

**Paramal Raman Vs. State of Kerala**

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**SooperKanoon Citation :** [sooperkanoon.com/726347](http://sooperkanoon.com/726347)

**Court :** Kerala

**Decided On :** Jul-03-1991

**Reported in :** 1992CriLJ176

**Judge :** M.M. Pareed Pillay and; K.G. Balakrishnan, JJ.

**Acts :** Evidence Act - Sections 105; [Indian Penal Code \(IPC\), 1860](#) - Sections 84 and 302; Code of Criminal Procedure (CrPC) - Sections 313

**Appeal No. :** Crl. A. No. 100 of 1988

**Appellant :** Paramal Raman

**Respondent :** State of Kerala

**Advocate for Def. :** Mohammed Ashraff, Public Prosecutor

**Advocate for Pet/Ap. :** P.M. Swayamprabha, Adv. (State Brief)

**Disposition :** Appeal dismissed

**Judgement :**

**K.G. Balakrishnan, J.**

1. The sale accused in Sessions Case No. 45/87 on the file of the Sessions Court, Manjeri is the appellant in this criminal appeal. He was tried for the offence punishable under Section 302, I.P.C. for having caused the death of a young boy

aged 7 years. The Sessions Court found the accused guilty and sentenced him to undergo imprisonment for life. The conviction and sentence are challenged in this criminal appeal.

2. On 21-9-85 deceased Sreekumar, his cousin Mini aged 7 years and another child named Suresh Babu went to the neighbouring channel for fishing. All the three children returned from the channel and P.W. 2 Mini and deceased Sreekumar went to the compound of the accused for plucking tamarind. Then accused came there with a chopper. As soon as Sreekumar got down from the tree he caught hold of the child and inflicted cut on his neck. Accused took the body of Sreekumar and dumped into a nearby cow dung pit. P.W. 2, Mini, who had been witnessing this ghastly incident, cried aloud, and P.W. 1, the maternal uncle of deceased Sreekumar and P.W. 5 reached that place. P.W. 5 took the deceased from the cowdung pit and bandaged the wound with some clothes. He later went to Manjeri police station and gave Ex. P1 statement. The Additional Sub-Inspector attached to Manjeri police station recorded the statement of P.W. 1 and registered crime No. 297 of 1985. P.W. 12, the Circle Inspector of Police, took over the investigation. He recovered MO. 2 weapon from the place of incident. The clothes used for bandaging the wounds of Sreekumar were also recovered. Two days after the incident the accused was arrested from the Manjeri bus stand. After the completion of the investigation P.W. 13 filed the charge-sheet.

3. On the side of the prosecution 13 witnesses were examined. P.Ws. 2 and 3 are the eye-witnesses of the occurrence. P.W. 1 and P.W. 5, who came to the place of incident immediately after the occurrence, deposed that they had seen the injured Sreekumar lying in the cowdung pit. P.W. 4 also had seen the accused carrying deceased Sreekumar to the cow-dung pit. P.W. 4 had attested Ext. P2 inquest report. P.W. 7 conducted the postmortem examination.

4. The accused when questioned under Section 313, Cr. P.C. feigned complete ignorance about the incident. The main argument advanced on behalf of the accused before the trial Court was that the accused was suffering from achizophrenia and that he was not aware of the nature and consequences of his acts. The plea of insanity set up by the accused was rejected by the Sessions

Court and found the appellant guilty.

5. The fact that deceased-Sreekumar sustained serious injuries at the hands of the accused and that he had an instantaneous death is not very much in dispute. Ext. P3 post-mortem certificate prepared by P.W. 7 gives the nature and extent of the injuries caused to deceased Sreekumar. There was an incised penetrating wound 4 x 2 cms. obliquely placed on the right side of neck. This wound had penetrated to a depth of 2.5 cms. severing the neck muscles. The jugular vein was cut. The 7th cervical vertebra up to the spinal cord was affected by the penetrating wound. There was also a penetrating wound on the right side of the neck on the middle 2 cms. below the first injury. The nature of the injuries would clearly show that the cut inflicted on deceased-Sreekumar was extremely grievous in nature and P.W. 7 deposed that Sreekumar died of injuries involving the neck and neck structures. The medical evidence in this case is consistent with the prosecution case.

8. As regards the occurrence there is clear and convincing evidence of the two child witnesses. P.W. 2 Mini is the daughter of P.W. 1. She deposed that on the date of the incident herself and deceased Sreekumar went to the compound of the accused for plucking tamarind. As Sreekumar climbed about 10 feet the accused came there. P.W. 2 did not see any weapon in the hand of the accused. Obviously, it could have been concealed by him. Sreekumar plucked some tamarind and got down from the tree. Then accused caught Sreekumar by his right hand and inflicted cut injuries on his neck. P.W. 2 further deposed that the accused took the injured and put him in a nearby cow dung pit. The defence counsel made searching cross-examination. However, the answers given in the cross-examination would only give strength and credit to her deposition. Though a small child, she showed exemplary presence of mind at the time of incident. She cried aloud and brought people to the place of incident. She did not run away seeing this terrible incident.

7. P.W. 3 Suresh Babu is also a child of almost the same age. His house is 30 to 40 feet away from the place of incident. Even though P.W. 3 was in the company of deceased-Sreekumar and Mini in the morning, he left for the home and P.W. 2 and deceased-Sreekumar alone went to the compound of the accused. P.W. 3

would say that he had seen deceased-Sreekumar and Mini going to the compound of the accused and Sreekumar plucking tamarind from the tree. P.W. 3 had also seen the accused coming and catching hold of Sreekumar and inflicting cut injuries on his neck. He identified MO 2 chopper. P.W. 3 also was subjected to severe cross-examination. But his evidence convincingly proved that the accused is the perpetrator of this crime.

8. The learned counsel for the appellant contended that the Sessions Judge should have accepted the plea of insanity raised by the appellant. Counsel for the appellant drew our attention to some of the materials available in evidence to prove that the appellant was a patient suffering from schizophrenia and he was labouring under delusion and auditory hallucination. It was also contended that during the relevant time the appellant was suffering from insanity and that he was not aware of the nature and consequence of his acts. The evidence of P.Ws. 1 and 4 and DWs. 1 to 3 throws some light on this aspect. But, there is dearth of satisfactory evidence to hold that the appellant-accused was insane and did this heinous crime without knowing the nature and consequence of the same. P.W. 1 is related to the deceased. He was asked whether the appellant was a mentally deranged person. He deposed that the appellant is in the habit of taking narcotic drug like ganja. P.W. 3, a child witness, has also spoken to this fact. He stated that the appellant used to consume liquor and smoke ganja beedies and behave in an indecent manner. P.W. 3 further stated that the people in the locality had developed some sort of aversion towards the appellant and used to refer him as a mad man. The evidence of P.W. 3 would clearly show that it was because of the indecent and improper behaviour of the appellant that the people of the locality called him mad. P.W. 2, the other child witness, has deposed that the people in the locality are afraid of the appellant. It is quite possible that the people might have been afraid of the appellant due to the fact that he did this heinous crime without any apparent rhyme or reason. P.Ws. 2 and 3 might have been referring to the state of mind of the people after the incident. P.W. 4 is the sister of the accused. She deposed that the accused is a mentally deranged person and he had been showing these symptoms since two years prior to the incident. The father of the accused was examined in this case of DW 2. He deposed that the accused showed symptoms of insanity after his second marriage and that the

accused was taken to a physician at Poon-kulam for treatment. The interested testimony of P.W. 4 and DW 1 cannot be accepted at its face value. There is no evidence to show that he was treated by any doctor at Poon-kulam. P.W. 4, the sister of the accused, admitted that the accused Used to go for coolie work and the people in the neighbourhood were not really afraid of the accused prior to the date of the incident and that the accused has not caused any harm to her.

9. There is no clear medical evidence regarding the insanity of the appellant. DW 3 is a doctor attached to Government Mental Health Centre at Calicut. He deposed that the appellant was admitted in the Mental Health Centre at Calicut on 19-10-1985. It may be recalled that the appellant was arrested on 23-9-1985 and was remanded to judicial custody on 24-9-1985. DW 1, the Superintendent of Sub-Jail, Manjeri stated that he was taken to the Mental Hospital. DW 1 was not the Superintendent of the Jail at the time when the accused was remanded to judicial custody. The evidence of DW 1 coupled with Ext. D1 journal maintained in the jail would only prove that the appellant was taken to the hospital on 19-10-1985. The evidence of DW 3 shows that he treated the appellant for some time and that the appellant was suffering from schizophrenia. DW 3 could not give anything regarding the history of the mental illness of the appellant. He stated that a person suffering from schizophrenia may have delusion or auditory hallucination and sometimes may attack others without any apparent reason.

10. The evidence adduced in this case is to be appreciated in the background of other attending circumstances. It is well settled that the crucial point of time at which the un-soundness of mind as defined under Section 84 of the Indian Penal Code has to be established is when the act was committed. It is equally well established that the burden is on the accused to prove that he is entitled to the benefit of Section 84. The burden is on the prosecution to prove that the accused committed the offence with the requisite mens rea and this burden always rests with the prosecution. However, when a person deliberately strikes another with a deadly weapon, which according to common experience of mankind, is likely to cause injury and sometimes even fatal injury depending upon the quality of the weapon and the part of the body on which it is struck, it would be reasonable to infer that what the accused did Was accompanied by the intention to cause a kind

of injury which in fact resulted from the act. In such a case the prosecution must be deemed to have discharged the burden which rested upon it to establish an essential ingredient of the evidence. Section 84 of the Indian Penal Code can no doubt be invoked by a person nullifying the evidence adduced by the prosecution by establishing that he was at the relevant time incapable of knowing the nature of the act or that what he was doing was either wrong or contrary to law. The accused may rebut the presumption 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. If the evidence adduced by the prosecution raises a reasonable doubt in the mind of the Court regarding mens rea of the accused, the accused should be entitled to get the benefit of doubt. The defence must establish certain circumstances either by its own evidence or by the prosecution evidence from which the existence of insanity can reasonably be inferred. The mere statement of hostile witnesses that he was insane cannot be accepted as sufficient evidence for the proof of the existence of insanity.

11. The Supreme Court had occasion to consider the nature of the proof required for successful defence under Section 84 of the Indian Penal Code. (See *Bhikari v. State of Uttar Pradesh* (1965 (3) SCR 194): (1966 Cri LJ 63), *State of Madhya Pradesh v. Ahmadulla* (AIR 1961 SC 998) : (1961 (2) Cri LJ 43), *Sheralli Wali Mahammed v. State of Maharashtra* (AIR 1972 SC 2443) : (1972 Cri LJ 1523) and *Francis v. State of Kerala* (AIR 1974 SC 2281 : (1974 Cri LJ 1310). In *Bhikari v. State of Uttar Pradesh* (1965 (3) SCR 194) : (1966 Cri LJ 63) the appellant killed a child in a cruel manner. He quarrelled with his neighbour on a matter relating to grazing of cattle in his field and the appellant threatened the latter. Some days thereafter he killed the neighbour's child and caused injury to some other children. The appellant ripped open the child's chest with a sickle and the child died almost immediately. The trial Court convicted the appellant rejecting the plea of insanity raised by him. The Supreme Court refused to interfere with the conviction and sentence and held that even though, the burden of proving the intention is on the prosecution, the same can be proved by circumstances and the accused is entitled to adduce evidence for nullifying the evidence of the prosecution. The Court held :

The prosecution need not give evidence about the capacity of the accused to know the nature of the act or that it was wrong or contrary to law because these are matters of presumption. Everyone is presumed to know the natural consequences his act. Similarly everyone is presumed to know the law. It is for this reason that Section 105 of the Evidence Act places upon the accused person the burden of proving the exception on which he relies.

12. In the present case, there is no evidence on record to prove the characteristics of his habit from which it could be concluded that he was acting like a mad man. He used to go for coolie work. There is no evidence to show that he picked up quarrel with anybody and behaved in a cruel or unusual manner. As regards the mental condition immediately before the occurrence we have the circumstances and the conduct of the accused. Accused saw the deceased climbing on the tamarind tree. The tree belongs to the accused and he might have had objection to the conduct of the deceased in plucking tamarind. P.W. 2 saw the accused before the incident and her conduct shows that she was not afraid of him. She never anticipated that this cruel fate would befall on her friend. The accused attacked all on a sudden and escaped from the scene immediately. This shows that he knew the nature and consequence of his acts. It is certain that the accused knew the physical nature of what he was doing; he did not believe that he was breaking a pot or cutting a cabbage, but was taking the life of a human being. After the incident he was absconding and was arrested two days after from the Manjeri transport bus-stand. From these circumstances and evidence we are unable to hold that the accused by reason of unsoundness of mind was incapable of knowing the nature of his acts or that he was doing what was either wrong or contrary to law.

The criminal appeal fails and the same is dismissed.