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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CRL.A(J)/60/2022

PABITRA PASOWAN
S/O. LT. SARAL PASOWAN, VILL. DAKHIN JALUKBARI, P.S. KHAIRABARI,

VERSUS

THE STATE OF ASSAM
REP. BY PP, ASSAM.

Advocate for the appellant : Mr. D. Borah, Amicus Curiae
Advocate for the respondent : Ms. A. Begum, Addl. PP

BEFORE

HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA
HON'BLE MRS. JUSTICE MITALI THAKURIA

Date of Hearing : 19.09.2024

Date of Judgment : 24.09.2024

JUDGMENT AND ORDER (CAV)

(Michael Zothankhuma, J.)

1. Heard Mr. D. Borah, learned Amicus Curiae for the appellant and Ms. A. Begum, learned Addl. PP, Assam.

2. The present appeal has been filed against the impugned judgment dated 06.04.2022 passed by the Court of the Sessions Judge, Udalguri, Assam in Sessions (I) Case No. 71 of 2019, by which the appellant has been convicted under Section 302 IPC for murdering his brother and has been sentenced to undergo Rigorous Imprisonment for life with a fine of Rs. 5,000/-, in default to undergo simple imprisonment for another 6 months.

3. The prosecution case in brief is that an FIR dated 03.04.2019 was submitted before the Officer In-charge, Khairabari P.S. by PW-2, who was a villager living in the village of the appellant. The FIR stated that at around 10 PM on 02.04.2019, the appellant had hit his elder brother Raju Pasowan on his head with a piece of wood while he was sleeping, due to which the elder brother Raju Pasowan died. The FIR also says that there was no other person in their family except the two brothers, who were both unmarried. Pursuant to the FIR dated 03.04.2019, Khairabari P.S. Case No. 10 of 2019 under Section 302 IPC was registered.

4. The case IO thereafter went to the place of occurrence and seized the piece of wood, which had been used by the appellant for hitting his brother. Inquest of the dead body was made and the body was sent for post-mortem examination. After examining witnesses and the appellant, the case IO submitted the charge-sheet, having found a *prima facie* case under Section 302 IPC against the appellant.

5. The learned Trial Court thereafter framed charge under Section 302 IPC against the appellant, to which the appellant pleaded not guilty and claimed to be tried. 10 prosecution witnesses were examined by the learned Trial Court and the appellant was examined under Section 313 Cr.PC. The learned Trial Court

thereafter came to a finding that the appellant had murdered of his brother. The appellant was accordingly convicted under Section 302 IPC and sentenced as stated in the foregoing paragraphs.

6. The learned Amicus Curiae submits that the entire case of the prosecution rests on circumstantial evidence and the extra judicial confession made by the appellant to PW Nos. 7 & 8. He submits that the circumstantial evidence do not form a complete link, to allow the learned Trial Court to come to a finding that the appellant was the only possible suspect who could have committed the crime against the deceased. He also submits that the evidence of the prosecution witnesses all point to the fact that the appellant was mentally ill and in view of Section 84 IPC, the appellant could not have been convicted of an act done while he was mentally ill. In this regard he has relied upon the judgment of the Trial Court in the case of ***Rupesh Manger (Thapa) v. State of Sikkim***, reported in ***(2023) 9 SCC 739***.

7. The learned Amicus Curiae submits that the alleged murder weapon i.e. the wood that has been used by the appellant to kill his brother has not been sent to the FSL for examination, to prove that the wood was the murder weapon, even though the same had been seized by the police. In this regard he relied upon the judgment of the Supreme Court in the case of ***A. Shankar v. State of Karnataka***, reported in ***(2011) 6 SCC 279***.

8. The learned Amicus Curiae also submits that though the appellant had allegedly given an extra judicial confession to PW-7 & 8, the same cannot be acted upon, in view of the fact that the IO was not informed of the same. He further submits that as there was a lacuna in the finding of the learned Trial Court in convicting the appellant, the impugned judgment and sentence should

be set aside. He also submits that as the prosecution witnesses had consistently given their testimonies to the effect that the appellant was mentally ill, it was the duty of the learned Trial Court to have the appellant examined by a civil surgeon in terms of Section 328 Cr.PC. He submits that non-compliance with the provisions of Section 328 Cr.PC has vitiated the trial and as such, no conviction could have been based on the actions of a person who was mentally ill.

9. The Additional Public Prosecutor submits that the appellant and the deceased who are siblings, lived together in the house in which the deceased was murdered. There was no other family member known to the villagers related to the two brothers. No other person also lived with them. Besides the above, the appellant was found with the stick/piece of wood which was the weapon used for murdering the deceased. This has been stated by PW-6 & PW-7. Further, the appellant had made an extra-judicial confession to PW-4, PW-5, PW-7 and PW-8 that he had killed the deceased. He further submits that no cross-examination had been made by the appellant to the prosecution witnesses as to who could have killed the deceased. Further, the appellant had fled from the place of occurrence and that no explanation had been given by the appellant as to how the deceased had died, when examined under Section 313 Cr.P.C. The injuries being very severe and as there was only a blanket denial of the evidence adduced against the appellant, there was no infirmity in the learned Trial Court convicting the appellant on the basis of the evidence adduced by the prosecution witnesses and the extra-judicial confession made by the appellant. In support of his submission, the learned Additional Public Prosecutor has relied upon the case of **Aftab Ahmad Anasari vs. State of Uttaranchal**, reported in **(2010) 2 SCC 583**.

10. We have heard the learned counsels for the parties.

11. In the case of ***Rupesh Manger (Thapa) [supra]***, the Supreme Court has held that an accused person, who seeks exoneration from the liability of an act under Section 84 of the IPC, has to prove legal insanity and not medical insanity. Further, in terms of Section 105 of the Evidence Act, the burden of proving the existence of circumstances bringing the case within the exception under Section 84 of the IPC lies on the accused and the Court shall presume the absence of such circumstances. Thus, the accused would have to place materials before the Court which should satisfy the test of a prudent man that the appellant's case came within Section 84 of the IPC, which was not done by the appellant during the trial stage.

12. In the case of ***A. Shankar (supra)***, the Supreme Court held that non-production of an FSL Report in the Court by the prosecution was fatal when the murder weapon had been sent to the FSL for examination.

13. In the case of ***State of Rajasthan vs. Rajaram***, reported in ***2004 1 RLW (Raj) 53***, the Supreme Court has held that an extra-judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the Court. The value of the extra-judicial confession, like any other evidence, depends upon the veracity and reliability of the witness to whom it has been made. The reliability of the witness who gives the evidence would also have to be seen. Such a confession can be relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of witnesses, who appear to be unbiased, not even remotely inimical to the accused and who does not have any motive for attributing any untruthful statement against the accused. The evidence relating to extra-judicial

confession, if found credible after being tested on the touchstone of credibility and acceptability, can solely form the basis of conviction. The requirement of corroboration is a matter of prudence and not an invariable rule of law.

14. In the case of ***Aftab Ahmad Anasari (supra)***, the Supreme Court held that though extra-judicial confession is considered to be a weak piece of evidence by the Courts, there is neither any rule of law nor of prudence that the evidence furnishing extra-judicial confession cannot be relied upon unless corroborated by some other credible evidence. The evidence relating to extra-judicial confession can be acted upon if the evidence about the extra-judicial confession comes from the mouth of a witness who appears to be unbiased and in respect of whom even remotely nothing is brought out which may tend to indicate that he may have a motive for attributing an untruthful statement to the accused.

15. In the case of ***State of U.P. vs. M.K. Anthony***, reported in ***(1985) 1 SCC 505***, the Supreme Court while explaining the law relating to extra judicial confession, ruled that if the word spoken by the witness are clear, unambiguous and unmistakable one showing that the accused is the perpetrator of the crime and nothing is omitted by the witness which may militate against it, then after subjecting the evidence of the witness to a rigorous test on the touchstone of credibility, the extra judicial confession can be accepted and can be the basis of a conviction. In such a situation, to go in search of corroboration itself tends to cause a shadow of doubt over the evidence and if the evidence of extra judicial confession is reliable, trustworthy and beyond reproach, the same can be relied upon and a conviction can be founded thereon.

16. PW-3 is a resident of the same village as the appellant. He testified that he

knew both the appellant and the deceased as they were his neighbours. He further stated that the deceased was a habitual drunker and on the date of occurrence he was sleeping under the influence of alcohol. The appellant, on the other hand had been suffering from mental disturbance as he has lost his parents. On the date of the occurrence, the mother of the PW-3 heard a sound nearby his house. On coming out from the house, his mother noticed that the accused was moving nearby his house. Then in the light given by the torchlight, the dead body of the deceased was seen on the ground with pool of blood. PW-3 then went to the spot where the deceased dead body was lying and called other villagers. His mother also called the informant. In the meantime, the appellant took shelter inside the school building from where he was traced up by the villagers. The appellant was thereafter confined in the house for the whole night and on informing the police, the police came and took the dead body to the police station.

In his cross-examination, the PW-3 stated that though he did not see the incident, all the villagers knew that the appellant was mentally ill. However, he did not receive any medical treatment. Further, the appellant mostly stayed in the bushes near the river bank alone because of his mental condition. He further stated that the crime may have been committed by the appellant due to his mental disability and lack of understanding about the act done by him.

17. The evidence of PW-4, who is a villager and the VDP Secretary of Khairabari village stated that PW-9 had come to his residence 2 years ago on one day at about 9 p.m and informed him that the appellant had killed his brother by beating him with a stick/piece of wood. On going to the place of occurrence the dead body of the deceased was seen and on searching for the

appellant, he was found sitting in the veranda of the school. The appellant was then caught and brought to the place of occurrence, where he was tied up with a rope. The police on being informed came and seized the stick/piece of wood which had been used by the appellant to kill the deceased. Further, the appellant confessed to PW-4 that he had murdered his elder brother.

In his cross-examination, PW-4 stated that the deceased was a habitual drunker and that the appellant sometimes suffered from mental problem.

18. The evidence of PW-5, who is a villager belonging to the same village as the appellant stated that he heard an alarm being raised in the residence of the appellant at about 9 p.m in the year 2019. As his house was adjacent to the residence of the appellant he went out from his house and he saw the appellant walking around with a stick/piece of wood. Thereafter other villagers came to the place of occurrence and saw the deceased was already dead. The appellant went to the veranda of the school and remain sitting there. Thereafter the villagers brought the appellant to his residence and confined him there by tying him up with a rope. The appellant also confessed his guilt in the presence of villagers.

In his cross-examination, PW-5 stated that the appellant some time suffered from mental illness and that the deceased was a habitual drunker.

19. The evidence of PW-6 is to the effect that on hearing an alarm, he went to the house of the appellant and found the dead body lying on the ground. At the same time he saw the appellant there with stick/piece of wood (lathi). As he was afraid, he left for his house and later came to know that the appellant had killed his brother.

20. The evidence of PW-7, who is a resident of the same village as the appellant is to the effect that on the date of occurrence at about 10 p.m, he came to the residence of the appellant an alarm had been raised. He saw the deceased lying on the bed and also noticed the appellant who was near the dead body with a stick/piece of wood in his hand. Thereafter the appellant confessed before PW-7 and others that he had killed his brother by beating him with the stick/piece of wood. The injury was seen on the head of the deceased.

In his cross-examination, PW-7 stated that the appellant was a mentally sick person and that he was earlier taken to Tezpur Mental Hospital but had not been cured.

21. The evidence of PW-8, who is a villager of the same village as the appellant is to the effect that on hearing an alarm being raised at the residence of the appellant he went to the place of occurrence wherein he heard that the appellant had caused the death of his elder brother and was standing near the dead body. When PW-8 asked the appellant, the appellant confessed his guilt and admitted to PW-8 that he had killed his elder brother. The appellant further stated that as he had earlier being assaulted by the deceased, he had killed his brother.

In his cross-examination, PW-8 denied the suggestion that the appellant was suffering from any mental illness at the time of occurrence of the crime. He further stated that both the appellant and the deceased were habitually drinkers. On the date of occurrence they were heavily drunken and they were found in drunken condition.

22. As can be seen from the evidence of the prosecution witnesses, extra-

judicial confession had been made by the appellant to PW-4, PW-5, PW-7 & PW-8, wherein he admitted to killing his elder brother. Though the cross-examination of some of the prosecution witnesses is to the effect that the appellant was known to be mentally unstable, the evidence of PW-8 in his cross-examination is that the appellant was not suffering from any mental illness at the time of the occurrence of the crime.

23. The question that should have cropped up in the mind of the learned Trial Court during trial, should have been with regard to whether the appellant was suffering from unsoundness of mind at the time of occurrence of the crime, given the fact that some of the witnesses had stated that the appellant was of unsound mind. In this regard, it would be helpful if Section 84 IPC, Section 328 and 329 Cr.P.C are reproduced here-in-below.

24. Section 84 IPC, Section 328 and 329 Cr.P.C are reproduced here-in-below as follows:

“Section 84 of IPC

Act of a person 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.

.....

Section 328 and 329 Cr.P.C

Section 328. Procedure in case of accused being lunatic.—(1)
When a Magistrate holding an inquiry has reason to believe that the person against whom the inquiry is being held is of unsound mind and consequently incapable of making his defence, the Magistrate shall inquire

into the fact of such unsoundness of mind, and shall cause such person to be examined by the civil surgeon of the district or such other medical officer as the State Government may direct, and thereupon shall examine such surgeon or other officer as a witness, and shall reduce the examination to writing.

[(1A) If the civil surgeon finds the accused to be of unsound mind, he shall refer such person to a psychiatrist or clinical psychologist for care, treatment and prognosis of the condition and the psychiatrist or clinical psychologist, as the case may be, shall inform the Magistrate whether the accused is suffering from unsoundness of mind or mental retardation:

Provided that if the accused is aggrieved by the information given by the psychiatric or clinical psychologist, as the case may be, to the Magistrate, he may prefer an appeal before the Medical Board which shall consist of—

- (a) head of psychiatry unit in the nearest government hospital; and*
- (b) a faculty member in psychiatry in the nearest medical college.]*

(2) Pending such examination and inquiry, the Magistrate may deal with such person in accordance with the provisions of section 330.

[(3) If such Magistrate is informed that the person referred to in sub-section (1A) is a person of unsound mind, the Magistrate shall further determine whether the unsoundness of mind renders the accused incapable of entering defence and if the accused is found so incapable, the Magistrate shall record a finding to that effect, and shall examine the record of evidence produced by the prosecution and after hearing the advocate of the accused but without questioning the accused, if he finds that no prima facie case is made out against the accused, he shall, instead of postponing the enquiry, discharge the accused and deal with him in the manner provided under section 330:

Provided that if the Magistrate finds that a prima facie case is made out against the accused in respect of whom a finding of unsoundness of

mind is arrived at, he shall postpone the proceeding for such period, as in the opinion of the psychiatrist or clinical psychologist, is required for the treatment of the accused, and order the accused to be dealt with as provided under section 330.

(4) If such Magistrate is informed that the person referred to in sub-section (1A) is a person with mental retardation, the Magistrate shall further determine whether the mental retardation renders the accused incapable of entering defence, and if the accused is found so incapable, the Magistrate shall order closure of the inquiry and deal with the accused in the manner provided under section 330.]

Section 329. Procedure in case of person of unsound mind tried before Court.—(1) *If at the trial of any person before a Magistrate or Court of Session, it appears to the Magistrate or Court that such person is of unsound mind and consequently incapable of making his defence, the Magistrate or Court shall, in the first instance, try the fact of such unsoundness and incapacity, and if the Magistrate or Court, after considering such medical and other evidence as may be produced before him or it, is satisfied of the fact, he or it shall record a finding to that effect and shall postpone further proceedings in the case.*

[(1A) If during trial, the Magistrate or Court of Sessions finds the accused to be of unsound mind, he or it shall refer such person to a psychiatrist or clinical psychologist for care and treatment, and the psychiatrist or clinical psychologist, as the case may be shall report to the Magistrate or Court whether the accused is suffering from unsoundness of mind:

Provided that if the accused is aggrieved by the information given by the psychiatric or clinical psychologist, as the case may be, to the Magistrate, he may prefer an appeal before the Medical Board which shall consist of—

(a) head of psychiatry unit in the nearest government hospital; and

(b) a faculty member in psychiatry in the nearest medical college.]

[(2) If such Magistrate or Court is informed that the person referred to in sub-section (1A) is a person of unsound mind, the Magistrate or Court shall further determine whether unsoundness of mind renders the accused incapable of entering defence and if the accused is found so incapable, the Magistrate or Court shall record a finding to that effect and shall examine the record of evidence produced by the prosecution and after hearing the advocate of the accused but without questioning the accused, if the Magistrate or Court finds that no prima facie case is made out against the accused, he or it shall, instead of postponing the trial, discharge the accused and deal with him in the manner provided under section 330:

Provided that if the Magistrate or Court finds that a prima facie case is made out against the accused in respect of whom a finding of unsoundness of mind is arrived at, he shall postpone the trial for such period, as in the opinion of the psychiatrist or clinical psychologist, is required for the treatment of the accused.

(3) If the Magistrate or Court finds that a prima facie case is made out against the accused and he is incapable of entering defence by reason of mental retardation, he or it shall not hold the trial and order the accused to be dealt with in accordance with section 330.]

25. The fact that the appellant had killed his brother is reflected in the evidence of PW-4, PW-5, PW-7 and PW-8. There is nothing in the evidence or in the records to show that PW-4, PW-5, PW-7 and PW-8 were inimical in any manner towards the appellant. There was no cross-examination by the appellant, during the recording of the evidence of PW-4, PW-5, PW-7 and PW-8, to the effect that the said PW-4, PW-5, PW-7 and PW-8 would want to impute anything false to the appellant. We also find that there was nothing to show that the appellant had not made the extra-judicial confession due to any

coercion. We find that the extra-judicial confession was voluntary.

26. Though the learned Trial Court could have, by way of caution subjected the appellant to be examined by a Civil Surgeon of the District or a Medical Officer, on suspicion of the appellant being of unsound mind, we find that the learned Trial Court has not made any order to that effect in terms of Section 329 Cr.P.C. Thus, it can be inferred that the learned Trial Court was of the view that the appellant was of sound mind and capable of making his defence at the time of pendency of the trial before the learned Trial Court.

27. In the case of **Devidas Loka Rathod vs. State of Maharashtra**, reported in **(2018) 7 SCC 718**, the Supreme Court has held that in cases where benefit of Section 84 IPC is given, the onus on the accused under Section 105 of the Evidence Act is not stringent as on the prosecution to be established beyond all reasonable doubt. The accused has only to establish his defence on a preponderance of probability, after which the onus shifts to the prosecution to establish the inapplicability of the exception.

28. In the present case, the appellant has not taken any defence to the effect that he was incapacitated by unsoundness of mind at the time of occurrence of the event.

29. In the case of **Rajkumar vs. State (NCT) of Delhi**, reported in **2023 SCC Online 609**, the Supreme Court has held that while examining the accused under Section 313 Cr.P.C, the accused should be drawn to every inculpatory statement so as to enable him to explain it, as the same amounts to basic fairness of a criminal trial. Failure in this area may gravely imperil the validity of the trial itself. In this regard, the question put to the appellant during his examination under Section 313 Cr.P.C goes to show that the appellant had

been drawn to all inculpatory materials to enable him to explain the same. With regard to Question No.13 which is to the following effect : "*Do you want to say any more*", the appellant answered to the following effect : "*I am a mentally retarded person and people took advantage of my mental state to falsely implicate in this case. I have not killed my brother*". To have made such a rational answer to a question put by the learned Trial Court does not show the appellant to be an insane person. What would have to be seen is whether the appellant was incapable of knowing the consequences of his actions. The appellant had to take the stand that he was unable to understand the consequences of his action, so as to enable the appellant to attract the exception of unsoundness of mind provided in Section 84 IPC. The answers given by the appellant in his 313 Cr.P.C examination does not indicate that the appellant was not aware of the consequence of his action and as such, this Court is of the view that the appellant has not been able to prove/show that he was suffering from legal insanity.

30. In the case of ***Dahyabhai Chhaganbhai Thakker vs State of Gujarat***, reported in ***AIR 1964 SC 1563***, the Supreme Court has held as under :

"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 IPC: 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".*

In this regard, the appellant has never taken the stand that he was suffering from unsoundness of mind at the relevant point of time. Further, the extra-judicial confession of the appellant to PW-8 shows that he had killed his brother, as he had earlier been assaulted by the deceased. Thus, in the present case, the *mens rea* of the appellant has been established.

31. In the case of **State of Madhya Pradesh vs. Ahmadullah**, reported in **AIR 1961 SC 998**, the Supreme Court has held that to establish insanity, it must be clearly proved that at the time of committing the act, the party is labouring under such defect of reason, as not to know the nature and quality of the act which he was committing. As stated earlier, it appears that the appellant knew what he had done, inasmuch as, he had subsequently run away from the place of occurrence and gone to the school from where he was caught by the villagers.

32. In the present case, as there was nothing to show that the appellant was suffering from unsound mind, the learned Trial Court has apparently not made any presumption as to whether the appellant was able to defend himself and whether he was suffering from unsoundness of mind at the time of the incident. Thus, only because some witnesses have stated that the appellant was of unsoundness of mind, does not mean that the appellant was suffering from legal insanity at the time the incident occurred. Legal insanity is a mental illness,

which prevents a person from distinguishing reality from fantasy due to a person's thoughts and perceptions. On the other hand, medical insanity would relate to a person's cognitive or emotional functioning. In the present case, there is nothing to show that the appellant could not comprehend the consequences of his action. Further, the reason for killing his brother has also been explained by him, i.e his deceased brother hit him first.

33. Accordingly, in view of the extra-judicial confession given by the appellant to the PW-4, PW-5, PW-7 & PW-8, who do not have any reason to impute false statements to the appellant, we hold that the conviction of the appellant on the basis of the extra-judicial confession does not suffer from any infirmity. Accordingly, we do not find any grounds to interfere with the impugned judgment and order. The appeal is accordingly dismissed.

34. Considering all the above facts, we are of the view that the learned Trial Court should have by way of abundant caution subjected the appellant to medical examination under Section 329 Cr.P.C. The same not being done, there can be nothing inferred that the appellant was of unsound mind at the time the incident occurred.

35. In view of the reasons stated above, we do not find that any ground to interfere with the decision of the learned Trial Court in coming to a finding that the appellant had murdered his brother.

36. The above being said, we are of the view that as evidence was adduced by witnesses, to the effect that the appellant suffered from unsoundness of mind from time to time, it would be in the interest of justice if the appellant is made to undergo a medical test, to decide as to whether the appellant should

continue his sentence in Jail or in a Mental Health Institution, keeping in view Section 335(2) Cr.P.C, which provides that no order for the detention of an accused in a lunatic asylum shall be made under Section 335(1)(a) Cr.PC, otherwise than in accordance with such rules as the State Government may make under the Indian Lunacy Act, 1912. The India Lunacy Act, 1912 was however repealed by the Mental Health Act, 1987 and the Mental Health Act, 1987 was subsequently also repealed by the Mental Healthcare Act in 2017.

37. [Section 335\(3\)](#) Cr.P.C provides that no order for the delivery of the accused to a relative or friend shall be made under clause (b) of Sub-Section (1) except upon the application of such relative or friend and on his giving security to the satisfaction of the Magistrate or Court, that the person delivered shall be properly taken care of and prevented from doing injury to himself or to any other person and he shall be produced for the inspection of such officer, and at such times and places, as the State Government may direct.

[Section 335\(4\)](#) of the Cr.P.C. provides that the Magistrate or Court shall report to the State Government the action taken under Sub-Section (1).

38. However, out of abundant caution, we are of the view that a medical examination of the appellant may be undertaken by a Civil Surgeon of the District or such other Medical Officer as the State Government may direct, who shall examine as to whether the appellant suffers from unsoundness of mind. In this regard, we direct the Superintendent of the concerned Jail to produce the appellant before a Civil Surgeon working under the Government of Assam or any Medical Officer as the State Government may direct, to examine whether the appellant suffers from unsoundness of mind. If the appellant is found to be suffering from unsoundness of mind, the State respondents shall thereafter transfer the appellant to the Psychiatric Ward in the Medical Wing of the Prison,

where he is serving his sentence. However, if there is no Psychiatric Ward in the Medical Wing of the Prison, the prisoner may be transferred to a Mental Health Establishment in terms of Section 103 of the Mental Healthcare Act, 2017. The entire exercise should be concluded within a period of 2 (two) months from the date of receipt of a certified copy of this order. The final report with regard to the above should thereafter be sent to the learned Trial Court.

39. In appreciation of the assistance provided by the learned Amicus Curiae, his fees should be paid by the Assam State Legal Services Authority.

40. Send back the LCR.

JUDGE

JUDGE

Comparing Assistant