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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Crl. Appeal No. 586/2012

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Reserved on: 4th October, 2012
Date of Decision: 4th January, 2013

PARAMJEET SINGH Appellant
Through Ms. Anita Abraham, Advocate.

Versus

STATE ...Respondent
Through Ms. Richa Kapoor, APP.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE S. P. GARG

SANJIV KHANNA, J.

Present case is a heart rendering and perplexing one because the appellant father, arraigned before the Court, was charged and has been convicted for murdering his very own daughter, by inflicting continuous, deep and multiple stab wounds with blades of scissors. As alleged, in intense rage he indiscriminatingly attacked his wife and the three children, including the deceased, in the intervening night of 3rd and 4th April, 2004. The appellant has impugned his conviction in Session Case No. 29/2008, arising out of FIR No. 194/04, vide judgment dated 16th November, 2011. By the order of the same day, he has been sentenced to life imprisonment, with fine of Rs 5,000/-, in

default of which he is to undergo one year simple imprisonment for his offence under Section 302 IPC for murder of Jaspreet Kaur. For his offence under Section 307 IPC , for attempt to murder of Arvin Kaur, Balwinder Kaur and Daljit Singh, he has been sentenced with seven years of rigorous imprisonment, with fine of Rs 5,000, in default of payment of which, he is to undergo imprisonment for one year.

2. On 4th April, 2004, at about 6.00- 7.00 A.M., three children of the appellant- Jaspreet Kaur, aged 12 years, Arvin Kaur, aged about 11/10 years, Daljit Singh, aged about 11/10 years and Balwinder Kaur, wife of the appellant aged 38 years, were rushed to DDU Hospital, Delhi. Dr. Uday Kumar (PW-12) proved MLCs (Ex. PW-12-A to C) of the three children whom he had examined and Dr. Vipul Barsalay proved MLC (Ex. PW 11/A) as he had examined Balwinder Kaur. The MLC of the deceased Japreet Kaur (Ex. PW12/A), recorded at 7.00 A.M., states that the patient was brought dead by HC Kartar Singh of the PCR. On local examination, there were twelve clean incise wounds i.e stab injuries caused by a sharp object. These injuries were also delineated in the post mortem conducted on 5th April, 2004. The Post Mortem Report (Ex. PW-6/A) was prepared and proved by Dr. Mishra (PW-6). PW-6 has stated that on external examination eleven injuries were found. The cause of death was opined to be respiratory embarrassment consequent upon laceration (piercing) and accumulation of blood in right thoracic cavity, due to stabbing. Injury No. 1,

a stab wound on the abdominal wall, was sufficient to cause death in the ordinary course of nature. The injuries indicated were:

“1. One stab wound was present over abdominal wall. It appeared to be in oval shape and having measurement of 1.2 cm x 1 cm- deep to peritoneal cavity. The edges were sharp. No active bleeding was present. The loops of small intestine were protruded through wound.

2. One stab wound (2 cm x 1.8 cm x deep to thoracic cavity) was present over right side of chest at the level of mid axillary line over 5-6 inter costal space. The active bleeding from wound was present cut sharp edged.

3. One CIW (1.5 x 0.5 x 2.6 cm deep) over right gluteal region.

4. One CIW (1.5 x 1 x 2.5 cm deep) over sacral area.

5. One CIW (2.5 x 1 x 3.4 cm) over back of right knee.

6. One CIW (3.5 x 1 x 3 cm deep) over back of right great toe.

7. One CIW (2 x 1.5 x 2 cm) over right supra clavicular area of chest.

8. One CIW (1.5 x 0.5 x 1 cm) over lateral aspect of upper 1/3rd right arm.

9. One CIW (1.6 x 0.5 x 1.2 cm) over lateral aspect of lower 1/3rd of right arm.

10. One CIW (1.5 x 2 x 2 cm) over left lumbar region.

11. One CIW (1.5 x 1 x 1 cm) over lateral aspect of chest on left side.”

3. The general description mentions that the clothes, worn by the deceased, had cut marks and were blood stained. PW-6's opinion was sought regarding the scissor blades seized vide Ex. PW-10/A, from the spot, being the weapon of

offence (Ex. PW-24/D and 6/B) and he opined that the stab injuries, as recorded, were possible with the said blades.

4. Arvin Kaur (PW-5) was brought at 5.50 A.M. to the hospital, by HC Harmeet Singh, with the alleged history of assault. In the MLC (Ex. PW-12/C), she was stated to have one clean incise wound over left iliac fossa with size approximately 3 x 2 x peritoneal deep with exposed intestinal loop. The injury was dangerous and caused by a sharp object. The MLC of (PW-1) Balwinder Kaur (Ex. PW 11/A), recorded at 6.35 A.M. on 4th April, 2004 mentions that the patient was brought with the alleged history of assault, by HC Kartar Singh of PCR. She had three wounds of simple nature:

- “1. CIW over lateral aspect of right arm size 3 x 3 x 3 bone deep.
2. CIW over anterior aspect of chest- 1.5 x 1.5 cm.
3. CIW over fourth web space size 2 x 1 cm

5. Daljit Singh was brought at 6:30 A.M., the same day, and the MLC (Ex. PW-12/B) of Daljit Singh (PW-2) mentions that there were two clean incise wounds of simple nature- one on right side of the face and another near right ear tragus- caused by a sharp object. Therefore, it has been firmly established that, on 4th April, 2004, the deceased Jasprit Kaur died a homicidal death and

Balwinder Kaur (PW-1), Arvin Kaur (PW-5) and Daljit Singh (PW-2) were admitted to the hospital with suffered injuries.

6. It cannot be doubted that Balwinder Kaur (PW-1), Daljit Singh (PW-2) and Arvin Kaur (PW-5) were eyewitnesses to the incident and suffered injuries, detailed above, as a consequence. They have deposed on identical lines regarding the occurrence and their testimonies remain unscathed. PW-1 has stated that, on 4th April, 2004, at night, she and the three children were sleeping on the bed and the appellant was sleeping on the floor. At around 4.00 A.M., PW-1 heard cries of her children. She woke up to see her husband holding a pair of scissors in his hands and attacking the children. PW-2 woke up and, on seeing his father attacking, retreated to a little distance. Jaspreet Kaur and PW-5 were injured by the appellant on their stomach. PW-1 tried to save her children but got injured on her right hand, during the process. The mother Balwinder Kaur (PW-1) asked Daljit Singh (PW-2) to run and get help from neighbours but when PW-2 tried to run out, the accused appellant tried to stop him and, in the process, PW-2 received injuries on his right ear. PW-1 then caught hold of the appellant and, in the meantime, PW-2 opened the door and ran out to call the neighbour/landlord Iqbal Singh (PW-10) who caught hold of the accused. The police was, thereafter, intimated.

7. Since Daljit Singh (PW-2), being a child of 11 years, would not have understood implication of an oath, his statement was administered without oath on 1st October, 2004. He has narrated that he heard a scream which woke him up from his sleep. He saw his father, the appellant, attacking with scissor. His mother (PW-1) asked him to bring someone to help and hence he called the landlord (PW-10) who came and caught hold of the appellant. He has stated that both his sisters were attacked with scissors. Arvin Kaur (PW-5) deposed on 5th April, 2005. PW-5 was about twelve years old. PW-5 was questioned and after the court was satisfied, that she comprehends and can give rational answers, her testimony was recorded. She has described that on 3rd April, 2004 all of the victims were sleeping on the bed while her father was sleeping on the floor. At about 4.00 A.M., PW-5 heard crying of her sister Jaspreet whereupon she woke up and saw her father attacking her sister, in the stomach. When her mother PW-1 tried to save the deceased Jaspreet, she was injured and then, when PW-5 herself tried to save her sister, the appellant inserted the blades of the scissor into her stomach. Similarly, when her brother (PW-2) tried to intervene, he was injured with the blades. PW-2 ultimately managed to run out and call landlord Iqbal Singh (PW-10). PW-1 and PW-5's statements regarding whether the appellant was undergoing any medical treatment, before the incident, will be dealt with subsequently.

8. Both PW-2 and PW-5 denied suggestions that they were tutored by their mother, to appear as witnesses against the appellant father. The children suffered serious injuries and their sister died due to the incident. Seeing the sensitivity of the occurrence and the consequences, it would be difficult for them to concoct and falsely implicate their own father. They have categorically affirmed that it was their father who inflicted the said injuries and no one else. A third party involvement is completely ruled out, keeping in mind the time and place of occurrence i.e. the residential house. There is no indication or cross-examination suggesting break-in or trespass by a third person. Further, their account is validated by the testimony of the landlord (PW-10) of the house where the incident occurred and statement of his son Harmik Singh (PW-8). In light of this, their statements have to be given due credibility by the Court and their veracity cannot be doubted as unreliable.

9. The Landlord Iqbal Singh (PW-10) and his son Harmik Singh (PW-8) have corroborated the eye witnesses accounts. PW-10 has stated that accused Paramjeet Singh was living on rent, in his house, along with his wife and children. At around 4.30 A.M., on 4th April, 2004, Daljit Singh @ Gollu (PW-2) came to him and took him to the appellant's room. There PW-10 saw two blades of scissors in the hands of the appellant who had caught hold of his wife (PW-1) from her hair and was causing her injuries. The eldest daughter, of the appellant and the deceased, Jaspreet @ Preeti was lying on the bed and was bleeding

profusely. Clothes of PW-2 and PW-5 were blood stained. PW-10 asked the appellant as to what he had done and asked him to throw the blades of the scissor. The appellant threw the blades and a piece of cloth on the ground. PW-10 brought the appellant out of the room and asked PW-2 and PW-5 to call his son Harmik (PW-8) and ask him to call the police. When the police came, PW-10 handed over the accused to them. PW-10 recognized the blood stained recoveries from the spot, including the blade of scissors, in the Court. In his statement Harmik Singh (PW-8) has corroborated that, at around 4.30 A.M.-5.00 A.M., on 4th April, 2004, PW-2 and PW-5 woke him up and asked him to save them from their father. When PW-8 came outside, he saw the accused had been caught by his father (PW-10). PW-8 called No. 100 from his mobile phone no. 9810806252. PCR van came and took PW-1 and the deceased to the hospital while PW-8 went with PW-2 and PW-5, to the hospital since they were also bleeding from the injuries. These statements by PW8 and PW10 have not been dented in the cross-examination.

10. CFSL Report (Exhibit PW-26/A), proved by Dr. N.R.K. Rao (PW-26) who had conducted the examination at the Forensic Lab at Hyderabad, corroborates and proves the version and statements of the aforesaid witnesses. Human blood was detected on the two blades of the scissor but blood group could not be ascertained due to disintegration of blood group specific substances. The fact that the appellant was arrested from the spot by the police

officers, vide arrest memo Exhibit PW-13/C dated 4th April, 2004, is proved from the statement of Constable Ram Singh (PW-13) who has deposed that, he along with others reached the site of occurrence and met the landlord (PW-10) after DD No. 32 Exhibit PW-13/A was received. The appellant was present at the spot and was handed over to SI Dharam Pal (PW-21). The injured had already been taken to the DDU Hospital. In the cross-examination, PW-13 has averred that DD No. 32 was received by SI Dharam Pal (PW-21), at the police post, at about 5.07 A.M. They had reached the spot at 5.15-5.30 A.M. and remained there till 10.00-11.00 A.M. The recording of the said DD is also proved by Constable Dayanand (PW-15) who was working as DD Writer, in the night of 3rd April, 2004, and had recorded DD Entry No. 32 (Exhibit PW-13/A).

11. Head Constable Kartar Singh (PW-17) was posted on PCR duty when the PCR message was received by him at 5.02 A.M. He reached the spot immediately thereafter and the appellant was found there with his wife, two daughters and one son. PW-17 had removed the deceased Jaspreet Kaur and injured Balwinder Kaur to the hospital in the PCR van. Jaspreet Kaur was declared brought dead by the doctor. The remaining two injured children were brought by the landlord (PW-10) in his own vehicle. ASI Harpal Singh (PW-19) proved the PCR form (Ex.PW 19/A) recording, inter alia, that he had received information from Mobile No. 9810806252 that one person had caused

injuries to his children by knife at House No. WZ-46, Plot No. 39, Gali No.2, Ravi Nagar.

12. SI Dharampal (PW-21) has stated that, after DD No.32 (Ex.PW 13/A) was recorded, the investigation was handed over to him. He along with Constable Ram Singh reached at the crime spot where the landlord Iqbal Singh (PW-10) met them. The appellant was presented and it was disclosed that he had stabbed his wife and children with scissor. The injured/deceased were taken to the hospital. Blood could be seen in one room and the scissor was lying in two pieces at the spot. The appellant was detained and remained in the custody of Constable Ram Singh (PW-13) while PW-21 went to the DDU Hospital. Injured Balwinder Kaur, Daljit Singh and Arvin were medically examined and their MLCs were prepared. Jaspreet Kaur was declared brought dead. MLCs of injured were obtained and, after recording of statement of Balwinder Kaur, rukka was sent for registration of FIR. Photographers and Crime Team were summoned to the spot. Blades of scissor were lifted, converted into pullanda and sealed. Similarly, the blood found at the spot was lifted from various places. Blood stained clothes of the appellant i.e. pant, shirt and banyan were seized. The clothes worn by Balwinder Kaur were also seized and sealed. The appellant was arrested. PW-21 in his cross-examination stated that he had reached the spot at about 5.15 A.M. and remained there for about 15 minutes. Thereafter, he left for DDU Hospital. He came back to the spot at 9 A.M.

13. Inspector Pratap Singh (PW-24) has made a similar statement. He was the officiating SHO in police station Tilak Nagar and, when he reached the spot, the appellant was produced by Constable Ram Singh. Scissor was lying at the spot and blood could be seen. He went to the DDU Hospital and came to know that Jaspreet Kaur was declared brought dead and three other injured were admitted in the said hospital. He has referred to preparation of rukka, registration of FIR, seizure of clothes, inspection of the spot by the Crime Team and lifting of blood and scissor from the spot. He has also proved the preparation of the site map by the Crime Team. He identified the clothes etc. and referred to the FSL Report. In the cross-examination he has stated that he had reached at the site of occurrence at about 5.45 A.M. When confronted in the cross-examination, he denied that the appellant was mentally ill and was undergoing treatment at Psychiatric Ward of RML Hospital.

14. The appellant in his Section 313 Cr.P.C. statement to the Court has stated that he was not mentally fit at that time since he was undergoing a treatment and was not fully conscious of his acts. The relevant portion of his statement under Section 313 Cr.P.C. reads as under:-

“Q. Why this case against you?

Ans. It is a false case

Q. Why the witnesses have deposed against you?

Ans. In my life, I have never scolded or rebuked my children. I do not know why they have deposed falsely against me.

Q- Do you want to say anything else?

Ans I do not know why the present case has been lodged against me as I was mentally unfit at that time. I was also undergoing treatment for my mental ailment. My wife Balwinder Kaur has also made a complaint to PP Khyala PS Tilak Nagar on the basis of which treatment for my mental ailment. My wife Balwinder Kaur has also made a complaint to PP Khyala PS Tilak Nagar on the basis of which DD No. 17 dated 27.03.2004 was recorded in which she stated he was not mentally well due to which, quarrel took place between me and herself.

Q- Do you want to lead defence evidence?

Ans. Yes, I want to call my brother and sister in support of my evidence.”

15. The appellant pleads to the Court that his conviction should be set aside on the ground of insanity under Section 84 IPC. The said section, under Chapter IV- General Exceptions, IPC, reads as under:

“84. Act of a person incapable of judgment by reason of unsound mind- Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.”

The aforesaid Section has to be read with Section 105 of the Evidence Act. The Section and Illustration (a) thereof reads as under:-

“105. Burden of proving that case of accused comes within exceptions.- 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 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.

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Illustrations

(a) A, accused of murder, alleges that, by reason of unsoundness of mind, he did not know the nature of the act. The burden of proof is on A.”

16. Legal insanity as distinguished from medical insanity envisaged and covered by Section 84 IPC is narrower and is applicable if the person accused was incapable of knowing the nature of the act or knowing that what he was doing was either wrong or contrary to law. The proper question, which is to be asked and answered, whenever a plea under Section 84 is raised, is whether the appellant/accused at the time of doing of the act, was incapable of knowing the nature of the act or that what he was doing was wrong or contrary to law. (See *Siddhapal Kamala Yadav v. State of Maharashtra*, AIR 2009 SC 97). In other words, to establish insanity under Section 84 IPC, it has to be established that the accused was laboring under such disability, i.e. unsoundness of mind, as not to know the nature and quality of the act he was committing or the act was wrong/contrary to law. Further, the crucial time for ascertaining insanity is the time when crime was committed i.e. the time when the act or offence was in fact done. Unsoundness of mind after or before commission of the offence is not relevant, though may throw light on whether the accused was unsound when the offence was committed. (See State of *Madhya Pradesh v. Ahmadulla*, AIR 1961 SC 998, *S.W. Mohammed v. State of Maharashtra* AIR 1972 SC 2443, *Dahyabhai Chhaganbhai Thakkar v. State of Gujarat* AIR 1964 SC 1563).

17. Every man is presumed to be sane, till contrary is established. Insanity or unsoundness of mind of the type stipulated in Section 84 IPC is an exception. Illustration (a) to Section 105 of the Evidence Act, quoted above, casts burden on the accused to show that the exception carved out under Section 84 IPC is applicable and burden is on the accused to prove insanity at the time when the offence was committed. However, the burden on the accused to prove insanity is not higher than that upon a party in civil proceeding i.e. the principle of preponderance of probability applies. It is not for the accused to establish conclusively or beyond doubt that he was insane to get benefit of Section 84 IPC but he is entitled to claim insanity, if he is able to raise a doubt regarding his sanity. To decide on the question of insanity, the Court should examine the behavior and antecedents of the accused before, during and subsequent to the event, to the extent they are relevant to record a finding on the mental condition of the accused. However, while doing so the act itself or absence of motive is not consequential and determinative. Hidayatullah J. in *Baswantrao Bajirao Vs. Emperor*, 1949 Cri.L.J., 181 where the accused had killed his two wives, has opined:-

“34. As to the second point about motive. The prosecution did lead some evidence of motive but the learned Sessions Judge did not accept it. I do not differ from the learned Sessions Judge and give the accused the benefit of the doubt. One fact, however, stares me in the face and it is the failure of the two wives to bear a son to the accused. When a man destroys his two wives in the manner he did there might be a hundred different reasons which might have prompted the action. Though I do not go as far as

Mayne J. did when he said: "that it is never necessary to seek the motive for a murder when the person murdered is the man's own wife" Mayne p. 185 (ibid) I am of opinion that failure to prove a motive does not necessarily mean that there was no motive. In *Beg v. Haynes*, (1859) 1 P and P 666 : 175 B. Rule 898) Bramwell B. in summing up to the jury, said:

As to the defence of insanity, it has been urged for the prisoner that you should acquit him on the ground that, it being impossible to assign any motive for the perpetration of the offence, he must have been acting under what is called a powerful and irresistible influence, or homicidal tendency. But I must remark as to that that the circumstances of an act being apparently motiveless is not a ground from which you can safely infer the existence of such an influence. Motives exist unknown and innumerable which might prompt the act. A morbid and restless (but resistible) thirst for blood would itself be a motive urging to such a deed for its own relief. But if an influence be so powerful as to be termed irresistible, so much the more reason is there why we should not withdraw any of the safeguards tending to counteract it.

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46. A crime is not excusable under the law whether done under an insane impulse or not unless it satisfies the grounds on which alone it can be excused. Those grounds are optimised in Section 84, Penal Code. This brings me to the discussion of the second and the third point. The second point is that there was confusion of the intellectual faculties. Most cases of insanity admit of some confusion of the mind. But what the law requires is that confusion must reach a certain degree so as to impair the cognitive faculties completely. This brings me to the third point. Here Dr. Roy himself admits that the confusion or clouding of consciousness was only partial. He admits that the prisoner knew the nature and quality of the act. This he could not but admit because there was no evidence of delusions of any kind. He, therefore, says that at the time of the commission of the crime the prisoner did not know that what he was doing was wrong or contrary to law. It is indeed difficult to see how he could say that not being present at the time of the murder. Within four or five hours the accused knew that his actions were wrong because he admitted his guilt and that it was contrary to law because he asked whether the police had come. Dr.

Roy says that the consciousness that his deed was wrong and contrary to law was slowly dawning on him. Now it is impossible for a doctor to depose to the exact state of an accused at the time of the commission of the offence. It is easier to say that the accused knew that his act was wrong or contrary to law than to say the contrary. Many doctors have frankly admitted this. Dr. Northward East frankly admitted his inability in True's case:

Is it possible to speculate definitely upon the mental processes of a person who is suffering from disease of the mind to say what he understands and he does not understand, and what he thinks or does not think. It is extremely difficult.”

The said judgment also takes notice of the five Mc’ Naughten Rules and observes that these rules do not define insanity and there are no tests indicated therein and holds that in India we are governed by the IPC (Indian Penal Code). It appears that in practice a wider immunity has been granted than what was postulated in Mc’ Naughton Rules of 1843. Section 84 IPC uses the expression “unsoundness of mind” and postulates that it should be of the nature and quality that the accused for the said reason (i) was incapable of knowing the act he was doing or (ii) did not know what he was doing was wrong morally or the act was contrary to law.

18. Criminal offences, including Section 302 IPC, mandate and require proof of *mens rea*. Section 84 IPC does not affect the general burden of proof and the

prosecution must establish *mens rea*. The general burden of proof that the accused person had requisite mens rea continues to remain upon prosecution as observed in **Sheralli Wali Mohammed** (*supra*), wherein the following passage from **Dahyabhai Chhaganbhai Thakkar** (*supra*) has also been quoted:-

“(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.”

Failure to prove mens rea or absence of mens rea when mandated and requirement of an offence, will result in acquittal but this should be distinguished from “insanity” as defined and granted immunity under Section 84 IPC. These are two separate lines of defences and require distinct considerations. Normally onus to prove mens rea is on the prosecution and failure to prove will cause acquittal on merits because no offence is proved to be committed. Question of “insanity” relates to disease or malfunctioning of mind and the onus is on the accused.

19. When we come to the facts of the present case, Balwinder Kaur (PW-1), the wife of the appellant, in her cross-examination categorically denied that the appellant was suffering from mental disorder before the occurrence. She had denied that the appellant was taken to G.B. Pant Hospital and then referred to RML Hospital for further treatment. The appellant, in person, wanted to put questions to PW-1 and the Trial Court permitted him to cross-examine PW-1. When cross-examined by the appellant, PW-1 has stated that she was not aware whether the appellant had gone to DDU Hospital or not. She, however, claimed that the appellant was not behaving properly with her children. The appellant was earlier running a three-wheeler, but wanted to drive a truck. He continuously insisted that PW-1 should get money from her parental home for purchase of a truck. The appellant had sold the three-wheeler and was unemployed. These issues led to constant quarrel between them.

20. Arvin (PW-5) had denied that the appellant was under medical treatment in a hospital. Landlord Iqbal Singh (PW-10), in his cross-examination, has stated that he had never seen the appellant in insane condition during his stay in the house. Few minutes after the incident, when PW-10 reached the crime spot and intervened, the appellant did not react or quarrel with him.

21. To support the appellant's plea, he had produced five defence witnesses.

22. Surender Singh (DW-1), who worked as Record Clerk at Ram Manohar Lohia Hospital, has produced attested OPD Entry Register dated 9th March, 2004 wherein it is recorded that Paramjeet Singh had Psychiatric OPD visit. At Serial No.155 of the said register, relating to 9th March, 2004, name of the patient Paramjeet Singh, age 45 years stands recorded, but the said witness did not have any personal knowledge about the illness or the psychiatric or other treatment, if any, which was given. From the said record it cannot be ascertained whether the appellant suffered from any ailment, what was the nature/character of the ailment, whether the appellant underwent doctor administered treatment, what was the type/nature of the treatment or any other relevant information. The Trial Court has recorded that even after giving numerous opportunities to the appellant he was unable to produce the medical records from the RML hospital, apart from the OPD Entry, to ascertain the nature and extent of alleged ailment/illness/treatment.

23. HC Jagbir Singh (DW-2) has proved DD No.17 (Ex. DW-2/A) dated 27th March, 2004, which records complaint made by Balwinder Kaur (PW-1) and mentions that ASI Harpal Singh went to WZ-46, Plot No. 39, Ravi Nagar where the complainant Balwinder Kaur (PW-1) gave a written complaint that there were some domestic issues with her husband who has been mentally disturbed for long and that she was getting him treated in the hospital.

24. Gurmeet Singh (DW-3), the elder brother of the appellant, has testified that the appellant had an adamant nature since his childhood and used to become mentally disturbed, at times. For the first time DW-3 saw this condition of the appellant when, in year 1980-1981, the appellant was deported back to India from Dubai. According to DW-3, the appellant used to get mentally disturbed whenever he faced tough times, in his life. 8-10 days prior to the incident his brother-in-law Amarjeet Singh called him and informed that the appellant had been detained in police post Khayala pursuant to the complaint made by his wife. The appellant at that time was mentally unfit and disturb and after talking to PW-1, the said witness came to know that the appellant was undergoing treatment for his mental ailment at some hospital. DW-3 in his cross-examination, however, accepted the position that the appellant used to remain mentally disturbed because of losses in business and sometimes when another person did not obey him.

25. Bhupinder Kaur, wife of Amarjeet Singh and sister of the appellant, had also appeared as a defence witness. She has been described as DW-4 though she should be treated as DW-6. She has stated that accused was perfectly right and was of good temperament, in her brief deposition. She has stated that the appellant was a truck driver and used to remain mostly outside.

26. Dr. Madan Lal (DW-4), Senior Medical Officer, Central Jail No.1, Tihar had produced the admission and discharge records of the appellant. He had also produced the summary sheets dated 5.4.2004, 8.8.2004, 24.11.2004, 28.2.2010, 18.2.2010, which were collectively marked Ex.DW 4/A. As per DW-4, the appellant was given treatment for adjustment disorder, which was explained as failure to adjust with the surroundings. However, according to DW-4, this did not amount to or show insanity.

27. Dr. Mohd. Niyaz Alam, Medical Officer, Central Jail No.3, Tihar has appeared as DW-5. He has mentioned that the appellant was admitted to jail hospital from 25th February, 2006 to 27th February, 2006 for manic episode, which means that the patient became violent. Thereafter, he was again admitted to the BT Ward from 20th October, 2008 to 29th October, 2008 for abnormal behavior which means that he was not listening to the instructions and doing the opposite, as per his wishes.

28. The test for application of Section 84 IPC, as noticed above, is that the accused, by reason of unsoundness of mind, was incapable of knowing the nature of the act or was incapable of knowing that what he is doing is either wrong or contrary to law. The words “he was not capable of knowing that he was acting wrong or contrary to law” refers to the accused’s consciousness in relation to the act on those affected by it or accused’s consciousness in relation

to himself. [See *Baswantrao Bajirao (supra)*]. In everyday life terms like, mental illness/disorder, behaviour disorder/abnormality, psychological disorder etc. are used loosely and applied to behaviour which is highly unusual, specially when an individual indulges in aggression in speech/conduct or physical violence. Cause of aggression/violence, as per modern social psychologists, is not programmed/attributed to a single factor but is triggered by a wide range of input variables which influence arousal, affective stages and cognitions. (General Affective Aggression Model proposed by Anderson in 1996/1997. Also see the Glossary of Mental Disorder and glossary published by World Health Organisation and other institution/organisation/governments). However, Section 84 IPC provides immunity in limited category of cases, i.e., unsound mind which has the stipulated consequences. The term “unsoundness of mind” in Section 84 IPC is not a medical term but a legal concept. Crimes are often committed or are a result of mental disorder/abnormality as in the cases of a serial killers like David Berkowitz but the test of “insanity” as a legal term is restrictive and more precise. The legal test is that the accused because of disease of mind should be crippled by defect of reason from knowing the nature and quality of the act he was doing or if he did know it, then he did not know that it was wrong (morally) or was contrary to law. (Questions of sympathetic treatment in punishment or grant of probation, when permissible, are separate aspects).

29. We have scrupulously examined the evidence placed before the Court to prove that the appellant was not of sound mind (*non compos mentis*) when he committed the said offence. From the statement of various defence witnesses which are to the effect that the appellant used to remain mentally disturbed and do not establish that he was insane as defined in Section 84 IPC. The witnesses have merely testified that the appellant was quarrelsome, adamant and used to become angry when stressed or when he faced difficult times. It becomes apparent that he was under treatment for the said purpose, when we read DD No.17, Ex.DW 2/A recorded on 17th March, 2004, the complaint of PW-1. Relevant portion of which reads as under:-

“Smt. Balwinder Kaur has produced me an application bearing the statement that she had made a telephone call to Police after an exchange of hot words with her husband on domestic tiffs. My husband is under mental problem for past long time and he is under treatment in a hospital and he use to become adamant due to his stubborn attitude. Now I am taking him to the hospital with the help of his brother Surjeet Singh and his sister Bhupinder Kaur.”

30. A reading of the aforesaid statement elucidates that the appellant was mentally disturbed and had quarrelsome nature, but it cannot be said that he was incapable of understanding the nature and character of his acts and consequences thereof qua to him and others. He knew the nature and quality of the act which he was committing and that what he had done was wrong. It cannot be said that the appellant was incapable of distinguishing right or wrong

or not knowing the nature, consequences and effect of the acts done by him. This becomes clear from his conduct at the time of the incident. From the statement of PW-1 and PW-2, it is clear that the appellant tried to prevent the PW-2 from reaching out for help. In fact, in order to prevent PW-2 from reaching the door, the appellant inflicted injuries on PW-2's ears. It was only when PW-1 caught hold of the appellant that PW-2 could run out and get help. Therefore, he was not ignorant of what he was doing. The fact that he was mentally disturbed did not mean that he was in the state of confusion or suffering from mental debility to the extent required and mandated by Section 84 IPC.

31. It has been clarified in *Elavarasan v. State* (2011) 7 SCC 110 that the mere fact that the appellant had assaulted his immediate family members was not ipso facto suggestive of his being an insane person. It further held that:

“38. So, also the fact that he had not escaped from the place of occurrence was no reason by itself to declare him to be a person of unsound mind incapable of understanding the nature of the acts committed by him. Experience has shown that different individuals react differently to same or similar situations. Some may escape from the scene of occurrence, others may not while some may even walk to the police station to surrender and report about what they have done. Such post-event conduct may be relevant to determine the culpability of the offender in the light of other evidence on record, but the conduct of not fleeing from the spot would not in itself show that the person concerned was insane at the time of the commission of the offence.”

32. Iqbal Singh (PW-10) has stated that at 4.30 A.M., Gullu @ Daljit Singh, son of Paramjeet, called him and when he reached the room of appellant Paramjeet, he saw two blades of scissors in appellant's hands. The appellant

had caught hold of PW-1 by her hair and was causing injuries to her. Preeti @ Jaspreet Kaur was lying on the bed and was profusely bleeding. Clothes of Gullu and Silki @ Arvin Kaur were also blood stained. He questioned the appellant that what he had done and asked him to throw away the blades. The appellant, on his asking, threw the blades. PW-10 brought the appellant out of his room. Thereafter, police was informed. The three children and PW-1 were taken to the hospital. The aforesaid conduct and behaviour of the appellant clearly shows that he was fully conscious and had knowledge as to what he was doing or had done.

33. In view of the aforesaid discussion, the appellant's plea of insanity, as mandated and stipulated under Section 84 IPC, has to be rejected. We do not find any merit in the present appeal and the same is dismissed. The conviction and sentence of the appellant under Section 302 IPC for murder of Jaspreet Kaur and under Section 307 IPC for attempt to murder Balwinder Kaur, Arvin Kaur and Daljit Singh is maintained. The appeal is disposed of.

**-sd-
(SANJIV KHANNA)
JUDGE**

**-sd-
(S. P. GARG)
JUDGE**

JANUARY 4, 2013

LR/NA/kkb