

Mahadeva Vs. State of Karnataka

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Court : Karnataka

Decided On : Jul-20-2018

Judge : Budihal R.B. and B.a.Patil

Appeal No. : CRL.A 979/2014

Appellant : Mahadeva

Respondent : State of Karnataka

Advocate for Def. : Sri. Vijayakumar Majage

Judgement :

- 1 - R IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE 20TH DAY OF JULY, 2018 PRESENT THE HONBLE MR. JUSTICE BUDIHAL R.B. AND THE HONBLE MR. JUSTICE B.A. PATIL CRIMINAL APPEAL NO. 979/2014 BETWEEN: Mahadeva S/o Munishetty Aged about 40 years R/of Chikkalathuru Village Hanur Hobli, Kollegal Taluk Chamarajanagara District-571 440 Appellant (By Sri N.S. Sampangi Ramaiah, Amicus Curiae Sri K.B.K. Swamy, Advocate) AND: State of Karnataka by Ramapura Police Kollegala Taluk Chamarajanagara District-571 440 Represented by State Public Prosecutor High Court Building Bangalore. Respondent (By Sri Vijayakumar Majage, Addl. SPP) - 2 - This Criminal Appeal is filed under Section 374(2) of the Cr.P.C praying to set aside the judgment and order dated 5/11.7.2014, passed by the Court of the Sessions Judge and Presiding Officer, in S.C.No.13/2010 convicting the

appellant/accused for the offences punishable under Sections 302 and 309 of Indian Penal Code. Kollegal, Court, Fast Track This Criminal Appeal coming on for hearing this day, B.A.PATIL J., delivered the following:-

JUDGMENT

Accused Mahadeva, son of Munishetty, appellant herein was convicted for the offences punishable under Sections 302 and 309 of IPC by the Sessions Judge and Presiding Officer, Fast Track Court, Kollegal in SC.No.13/2010 and he was sentenced to undergo RI for life and to pay a fine of Rs.50,000/-, in default, to undergo further imprisonment for a period of five months and was also sentenced to undergo SI for a period of six months by the judgment and order of conviction and sentence dated 5/11.7.2014. Challenging the same he has preferred the present appeal.-. 3 - 2. Before we proceed to dwell upon the merits of the case, it is necessary to state the brief facts of case of the prosecution which are that on 1.10.2009 after finishing the dinner, accused forced his daughter Jyothi and his mother Maramma to sleep outside the house by threatening them if they enter into the house, he will cut off their legs. It is further case of the prosecution that the accused used to suspect the fidelity of his wife deceased Jayamma. When Jayamma slept at about 8.30 p.m. inside the house, he cut off her neck with chopper and thereby committed the murder of his wife Jayamma, thereafter he consumed the poison and tried to commit suicide and as such a case was registered in Crime No.126/2009 for the offences punishable under Sections 302 and 309 of IPC. After completion of investigation the charge sheet was laid against the accused. Thereafter the committal Court committed the case to the Sessions Court and the Sessions Court took - 4 - cognizance and after hearing the learned Public Prosecutor and the learned counsel for the accused, prepared the charge, which was read over and explained to the accused. Accused pleaded not guilty and claimed to be tried, as such the trial was fixed.

3. In order to prove its case, the prosecution has examined 16 witnesses and got marked 26 Exhibits with sub-markings and also 10 Material Objects. Thereafter, the statement of the accused was recorded under Section 313 of Cr.P.C. by preparing the questionnaire on the basis of incriminating material. Accused denied

the same and thereafter he got examined the doctor as DW.1 and got marked Ex.D1. After hearing the learned counsel for both the parties, the trial Court has come to the conclusion that there is sufficient material to prove the case of the prosecution and - 5 - ultimately convicted the accused for the aforesaid offences.

4. We have heard Sri Sampangi Ramaiah N.S., learned amicus curiae representing the appellant- accused and subsequently the learned counsel Sri. K.B.K. Swamy, so also the learned Additional SPP Sri Vijayakumar Majage appearing for the respondent-State.

5. The learned amicus curiae apart from the grounds urged in the appeal memo, by taking us through the evidence on record, submitted that the evidence which has been produced by the prosecution is not worth believable so as to bring home the guilt of the accused beyond all reasonable doubt. The trial Court without considering the said fact has wrongly convicted the accused. He further submitted that if the circumstances under which the alleged incident has taken place, if cumulatively taken into consideration, it clearly goes to show - 6 - that the accused was suffering from paranoid schizophrenia which is a mental disease and because of the said disease the accused was incapable of knowing the nature of act and was not having any mental element to cause the death of the deceased, then under such circumstances the trial Court ought to have acquitted the accused by extending the benefit under Section 84 of IPC. Therefore, the judgment and order passed by the trial Court is not sustainable in law. He further submitted that the evidence of DW.1 is self- explanatory, which clearly goes to show that since 1995 the accused was under treatment and he has also taken the treatment in Kerala State and he was discharged from the hospital against the medical advice and after his discharge, within 90 days the alleged incident has taken place. Even immediately thereafter, again he has been admitted to NIMHANS Hospital for the treatment. All these cumulative circumstances clearly go to show that the accused - 7 - was under a delusion at the time when the alleged incident has taken place and the said fact is proved by him. Under such circumstances the benefit of Section 84 of IPC ought to have been given to the accused by the trial Court. In order to substantiate his contention, he relied upon the decisions of the Honble Apex Court in the case of Dahyabhai Chhaganbhai Thakkar Vs. State of Gujarath

reported in AIR 1964 SC1563 and in the case of Srikanth Anandrao Bhosale Vs. State of Maharashtra reported in (2002)7 SCC748 On these grounds he prayed to allow the appeal and to set aside the judgment and order passed by the trial Court and to acquit the accused.

6. Even the learned counsel appearing for the appellant-accused submitted that the accused was not having any mens rea to commit the alleged offence and the presence of the daughter of the accused who came to be examined as PW.4 itself is - 8 - not proved by the prosecution and when the accused is mentally unsound, the trial Court ought to have given the benefit of doubt to the accused. On these grounds he prayed to allow the appeal.

7. Per contra, the learned Additional SPP vehemently argued by submitting that the prosecution has clearly established the fact that the accused has committed the murder of his wife and even PW.4, the daughter of the deceased and accused has clearly stated in her evidence that as on the date of the incident there was a quarrel between the accused and the deceased and thereafter accused warned them to go and sleep outside the house and thereafter accused and the deceased slept inside the house. At about 8.30 p.m. accused came out and saw whether all were sleeping or not. At that time PW.4 pretended as if she was sleeping and thereafter the accused went inside, committed the murder of his mother and - 9 - thereafter he came out by telling that he has murdered his wife. The said fact itself amounts to an extra-judicial confession and when the accused and the deceased alone were staying in the house, then under such circumstances as per Section 106 of the Indian Evidence Act, he has to explain as to under what circumstances the death of the deceased occurred inside the house. He further submitted that immediately after the incident the accused has also tried to commit suicide by consuming poison. He further submitted that in order to attract the provisions of Section 84 of IPC the accused has to prove that at the time of the alleged incident, he was mentally unsound. He further submitted that immediately after the incident the accused was also taken to the hospital, where the doctor-PW.15 examined him and has not opined that the accused was suffering with mental ailment. He further submitted that though the accused was taking treatment in NIMHANS Hospital, - 10 - it was 15 to 20 days prior to the incident in question, which will not

enure to the benefit of the accused to hold that at the time of the alleged incident the accused was mentally unsound. He further submitted that the trial Court after considering all the materials placed on record has rightly convicted the accused-appellant herein. The appellant has not made out any good grounds so as to interfere with the impugned judgment and order. Hence, he prays that the appeal may be dismissed being devoid of merits by confirming the impugned judgment and order.

8. In order to substantiate its case, the prosecution has examined 16 witnesses. PW.1 is the brother of the deceased who filed the complaint as per Ex.P21. He has deposed that after his recovery, accused started suspecting the fidelity of his deceased sister and accused also used to take treatment. After coming from Kerala, the deceased - 11 - used to tell her mother that the accused was suspecting her fidelity and ill-treating her. He has further deposed that about two years back at about 8.30 p.m. CW.12 informed over the phone that the accused has cut the neck of the deceased and immediately by hiring two tempos they went to the house of the deceased, where they saw the dead body of the deceased and the accused was taken to the hospital as he had consumed the poison. He has further deposed that he has filed the complaint as per Ex.P21. On the next day morning, police came and drawn the spot mahazar. During the course of cross-examination of PW.1, much has not been elicited so as to discard the evidence of this witness.

9. PW.4 is the daughter of the deceased and accused. She is the main witness in this case. She has deposed that as her uncle had removed the roof of their house, her family members used to - 12 - stay in the house of her grandparents as they were not having any residential house. She further deposed that when they were staying in the house of her grandparents, his parents, i.e., accused and the deceased used to quarrel and her father by consuming alcohol used to assault her mother. On 1.10.2009 her mother has been murdered. On the said date, they brought the meat as the villagers have cut the goat. During evening hours after preparing the food, they had food. Thereafter when they put mat for sleeping, her father told that they should not sleep inside and asked them to go and sleep outside. He also threatened that if they sleep inside, he will cut off their legs. She

further deposed that herself, her younger sister, younger brother and her grandmother went and slept outside. Her parents slept inside the house. She further deposed that when they slept outside, her father came out and saw whether they slept or not. At that time, she pretended that she was sleeping.-. 13 - Thereafter, at about 8.30 p.m. her father went near the shop of Siddaraju and was shouting that he committed the murder of the deceased Jayamma by cutting her throat and he also poured polidal himself on his body. When they all went inside the house, they saw the deceased in a pool of blood. She further deposed that the day on which the incident took place, the accused was grinding macchu, but she did not enquire about the same. She has also identified the said macchu as MO.No.5. During the course of cross-examination, PW.4 has deposed that when her father pleaded for his excuse, herself, her grandfather, her younger sister and younger brother were present and when she awoke at about 8.00 p.m. she went near the shop, where 20 to 30 persons had gathered. When it is suggested that when the accused was suffering from unsoundness of mind, he used to behave like a mad and indifferently, the said suggestion has been denied by this witness.-.

14 - 10. It is the contention of the learned counsel for the appellant that the evidence of PW.4-Jyothi is not trustworthy and reliable as there is every likelihood of tutoring the said witness by the relatives and friends. As could be seen from the evidence of PW.4, the same is convincing about the quality of the facts which are stated by her. It is well established of principle that the evidence of the child witness is not required to be rejected per se, but the Court as a rule of prudence should consider such evidence on close scrutiny and only on being convinced about the quality thereof and reliability, it can record the conviction of the accused. This proposition of law has been laid down by the Honble Apex Court in the case Golla Yelugu Govindu Vs. State of A.P., reported in AIR 2008 SC1842 wherein at paragraph-9, it has been observed as under:- - 15 - 9. The decision on the question whether the child witness has sufficient intelligence primarily rests with the trial Judge who notices his manners, his apparent possession or lack of intelligence, and said Judge may resort to any examination which will tend to disclose his capacity and intelligence as well as his understanding of the obligation of an oath. The decision of the trial court may, however, be disturbed by the higher Court if from what is preserved in the records, it is clear his conclusion was

erroneous. This precaution is necessary because child witnesses are amenable to tutoring and often live in a world of make beliefs. Though it is an established principle that child witnesses are dangerous witnesses as they are pliable and liable to be influenced easily, shaped and moulded, but it is also an accepted norm that if after careful scrutiny of their evidence the Court comes to the conclusion that there is an impress of truth in it, there is no obstacle in the way - 16 - of accepting the evidence of a child witness. 11. Keeping in view the said proposition of law if the evidence of PW.4 is closely scrutinized, in the cross-examination no such material has been brought on record to show that the said witness has been tutored, but the evidence of this witness appears to be natural and probable.

12. Even if we peruse the evidence of PW.6, mother of the accused, she has deposed that there used to be little bit quarrels between the accused and the deceased. Accused, deceased and their children were residing with her. On the date of the incident during night hours, herself and her grandchildren were sleeping outside and she did not notice who slept inside the house. She further deposed that even accused had food along with them and on the next day at about 9.00 a.m. people gathered and told that deceased has been - 17 - murdered. This witness has been treated as hostile. During the course of cross-examination by the learned Public Prosecutor, she has admitted the suggestion as true that on 1.10.2009 they have cut the goat in their village and after bringing the meat they prepared the food. Herself, accused, deceased and grandchildren together had food and thereafter as usual herself and her grandchildren put the mat to sleep inside the house. The other suggestions have been denied by this witness.

13. In so far as suspecting the fidelity of the deceased by the accused is concerned, PW.1 the brother of the deceased has deposed that the accused was suspecting the fidelity of his wife. He used to make galata and the said fact used to be informed by the deceased to her mother. He has further deposed that about two years back at about 8.30 p.m. CW.12 informed over the phone that the accused has cut the neck of the deceased and - 18 - immediately by hiring two tempos they went to the house of the deceased, where they saw the dead body of the deceased and the accused was taken to the hospital as he had consumed the

poison.

14. If we peruse the evidence of the doctor- PW.15 who examined the accused, he has deposed that he examined the accused on 2.10.2009 at about 1.20 a.m. His health was normal and he was discharged about 6.30 a.m. The doctor who conducted the autopsy over the dead body of the deceased has clearly deposed that the deceased died because of cut throat injury caused to her neck. Even PW.16, the Police Inspector has deposed that immediately after apprehending the accused, he has recorded the voluntary statement of the accused as per Ex.P23 and in the presence of the panch witnesses he has recovered the machhu by drawing a mahazar as per Ex.P11 and seized the machhu-MO.No.5. Though PWs.4, 5, 6, 7 and 8 - 19 - to 14 have not supported the case of the prosecution and have been treated as hostile, there is consistent evidence of PW.4 who is said to have seen the accused sleeping along with the deceased inside the bedroom at about 8.30 a.m. She has also deposed that the accused came out and told that he murdered the deceased Jayamma by cutting her throat. The said fact also amounts to nothing, but an extrajudicial confession. The evidence of PW.4 also corroborates with the evidence of the doctor who conducted autopsy over the body of the deceased. Even in the evidence of the prosecution, nothing has been brought on record to show that some other persons were having ill-will so as to eliminate the deceased. PW.4, being own daughter of the accused will not spare a third person if he has committed the alleged offence and involve his own father. It is well established principle of law that no real culprits will be spared and an innocent person will be fixed in the crime. In that light, it - 20 - can safely be held that the prosecution has proved the guilt of the accused beyond all reasonable doubt.

15. The alternative argument of the learned counsel for the appellant-accused is that though accused has committed the alleged offence, he was not having any mens rea. As he was suffering with mental disease at the time of alleged incident, he is entitled to the benefit under Section 84 of IPC. For the purpose of brevity we quote Section 84 of IPC, which reads as under:- 84. Act of a person of unsound mind-Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act,

or that he is doing what is either wrong or contrary to law. - 21 - 16. In view of the aforesaid provision of law, it is the submission of the learned counsel for the appellant-accused that the accused was suffering with paranoid schizophrenia which is a mental disease and when a person is under paranoid delusion he is not fully aware of his activities and its consequences. The cause of schizophrenia is still not known, but heredity plays a part. Paranoid schizophrenia, in the vast majority of cases, starts in the fourth decade and develops insidiously. Suspiciousness is the characteristic symptom of the early stage and subsequently it gradually develops into delusions of persecution. He further submitted that in this behalf, the evidence of DW.1-Dr.Suresh Badadmath examined by the accused substantiates his contention.

17. In order to prove his defence, the accused has got examined DW.1-Dr.Suresh Badadmath, working as Additional Professor of Psychiatric in - 22 - NIMHANS Hospital who has deposed that for the first time, the accused was got admitted in NIMHANS Hospital on 9.9.2009 and as against the medical advice, the family members of the accused got him discharged on 15.9.2009. On 15.6.2009 he was prescribed ECT (Electro Convulsive Therapy) for three times. On 9.3.2010 again the family members of the accused got admitted him and he was in the hospital for treatment till 24.4.2010. Again on 11.7.2010 he was brought to the hospital and was discharged on 13.7.2010. DW.1 has further deposed that as per the order of the Court the accused was admitted on 19.11.2010 and discharged on 8.12.2010 and again the jail authorities got admitted him on 11.5.2011 and he was discharged on 19.5.2011. DW.1 has also produced the case sheet as per Ex.D1. He has further deposed that the accused has been treated in his hospital and he is having two types of mental disease namely, i) paranoid schizophrenia ii) alcohol - 23 - harmful use. The accused was having the features of disease that he used to suspect his wifes fidelity; he was also having suspicion that the people may talk about him; he was also having fear that the people may kill him and he was also having the tendency of committing suicide and depression and because of the same he used to consume alcohol. He has further deposed that when the accused was admitted in the hospital for first time, he was suffering from serious mental disease and as such he has been treated with ECT. He has further deposed that he was having the tendency of second group throughout the treatment that was

required for him. He has further deposed that as the medicine has been stopped, the said disease has been developed and reached the said stage. The said disease is hereditary. He has further deposed that there is a record in the hospital that his mother was also having mental disease. He has further deposed that when the accused was brought for the - 24 - first time he was not in a position to listen to anybody. During the said disease, patient will not be in a position to know as to what act he will do. He has further deposed that he cannot say as to what was the condition of the accused at the time of the alleged incident. During the course of cross- examination, DW.1 has deposed that on 14.9.2009, there were signs of improvement in the accused and it was not required to see him by keeping a watch. He has further deposed that he cannot say that as on 1.10.2009 what was the mental status of the accused. Except that, nothing has been elicited from the mouth of this witness.

18. On going through the entire evidence and the arguments of the learned counsel for the appellant-accused, it is the contention of the learned counsel for the appellant-accused that though the death of the deceased is a homicidal, the accused is entitled to get the benefit under - 25 - Section 84 of IPC. If we peruse Section 84 of IPC closely, it comes under general exceptions. When a person is accused of any offence, the burden of proving the existence of the said circumstance and to bring the case within anyone of general exceptions as enumerated in IPC, is on the person who takes that contention as per Section 105 of the Indian Evidence Act. If we see Section 101 of the Indian Evidence Act, it also enumerates that whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. By keeping in view the aforesaid proposition of law, it makes clear the onus of establishing insanity is on the accused and the burden of proof upon him is no higher than which rests upon a party to civil proceedings. Though it is the contention of the learned Additional SPP that the accused must prove the fact that he was insane as on the date and time of the alleged incident, - 26 - when a plea of legal insanity is set up, the Court has to consider whether at the time of commission of the offence the accused, by reason of unsoundness of mind, was incapable of knowing the nature of the act or that he was doing what was either wrong or contrary to law. The crucial point of time for ascertaining the state of

mind of the accused is the time when the offence was committed. Whether the accused was in such a state of mind as to be entitled to the benefit of Section 84 of IPC can only be established from the circumstances which preceded, attended and followed the crime. This proposition of law has been laid down by the Honble Apex Court in the case of Dahyabhai Chhaganbhai Thakkar Vs. State of Gujarath (cited supra), wherein at paragraph-9 it has been observed as under:- 9. When a plea of legal insanity is set up, the court has to consider whether at the time of commission of - 27 - the offence the accused, by reason of unsoundness of mind, was incapable of knowing the nature of the act or that he was doing what was either wrong or contrary to law. The crucial point of time for ascertaining the state of mind of the accused is the time when the offence was committed. Whether the accused was in such a state of mind as to be entitled to the benefit of Section 84 of the Indian Penal Code can only be established from the circumstances which preceded, attended and followed the crime.

19. On going through the above decision of the Honble Apex Court it makes clear that it is not exactly the date and time of the offence alone is to be looked into, but even the circumstances which preceded, attended and followed at the time of crime must also be seen. In that light, if we see the evidence of DW.1-Dr.Suresh Badadmath, it clearly indicates the fact that earlier to the incident in question, the accused was under treatment for - 28 - the said insanity and even immediately after the incident and subsequently thereafter he was also under the treatment. Even the evidence of DW.1 discloses the fact that the accused was discharged against the medical advice. It also indicates the fact that the mother of the accused was also suffering with the unsoundness of mind. In that light, the only point which has been made clear in this behalf is that the unsoundness of the accused before and after the incident is a relevant fact. From the circumstances of the case clearly an inference can be reasonably drawn that the appellant was under a delusion at the relevant time. Even the evidence produced indicates the fact that the accused was suffering with paranoid schizophrenia which is a mental disease. What is paranoid schizophrenia when it starts, what are its characteristics and dangers flowing from this ailment is a question. Paranoid schizophrenia, in the vast majority of cases, starts in the fourth - 29 - decade and develops insidiously. Suspiciousness is the characteristic symptom of the early stage. Ideas of

reference occur, which gradually develop into delusions of persecution. Auditory hallucinations follow, which in the beginning, start as sounds or noises in the ears, but afterwards change into abuses or insults. Delusions are at first indefinite, but gradually they become fixed and definite, to lead the patient to believe that he is persecuted by some unknown person or some superhuman agency. He believes that his food is being poisoned, some noxious gases are blown into his room and people are plotting against him to ruin him. disturbances of general sensation give rise to hallucinations, which are attributed to the effects of hypnotism, electricity, wireless telegraphy or atomic agencies. The patient gets very irritated and excited owing to these painful and disagreeable hallucinations and delusions. Since so many people are against him and are interested in his ruin, he - 30 - comes to believe that he must be a very important man. The nature of delusions thus may change from persecutory to the grandiose type. He entertains delusions of grandeur, power and wealth, and generally conducts himself in a haughty and overbearing manner. The patient usually retains his memory and orientation and does not show signs of insanity, until the conversation is directed to the particular type of delusion from which he is suffering. When delusions affect his behaviour, he is often a source of danger to himself and to others. (Modis Medical Jurisprudence and Toxicology, 22nd Edn.) 20. Further, according to Modi, the cause of schizophrenia is still not known but heredity plays a part. The irritation and excitement are effects of illness. On delusion affecting the behaviour of a patient, he is a source of danger to himself and to others.-. 31 - 21. In view of the medical evidence of DW.1 and by looking into circumstances of the case an inference can reasonably be drawn that the appellant-accused was under delusion at the relevant time and he is entitled to get the benefit under Section 84 of IPC. This proposition of law has been laid down by the Honble Apex Court in the case of Srikanth Anandrao Bhosale Vs. State of Maharashtra (cited supra), wherein at paragraphs-9 and 20, it has been observed as under:- 9. From the aforesaid evidence, it has been proved that there was a family history of psychiatric illness. The father of the appellant was suffering from the ailment at the age of 65 and 1989 his father ran away from the house. xxx xxx xxx xxx xxx xxx xxx xxx - 32 - 20. Mr.Arun Pednekar relies upon Sheralli Wali Mohammed v. State of Maharashtra to contend that the mere fact that the appellant did not make any

attempt to run away or that he committed the crime in daylight and did not try to hide it or that the motive to kill his wife was very weak, would not indicate that at the time of commission of the act the appellant was suffering from unsoundness of mind or he did not have requisite mens rea for the commission of the offence. It is correct that these facts itself would not indicate insanity. In the present case, however, it is not only the aforesaid facts but it is the totality of the circumstances seen in the light of the evidence on record to prove that the appellant was suffering from paranoid schizophrenia. The unsoundness of mind before and after the incident is a relevant fact. From the circumstances of the case clearly an inference can be reasonably drawn that the appellant was under a delusion at the relevant time. He was under an - 33 - attack of the ailment. The anger theory on which reliance has been placed is not ruled out under schizophrenia attack. Having regard to the nature of burden on the appellant, we are of the view that the appellant has proved the existence of circumstances as required by Section 105 of the Evidence Act so as to get the benefit of Section 84 IPC. We are unable to hold that the crime was committed as a result of an extreme fit of anger. There is a reasonable doubt that at the time of commission of the crime, the appellant was incapable of knowing the nature of the act by reason of unsoundness of mind and, thus, he is entitled to the benefit of Section 84 IPC. Hence, the conviction and sentence of the appellant cannot be sustained. 22. On going through the aforesaid decision, the facts and the circumstances in the said decision are aptly applicable to the facts and circumstances of the present case. In that light, we feel that the accused is entitled to the benefit of Section 84 of - 34 - IPC. Even this Court in the case of Sri B.Sudhakara Vs. State - Through the Inspector of Police, Mangalore North, in Criminal Appeal No.502/2012 disposed of on 15.3.2016 has taken the similar view and the benefit has been extended to the accused under Section 84 of IPC.

23. Though we have come to the conclusion that the accused has committed the alleged offence, we find from the evidence of DW.1 and the other material produced in this behalf that the accused has proved that he was suffering from unsoundness of mind at the time of commission of the alleged offence and was incapable of knowing the nature of the act. When that being the case, the general exceptions will come into play. Nothing is an offence which is done by a person

who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to - 35 - law. Therefore, the accused-appellant herein is entitled to be acquitted.

24. We have carefully and cautiously gone through the judgment and order passed by the trial Court. The trial Court has not considered the aforesaid aspect in its right perspective which has resulted in miscarriage of justice. On re- appreciation of the entire evidence on record in detail as discussed by us above, we conclude that reasons assigned and the conclusion arrived at by the trial Court are improper and incorrect, inasmuch as the evidence on record, more particularly the evidence of the doctor-DW.1 is not properly considered and appreciated by the trial Court in the manner in which it ought to have been considered by it.

25. In view of the aforesaid detailed discussion, we are of the considered opinion that the appellant has made out a case so as to allow - 36 - the appeal and to acquit him from the charges levelled against him. In that light, the judgment and order of conviction and sentence passed by the Sessions Judge and Presiding Officer, Fast Track Court, Kollegal in SC.No.13/2010, dated 5/11.7.2014 is liable to be set aside. Accordingly, we pass the following:- We allow the appeal, set aside the judgment and order of the conviction passed by the Court below. Appellant/accused is acquitted from the charges levelled against him. Though we have acquitted the accused/appellant, the duty of the counsel does not come to an end in the light of provision of Sec.335 Cr.P.C. Concerned prison authority is hereby directed to take steps for taking the appellant/accused to NIMHANS Hospital at Bengaluru to decide whether the person is qualifying for being retained in the institution or not. If after observation at some - 37 - future point of time, a stage is reached when the doctors are of the view that the appellant/accused is perfectly well and safe both to himself and society, in that event, it is open to them to discharge the appellant/accused after issuing intimation to the relatives of the accused/appellant and also trial Court which has to apply its independent mind to the facts and circumstances. We place on record the valuable assistance rendered by the learned Amicus Curiae Sri. N. S. Sampangi Ramaiah. We direct the registry to pay a sum of Rs.10,000/- (Rupees Ten Thousand only) to the learned Amicus Curiae as honorarium. Sd/- JUDGE Sd/- JUDGE Pages 1 to 35ck/- Pages 36 to

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