IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

&

THE HONOURABLE MR.JUSTICE P. V. BALAKRISHNAN

TUESDAY, THE 17TH DAY OF DECEMBER 2024 / 26TH AGRAHAYANA, 1946

CRL.A NO. 964 OF 2020

AGAINST THE JUDGMENT DATED 24.08.2020 IN SC NO.613 OF 2018 OF ADDITIONAL SESSIONS COURT-IV, THODUPUZHA

APPELLANT/ACCUSED:

ROLLYMOL
AGED 39 YEARS
W/O. JOY, KUNTHAMCHARIYIL,
AYARKUNNAM VILLAGE, KOTTAYAM DISTRICT,
F.C NO.246, WOMENS PRISON, VIYOOR,
THRISSUR, PIN - 680010.

BY ADV MANJU ANTONEY

RESPONDENT/COMPLAINANT:

STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM - 682031.

BY SMT. NEEMA T.V., SR. PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING COME UP FOR FINAL HEARING ON 17.12.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

"CR"

J U D G M E N T

Raja Vijayaraghavan, J.

The above appeal has been preferred by the sole accused in S.C.No. 613 of 2018 on the file of the Additional Sessions Judge-IV, Thodupuzha. In the above case, the appellant, a lady aged 39/18 years is accused of having committed maternal filicide.

Prosecution Case:

2. The case of the prosecution is that the appellant had two children in her marriage with PW1. The elder child is autistic. The younger child (Alex) was 1½ years of age when the alleged incident had taken place. The prosecution alleges that PW1 was a Mason by profession and was engaged by PW5, the uncle of the appellant, to carry out some work in his residential home. The appellant, her husband, and two children were residing at the house bearing No. U.G.P. XI/265, which belonged to Peermedu Tea Company, Puthukkada Bhagam, Laundry Kara, Upputhara Village. The prosecution case is that on 18.04.2018, at about 6:30 p.m., the appellant with intent to murder her younger son, pressed his neck and thereby strangulated him.

Registration of the Crime:

3. Joy (PW1), the husband of the appellant, went to the Upputhara Police Station on 18.04.2018 at 11:50 p.m. and lodged a statement, based on which Ext.P7 FIR was registered as Crime No. 157 of 2018 under Section 174 of the Cr.P.C. on 19.04.2018. It would be pertinent to note at this juncture that at the time of furnishing the statement, the case of the informant was that his son had fallen from the cot and had suffered certain injuries, and though the child was taken to the St.John's Hospital, Kattappana, his life could not be saved.

Investigation:

4. The investigation was taken over by the Sub Inspector of Police, Upputhara Police Station. He submitted a report incorporating Section 302 of the IPC. He went to the spot at 11:30 a.m., on 19.04.2018, and prepared the Scene Mahazar. The autopsy of the child was conducted which revealed that constrictive force was inflicted on the neck and that the death of the child was a case of homicide. On 06.05.2018, the accused was arrested as per Ext.P10 Arrest Memo. The investigation was then taken over by PW18, who completed the investigation and laid the final report before the Judicial First Class Magistrate, Kattappana for the offence under Section 302 of the IPC.

5. Committal proceedings were initiated in accordance with the law, and the case was committed to the Court of Session. The case was made over to the Additional Sessions Judge for trial and disposal.

Trial Proceedings:

6. On the appearance of the accused, when the charge was read to the accused, she pleaded not guilty and claimed that she be tried in accordance with the law.

7. In order to prove its case, the prosecution examined 16 witnesses as PWs 1 to 16, through them, Exts.P1 to P14 were exhibited and marked. MO1 series clothes were produced and identified.

8. After the close of prosecution evidence, the incriminating materials arising out of the evidence were put to the accused. She denied all the circumstances and maintained her innocence. She stated that her child had fallen from the cot and had suffered injuries. She asserted that she was suffering from mental disorders and that she was consuming medicines for the same. The accused was then called upon to enter her defence. On her side, Dr. V Satheesh, the Professor and Head of the Psychiatric Department, Medical College Hospital, Kottayam was examined as DW1, and through him, Ext. D2 was marked.

Findings of the learned Sessions Judge:

9. The learned Sessions Judge, after evaluation of the evidence let in, came to the conclusion that the accused had committed the murder of her younger son by throttling him. To arrive at the following conclusion, the following findings were arrived at:

a) The claim raised by the defence that the accused was suffering from a mental disorder was rejected for her failure to adduce reliable evidence to substantiate the same.

b) The Court observed that the evidence clearly established the accused was last seen with the deceased only moments before he was found dead.

c) The court held that the confession allegedly made by the accused to PWs 1 and 7 was credible.

d) The confession was further corroborated by medical evidence, which confirmed that the cause of death was due to the constricting force applied by the accused on the neck of the deceased.

Rival contentions raised before us:

10. Sri. Anoop C. C, learned counsel appearing for the appellant,

submitted that the judgment of the learned Sessions Judge is unsustainable in law. He advanced the following submissions to substantiate his contention.

a) In the First Information Statement furnished by PW1, it was emphatically stated that the appellant and her elder son were suffering from a mental disorder and were undergoing treatment for the same. There were materials suggesting that the accused had been suffering from psychotic delusions even prior to the incident. However, the investigating officer suppressed the said materials and even persuaded PW1 to resile from his earlier version and suppress the medical treatment and records that were in his exclusive possession. This has resulted in serious prejudice.

b) The evidence of DW1, the Head of Department, Psychiatry cemented the fact that the appellant had been suffering from a mental disorder, including delusions and psychotic episodes, for approximately eight years before the incident. He also stated that there is every likelihood that she was unaware of the nature of her acts when the incident happened.

c) Relying on the principles laid down by the Apex Court in **Bapu @ Gajraj Singh v. State Of Rajasthan**[1], the learned counsel argued that the failure of the investigating officer to conduct a fair investigation into the mental

[1] [(2007) 8 SCC 66]

condition of the accused is a serious lapse on his part.

d) The learned counsel referred to decisions in **Shibu v. State of Kerala**[2], **Aji Devassy v. State of Kerala**[3], and **Reji Thomas @ Vayalar v. State of Kerala**[4], to highlight that it is the duty of an honest investigating officer to subject the accused to a medical examination immediately and present the evidence before the Court. The failure to conduct such an inquiry creates a serious infirmity in the prosecution's case and warrants extending the benefit of the doubt to the accused.

11. The learned Public Prosecutor submitted that the learned Sessions Judge had properly evaluated the facts, circumstances, and evidence presented in the case before arriving at the finding of guilt. To buttress her submissions, the following contentions were advanced:

a) The defence cannot merely claim that the appellant was suffering from a mental disorder to avail the exception under Section 84 of the IPC. It must demonstrate that the physical and mental ailments from which the appellant suffered rendered her intellect so weak that she was incapable of understanding the nature of her actions. No such circumstance was made

[2] [2013 (4) KLT 323]
[3] [2023 KHC 9420]
[4] [2023 KHC 556]

out in the instant case

b) Reliance was placed on **Sheralli Wali Mohammed vs The State of Maharashtra[5],** and it was urged that a mere abnormality of mind or partial delusion will not suffice to invoke the protection under Section 84 of the IPC.

c) PW1 clearly stated that the accused was sane and was not undergoing any treatment for mental illness and there is no reason to disbelieve him. PW1 and PW7 had also stated that the accused divulged to them that she had smothered the boy to death. The evidence tendered by the said witnesses was rightly relied upon by the learned Sessions Judge to arrive at the finding of guilt.

12. We have carefully considered the submissions advanced and have gone through the entire records.

Evaluation of the evidence:

13. The fact that the child of the accused had died of homicide, is not a fact that is disputed. In order to prove the same, the prosecution examined PW9, who is the Assistant Professor and Assistant Police Surgeon at the Medical

[5] [(1973) 4 SCC 79]

College Hospital, Kottayam. He stated before the court that he had examined the child, aged 1½ years old, involved in Crime No. 157/2018 on 19.04.2018 and had noted five injuries. He stated that the postmortem findings were consistent with the death due to constricting force over the neck. He added that Injury Nos. 1 to 4 could be caused by manual strangulation. In cross-examination, the learned counsel appearing for the accused put a question to the Doctor as to whether Injury No.5 could be caused by holding onto the neck. The Doctor responded that it was not possible for the child to sustain an injury in that manner. Thus, from the evidence of PW9, the prosecution has established beyond any semblance of doubt that the constricting force was applied over the neck of the child leading to his death. Before parting with the evidence, it would be apposite to refer to injury No. 5 noted by the Doctor.

> Contusion of scalp 1.3x1x0.5 cm, right side of back of head, 3 cm above right ear, 8 cm outer to midline.

We have referred to injury No. 5, as the case of the defence is that the child had fallen from the cot, which ultimately resulted in his death. The evidence adduced by the Doctor would emphatically show that the falling of the child from the cot is not the cause of his death.

14. Now, we shall come to the evidence tendered by the prosecution

witnesses to establish guilt. As we have stated earlier, the learned Sessions Judge has mainly relied on the evidence of PWs 1 and 6 to arrive at the finding of guilt. Though the elder child of the accused was examined as a witness, the court was not inclined to believe his version.

15. When examined as PW1, the husband of the accused stated that he, along with his family, had gone to the house of PW4, who is none other than the uncle of the accused, to carry out some construction work. On 18.04.2018, early in the morning, he went out for work. At about 6:00 p.m., Lalu's (PW4) wife (CW11) called him up and informed him that his child had fallen from the cot and had sustained certain injuries, and he had been taken to St. John's Hospital, Kattappana. Upon receiving the information, he rushed to the hospital. On reaching there, he found that his child had already expired. He then went to the Police Station, Upputhara, and lodged information, based on which the crime was registered. He stated that two days after the incident, the accused told him that she had strangulated the child. He stated that his elder child was suffering from a mental disorder, and his wife used to say once in a while that she wanted to end her life and that of the elder child. He also stated that his wife had attempted to commit suicide by jumping into the well. He identified the clothes worn by the child, which is marked as MO1 series. In cross-examination, he

admitted that his elder child was suffering from a mental disorder. When he was asked whether his wife was suffering from any mental disorder, he emphatically denied the same. However, he stated that he was aware of the fact that the elder brother of his wife was suffering from a mental disorder. When a specific question was put as to whether he had stated in the FI statement that his wife was suffering from a mental disorder and that she was taking medicines for the same, he answered in the affirmative. He also admitted that while giving his statement to the police, he had stated that the medical records pertaining to his wife would be produced before the police, and by saying so, he had consoled his wife. When he was asked whether his wife was suffering from a mental disorder prior to, during, and subsequent to the incident, he stated that, after the incident, his wife had jumped into a well and thereafter, she was admitted to the Psychiatric Department of the Medical College Hospital. He denied that she had undergone any treatment prior to the incident.

16. PW2 is one Preethy. She stated before the Court that she was acquainted with the accused as well as the deceased. She stated that on 18.04.2018 at 6:15 p.m., she saw the accused standing on the doorsteps of the house in which she was residing, with the younger child on her lap. At about 6:30 p.m., while she was talking to a lady, the accused came running towards

her and told her that her minor child had fallen from the cot and that he was lying unconscious. The witness, along with one Alice (CW3) and her husband, rushed to the house, where the child was lying. She found that the child was unconscious. Alice lifted up the child and took her to the hospital. Later that night, she was told that the child was no more.

17. PW3, Reena @ Anumol George, is a neighbor of the accused. She stated that on 18.04.2018, at about 6:30 p.m., she heard a loud cry. She saw that PW2, CW3, and CW5 were rushing out of the house of the accused, and CW3 was carrying the child. She stated that when she enquired, Alice told her that the accused informed her that the child had fallen from the cot, and had suffered certain injuries on his head. The child was taken to the Community Health Centre, in the vehicle of PW4. However, the Doctor directed them to a higher Centre. The child was accordingly taken to St. John's Hospital, Kattappana, where after examining the child, he was pronounced dead. She stated that the Doctors had expressed certain doubts as regards the cause of death.

18. PW4 is the driver of the vehicle in which the child was taken to the hospital. He was also an attestor to the Ext.P2 inquest report.

19. PW5 is one Lalu, the uncle of the accused. He stated that the

incident had happened in his house. According to him, on 18.04.2018, between 5:00 p.m. and 6:00 p.m., he received a phone call and was informed that the younger child of the accused had fallen from the cot and was taken to the hospital, and later he was pronounced dead. He also stated that at 5:30 p.m., on 18.04.2018, the accused had called him up on his mobile phone and enquired about his arrival. He went on to say that he had enquired about the cause of death to the elder son of the accused, who had told him that the accused had smothered his brother.

20. PW7 is Sarala, who stated that she is having close acquaintance with the accused and the deceased. She stated that on 18.04.2018, at about 6:00 p.m., the accused approached her, and demanded that she be permitted to make a call to PW5, using her mobile phone. She spoke about the conversation that the accused had with PW5. She stated that after some time, she heard a cry, and when she enquired, she was told that the younger child of the accused had fallen from the cot and had sustained certain injuries. She stated that after some time, she went to the house of the accused and found that the accused was sitting in the room and crying. When she asked the accused, she is alleged to have confessed that she had killed her child by smothering his neck.

21. The prosecution also examined the elder son of the accused with

the assistance of an interpreter. The learned Sessions Judge, who noted the demeanor of the witness, was not prepared to accept his evidence. We do not think that his evidence will in any way help the prosecution to canvass a finding of guilt against the accused.

22. Now we shall deal with the version of the defence. While being examined under Section 313 of the Cr.P.C., the accused reiterated that the child had fallen from the cot, leading to his death.

23. Now we shall deal with the evidence of DW1, who was examined on the side of the accused, to prove that the accused was suffering from mental disorder. DW1 is none other than the Professor and Head of the Psychiatric Department, at Medical College Hospital, Kottayam. He stated that the accused was admitted to the Medical College Hospital, Kottayam, as an inpatient, from 21.04.2018 to 28.04.2018. She had jumped into a well and had suffered partial drowning. He stated that he had noted the family history of psychiatric illness and found that the grandmother, mother, maternal first cousin, and her elder brother also had psychiatric ailments. She was in the Psychiatric Ward following the fall into a well. His first diagnosis was that the accused was having depression with psychotic symptoms. He stated that the symptoms had not occurred as a sudden one, but it was gradual. When a question was put to him

as to whether the illness suffered by the accused may lead to violence, he stated that generally it is not the case, but there can be some variations. He stated that during the treatment, he had not noted any violent behavior on the part of the accused. He stated that depression with psychotic symptoms causes delusion, and she was also having hallucinations. He stated that, as she was suffering from this disease, very close to the incident, she might have been suffering the same even at the time of the incident. To a specific question as to whether the person suffering from this illness can rationally think about what she is doing, the Doctor responded that the patient's thinking is impaired and that she may not be aware of the consequences of the crime. He stated about the past history of behavior abnormality, after the delivery. He stated from the history that he noted, it was seen that in 2007, there was a history of behavior abnormality and she was treated in Paduva Hospital. However, there were no records produced before him to substantiate the same.

24. While evaluating the evidence adduced by the prosecution, it needs to be noticed that this is a case wherein, the mother is alleged to have committed strangulation of a 1½ years old child. In the First Information Statement furnished by the husband (PW1), on 19.04.2018 itself, he had stated that his wife as well as his elder son, were suffering from a mental disorder and

that they were undergoing treatment for the same. It is undisputed that two days after the incident, on 21.04.2018, at 4:05 a.m., she was taken to the Medical College Hospital, Kottayam after she had jumped into a well, in an attempt to commit suicide. In Ext.D2 medical records of the accused at Medical College Hospital, it has been stated that the lady was suffering from psychiatric illness and that too for the past 8 years. It is also stated that she had undergone psychiatric treatment from Paduva Hospital, for the past 7 years. None of the family members of the accused was cited and examined before the Court. PW1 on the other hand, while tendering evidence, reneged from his earlier version and refused to admit that his wife was suffering from any mental disorder or that she was taking medicines for the same. What is discernible from the above is that it was brought to the notice of the Investigating Officer that the accused, who committed the murder of her 1½ years old child with no apparent motive, was suffering from mental disorder. He was also aware that though the incident was on 18.4.2018, he was in a position to arrest the accused only on 06.05.2018, as she was admitted to the Psychiatric Ward, Medical College Hospital, Kottayam. In spite of the above, no records were collected, nor were any witnesses, including the psychiatrist who treated the accused, cited. While in the box, when the investigating officer was asked whether he conducted any investigation into the mental health of the accused before filing of the charge, he

answered in the negative.

The principles of law:

25. It would be apposite at this juncture to notice the settled position of law when a plea of insanity is raised by the accused in a criminal trial. In **Dahyabhai Chhaganbhai Thakkar v. State of Gujarat**[6], the Apex Court had occasion to lay down the law as under:

> 5. Before we address ourselves to the facts of the case and the findings arrived at by the High Court, it would be convenient to notice the relevant aspects of the law of the plea of insanity. At the outset let us consider the material provisions without reference to decided cases. The said provisions are:
>
> INDIAN PENAL CODE
>
> Section 299- Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.
>
> Section 84- 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.
>
> INDIAN EVIDENCE ACT
>
> Section 105 - 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 (45 of 1860) or within any

[6] [AIR 1964 SC 1563]

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.

Section 4 "Shall presume".—Whenever it is directed by this Act that the Court shall presume a fact, it shall regard such facts as proved unless and until it is disproved.

"Proved"—A fact is said to be "proved'" when after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

"Disproved" —A fact is said to be disproved when, after considering the matters before it, the Court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist. Section 101 - Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of fact which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

It is a fundamental principle of criminal jurisprudence that an accused is presumed to be innocent and, therefore, the burden lies on the prosecution to prove the guilt of the accused beyond reasonable doubt. The prosecution, therefore, in a case of homicide shall prove beyond reasonable doubt that the accused caused death with the requisite intention described in Section 299 of the Indian Penal Code. This general burden never shifts and it always rests on the prosecution. But, as Section 84 of the Indian Penal Code provides that nothing is an offence if the accused at the time of doing that act, by reason of unsoundness of mind was incapable of knowing the nature of his act or what he was doing was either wrong or contrary to law. This being an exception, under Section 105 of the Evidence Act the burden of proving the existence of circumstances bringing the case within the said exception lies on the accused; and the court shall presume the absence of such circumstances. Under Section 105 of the Evidence Act, read with the definition of "shall presume" in Section 4 thereof, the court shall regard the absence of such circumstances as proved unless, after

considering the matters before it, it believes that said circumstances existed or their existence was so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that they did exist. To put it in other words, the accused will have to rebut the presumption that such circumstances did not exist, by placing material before the court sufficient to make it consider the existence of the said circumstances so probable that a prudent man would act upon them. The accused has to satisfy the standard of a "prudent man". If the material placed before the court such, as, oral and documentary evidence, presumptions, admissions or even the prosecution evidence, satisfies the test of "prudent man", the accused will have discharged his burden. The evidence so placed may not be sufficient to discharge the burden under Section 105 of the Evidence Act, but it may raise a reasonable doubt in the mind of a judge as regards one or other of the necessary ingredients of the offence itself. It may, for instance, raise a reasonable doubt in the mind of the judge whether the accused had the requisite intention laid down in Section 299 of the Indian Penal Code. If the judge has such reasonable doubt, he has to acquit the accused, for in that event the prosecution will have failed to prove conclusively the guilt of the accused. There is no conflict between the general burden, which is always on the prosecution and which never shifts, and the special burden that rests on the accused to make out his defence of insanity.

xxxxx xxxxxx xxxxxxx

7. 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 prove 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 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.

26. Under Section 84 of the IPC, a person is exonerated from liability for doing an act on the ground of unsoundness of mind if he, at the time of doing the act, is either incapable of knowing (a) the nature of the act or (b) that he is doing what is either wrong or contrary to law. The accused is protected not only when, on account of insanity, he was incapable of knowing the nature of the act, but also when he did not know either that the act was wrong or that it was contrary to law, although he might know the nature of the act itself. He is, however, not protected if he knew that what he was doing was wrong, even if he did not know that it was contrary to law, and also if he knew that what he was doing was contrary to law even though he did not know that it was wrong. The onus of proving unsoundness of mind is on the accused. But, where during the investigation previous history of insanity is revealed, it is the duty of an honest investigator to subject the accused to a medical examination and place that evidence before the court, and if this is not done, it creates a serious infirmity in the prosecution case and the benefit of doubt has to be given to the accused. The onus, however, has to be discharged by producing evidence as to the conduct of the accused shortly prior to the offence and his conduct at the time or immediately afterward, also by evidence of his mental condition and other

relevant factors. Every person is presumed to know the natural consequences of his act. Similarly, every person is also presumed to know the law. The prosecution has not established these facts. (See: **Sidhapal Kamala Yadav v. State of Maharashtra**[7]) (emphasis supplied)

27. In **Shibu** (supra), a Division Bench of this Court, after interpreting the principles of law laid down in previous precedents and after examining the provisions of Sections 6, 84, and 300 of the IPC, observed that whenever an offence under the IPC is allegedly committed, the investigating officer must first satisfy themselves that the alleged act constitutes an offence as defined under the IPC. The Court emphasized that in cases where inappropriate, extraordinary, or strange behavior of the accused is observed, or where the manner in which the offence is committed raises a reasonable doubt, belief, or strong suspicion of a mental health issue, the investigating officer must inevitably investigate the mental state of the accused. This includes ascertaining whether the accused has a history of mental health issues and ensuring the accused is examined by a psychiatrist at the earliest opportunity to determine whether they were acting under unsoundness of mind at the time of the incident and were unaware of the nature of their actions. The investigating officer cannot and must not shirk their responsibility to investigate such aspects, which is mandated by Section 6 of the

[7] (2009) 1 SCC 124)

IPC, requiring them to understand the definition of every offence subject to General Exceptions. This is because in cases where a General Exception may apply, acts committed by the accused might not constitute an offence under certain circumstances. The cause of the inappropriate or strange behavior of the accused must be thoroughly investigated to rule out the possibility of mental unsoundness or legal insanity. This Court further observed that if, during the investigation, the investigating officer learns from relatives, friends, or neighbors that the accused may have a mental health issue, the officer is obligated to investigate the mental condition of the accused. It was underscored that Sections 6, 84, and 300 IPC make it clear that if the investigating officer, upon inquiry, is satisfied that the accused's actions still constitute an offence, despite indications of medical unsoundness, they may proceed to file a charge sheet—provided they are satisfied that the accused is not legally insane. This determination must be based on a psychiatric examination conducted during the investigation. In such cases, the accused may still establish before the Court that their case falls under Section 84 of the IPC, notwithstanding the investigating officer's findings. However, the burden of proof under such circumstances shifts to the accused, as stipulated in Section 105 of the Evidence Act. This Court also clarified that the prosecution cannot discharge its burden of proof unless it establishes beyond reasonable doubt the mental state and criminal intent at the

time of the offence. Even if the prosecution proves the alleged act, and the accused fails to establish a defence under Section 84 of the IPC, the accused may still be entitled to the benefit of the doubt if reasonable doubt arises regarding mens rea due to any omission by the prosecution or other factors. In other words, in such cases, the court is required to evaluate not only whether the accused committed the alleged act but also whether they possessed the requisite mens rea, irrespective of the defence plea under Section 84 of the IPC.

28. In the case on hand, from the FI Statement itself, it is discernible that PW1 stated to the Investigating Officer that the accused was a person who was suffering from a mental disorder and that she was consuming medicines for the same. Two days after the incident, the accused attempted to commit suicide, by jumping into a well. She was admitted to the Medical College Hospital, Kottayam in the Psychiatry Department and she underwent treatment till 06.05.2018, on which date, she was arrested. So from 21.04.2018 till 06.05.2018 the accused was undergoing treatment in the Psychiatric Ward. When examined before the Court, the Investigating Officer stated in unequivocal terms that he did not deem it necessary to conduct any inquiry to ascertain the mental condition of the accused or whether the accused was suffering from mental impairment, prior to this incident.

29. DW1, the Professor and Head of the Psychiatric Department at Medical College Hospital, Kottayam, noted a family history of psychiatric illness involving the grandmother, mother, maternal cousin, and the accused's elder brother. During her stay in the Psychiatric Ward from 21.04.2018 to 28.04.2018, he diagnosed the accused with depression with psychotic symptoms, emphasizing its gradual onset. He explained that this condition causes delusions and hallucinations, impairing the patient's ability to understand their actions or consequences. DW1 opined that the accused likely suffered from the same condition at the time of the incident. He also noted a history of behavioral abnormalities since 2007, for which the accused had received treatment at Paduva Hospital. The investigating agency, however, allegedly suppressed relevant medical records and prevented PW1 from presenting them in court, thereby denying the accused the benefit of Section 84 of the IPC. This is because the records most certainly would be with PW1 and the accused cannot possibly make it available before the court or the police if her spouse choose not to reveal it. We find from Exhibit D1 treatment records that the accused was taken to the hospital by her family members. However, none of the near family members of the accused were either cited or examined.

30. In a catena of cases it has been held by the Apex Court that an

Investigating Officer must conduct fair and impartial investigations. As officers of the court, their duty is to assist in uncovering the truth with objectivity and in adherence to the law. It would be apposite to take note of the principles laid down in **Arvind Kumar @ Nemichand v. State of Rajasthan**[8], wherein the Apex Court had lucidly laid down the subtle differences between a Fair, Defective, and a Colourable Investigation. It was observed as under:

> 40. An Investigating Officer being a public servant is expected to conduct the investigation fairly. While doing so, he is expected to look for materials available for coming to a correct conclusion. He is concerned with the offense as against an offender. It is the offense that he investigates. Whenever a homicide happens, an investigating officer is expected to cover all the aspects and, in the process, shall always keep in mind as to whether the offence would come under Section 299 IPC sans Section 300 IPC. In other words, it is his primary duty to satisfy that a case would fall under culpable homicide not amounting to murder and then a murder. When there are adequate materials available, he shall not be overzealous in preparing a case for an offense punishable under Section 302 IPC. We believe that a pliable change is required in the mind of the Investigating Officer. After all, such an officer is an officer of the court also and his duty is to find out the truth and help the court in coming to the correct conclusion. He does not know sides, either of the victim or the accused but shall only be guided by law and be an epitome of fairness in his investigation.
>
> 41. There is a subtle difference between a defective investigation, and one brought forth by a calculated and deliberate action or inaction. A defective investigation per se would not enure to the benefit of the accused, unless it goes into the root of the very case of the prosecution being fundamental in nature. While dealing with a defective investigation, a court of law is expected to sift the evidence available and find out the truth on the principle that every case involves a journey towards truth. There shall not be any pedantic approach either by the prosecution or by the court as a

[8] 2021 SCC OnLine SC 1099

case involves an element of law rather than morality.

31. In **Kumar v. State**[9], the Apex Court underscored the importance of a fair investigation by observing as under:

> 28. The criminal justice must be above reproach. It is irrelevant whether the falsity lie in the statement of witnesses or the guilt of the accused. The investigative authority has a responsibility to investigate in a fair manner and elicit truth. At the cost of repetition, I must remind the authorities concerned to take up the investigation in a neutral manner, without having regard to the ultimate result. In this case at hand, we cannot close our eyes to what has happened; regardless of guilt or the asserted persuasiveness of the evidence, the aspect wherein the police has actively connived to suppress the facts, cannot be ignored or overlooked."

32. In **Ranvir Singh V State of Madhya Pradesh**[10] it was held as under :

> 45. A fair investigation would become a colourable one when there involves a suppression. Suppressing the motive, injuries and other existing factors which will have the effect of modifying or altering the charge would amount to a perfunctory investigation and, therefore, become a false narrative. If the courts find that the foundation of the prosecution case is false and would not conform to the doctrine of fairness as against a conscious suppression, then the very case of the prosecution falls to the ground unless there are unimpeachable evidence to come to a conclusion for awarding a punishment on a different charge."

33. A clear distinction must be drawn between a defective investigation and one tainted by deliberate or calculated actions or omissions. While a

---

[9] (2018) 7 SCC 536

[10] (2023 SCC OnLine SC 94)

defective investigation does not automatically benefit the accused, it can have significant implications if it undermines the very foundation of the prosecution case. Courts are duty-bound to scrutinize the available evidence and uncover the truth, guided by the principle that every case represents a journey toward justice. Both the prosecution and the court must avoid rigid or superficial approaches and focus on applying the law over moral interpretations. It is the responsibility of the investigative authorities to ensure fairness and impartiality in uncovering the truth. Investigations must be conducted with neutrality, without being influenced by potential outcomes. An investigation becomes compromised when it involves suppression of critical facts, injuries, the applicability of exceptions, or other material evidence, which if produced may show a totally different picture. Such suppression transforms a fair investigation into a biased and perfunctory exercise, resulting in a distorted narrative. If the court finds that the prosecution case is based on a foundation of intentional suppression and fails to adhere to the doctrine of fairness, the case would necessarily collapse.

Towards Efficient and Scientific Crime Investigation:

34. Before parting, we would like to mention that as early as 2006, the Apex Court in **Prakash Singh v. Union of India and Ors.**[11] had emphasized

[11] [(2006) 8 SCC 1]

the importance of separating the investigating police from the law-and-order police. This separation was recommended to ensure speedy investigation, foster specialized expertise, and build improved rapport with the public.

35. The Law Commission, in its 154th report, had similarly highlighted the need for expeditious and effective investigation of offences, which is crucial for achieving the goal of a speedy trial. The report underscored that the investigation of a crime is a highly specialized process requiring patience, expertise, proper training, and a clear understanding of the legal framework governing specific offences, as well as the socio-economic context of the crime. Investigation is essentially an art of unearthing hidden facts and linking various pieces of evidence to build a strong case for prosecution. This task demands a level of specialization and professionalism that, unfortunately, has not been fully realized by police agencies.

36. To perform such specialized tasks efficiently, there is an urgent need for a dedicated investigating wing within the police force that continually updates its knowledge and skills by leveraging advancements in technology. The National Police Commission, in its Fourth Report, lamented the lack of exclusive focus and single-minded dedication of police officials to investigations due to systemic constraints. Efficient investigation presupposes the adoption of a

scientific work culture. Tools such as computers, photography, videography, advanced interrogation techniques, observation gadgets, and sophisticated search equipment are indispensable for investigating both traditional and technologically advanced crimes. While rapid advancements in science and technology have significantly influenced criminal investigation, they have also enabled criminals to employ sophisticated methods to leave no traces or clues at crime scenes.

37. Despite this, we observe that the average investigating officer continues to rely heavily on traditional methods, such as recording witness statements or extracting confessions from accused persons, to complete investigations. Even scene sketches and plans are often prepared by village officers, and mahazars are drawn up without sufficient application of mind. This reliance on outdated methods can largely be attributed to a lack of awareness and knowledge about the scientific tools available for crime detection. This shortfall can be addressed by providing access to state-of-the-art scientific facilities and conducting regular, systematic in-service training programs at periodic intervals.

38. The Bharatiya Nagarik Suraksha Sanhita, 2023, has taken a commendable step by introducing the use of technology at all stages of the

criminal justice process, from crime registration to the conclusion of the trial. The primary objective of these transformative changes is to expedite trials and bring transparency to the investigation process. The integration of technology and forensic science into investigations is a pivotal development aimed at modernizing the criminal justice system and harnessing the strengths of modern scientific methodologies. Such measures will not only ensure greater accountability in police investigations but also improve the quality of evidence, thereby safeguarding the rights of both the accused and the victims. Consequently, it is imperative to institutionalize training programs to equip investigating officers with scientific methods of investigation.

39. In this jurisdiction, we have frequently encountered cases where the accused are acquitted due to errors and shortcomings in police investigations. There are also cases such as the instant one wherein the accused is charged with serious crimes without conducting a fair investigation. Despite numerous judicial pronouncements which the investigating officers are to scrupulously adhere to, the final report was laid charging the appellant under Section 302 of the IPC. This action is also unjust and unfair. It is imperative that the State Police Department rises to meet these challenges by establishing a centralized knowledge repository. Such a repository would serve as a vital

resource for young and inexperienced officers, enabling them to access comprehensive information and seek guidance from a dedicated team of experts. This repository would also facilitate seamless access to legal updates, including recent judicial interpretations and developments in investigative techniques.

40. The creation of such a central knowledge repository would empower investigating officers by allowing them to access relevant precedents, evidence-gathering techniques, and expert advice, ensuring a more robust and efficient investigation process. Moreover, with crimes increasingly involving advanced technology, officers must be provided with the necessary support to navigate complex cases and prepare foolproof final reports backed by legally admissible evidence. Without timely intervention and proper training, the quality of crime investigations will continue to suffer, resulting in serious injustices. We trust that these suggestions will be given due consideration and that appropriate measures will be taken to make crime investigations in the State more effective, scientific, and result-oriented.

Conclusion:

41. In the facts and circumstances of this case, we are convinced that the Investigating Officer was duty-bound to investigate the mental condition of the accused and determine whether she suffered from any unsoundness of mind

that incapacitated her from understanding the grievous nature of her actions. The filing of the charge sheet by the Investigating Officer, without ascertaining the mental state of the accused, reflects a dishonest approach, rendering the charge sheet defective due to the lack of investigation into this critical aspect. It can be reasonably inferred that the deliberate suppression of an investigation into the accused's mental state was aimed at securing a conviction, even though the acts, when considered alongside Section 84 of the IPC, may not constitute an offence. We, therefore, conclude that the appellant is entitled to succeed and the appeal is liable to be allowed on the above ground.

Consequently, this appeal is allowed. The conviction and sentence passed by the learned Sessions Judge under section 302 of the IPC is set aside, and the appellant/accused is acquitted of all charges under section 235(1) of the Cr.P.C. The bail bond shall stand cancelled, and the appellant shall be set at liberty if her continued incarceration is not required in any other case.

Sd/-
RAJA VIJAYARAGHAVAN V,
JUDGE

Sd/-
P.V. BALAKRISHNAN,
JUDGE

PS/APM/15/12/24