

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 816 of 2010**

- Madvi Chaitu, S/o Chamru Madia, aged about 35 years, R/o Village - Marenga Patelpara, P.S. Mardoom, Distt. Bastar (CG)

---- Appellant**Versus**

- State Of Chhattisgarh, Through Police Station - Mardoom, Distt. Bastar (CG)

---- Respondent

For appellant :

Shri Vijay K. Deshmukh, Advocate.

For Respondent/State :

Shri Chandresh Shrivastava, PL.

Hon'ble Shri Justice Pritinker Diwaker**Hon'ble Shri Justice C.B. Bajpai,****Judgment On Board by Justice Pritinker Diwaker****07/12/2015:**

This appeal arises out of the judgment of conviction and order of sentence dated 23.9.2010 passed by Additional Sessions Judge, Bastar at Jagdalpur in S.T.No.136/09 convicting the accused/appellant under Sections 302 and 307 of IPC, each under two counts and sentencing him to undergo imprisonment for life with fine of Rs.300/- on two counts and RI for 7 years with fine of Rs.200/- on two counts respectively with default stipulations.

2. As per the prosecution case, on 6.10.2009 in between 8-9 pm the accused/appellant had a quarrel with his wife Rudo (PW-3) on the ground that she never used to cook food in time. It is alleged that the accused/appellant caused injuries with axe to his two sons namely Vishnu aged 3 years and Vishwanath aged 5 years as well as daughter Bodki,

aged 6 years and wife Rudo. Vishnu and Vishwanath however succumbed to the injuries sustained by them whereas Bodki and Rudo suffered grievous injuries. FIR (Ex.P-1) was lodged by Madvi Raitu (PW-1) on 7.10.2009, based on which offence under Sections 302 and 307 of IPC was registered against the accused/appellant. Merg intimations Ex.P-2 and P-3 were also recorded on 7.10.2009. Injured Rudo and Bodki were medically examined by Dr. (Smt.) Rita Gedam vide Exs.P-18 and P-19 respectively. Inquest over the dead bodies of Vishnu and Vishwanath was performed vide Exs.P-15 & P-16 respectively. The dead bodies were sent for postmortem examination which was conducted by Dr.NS Nag (PW-12) vide Exs.P-22 and P-23 and he noticed incised wound over left side of neck of deceased Vishwanath and incised wound over occipital region of skull, neck, fracture of occipital bone of deceased Vishnu. According to the doctor, the cause of death of Vishwanath was internal hemorrhage, hemorrhagic shock due to neck injury and that of Vishnu the internal hemorrhage, hemorrhagic shock due to head injury and their death was homicidal in nature. On the memorandum of the accused/appellant (Ex.P-9) one bloodstained axe was seized from his possession vide Ex.P/10. After investigation charge sheet was filed against the accused under Sections 302 twice and 307 twice IPC followed by framing of charge accordingly.

3. So as to hold the accused/appellant guilty, prosecution examined as many as 13 witnesses. Statement of the accused/appellant was also recorded under Section 313 of Cr.P.C. in which he denied the charge levelled against him and pleaded his innocence and false implication in the case.

4. The trial Court after hearing counsel for the respective parties and considering the material available on record, convicted and sentenced the accused/appellant as mentioned above, by the judgment under assail herein.

5. Counsel for the accused/appellant submits that as the accused/appellant was

suffering from insanity and unsoundness of mind, he was not aware of the consequences of his act and therefore, is entitled for the protection under Section 84 of IPC. He has placed his reliance on the decisions of Supreme Court in the matter of **P.S.V.L.N. Sastry v. Advocate General, High Court of Andhra Pradesh (2007) 15 SCC 271**, in the matter of **State of Rajsthan v. Shera Ram Alias Vishnu Dutta (2012) 1 SCC 602** and in the matter of **State of Rajsthan v. Vidhya Devi (2011) 15 SCC 228**.

6. On the other hand, supporting the impugned judgment it has been argued by the State counsel that eyewitnesses to the incident PW-1 Raitu, PW-2 Raiti and PW-3 Rudo have fully supported the case of prosecution and from their statements it has been established that it is the accused/appellant who killed his sons Vishnu and Vishwanath and caused severe injuries to his wife Rudo and daughter Bodki. He submits that a prompt report was lodged by PW-1 Raitu and he too has supported the prosecution case. PW-7 Madvi Piso and PW-8 Madvi Chaiti have also supported the prosecution case. It has been further argued that on the memorandum of the accused/appellant Ex.P-9, one bloodstained axe was seized under Ex.P-10 and as per FSL report Ex. C-1 presence of blood on the said article has been duly confirmed. According to the State counsel, if at the time of commission of the offence the accused/appellant was of unsound mind, it was for him to prove the said fact by adducing cogent evidence but here in the present case except oral statements of some of the witnesses, nothing has been brought on record to demonstrate the same and being so, he cannot take the plea of insanity at this stage.

7. Heard counsel for the respective parties and perused the material on record.

8. Madvi Raitu (PW-1) has stated that on the date of incident at about 8-9 pm, Rudo (PW-3), Vishwanath (deceased), Bodki and appellant were there in their house and that the accused/appellant committed murder of Vishnu and Vishwanath by assaulting with

axe. According to this witness, on hearing the cries of Bodki he went to the place of occurrence and saw the accused/appellant standing there holding axe in his hand and was saying that he would kill others also. According to him, the appellant caused injuries on the neck of Vishnu and Vishwanath who were lying dead at the place where they were sleeping prior to the incident. Thereafter, the villagers are said to have come there and caught hold of the accused/appellant so that he could not run away. In paragraph No. 6 of his deposition, he has stated that for last many years thereto the accused/appellant was of unsound mind for which customary treatment prevailing in villages was being given to him. It has also come in the evidence of this witness, that being in the grip of insanity, the accused used to indulge in quarrel and beating with anyone he came across.

9. Raiti (PW-2) - the sister of the accused/appellant has stated that on the date of incident when she was sleeping in her house, her sister-in-law Rudo (PW-3) came there in injured condition and informed that the accused/appellant had caused injury to her by axe. Thereupon, she along with her sister-in-law and PW-1 Raitu went to the house of appellant and found his two sons dead and daughter Bodki injured with bleeding. According to this witness, at that time the accused/appellant was sitting there and when she asked him as to why he killed them, he simply disclosed to have killed them. She has further stated that the villagers had beaten the appellant and then report was lodged. In paragraph No. 4 she has stated that mental condition of the appellant was not good and that is why she was residing with her another brother PW-1. The accused/appellant is stated to have been treated as per village customs apart from being exorcised but his condition did not improve and on account of insanity he used to assault anyone coming in his contact.

10. Rudo (PW-3) - wife of the accused/appellant and one of the injured witnesses has stated that on the date of incident when she was sleeping with her children, the

accused/appellant came there and killed her two sons by assaulting with axe and also caused injuries to her and her daughter Bodki. In paragraph No.5 she has admitted that her husband was suffering from mental disease but has denied the fact that he was treated in the village. According to this witness, she was not aware as to why the appellant opened assault. Benjami Chaitu (PW-4) and Gajru (PW-5) reached the place of occurrence after the incident was over and saw the dead bodies of Vishnu and Vishwanath and the injured persons Bodki and Rudo. Bodki (PW-6) who also suffered injuries in the incident was brought to the Court as a witness but as she failed to understand the questions put to her by the Court, her evidence could not be recorded. Madvi Pisso (PW-7) - mother of the accused/appellant has stated that on the date of incident when she was sleeping in the house of her younger son Raitu (PW-1), she was woken up by him and then along with him went to the house of the appellant and found him sitting there holding axe in his hand. She also saw dead bodies of Vishnu and Vishwanath lying there and Bodki and Rudo in injured condition. Madvi Chaiti (PW-8) - the younger sister of the accused/appellant also reached the spot after coming to know about the incident through her sister Raiti (PW-2). In paragraph No.2 she has also stated that mental condition of her brother (appellant) was not good for many days and was provided prolonged treatment but even then his condition did not improve. Madvi Samalu (PW-9) - a villager is stated to have reached the spot after the incident had taken place. This witness too has stated that mental condition of the accused/appellant was not good for many days and when he reached the place of occurrence, the accused/appellant was tied with the rope. He has further stated that the villagers never used to believe the appellant as his mental condition was not good. Dr. Smt. Rita Gedam (PW-10) is the witness who had medically examined Rudo vide Ex.P-18 and Madvi Bodki vide Ex.P-19 and noticed following injuries:

MLC of Madvi Rudo:

Incised wound of size ½" x ½" x depth ½" on left mandibular region, the injury was severe in nature and caused by sharp object. (Ex.P/18)

MLC of Madvi Bodri:

incised wound of size 2 inch x 1 ½ inch x 1 ½ inch from right cheek to nose and lips; there was injury on left cheek also of size 2 inch x 1 ½ inch extending up to left side of nose. The injuries were grievous in nature and caused by sharp object. (Ex.P/19).

11. Dr. K. Vinay Kumar (PW-11) is the witness who also provided medical treatment to the injured persons. Dr. N.S. Nag (PW-12) is the witness who conducted postmortem examination on the bodies of deceased Vishwanath and Vishnu vide Exs.P-22 and P-23 respectively and noticed following injuries:

Injuries on the body of Vishwanath:

1. Lacerated wound over left neck region, 2 x 1 inch, the same was caused by hard and sharp edged weapon.
2. On dissection, all organs were found congested and there was fracture of clavicle bone.

cause of death of Vishwanath, according to this witness, was internal hemorrhage and hemorrhagic shock due to neck injury, and the death was homicidal in nature.

Injuries on the body of Vishnu:

1. lacerated wound on occipital region of skull, 2 ½ x 1 inch, occipital bone broken,
2. lacerated wound on right neck, 2 x 1 inch,
Both injuries were antemortem in nature, caused by hard and sharp edged weapon.
3. On dissection, brain and other organs were found congested.

The cause of death of Vishnu, according to this witness, was internal hemorrhage, hemorrhagic shock due to head injury and that death was

homicidal in nature.

12. Prakash Shukla (PW-13) is the investigating officer who has duly supported the case of the prosecution.

13. On the basis of memorandum of the appellant Ex.P-9, seizure of axe was made under Ex.P-10 and as per FSL report (Ex.C-1), blood was found thereon.

14. This Court dealt with the entire evidence on record with a great deal of industry and having done so it becomes quite clear that on the ill-fated night of 6.10.2009 the accused/appellant herein turned wild and after picking up the axe opened an assault on his two minor sons (Vishnu and Vishwanath aged about 3 years and 5 years respectively at the relevant time) as well as his wife Rudo (PW-3) and daughter Bodki (PW-6), when all of them were fast asleep. Record further goes to show that the injuries caused by the accused/appellant proved fatal to his sons Vishnu and Vishwanath and put an end to their life, however, his wife and daughter were fortunate enough to survive the attack. This incident was witnessed by Raitu (PW-1) and Raiti (PW-2) apart from Rudo (PW-3) - the victim herself, and all of them have supported the case of the prosecution. From the evidence of all these witnesses it is apparent that it is the accused/appellant who caused injuries to his wife and daughter (both surviving) as well as the two sons who eventually succumbed to the same. Incident is also supported by Madvi Piso (PW-7) and Madvi Chaiti (PW-8) who had been to the spot immediately after coming to know the assault opened by the accused on his wife, daughter and two sons. Case of the prosecution further gets full corroboration from the medical reports of Rudo and Bodki (Ex. P-18 and P-19 respectively), as also the postmortem reports of Vishwanath and Vishnu (Ex. P-22 and P-23 respectively). This apart, on the disclosure statement of the accused/appellant Ex. P-9, seizure of blood stained axe was made under Ex. P-10. FSL report Ex. C-1 also confirms the presence of blood on

the said axe. Thus, there is enough material on record to show that it is the accused/appellant who has committed the murder of his two sons and caused grievous injuries to his wife and daughter and the finding to this effect recorded by the Trial Court does not suffer from any illegality or infirmity.

15. Now, the only question to be answered by this Court is whether the accused/appellant can derive any benefit of Section 84 of the Indian Penal Code and 105 of the Indian Evidence Act and before starting appreciation of the evidence to meet the objective, this Court feels it necessitous to have a glance of the provision itself, which is reproduced as under for ready reference:

“84. 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.”

“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 (XIV of 1860), or within any special exception or proviso contained in any other part of the same Code, or in any law 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.”

15. In addition to the afore-quoted provisions, reference to the judicial pronouncements of the Apex Court regarding the applicability of the provisions is also required to be made, which is as under:

In the matter of **Surendra Mishra v. State of Jharkhand** reported in **(2011) 11 SCC 495** it has been held as under:

7. Another decision of this Court on which reliance has been placed is in *Shrikant Anandrao Bhosale v. State of Maharashtra* (2002) 7 SCC 748, and our attention has been drawn to the following passage from SCC para 20 of the judgment: (SCC pp. 755-56)

“20. ... In the present case, however, it is not only the aforesaid facts but it is the totality of the circumstances seen in the light of the evidence on record to prove that the appellant was suffering from paranoid schizophrenia. The unsoundness of mind before and after the incident is a relevant fact. From the circumstances of the case clearly an inference can be reasonably drawn that the appellant was under a delusion at the relevant time. He was under an attack of the ailment. The anger theory on which reliance has been placed is not ruled out under schizophrenia attack. Having regard to the nature of burden on the appellant, we are of the view that the appellant has proved the existence of circumstances as required by Section 105 of the Evidence Act so as to get the benefit of Section 84 IPC. We are unable to hold that the crime was committed as a result of an extreme fit of anger. There is a reasonable doubt that at the time of commission of the crime, the appellant was incapable of knowing the nature of the act by reason of unsoundness of mind, thus, he is entitled to the benefit of Section 84 IPC. Hence, the conviction and sentence of the appellant cannot be sustained.”

8. Nobody had appeared on behalf of the respondent. However, we have perused the records and bestowed our consideration to the submission advanced by Mr. Agrawal and we do not find any substance in the same. In view of the plea raised it is desirable to consider the meaning of the expression “unsoundness of mind” in the context of Section 84 of the Indian Penal Code and for its appreciation, we deem it expedient to reproduce the same. It reads as follows:

“84. 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 84 of the Penal Code is found in its Chapter IV, which deals with general exceptions. From a plain reading of the aforesaid provision it is evident that an act will not be an offence, if done by a person who, at the time of doing the same by reason of unsoundness of mind, is incapable of knowing the nature of the act, or what he is doing is either wrong or contrary to law.

9. But what is unsoundness of mind? This Court had the occasion to

consider this question in {*Bapu v. State of Rajasthan (2007) 8 SCC 66, para 13*}

“13. The standard to be applied is whether according to the ordinary standard, adopted by reasonable men, the act was right or wrong. The mere fact that an accused is conceited, odd, irascible and his brain is not quite all right, or that the physical and mental ailments from which he suffered had rendered his intellect weak and had affected his emotions and will, or that he had committed certain unusual acts in the past, or that he was liable to recurring fits of insanity at short intervals, or that he was subject to getting epileptic fits but there was nothing abnormal in his behaviour, or that his behaviour was queer, cannot be sufficient to attract the application of this section.”

10. The scope and ambit of Section 84 of the Penal Code also came up for consideration before this Court in *Hari Singh Gond v. State of M.P. (2008) 16 SCC 109*, in which it has been held as follows: (SCC pp.111-12, para 10)

“10. '17. Section 84 lays down the legal test of responsibility in cases of alleged unsoundness of mind. There is no definition of “unsoundness of mind” in IPC. The courts have, however, mainly treated this expression as equivalent to insanity. But the term “insanity” itself has no precise definition. It is a term used to describe varying degrees of mental disorder. So, every person, who is mentally diseased, is not ipso facto exempted from criminal responsibility. A distinction is to be made between legal insanity and medical insanity. A court is concerned with legal insanity, and not with medical insanity.’*”

11. in our opinion, an accused who seeks exoneration from liability of an act under Section 84 of the Penal Code is to prove legal insanity and not medical insanity. Expression “unsoundness of mind” has not been defined in the Penal Code and it has mainly been treated as equivalent to insanity. But the term “insanity” carries different meaning in different contexts and describes varying degrees of mental disorder. Every person who is suffering from mental disease is not ipso facto exempted from criminal liability. The mere fact that accused is conceited, odd, irascible and his brain is not quite all right, or that the physical and mental ailments from which he suffered had rendered his intellect weak and affected his

emotions or indulges in certain unusual acts, or had fits of insanity at short intervals or that he was subject to epileptic fits and there was abnormal behaviour or the behaviour is queer, are not sufficient to attract the application of Section 84 of the Penal Code.

18. We are of the opinion that the appellant though suffered from certain mental instability even before and after the incident but from that one cannot infer on a balance of preponderance of probabilities that the appellant at the time of the commission of the offence did not know the nature of his act; that it was either wrong or contrary to law. In our opinion, the plea of the appellant does not come within the exception contemplated under Section 84 of the Penal Code.”

In the matter of **Mariappan v. State of Tamil Nadu** reported in **(2013) 12 SCC 270** it has been held as under:

“20. It is useful to refer the decision relied on by the learned counsel for the State i.e. *Sudhakaran v. State of Kerala* {(2010) 10 SCC 582}. The facts in that case are identical to the case in hand. There again, this Court referred to Modi's Medical Jurisprudence and Toxicology, 23rd Edn. about paranoid schizophrenia. The following statements in paras 26 and 28 are relevant: (SCC p. 588)

“26. The defence of insanity has been well known in the English legal system for many centuries. In the earlier times, it was usually advanced as a justification for seeking pardon. Over a period of time, it was used as complete defence to criminal liability in offences involving mens rea. It is also accepted that insanity in medical terms is distinguishable from legal insanity. In most cases, in India, the defence of insanity seems to be pleaded where the offender is said to be suffering from the disease of schizophrenia.

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28. The medical profession would undoubtedly treat the appellant herein as a mentally sick person. However, for the purpose of claiming the benefit of the defence of insanity in law, the appellant would have to prove that his cognitive faculties were so impaired, at the time when the crime was committed, as not to know the nature of the act.”

21. After advertent to Sections 84 and 299 IPC and Sections 105 and 101 of the Evidence Act, this Court is bound to prove the existence of any fact, the burden of proof lies on that person". This Court also held as under: (Sudhakaran case (2010) 10 SCC 582, para 35)

"35. It is also a settled proposition of law that the crucial point of time for ascertaining the existence of circumstances bringing the case within the purview of Section 84 is the time when the offence is committed. We may notice here the observations made by this Court in Ratan Lal v. State of MP (1970) 3 SCC 533. In para 2 of the aforesaid judgment, it is held as follows: (SCC p. 533).

'2. It is now well settled that the crucial point of time at which unsoundness of mind should be established is the time when the crime is actually committed and the burden of proving this lies on the [appellant.]'

"

As concluded, we also reiterate that at the time of commission of offence, the physical and mental condition of the person concerned is paramount for bringing the case within the purview of Section 84.

24. Another factor which goes against the appellant-accused is that he himself was examined as Defence Witness 3. According to the learned trial Judge, as a witness, he made meticulously following the court proceedings acting suitably when the records were furnished for perusal. The trial Judge has also pointed out that during the entire proceedings, the accused has nowhere stated that he was insane earlier to the date of incident. The trial Judge, after noting his answers in respect of the questions under Section 313 of the Code of Criminal Procedure, 1973 has concluded that the accused could not be termed as an "insane" person."

In the matter of **Sheralli Wali Mohammed v. The State of Maharashtra** reported in **(1973) 4 SCC 79** it has been held as under:

12. To establish that the acts done are not offences under Section 84 of the Indian Penal Code, it must be proved clearly that, at the time of the commission of the acts, the appellant, by reason of unsoundness of mind, was incapable of either knowing the nature of the act or that the acts were either morally wrong or contrary to law. The question to be asked is, is

there evidence to show that, at the time of the commission of the offence, he was labouring under any such incapacity? On this question, the state of his mind before and after the commission of the offence is relevant. The general burden of proof that an accused person is in a sound state of mind is upon the prosecution. In *Dahyabhai Chhaganbhai Thakkar v. The State of Gujrat (1964) 4 SCR 361 Subba Rao, J*, as he then was, speaking for the Court said:

“(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 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.

13. With this in mind, let us consider the evidence to see whether the accused was in an unsound state of mind at the time of the commission of the acts attributed to him, PW-3, one of the brothers of the accused stated that the accused used to become excited and uncontrollable, that sometimes he behaved like a mad man, and that he was treated by Dr. Deshpande and Dr. Malville. PW-4, Hyderali, also a brother of the accused, has stated that the accused used to suffer from temporary insanity and that he was treated by Dr. Deshpande and Dr. Malville. The evidence of these two witnesses on the question of insanity of the accused did not appeal to the trial court and the Court did not, we think rightly, place any reliance upon it. No attempt was made by the defence to examine the two doctors. There was, therefore, no evidence to show that, at the time of the commission of the acts, the accused was not in a sound state of mind. On

the other hand, PW-8, Rustom Mirja, has stated in his deposition that the accused has been working with him as an additional motor driver for the last 8 or 10 years and that his work and conduct were normal. He also stated that the accused worked with him on March 6, 1968, till 4 p.m. PW-16, Dr. Kaloorkar, who examined the accused at 7.20 a.m. on the day of the occurrence, has stated in his deposition that he found that the accused was in normal condition. His evidence has not been challenged in cross-examination.

14. We think that not only is there no evidence to show that the accused was insane at the time of the commission of the acts attributed to him, but that there is nothing to indicate that he had not the necessary mens rea when he committed the offence. The law presumes every person of the age of discretion to be sane unless the contrary is proved. It would be most dangerous to admit the defence of insanity upon arguments derived merely from the character of the crime. The mere fact that no motive has been proved why the accused murdered his wife and child or, the fact that he made no attempt to run away when the door was broke upon, would not indicate that he was insane or, that he did not have the necessary mens rea for the commission of the offence. We see no reason to interfere with the concurrent findings on this point either.”

In the matter of **Oyami Ayatu v. The State of Madhya Pradesh** reported in **(1974) 3 SCC 299** it has been held as under:

5. It has been urged by Mr. Goswami that the circumstances of the case show that the appellant is not a sane person. Reference in this context is made to the fact that the appellant in answer to the various questions which were put to him by the committing magistrate as well as by the Sessions Judge at the trial, admitted all the allegations. The fact that the appellant made a clean breast of the matter and admitted the various allegations of the prosecution would not, in our opinion, go to show that the appellant was of unsound mind. The further fact that the appellant caused the death of the deceased over a trifling matter would also not warrant a conclusion that the appellant was not a sane person. No other material was also brought on the record from which an inference of insanity of the appellant might be drawn. An argument was advanced for the first time before the High Court that the appellant was not a sane

person. The High Court rejected this argument after referring to the fact that there was no history of insanity of the appellant. There was also nothing, it was observed, to show that the conduct or the behaviour of the appellant either before or after the occurrence was not of a normal person.

6. According to Section 84 Indian Penal Code, nothing is an offence which has been 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. While dealing with this provision, this Court observed in the case of *Dahyabhai Chhaganbhai Thakkar v. State of Gujrat (1964) 7 SCR 361*, that there is rebuttable presumption that the accused was not insane when he committed the crime in the sense laid down by Section 84 Indian Penal Code. The accused may rebut it by placing before the court all the relevant evidence, oral, documentary or circumstantial, but the burden of proof upon him is no higher than that which rests upon a party to civil proceedings. In the case of *Bhikair v. The State of Uttar Pradesh (1965) 3 SCR 194*, this Court held that the burden of proving the intention of the accused person, where intention is an ingredient of the offence is on the prosecution and this burden never shifts. But intention can sometimes be only proved from circumstances and therefore it is sufficient for the prosecution to prove the acts of the accused and the circumstances in which they were committed. If from these an inference of the requisite intention can be reasonably drawn, the prosecution must be deemed to have discharged its burden. Dealing with Section 84 Indian Penal Code, this Court observed that the aforesaid section could be invoked by a person for nullifying the evidence adduced by prosecution by establishing that he was at the relevant time incapable of knowing the nature of the act or that what he was doing was wrong or contrary to law, because these are matters of presumption. Every one is presumed to know the natural consequences of his act. Similarly, everyone is presumed to know the law. It is for this reason that Section 105 Indian Evidence Act places upon the accused person the burden of proving the exception on which he relies.”

In the matter of **Bhikari v. The State of Uttar Pradesh** reported in **AIR 1966 SC**

1 it has been held as under:

8. Mr. Verma then relies on the following observations made by the

learned Sessions Judge and says that in view of these observations it would appear that the learned Sessions Judge entertained a doubt about the sanity of the appellant and that, therefore, the benefit of that doubt must be given to him. The statement runs thus:

“I am conscious of the fact that the standard of proof required from the accused for the proving of his (sic) insanity at the time of commission of the crime is not the standard of proof required from the prosecution but it is for the defence to prove that insanity existed at the time of commission of the crime and this burden cannot be discharged merely by creating a doubt about his insanity.”

We find it difficult to construe these observations of the learned Sessions Judge to mean what learned counsel says they mean. Immediately after the statement which we have quoted occurs the following in the judgment of the learned Sessions Judge:

“The defence must establish certain circumstances either by its own evidence or by the prosecution evidence from which the existence of insanity can reasonably be inferred. The mere statement of hostile witnesses that he was insane cannot be accepted as sufficient evidence for the proof of the existence of the insanity.”

All that the learned Sessions Judge meant by saying “by creating a doubt” evidently was that by merely trying to throw doubt about his sanity at the relevant time an accused person cannot be said to discharge the burden of proving that he was insane.”

16. After taking stock of the provision and the interpretation made by the Apex Court as above, a re-look of the entire compilation of the case in hand appears to be the need of the hour. Record goes to demonstrate that the plea of insanity was never taken by the accused before recording of statements of the witnesses in the Court. Even at the time of recording the statements of the witnesses under Section 161 of the Code of Criminal Procedure such plea of insanity or unsoundness of mind has not been taken by anyone of them. The defence also did not choose to file an application under Section 328 of the

Code of Criminal Procedure nor has it availed the provisions of chapter XXV thereof. Accused did not even make a whisper in his statement recorded under Section 313 of the Code of Criminal Procedure that he was insane or suffering from unsoundness of mind. Though the appellant participated in the entire proceedings of the case, he did not raise any objection that he had any mental problem or was he suffering from insanity. None of the order sheets of the Court below reflects that the concerned judge ever felt the conduct of the appellant as abnormal, rather in paragraph No. 15 of the judgment impugned it has been recorded by the trial Judge that in the entire proceeding it did not occur to him that the accused/appellant was of unsound mind. Of course, some of the witnesses have stated that at the time of incident, the accused/appellant was insane, but this is not enough to pass the test of law. To come true on the touchstone of law, mere pleading as regards insanity and casual statements of some of the witnesses to this effect is not worth acceptance but they are required to be proved by leading cogent and clinching evidence in support thereof. There is nothing of this sort herein to show whether the appellant received any medical treatment for the mental disease or sought any opinion from the qualified expert. Customary treatment including exorcism pleaded to have been taken by the accused for his mental disease would not be sufficient to arrive at a conclusion that on account of being of unsound mind, he was incapable of either knowing the nature of the act or that the acts were morally wrong or contrary to law, rather something more like medical evidence would be required for doing so. To put it differently, the defence in this case has not been in a position to prove in accordance with law that the cognitive faculties of the accused were so impaired that he was not in a position to see the repercussions of his act and since it has not been done, the accused/appellant cannot disown his guilt of murdering his two sons and causing dangerous injuries to wife and daughter. Further, the act of the accused in denying

charges, pleading trial as well as false implication in 313 statements makes this Court to draw an inference that his mental faculties were not so impaired to provide him the strength to wriggle out of the rigor of law. Counsel for the appellant has tried his best to put up his case by taking support from several case laws but all of them being on different footing, could not convince the judicial mind of this Court.

17. While summing up, this Court finds no illegality or infirmity in the view taken by the trial Court convicting and sentencing the accused as described above. His guilt under Sections 302 IPC twice, for killing his two sons and 307 IPC twice, for assaulting his wife and daughter, recorded by the Court below is hereby reaffirmed.

18. For the reasons culled out on the basis of aforesaid factual and legal analysis, the appeal is held to be without any force and being so it has the destiny of dismissal.

19. Dismissal recorded accordingly.

Sd/-

(Pritinker Diwaker)

Judge

Sd/-

(CB Bajpai)

Judge