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C.R

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

&

THE HONOURABLE MR.JUSTICE P. V. BALAKRISHNAN

FRIDAY, THE 21ST DAY OF FEBRUARY 2025 / 2ND PHALGUNA, 1946

CRL.A NO. 1374 OF 2018

CRIME NO.941/2010 OF WADAKKANCHERY POLICE STATION, THRISSUR

AGAINST THE JUDGMENT DATED 08.11.2018 IN SC NO.460 OF 2011 OF ADDITIONAL SESSIONS COURT -IV, THRISSUR

APPELLANT/ACCUSED (IN CUSTODY):

SHARANYA
AGED 27 YEARS
W/O.NIJO, KUDILIL HOUSE, THEKKUMKARA VILLAGE AND DESOM, THRISSUR DISTRICT.

BY ADV SRI.K.V.SABU

RESPONDENT/STATE:

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

BY ADVS.
GOVERNMENT PLEADER
SMT.AMBIKA DEVI S, SPL.GP ATROCITIES AGAINST WOMEN & CHILDREN & WELFARE OF W & C

OTHER PRESENT:

SMT NEEMA T V, SR. PP.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 13.02.2025, THE COURT ON 21.02.2025 DELIVERED THE FOLLOWING:

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RAJA VIJAYARAGHAVAN V, CR
&
P.V.BALAKRISHNAN,JJ.

Crl.Appeal No.1374 of 2018

Dated this the 21st day of February 2025

JUDGMENT

P.V.BALAKRISHNAN,J

This appeal is filed by the sole accused in SC No. 460/2011 on the files of the Additional Sessions Court-IV, Thrissur, challenging her conviction and sentence imposed under Sections 302 & 309 IPC by that court.

2. The prosecution case is that, due to some mental agony, which arose out of the marital life of the accused, on 1/12/2010 at about 10 pm the accused committed murder of her son by name Sreehari aged about 3¾ months by smothering him using her hands and thereafter attempted to commit suicide by inflicting cut injuries on her body, by using a steel blade. Hence, the prosecution alleged that the accused has committed the offences punishable under Sections 302 and

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309 of IPC.

3. On filing of the final report, cognizance of the offences was taken by the Sessions Court on 12/7/2011 and the case was made over to the Additional Sessions Court-IV for trial and disposal. On appearance of the accused, the trial court after hearing both sides, framed charges against her under Sections 302 and 309 IPC.on 26/9/2015. Thereafter, from the side of the prosecution, PW1 to PW15 were examined and Exhibits P1 to P17 documents and MO1 to MO8 were marked. When the accused was questioned under Section 313 Cr.P.C.,she denied all the incriminating circumstances brought against her in evidence and contended that she is innocent. She stated that someone has trespassed into her house and has killed her son and inflicted injuries upon her. From the side of the accused, no evidence was adduced. The trial court on an appreciation of the evidence on record and after hearing both sides, by judgement dated 8.11.2018, found the accused guilty and convicted her under Sections 302 and 309 IPC. The accused was

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sentenced to undergo imprisonment for life and to pay a fine of Rs.5,000/- under Section 302 IPC.The accused was also sentenced to undergo simple imprisonment for a period of six months under Section 309 IPC. In case of non payment of fine, the accused was ordered to undergo rigorous imprisonment for a further period of six months.

4. The learned counsel for the appellant Adv. K.V.Sabu assailed the impugned judgment by contending that no proper appreciation of evidence was done by the trial court and that even in the absence of evidence, the accused has been convicted. He argued that all the material witnesses have turned hostile and there is no evidence to show that the accused has killed her child or that she has attempted to commit suicide. He also argued that, it has come out in evidence that the kitchen door was open at the relevant time and the prosecution has not investigated and ruled out the possibility of another person committing the acts. He further, by relying on the decision in **K.M.Sujith v. State of Kerala(Crl.Appeal No.1705 of 2005**

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dated 21/10/2009), contended that the trial court had wrongly placed the burden under Section 106 of the Evidence Act upon the accused without even proving its case beyond reasonable doubt. He submitted that the prosecution has not produced the chemical examination report of the weapon allegedly used in the crime and the medical evidence is not conclusive. He also, by relying on the decision in **Babu v. State of Kerala [(2010) 9 SCC 189**], argued that since the prosecution has not proved the motive for the crime, the conviction cannot be sustained. He further submitted that the entire prosecution in this case has to fail in the light of Section 115 of the Mental Healthcare Act, 2017. Hence, he prayed that this appeal may be allowed.

5. Per contra, the learned Public Prosecutor Adv.Neema contended that the prosecution has proved its case beyond reasonable doubt. It has proved that the accused was alone with her baby inside her bedroom at the relevant time and hence, the burden is upon the accused under Section 106 of the

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Evidence Act to explain as to what happened to the child and as to how she sustained injuries. She further submitted that Section 115 of the Mental Healthcare Act, 2017(hereinafter referred to as 'the Act' for short) applies only in so far as it relates to Section 309 IPC and there is no bar in conducting the trial and punishing the accused under any other offences in IPC, including Section 302 IPC.

6. As stated earlier, the accused has been convicted by the trial court for committing murder of her child and also for attempting to commit suicide. It is the prosecution case that the accused had, after killing her child by smothering, attempted to commit suicide, by inflicting cut injuries using a blade on various parts of her body. The pivotal question, which arises in this case, is the impact of Section 115 of the Act, which came into effect on 7/7/2018 while trial was going on in the present case. Section 115 of the Act reads as follows:

> **"115. Presumption of severe stress in case of attempt to commit suicide**.— (*1*) Notwithstanding

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anything contained in Section 309 of the Indian Penal Code (45 of 1860) any person who attempts to commit suicide shall be presumed, unless proved otherwise, to have severe stress and shall not be tried and punished under the said Code.

(*2*) The appropriate Government shall have a duty to provide care, treatment and rehabilitation to a person, having severe stress and who attempted to commit suicide, to reduce the risk of recurrence of attempt to commit suicide."

(emphasis supplied)

7. Section 120 of the Act, which is extracted below, says that the provisions of the Mental Healthcare Act, 2017 shall have overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

" **120. Act to have overriding effect**.— The provisions of this Act shall have overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue

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of any law other than this Act."

Therefore, even if there are any provisions inconsistent with Section 115 of the Act (with which we are concerned in the present case) in any other law, the former will prevail over the latter.

8. A plain reading of Section 115 of the Act goes to show that notwithstanding anything in Section 309 IPC, a person attempting to commit suicide shall be presumed to have severe stress and unless it is proved otherwise, the person shall not be tried and punished under the said Code. It is very pertinent to note that the legislature has consciously avoided the words such as "the said provision" or "the said section" and instead, has specifically stated "the said Code", while enacting Section 115(1) of the Act. The terminology "the said Code" used in Section 115(1) undoubtedly refers to Indian Penal Code, which is referred to in the earlier part of the Section. If so, on a literal interpretation of Section 115(1), it can be stated that any person who attempts to commit suicide shall be presumed,

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unless proved otherwise, to have severe stress and cannot be tried and punished for any offences under the IPC. In other words, we may say that Section 115(1) of the Act, creates an embargo in conducting trial and punishing a person, who has attempted to commit suicide, not only for the offence under Section 309 IPC but also for any other offences under IPC committed in the course of the same transaction, unless it is proved that the person accused is not having severe stress. The afore conclusion reached by us is also fortified by sub section (2) of Section 115, which clearly delineates the object and purpose for providing an umbrella of protection to such a person. Sub Section (2) of Section 115 reminds the Government of its duty to provide care, treatment and rehabilitation to a person, having severe stress and who attempted to commit suicide, to reduce the risk of recurrence of attempt to commit suicide. This mandate of the law to give care, protection and rehabilitation to such a person having stress can never be achieved, if he is convicted and sentenced to imprisonment for

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other offences under the Penal Code. In other words, it is sans logic to convict and sentence an accused under the other provisions of the IPC, when he has attempted to commit suicide during the course of same transaction and has not been proved not having severe stress.

9. At this juncture, we will also take note of a few decisions of the Hon'ble Apex Court and this Court, wherein Section 115 of the Mental Healthcare Act,2017 has been considered and discussed. In the decision in **Common Cause (A Registered Society) v. Union of India & Anr [(2018) 5 SCC 1]**, the Hon'ble Apex Court while considering the question of right to die had occasion to observe as follows:

> **"366.**This Court's holding in *Gian Kaur*[*Gian Kaur* v.*State of Punjab*, (1996) 2 SCC 648 : 1996 SCC (Cri) 374] that the right to life does not include the right to die in the context of suicide may require to be revisited in future in view of domestic and international developments ["Humanization and Decriminalization of Attempt to Suicide", Law Commission of India (Report No. 210, 2008); Rajeev Ranjan,

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et al, "(De-) Criminalization of Attempted Suicide in India : A Review", Industrial Psychiatry Journal (2014), Vol. 23, Issue 1, at pp. 4-9.] pointing towards decriminalisation of suicide. In India, the Mental Health Care Act, 2017 has created a "presumption of severe stress in cases of attempt to commit suicide". Section 115(1) provides thus:

> "**115.** Presumption of severe stress in case of attempt to commit suicide:- (1) Notwithstanding anything contained in Section 309 of the Penal Code, 1860 any person who attempts to commit suicide shall be presumed, unless proved otherwise, to have severe stress and shall not be tried and punished under the said Code."

Under Section 115(2), the Act also mandates the Government to provide care, treatment and rehabilitation to a person, having severe stress and who attempted to commit suicide, to reduce the risk of recurrence. Section 115 begins with a non obstante provision, specifically with reference to Section 309 of the Penal Code. It mandates (unless the contrary is proved by the prosecution) that a person who attempts to commit suicide is suffering from severe stress. Such a person shall not be tried

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> and punished under the Penal Code. Section 115 removes the element of culpability which attaches to an attempt to commit suicide under Section 309. It regards a person who attempts suicide as a victim of circumstances and not an offender, at least in the absence of proof to the contrary, the burden of which must lie on the prosecution. Section 115 marks a pronounced change in our law about how society must treat an attempt to commit suicide. It seeks to align Indian law with emerging knowledge on suicide, by treating a person who attempts suicide being in need of care, treatment and rehabilitation rather than penal sanctions."
>
> (emphasis supplied)

It can thus be seen from the afore discussion that the Apex Court has opined that a person who attempts to commit suicide is suffering severe stress (unless the contrary is proved) and he shall not be tried and punished under the Penal Code. The Apex Court regarded such a person as a victim of circumstances and not an offender, in the absence of proof to the contrary. It also held that Section 115 reflects a law as to how the society must

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treat such a person ie; by providing care, treatment and rehabilitation rather than penal sanctions. The afore view was also reiterated by the Hon'ble Apex Court in the decision in **Ravinder Kumar Dhariwal & Anr v. Union of India & Others [(2023) 2 SCC 209**].

10. This Court also had the occasion to delve into the nuances of Section 115 of the Act in the decisions in **Naveed Raza v. State of Kerala(2024 6 KHC 534**) and **Leby Sajeendran v. State of Kerala (2024 7 KHC 130),** wherein it was held that Section 115 creates a statutory presumption that a person committing suicide is under a severe stress and due to the stress, which he is presumed to have undergone, he cannot be prosecuted under the Indian Penal Code. It was also held that the Act, being a beneficial legislation, will have retrospective operation and that from 2017 onwards the presumption gets attracted and unless the prosecution proves that the person was not under any stress, he is immune from prosecution. In the afore cases, since the prosecution was only

under Section 309 IPC, unlike the case in hand, the court dealt with it and terminated the proceedings against the accused. The afore decisions also thus leans in favour of the conclusion reached by us and as narrated afore.

11. Coming to the facts of this case, at the sake of repetition, we may say that as on the date when Section 115 of the Act came into force, the trial in the case was going on. The charge was framed in this case on 26/9/2015 and the examination of the witnesses started on 20/11/2017. It is thereafter, the impugned judgment came to be passed on 8/11/2018. If so, it has to be held that as and when the Mental Healthcare Act 2017 came into force i.e, on 7/7/2018, the trial court ought to have, in compliance with Section 115, desisted from proceeding with the trial of the case and pronouncing the judgement. It is to be taken note that, in the present case admittedly no material has been adduced to show that the accused is not having severe stress. If so, we are of the view that all further proceedings in the trial court after 7/7/2018, till

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the passing of the impugned judgment are illegal, and are liable to set aside. Hence, we find that the impugned judgment passed against the appellant/accused convicting her under Sections 302 & 309 IPC cannot be sustained.

In the result, this appeal is allowed as follows:

The conviction and sentence rendered in SC No.460/2011 against the appellant/accused under Sections 302 and 309 IPC by the Additional Sessions Court-IV, Thrissur are set aside and the appellant/accused is set at liberty.

Sd/-
RAJA VIJAYARAGHAVAN V
Judge

Sd/-
P.V.BALAKRISHNAN
Judge

dpk