

Binu Kumar vs the State of Kerala

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SooperKanoon Citation : sooperkanoon.com/1869828

Court : Kerala

Decided On : Dec-06-2019

Judge : Honourable Mr. Justice a.Hariprasad,Honourable Mr.Justice N.Anil Kumar

Appeal No. : CRL.A/221/2016

Appellant : Binu Kumar

Respondent : The State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A.HARIPRASAD & THE HONOURABLE MR.JUSTICE N.ANIL KUMAR FRIDAY, THE 06TH DAY OF DECEMBER 2019/15TH AGRAHAYANA, 1941 AGAINST THE JUDGMENT IN S.C.330/2014 DATED 22-12-2015 OF ADDITIONAL SESSIONS COURT-I, ALAPPUZHA C.P.122/2013 OF JUDICIAL FIRST CLASS MAGISTRATE COURT-I, HARIPAD CRIME No.612/2013 OF Kareelakulangara Police Station, Alappuzha APPELLANT/ACCUSED: BINU KUMAR, AGED 39 YEARS, S/O.VSUDEVAN, HARIVILASAM, MUTHUKULAM THEKKUM MURI, MUTHUKULAM VILLAGE, ALAPPUZHA PIN 690506. BY ADVS. SRI.B.RENJITHKUMAR SRI.T.PRADEEPAKUMAR SMT.C.SINDHU (PLAVILAIL)

SRI.D.THILAKAN RESPONDENT: THE STATE OF KERALA, REP.BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM. BY SMT.AMBIKA DEVI.S, SPL.GP ATROCITIES AGAINST WOMEN & CHILDREN & WELFARE OF W & C SR.PUBLIC PROSECUTOR-MR.K.B.UDAYAKUMAR THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 19-11-2019, THE COURT ON 06-12-2019 DELIVERED THE FOLLOWING: :-2-:

JUDGMENT

(Dated this the 06th day of December, 2019) N.ANIL KUMAR, J: This appeal is directed against the judgment of the Additional Sessions Judge-I, Alappuzha convicting the appellant for having committed offences punishable under Sections 449, 307 and 302 of the Indian Penal Code, 1860 (for short 'IPC') and sentenced to undergo rigorous imprisonment for five years and also pay fine of Rs.1000/-, in default to undergo rigorous imprisonment for ten days for the offence punishable under Section 449 IPC; to undergo rigorous imprisonment for seven years and to pay fine of Rs.1000/-, in default to suffer rigorous imprisonment for ten days for the offence punishable under Section 307 IPC; and to undergo imprisonment for life and also to pay fine of Rs.1000/- and in default to undergo rigorous imprisonment for ten days for the offence punishable under Section 302 IPC for committing uxoricide. :-3-:

2. The prosecution case in brief is that on 20.7.2013, at

about 5 p.m, the accused, who is the husband of deceased Vinodini, went to the house owned by PW2 Kanakamma, the mother of deceased Vinodini bearing Door No.IV/382 of Patiyoor Panchayath and village and when PW2 hesitated to open the door, the accused uttered abusive words against her, forcefully entered the house and questioned as to why the cases pending against him were not withdrawn. Later, when PW2

was engaged in household duties, the accused demanded the key of the cupboard. PW2 refused to give the key of the cupboard as demanded by the accused. Feeling agitated, the accused went out, took out a snapper knife from his motorcycle bearing registration No.KL-04/T-8372, entered the hall of the house and stabbed her on her abdomen. On seeing this, his wife-Vinodini made an attempt to obstruct the illegal act of the accused, whereupon she was wrongfully confined and again stabbed PW2 which hit behind her left ear. When the knife had broken, he threw away the same in the hall, entered the kitchen, took out a :-4-: steel knife and stabbed Vinodini incessantly. When she went out to the front courtyard of the house, for escaping from the clutches of the accused, the accused followed her and again attacked with the knife at the earthen road, north-east of Thazhvaram Bindu Bhavan. As a result of the assault, Vinodini succumbed to the injuries and PW2 sustained grievous injuries.

3. For the occurrence in question, PW1 lodged Ext.P1

First Information Statement (FIS) before PW22 the then Station House Officer, Kareelakkulangara Police Station. On the strength of Ext.P1 FIS, PW22 registered Ext.P22 First Information Report (FIR).

4. PW23 took over the investigation in this case

immediately after the occurrence. On getting information that the deceased and her mother were taken to the Government Hospital, Kayamkulam for treatment, PW23 also went there, identified the accused, removed him to the Kareelakkulangara Police Station and kept him there under the safe custody of PW22 under surveillance till the accused was arrested the next :-5-: day. While in custody, on the basis of the confession statement given by the accused, MO3 knife and MO13 rain coat were recovered in accordance with Section 27 of the Evidence Act. PW23 collected Ext.P15 certificate issued by the Secretary of Grama Panchayat to prove the issuance of residence certificate. On his request, PW18- the Village Officer prepared Ext.P16 plan and also

issued Ext.P17 possession certificate of the property which is in the name of deceased Vinodini. During the course of investigation, PW20 the Motor Vehicle Inspector, inspected the motor vehicle bearing Regn.NO.KL-04/T-8372 and issued Ext.P19 report. PW23 questioned the witnesses, recorded their statements, collected material evidence including scientific evidence and filed the final report before the jurisdictional court.

5. After complying with the usual formalities, the

learned Magistrate committed the case to the court of Sessions, Alappuzha. The learned Sessions Judge took cognizance of the offences under Sections 449,307 and 302 of the IPC against the accused, numbered the case as SC.No.330/2014 and made over :-6-: the case to the 1st Additional Sessions Court, Alappuzha for trial and disposal.

6. On committal, after having heard both sides, the

learned Sessions Judge framed charge under Sections 294(b), 302, 307, 342 and 449 of IPC against the accused. The accused pleaded not guilty to the charge whereupon the prosecution examined PWs.1 to 23 on prosecution side and Exts.P1 to P38. Mos.1 to 26 were also marked as material objects. On cross- examination, Exts.D1 to D3(b) contradictions in respect of PWs.2,3 and 6 were marked.

7. On closing the evidence for prosecution, the

accused was questioned under Section 313(1)(b) of Cr.P.C. He denied all the incriminating circumstances appearing in the evidence against him. He added that when he had gone to the wife's residence for taking his wife and child to his house, PW2 and PW6 Simi objected his entry into the house and PW6 tried to attack him. He stated that he could not remember what transpired thereafter. While he was working in Sharjah, he had :-7-: suffered a head injury. The child was born after the incident

in Sharjah. When his wife's parents realised that his wife was conceived, they insisted that the couple should not have a child at that time. He alleged that PW2 Kanakamma, her husband Ramachandran and other relatives forcibly took Vinodini from his house. When he resisted the act of his mother-in-law, she took out a chopper against him. When his grandmother questioned them, she was attacked and injured. The child was not shown to him for the last four years. PW2 had instituted a false case against him in the court at Haripad in connection with an incident, which happened on the date of the naming ceremony of the child. After four months of the birth of the child, he had given a complaint before the Superintendent of Police seeking the company of his wife and child. Later, PW2 and his wife Vinodini filed a case before the Magistrate Court alleging that he was attempting to evict them from the house. The incident involved in this case happened when both the cases were posted in the court. On that day, both his wife-Vinodini :-8-: and PW2 were present. According to the accused, for about one month before the incident, they were living together.

8. The learned trial Judge did not deem it fit and proper

to acquit the accused under Section 232 of the Cr.P.C. Thereupon, the accused was called upon to enter on his defence. DWs.1 to 5 were examined on defence side and marked Exts.X1 and D1 to D8.

9. Before we advert to the evidence in this case, it

becomes necessary to consider whether the accused inflicted injuries to the victim Vinodini and her mother PW2 Kanakamma on 20.7.2013 at about 5 p.m. as alleged by the prosecution.

10. On 21.7.2013, PW7 Dr.Unmesh, Associate Professor

of Forensic Medicine and Deputy Police Surgeon, Medical College Hospital, Alappuzha conducted postmortem examination on the body of the deceased Vinodini and issued Ext.P2 Postmortem Certificate noting

18 antemortem injuries, which are narrated in paragraph 17 of the judgment. When examined before court, he stated that death of Vinodini was due :-9-: to an incised penetrating wound sustained to the neck, chest and abdomen on account of injury Nos.8,10 and 12. Considering the nature of the injuries sustained to the deceased, we think, it is appropriate to narrate injury Nos.8,10 and 12 as hereinbelow. 8. Incised penetrating wound 3.2x0.5 cm, obliquely placed on right side of back of trunk overlying the shoulder with its upper inner blunt end 6 cm outer to midline and at the level of top of shoulder. The wound was entering into the laryngeal space at pharyngo- laryngeal junction, below the level of hyoid bone after piercing through the neck muscles and facial structures. The wound was 8cm deep and was directed upwards, forwards and to the left. There was heavy infiltration of blood along the track. The air passages contained fluid blood and blood stained froth. The lungs showed foci of aspirated blood. The oesophagus and stomach also showed blood. Stomach was full with blood mixed with food;

9. xxxxx xxxxxx xxxxxx

10. Incised penetrating wound 3.4x1cm, 7.5 cm deep,

obliquely placed on right side of front of abdomen with its upper inner blunt end 17 cm outer to midline and 4 cm above top of hip bone. The wound was seen entering into the peritoneal cavity and was directed backwards and towards left. The peritoneal cavity was seen smeared with blood;

11. xxxxxxxx xxxxxxxx xxxxxx

12. Incised penetrating wound 3.5x0.9cm, 13.5 cm deep,

obliquely placed on left side of back of trunk with its :-10-: upper inner blunt end 14 cm outer to midline and 13 cm below top of shoulder. The wound was seen entering the chest cavity after piercing through the 8 th intercostals space on left side. The wound was directed downwards and forwards. The left chest cavity was seen smeared with blood;

11. PW7 adduced evidence to show that Vinodini

sustained a homicidal death and injury Nos.8,10 and 12 are independently sufficient to cause death in the ordinary course of nature. PW7 confirmed that the injuries could be caused with MO3.

12. PW16 Dr.Jain Jacob examined PW2 on 20.7.2013 at 5.40 p.m and issued Ext.P4 certificate noting the following injuries:-

1. Large cut injury on the anterior abdomen wall about 15 cms long and 5 to 6 cms deep;
2. Incised wound on the left hand 5x5 cms;
3. Incised wound on the right hand 6x0.5cms

13. He stated that at the time of examination, the

condition of PW2 was critical. According to him, as injury No.1 was in the vital part of the body, wherein profuse bleeding occurred and if proper timely treatment was not given, the injury :-11-: would be sufficient to cause death in the ordinary course of nature. He further stated that the injuries could be caused with MOs.1 and 2 weapons.

14. We now turn to the evidence before the court

below. PW1 Sivan is the nephew of Ramachandran, father of the deceased Vinodini and husband of PW2 Kanakamma. He has been conducting a printing press at Chettikulangara at Mavelikkara. On getting information that some untoward incident had happened in the residence of his uncle, he rushed to the place, collected details and proceeded to the Government Hospital, Kayamkulam where the injured was admitted. When he reached the hospital, he was told that Vinodini had already succumbed to the injuries and PW2 Kanakamma had been taken to the Medical College Hospital, Alappuzha for better treatment. Immediately,

thereafter he came to Kareelakulangara Police Station and lodged Ext.P1 First Information Statement before PW22.

15. PW2 Kanakamma, who is the mother of the

: -12- : deceased, deposed before court that on 20.7.2013, she had gone to the court at Haripad along with Vinodini. After attending the court, both of them returned home. They had lunch and after that, they were taking rest at home. While so, the accused came there on a bike and peeping through the window, asked her to call Vinodini. When she refused to open the door, he showered abusive words against her and forcibly stamped on the door. When she opened the door, the accused entered the house, went to her bedroom, ascertained the presence of both Vinodini and child and questioned her propriety in attending the court on that day. He threatened that every one would be done away with. Mean while, PW2 entered the kitchen and engaged herself in the household affairs. After sometime, Vinodini approached her and told her that the accused had come to take them home. PW2 advised her daughter and reminded the words of her father to be cautious in taking a decision regarding going back to his house. The accused somehow came to know about the conversation between PW2 and her daughter. Suddenly, he entered the : -13- : kitchen and asked for the key of the cupboard which she refused to give. While she was attempting to contact her husband through mobile phone, the accused stabbed her with MO1 knife on her abdomen. On seeing this, Vinodini rushed to save her from the assault. The accused became more violent and warned her against approaching him and threatened to kill her and her father. Sensing danger, PW2 advised her daughter and child to escape from the place. When she made an attempt to take the child, the accused attacked her with a knife which hit behind her left ear and the same broke. The accused threw the broken knife in the hall. PW2 identified MO1 knife and MO2 broken blade of MO1 knife before court. Since MO1 knife was broken, the accused went to the kitchen and took MO3 knife from the kitchen. The accused

stabbed Vinodini repeatedly. She somehow managed to take the daughter outside and went towards east near the coconut tree. The accused followed them and tried to stab her. When she resisted that attack, the knife hit on her right thumb. The accused continued to stab Vinodini. At :-14-: that time, PW5 Sathiyamma, resident of the eastern house came and took away the child safely. Thereafter, they moved eastwards and Vinodini fell into the muddy water. PW2 cried aloud for rescuing them and while so, the neighbours gathered there, took them to the Government Hospital, Kayamkulam. After giving first aid, she was taken to the Medical College Hospital, Alappuzha. PW2 testified that the accused had stabbed them with the intention of killing them. PW2 identified Mos.4 to 13 the wearing apparels belonging to herself, her daughter and the accused. She stated that as a result of the injuries sustained, her daughter succumbed to the injuries.

16. PW5 is Sathiyamma, who is the resident on the

immediate east of the house of the deceased. She stated that on 20.7.2013 at about 5 pm, she heard a hue and cry from the northern side of her house. She realised that Vinodini and PW2 were crying at that time. She went out and reached the residence of PW2 where she saw the accused stabbing Vinodini with a steel knife having a white handle. The child was crying :-15-: loudly at that time. Immediately, she took care of the child and left the place for the residence of her son Kannan. Then, she found her son and others rushing to the scene and when she reached the place again along with her son and others, she found Vinodini lying on her front in the muddy water. She further stated that her son took his car and both the injured were taken to the Medical College Hospital.

17. On cross-examination, she further stated that on

28th day ceremony of the child, there was a quarrel among the relatives. She further stated that when her elder son Binu had intervened in the matter, the

accused and his mother had abused them.

18. PW6 is the half brother of Vinodini and the son of

PW2 born in her wedlock with K.V.Lakshmanan. He testified that PW2 married K.V.Lakshmanan initially. In the said wedlock, she had two children including PW6. According to PW6, when he was 1 years old, PW2 deserted his father and started residing with Ramachandran. Vinodini is the daughter :-16-: born out of that relationship. PW6 also stated that he had gone for the 28th day ceremony of the child as invited by Vinodini. According to him, after the 28th day function, when the accused and his mother left the place, suddenly a box fell down from the lap of the mother and the gold ornaments contained therein were scattered on the floor. He testified that immediately after the function, the mother was taking away all the gold ornaments and on that score, an altercation took place between them. The accused then abused and beat her.

19. PW3 Sasidharan is a carpenter, who is the

brother of PW5 Sathiyamma. According to him, on the date of incident, he went to the place of occurrence on being alerted by one of his neighbours, where he could find her sister Sathiyamma standing there holding a child on her hip. He had also noted an old lady standing there holding her abdomen and trying out to rescue her daughter. According to him, on the immediate north of the northern boundary wall of the house, a girl was found lying on her chest. He went there, made and :-17-: turned her body lie on the back. Immediately, both the injured were taken to the hospital by them in the car owned by PW5's son Kannan.

20. During cross-examination, he had stated that while they were taking the injured in the car, the accused was found passing them on a bike.

21. PW4 Chandrikamma is the resident on the

immediate north of the house of the deceased. She testified that on 20.7.2013 at about 5 p.m, she heard a hue and cry from the residence of PW2 and immediately she rushed to the scene of occurrence. When she went to the scene of occurrence, she found Vinodini lying in blood on her chest and PW2 standing in pain, holding her abdomen.

22. On cross-examination, she stated that she also had seen the accused passing them on a bike on the date of occurrence.

23. On going through the oral evidence of PWs.2 to

5, it is clear that the accused was present at the scene of :-18:- occurrence. PW2 clearly stated the entire incident in detail starting from the arrival of the accused at the house till the time the deceased had fallen down on the mudroad and then when both were rushed to the hospital. The sequence of events after the occurrence are narrated by PWs.3 and 4. They had heard the hue and cry from the residence of PW2 following which they had rushed to the scene of occurrence. Later they found the accused leaving the place on the bike.

24. On analysis of the entire evidence, the court

below had entered a finding that the accused had married Vinodini on 6.11.2005 and in the wedlock, a child was born to the couple in a private hospital at Vavvakkavu. Relying on the oral evidence of PW2 and other circumstances including Ext.P2 Postmortem Certificate, the court below had come to a finding that the prosecution had been able to prove its case beyond reasonable doubt. Accordingly, the accused had been convicted and sentenced as stated in paragraph 1 of the judgment.

25. Heard Sri.B.Renjith Kumar, the learned counsel :-19-: for the appellant and Sri.K.B.Udaya Kumar, the learned Senior Public Prosecutor for the State.

26. Challenging the appreciation of evidence and

findings recorded by the trial court, learned counsel for the appellant mainly relied on the following points to establish that the prosecution failed to prove the offence beyond reasonable doubt. i)The accused sustained injuries in the very same occurrence. Thus,the genesis of the occurrence had been suppressed. ii)The Police manipulated material objects to suit the prosecution case. iii)Oral testimonies of PWs.2 and 5 are inconsistent and diametrically opposite. iv)Although the child born out of the wedlock between the accused and Vinodini were questioned by the Police, the child was not examined before court. v)The accused was suffering from serious mental disorder and he was doing that by reason of his unsoundness of mind and was incapable of knowing the nature of the act or that he was doing what was either wrong or contrary to law. vi)The accused had no intention to cause death of his wife. :-20-:

27. Per contra, the learned Public Prosecutor

submitted that there is absolutely nothing to disbelieve the evidence tendered by PWs.2 to 5. According to the learned Senior Public Prosecutor, the allegation of murder is proved, based on cogent and convincing evidence. In order to support the contention, the learned Senior Public Prosecutor mainly relied on the conduct of the accused on the date of occurrence and prior to the date of occurrence. On the fateful day, cases in connection with matrimonial dispute between the parties were posted in the court at Haripad and both the parties appeared in court. The learned Senior Public Prosecutor submitted that the accused came to the house and sought his entry obviously for the purpose of taking his wife and child to his home. As PW2 was not willing to let her daughter and child accompany him as demanded by the accused, the accused later assaulted PW2 and his wife, which resulted in causing grievous injuries to PW2 and his wife. His wife succumbed to the injuries later. Learned Senior Public Prosecutor emphasised the conduct of the accused :-21-: in assaulting PW2 and in committing uxoricide at their residence. Heavy reliance is also placed on the medical certificate and

postmortem certificate issued.

28. In view of the contention that the accused

sustained injuries in the very same occurrence, it becomes necessary to consider as to whether the accused had sustained injuries during the course of occurrence. PW15 Dr.Kshema Chithrajan was working as Assistant Surgeon at Taluk Head Quarters Hospital, Haripad on 20.7.2013. On that day, she had examined Binu Kumar, 37 years and issued Ext.P13 wound certificate. PW15 noted multiple abrasion on the body of the accused.

29. As per the requisition received from the Inspector

of Police, Kayamkulam on 21.7.2013, for examination of injuries and collection of hair and nail clippings, PW7 Dr.Unmesh conducted physical examination on the body of the accused on 21.7.2013 at 5p.m. and issued Ext.P3 wound certificate. In Ext.P3, PW7 stated that the accused sustained :-22-: injuries on the hand while defending the stabbing action by his brother-in-law Simi on 20.7.2013 evening around 5 p.m. at his wife's house. According to him, the accused told him that when he tried to catch hold of the knife using both hands, while he was being stabbed, there was a scuffle between them following that. According to him, he sought medical attention from Haripad Govt.Hospital around 5.30-6pm. Considering the nature of injuries sustained to the accused, we think, it is appropriate to narrate the details of the injuries of the accused as hereinbelow:- 1. Linear abrasion,11cm long, obliquely placed on left side of front of abdomen with its lower inner end 3cm outer to midline end 12 cm below costal margin.

2. Contusion 6.5x5cm, obliquely placed on right

side of back of trunk, 5cm outer to midline and 13cm below top of shoulder. Local rise of temperature and redness were present over the area. The contusion was

tender to touch.

3. Contusion 6.5x4.5cm, with an abrasion

(6.5x0.7cm) obliquely overlying it, on lower part of left side of back of trunk with its upper inner end 5cm outer to midline and 35cm below top of shoulder. Local rise of temperature and redness were present. The contusion was tender to touch.

4. Superficial incised wound, 1cm long, obliquely

placed on inner aspect of right palm (over the :-23-: hypothenar eminence) with its upper inner end 1.3cm below the wrist and near the inner border of right palm.

5. Incised wound, 1.9cm long, obliquely placed on

front aspect of distal phalanx of right index finger. The wound was oblique, slightly curved with convexity upwards and inwards; extending from the outer border of the distal crease to the tip of finger; downwards and to the left side with a tailing towards the tip (Depth of the wound could not be assessed).

6. Superficial incised wound 1.3cm long, curved

(with the convexity upwards) and obliquely placed on palmar aspect of left hand (overlying the thenar eminence) with its inner end 5cm below wrist and 5.5cm outer to the inner border of left hand.

7. Incised wound 0.6cm long, on tip of left index finger, involving the nail. The wound was oblique and over the outer half of the middle of nail; involving its whole thickness.

8. Superficial incised wound 0.6x0.2cm, transverse, on inner aspect of left thumb, 4cm above its tip.

9. Superficial incised wound 0.5x0.3cm, raising on

flap inwards, on outer aspect of left thumb over the root of proximal knuckle, 6.5cm above its tip. (The injuries No.4 and 6 were seen covered with bright red scab. The injuries No.5,8 and 9 were bleeding on manipulation.)

30. Now the question is whether the prosecution has

explained his injuries and if there is no such explanation, what :-24-: would be its legal effect. It is true that the prosecution is not bound to explain the injuries found on the accused in all cases. The evidence of PW7 would clearly show that the injuries sustained to the accused would not have been self inflicted. Under the circumstances, we are of the view that the prosecution is bound to offer an explanation as regards the injuries sustained to the accused. The explanation offered is that injury Nos.1 to 3 in Ext.P3 could be caused if the body goes in touch with a cot or a wall and other injuries could be caused in a scuffle by the weapon alleged to have been used to inflict injuries on PW2 and Vinodini.

31. In the case on hand, the prosecution adduced

evidence before the court touching the nature of injuries sustained to the accused. The fact that the accused sustained injuries at the time of occurrence or in the course of altercation has not been suppressed. The prosecution adduced evidence to show that consequent to the attack as against PW2, Vinodini intervened and as a result of which there was a scuffle between :-25-: the accused and Vinodini resulting in some injuries to him. In the case at hand, the prosecution admitted the presence of injuries on the body of the accused. The defence version which explains the injuries on the person of the accused is improbable. The presence of PW6 Simi has not been brought out in evidence. Since there is no omission on the part of the prosecution to explain the injuries on the person of the accused, we are inclined to accept the version of the prosecution which competes in probability with the prosecution case as put forward by PWs.1 to 6.

32. PW7 the Forensic Expert has spoken in clear

terms that the fatal injuries on the body of the deceased could be caused by MO3 which is a dangerous weapon. Further, the oral testimony of PW16 Dr.Jain Jacob, who had attended PW2 at the Taluk Headquarters Hospital at Kayamkulam and issued Ext.P14 wound certificate would clearly show that the injuries could be caused with MOs.1 to 3 weapons. Merely because, PW2 had made mention about a sword stick alleged to have been used in inflicting injuries on her on the date of occurrence, the same :-26-: could not be taken as a yardstick to hold that some other weapon was also used to inflict injuries on PW2. The injured was taken to the hospital in a critical condition and the possibility of furnishing necessary information to the Doctor by someone who accompanied the injured could not be ruled out. It is brought out in evidence that Vinodini had died due to the fatal stab injury sustained at that time. Similarly, PW2 had suffered grievous injuries on the vital parts of the body. If timely medical attention was not given, she also would have succumbed to the injuries. In view of the circumstances, we are of the view that the accused committed the act as alleged by the prosecution.

33. It is true that, once it is proved by the

prosecution that the accused was present at the time of occurrence and the accused committed uxoricide and assaulted his mother-in-law, the burden was heavy on the part of the appellant to show how his wife and his mother-in-law sustained injuries. The prosecution case is that the accused committed uxoricide. Section 106 of the Evidence Act requires a :-27-: person having special knowledge of the fact to explain the same as laid down by the Apex Court in C.S.D.Swamy v. The State [AIR 1960 SC 7], P.N.Krishna Lal and others v. Govt. of Kerala and another [1995 Supp.(2) SCC 187], Sidhartha Vashisht@Manu Sharma v. State (NCT of Delhi) [AIR 2010 SC 2352] and State of Rajasthan v. Parthu [(2007)12 SCC 754], this legal position is clarified.

34. It is clear from the records in this case that PW23

arrested the accused immediately after the accused assaulted PW2 and his wife Vinodini on the date of occurrence. PW2 to 6 have no case that the accused made an attempt to escape from the scene of occurrence immediately after the occurrence. When PW23 was cross-examined, he denied that the mother of the accused had told him about the mental ailment of the accused. Similarly, he had stated that he had no occasion to enquire into the mental stability of the accused as there was no information about any mental ailment.

35. The defence witnesses i.e., DWs. 1 and 2 stated

: -28-: that the appellant had been undergoing treatment for insanity for a very long time. The evidence of PW23 coupled with the conduct of the accused at the time of occurrence persuaded us to examine in order to satisfy us that there had been proper and complete appreciation of all evidence based on the relevant circumstances involved in this case. DW1 is Dr.Indhu.V.Nair, Senior Consultant in Psychiatry, Mental Health Centre, Thiruvananthapuram, who had occasion to treat the accused in the hospital when he was taken from the District Jail, Thiruvananthapuram from 29.4.2014 till 16.6.2014. He was again admitted on 6.12.2014 and was discharged on 30.12.2014. DW1 brought treatment records of the accused as directed by the court below. Ext.X1 treatment record would show that DW1 met the accused first time on 29.4.2014 when he was brought from District Jail, Thiruvananthapuram for treatment. At first, he was brought with complaints of bad thoughts, irritability and poor memory for the past several weeks. During his admission there, he was found to have obsessions, characterised by :- 29-: blasphemous thoughts and compulsion praying rituals. He was started on medications including mood stabilizer and SSRA (group of drugs used for reducing blasphemous thoughts) such as benzodiazepines,electroxines etc. Consequently, according to DW1, his

obsession symptoms had decreased with optimisation of medication dosage and was discharged and sent back to jail on 16.6.2014. DW1 opined that he was diagnosed with obsessive compulsive disorder, OCD bipolar mood disorder and hypothyroidism. DW1 further stated that persons with hypothyroidism have a chance of developing depressive symptoms and a range of other neuro psychiatric problems. DW1 added that there are two pole of bipolar active disorder. They are depressive and mania phases and mixed phase. Actions of such persons, according to DW1, are not predictable. She further stated if there is no proper medication, there may be aggravations of their symptoms.

36. According to DW1, she had administered

Valproate, which is a mood stabilizer and also an anti-epileptic :-30-: drug to the accused. She added that Olanzapine is an anti- psychotic drug which can be used for schizophrenia and in many other conditions. Sertraline belongs to the group of SSRA, used as an anti anxiety, anti depression, anti OCD drug. According to her, all these drugs were administered to the accused. She stated that during mania stage, patient can be either euphoric or irritable; She stated that she had seen him in the mania stage. She had treated him only at the first spell. She further stated that during 6.12.2014 and 30.12.2014, Dr.Anish had treated him and at that time, he had been continuing the medicine prescribed by her. She testified that Olanzapine was added during second admission. The accused came for review on 29.9.2015. According to her, he was directed to continue the same medicines.

37. DW2 Dr.Rekha Mathew was working as

Assistant Professor in the Department of Psychiatry at the Government Medical College, Vandanam on 12.12.2013. On that day,she had issued Ext.D4 certificate to Savithry, aged 57, :-31-: Harivilasom, Muthukulam South.P.O., Kayamkulam, after perusing O.P.treatment records and

examining the patient. She further stated that normally for outpatients, two small notebooks are issued for verifying the history of treatment. Ext.D5 is one of the books maintained by the patient and recorded by the treating Doctor. According to her, going by Ext.D5, it is clear that Savithri has been coming for treatment at the Psychiatry Department from 2005 onwards. She confirmed that Savithri was a psychiatric patient suffering from recurring depressive disorder. She clarified that bipolar and recurring depressive disorders are mood disorders.

38. DW2 also proved Ext.D7 series OP Tickets in

respect of the accused who had taken treatment on 8.4.2013,10.5.2013 and 31.5.2013. She had prescribed him Valporate, Zetraline and Lorazepam. In addition to the same, Clonazepam and Olanazepine were also given. According to her, Olanazepine was given for any number of psychiatric disorders including Schizophrenia and bipolar disorders. She :-32-: further stated that the accused was taken by his mother Savithri with complaints of obsessive compulsive disorder, which is an anxiety disorder. It is not part of bipolar disorder. A traumatic brain injury sustained to the accused was also noted by her.

39. On being examined under Section 313 of Cr.P.C.,

the accused stated that he sustained a brain injury while he was working abroad. He underwent an operation thereafter. In support of the submission, DW3 Dr.Shaji.C.V., Assistant Professor of Neurology, Medical College Hospital, Alappuzha was examined before court to prove Ext.D8 certificate in respect of the accused. DW3 stated that he was brought by Vinodini Hari Vilasom, Muthukulam P.O., Muthukulam. According to him, he had right parietal numbness, history of right parietal Extradural hematoma which was operated on 23.11.2007 in Sharjah. According to the Doctor,EDH was cleared and the patient had become normal. DW3 clarified that any hematoma as such is not harmful on the

brain unless it produces pressure or direct damage to the brain due to primary cause, depending upon :-33-: the blood collected in the space. In case the blood collected in the space is in excess, such clotting and consolidation of blood are harmful to the patient, DW3 has testified.

40. DW4 is the mother of the accused. One of the

contentions taken by the accused is that he sustained injury in the very same occurrence on 20.7.2013 in the evening. According to DW4, on 20.7.2013, the accused came to her house with bleeding injuries from his hands and when she asked about it, he could not state anything. Immediately, she took her son to the Government Hospital, Haripad where the injuries were dressed by the Doctor, who admitted him. She testified that the Police came in the meanwhile and directed not to admit him in the hospital. They took the accused along with her in the Police jeep to Kareelakulangara Police Station and retained her son in the Police Station. It is her specific case that he told the Circle Inspector that her son is a mental patient and is on treatment. According to her, she is also undergoing treatment in the Medical College Hospital for mental ailment. She further :-34-: stated that for the last 12 years, the accused has been under treatment for mental illness. In view of the evidence let in by DW4, it may be noted that DW2 was examined to prove that DW4 underwent psychiatric treatment in the Department of Psychiatry, Medical College Hospital for mental ailment.

41. In cross-examination, she stated that the accused had

suffered an accident in Sharjah after an altercation with persons, who stayed with him. After the altercation, there was a case against him and he was convicted and sentenced for six months. Later he had gone to Qatar. She admitted that consequent to the birth of the child, there was a quarrel in the hospital on the bill payable. There was a quarrel on the 28th day also. She proved Ext.P38 objection given by them in

M.C.No.68/2011 filed by Vinodini. She stated that on the date of occurrence, MC No.

had appeared before the court. She further admitted that PW2 had two children in her first marriage, which fact had come to the notice of the accused and his family only after the marriage :-35-: between the accused and her daughter. She added that they had a feeling that it should have been disclosed to them earlier. On the date of occurrence, according to DW4, accused had left her house after 3 pm for taking the wife and child, but he came back at about 6 pm with injuries on his hands.

42. On going through the proceedings of the court

below, it is clear that the accused was taken into custody on 21.7.2013. The charge sheet was submitted and commitment was done on 4.4.2014. During trial, the following circumstances are brought out in evidence.

1. On going through the evidence of DWs.1 and 2, it is clear that the accused had been suffering from mental illness since unknown duration.

2. He was being treated and examined by psychiatrists in the Mental Health Centre, Thiruvananthapuram.

3. The accused was taken to the Medical College Hospital, Alappuzha by Vinodini, the wife of the accused complaining parietal extradural hematoma :-36-: which was operated on 23.11.2007.

4. DW4, the mother of the accused stated before court

that after the operation, the accused had developed mental illness and he went to the extent of assaulting persons, who stayed with him. In connection with the above, he was in jail for six months.

5. Evidence tendered by DW1 would further show that during the pendency of proceedings, the accused had obsession, characterised by blasphemous thoughts

and compulsion praying rituals.

6. The accused was diagnosed with Obsessive Compulsive Disorder, bipolar mood disorder and hypothyroidism.

7. DW1 prescribed valproate, olanzapine, sertraline and other various anti-psychotic drugs to the accused.

8. DW2 stated that from 2005 onwards, DW4 was taking treatment in the Psychiatry Department for depressive disorder which can be hereditary. :-37-:

9. On the strength of Ext.D7 O.P.tickets, in respect of the accused, DW2 stated that the accused had taken treatment on 8.4.2013, 10.5.2013 and 31.5.2013 respectively.

10. DW2 further stated that the accused was taken to the

hospital by DW4 with complaints of obsessive compulsive disorder. 11.DW2 prescribed valproate, zentraline, lorazepam, clonazepam and olanzapine and other anti-psychotic drugs to the accused. 12.DW2 noted a traumatic brain injury sustained by the accused.

43. It is a well known fact that olanzapine is an anti-

psychotic medication used to treat the symptoms of psychotic conditions such as schizophrenia and bi-polar disorder. Diazepam is used to treat anxiety, alcohol withdrawal and seizures. It is also used to relieve muscle spasms and to provide sedation before medical procedures. This medication works by :-38-: calming the brain and nerves. Diazepam belongs to a class of drugs known as benzodiazepines. The nature of illness and its correlation to the nature of treatment stated above is appropriately discussed by the Apex Court in *Devidas Laka Rathod v. State of Maharashtra* [(2018) 7 SCC 718(paragraph 16)].

44. On going through the medicines administered, it

is clear that the appellant was suffering from serious mental illness at the time of occurrence, before and after the occurrence. It is a fact that DW4, who is the mother of the appellant, has also been suffering from mental illness, which may be hereditary in nature. The trial Judge erred in proper consideration and appreciation of evidence, virtually ignoring all the evidence available, raising doubts about the mental condition of the appellant at the time of commission of the offence. The court below virtually believed the version of DW2 that under regular medication, the accused can lead a normal life. Considering the nature of mental illness spoken by DWs.1 and 2, we have no doubt in our mind that the :-39-: accused had been suffering from mental illness for a long time. There is no evidence before us to hold that the accused used to take medicines regularly to lead a normal life. The trial court had a duty to consider the nature of evidence adduced by DWs.1 and 2 and DW4 on record with regard to the mental illness of the appellant.

45. On going through the entire evidence especially

the evidence of PW2, who is the mother of the deceased, but also PW7, the Doctor who conducted the postmortem examination would convincingly establish the fact that on 20.7.2013 at about 5 p.m., the accused assaulted the deceased Vinodini and PW2 with MO1 and MO3 which resulted in sustaining injuries to PW2. PW2's daughter, the victim in this case succumbed to the injuries later. The fact that the death of Vinodini being homicidal in nature is also not in dispute. Before we proceed to analyse the rival submissions, it is apposite to restate the settled legal position about matters to be considered for deciding the benefit under Section 84 of the IPC. The law :-40-: presumes that every person committing an offence is sane and is liable for his acts, though in specified circumstances it may be rebuttable. The doctrine of burden of proof in the context of the plea of insanity has been considered by the Supreme Court in Dahyabhai Chhaganbhai Thakkar v. State of Gujarat [AIR 1964 SC 1563]. The Supreme Court held as follows:-

7.....(2)there is a rebuttable presumption that the accused was not insane, when he committed the crime, in the sense laid down by S.84 of the Indian Penal Code: the accused may rebut it by placing before the court all the relevant evidence-oral, documentary or circumstantial, but the burden of proof upon him is no higher than that rests upon a party to civil proceedings.....

46. Section 84 of the IPC provides an exception that an

act will not be an offence, if done by a person who, at the time of doing the same, 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. Under Section 105 of the Indian Evidence Act, when a plea of insanity is raised by the accused, the burden is on the accused to substantiate the plea.

47. In Ratan Lal v. State of Madhya Pradesh [(1970)

3 SCC 533], the Supreme Court held as follows:- :-41-: 2. It is now well settled that the crucial point of time at which unsoundness of mind should be established is the time when the crime is actually committed and the burden of proving this lies on the accused.....

48. On going through the oral evidence of PW23, it is

clear that no investigation was conducted touching the background of appellant's illness. According to DW4, she had stated before PW23 that the appellant was suffering from mental illness for a considerable long time. Despite learning the fact that the appellant was suffering from mental illness, PW23 did not probe into the matter further. It is a fact that during the pendency of the proceedings, the appellant underwent treatment before DW1. The facts in the present case persuade us to believe that the prosecution has deliberately omitted to conduct investigation with regard to the appellant's mental illness presumably for

the reason that it is the duty of the prosecution to prove the prosecution case by collecting cogent evidence and the prosecution is not obliged to collect negative evidence touching the mental condition of the accused.

49. In Hari Singh Gond v. State of Madhya

: -42-: Pradesh [(2008) 16 SCC 109], Sidhapal Kamala Yadav v. State of Maharashtra [(2009) 1 SCC 124] and Devidas Loka Rathod v. State of Maharashtra [(2018) 7 SCC 718]], the Supreme Court opined (in Sidhapal Kamala Yadav's case) as follows:- 8. 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.....

50. In the decision reported in Surendra Mishra v.

State of Jharkhand [(2011) 11 SCC 495] the Supreme Court, while determining an offence under Section 84 of IPC, opined that it is the totality of the circumstances seen, in the light of the evidence on record, which would prove that the appellant in the said case was suffering from insanity. The court added that it is imperative to take into consideration the circumstances and the behaviour preceding, attending and following the crime. Going by the evidence including the conduct of the accused during :-43-: trial, we are satisfied that the accused was suffering from mental illness before the incident, at the time of the incident and after the incident in this case.

51. In Vijayee Singh & others v. State of U.P.

[(1990) 3 SCC 190], the Supreme Court held as follows:- 26..... But if the accused succeeds in creating a reasonable

doubt or shows preponderance of probability in favour of his plea, the obligation on his part under Section 105 gets discharged and he would be entitled to an acquittal. Applying the principles of law laid down by the Apex Court to the facts of the case including the evidence of eye witnesses to whom, we have already adverted to, the defence evidence adduced by Dws.1, 2 and 4, documentary evidence such as Exts.X1,D5,D6,D7 and D8, would inter alia reveal that the appellant was suffering from mental illness on the date of occurrence. We are also satisfied that the appellant was suffering from mental illness before and after the occurrence. Despite the fact that the marital dispute between the accused and his wife had been pending before the court, it is brought out in :-44-: evidence that the accused wanted the company of his wife and child with him. PW2 stated before court that the accused came to her house on the date of occurrence to take his wife and child along with him, which was discouraged by her. The evidence tendered by PW2 would show that the accused did not make any attempt to assault his wife and the child initially. The accused hated his mother-in-law and assaulted her. On seeing this, her daughter, who is the wife of the accused, intervened and prevented the accused from doing so, which made the accused violent to do the extreme step. Even after the occurrence, the accused did not make any attempt to run away from the spot. He was physically available there. The fact that the accused underwent an operation for right parietal extradural hematoma is an added circumstance to believe that the operation might have activated the mental illness of the accused. The manner in which the crime was committed by the accused and his conduct with others are sufficient to indicate that the accused was of unsound mind and that he was incapable of knowing the nature of the act :-45-: or that what he was doing was wrong or contrary to law. In view of the overwhelming evidence, the conviction of the appellant for the offences punishable under Sections 449,302 and 307 of IPC are unsustainable.

52. However, we have reasons to believe that the accused

committed the act, which, if he had been of sound mind, would have been an offence of murder and that he was, at the time when the act was committed, by reason of unsoundness of mind, incapable of knowing the nature of the act or that it was wrong. In other words, we find that the accused had committed the acts in question namely, the assault on his mother resulting in her death but for the case of the accused falling under Section 84 of the IPC, the said act would have been an offence of murder.

53. On going through the medicine administered to the

accused, we are satisfied that the cause of his mental illness was still not known, but hereditary plays a part. His mother DW4 has been suffering from mental illness. On going through the

facts of the case, it is further evident that the accused developed

: -46-: thinking, according to his own private rules of logic, which others, including his wife and relatives, found it difficult to accept. In a case of murder, when the conduct of the accused demonstrates abnormality, we find it difficult to believe that in the course of investigation in which the close relatives of the appellant were questioned, PW23 did not get any information touching the background of appellant's mental illness. This is all the more important in view of the evidence let in by DW4 that she told her son's mental illness to PW23, when he was questioned by PW23. The facts in the present case persuade us to think that the prosecution deliberately withheld relevant evidence with regard to the appellant's mental illness. The failure of the prosecution to do so creates serious infirmity in the prosecution case of murder when plea of insanity is raised by the accused at the trial and raises a doubt whether the acts of violence were committed with the requisite intention of committing the offence. Thus, we have no hesitation to hold that the accused is entitled to get the benefit under Section 84 of : -47-: the I.P.C.

54. It has come out in evidence that the accused had been

suffering from Obsessive Compulsive Disorder. On delusion affecting the behaviour of a patient, he is a source of danger to himself and to others. Section 335 of Cr.P.C. has its thrust mainly towards the interest of the society in general. The Section at the same time seeks to protect such accused from harming himself. No doubt, the paramount interest of the society shall not be sacrificed at the cost of a person suffering from insanity. As already indicated, even if there is no criminal liability in view of Section 84 of IPC, the accused has committed the act which resulted his wife's death. In the circumstances, it is dangerous to let free such a person in an orderly society without imposing suitable conditions as future chance of recurrence of lunacy in such cases may not be ruled out in which event the society will be in danger. The court cannot assume the fact that if such person is let off freely, he would not repeat similar dangerous acts or would not harm :-48-: himself.

55. Judged by the provisions contemplated under Sections

335 and 338 of the Code of Criminal Procedure, we are of the view that the appellant is to be detained in safe custody in terms of Section 335(1)(a) of the Code of Criminal Procedure. Considering the fact that the accused underwent treatment for serious mental illness, we are of the further view that at this stage, it is not in the interest of justice to deliver the appellant for the time being to any relative or friend of the appellant as provided under Section 335(1)(b) of the Cr.P.C.

56. Section 335 of the Cr.P.C. gives two options to the Magistrate or court before whom or which the trial had been

held to deal with such person in accordance with clauses (a) and

(b) to sub-section(1) under which such person is ordered to be

detained in safe custody in such place and manner as the Magistrate or court thinks fit, or he may be ordered to be delivered to any relative or friend of such person. Sub-section

(4) of Section 335 provides that the Magistrate or court shall

: -49- : report to the State Government, the action taken under sub-section (1). Section 336 of Cr.P.C. gives the power to the State Government to empower the officer in charge of the jail in which a person is confined under the provisions of Section 330 or 335 to discharge all or any of the functions of the Inspector General of Prisons under Section 337 or Section 338 of the Code. Section 338 deals with the procedure where the prisoner with mental illness is detained under the provisions of sub-section (2) of Section 330 or Section 335 and such Inspector General or visitors shall certify that, in his or their judgment, he may be released without danger of his doing injury to himself or

to any other person, the State Government may thereupon order

him to be released, or to be detained in custody or to be transferred to a public lunatic asylum (at present Mental Health Establishment) if he has not been already sent to such an asylum; and, in case it orders him to be transferred to an asylum, may appoint a commission, consisting of a judicial and two medical Officers. Sub-section (2) provides that such : -50- : commission shall make a formal inquiry into the state of mind of such person, take such evidence as is necessary, and shall report to the State Government, which may order his release or detention as it thinks fit. Section 339(1) of Code provides that whenever any relative or friend of any person detained under the provisions of section 330 or section 335 desires that he shall be delivered to his care and custody, the State Government may, upon the application of such relative or friend and on his giving security to the satisfaction of the State Government, that the person delivered shall be properly taken care of and prevented from

doing injury to himself or any other person; be produced for the inspection of such officer, and at such times and places, as the State Government may direct.

57. In the result, we set aside the conviction and sentence

entered against the appellant under Sections 449,307 and 302 of IPC. We find that the appellant has committed the act of stabbing and assaulting his wife and PW2 with MOs.1 and 3 and his wife succumbed to the injuries for the foregoing reasons :-51-: stated in the judgment. We, therefore, acquit the appellant on the ground that, at the time at which he is alleged to have committed the offence, he was, by reason of unsoundness of mind, incapable of knowing the nature of the act alleged, or that it was contrary to law. We direct that the appellant shall be kept in safe custody for the present as provided under Section 335 of the

Cr.P.C. Sub-section (2) of Section 335 provides that the order

for detention shall be in accordance with the rules framed by the State Government under the Lunacy Act, 1912. As the Lunacy Act, 1912 is not in force at present and it has been repealed and the relevant Act in force is the Mental Healthcare Act, 2017, we find that the latter Act is applicable in this case. We, therefore, direct that the appellant is to be detained in one of the mental health establishments in the State in accordance with the rules, if any, framed by the State Government. It is open to the State Government to direct the appellant to be delivered to any of his relatives or friends in accordance with law. A copy of this

judgment shall also be sent to the Director General of Prisons

:-52-: and the Secretary, Home Department, Government of Kerala in terms of Section 335(4) for taking further action in terms of Sections 338 and 339 of the Cr.P.C. The said authorities are directed to submit a

report of action taken by them from time to time before the trial court within three months from the date of receipt of a copy of this judgment. The court below is directed to take further follow up action and issue necessary orders in the best interest of the appellant in accordance with Chapter XXV of the Cr.P.C. The Criminal Appeal is allowed. The conviction and sentence imposed against the appellant by the trial court for the offences punishable under Sections 449,307 and 302 IPC stand set aside. The accused stands acquitted subject to Section 335(1)(a) of Cr.P.C. as stated above. Sd/- A.HARIPRASAD, JUDGE Sd/- N.ANIL KUMAR, JUDGE MBS/

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