In Re: K.M. Thomas

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Court : Chennai

Decided On : Sep-06-1971

Reported in : (1973)1MLJ179

Appellant : In Re: K.M. Thomas

Judgement :

S. Ganesan, J.

1. K.M. Thomas the appellant has preferred this appeal against his conviction under Section 302, Indian Penal Code, and the sentence of death passed thereunder by the learned Sessions Judge of Kanyakumari Division for having murdered one Kunjuman alias K. M. Joseph with a rubber tapping knife.

2. The occurrence had taken place in Eravannoor Rubber Estate owned by the appellant's elder brother Thiru K.M. Mathai in Thirupparappu village in Kanyakumari District at 3-30 P.M. on 30th August, 1970. The appellant was the manager of the said estate for sometime till January, 1969 when the deceased Joseph assumed charge of the managership. On the day of occurrence at about 3-30 P.M., the appellant went to the estate and demanded six kottas of paddy from Joseph (the deceased) and the latter explained that only two kottas of paddy were readily available and promised to give the balance of four kottas after the harvest. Joseph then asked Sargunam P.W. 1, a part time cooly who occasionally worked in the estate and had come there just then to cut tender coconuts from the tree

and give it to the appellant. P.W. 2 Muthunayagam, a permanent employee in the estate was then taking hay from the hayrick at a distance of 50 feet. Just then P.W. 4, a neighbour and one Ramalingam also came to the court-yard of the estate house where the appellant and Joseph were conversing. After drinking the coconut water, the appellant asked P.Ws. 1 and 2, Solomon P.W. 4, and Ramalingam to go away; and accordingly P.W. 4 and Ramalingam left the place for their house. P.W. 2 Muthunayagam moved out to the cattle shed which is about 20 feet away from the estate house and was standing there. The appellant then asked Joseph to open the estate house and show him the two kottas of paddy which he said were stocked in the room. Accordingly Joseph opened the door of the eastern room in the estate house and entered the same. The appellant also entered the room and then took out M.O. 1 a knife used for tapping juice from the rubber trees from his waist and stabbed Joseph on his back with the knife. On sustaining a bleeding injury as a result of the attack, Joseph turned aside and the appellant stabbed him again with the knife on his right chest, on his left shoulder and on his left upper arm. Thereupon Jospeh cried out 'Ayyo, the accused has stabbed me, you run away'. The remarks were addressed to P.W. 1. Joseph went out of the inner room, went past the northern verandah and the court-yard and ran eastwards along the road. P.W. 1 ran after him and the appellant ran behind him. After chasing Joseph upto the eastern limit of the estate the appellant stopped and went back to the estate house. After running for about a furlong along the road abutting the estate on the west, Joseph fell down on the road near a channel. P.W. 1 ran to the place and Joseph asked him to report the occurrence to one Dass, a panchayat member of Thiruvarampu Panchayat which was at a distance. It was then about 4 p.m.

3. P.W. 2 Muthunayagam, a Watchman employed in the estate has corroborated P.W. 1 in full about the occurrence till Joseph fell down on the road near the channel. According to him, after P.W. 1 left the place, P.W. 4 and Ramalingam arrived there; and as Joseph asked for water P.W. 2 and Ramalingam took some water in their hands from the channel and Joseph drank the same. The appellant then came along to the place pushing a cycle. On seeing him, Joseph got up and ran along the road and fell inside the estate of a Nagercoil gentleman. By the time P.W. 2 and Ramalingam went to the place, Joseph had already died and one

Palian and P.W. 3 Joseph, a butler in the estate were already there. It was then about 4-15 p.m.

4. P.W. 3 claims that about 3-30 P.M. that day, he was going to the Eravannoor estate from his house which was on the south about a mile away; and on the way he met P.W. 1 at a distance of about two furlongs south of the estate and the latter told him that the appellant had stabbed Joseph (the deceased). The appellant was pushing his cycle along the road southwards. On going northwards, P.W. 3 saw Joseph (the deceased) lying in the estate of a Nagercoil gentleman. Palian who was already there and P.W. 3 gave water to Jospeh who was still alive; and the latter told them that the appellant had stabbed him. A few minutes later Joseph died.

5. According to P.W. 4, a neighbouring estate holder on that date at about 3-30 P.M., he and Ramalingam while returning home went inside the Eravannoor estate and he has corroborated the testimony of P.W. 1 in full and he has also sworn that, after the appellant retreated from the place where Joseph had fallen near the channel, he (the witness) and Ramalingam went to the place where Joseph was lying. P.W. 2 and Ramalingam gave water to Joseph. As the appellant then approached the place pushing his cycle, Joseph got up and ran southwards. P.Ws. 2, 4 and Ramalingam then, followed and found Joseph lying dead near the estate of a Nagercoil gentleman. While going along the road to report the matter to Dass, the panchayat member, P.W. 1 met P.W. 3 the butler on the way and informed him about the occurrence. At 4-30 p.m. he reached the house of Dass and, while returning, found Joseph lying dead near the estate of the Nagercoil gentleman. It was about 5 p.m., P.W. 1 then walked a distance of five miles and reached Kulasekharam police station at 7 p.m. and laid the first information report Exhibit P-1 to the head constable P.W. 10. The latter registered the crime and sent express reports to the concerned officers. P.W. 12, the Inspector of Police reached the scene of occurrence at 9-30 p.m. that day, saw the dead body and later seized the blood-stained cement plaster M.O. 2 from the court-yard of the estate house, M.O. 3 and M.O. 4 blood-stained earth, M.O. 5 blood-stained paddy and M.O. 6 blood-stained earth from the room and M.O. 7 blood-stained earth from the verandah, M.O. 8 bloodstained earth from the court-yard, M.O. 9 blood-stained

lungi lying on the road abutting the channel at a distance of no feet from the place where the dead body was lying, M.O. 10 bloodstained grass and M.O. 11 blood-stained leaves on the road at a distance of 800 feet from the estate house apart from M.Os. 13, 14 and 15 in the presence of P.W. 7 and another. Between 11 P.M. and 12-30 A.M. on that night he held the inquest and later handed over the dead-body for post-mortem.

6. At 10-30 a.m. the next day (31st August, 1970) P.W. 12 searched the house of the appellant in the latter's absence but in the presence of his wife and seized M.O. 12 blood-stained heroin, the cycle and other articles in the presence of P.W. 8 after serving a search list on the appellant's wife. On 1st September, 1970, P.W. 12 arrested the appellant; and the latter gave a confession (the admissible portion Exhibit P-3) and, in pursuance of the confession, produced M.O. 1, tapper's knife from one of the two hay-ricks in which it was hidden. Chemical-analysis has revealed that M.O. 1 the tapper's knife, M.O. 2 blood stained cement and M.Os. 5 to 15 were stained with human blood.

7. When examined by the Magistrate and by the Sessions Judge the appellant denied the offence and did not offer to examine any witnesses on his behalf.

8. That the deceased died of violence does not admit any doubt whatsoever. P.W. 5 the Civil Assistant Surgeon attached to the Government Dispensary, Kulasekharam who conducted autopsy between 11 and 12 noon on 31st August, 1970, has found an incised wound at the outer aspect of the shoulder joint, a contused lacerated wound at the outer aspect of left arm at the upper part, a stab wound at the upper portion of right axillary region of the chest and a V shaped incised wound on the left side of the back at the middle 3' away from the mid line. The doctor is of opinion that the deceased died of shock and haemorrhage because of the injury to the right axillary artery and vein and that the stab wound on the chest with the corresponding cut injuries to the right axillary artery and vein was fatal and was sufficient in the ordinary course of nature to cause death. She is also of opinion that the deceased might have survived for about an hour after sustaining the injuries and would have died about 20 hours prior to the post-mortem examination. She has also stated that the deceased could have run to a

distance of one or one and a half furlongs after the receipt of the injuries and that the injuries could have been caused by stabbing with a weapon like M.O. 1.

9. The learned Counsel for the appellant has been unable to challenge the prosecution evidence with any show of success and we are satisfied that it is impossible to discredit the prosecution case. We have briefly summarised the evidence of P.Ws. 1, 2 and 4, the eyewitnesses as also the other material witnesses in the earlier part of the judgment; and we find that their evidence is consistent and natural. We have no reason to suspect that P.W. 1 used to work as a part-time cooly in the estate in question and that he has witnessed the occurrence and we find that the first information report given by him contains substantially similar account of the occurrence as now set forth by the prosecution witnesses and we are satisfied, taking into account the circumstances in the case that the delay in lodging the first information report is not inordinate.

10. We have also no reason to suspect that P.W. 2 is a regular watchman employed in the estate and that he had also witnessed the entire occurrence. P.W. 4 in an independent and respectable witness and his evidence also sounds natural. We also find very little difficulty in accepting the evidence of P.W. 3 a butler employed in the estate, that P.W. 1 had told him, while the latter was on his way to see the panchayat member, that it was the appellant who had stabbed the deceased. We have also the dying declaration made by the deceased to P.W. 3 and the evidence of P.W. 3 is also impressive. We have also the evidence of the Inspector of Police that the appellant produced the bloodstained tapper's knife M.O. 1 which is proved to have been used by him in cutting and stabbing the deceased: and we have already pointed out that the weapon is proved to be stained with human blood.

11. There can be no doubt that it is the appellant who had fatally cut and stabbed the deceased on the day of occurrence with M.O. 1. The evidence is overwhelming; and we find no reason to suspect the testimony of P.Ws. 1 to 4 and the testimony of the Inspector relating to the recovery of M.O. 1 the knife proved to have been used by the appellant in stabbing the deceased.

12. The main contention of the learned Counsel for the appellant is that the appellant was insane at the time of occurrence and that in law he is not responsible and cannot be convicted for the murder. In view of the seriousness of the plea we permitted the learned Counsel to adduce evidence at this stage in support of the plea of insanity.

13. D.W. 1, the elder brother of the appellant has sworn before us that in the year 1962 the appellant was suffering from mental illness, that in the year 1963 he was admitted in Ramakrishna Ashram Hospital at Trivandrum, as he had sleepless nights and used to read books aloud and laugh aloud and complained that somebody was singing and ringing in his ears. Dr. K. V. Jacob treated him between 2nd July, 1963 to 27th July, 1963 and has diagnosed the disease as schizophrenia (vide Exhibits D-6 and D-7). Even after he was discharged From the hospital, the treatment was continued at home but he was not completely alright. In August, 1965, he suddenly attacked his maternal uncle's son who was working in the estate and dealt 2 or 3 blows and the uncle's son stabbed the appellant on his back in retaliation. The appellant suspected that his uncle's son who was looking after the estate had tapped the rubber trees during the night time and charged him directly with theft and the latter insisted that he did not know. Thereupon the witness consulted Dr. Alexander and as the appellant had already 35 electric shocks, the shock therapy was given up and he was admitted in S. P. Ayurvedic Hospital and Pharmacy near Quilon where he got treatment from 30th December, 1966 to 12th May, 1967 (vide Exhibit D-8, the certificate from the Ayurvedic Hospital). After his discharge his condition had not improved to any considerable extent. In July, 1967, he became violent and was therefore admitted in the Rotary Club 'Clinic, Trivandrum, for treatment under Dr. Kumara Pillai, the ex-superintendent of the Mental Hospital. He was in the hospital for a month and electric treatment was continued. In January, 1968, he again complained that he was hearing some noise and music in his ears, that M. M. George a leading planter of that area must be the person who had played radar equipment and caused the nuisance in his ears and that he should finish Mr. George. Thereupon his younger brother managed to take the appellant to the mental hospital at Trivandrum where he was treated from 23rd January, 1968 to 28th March, 1968, (vide Exhibit D-9). In September, 1968, the appellant kicked his younger brother's

child and as the child fell he wanted to take out the child's brain. He was again taken to the Mental Hospital, Trivandrum and was treated there from 3rd September, 1968 to 29th November, 1968 (vide Exhibit D-10). The treatment was continued as an out-patient and during that period the deceased was attending on him. The treatment was continued till 5th December, 1968. The doctor advised that occupational therapy might restore sanity, but he was not put in any job till May, 1969. He consumed six viels of Dalf poison after a sumptuous meals in a room which had been hired for his stay during the treatment. But fortunately he vomited the poison and rushed home and he was taken to Dr. Mathia's Nursing Home and was kept therefor 10 days. When he recovered he was complaining that he was alone and that there was nobody to take care of him. So in September, 1969, his marriage was celebrated; and as a sort of occupational therapy he was asked to manage the rubber estate in question under the control of his youngest brother as an experimental measure and the youngest brother was acting as a shadow. In May, 1970, however he attacked his youngest brother and also threatened to stab him with a knife. His youngest brother got panicky and left the estate From May, 1970 onwards the witness was looking after the estate and the deceased was placed in management of the immature area in the estate.

14. The witness has also spoken to the following facts. The appellant had written the letter Exhibit D-11 dated 5th December, 1968 to the supervisor of the estate who was in charge before Shamdas. In that letter he had described his sufferings which he had undergone as a result of taking shock treatments and stated that he had been taken to the hospital at Trivandrum by being tied up. Exhibit D-12 dated 4th August, 1970, is a letter addressed by the appellant's wife to the wife of the witness. In that letter the appellant's wife has described the unpleasant time she was spending with the appellant. She complains that he abused her in bad language, that he had beaten her on the face and also threatened to stab her with a knife. He was complaining that Kunju-man (the deceased) and party of Eravannoor had mixed folidol in all the foodstuffs in the house. She also says that the appellant charged her with having got the baby in the womb through somebody else, because he was not feeling well and stated that he must marry a girl in poor circumstances.

15. The witness has further deposed that insanity was hereditary in their family. Their paternal grandfather and two of the father's sisters were mentally unsound. Their father's brother's daughter and her son are also having treatment in the mental hospital.

16. D.W. 2, Dr. N. Vijayan, who is toe Assistant Professor in the Medical College, Trivandrum has had considerable experience in the Mental Hospital, London for six years and nearly four years in Trivandrum. He has produced the case diary of the appellant Exhibit D-9 and also Exhibit D-7 the prescription issued by Dr. Jacob. The symptoms as revealed by the case history are the following: occasional violence, general inactivity, loss of sleep and appetite, at times violent and over-talkative, excited and elated wandering tendency, suspicion of others and suspicion that some machine is controlling his activities. These symptoms were noticed for six years, and Dr. Jacob had further recorded that he is introvert by personality and is having remissions and recurrences.

17. D.W. 2 has stated that schizophrenia is a disorder of the mind characterised by thought disorder, disorder of feeling with periods of violence, agitation and aggressiveness, perpetual disorder with delusion and hallucination and behaviour disorder resulting in the gradual deterioration of the total personality of the individual. He has sworn that paranoid delusion from which the appellant was suffering is a false belief which cannot be changed by reason and has the force of conviction in the patient. Persons so affected will have delusions of persecution, will feel that people are against him or even attempting to poison him and will even feel that others are watching his activities and laughing at him, and his behaviour may be directed according to those delusions. He has also sworn that complete recovery is not possible, that there are chances of remissions and relapses, that normally when a relapse occurs it will be a sudden outburst of violence, that it can even be explosive at times and that a sudden explosion of violence may itself be the onset of the relapse of the mental illness. He has also sworn that the appellant had all the delusions and hallucinations and did not have complete insight in his mental state.

18. According to him the appellant was suffering from schizophrenia, the outstanding characteristic of which is disordered thinking. There is great incoherence of thought, periods of wild excitement occur and there are illusions and hallucinations. Delusions which are bizarre in nature are frequently present; often there is impulsive and senseless conduct as though in response to the hallucinations or delusions. Ultimately the whole personality may completely disintegrate.

19. The test of criminal responsibility in India is based on the MacNaughten rules and is embodied in Section 84 of the Indian Penal Code which runs 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.

Section 84, Indian Penal Code, must be read with Section 105 of the Indian Evidence Act which deals with the burden of proof in cases of insanity among other Exceptions in the Indian Penal Code. Section 105, Evidence Act, is framed thus:

When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code, or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.

Illustrations: (a) A, accused of murder,, alleges that, by reason of unsoundness of mind, he did not know the nature of the act.

The burden of proof is on A.

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20. The plea of insanity has come up for considerable debate and discussion in the various High Courts in India the House of Lords, the Privy Council and also in the Supreme Court in the State of M.P. v. Ahmadulla : [1961]3SCR583 ,

Dahyabhai v. State of Gujarat (1964) 2 Cri.L.J. 472, Bikari v. State of Uttar Pradesh : 1966 CriLJ63 , Munshi Ram v. Delhi Administration (1968) M.L.J. (Crl.) 577, and Jai Lal v. Delhi Administration (1969) M.L.J. (Crl.) 259, (a case dealing with schizophrenia.) The law on the subject may now be taken to be well settled in India and may be summarised thus.

21. It is the duty of the prosecution to prove beyond reasonable doubt that the accused had committed the offence with the requisite mens rea and the burden never shifts. Where the accused sets up the plea of insanity as a defence, it is for him to establish the same. The presumption is that he was sane and that, where he has had previous attacks of insanity, the act was committed in lucid intervals; but the presumption is rebuttable and it is open to him to show by the evidence adduced by the prosecution as well as by him that he was insane at the time of the commission of the offence. The burden of proof of insanity is not so heavy and strict as lies on the prosecution to prove its case; he is net bound to prove insanity beyond all reasonable doubt. All that he is required to do is to show that his version is probable; in other words the burden of proof upon him is no higher than that of a party to a civil proceeding and the burden can be discharged by showing preponderance of probabilities in favour of the plea on the basis of the materials on record. Even if he fails to establish the plea of insanity, he will be entitled to succeed, if on the evidence adduced by the prosecution as well as by him, the Court entertains a reasonable doubt about the prosecution case relating to the mens rea or the other ingredients of the offence.

22. It is not enough for the defence to rely upon a mere possibility that the accused might have been of unsound mind at the time of the commission of the offence; what is required is that regard being had to the previous history of the accused, his behaviour before or at the time of the commission of the act and his subsequent conduct, coupled with other circumstances, the Court should be in a position to hold that there was a reasonable probability that, at the time when the offence was committed, he was suffering from unsoundness of mind of the nature and degree mentioned in Section 84, Indian Penal Code. No such conclusion should be rashly arrived at on mere surmises and inferences without any basis on record.

23. It must however be remembered that it is not every form of insanity or madness that is recognised by law as a sufficient excuse. There is a vital distinction between medical insanity and legal insanity. Insanity, according to the medical science, will comprise mental abnormality of different kinds due to various causes and existing in various degrees; and even uncontrolled impulse driving a man to kill or wound would come within its scope. The legal conception of insanity differs considerably from the medical conception and, in order to escape the charge, the accused must show that he was of unbound mind at the time he committed the act and not merely before or after the act and that, as a 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.

24. As pointed out by Mayne, the words 'incapable of knowing the nature of the act' may refer to two different states of mind, which are distinguished in the answers of the Judges, and to the English Draft Code, 1879, by the words 'nature' and the 'quality'. A man is properly said to be ignorant of the nature of his act where he is ignorant of the properties and operation of the external agencies which he brings into play, as for instance, where an idiot should fire a gun at a person, looking upon it as a harmless firework. He is ignorant of the quality of the act if he knows the result which will follow, but is incapable of appreciating the elementary principles which make up the heinousness and shocking nature of the result, for instance, if, the idiot was unable to perceive the difference between shooting a man and shooting an ape. This ground of exemption will hardly ever be found to exist, except in the case of idiots, or lunatics whose insanity is so complete as to sweep away substantially all the reasoning power which distinguishes a man from a beast.

25. While dealing with the second ground of exemption covered by the words 'that he is doing what is either wrong or contrary to law', Mayne has observed that it is the most important test in numerous cases and will arise where mental disease has only partially extinguished reason. One familiar instance of such partial extinction is the case of delusions, which apparently leave the mind unaltered outside the special ideas which affect. As observed by the learned Judges who framed the Mac-Naughten rules, a person labouring under specific delusions, but

in other respects sane, shall not be acquitted on the ground of insanity, unless the delusions cause him to believe in the existence of some states of things, which, if it existed, would justify or excuse his act provided that insanity before or after the time he committed the act and insane delusions, though only partial, may be evidence that the offender was, at the time when he committed the act, in such a condition of mind so as to entitle him to be acquitted on the ground of insanity.

26. For instance, if, in consequence of an insane delusion, a person thinks another man to be a wild beast or a jar made of clay, and kills him, he is exempted from criminal responsibility, as he does not know the physical nature of the act. If he kills a child under an insane delusion that, by doing so, he is saving him from sin and sending him to heaven, he knows the nature of the act that it will result in death, but he is not capable of understanding that what he is doing is morally Wrong. If a person kills another man under the influence of a delusion he is attempting to take his life, he would be exempt from punishment, inasmuch as he, by reason of insanity, is incapable of knowing that his act is contrary to the law of his country and is justified in killing that man in self-defence if his delusion were true. Similarly, a person who kills another man under the belief arising from an insane delusion that the man had committed adultery with his wife, may be entitled to invoke the benefits of Exception 1 of Section 300, Indian Penal Code. On the other hand, if a person kills another man under the influence of an insane delusion that he had inflicted a serious injury to his character and fortune, he is criminally responsible for his offence, as no one is entitled by law to kill a person in revenge for such injury, even if his delusion were true.

27. Insanity, in order to absolve a person from all criminal responsibilities, must have affected his cognitive faculties. If the insanity had merely affected his emotion or will, leaving his cognitive faculties substantially unimpaired, he cannot plead exemption though it may be a case of extenuation. Any mental aberration short of the complete damage to the cognitive facilities will not constitute an excuse under the Indian Penal Code. The fact that his behaviour was queer, that his mental ailment has rendered his intellect weak or that he was liable to recurring fits of insanity at short intervals, will not do. The fact that he was suffering from mental derangement is only one step and he cannot succeed unless he shoed that

he was, at the time of the commission of offence, insane.

28. Where previous insanity is proved, the Court has to weigh all the circumstances carefully before coming to the conclusion whether the accused did or did not at the time of the commission of the offence know that he had committed a crime. The Court will consider whether he had any motive to commit the offence, whether the act was deliberate and showed preparation, whether the act was accompanied by manifestations of unnatural and fiendish brutality, whether the act was committed openly or in a manner which showed a desire to concealment, whether he showed consciousness of his guilt by acts like running away from the scene, whether he made efforts to avoid detection by destroying evidence of his crime by concealing the weapon of attack or the body of his victim and whether he offered false excuses and made false statements when arrested. It will, however, be unwise for the Court to infer insanity solely by relying upon one or more circumstances, particularly when they are compatible with acts of revenge Motive is certainly an important factor which must be taken into consideration; but it must be remembered that there are cases where it may be difficult to trace motive in cases of homicide by sane persons though there may be one; and as observed by Modi in Medical Jurisprudence and Toxicology (17th Edition) at page 420, insane persons are known to have committed murders with a motive, however trifling it may be ; and a sane person may commit murder on a very trivial excuse; and it is also known that some persons have committed murders in a brutal and savage manner while indulging in revenge.

29. Looking into the hereditary background of the appellant, the history sheets maintained by the doctors of the treatment of his mental illness, the various symptoms of his mental disease and his strange and violent conduct from the year 1962 onwards, we are inclined to agree with Dr. N. Vijayan (D.W. 2) that the appellant was suffering from hebephrenia, a variety of schizophrenia, prior to the occurrence. We are not however inclined to uphold his opinion that the appellant was suffering from complete insanity and that he was totally incapable of knowing the nature of the act or knowing that the act he committed was either wrong or contrary to law. The case sheets relating to the appellant's treatment dearly show that there were lapses and remissions; and the passage in Modi's Medical

Jurisprudence relied on by the doctor itself shows that delusions are present only frequently. When the doctor was asked by us whether there was any difference between medial insanity and legal insanity, he stated that there was none; and it is therefore clear that his testimony relating to the criminal responsibility of the appellant is not entitled to any serious consideration.

30. On the whole we are inclined to think that the appellant was at the time of occurrence suffering from hebephrenia and that he had fatally stabbed the deceased under a delusion while suffering from the disease that the latter had mixed poison in his food. Exhibit D-12 which is proved to be a letter written by the appellant's wife to P.W. 1's wife shows that, on 4th August, 1970 i.e., about 26 days prior to the occurrence, the appellant had complained that the deceased and some men of Eravanoor had mixed folidol in all the foodstuffs in the house; and it is not improbable that he continued to entertain the said delusion subsequently also and that he had murdered the deceased while acting under that delusion.

31. We have already pointed out that we do not agree with the opinion of D.W. 2 Dr. Vijayan that the appellant was suffering from complete insanity; and we are clear that the events which took place on the day of occurrence do not support the contention now raised on behalf of the appellant that he was completely insane at the time of occurrence.

32. No evidence is now available about the conduct of the appellant after the appellant's wife had written the letter Exhibit D-12; and admittedly no plea of insanity was urged when the enquiry or trial was held. It is proved that the appellant had asked the deceased who was admittedly in management of the rubber estate for six kottas of paddy and that the deceased offered to give two kottas of paddy immediately and promised to give the balance after harvest. It is also proved that the appellant drank coconut water which was given to him by P.W. 2 as per the orders of the deceased. There is also clear evidence that, while the appellant and the deceased were conversing with each other, after drinking coconut water, the appellant requested P.Ws. 1, 2 and 4 and Ramalingam who were at the scene to go away, that P.W. 4 and Ramalingam accordingly left the place for their house and that P.W. 2 also moved away to the cattle-shed. It is also

established that the appellant asked the deceased to open the estate house and show him the two kottas of paddy which were available, that, on entering the room the appellant took out a tapper's knife from his waist and stabbed the deceased, that the appellant stabbed him again more than once and that the appellant chased the deceased upto the eastern limit of the estate as the latter ran along the road after the attack.

33. We are inclined to deduce from these circumstances that the appellant had gone to the estate in the afternoon deliberately for murdering the deceased. He had gone to the estate armed with a deadly weapon at a time when he did not expect the butler P.W. 3, the only permanent employee in the estate to be present, and, on seeing P.Ws. 1, 2 and 4 and Ramalingam, had requested them to go away from the scene, evidently in order to attack the deceased when the latter was alone. It also appears to us that his request for 6 kottas of paddy was cunningly made with a view to take the unwary deceased into the building with a view to isolate the latter from all possible help during his attack. The fact that he chased the deceased to the eastern limit of the estate also shows his intention to continue the attack on the deceased; and it is evident that he was dissuaded from further attacking the deceased, because P.W. 1 was also running after the deceased during the chase. It is also established that, after sometime he went, pushing his cycle, to the spot where the deceased was lying; and it sounds probable that he went there with a view to attack the deceased further if he was still alive and that he had to return back on seeing witnesses at the place where the deceased was lying injured. The fact that he had deliberately concealed the weapon is also a point against him.

34. We may at once state that we do not agree with the learned Public Prosecutor that the appellant had attacked the deceased because the deceased had assumed management of the estate after the appellant from January, 1969. That does not appear to be the motive in this case. It does not appear from the evidence on record that the appellant had entertained any grouse against the deceased during the intervening period of nearly 20 months for having supplanted him. If he had any serious grievance, it should have been only against his brother D.W. 1 who was responsible for the change in the management. Nor are we inclined to think

that the offer of the deceased to give only 2 kottas of paddy for the present had momentarily upset him. It appears to us probable that the appellant, as observed earlier, continued to harbour the delusion that the deceased had put folidol poison into the foodstuffs in his house and that, acting under the delusion, he had deliberately gone to the estate and stabbed the deceased. The weapon used is a dangerous one and the injuries were inflicted on vital parts of the body; and the other circumstances in the case which we have set out earlier also tend to support the prosecution case that the appellant had deliberately stabbed the deceased with an intention to murder him or in the alliterative with intent to cause such an injury as was sufficient in the ordinary course of nature to cause death. The delusion that the deceased had poisoned all the foodstuffs in the appellant's house would constitute only the apparent motive in this case and cannot take the case out of the ambit of Section 302, Indian Penal Code.

35. There can therefore be no doubt that the conviction of the appellant under Section 302, Indian Penal Code, for murder is proper; but we are clear that the circumstances of the case do not warrant the imposition of the maximum sentence.

36. It is true that the MacNaughten rules have been assailed by leading psychiatrists and eminent judges from various parts of the globe and that, in Britain, and other countries, legislations are being undertaken to mitigate the rigour of these rules; but then, unfortunately, no such steps have so far been undertaken, in India and the result is that the hands of Court are unfortunately tied and the existence of mental derangement can at best be pleaded only as an extenuating circumstance, unless the stringent provisions of Section 84, Indian Penal Code, are satisfied.

37. In the result the conviction of the appellant under Section 302, Indian Penal Code, is upheld; but the sentence of death is set aside and instead the appellant is sentenced to imprisonment for life. Subject to this modification, the criminal appeal is dismissed.