

**Sankaran Vs. the State**

**Sankaran Vs. the State**

**SooperKanoon Citation :** [sooperkanoon.com/726627](http://sooperkanoon.com/726627)

**Court :** Kerala

**Decided On :** Sep-24-1993

**Reported in :** 1994CriLJ1173

**Judge :** L. Manoharan and; P.A. Mohammed, JJ.

**Acts :** [Evidence Act, 1872](#) - Sections 5, 84 and 105; Indian Penal Code (IPC) - Sections 302; Code of Criminal Procedure (CrPC) , 1974 - Sections 329, 329(1), 313 and 465

**Appeal No. :** Crl. Appeal No. 294 of 1990

**Appellant :** Sankaran

**Respondent :** The State

**Advocate for Def. :** K.C. Peter, Addl. Director of Prosecutions

**Advocate for Pet/Ap. :** V.A. Kasthuri (State Brief)

**Disposition :** Appeal dismissed

**Judgement :**

**P.A. Mohammed, J.**

1. This is a case of uxoricide. The appellant-accused was convicted Under Section 302, IPC for killing his wife and was sentenced to undergo imprisonment for life.

The said conviction and sentence are being challenged, in this appeal.

2. The prosecution case can be condensed thus : In the night of 15-11-1989, the accused, after murdering his wife, Thankamani, by strangulation went over to the house of his neighbour, Sankarankutty with a chopper and laid down in the veranda. He did not go away from there in spite of the repeated demands made to him. Seeing the strange conduct of the accused, Sankarankutty went to the house of P.W. 5, a close relative, at about 3 a.m. to do something in the matter. Thereupon P.W. 5 came to the house and asked the accused to go away but he did not respond. Then P.W. 5 and others went to the house of the accused and called his wife and son but no one came out. P.W. 5 thereafter, along with Narayanan, son of Sankarankutty, went to the house of Panchayat President. After hearing the incident, the President telephoned to the Irinjalakuda police station. Thereupon P.W. 5 and Narayanan hired a taxi car and rushed to the police station. The matter was narrated to the police and thereafter two police constables came to the scene. They found the accused lying in the veranda of the house. Then they went to the house of the accused and found the dead body of Thankamani on the upstairs room of the house. P.W. 1 Head Constable took the accused into custody and brought to the police station and submitted a report to P.W. 12 the Assistant Sub Inspector. Ext. P1 is the report submitted by P.W. 1 and Ext. P6 is the FIR prepared by P.W. 12. On the basis of the report, Crime No. 304/89 was registered. A police constable was deputed to guard the dead body. Then the investigation was taken over by P.W. 13, Circle Inspector of Police. He went to the scene and held the inquest. Ext. P4 is the inquest report prepared by him. Thereafter the deadbody was sent for post-mortem. Ext.P2 is the post-mortem certificate issued by P.W. 8 doctor. After completing the investigation P.W. 13 filed the final report. The Judicial Magistrate of the first Class, Irinjalakuda committed the case to the Sessions Court. The learned Sessions Judge framed the charge under Section 302, IPC against the accused.

3. The appellant pleaded not guilty to the charge framed against him. The prosecution has examined 13 witnesses and thereafter accused was questioned as required under Section 313 of the Code of Criminal Procedure. Contrary to the plea raised earlier, the accused explicitly admitted certain incriminating

circumstances found against him. However, he has raised a plea of unsoundness of mind. During the trial as well as at the time of questioning the learned Sessions Judge found the accused normal in behaviour. However, considering the nature of certain answers given by the accused during the examination Under Section 313, the learned Sessions Judge referred the accused to the Superintendent, Mental Health Centre, Trichur for his opinion in so far as the mental state of the accused. According to the report submitted by the psychiatrist the accused was found to be normal though he had complained of some memory loss. The report further reveals that at present there is no evidence of unsoundness of mind.

4. The question that arises for decision is whether the death of Thankamani was homicide and the accused had intentionally or knowingly caused her death. P.Ws. 2 and 3 are the children of the accused and the deceased. The competency of these witnesses to give evidence is not in dispute. Their evidence would undoubtedly reveal that they (P.Ws. 1 and 2) witnessed the accused dragging their mother towards him and strangulating her with a 'thorthu mundu'. The accused threatened that he would kill them in case noise was made. The accused thereafter went out of the house with a chopper. P.Ws. 5 and 6 deposed that they saw the accused lying in the veranda of the house of Sankarankutty with a chopper. According to P.W. 5, he went to the house of the accused and called his wife Thankamani and son but there was no response. P.Ws. 2 and 3 stated that sometime after the accused left the house they heard some one calling from outside but they did not respond as they were frightened. Thus the evidence of P.Ws. 5 and 6 would give support to the evidence of P.Ws. 2 and 3. There is no reason to disbelieve the evidence of P.Ws. 1 and 2 who are none other than the children of the accused. P.W. 8 is the doctor who conducted post-mortem and issued Ext. P2 certificate. As per Ext. P2 there were twelve injuries. Injury No. 1 is a pressure abrasion 28.5 cm in length encircling the neck all round (more prominent on the left side than the right side of neck), horizontal over and above the thyroid cartilage. The doctor opined that the deceased died of ligature strangulation. Ext.P2 certificate states :

A cotton 'thorthu' spun into a rope was loosely encircling the neck and the two free ends of it was crossing each other over the front of the neck in the midline and

seen lying on each side of the neck.

The doctor, during the examination stated that the strangulation could have been caused with 'thortu' found around the neck of the accused. M.O.I is the 'thorthu' so found on the dead body of the deceased and that has been proved by the doctor. This evidence clinchingly corroborates the testimony of P.Ws. 2 and 3 that the accused strangled their mother with a 'thorthu'. According to the doctor, except injury No. 10 and old injuries, injury Nos. 11 and 12, other could be caused in a struggle during strangulation. The evidence of P.Ws. 2 and 3 in conjunction with that of P.W. 8 doctor would surpassingly prove that the death in the present case was a homicide and it was caused by the accused by strangulation, which is sufficient in the ordinary course of nature to cause death.

5. The learned Counsel appearing for the appellant raised a contention that the accused is a person of 'unsound mind' and his action of causing death of his wife cannot be considered to be an offence in view of the provision contained in Section 84 of the IPC. The following circumstances are brought to our notice in support of the plea of insanity or unsoundness of mind.

- 1) That the accused attempted to commit suicide prior to throttling of his wife.
- 2) That the accused came to the kitchen, after attempting to commit suicide and laid down there as if he was praying.
- 3) That after causing the murder he dragged the dead body.
- 4) That the accused caused injury on the private parts of the deceased.
- 5) That the accused was found lying in the veranda of the house of the neighbour.

The argument is that the above circumstances would bring out a case of insanity so as to attract the provisions contained in Section 84 of the Code. Though the aforesaid circumstances may be available materials in testing the plea on the basis of the preponderance of probabilities, they by themselves will not constitute matters leading to essential ingredient of Section 84. The essential requisite relates to the state of mind of the accused at the time of actual commission of the

offence.

6. Section 84 of the Indian Penal Code is thus:

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.

The essential requisite of this Section is the incapability of the person of knowing the nature of the act, or that he is doing what is either wrong or contrary to law at the time of doing the act by reason of 'unsoundness of mind'. Sir William Blackstone said :

Insanity of a prisoner is ordinarily ascertained at the trial; in which case it lies on the accused to establish that he was non compositus mentis when the offence was committed which if proved entitles him to an acquittal.

What is embodied in Section 84, in sum and substance, is M 'Naghten's rules of insanity, as propounded the law of insanity in M 'Naghten's case (1843) 8 ER 718. That was a case where Daniel M 'Naghten having the delusion of persecution and Sir Robert Peel injured him and believing that he was being hounded by his enemies shot and killed Mr. Drummond, Private Secretary of Sir Robert Peel mistaking him for Peel himself. Having been indicted for murder the trial judge instructed the jury to convict if the accused at the time of the act was 'in a sound mind' but to acquit him if he was 'not sensible' at that time, stating the question to be whether he knew 'he was doing a wrong or wicked act'. The evidence tendered would show that the accused was not of sound mind but it did not show whether he knew that he was acting contrary to law. The verdict of the jury was 'not guilty on the ground of insanity'. The verdict being made the subject matter of debate in the House of Lords the opinions of judges were taken. One of the answers given by the House of Lords is this :

It must be clearly proved that, at the time of the committing of the act, the party accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing; or, if he did know it,

that he did not know he was doing what was wrong. The mode of putting the latter part of the question to the jury on these occasions has generally been, whether the accused at the time of doing the act knew the difference between right and the wrong....

(Italics underlining supplied)

7. K.K. Mathew, J. in *Sheralli Wali Mohammed v. State of Maharashtra* (1973) 4 SCC 79 : (1972 Cri LJ 1523) held (at p. 1525 of Cri LJ) : it must be proved clearly that, at the time of the commission of the acts, the appellant, by reason of unsoundness of mind, was incapable of either knowing the nature of the act or that the acts were either morally wrong or contrary to law. The question to be asked is, is there evidence to show that, at the time of the commission of the offence, he was labouring under any such incapacity? On this question, the state of his mind before and after the commission of the offence is relevant.

Govinda Menon, J. speaking for the Division Bench *Govinda bi alias Subramonia Iyer v. State of Kerala* 1960 Ker LJ 1375 : (1962 (2) Cri LJ 135) observed (at p. 140 of Cri LJ) :

It is necessary for the application of Section 84, IPC to show (1) that the accused was of unsound mind; (2) that he was of unsound-mind at the time he did the act and not merely before or after the act; and (3) as result of unsoundness of mind he was incapable of knowing the nature of the act or that he was doing what was either wrong or contrary to law. It is not therefore every person mentally diseased who ipso facto is exempted from criminal responsibility.

8. What is the state of mind of the accused in the present case at the time of causing the death of his wife? It was urged by Sri K.C. Peter, learned Additional Director of Prosecution that the accused was perfectly sane at the time of causing the death and that there was no evidence in the case to hold otherwise. He further points out that under Section 105 of the Evidence Act, the burden is heavily on the accused to prove the existence of circumstances bringing the case within the exception. There cannot be much dispute on this position. The Supreme Court in *State of Madhya Pradesh v. Ahmadulla* AIR 1961 SC 998 : (1961 (2) Cri LJ 43)

held (at p. 44 of Cri LJ):the burden of proof that the mental condition of the accused was, at the crucial point of time, such as is described by this section lies on the accused who claims the benefit of this exemption.

In Kuttappan v. State of Kerala 1986 Cri LJ 271 U.L. Bhat, J. (as he then was) speaking for the bench observed (at p. 274 of Cri LJ) :

What Section 84, IPC provides is defence of legal insanity as distinguished from medical insanity. A person is legally insane when he is incapable of knowing the nature of the act or that what he was doing was wrong or contrary to law incapacity of the person on account of insanity must be of the nature which attracts the operation of Section 84, IPC.

9. For the first time, the plea of 'un-soundness of mind' was raised by the accused when he was examined under Section 313. Learned Sessions Judge has observed that during the trial as well as at the time of questioning, the accused appeared to be perfectly normal. However, the accused was sent for examination by a Psychiatrist in view of his certain answers pointing to the unsoundness of mind. There was no symptom of insanity in the report given by the Psychiatrist. No witness was examined to establish the unsoundness of mind at the time of causing the death. Not even a medical certificate was produced to disprove the sanity of the mind. Under this situation, we are compelled to hold that the accused has not discharged the burden cast on him under law to prove that he was having an 'unsound mind' at the time of causing the death of his wife Thankamani.

10. Notwithstanding the above, the question that comes up for consideration is whether the accused can prove the plea of insanity on the basis of preponderance of probabilities. Here it may be necessary to examine what actually is the content of 'insanity'. Insanity implies the existence of either or both of the mental conditions namely, an incapacity (i) to know the nature of the act and (ii) to know that the act is wrong or contrary to law. 'The disordered mind in insanity may be subject of delusions or hallucinations. A delusion is a pervasion of judgment whereby the individual accepts as real an erroneous perception or conception which has no real existence.' Thus it can be said that the insanity is the disorder of the conduct in that the process of adjusting the self to the circumstances is deranged. George

a Dorsey says :

The pictured movement area of the brain has gone out of action. The body does not track; one part goes one way another part does not go at all. Impulses from all the different parts of the body no longer have a meeting place where they can be co-ordinated, and as a result of such co-ordination adjust the body as an individual unit.

That is why it is said 'a mad man is like one who is absent' (*furiosus absentis loco est*). In view of these characteristic features of insanity extreme degree of proof cannot be insisted upon in all the situations. What is required here is that the accused will have to rebut the normal rebuttable presumption that he is not insane by placing materials before the court sufficient to make it consider the existence of the circumstances so probable that a prudent man would act upon them. In other words, the accused has only to satisfy the standard of a prudent man and he need not establish his plea beyond all reasonable doubt. To do so, the entire evidence is required to be examined on the basis of preponderance of probability. The Supreme Court in *Dahyabhai Chhaganbhai Thakkar v. State of Gujarat*, AIR 1964 SC 1563 : (1964 (2) Cri LJ 472) observed (para 7) :

Even if the accused was not able to establish that he was insane at the time he committed the offence, the evidence placed before the court by the accused or by the prosecution may raise a reasonable doubt in the mind of the court as regards one or more of the ingredients of the offence, including mens rea of the accused and in that case the court would be entitled to acquit the accused on the ground that the general burden of proof resting on the prosecution was not discharged.

Explaining the above decision, the Supreme Court in *Bhikari v. State of U.P.*, AIR 1966 SC 1 : (1966 Cri LJ 63) held thus : (Para 6)

If upon the evidence adduced in the case whether by the prosecution or by the accused a reasonable doubt is created in the mind of the court as regards one or more of the ingredients of the offence including mens rea of the accused he would be entitled to be acquitted. This is very different from saying that the prosecution must also establish the sanity of the accused at the time of commission of the

offence despite what has been expressly provided for in Section 105 of the Evidence Act.

In *State of U.P. v. Ram Sarup*, AIR 1974 SC 1570 : (1974 Cri LJ 1035) the apex court held (Para 19) :

The burden which rests on the accused to prove the exception is not of the same rigour as the burden of the prosecution to prove the charge beyond a reasonable doubt. It is enough for the accused to show, as in a civil case, that the preponderance of probabilities is in favour of his plea.

In *Rabindra Kumar Dey v. State of Orissa*, AIR 1977 SC 170 : (1977 Cri LJ 173) the Supreme Court further said (Para 6) :

In fact, from the cardinal principles referred to above, it follows that, it is sufficient if the accused is able to prove his case by the standard of preponderance of probabilities as envisaged by Section 5 of the Evidence Act as a result of which he succeeds not because he proves his case to the hilt but because probability of the version given by him throws doubt on the prosecution case and, therefore, the prosecution cannot be said to have established the charge beyond reasonable doubt. In other words, the mode of proof, by standard of benefit of doubt, is not applicable to the accused, where he is called upon to prove his case or to prove the exceptions of the Indian Penal Code on which he seeks to rely.

Manoharan, J. while dealing with burden of proof as to insanity observed on behalf of the Bench of Madhavan v. State of Kerala, (1992) 1 Ker LT 544 thus :

What is crucial in such circumstance is, his mental condition at the time of the commission of the offence. In that regard his conduct immediately before and after the occurrence may be of relevance. If the accused has a previous history of mental disease that also would be a relevant factor in considering the probability of the case pleaded...one important factor to be remembered is minor mental aberration, hot temperament, lack of self control or getting easily provoked are not sufficient to absolve one from the liability of his act.

11. The five circumstances highlighted hereinbefore on behalf of the accused would reveal the antecedent and posterior conduct of the accused. It is argued that the accused attempted to commit suicide and having failed in that attempt he came to the kitchen and laid there as if he was praying. But there is no evidence, direct or indirect, in this regard, P. Ws. 2 and 3 did not speak about the alleged attempt to commit suicide by the accused. There are circumstances available prior to the actual commission of offence. Those circumstances which are proved on the other hand would indicate that he was sane and normal prior to the commission of offence. The reason for the attempt to commit suicide has been detailed in the statement under Section 313. This can only be an afterthought. The statements under Section 313 if at all, could indicate that he is a frustrated man. That does not mean he cannot choose right and wrong. The posterior conduct, that is to say, dragging the deadbody and lying in the veranda of the neighbour would reveal that he was having a perplexed mind seeking solace somewhere. That does not mean he was insane. As far as the causing of injury on the private parts of the deceased (injury No. 10) P.W. 8 doctor said that it could be caused by a forceful sexual act. There is no material in this case to show that the deceased was subjected to sexual assault by someone other than the accused. That being so, there was every probability that accused might have attempted to have sexual intercourse with his wife and that she might have resisted. This naturally should have prompted the accused to cause injury on the private part of the deceased out of vengeance. One reflecting circumstance is that the accused told the children (PWs 2 and 3) that they would also be killed if they cry or create noise from the house. This would indicate that he was very much sane immediately after causing the death. Dragging the dead body is not an abnormal conduct because every murderer will try to hide the dead body after dragging it to a convenient place. Seeking rest at the veranda of the neighbour's house may be act to relieve his mental agony. Some minor deviation in the regular conduct of a person will not make him 'insane'. A person with a frustrated and perplexed mind may exhibit aberrations in his normal behaviour but that by itself do not pronounce that he is having 'unsoundness of mind.' This Court is primarily concerned with the existence of legal insanity as distinct from medical insanity. What is contemplated under Section 84, I.P.C. is not medical insanity but legal insanity which if proved would

entitled the accused to get an order of acquittal. Even if the entire evidence including the aforesaid circumstances specially marshalled is scanned this Court will not find its way to hold that the accused has proved his plea of legal insanity or created a reasonable doubt in the mind of this Court as regards the one or more of the ingredients of the offence.

12. It was argued that the prosecution has not proved any motive on the part of the accused to commit the crime. Of course, it is true that no motive is alleged or proved in this case; but we cannot agree with contention that the entire prosecution case is vitiated for that reason. The Supreme Court in *Sherali Wali Mohammed's case* (1973) 4 SCC 79 : (1972 Cri LJ 1523) observed thus (at p. 1526 of Cri LJ) :

The mere fact that no motive has been proved why the accused murdered his wife and child or, the fact that he made no attempt to run away when the door was broke open, would not indicate that he was insane or, that he did not have the necessary mens rea for the commission of the offence.

The Supreme Court in *Krishna Pillai Sree Mular v. State of Kerala*, AIR 1981 SC 1237 : (1981 Cri LJ 743) observed (Para 7) :

In any case, it is not a sine qua non for the success of the prosecution that the motive must be proved. So long as the other evidence remains convincing and is not open to reasonable doubt, a conviction may well be based on it.

Lord Blackburn in *Brogden v. Metropolitan Railway Co.*, (1877) 2 AC 666 remarked :

It is a trite learning that the thought of a man is not triable, for the Devil himself knows not, the thought of a man.

Therefore the motive is not a decisive test for determination of the criminal character of human acts. 'A man who carries a guilty mind is not punished under the penal law; he is punished for his unlawful actions. The law will judge a man by his actions and not by the motions of his mind.' (See *Rajayyan Samuvel v. State of Kerala*, (1992) 2 Ker LT 234. That being so, the failure to prove motive cannot be

said to be fatal to the prosecution case.

13. Lastly it was contended on behalf of the accused that the failure to follow the procedure laid down in Section 329 of the Code of Criminal Procedure would vitiate the trial in this case. It was pointed out that a Division Bench of this Court in *Dhora v. State of Kerala*, (1991) 2 Ker LT 775 took the view that the provisions contained in Section 329 is mandatory. The observation of the Division Bench in this regard is extracted below :

Thus, law enjoins on the Sessions Judge to hold a trial regarding the soundness of the accused's mind when it 'appears' to him that the person brought to the trial is of unsound mind and consequently incapable of making his defence. According to the requirement, he shall 'in the first instance, try the fact of such unsoundness as incapacity.' He can proceed only if he is satisfied that the accused is of sound mind and is capable of making his defence. The word 'appears' in Section 329 of lesser degree of probabilities than the word proof. The corresponding Section in the old Code of Criminal Procedure (Section 465) received such an interpretation from Supreme Court in *I.V. Sivaswami v. State of Mysore*, AIR 1971 SC 1638 : (1971 Cri LJ 1193). If there is something in the demeanour of accused or in facts of the case which raise a doubt in the mind of court that the accused is of unsound mind and consequently incapable of making his defence, it is obligatory on the court to try the said fact before proceeding with trial into the charge. Failure to follow the procedure laid down in Section 329 would vitiate the trial as the provision is mandatory.

That was a case where the accused killed his father and mother besides severely hacking two neighbours with a sharpened chopper. Thereafter he went to the police station with the weapon and narrated the whole story. This Court after hearing narration of facts formed an opinion that the accused did the acts as a 'demented person'. The learned Session Judge also entertained doubt that the accused 'might have been prompted by some derangement'. In spite of this the learned Sessions Judge did not try the fact of unsoundness and incapacity as a preliminary issue and record a finding as required under Sub-section (1) of Section 329 of the Code. It was in that background the Divisions Bench remanded the

case to the Sessions Court directing to follow the procedure in accordance with law. As far as the present case is concerned, the Sessions Court did not notice any symptom of unsoundness of mind during trial as well as at the time of questioning under Section 313. As pointed out earlier, the Sessions Judge observed that the accused appeared to be normal during the trial. However, in view of strange answers given by the accused in so far as certain incriminating circumstances alleged against him, the learned Sessions Judge referred the accused for examination by a Psychiatrist. The further trial of the case was adjourned. After the examination of the accused, Psychiatrist Dr. A.G. Vishwanathan Civil Surgeon, Mental Health Centre, Trichur issued a certificate dated 21-7-1990. The certificate reveals that his intellectual functions were within normal limits and no delusion or hallucination could be elicited. After considering this certificate, the learned Sessions Judge came to the conclusion that the accused did not suffer from any unsoundness of mind. It is of course true that the said certificate is not seen marked in this case; however the fact remains that there is a valid certificate which is relied on by the learned Sessions Judge. We have also perused the certificate and satisfied as to its genuineness. We are therefore of the view that there is substantial compliance of the provisions contained in Section 329 of the Code in the facts of the present case. That being so, the decision in Dhora's case (1991) 2 Ker LT 775 is clearly distinguishable and the principles laid down therein cannot be pressed into service in the facts of this case.

14. In view of the aforesaid conclusions we are compelled to hold that the conviction and sentence passed against the appellant in this case are perfectly valid and legal. No interference is called for. We accordingly dismiss the appeal.