazar was prepared and MO1 fork, MO2 knife and MO5 gold chain found at the scene of crime were seized. Immediately after the incident, the appellant got himself admitted in the Medical College Hospital, Thrissur, where he underwent treatment, until he was arrested by PW16 on 20.01.2003. Witnesses were questioned by PW16 and in the course of investigation, PW15 issued a requisition for recording the 164 statement of material witnesses. PW8, the Judicial Magistrate of First Class - III, Thrissur, recorded the 164 statements of PWs 2 to 4. It was PW5, the Forensic expert attached to the Thrissur Medical College Hospital, who conducted autopsy over the dead body and issued Ext.P2 postmortem certificate. Finally, after conclusion of investigation, it was PW15 who laid the final report before jurisdictional Magistrate, and the said court took cognizance of the offence.

4. Committal proceedings were initiated by the learned jurisdictional Magistrate and after complying with the formalities, committed the case to the Court of Sessions. The charge was framed in accordance with law and when the same was read over to the accused, he pleaded not guilty and claimed that he be tried.

5. To substantiate the charges levelled against the appellant, the prosecution examined PWs1 to 16 through whom Exts.P1 to P24 were marked. The prosecution also produced and identified MOs1 to 14. When questioned by the trial Court u/s 313(1)(b) of the Code of Criminal Procedure, apart from denying the incriminating materials arising against him in the prosecution evidence, the appellant filed a statement detailing his version of the incident. According to the appellant, he had been undergoing treatment at various mental hospitals for the past ten years as he was suffering from serious psychiatric disorder. It is stated that on the date of incident, he was unable, by virtue of the mental disorder suffered by him, to understand the nature and consequences of his act. He would state that he was inflicted injuries by the deceased prior to him committing the offensive act and owing to the diseased state of his mind, he was unable to discern the consequences. It is further stated that he had not intentionally

committed any act and that he had no intention to cause any injury to Gopakumar, the deceased in the instant case. Alternatively, he stated that he had no knowledge that Gopakumar would succumb to the injuries sustained as a result of the unintended injury inflicted by him.

6. On finding that the accused could not be acquitted u/s 232 of the Code of Criminal Procedure, he was asked to enter upon his defence. On the side of the defence, DWs 1 to 6 were examined and Exts. D1 to D5 were marked.

7. The learned Sessions Judge considering the evidence on record, found the prosecution case to be credible and cogent and accordingly convicted and sentenced the accused as aforesaid. The learned Sessions Judge repelled the contention of the appellant that he was entitled to bring his case within S. 84 of the IPC, holding that the evidence let in did not enable the Court to conclude that he was incapable of understanding the nature and consequences of the act committed by him at the time of infliction of the injuries. Holding so the appellant was found guilty and was convicted and sentenced to undergo imprisonment for life as stated above.

8. We have heard Shri.S.Rajeev, the learned counsel appearing for the appellant and Shri.K.K.Rajeev, the learned Public Prosecutor. We also perused the entire records.

9. According to Shri. S. Rajeev, the learned counsel appearing for the appellant, the reliance placed by the learned Sessions Judge on the evidence of PWs 2, 3 and 4, the employees of the canteen, was misplaced. It was submitted by the learned counsel that their evidence was discrepant, uninspiring and at variance inter se and being persons working under the deceased, were bound to give a distorted and biased version of the incident. The learned counsel would submit that, the evidence of witnesses were uncharitably modulated during the course of the trial by adding embroidery to their initial versions. It was further submitted that cogent and convincing evidence was adduced by the defence by examining Psychiatrists who had treated the accused to prove that the appellant was suffering from Psychosis and major mental disorder and the learned Sessions Judge ought to have extended the protection u/s 84 of the IPC to the appellant.

Finally, the learned counsel submitted that the learned Sessions Judge has acted improperly in not considering whether the offence proved against the accused fell within the various clauses of S.300 of the IPC or as to whether he was entitled to avail the extenuating protection of Exception 1 and/or Exception 4 of S.300 of the IPC. It was submitted that the accused had sustained a fracture to the nasal bone and the evidence let in by the prosecution revealed that the act, even if it is found to have been proved, was committed without premeditation, in a sudden fight, in the heat of passion upon a sudden quarrel without the appellant having taken undue advantage or acted in a cruel or unusual manner. It was further submitted by the learned counsel that notwithstanding the fact that the benefit of S. 84 could not be extended to the appellant, while considering the applicability of Exception 4 of S.300, his sick mental status should have been reckoned, so that strict rigors, as would be applicable to a normal reasonable and sane person, should not have been applied by the learned Sessions Judge. According to the learned counsel, all the doctors had opined that the mental disease suffered by him could easily have sparked up his emotions and once it reached an excited state, he would have been prevented from controlling his acts as a reasonable and prudent person.

10. Au contraire, the learned Public Prosecutor has submitted that the evidence let in by the prosecution by examining PWs 1 to 4 are cogent and convincing and the sequence of events narrated by the aforesaid witnesses would reveal that the appellant had acted in a cruel and unusual manner and that he was not entitled to seek solace under any of the exceptions to S.300 of the IPC. It is pointed out that the sequence of events reveals in unmistakable terms that the appellant was the aggressor and he had inflicted the fatal injury on the neck of the deceased Gopakumar with intent to cause death. The learned Public Prosecutor further submitted that the learned Sessions Judge had properly and correctly evaluated the evidence and has believed the version of the eye witnesses.

11. To bring home the guilt of the accused, the prosecution mainly rely on the ocular evidence of PW 1 to 4 , whose narration of the events will shed ample light on the incident which commenced within the four walls of a hospital canteen and ended in a bloody fashion inside the kitchen.

12. PW1 is the staff nurse of the Westfort Hi Tech Hospital. PW1 testified before Court that she was working as staff nurse at the Westfort Hi Tech Hospital and that on 12.01.2003, at about 7.45 p.m., she along with her friends Minimol and Sheeba had gone to the hospital canteen for taking dinner. The food was served to them by the accused. PW1 was nursing a stomach ailment and to obtain relief she placed her legs on an adjacent chair. Accused took offence in the sitting posture and reprimanded her. She immediately placed her legs down on the floor but the matter was taken up by her friend, Sheeba, who asked the accused to mind his own business. This irked the accused and there was a hot exchange of words. This was noticed by the deceased who was the supervisor .He intervened and after asking the accused the reason for raising his voice escorted him to the kitchen. After sometime, she heard the sounds of vessels tumbling down and immediately thereafter, PW4 - Daison, hurriedly came and asked them to get some help. They informed the hospital security and while she along with her friends were standing on the ground floor, near to the stairs, saw the deceased being carried by the other staff. The deceased was seen clutching his neck and he was profusely bleeding.

13. PW2 was the assistant cook attached to the Westfort Hi Tech Hospital and he testified that on 12.01.2003 at 8 p.m., the accused as well as the deceased Gopakumar were in the canteen. He heard some noisy exchanges from the restaurant area. Deceased Gopakumar, who is the canteen supervisor went there to enquire. After sometime, the deceased Gopakumar along with the accused to the kitchen. Gopakumar asked the accused as to why he was raising his voice at the hospital staff and he was told to inform him if he had any problems with the customers. The accused retorted back by challenging the authority of Gopakumar and by pointing his fingers at Gopakumar asked him as to who he was for asking questions. According to the witness, this was followed by a scuffle between Gopakumar and the accused. PWs2, 3 and 4 interfered and separated them. At that time, the accused took a fork from an adjacent table and attempted to stab Gopakumar. Gopakumar wrested the fork from the hands of the accused as a result of which minor injuries were sustained by the accused on his fingers. After getting the fork it was dropped down on the floor by the accused. Immediately thereafter, the accused took MO2 knife which was found nearby and stabbed

Gopakumar on the left side of his neck. Gopakumar used his hands to block the stab. His hands struck the accused and he fell down on the nearby table. The witness stated that he, along with PW3 and PW4, carried Gopakumar and took him to the casualty of the hospital. They were asked to take the deceased to the Westfort Hospital, which was nearby. Since they were not able to summon the ambulance, he along with PW3 and PW4 took Gopakumar in a Maruti car to the Westfort Hospital at Padinjarecotta. Gopakumar was declared dead by the doctor who examined him. Immediately thereafter, he rushed to the Ayyanthole police station and gave Ext.P1 statement. He identified MO1 fork which was used by the deceased initially and MO2 knife. He also stated that he had given 164 statement before the learned Magistrate. In cross examination, the witness stated that there was no previous enmity between the deceased and the accused. He also admitted that the accused had also sustained some injuries in the course of the scuffle. He would state that prior to the incident, the accused had no occasion to behave in an improper manner towards Gopakumar or to the witness. He also testified that Gopakumar had fisted the accused 2 or 3 times and those blows fell on the hands and shoulder of the accused. To a pointed question in cross examination, the witness admitted that it was after Gopakumar had fisted the accused that the accused had taken the fork and the knife. Several questions were put by the learned defence counsel to bring out the fact that the accused acted in a manner befitting an insane person, but the same was shielded by the witness who asserted that the accused behaved quite like a normal person, prior to , and subsequent to the incident.

14. PW3 is one Ramankutty who was working as assistant cook in the canteen. The said witness would state that on 12.1.2003 at 8.00 p.m while he along with PW2 and PW4 - Daison were in the canteen kitchen, they heard sounds of a noisy exchange of words. According to the said witness, it was that of Gopakumar and the accused. After sometime, Gopakumar along with accused came to the kitchen. After reaching kitchen, Gopakumar asked the accused as to why he was raising his voice at customers. The accused became furious and after pointing his fingers towards the deceased questioned his authority. Thereafter they engaged in fisticuffs. The witness along with others, interfered and they were separated. The accused then took hold of a fork lying on the adjacent table and attempted to stab

Gopakumar. Gopakumar, a six-footer, wrested the knife from the hands of the accused. Some injuries were sustained on the palms of the accused. Immediately thereafter, the accused took a knife from an adjacent table and stabbed on the left side of the neck of Gopakumar. Gopakumar tried to evade the stab and according to the witness, the hands of Gopakumar struck on the face of the accused and the accused fell down on the table lying adjacent. Accused dropped the knife then and there and left the place. The witness corroborated the version of PW2 in respect of rest of the incident. In cross examination, he stated that prior to the incident, Gopakumar and the accused were having a very amiable relationship and were very friendly with each other and there had never been an occasion wherein the accused had talked loudly or had picked up a fight with any other person. Further, in cross examination, the witness would state that he had held back the accused for some time and it was thereafter that the accused had gone and stabbed Gopakumar on his neck with MO2 knife. He added that the accused was in the habit of taking medicines.

15. PW4 was working as a cleaning staff in the canteen. He also corroborated the version of PW2 and PW3. According to the witness, at 7.45 pm, the nurses of the hospital came to the canteen for dinner. Rajimol had placed her legs over the chair. The accused asked her to put her legs down. Thereafter he spoke about the incident involving Sheeba and the accused. Hearing the sounds of altercation, Gopakumar came to the canteen. The accused was asked to come to the canteen and on reaching the canteen, Gopakumar asked him as to why he was picking fight with the staff nurses. Immediately the accused retorted at Gopakumar and questioned his authority. There occurred a scuffle between the accused and the deceased. PW2 and PW3 separated them. Immediately thereafter, the fork lying on the adjacent table, was taken by the accused and he attempted to stab Gopakumar with the same. Gopakumar wrested the fork from his hands and as a result of which, accused sustained some injuries on his neck. Gopakumar thereafter went and stood near the cash counter. At that time, the accused took a knife and stabbed Gopakumar at his neck. Gopakumar tried to block the stab and his hands struck the face of the accused and he fell down on the adjacent table. Gopakumar started bleeding profusely and the accused put the knife down and left the place. In cross examination, the witness stated that the accused also had

sustained an injury on his nose when he had fallen on the adjacent side table. The witness denied that he had any knowledge of mental ailment suffered by the accused. He testified that Gopakumar and the accused had exchanged blows at each other and further that Gopakumar attempted to block the stab injury and in course of the same, Gopakumar had pushed the accused and it was at that time that the accused had fallen down. He asserted that when the accused had gone to stab Gopakumar, the accused was not bleeding from his nose. He also stated that Gopakumar must have used necessary pressure when the accused had attempted to stab him.

16. In respect of the initial phase of the incident that transpired in the restaurant area, the evidence of PW2, 3 and 4 are identical. There is some shroud of darkness in their evidence as regards the commencement of the fight and as to who struck the initial blow. PW2 has stated in cross examination that deceased Gopakumar had fisted the accused first and that it was later that the fork was taken by the accused from the adjacent table. It has also come out in evidence that the accused had sustained a fracture of his nasal bone. PW4 has stated a different version in respect of the 2nd phase of the incident and has deposed that after wresting the fork from the hands of the deceased, the accused went and stood near a glass partition and that the accused at that time came from behind and inflicted the fatal blow . PW2 and PW3 does not support this version of the incident, though while being cross examined, PW 3 testified in the above lines. PW4 was examined in court on the next day of examination of PW 2 and PW 3 and this is highlighted by the learned counsel to contend that the version of PW 4 is overly exaggerated to paint a different picture of the incident.

17. To prove the fatal injury sustained by the deceased, prosecution examined PW5, the Assistant Professor of Forensic Medicine and the Deputy Police Surgeon at Medical College, Thrissur, who had issued Ext.P2 postmortem certificate. After conducting the autopsy on the dead body of the deceased on 13.1.2003, he had noted the ante mortem injuries found on the body of the deceased. It has to be mentioned at this juncture that the defence does not dispute the injuries. PW5 opined that the deceased had died by injury No.3 which is the incised wound sustained on the neck of the deceased. In cross examination

it was deposed by the doctor that injury No.3 is necessary for causing death in the usual course .

18. In Ext.P2 postmortem certificate, the following ante mortem injuries are noted:-

(i). Contused abrasion, 3x0.2 cm vertical over right chin, 0.5 cm vertically below right angle of mouth.

(ii). Four circular contused abrasion, 0.3 cm each in diameter, one above the other and 0.3 cm apart, over left side of face, with upper one 3cm in front of tragus at 10 O clock position.

(iii). Incised wound 7x2x2, spindle shaped, oblique over left side of neck with front upper end 4cm vertically below tip of mastoid process, cutting muscles, minor nerves and vessels, outer aspect of carotid sheath and external carotid artery underneath and tailing outwards.

(iv). Linear abrasion, 2.5 cm long, transverse, over front of right forearm, 5cm above wrist.

(v). Contused abrasion, 3x0.3 cm, vertical, over outer aspect of left upper arm, 4cm, below shoulder tip.

(vi). Fracture separation of right greater horn of hyoid bone, 0.3 cm inner to tip and fracture dislocation of joint of right greater horn with body of hyoid bone Reddish blood infiltrated around fracture and dislocation. Other soft tissues, cartilages and vertebrae of neck intact under flap dissection of neck under bloodless field.

19. The prosecution also examined PW14, the doctor attached to the Medical College Hospital, Thrissur, through whom Ext.P11 wound certificate was proved. The said certificate reveals that the accused had sustained some injuries which included a nasal fracture in the course of the above incident. The injuries detailed in Ext.P11 certificate are extracted here for easy reference.

(i). Tender swelling on nose with deformity suggesting fracture on nasal wall blood clot in both nasal cavities.

(ii). Lacerated wound 11x1 cm about 5cm above right ear.

(iii). Abrasion on right hand and right foot.

20. The fact that it was the accused who caused the injury and the version of the witnesses with regard to the occurrence is so imposing that a strong challenge in respect of the same cannot and was not raised before us by the learned counsel appearing for the appellant. We are also of the view that the evidence let in by the prosecution is probable, natural and cogent and hence reliable and that the learned Sessions Judge was justified in accepting the same and holding that Gopakumar was murdered by the appellant in the manner spoken to by the witnesses and that the death was as a result of the injuries sustained.

21. The point strenuously stressed by the learned counsel appearing for the appellant relates to the defence u/s 84 of the IPC. Under this provision nothing is an offence, which is done by a person who, at the time of doing it, is, by reason of unsoundness of mind is incapable of knowing the nature of his act or that he was doing is wrong or contrary to law. Before we advert to the evidence of DW1 to 5 examined by the defence, to prove that the acts of the accused would fall within the ambit of S.84 of the IPC, we shall briefly refer the principles laid down by the Apex Court in Babu v. State of Rajasthan (2007 (4) KLT 63 (SC) . In the said case the Apex Court had occasion to consider the legal test of responsibility in cases of alleged unsoundness mind. It was held as follows:-

[7] S.84 lays down the legal test of responsibility in cases of alleged unsoundness of mind. There is no definition of unsoundness of mind in the IPC. Courts have, however mainly treated this expression as equivalent to insanity. But the term insanity itself has no precise definition. It is a term used to describe varying degrees of mental disorder. So, every person who is mentally diseased, is not ipso facto exempted from criminal responsibility. A distinction is to be made between legal insanity and medical insanity. A Court is concerned with legal insanity and not with medical insanity. The burden of proof rests on an accused to prove his insanity, which arises by virtue of S.105 of the Indian Evidence Act, 1882 (in short the 'Evidence Act') and is not so onerous as that upon the prosecution to prove that the accused committed the act with which he is charged. The burden on the

accused is no higher than that resting upon a plaintiff or a defendant in a civil proceeding. In dealing with cases involving a defence of insanity, distinction must be made between cases, in which insanity is more or less proved and the question is only as to the degree of irresponsibility and cases, in which insanity is sought to be proved in respect of a person, who for all intents and purposes, appears sane. In all cases, where previous insanity is proved or admitted, certain considerations have to be borne in mind. Mayne summarises them as follows: "Whether there was deliberation and preparation for the act; whether it was done in a manner which showed a desire to concealment ; whether after the crime, the offender showed consciousness of guilt and made efforts to avoid detections whether, after his arrest, he offered false excuses and made false statements. All facts of this sort are material as bearing on the test, which Bramwall, submitted to a jury in such a case : Would the prisoner have committed the act if there had been a policeman at his elbow ? It is to be remembered that these tests are good for cases in which previous insanity is more or less established. These tests are not always reliable where there is, what Mayne calls, "inferential insanity"."

[8]. Under S.84 IPC, a person is exonerated from liability for doing an act on the ground of unsoundness of mind if he, at the time of doing the act, is either incapable of knowing (a) the nature of the act, or (b) that he is doing what is either wrong or contrary to law. The accused is protected not only when, on account of insanity, he was incapable of knowing the nature of the act, but also when he did not know either that the act was wrong or that it was contrary to law, although he might know the nature of the act itself. He is, however, not protected if he knew that what he was doing was wrong, even if he did not know that it was contrary to law, and also if he knew that what he was doing was contrary to law even though he did not know that it was wrong. The onus of proving unsoundness of mind is on the accused. But where during the investigation previous history of insanity is revealed, it is the duty of an honest investigator to subject the accused to a medical examination and place that evidence before the Court and if this is not done, it creates a serious infirmity in the prosecution case and the benefit of doubt has to be given to the accused. The onus, however, has to be discharged by producing evidence as to the conduct of the accused shortly prior to the offence and his conduct at the time or immediately afterwards, also by evidence of his

mental condition and other relevant factors. Every person is presumed to know the natural consequences of his act. Similarly every person is also presumed to know the law. The prosecution has not to establish these facts.

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[11]. The section itself provides that the benefit is available only after it is proved that at the time of committing the act, the accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or that even if he did not know it, it was either wrong or contrary to law then this section must be applied. The crucial point of time for deciding whether the benefit of this section should be given or not, is the material time when the offence takes place. In coming to that conclusion, the relevant circumstances are to be taken into consideration, it would be dangerous to admit the defence of insanity upon arguments derived merely from the character of the crime. It is only unsoundness of mind which naturally impairs the cognitive faculties of the mind that can form a ground of exemption from criminal responsibility. Stephen in 'History of the Criminal Law of England, Vo. II, page 166 has observed that if a persons cut off the head of a sleeping man because it would be great fun to see him looking for it when he woke up, would obviously be a case where the perpetrator of the act would be incapable of knowing the physical effects of his act. The law recognizes nothing but incapacity to realise the nature of the act and presumes that where a man's mind or his faculties of ratiocination are sufficiently dim to apprehend what he is doing, he must always be presumed to intend the consequence of the action he takes Mere absence of motive for a crime, howsoever atrocious it may be, cannot in the absence of plea and proof of legal insanity, bring the case within this section. This Court in Sherall Walli Mohammed v. State of Maharashtra, 1972 Cri LJ 1523 (SC), held that the mere fact that no motive has been proved why the accused murdered his wife and child or the fact that he made no attempt to run away when the door was broken open would not indicate that he was insane or that he did not have necessary mens rea for the offence. Mere abnormality of mind or partial delusion, irresistible impulse or compulsive behaviour of a psychopath affords no protection under S.84 as the law contained in that section is still squarely based on the outdated Naughton rules of

19th Century England. The provisions of S.84 are in substance the same as that laid down in the answers of the Judges to the questions put to them by the House of Lords, in M Naughton's case. 1843 (4) St. Tr. (NS) 847. Behaviour, antecedent, attendant and subsequent to the event, may be relevant in finding the mental condition of the accused at the time of the event, but not that remote in time. It is difficult to prove the precise state of the offender's mind at the time of the commission of the offence, but some indication thereof is often furnished by the conduct of the offender while committing it or immediately after the commission of the offence. A lucid interval of an insane person is not merely a cessation of the violent symptoms of the disorder, but a restoration of the faculties of the mind sufficiently to enable the person soundly to judge the act; but the expression does not necessarily mean complete or perfect restoration of the mental faculties to their original condition. So, if there is such a restoration, the person concerned can do the act with such reason, memory and judgment as to make it a legal act; but merely a cessation of the violent symptoms of the disorder is not sufficient.

[12]. the standard to be applied is whether according to the ordinary standard, adopted by reasonable men, the act was right or wrong. The mere fact that an 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 had affected his emotions and will, or that he had committed certain unusual acts, in the past or that he was liable to recurring fits of insanity at short intervals, or that he was subject to getting epileptic fits but there was nothing abnormal in his behaviour, or that his behaviour was queer, cannot be sufficient to attract the application of this section.

22. It is submitted by the learned counsel that Ext.D1 to D5 would reveal that at least from the year 2001, the accused was diagnosed as suffering from acute psychosis and major mental disorder, and he is also diagnosed to have been afflicted by paranoid schizophrenia. We have gone through Exts.D1 to D5 and also the evidence of DW1 to DW6. The lower Court has deliberated on this point extensively and the same can be found from Para 42 onwards of the trial court judgment. Though the evidence of DW1 to DW5 speaks about the bouts of depression and mental disorder suffered by the accused at various points of time,

it does not appear to us , that the accused has satisfied the test of legal insanity. Further, the evidence of PW1 to PW4, who had occasion to deal with the accused and who had been working along with the accused in the hospital canteen, would also reveal that the accused was behaving in a normal manner with no unusual behavioral pattern. We accept the conclusion of the court below that there is absolutely no data to conclude that the appellant was having a relapse of his ailments. It has come out that the appellant was working in the same canteen for the past two months and his behavior has been exemplary. He was doing a job which required interaction with strangers and no one has a case that the accused had occasion to behave in a manner unbecoming of a normal and sane person . It has come out in evidence that immediately after the incident , the accused had dropped down the weapon and went out of the hospital canteen . He got admitted himself in the Hospital and gave his version of the incident to the doctor concerned. On the next day, he had furnished a detailed statement to the police in quite an intelligent manner, detailing his version of the incident . All these materials were adverted to by the learned Sessions Judge to ultimately deny the benefit to the accused u/s 84 of the IPC. We have independently considered the evidence let in by the defence and also the medical records produced before Court and we are of the view that the learned Sessions Judge was perfectly justified in coming to the conclusion that the accused was, on the date of incident, capable of knowing the nature and consequences of his acts as well as its legal consequences. We are of the considered view that the defence u/s 84 of the IPC was rightly declined by the learned Sessions Judge.

23. The matter does not end there. We need to advert to the contention of the learned counsel as regards the substantive plea relating to the applicability of Exception 4 of S.300 IPC. We have scanned the trial court Judgment and it does not appear to us that the Learned Sessions Judge has made any genuine effort to consider the said plea of the accused.

24. For bringing in the operation of Exception 4 of section 300 of the IPC, it has to be established by the appellant that the act was committed without premeditation, in a sudden fight , in the heat of passion upon a sudden quarrel without him having taken undue advantage and not having acted in a cruel or unusual manner. The

Fourth Exception of S.300 IPC covers acts done in a sudden fight. The said exception deals with a case of prosecution not covered by the first Exception. The exception is founded upon the same principle, for, in both, there is absence of premeditation. But, while in the case of Exception 1, there is total deprivation of self control, in case of Exception 4, there is only that heat of passion which clouds men's sober reason and urges them to deeds which they would not otherwise do. There is provocation in Exception 4 as in Exception 1; but the injury done is not the direct consequence of that provocation. In fact Exception 4 deals with the cases in which notwithstanding that a blow may have been struck, or some provocation given in the origin of the dispute or in whatever way the quarrel may have originated, yet the subsequent conduct of both parties puts them in respect of guilt upon equal footing. A 'sudden fight' implies mutual provocation and blows on each side. The homicide committed is then clearly not traceable to unilateral provocation, nor in such cases could the whole blame be placed on one side. For if it were so, the Exception more appropriately applicable would be Exception 1. There is no previous deliberation or determination to fight. A fight suddenly takes place, for which both parties are more or less to be blamed. It may be that one of them started it, but if the other had not aggravated it by his own conduct, it would not have taken the serious turn it did. There is then mutual provocation and aggravation, and it is difficult to apportion the share of blame which attaches to each fighter. The help of Exception 4 can be invoked if death is caused (a) without premeditation, (b) in a sudden fight; (c) without the offenders having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed. To bring a case within Exception 4, all the ingredients mentioned in it must be found. It is to be noted that the 'fight' occurring in Exception 4 to S.300 IPC is not defined in the IPC. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties have worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two and more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to

show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in cruel or unusual manner. The expression 'undue advantage' as used in the provision means 'unfair advantage'. Where the offender takes undue advantage or has acted in a cruel or unusual manner, the benefit of Exception 4 cannot be given to him. If the weapon used or the manner of attack by the assailant is out of all proportion, that circumstance must be taken into consideration to decide whether undue advantage has been taken. (See Iqbal Singh V State of Punjab 2008 (11) SCC 698) .

25. We have already considered the evidence of PW2 to PW4 to evaluate the sequence of events. There is no dispute that there was a scuffle between the appellant and the deceased after coming to the kitchen. There is absolute paucity of evidence as to who struck the initial blow. All that is available before Court is that the deceased asked the accused as to why he was raising his voice at the customers and the accused responded by questioning the authority of the deceased. All the witnesses speak about the scuffle but it does not appear as to who started the scuffle and struck the initial blow. There is evidence to show that the deceased was a sixfooter and was well built when compared to the accused. PW2, 3 and 4 are all working under the deceased who is the Supervisor of the canteen and apparently, the appellant, most reasonably would have suspected that he would be cornered by the others. Though we have denied the benefit of S.84 of the IPC to the accused, it cannot be disputed that the accused was suffering from mental ailments and was having sporadic bouts. We find merit in the contention of the learned counsel appearing for the appellant that the prosecution has modulated its version in the course of trial and the evidence let in by PW4 is at variance with the earliest statement of PW2 as per Ext.P1 FI statement. The version of PW2 and PW3 would reveal that the whole transaction started inside the kitchen when blows were exchanged by the accused and the deceased , and culminated in the kitchen by the infliction of stab injury by the appellant on the neck of Gopakumar. The sequence of events leaves one in no manner of doubt that the acts formed part of a single transaction.

26. The learned Public Prosecutor pointed out that the evidence of PW4 would show that after wresting the fork from the hands of the accused, the deceased had gone to the kitchen and it was at that particular point of time that the accused had inflicted a blow with a knife on the neck of the deceased. At the same time, if the evidence of PW2 and 3 is scanned in earnest, it reveals a different version. This aspect of the matter is narrated by PW2. The FI Statement is not in terms of the modulated version of PW4. At the sake of repetition, we have to state that we are in the dark as to how the scuffle initially started and at what point of time, the accused had sustained fracture on his nasal bone. Minor inconsistencies are there in the statement of witnesses and we are unable to discern for certain as to the exact point of time the accused sustained fracture on his nasal bone and as to whether it was simultaneous with the sustaining of injury by the deceased.

27. Certain other facts are also undisputed. It is on record that the relationship between the accused and the deceased upto that point and also between the accused and PW2 to PW4 were cordial. The quarrel had initially started after an innocuous occurrence in which the accused had asked one of the nurses who had come to take food to keep her legs down. It is also on record that there occurred a sudden quarrel between the parties and they had exchanged blows. Admittedly, there was no chance for any premeditation and the incident had occurred by chance. There is no evidence on record that there was any prior enmity between the accused and the deceased. We also agree with the contention of the learned counsel for the appellant that the incident occurred in the heat of passion and the accused is not shown to have taken undue advantage or has acted in a cruel or unusual manner. It is on record that only one injury was inflicted by the accused on the deceased and it has also been brought out that a nasal fracture was also sustained by the accused. The incident had occurred in a spontaneous manner and there was no occasion for either of the parties to think of the consequences.

28. We need not have to stress much upon these contentions as these principles were elaborately dealt with in a recent judgment of the Apex Court reported in *Ankush Shivaji Gaikwad v. State of Maharashtra* (AIR 2013 SC 2454) wherein it was held as follows:-

We may lastly refer to the decision of this Court in Pulicherla Nagaraju @ Nagaraja Reddy v. State of Andhra Pradesh (2006) 11 SCC 444 where this Court enumerated some of the circumstances relevant to finding out whether there was any intention to cause death on the part of the accused. This Court observed:

"...Therefore, the court should proceed to decide the pivotal question of intention, with care and caution, as that will decide whether the case falls under Section 302 or 304 Part I or 304 Part II. Many petty or insignificant matters - plucking of a fruit, straying of a cattle, quarrel of children, utterance of a rude word or even an objectionable glance, may lead to altercations and group clashes culminating in deaths. Usual motives like revenge, greed, jealousy or suspicion may be totally absent in such cases. There may be no intention. There may be no premeditation. In fact, there may not even be criminality. At the other end of the spectrum, there may be cases of murder where the accused attempts to avoid the penalty for murder by attempting to put forth a case that there was no intention to cause death. It is for the courts to ensure that the cases of murder punishable under Section 302, are not converted into offences punishable under Section 304 Part I/II, or cases of culpable homicide not amounting to murder, are treated as murder punishable under Section 302. The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances : (i) nature of the weapon used; (ii) whether the weapon was carried by the accused or was picked up from the spot; (iii) whether the blow is aimed at a vital part of the body; (iv) the amount of force employed in causing injury; (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight; (vi) whether the incident occurs by chance or whether there was any pre-meditation; (vii) whether there was any prior enmity or whether the deceased was a stranger; (viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation; (ix) whether it was in the heat of passion; (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; (xi) whether the accused dealt a single blow or several blows. The above list of circumstances is, of course, not exhaustive and there may be several other special circumstances with reference to individual cases which may throw light on the question of intention..."

(emphasis supplied)

29. Taking cue from the exposition of law laid down in Ankush Shivaji Gaikwad (supra), we have to observe that the instant is not a case where the appellant had come armed with a weapon in order to attack the deceased. The weapon was found in the kitchen and it was in a fit of passion that the weapon was used by the accused. It has also come out in evidence that the act was committed in the course of a sudden quarrel and there is no allegation of premeditation. There is no allegation of any previous enmity. It does not appear to us that the accused had taken any undue advantage and he has not acted in an unusual manner. Only a single blow was inflicted and the appellant has also suffered a nasal fracture. Going by the evidence of PW2 and 3, the incident cannot be bifurcated into two. It is not possible also to come to a conclusion that the heat of passion had died down in the course of the incident. Taking all these circumstances into consideration, we are satisfied that it would be absolutely safe to conclude that the case would fall under Exception 4 to S.300 of the IPC, and the appellant can be held guilty only of an offence of culpable homicide not amounting to murder u/s 299 punishable u/s 304 of the IPC.

30. The next question is whether the case will come under the first part or the second part of S.304 IPC. For punishment u/s 304 Part I, the prosecution must prove: the death of the person in question; that such death was caused by the act of the accused and that the accused intended by such act to cause death or cause such bodily injury as was likely to cause death. As regards punishment for Section 304 Part II, the prosecution has to prove the death of the person in question; that such death was caused by the act of the accused and that he knew that such act of his was likely to cause death. [See Ankush Sivaji Gaekwad (supra)] .There was a sudden, instantaneous altercation and a single injury was inflicted in a fit of passion and it does not appear to us that the accused had acted in a cruel or unusual manner. The overall facts of the case and the circumstances persuade us to hold that the act committed was done with the knowledge that it is likely to cause death but without any intention to cause death or cause such bodily injury as is likely to cause death. Hence, we hold that offence committed by the accused comes under Part II of S.304 IPC. In order to arrive at such a conclusion, we have

taken note of the decisions of Apex Court in Bhera v. State of Rajasthan (2000 (10) SCC 225), Kunha Yippu v. State of Kerala (2000 (10) SCC 307), Masumsha Hasansha Musalman v. State of Maharashtra (2000 (3) SCC 557), Guljar Hussain v. State of U.P. (1993 Supp (1) SCC 554), K. Ramakrishnan Unnithan v. State of Kerala (1999 (3) SCC 309), Pappu v. State of M.P. (2006 (7) SCC 391), Muthu v. State by Inspector of Police, Tamil Nadu (2007 (12) Scale 795) and Ankush Shivaji Gaikwad v. State of Maharashtra (AIR 2013 SC 2454). We, accordingly set aside the conviction of the appellant u/s 302 of the IPC and modify the same to one u/s 304 part II of the IPC.

31. In the result, the appeal is allowed in part. The verdict of guilt, conviction and sentence imposed on the appellant is modified to the effect that the appellant is found guilty and he is convicted u/s 304 part II of the IPC and he is sentenced to undergo rigorous imprisonment for a period of seven years. Set off as per law will be allowed.

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