

In Re: Palaniappan

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Court : Chennai

Decided On : Apr-03-1972

Reported in : (1972)2MLJ497

Appellant : In Re: Palaniappan

Judgement :

S. Ganesan, J.

1. The appellant Palaniappan had been convicted and sentenced to life imprisonment by the learned Additional Sessions Judge of Salem under Section 302, Indian Penal Code, for having murdered one Ramasami.
2. No previous enmity is alleged between the appellant and the deceased Ramasami. P.W. 2, Kandasami is the younger brother of the appellant and the deceased was P.W. 2's brother-in-law; and P.W. 3 is the wife of the deceased. They all reside in The Kandampalayam village in Salem district.
3. The occurrence is said to have taken place at about 1 P.M. on 26th October, 1969 in the cattleshed of the appellant. P.W. 1 is said to have been there paving the front yard of his shed with cement; and P.W. 2 the prother of the appellant is said to have been there shodding his bull near the road side close by. Both these witnesses heard the words of distress of the deceased . There upon both the witnesses ran towards the appellant's cattle shed from which the alarm emanated. As P.W. 2 attempted to enter the cattle-shed, the appellant attempted to stab him

with the knife M.O. 1 saying 'don't look in.' P.W. 2 however, successfully caught hold of both the hands of the appellant and pushed him to the south-west corner of the cattleshed and held him to the wall. Ramasami was lying on the floor with stab injuries on his stomach and told P.W. 1 when questioned by the latter that he was stabbed by the appellant with a knife. At P.W. 2's request P.W. 1 wrested the knife M.O. 1 from the appellant. As there was bleeding from the stomach, P.W. 2, ran to his house for bringing linen for tying up the wound; and P.W. 1 held both sides of the wound with his hand. The appellant then took out a pen knife M.O. 2 and saying stabbed Ramaswami on his left hand and his buttock on the left side. P.W. 1 raised an alarm and cried out P.W. 2 heard these words while returning to the cattle-shed with linen and rushed to the spot. Then both the witnesses tied the hands of the appellant and held him close to the wall; and the appellant thereby sustained small injuries on his face. P.W. 1 then tucked both the knives into the roof of the cattleshed, went out, fetched a van and transported Ramasami to the General Hospital. Before Ramasami was removed in the van, his wife P.W. 3 rushed to the cattle shed on learning about the occurrence and Ramasami told her that he was stabbed by the appellant.

4. P.W. 5 the Civil Assistant Surgeon attached to the Government Headquarters Hospital, Salem examined Ramasami at 3-40 P.M. and found on him (1) an incised wound on the dorsum of the left hand $1\frac{1}{2}' \times 1\frac{1}{2}'$ and the extensor tendon of the middle and ring finger was cut; (2) an incised wound on the gluteal region $1\frac{1}{2}' \times 1\frac{1}{2}'$; (3) an incised wound on the right side abdomen in the epigastric region near costal margin $1\frac{1}{2}' \times 1\frac{1}{2}'$; and (4) an incised penetrating wound on the left epigastric region $1\frac{1}{2}' \times 3'$ above the umbilicus. Loop of small intestine was projecting through the wound.

5. The doctor then sent intimation of the accident to Shevapet Police Station.

6. On receiving the intimation at 4-15 P.M. P.W. 8 the Head Constable rushed to the hospital and recorded a dying declaration (Exhibit P-11) from Ramasami at 4-45 P.M. which is to the following effect. At about 1 P.M. while Ramasami was passing along Ondikadai after having tea, the appellant who was sitting in Nandhi Thottam valavu stabbed him with a suri knife on his chest and stomach on the left

side. P.W. 1 who was nearby wrested the knife from the appellant. P.W. 1 and P.W. 2 were also then present; and they bandaged the wounds on his stomach. The appellant, however, stabbed him again on he left hand and on the left side of the buttock. P.W. 2 wrested that knife also. Then they took the appellant to the Police Station and took him (Ramasami) to the Government Hospital. There was enmity between him and the appellant owing to the purchase of some land. The dying declaration is attested by P.W. 1. P.W. 8 then went back to the station, registered a crime under Section 307, Indian Penal Code and sent the First Information Report, Exhibit P-12, to Kakapalayam Police Station within whose jurisdiction the occurrence took place. On receipt of the First Information Report, P.W. 12 the Sub Inspector of Police of Kakapalayam Police Station re-registered the crime under Section 307, Indian Penal Code.

7. At 6-45 P.M. on the same day Ramasami died at the hospital and on receiving the death intimation on the next day (27th October, 1969) at 6 AM., P.W. 12 the Sub-Inspector altered the section to 302, Indian Penal Code and sent express reports to the concerned officers. On receiving the express support at 8-15 A.M P.W. 13 the Inspector of Police went to the hospital and between 10 and 11-30 A.M. held the inquest at which he examined P.Ws. 1 to 3 and then handed over the dead body to P.W. 9, Civil Assistant Surgeon of that hospital for postmortem. On visiting the scene of occurrence, P.W. 13 recovered the knives M.Os. 1 and 2, broken pieces of pot M.O. 7 series and bloodstained earth M.O. 8 in the cattle shed of the appellant. The appellant was found absconding and. was arrested on the same evening at 6-15 P.M. at Katchupalli Selliamman temple, and P.W. 13 recovered from his person a blood stained shirt M.O. 10 and towel and M.O. 11 under the mahazar Exhibit P. 10 attested by P.W. 7 and another. As the appellant had injuries, the Inspector sent him to the Government Hospital Vembadithalam.

8. P.W. 6 the Medical Officer attached to the Vembadithalam Government Hospital found on the appellant (1) an abrasion skin deep 3/4' 1/2' on the left cheek and the surface was covered with clotted blood and edges were swollen; (2) a superficial abrasion about 1' in diameter on the front of the left knee below the keep cap; and (3) a stab wound on the back aspect of the right little finger at the lower phalanx 1/2' 1/4' 1/3'.

9. On 28th October, 1969, the Inspector of Police sent a remand report Exhibit D-9 to the Sub-Magistrate, Sankari stating that, during the investigation, it was reported that the appellant was found to be mentally unsound during the preceding 7 days and requested that the appellant may be produced before the District Medical Officer, Salem, for examination and report.

10. On receiving a requisition from the Sub-Divisional Magistrate, Sankari, for keeping the appellant under observation, P.W. 4 the Assistant District Medical Officer, Government Headquarters Hospital, Salon, kept the appellant under observation for a week prior to 5th November, 1969. The appellant told him that an astrologer had informed him that a man named Ramayya will murder him and that he therefore took the initiative and murdered Ramayya in advance. The doctor is of opinion that the appellant was suffering from schizophrenia with homicidal tendency. Exhibit P-1 is the certificate which he had issued on 5th November, 1969 and Exhibit P-2 is the medical history sheet.

11. On 2nd December, 1969, the charge-sheet was laid; and subsequently on 3rd January, 1970, the appellant was admitted into the Government Mental Hospital, Madras for treatment of schizophrenia. After treatment the appellant was declared fit for trial on 6th August, 1960 {vide Exhibit P-23 discharge certificate issued by the Government Mental Hospital, Madras).

12. Chemical analysis revealed that there was no blood on M.Os. 1 and 2 (knives) and that M.Os. 8 and 9 (earth recovered from the cattle shed of the appellant) and M.Os. 10 and 11 (clothes recovered from the appellant) are stained with human blood.

13. In the committal Court the appellant had set out the following version about the occurrence and the circumstances leading thereto. The deceased Ramasami used to visit his house frequently and while he was not mentally in a fit condition to look after his family and the lands, one Appukutti who has married his cousin sister was managing the properties and his family, and there was enmity between Appukutti and the deceased. One day (the day of occurrence) Appukutti, the deceased and the appellant's wife were in the appellant's house ; and the appellant who was then in his garden heard the cries of the wife of P.W. 2 that Appu had stabbed

Ramasami. Thereupon the Appellant went to the scene of occurrence and P.W. 1, his brother Dorayan and P.W. 2 tied his hands and compelled him to admit that he was the culprit, as the house belonged to him and then took him and the deceased in a van. They handed him over to Kakapalayam Police Station; and while they were transporting him in the van, they were saying that they must say that it was the appellant who stabbed Ramasami.

14. At the sessions the appellant had stated that he was a lunatic and that the murder case had been foisted on him taking advantage of his insanity. He denied that he was arrested by the Inspector at 6-15P.M. on 27th October, 1969 in Katchupalli Selliamman temple or that the Inspector recovered from his person the bloodstained shirt and towel, M.Os. 10 and 11.

15. That the deceased died of violence does not admit of any doubt whatsoever. As already observed P.W. 5 the Civil Assistant Surgeon of the Salem Hospital found on him, while alive, incised wounds, the last two of which were on the right side of the abdomen and over the left epigastric region 3' above the umbilicus. P.W. 9, the Medical Officer attached to the Government Headquarters Hospital, Salem who held the post-mortem at about 12-20 P.M. on 27th October, 1969 had found apart from other injuries the two injuries on the stomach set out above. On dissection he found that the transverse colon and stomach were injured. He is of opinion that the injury in the upper part of the abdomen was necessarily fatal.

16. There can also be no doubt that it is the appellant who had fatally attacked the deceased in his cattleshed on the date of the occurrence as alleged by the prosecution. I have carefully scrutinised the evidence of P.Ws. 1 and 2 the material eye-witnesses in the case; and they have substantially spoken to the prosecution case as set out earlier. Nothing very material had been brought out in the cross-examination of P.W. 1 to discredit his evidence and I am satisfied that he is a true witness. He is a pangali of the appellant and he also lives close by to the appellant's cattleshed. He denies that the deceased was under his thumb and that he had lent a sum of Rs. 500 to the wife of the deceased. It is pointed out that he has not stated before that the appellant stabbed the deceased on the buttock on the left side and on the right hand; but I am not inclined to suspect his evidence on

account of this and other small discrepancies found in his evidence.

17. P.W. 2 is none other than the younger brother of the appellant; and I am satisfied that he was an eye-witness to the occurrence and that his evidence, is entitled to credence, though he had admitted that there was enmity between him and the, appellant during the period. It appears to be doubtful whether there was any enmity between the appellant and this witness at all, as the witness is proved to have told the Sab Magistrate, Sankari that he took the appellant to Kannantheri astrologer and that the appellant's mental condition did not get better in spite of some shanti done by the former.

18. In view of the fact that there is a Variation in the prosecution case regarding the time and place of arrest of the appellant, I think it unsafe to attach any importance to the prosecution evidence that the clothes M.Os. 10 and 11 which are proved to be stained with human blood were recovered from his body. While P.Ws. 1 and 2 are positive that they took the appellant along with the deceased in a van and handed him over to the police station, P.W. 13 the Inspector strangely enough claims that he arrested the appellant near a temple at a much later time.

19. I have no doubt that the appellant's story that it was Appukutti, the appellant's brother-in-law, who had murdered the deceased is false. Admissions made by P.W. 2 before the Sub-Magistrate, Sankari are relied upon for showing that there was illicit intimacy between the appellant's wife and the deceased, that Appukutti reprimanded the deceased on that account and that, as the deceased persisted in his visits to the appellant's house, there was enmity between the deceased and Appukutti; but I am satisfied that the appellant's version is not entitled to any credence.

20. I find no reason to reject the testimony of P. Ws. 1 and 2 that it was the appellant who had attacked the deceased on that date; and there is the further evidence of P.W. 1 and P.W. 3 that the deceased told them immediately after the attack that it was the appellant who had stabbed him. I also find no reason to suspect the dying declaration Exhibit P. 11 made by the deceased before P.W. 8 and I have already set out the dying declaration in full detail in the earlier part of the judgment. The only point on which I have some doubt is that the recital therein

that there was prior enmity between him and the appellant over the purchase of some lands has been subsequently interpolated.

21. In fairness to the learned Counsel for the appellant, it must be stated that he had fairly conceded that, on the materials on record, it would be difficult to say that the appellant had not attacked the deceased and that the culprit was Appukutti, the appellant's brother-in-law. On the medical evidence there can be no doubt that the appellant would be liable for murder under Section 302, Indian Penal Code. The injury on the stomach is proved to be necessarily fatal.

22. The main argument of the learned Counsel for the appellant is that the appellant was insane at time of the occurrence and that he is therefore entitled to an acquittal under the provisions of Section 84 of the Indian Penal Code.

23. The law on the subject of insanity has been reviewed on more than one occasion by the Supreme Court of India. In *State of M.P. v. Ahmadulla* (1961) M.L.J. (Cri.) 480 : (1961) 2 S.C.J. 197 : (1961) All. 463, the Supreme Court has dealt with the subject; but the leading case on the subject is *Dahyabhai v. State of Gujarat* (1965) 2 S.C.J. 531 : (1965) M.L.J. (Cri.), wherein the Supreme Court has laid down the law in the following terms:

The doctrine of burden of proof in the context of the plea of insanity may be stated in the following propositions: (1) The prosecution must have proved beyond reasonable doubt that the accused had committed the offence with the requisite mens rea; and the burden of proving that always rests on the prosecution from the beginning to the end of the trial; (2) There is a rebuttable presumption that the accused was not insane, when he committed the crime, in the sense laid down by Section 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 which rests upon a party to civil proceedings; (3) Even if the accused was not able to establish conclusively 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. When a plea of legal insanity is set up, the Court has to consider whether at the time of commission of the offence the accused, by reason of unsoundness of mind, was incapable of knowing the nature of the act or that he was doing what was either wrong or contrary to law. The crucial point of time for ascertaining the state of mind of the accused is the time when the offence was committed. Whether the accused was in such a state of mind as to be entitled to the benefit of Section 84 of the Indian Penal Code, can only be established from circumstances which preceded, attended and followed the crime.

24. The same principles have been reaffirmed by the Supreme Court in *Jai Lai v. Delhi Administration* : 1969 CriLJ259 and their Lordships have observed that the general burden is on the prosecution to prove beyond reasonable doubt not only the actus reus but also the mens rea. The principles which have thus been well established have been followed by this Court recently in the following decisions by Sadasivam, J., and K.N. Mudaliyar, J. in *Kamr Marolle, In re* (1970) 83 L.W. (Cri.) 149 and *Thangavelu Asari, In re* (1971) L.W. (Cri.) 154, in the unreported Judgment of Venkataraman J. and Maharajan, J., in Crl. Appeal No. 1035 of 1970 and by K.N. Mudaliyar, J. and Ganesan, J., in *K.N. Thomas, In re* (1971) K.W. (Cri.) 269.

25. The Penal Code, does not define unsoundness of mind; and the Courts have treated this expression as equivalent to insanity. Insanity is a term used to describe various degrees of mental disorder ranging from mild delusional state to extreme cases of paranoia Or schizophrenia.

26. The Indian Law limits the exemption only to those cases where cognitive faculties are completely impaired and not to cases where the insanity affects only the emotions and the will. As a ground of exemption, insanity must be coupled with an incapacity of knowledge caused thereby viz., incapacity of knowing (1) the nature of the act, or (2) the wrongfulness of the fact or the illegality of the act. As pointed out by the Division Bench of the Allahabad High Court in *Lakshmi V. State* : (1959)IILLJ155All , what Section 84 lays down is not that the accused claiming protection under it should not know an act to be right or wrong, but that the

accused should be 'incapable' of knowing whether the act done by him is right or wrong. The capacity to know a thing is quite different from what a person knows. The former is a potentiality, the latter is the result of it.

27. I am bound to observe that there is some divergence of opinion among the High Courts as to the interpretation to be placed upon the second ground of exemption in Section 84, Indian Penal Code. One view is that the accused can escape liability by showing that he did not have the capacity to know either that the act he did was wrongful or that it was illegal; in other words he can succeed by showing that he believed that his act was not wrongful though he knew it to be contrary to law. The other view does not countenance any such distinction and would hold him liable in both the contingencies. I however do not desire to express any opinion on this controversy as, in my view, a decision on this point is not necessary for a disposal of this case.

28. The words 'incapable of knowing the nature of the act' may, as pointed out by Mayne in his Criminal Law of India (4th Edition - Page 173) refer to two different states of mind, which are distinguished by the words 'nature and quality', and the delusion relates to the acts themselves. A man is properly said to be ignorant of the nature of his act, when he is ignorant of the properties and operation of the external agencies which he brings into play, as if for instance, an idiot should fire a gun at a person, looking upon it as a harm-less fire work.

29. Other illustrations which are normally given are cases where a person strikes at another and in consequence of an insane delusion believes that he is striking a bird or is breaking a jar. A man is said to be ignorant of the quality of his act, if he knows the result which would follow but is incapable of appreciating the elementary principles which make up the heinous and shocking nature of the result; as for instance, where an idiot is unable to perceive the difference between shooting a man and shooting an ape. The test is whether the person was unconscious of what he was doing or of the consequences of his physical act.

30. The second ground of exemption envisaged by Section 84, Indian Penal Code, will apply to cases where the mental disease has only partially extinguished reason and covers delusions of the second kind which do not extend to the acts

themselves; but the person suffering under the delusion knows the nature of the act done thereunder. If the accused was conscious that the act was one which he ought not to do or that the act was contrary to the law of the land, he is punishable. The test is whether he has got the power of distinguishing between right or wrong, not in the abstract, but in regard to the particular act committed. The standard to be applied is whether, according to the ordinary notions of reasonable men, the act was right or wrong. A very common way of applying the test under the section is to ask, whether the man would have, in the circumstances committed the act if a policeman had been at his elbow.

31. In deciding whether the murder was the result of insanity Or not, the Court will consider Various factors. The fact, that the murderer had no motive, that he did not make any pre-arranged plan to kill, that he had no accomplice in the criminal act, that he did not run away from the scene, that he made no efforts to avoid detection by destroying evidence of his crime by concealing the weapon of attack or the body of his victim and that he did not offer false excuses and did not make false statements when arrested will be relevant circumstances. 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; but it must be remembered that it would be difficult to trace motive in cases of homicide by sane persons though there may in fact 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.

Mayne has observed at page 174 (Part II) thus:

One familiar instance of such partial delusions is the case of delusions, which, apparently leave the mind unaltered outside the special ideas which they affect. The questions put by the House of Lords to the judges (in the Macnaughten's case) seem to have been specially addressed to this form of insanity. Their answers are perfectly clear and are embodied in the following clause of the Draft Code of 1879, which puts the law in the most satisfactory manner.

A person labouring under specific delusions but in other respects sane, shall not be acquitted on the ground of insanity, unless the delusions caused, him to believe in the existence of some state of things which, if 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 as to entitle him to be acquitted on the ground of insanity.

In *R. v. Townley* 3F & F 839, Martin, B., put as an instance of delusion, the case of a man who fancied himself to be a king dispensing justice to his subjects. 'If such a man were to kill another under the supposition that he was exercising his prerogative as a king, and that he was called upon to execute the other as a criminal, he would not be responsible'

* * * *The mere existence of an insane delusion only entitles a man to be treated as if the facts really were such as he supposed them to be.

32. I respectfully agree with these observations and the provisions of Section 84 of the Indian Penal Code are based upon the M'Naughten rules. The answer to question No. 4 in the M'Naughten's case which is embodied in the Draft Code of 1879 referred to in the passage above in Mayne's Criminal Law of India (referred to above) is based upon the principles underlying Sections 76 and 79 of the Indian Penal Code which deal with mistake of facts. Mistake may be due to chance, negligence, stupidity or even superstition - vide *Sanford v. Bede* 65 L.J. Q.B. 73. Thus where a man assaults and kills a human being believing in good faith that the object of the assault was not a human being at all but a ghost or a tiger, the mistake of fact would afford a good defence to a charge under Section 302, Indian Penal Code, etc. In my view, persons acting under insane delusions must in law be deemed to have acted under a bona fide mistake of fact, and the responsibility for their crime must be regulated and fixed by reference to the principles underlying Sections 76 and 79 of the Indian Penal Code. I am fortified in this view by the following passage found in Nelson's Indian Penal Code - 6th Edition Volume, I at page 336:

Insanity of the first kind i.e., delusion coupled with a knowledge of the nature of the act done thereunder is in law treated as a bona fide mistake of fact under which accordingly the conduct may or may not be justified. See the Answers to Questions I and IV in the M'Naughten's case. Such cases therefore fall under Section 76 or Section 79 of the Code, the delusion being a bona fide mistake of fact, and the ordinary rule thereof applies. If the fact would have been lawful under the supposed state of things, the doer is exempted from liability for it; if it would not, he is guilty.

33. A few illustrations may be given. 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. Similarly, a person who kills another man under the belief arising from an insane delusion that the man had committed adultery (in his presence) with his wife, may be entitled to invoke the benefits of exceptions 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 delusions were true.

34. The law is thus fairly well settled; and it remains to consider whether the appellant can take shelter under the provisions of Section 84, Indian Penal Code. At the outset it must be remembered that the appellant did not at any stage admit that he murdered the deceased and did not plead that he was entitled to an acquittal because he was totally insane. On the other hand, his uniform plea was that it was his brother-in-law Appukutti who had murdered the deceased, as the latter was on illicit intimacy with the appellant's wife and continued to visit the appellant's house when Appukutti was looking after the affairs of his family during the period when he was incapacitated from looking after them. I am, however, prepared to ignore this stand and to consider whether the appellant was suffering from insanity at the time when he murdered the deceased and is entitled to claim the benefit of Section 84, Indian Penal Code.

35. On the whole I am unable to rule out the possibility that the appellant was, on the date of occurrence, suffering from the mental malady known by the medical term schizophrenia which is a disorder of the mind characterised by thought disorder, disorder of feeling with periods of violence, agitation and aggressiveness and perpetual disorder with delusions, hallucinations and behaviour disorder resulting in the gradual deterioration of the total personality of the individual.

36. The evidence of P.Ws. 2 and 6 establishes that, on 11th October, 1969 about 15 days prior to the occurrence, the appellant laid a criminal complaint to the police that P.W. 2 his younger brother was keeping his wife and that he had poisoned him through his wife. The doctor, P.W. 6, is clear that there was no poisoning and that the appellant appeared to be suffering from a fright; and it is not suggested that P.W. 2 was keeping the appellant's wife during the period.

37. The evidence of D.W. 2 established that, about 15 days prior to the occurrence, the appellant appeared to have been afflicted with mental disease. The evidence of D.W. 1 the karnam of the Village, which appears to be true, clearly establishes that, about a month prior to the occurrence, the appellant was suffering from mental disorder of a violent kind.

38. It is not improbable that, as suggested by P.W. 2 the brother of the appellant, the appellant was suffering from mental disorder for about two or three months prior to the occurrence.

39. The remand report Exhibit D-9 submitted by the Inspector of Police P.W. 13 on 28th October, 1969 shows that a request had been made by the Inspector for keeping the appellant under observation in the hospital to test his mental condition; and P.W. 4 the Assistant District Medical Officer of Salem has sworn that his observation of the appellant for a week prior to 5th November, 1969 suggested that the appellant was suffering from schizophrenia with homicidal tendency and subject to persecution delusions for 15 days prior to 5th November, 1969 i.e., between 20th October, 1969 and 5th November, 1969. The occurrence took place on 26th October, 1969. The remand report Exhibit D-9 also shows that the investigation by P.W. 13 the Inspector of Police disclosed, that the appellant was suffering from insanity for about a week prior to the occurrence.

40. We can, therefore, safely proceed on the assumption that the appellant was suffering from mental disorder on the date of the occurrence; but the further question is whether the appellant, while attacking the deceased, did not know the nature of the act or that he did not know that he was doing anything wrong or what was contrary to law.

41. The learned Counsel contends that the appellant had no apparent motive to do away with the deceased, that the attack was unreasonably brutal and savage, that the attack had been made openly and in broad day-light in his cattle shed very near the house where his wife lived and around which there were admittedly houses, that he did not attempt to run away on seeing P.Ws. 1 and 2 entering the shed and also later when he had an opportunity to run away while P.W. 1 was holding the edges of the wound on the stomach of the deceased with his hands and when P.W. 2 had gone to his house for bringing linen for bandaging the wounds and that he meekly submitted to P.Ws. 1 and 2 and allowed them to tie his hands.

42. I am however, unable to accept the contention. P.W. 2 has conceded in the Court below that the deceased was having illicit intimacy with the appellant's wife and was frequently visiting the appellant's house and the repeated suggestion made on behalf of the appellant was that the deceased was keeping the appellant's wife. I am unable to rule out the possibility that this circumstance was worrying the appellant throughout the period. It may be remembered that he had recounted to P.W. 4, the Assistant Medical Officer, Salem, in the last week of October, 1969 that an astrologer had told him that the deceased intended to murder him and that he therefore murdered the deceased. I find no reason to discredit the evidence of the medical officer on this point. These circumstances clearly suggest that the appellant had been harbouring some hatred to the deceased before the occurrence.

43. I am then impressed with the fact sworn to by P.W. 2 that when P.W. 2 entered the appellant's cattle shed, the appellant attempted to stab him with a knife (M.O. 1) saying This implies that he was conscious that he had murdered the deceased, that he knew that his act was illegal and that he wanted to screen the

offence from being known to P.W. 2.

44. The third piece of evidence is provided by P.W. 1 and it is to the effect that, while he was holding the edges of the wound on the stomach, the appellant took out M.O. 2 and stabbed the deceased on his right hand and on the left buttock uttering the following words . The words of abuse clearly show that the appellant had been harbouring bitter feelings of enmity against the deceased, and the words leave no doubt in my mind that he was bent upon finishing the deceased once for all.

45. In view of these clinching circumstances, I am not impressed with the points enumerated by the learned Counsel for the appellant in support of his contention. The murder has taken place in the cattle shed; and it is not improbable that the deceased had gone there for the illicit purpose of meeting the appellant's wife and that the appellant, on seeing the deceased went to his cattle shed and stabbed him. It also appears to me obvious that the appellant could not have attempted to run away from the scene as P.Ws. 1 and 2 had arrived there in time while the murderous attack was in progress and it would have, therefore, been futile for the appellant to have ventured upon an escape.

46. The delusion if any suffered by the appellant during the attack must be the one referred to by P.W. 4, the Assistant Medical Officer, Salem and it is that he was obsessed by an apprehension that the deceased was likely to murder him. It is plain that this circumstance cannot afford any protection to the appellant; for the law, as stated above, is that a murderer acting under a delusion must be dealt with on the basis that the circumstances under which he acted, while suffering from the delusion, are true. If he had acted under the said delusion, it must be held that the appellant had murdered the deceased in anticipation that the deceased would murder him. This circumstance cannot obviously clothe the appellant with any right of protection under Section 84, Indian Penal Code.

47. I am however satisfied that, in view of the fact that the appellant was partially insane at the time of the occurrence the sentence of life-imprisonment is appropriate though the provisions of Section 84, Indian Penal Code, cannot be properly invoked.

48. In the result, the appeal is dismissed and the conviction of the appellant under Section 302, Indian Penal Code, and the sentence of life imprisonment imposed on him are hereby upheld.

Venkataraman, J.

49. I respectfully agree with my learned brother that on the evidence in this case the appellant has not made good his defence under Section 84 of the Indian Penal Code and that consequently his appeal has to be dismissed.

50. I wish to add that on the question of the controversy in the High Courts about the interpretation of the second ground of exemption under Section 84, Indian Penal Code namely, 'incapable of knowing that he is doing what is either wrong or contrary to law', reference may be made to the commentaries of A.I.R. in Note 9 to Section 84 at pages 549 to 558, where the matter is more fully discussed. Two contrary views have been put forth. According to the first view, the accused, in Order to earn the benefit of the exemption, must show the presence of both the factors. In other words, he must show that he was incapable of knowing that he was doing what was wrong and he must also show that he was incapable of knowing that he was doing what was contrary to law. If he knew that what he was doing was wrong, though he did not know that it was contrary to law, he would be liable, according to this view, and, vice versa if he knew that what he was doing was contrary to law, though he was incapable of knowing that what he was doing was wrong, then also he would be liable.

51. The other view is that, in Order to earn the benefit of the exemption, it is enough if he establishes one of the factors. In other words, if he was incapable of knowing that what he was doing was wrong, he would be entitled to an acquittal, even if he could know that what he was doing was contrary to law, and vice versa, if he was incapable of knowing that what he was doing was contrary to law, he would be entitled to an acquittal, even if he was capable of knowing that what he was doing was wrong.