

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRA-D-1554-DB-2014(O&M)

Reserved on : 18.12.2018

Date of decision : 21.12.2018

Manoj

... Appellant

Versus

State of Punjab

... Respondent

***CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA
HON'BLE MR.JUSTICE B.S.WALIA***

Present: Mr.Aditya Chadha, Legal Aid Counsel
for the appellant.

Mr.Vishal Garg, Addl.A.G. Haryana.

Mr. Rishab Lohan, Advocate
for the complainant.

RAJIV SHARMA, J.

This appeal is directed against the judgment and order dated dated 10.02.2014 rendered by learned Additional Sessions Judge, Kaithal, in Sessions Case No.2 of 2013, whereby the appellant was charged with and tried for offence punishable under Section 302 of the Indian Penal Code (in short "IPC") and Section 27 of the Arms Act, 1959. The appellant was convicted and sentenced for offence punishable under Section 302 IPC and Section 27 of the Arms Act, 1959. He was sentenced to undergo imprisonment for life and to pay fine of Rs.10,000/- for offence punishable under Section 302 IPC and in default of payment of fine, to further undergo rigorous imprisonment for a period of one year. He was also sentenced to undergo rigorous imprisonment for a period of one year and to pay fine of

Rs.5000/- for offence punishable under Section 27 of the Arms Act, 1959 and in default of payment of fine, to further undergo imprisonment for a period of three months.

2. The case of the prosecution in a nutshell is that on 15.04.2012, the police party reached at the place of occurrence. The dead body of Dilawar was lying in the street. Shishpal son of Jai Pal and Rekha wife of Manoj as well as other villagers were present on the spot. The statement of Shishpal was recorded. He deposed that he had two sons and two daughters. All were married. The name of his eldest son was Dilawar. His youngest daughter Rekha was married with Manoj. Rekha had two daughters and one son. Her youngest son was aged 2 ½ years. On 14.04.2012 he had received telephonic information from his daughter Rekha that her son Nishesh was ill. Manoj and his family members were not getting him treated. On 15.04.2012 he along with his son Dilawar went to the village Chandana at 10.30 A.M. He asked his son Dilawar to stop at the canal of village Chandana. He proceeded towards the house of Manoj. He enquired from Manoj and his daughter about the domestic issues. Manoj suddenly became angry and slapped him. Manoj went on the roof of his house after taking out his rifle. He sat on the roof and was saying that he will kill everybody. At about 11.30 A.M., Dilawar came on the motor cycle in the public street. Manoj fired 2-3 gun shots from his rifle at him. His son was shot at the forehead and on the right eye. Dilawar fell down. Manoj had fired the gun shots with intention to kill his son. He and his daughter were standing nearby. The inquest report was prepared. The body was sent for post-mortem examination. The motor cycle was taken into possession. The clothes of deceased were also taken into possession. Two empty cartridges

of .315 bore were also taken into possession and sent to the FSL. Rifle alongwith 8 live cartridges were also taken into possession.

3. Prosecution examined a number of witnesses in support of its case. The statement of appellant was also recorded under Section 313 Cr.P.C. The defence taken by the appellant is that he was serving in police department. He was declared unfit by Psychiatric Medical Board of Psychiatric Department of PGIMS, Rohtak. He was pre-maturely retired on 16.04.2005. He was falsely implicated in the case. The appellant was convicted and sentenced as noticed hereinabove. Hence this appeal.

4. Learned counsel appearing for the appellant has argued that the prosecution has failed to prove the case against the appellant.

5. Learned counsel appearing on behalf of the State has supported the judgment and order dated 10.02.2014.

6. Learned counsel appearing on behalf of the complainant has also supported the judgment and order dated 10.02.2014.

7. We have heard learned counsel for the parties and have gone through the judgment and record very carefully.

8. PW-8 Dr.Nidhi Garg along with Dr.Anil Aggarwal and Dr.Anu Meha conducted the post-mortem examination on the body of Dilawar. She noticed the following injuries:-

“1. A lacerated wound extending from glabella including whole of right orbit extending upto in front of right ear. Size of the wound was 11 x 5 cm and was penetrating and brain matter was exposed. Underlying bone was shattered into pieces. Clotted blood was present in brain. Eyeball was not present. The margin of wound on medial side was inverted.

2. *A lacerated wound of size 10 x 5 cm with slightly everted margins with brain matter and muscles exposed from wound just below and behind the right ear including the upper part of neck and extending upto angle of mandible. Ear lobule was lacerated. Multiple pieces of bone were present with clotted blood. Both the wounds were communicating with each other."*

The cause of death was shock and haemorrhage due to injury to vital organs, i.e. brain which was ante mortem in nature and sufficient to cause death in ordinary course of nature. The probable time between injuries and death was within few minutes and between death and post-mortem examination was within 24 hours. She proved post-mortem report Ex.PJ.

9. PW-2 HC Ajmer Singh testified that on 15.04.2012 he was posted in the Police Station, Titram. He received ruqa Ex.PB. He recorded FIR Ex.PC. SI Karambir Singh deposited with him one sealed parcel containing rifle of .315 bore along with sample seal, one more sealed parcel containing two empty cartridges of .315 bore along with sample seal, one another sealed parcel containing blood stained earth along with sample seal, one more sealed parcel containing clothes of the deceased along with sample seal. All the parcels were sent to the FSL through Constable Ramesh Kumar.

10. PW-5 Shishpal was an eye witness. He deposed that his daughter Rekha was married with accused. On 14.04.2012, he received telephonic call from his daughter that her son is not feeling well. Her husband and family members were ignoring him. He along with his son Dilawar went towards the house of his daughter on 15.04.2012 at 10.30 A.M. He asked his son to wait at some distance. He went to the house of his daughter. He made inquiries from the accused. Accused slapped him.

Thereafter he took out the rifle from the room and went to the roof. He threatened to kill all of them. When his son Dilawar reached in the street in front of the house of the accused, the accused fired two shots from the roof of his house at Dilawar. One shot hit on the forehead of Dilawar and another hit on his right eye. He and his daughter were standing at the gate of the house of the accused. Dilawar died. Police reached at the spot. His statement was recorded vide Ex.PB. In his cross-examination he deposed that marriage of his daughter was solemnized in the month of May, 2000. Prior to the occurrence there was no litigation between them and the accused. He had left his son behind to avoid exchange of hot words.

11. PW-6 Rekha had also corroborated the statement of PW-5 Shishpal. She testified that on 14.04.2012 she made telephonic call to her father since her son was not well and accused was not providing treatment to her son. On 15.04.2012 her father and brother Dilawar came to village Chandana. Her father came to the house while leaving Dilawar at some distance. Accused slapped her father. Accused took out the rifle from his room and went to the roof. His brother Dilawar came in front of the house. Accused fired at him from his rifle from the roof. Accused fired two shots. One hit on the forehead of his brother and other hit on his right eye. In cross-examination she had categorically deposed that her husband had obtained voluntary retirement. Accused never took any treatment for mental illness. He used to pose as mentally ill person. She denied the suggestion that at the time of occurrence accused was of unsound mind and was getting treatment from the PGI, Rohtak as well as from other hospitals.

12. PW-7 Rajinder Kumar had brought the summoned record pertaining to arm licence. According to record, the licence was issued in the

name of Manoj Kumar son of Chhajju Ram.

13. PW-9 SI Multan Singh testified that on 16.04.2012 he took out the accused from the police lock up. He interrogated him. Accused made disclosure statement Ex.PK regarding concealment of his arm licence in his house. The licence was also got recovered vide Ex.PF. He prepared the site plan.

14. PW-10 SI Karambir Singh testified that he visited the spot. Shishpal (father of the deceased), Rekha (sister of the deceased) and some other persons were present near the dead body. Shishpal got recorded his statement vide Ex.PB. FIR was registered. The photographs were taken. Site plan was prepared. Dead body was sent for post-mortem examination. The accused was produced by his father and Sarpanch Surinder Singh. Accused was carrying his licenced rifle along with eight live cartridges and two empty. The accused was formally arrested by him. In his cross-examination he deposed that the distance between Police Station, Titram and village Chandana was about 5 kilometers. There is a canal adjoining to village Chandana which is situated at a distance of about half kilometer from the place of occurrence. The accused had fired shots on the deceased from a distance of about 35'. He recorded the statements of Rekha and Shishpal.

15. The appellant had produced as many as ten witnesses in support of the plea taken before the trial Court that he was suffering from schizophrenia.

16. DW-1 Rajiv Kumar had produced the summoned record of the case titled as "State vs. Manoj" bearing FIR No.105 dated 25.05.2010. He further deposed that the application Ex.D1 was dismissed by this Court vide

order dated 10.12.2012 on the basis of Medical Board's opinion in which Board had opined that Manoj Kumar did not suffer from any major psychiatric ailment.

17. DW-2 Inderjit Singh had produced file No.244/11. As per bed head ticket of Jail Hospital, Central Jail Patiala, he was suffering from schizophrenia on 02.11.2011 and was discharged on 02.01.2012.

18. DW-3 Nafe Singh deposed that the accused was lodged in the District Jail, Kaithal, in FIR No.38 dated 15.04.2012. On 17.04.2012 accused was advised to be shifted to PGI MS Rohtak by the Medical Officer, District Jail, Kaithal.

19. DW-4 Constable Ajaib Singh deposed that as per record accused was enrolled in Haryana Police as constable on 29.09.1989. He was boarded out of service on medical grounds on 16.04.2005 vide order dated 20.05.2005. The photocopy of same was marked as Mark DN.

20. DW-5 Chhajju Ram is father of the accused. According to him, his son was suffering from mental illness/disorder and he was medically examined. He was declared unfit for further service in Haryana Police as per the Board of Doctor Pt. B.D. Sharma, PGI MS Rohtak. He also deposed that there was improvement in his health in the year 2006. Accused was falsely implicated in criminal case in the State of Punjab. He further deposed that on 12.04.2012 accused got hypertensive and aggressive due to schizophrenia. He was taken to Life Line Hospital, Kaithal. He was referred to mental hospital. The attendant Ishwar Pandit had shown reluctance to go to Patiala. He told his daughter-in-law that accused would be taken to Patiala. On 15.04.2012 at about 8.00 A.M. Rekha and his brother Dilawar were preparing to go to Rajindra Hospital, Patiala. Accused Manoj, Rekha

and Dilawar were in room. Rekha had taken out the clothes from almirah in which rifle was lodged. He heard the voice of Rekha that accused had fled away with rifle. Dilawar chased him. He and Ishwar Pandit were sitting in the *Baithak* (drawing room). In the meanwhile Dilawar obstructed the accused. Accused pressed the trigger. The bullet hit the head of the deceased. According to him when the incident happened accused was suffering from mental disorder. In his cross-examination, he deposed that Manoj had gone to Madhya Pradesh in year 2006 and remained there till 2011. He also admitted that accused had partnership in 2/3 firms at Hoshangabad, M.P. Manoj had also entered into agreement with Randhir Singh for purchasing land worth Rs.32 lacs.

21. DW-9 Ishwar deposed that his shop was situated in front of the house of Manoj. Manoj used to remain slightly ill. Chhajju Ram came to him at about 5.00 P.M. that Manoj was suffering from serious illness. They brought Manoj in a tempo to Life Line Hospital, Kaithal. Doctor referred him to Patiala. They requested him to accompany him to Patiala. He refused. He along with Chhajju Ram was sitting on 14 or 15.04.2012 at about 8.00/8.30 A.M. Dilawar tried to obstruct Manoj and in that process two gun shots were fired by Manoj. He had no information about the treatment of mental illness of Manoj prior to 12.04.2012.

22. DW-10 Krishan Lal had produced the record from District Jail, Kaithal when Manoj was referred to PGI MS Rohtak. According to him, as per record on 12.12.2012 Dr.Vikas Kataria treated him and referred the patient to PGI MS Rohtak.

23. DW-7 Dr.S.C. Mittal deposed that on 12.04.2012 patient Manoj Kumar, aged 42 years came to his Life Line Hospital, Kaithal. He was

suffering from maniac depressive psychosis with aggressive behavior. He had referred him to Rajindra Hospital, Patiala. In cross-examination he deposed that he had not treated the patient. He was M.D. (medicine) physician. He had knowledge about psychiatry. He had not clinically examined the patient. The patient was in the hospital for about 30 minutes.

24. DW-8 Dr.Neeraj Mittal deposed that cognitive functions of Manoj were deteriorated. He had delusions. According to him, Manoj was suffering from chronic schizophrenia.

25. The Forensic Science Laboratory's report is Ex.PS. According to the results, the firing mechanism of .315” rifle marked W/1 was found in working order. .315” fired cartridge cases marked C/1 & C/2 were fired from .315 rifle marked W/1 and not from any other fire arm even of same make and calibre. The licence of the rifle was recovered at the instance of the appellant. According to the FSL report Ex.PS, the rifle used by the appellant was used in the crime. Exhibit-3 (swab) was stained with blood stains. Exhibit-4a (shirt), exhibit-4b (banian) and exhibit-4c (parna) were stained with blood stains. The appellant has taken a defence that he was insane at the time of incident, i.e. 15.04.2012. The insanity has to be seen at the time when the incident had taken place, i.e. 15.04.2012. The appellant had taken out rifle and fired at Dilawar. One bullet hit on the forehead and another on right eye of Dilawar. The cause of death was shock and haemorrhage due to injury to vital organs, i.e. brain which was ante mortem in nature and sufficient to cause death in ordinary course of nature. According to his father DW-5 Chhajju Ram, his son had gone to Madhya Pradesh between 2006 to 2011. According to discharge order marked as Mark DN, the appellant was suffering from mental disease. He remained

under treatment in PGI MS Rohtak as per discharge order till 16.04.2005. It is also stated in the order that he was completely and permanently incapacitated for further service in the department and was unfit for further service as Constable in the Haryana Police Department. According to the statement of his wife, the appellant was normal at the time when the incident had happened. The burden is always upon the accused to prove the existence of circumstances bringing the case within the purview of Section 84 of the Indian Penal Code.

26. According to Section 105 of the Evidence Act when a person is an 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 or within any special exception is upon the accused.

27. Their Lordships of the Hon'ble Supreme Court in ***Sheralli Wali Mohammed vs. State of Maharashtra, AIR 1972 SC 2443*** have held that the law presumes every person of the age of discretion to be sane unless the contrary is proved and it would be most dangerous to admit the defence of insanity upon arguments derived merely from the character of the crime. Their Lordships have held as under:

“12. To establish that the acts done are not offences under S. 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 Gujarat, (1964) 7 SCR 361 at p. 367 = (AIR 1964 SC 1563), 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 S. 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."

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, P. W. 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. P. W. 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 the 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, P. W. 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. P. W. 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.

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 open, 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.”

28. Their Lordships of the Hon'ble Supreme Court in ***T.N. Laskhmaiah vs. State of Karnataka, 2001 AIR (SC) 3828*** have held that where the exception under Section 84 of the Indian Penal Code is claimed, the Court has to consider whether, at the time of commission of the offence, the accused, by reason or unsoundness of mind, was incapable of knowing the nature of the act or that he is doing what is either wrong or contrary to law. The entire conduct of the accused, from the time of the commission of the offence upto the time, the Sessions proceedings commenced, is relevant for the purpose of ascertaining as to whether plea raised was genuine, *bonafide* or after thought. Their Lordships have held as under:-

*11. In a case where the exception under Section 84 of the Indian Penal Code is claimed, the Court has to consider whether, at the time of commission of the offence, the accused, by reason of unsoundness of mind, was incapable of knowing the nature of the act or that he is doing what is either wrong or contrary to law. Entire conduct of the accused, from the time of the commission of the offence upto the time, the Sessions proceedings commenced, is relevant for the purpose of ascertaining as to whether plea raised was genuine, bonafide or after-thought. Dealing with the plea of insanity, the scope of Section 84 Indian Penal Code, the attending circumstances and the burden of proof, this Court in ***Dahyabhai Chhaganbhai Thakkar vs. State of Gujarat, AIR 1964 Supreme Court 1563*** held :*

"It is fundamental principle of criminal jurisprudence that an accused is presumed to be innocent and, therefore, the burden lies on the

prosecution to prove the guilt of the caused beyond reasonable doubt. The prosecution, therefore, in a case of homicide shall prove beyond reasonable doubt that the accused caused death with the requisite intention described in Section 299 of the Indian Penal Code. This general burden never shifts and it always rests on the prosecution. But, Section 84 of the Indian Penal Code provides that nothing is an offence if the accused at the time of doing that act, by reason of unsoundness of mind was incapable of knowing the nature of his act or what he was doing was either wrong or contrary to law. This being an exception, under Section 105 of the Evidence Act the burden of proving the existence of circumstances bringing the case within the said exception lies on the accused, and the court shall presume the absence of such circumstances. Under Section 105 of the Evidence Act, read with the definition of "shall presume" in Section 4 thereof, the court shall regard the absence of such circumstances as proved unless, after considering the matters before it, it believes that the said circumstances existed or their existence was so probable that a prudent man ought, under the circumstances of the particular case, to act upon the opposition (supposition ?) that they did exist. To put it in other words, the accused will have to rebut the presumption that such circumstances did not exist, by placing material before the court sufficient to make it consider the existence of the said circumstances so probable that a prudent man would act upon them. The accused has to satisfy the standard of a 'prudent man'. If the material placed before the court, such as oral and

documentary evidence, presumptions, admissions or even the prosecution evidence, satisfies the test of 'prudent man' the accused will have discharged his burden. The evidence so placed may not be sufficient to discharge the burden under Section 105 of the Evidence Act, but it may raise a reasonable doubt in the mind of a judge as regards one or other of the necessary ingredients of the offence itself. It may, for instance, raise a reasonable doubt in the mind of the judge whether the accused had the requisite intention laid down in Section 299 of the Indian Penal Code. If the judge has such reasonable doubt, he has to acquit the accused, for in that event the prosecution will have failed to prove conclusively the guilt of the accused. There is no conflict between the general burden, which is always on the prosecution and which never shifts, and the special burden that rests on the accused to make out his defence of insanity."

29. Their Lordships of the Hon'ble Supreme Court in ***Sudhakaran vs. State of Kerala 2010 (10) SCC 582*** have distinguished the legal insanity with medical insanity as under:

"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 a 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.

27. The plea taken in the present case was also that the

appellant was suffering from "paranoid schizophrenia". The term has been defined in Modi's Medical Jurisprudence and Toxicology¹ as follows:

"Paranoia is now regarded as a mild form of paranoid schizophrenia. It occurs more in males than in females. The main characteristic of this illness is a well elaborated delusional system in a personality that is otherwise well preserved. The delusions are of persecutory type. The true nature of this illness may go unrecognized for a long time because the personality is well preserved, and some of these paranoiacs may pass off as social reformers or founders of queer pseudoreligious sects. The classical picture is rare and generally takes a chronic course.

Paranoid Schizophrenia, in the vast majority of case, starts in the fourth decade and develops insidiously. Suspiciousness is the characteristic symptom of the early stage. Ideas of reference occur, which gradually develop into delusions of persecution. Auditory hallucinations follow which in the beginning, start as sound or noises in the ears, but later change into abuses or insults. Delusions are at first indefinite, but gradually they become fixed and definite, to lead the patient to believe that he is persecuted by some unknown person or 1 [23rd Ed. Page 1077] some superhuman agency. He believes that his food is being poisoned, some noxious gases are blown into his room and people are plotting against him to ruin him. Disturbances of general sensation give rise to hallucinations which are attributed to the effects of hypnotism, electricity, wireless telegraphy or atomic agencies. The patient gets very irritated and excited owing to these painful

and disagreeable hallucinations and delusions."

28. *The medical profession would undoubtedly treat the appellant herein as a mentally sick person. However, for the purposes 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.*

29. *Section 84 of the Indian Penal Code recognizes the defence of insanity. It is defined as under:-*

"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."

30. *A bare perusal of the aforesaid section would show that in order to succeed, the appellant would have to prove that by reason of unsoundness of mind, he was incapable of knowing the nature of the act committed by him. In the alternate case, he would have to prove that he was incapable of knowing that he was doing what is either wrong or contrary to law."*

30. Their Lordships of the Hon'ble Supreme Court in ***Hari Singh vs. State of Madhya Pradesh 2008 (16) SCC 109*** have held that Section 84 of the Indian Penal Code lays down the legal test of responsibility in cases of alleged unsoundness of mind. There is no definition of unsoundness of mind in the Indian Penal Code. Courts have, however, mainly treated this expression as equivalent to insanity. Their Lordships have further held that every person, who is mentally diseased, is not ipso facto exempted from criminal responsibility. Their Lordships have held as under:

"5. 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 the IPC. 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. The burden of proof rests on an accused to prove his insanity, which arises by virtue of Section 105 of the Indian Evidence Act, 1972 (in short the 'Evidence Act') and is not so onerous as that upon the prosecution to prove that the accused committed the act with which he is charged. The burden on the accused is no higher than that resting upon a plaintiff or a defendant in a civil proceeding. (See Dahyabhai v. State of Gujarat AIR 1964 SC 1563). In dealing with cases involving a defence of insanity, distinction must be made between cases, in which insanity is more or less proved and the question is only as to the degree of irresponsibility, and cases, in which insanity is sought to be proved in respect of a person, who for all intents and purposes, appears sane. In all cases, where previous insanity is proved or admitted, certain considerations have to be borne in mind. Mayne summarises them as follows:

"Whether there was deliberation and preparation for the act; whether it was done in a manner which showed a desire to concealment ; whether after the crime, the offender showed consciousness of guilt and made efforts to avoid detections whether, after his arrest, he offered false excuses and made false statements. All facts of this sort are material as bearing on the test, which Bramwall, submitted to a jury in such a case :

Would the prisoner have committed the act if there had been a policeman at his elbow ? It is to be remembered that these tests are good for cases in which previous insanity is more or less established. These tests are not always reliable where there is, what Mayne calls, "inferential insanity".

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

the law. The prosecution has not to establish these facts.

7. There are four kinds of persons who may be said to be non compos mentis (not of sound mind), i.e., (1) an idiot; (2) one made non compos by illness (3) a lunatic or a mad man and (4.) one who is drunk. An idiot is one who is of non-sane memory from his birth, by a perpetual infirmity, without lucid intervals; and those are said to be idiots who cannot count twenty, or tell the days of the week, or who do not know their fathers or mothers, or the like, (See Archbold's Criminal Pleadings, Evidence and Practice, 35th Edn. pp.31-32; Russell on Crimes and Misdemeanors, 12th Edn. Vol., p.105; 1 Hala's Pleas of the Crown 34). A person made non compos mentis by illness is excused in criminal cases from such acts as are committed while under the influence of his disorder, (See 1 Hale PC 30). A lunatic is one who is afflicted by mental disorder only at certain periods and vicissitudes, having intervals of reason, (See Russell, 12 Edn. Vol. 1, p. 103; Hale PC 31). Madness is permanent. Lunacy and madness are spoken of as acquired insanity, and idiocy as natural insanity.

8. Section 84 embodies the fundamental maxim of criminal law, i.e., actus non reum facit nisi mens sit rea" (an act does not constitute guilt unless done with a guilty intention). In order to constitute an offence, the intent and act must concur; but in the case of insane persons, no culpability is fastened on them as they have no free will (furios is nulla voluntas est).

9. The section itself provides that the benefit is available only after it is proved that at the time of committing the act, the accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or that even if he did not know it, it was either wrong or contrary to law then this section must be applied. The crucial point

of time for deciding whether the benefit of this section should be given or not, is the material time when the offence takes place. In coming to that conclusion, the relevant circumstances are to be taken into consideration, it would be dangerous to admit the defence of insanity upon arguments derived merely from the character of the crime. It is only unsoundness of mind which naturally impairs the cognitive faculties of the mind that can form a ground of: exemption from criminal responsibility. Stephen in 'History of the Criminal Law of England, Vo. II, page 166 has observed that if a person cuts off the head of a sleeping man because it would be great fun to see him looking for it when he woke up, would obviously be a case where the perpetrator of the act would be incapable of knowing the physical effects of his act. The law recognizes nothing but incapacity to realise the nature of the act and presumes that where a man's mind or his faculties of ratiocination are sufficiently dim to apprehend what he is doing, he must always be presumed to intend the consequence of the action he takes. Mere absence of motive for a crime, howsoever atrocious it may be, cannot in the absence of plea and proof of legal insanity, bring the case within this section This Court in Sherall Walli Mohammed v. State of Maharashtra: (1972 Cr.LJ 1523 (SC)), held that 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 broken open would not indicate that he was insane or that he did not have necessary mens rea for the offence. Mere abnormality of mind or partial delusion, irresistible impulse or compulsive behaviour of a psychopath affords no protection under Section 84 as the law contained in that section is still squarely based on the outdated Naughton rules of 19th Century

England. The provisions of Section 84 are in substance the same as that laid down in the answers of the Judges to the questions put to them by the House of Lords, in M Naughton's case (1843) 4 St. Tr. (NS) 847. Behaviour, antecedent, attendant and subsequent to the event, may be relevant in finding the mental condition of the accused at the time of the event, but not that remote in time. It is difficult to prove the precise state of the offender's mind at the time of the commission of the offence, but some indication thereof is often furnished by the conduct of the offender while committing it or immediately after the commission of the offence. A lucid interval of an insane person is not merely a cessation of the violent symptoms of the disorder, but a restoration of the faculties of the mind sufficiently to enable the person soundly to judge the act; but the expression does not necessarily mean complete or perfect restoration of the mental faculties to their original condition. So, if there is such a restoration, the person concerned can do the act with such reason, memory and judgment as to make it a legal act ; but merely a cessation of the violent symptoms of the disorder is not sufficient.

10. 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.”

31. Their Lordships of the Hon'ble Supreme Court in ***Elavarasan vs. State, AIR 2011 SC 2816*** have held that while determining whether the accused is entitled to the benefit of Section 84 I.P.C. the Court has to consider the circumstances that proceeded, attended or followed the crime but it is equally true that such circumstances must be established by credible evidence. Their Lordships have held as under:

“21. From the deposition of the above two witnesses who happen to be the close family members of the appellant it is not possible to infer that the appellant was of unsound mind at the time of the incident or at any time before that. The fact that the appellant was working as a government servant and was posted as a Watchman with no history of any complaint as to his mental health from anyone supervising his duties, is significant. Equally important is the fact that his spouse Smt. Dhanalakshim who was living with him under the same roof also did not suggest any ailment afflicting the appellant except sleeplessness which was diagnosed by the doctor to be the effect of excessive drinking. The deposition of PW3, Valli that her son was getting treatment for mental disorder is also much too vague and deficient for this Court to record a finding of unsoundness of mind especially when the witness had turned hostile at the trial despite multiple injuries sustained by her which she tried to attribute to a fall inside her house. The statement of the witness that her son was getting treatment for some mental disorder cannot in the circumstances be accepted on its face value, to rest an order of acquittal in favour of the appellant on the basis thereof. It is obvious that the mother has switched sides to save her son from the consequences flowing from his criminal act.

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25. *What is important is that the depositions of the two doctors examined as court witnesses during the trial deal with the mental health condition of the appellant at the time of the examination by the doctors and not the commission of the offence which is the relevant point of time for claiming the benefit of Section 84 I.P.C. The medical opinion available on record simply deals with the question whether the appellant is suffering from any disease, mental or otherwise that could prevent him from making his defence at the trial. It is true that while determining whether the accused is entitled to the benefit of Section 84 I.P.C. the Court has to consider the circumstances that preceded, attended or followed the crime but it is equally true that such circumstances must be established by credible evidence. No such evidence has been led in this case. On the contrary expert evidence comprising the deposition and certificates of Dr. Chandrashekhar of JIPMER unequivocally establish that the appellant did not suffer from any medical symptoms that could interfere with his capability of making his defence. There is no evidence suggesting any mental derangement of the appellant at the time of the commission of the crime for neither the wife nor even his mother have in so many words suggested any unsoundness of mind leave alone a mental debility that would prevent him from understanding the nature and consequences of his actions. The doctor, who is alleged to have treated him for insomnia, has also not been examined nor has anyone familiar with the state of his mental health stepped into the witness box to support the plea of insanity. There is no gainsaying that insanity is a medical condition that cannot for long be concealed from friends and relatives of the person concerned. Non-production of anyone who noticed any irrational or eccentric behaviour on the part of the appellant in that*

view is noteworthy. Suffice it to say that the plea of insanity taken by the appellant was neither substantiated nor probablised.

26. Mr. Mani, as a last ditch attempt relied upon certain observations made in Mahazar Ex.P3 in support of the argument that the appellant was indeed insane at the time of commission of the offences. He submitted that the Mahazar referred to certain writings on the inner walls of the appellant's house which suggested that the appellant was insane. A similar argument was advanced even before the Courts below and was rejected for reasons which we find to be fairly sound and acceptable especially when evidence on record establishes that the appellant was an alcoholic, who could scribble any message or request on the walls of his house while under the influence of alcohol. The Courts below were, therefore, justified in holding that the plea of insanity had not been proved and the burden of proof cast upon the appellant under Section 105 of the Evidence Act remained undischarged. The High Court has also correctly held that the mere fact that the appellant had assaulted his wife, mother and child was not ipso facto suggestive of his being an insane person.”

32. The appellant was capable of knowing the nature of his act. He had purchased the properties. He had filed civil suits. He entered into the agreements. He entered into partnership. The law is well settled that even the person suffering from mental disease, he is not *ipso facto* exempted from criminal responsibility. The medical evidence before and after the incident is also to be seen. There is no medical record of 15.04.2012 that he was suffering from mental disease. Statements of PW-5 Shishpal and PW-6 Rekha have been duly corroborated by the medical evidence. The appellant was examined by the Board of Doctors, PGI MS Rohtak and after observing

him from 24.04.2012 to 18.05.2012, the Board opined that there was no mental illness of the accused. The plea taken by the appellant is also that he was taken to Life Line Hospital and thereafter he was referred to Rajindra Hospital, Patiala. He remained in the private hospital, i.e. Life Line Hospital, for only 30 minutes. The doctor examined him was General Physician and not a Psychiatrist. The plea taken by the appellant was false and has rightly been disbelieved by the trial Court.

33. Accordingly, there is not merit in the present appeal and the same is dismissed.

(RAJIV SHARMA)
JUDGE

(B.S. WALIA)
JUDGE

December 21, 2018.

Davinder Kumar

Whether speaking / reasoned

Yes/No

Whether reportable

Yes/No