Before Satish Kumar Mittal & Amol Rattan Singh, JJ.

DEEP CHAND—*Appellant*

versus

STATE OF HARYANA—*Respondent*

CRA No.D-670-DB of 2007

January 11 2013

Indian Penal Code, 1860 - Ss. 302, 84 - Unsoundness of mind - Medical Insanity - Legal Insanity - Appellant murdered his wife - Took defence of unsoundness of mind - Convicted by trial court - Filed appeal - Murder took place on 17.6.2006 - Doctor examined as defence witness - Appellant admitted to psychiatry ward on 13.10.2006 - Discharged on 15.11.2006 - Diagnosed as "Likely to be suffering from persistent delusional disorder" - Held - Distinction has to be drawn between medical insanity and legal insanity - Level has to be such as to make a person incapable of understanding effect of his action and consequences to victim - Further held - Evidence led did not show that he was incapable of understanding nature of his action - Benefit of Section 84 IPC denied - Appeal dismissed.

Held, that what cannot be lost sight of is that, all the three witnesses, i.e., children of the appellant (of teen age), have stated that they had checked their father when they saw him hitting their mother but, despite that, he had hit her again and then run away. Thereafter, he had again threatened them when the dead body of the deceased (their mother) was brought home by PW11 Ravinder. Obviously, the appellant cannot be said to be unaware of the consequences of his action. However, whether or not he can be given benefit of doubt on account of unsoundness or temporary unsoundness of his mind, is to be examined as per the legal position, in India, on the issue.

(Para 25)

Further held, that however, courts in India have always drawn a distinction between medical insanity, and legal insanity, to the effect that, what the doctor may find to be unsoundness of mind, may not be of such a nature or level so as to make a person incapable of understanding the

effects of his action, so as to exonerate him from having the guilt of knowing what he is doing, and the consequences thereof to the victim.

(Para 26)

Further held, that to take the benefit of the section of this exception, it has to be proved, even if not on the same strength of proof, as required by the prosecution, but nevertheless, still to a plausible extent, that the accused was incapable of understanding the nature of his act.

(Para 33)

Further held, that in our considered opinion, after going through the entire evidence, there is no such indication, whatsoever, that the deceased, who was the appellants' wife, was, at any time, in a threatening position to him so as to lead him to believe that he was acting in self defence; in fact, no such plea was taken by him even in his statement under Section 313 Cr.P.C. ,which was recorded after he was declared fit for trial. Therefore, even if he was under any delusion at the time of committing the offence that she had inflicted any kind of injuries to his character or fortune, or was, in any manner, not kindly disposed towards him, even so, being aware of the consequences of his action, even as per Mc Naughten Rules, he would be liable for punishment. Thus, as per the law discussed, he would have to be shown to be completely incapable of understanding the nature of his action, to take the benefit of Section 84 IPC. We are of the firm opinion that he was in no such mental state, as per the evidence led in the trial court.

(Para 35)

Gurinder Singh Goraya, Advocate, *for the appellant.*

Paramjeet Batta, Addl.AG, Haryana.

AMOL RATTAN SINGH, J.

(1) This appeal has been filed by Deep Chand, the sole accused, against the judgment and order dated 8.6.2007 passed by learned Sessions Judge, Narnaul, vide which he was found guilty and was convicted under Section 302 IPC. He was, resultantly, sentenced to undergo imprisonment for life and to pay a fine of Rs.5,000/-, in default of which, he was to further undergo imprisonment for one year.

(2) The facts of the case are that, on 18.6.2006, information was received by the Incharge of Police Post, Government Hospital, Narnaul, that one Bhagwati wife of Deep Chand (appellant), aged about 40 years, resident of Village Turkiawas, Police Station Ateli, has been admitted in Government Hospital, Narnaul, with multiple injuries. Upon receipt of this information, ASI Chander Bhan (PW13), along with one Constable Jasbir Singh, reached Government Hospital, Narnaul, with an application to the doctor to opine about the condition of injured Bhagwati, upon which, the doctor recorded that she had been referred to PGIMS, Rohtak. Thereupon, ASI Chander Bhan along with Constable Rajesh reached PGIMS, Rohtak, on 19.6.2006, to record the statement of the injured lady and for the doctor's opinion on the same. The doctor stated before the police party that Bhagwati wife of Deep Chand, resident of Village Turkiawas, had not been admitted in the PGIMS, Rohtak, as per record.

Thereafter, the police party reached Village Turkiawas and met Ram Chander, Lambardar, son of Parbhati Lal, resident of Village Turkiawas, who got recorded his statement, which was converted into an FIR, stating that he is a pensioner of CRPF and Lambardar of the village and that today, i.e., 19.6.2006, he had gone to Delhi at 5.00 AM for personal work and returned back at 6.00 PM and came to know that on the previous day, during the night of 17/18.6.2006, Deep Chand son of Har Dutt, resident of Village Dhani Turkiawas, had caused injuries to his wife, Bhagwati, with a wooden stick (danda) and that the injured lady had been taken to Ateli by her son Ravinder (PW11) and to General Hospital, Narnaul, from where she was referred to PGIMS, Rohtak.

(3) On the way to Rohtak, she succumbed to her injuries near Charkhi Dadri. Thereupon, she was brought back and cremated in the village at about 8/9.00 PM at night without any information being given to the police by her family members. He further stated that Bhagwati's death was as a result of injuries caused by her husband. He also recorded that he had heard that Deep Chand used to beat his wife, Bhagwati. He, consequently, requested that legal action be taken against Deep Chand.

This person subsequently deposed before the trial court as PW9 and stated that his statement was recorded on 20.6.2006 (not 19.6.2006). However, this would make no material difference, to the determination of guilt, or otherwise, of the accused as would be subsequently seen.

The FIR further states that, as per MLR dated 18.6.2006, Bhagwati had received two injuries and both were advised for x-ray and CT scan, and that the same had been caused by a blunt weapon. Consequent upon this, the FIR was registered under Sections 302/201/34 IPC.

(4) Thereafter, the formalities, which were required to be completed, had been done; inasmuch as, the special report was sent to the Ilaqa Magistrate, etc. ASI Chander Bhan (PW13) is stated to have reached the place of occurrence after 9.15 PM on 19.6.2006. Though no further proceedings were recorded on the file on 19.6.2006, subsequently, in the statement of

ASI Chander Bhan (PW13), it has come that though he reached the spot on 19.6.2006 but no spot inspection could be carried out as it was dark and thereafter investigation of the case was handed over to Inspector Raghubir Singh (PW14).

(5) As per subsequent deposition of Inspector Raghubir Singh (PW14), he had also visited the spot in Village Turkiawas on 19.6.2006 after receiving the case file from ASI Chander Bhan, but no spot inspection could be carried out due to darkness and the same was done on 20.6.2006 and rough site plan (Ex.PT) was prepared on the same date. Though there is no memo of arrest of the accused (appellant Deep Chand), memo of recovery of a wooden 'kiker' danda (stick, Ex.PL) was prepared by Inspector Raghubir Singh on 20.6.2006 in the presence of Ram Chander (PW8) son of Umrao Singh, resident of Village Jharoda, and one Hanuman son of Maru Ram, resident of Village Turkiawas, which, having been sealed, was handed over to the witness of recovery (Ram Chander, PW8).

Thereafter, the ashes and bones of the deceased were stated to have been recovered from the place of cremation in the village, vide recovery memo (Ex.PM), which were also sealed and handed over to Ram Chander, Lambardar, son of Parbhati Lal (PW9). Danda (Ex.PL) and ashes and bones (Ex.PM) were subsequently sent to the FSL for examination, however, no firm opinion on the same was given by the laboratory with regard to this. Though, subsequently, in his deposition before the trial court, the Investigating Officer (PW14) stated that he had recorded the statements

of witnesses Suresh, Manisha (children of the deceased) and one Dharam Chand on 20.6.2006, the same are not on the exhibited record of the case. Only the statement of Ravinder son of the accused and deceased is on the record, i.e., Ex.PN dated 6.8.2006.

(6) As per this statement, he has narrated the entire sequence of events, the relevant of which are that, at 4.00AM when he was sleeping in the field, his sister Manisha woke him up and said that their father had caused injuries to their mother with a danda on her head, as she was sleeping, and thereafter had run away. He further stated that he saw that his mother had become unconscious due to the injuries on her head, upon which he brought her to PHC, Ateli, and then to General Hospital, Narnaul, where the doctor gave her first aid and then referred her to the PGIMS, Rohtak, due to the nature of injuries (in the Hindi version, he states that he took his mother to these hospitals on his camel cart). Thereafter, he arranged for a vehicle and when he was going to PGIMS, Rohtak, for treatment of her, she died on the way, at Charki Dadri.

Thereafter, he brought her body back to their tubewell, where they all were residing. In his statement, he stated that his father had also come there and was told that his mother had expired. According to him, his father had threatened him and his brothers that in case they disclosed the matter to any one, he would also kill them. Due to this threat, they did not disclose the reasons for the death of their mother, even when the villagers came, upon hearing of the death. Thereafter, they cremated her at about 8/9.00 PM at night. He further stated that he was not at fault and that his mother had died due to the injuries inflicted on her by his father. As per this statement, his father used to beat his mother on earlier occasions also. He also wanted that severest legal action be taken against his father.

(7) This witness is the material witness, who was examined as PW11 by the prosecution, before the trial court, on 6.3.2007. Though the first part of his statement before the trial court matches with the statement made by him under Section 161 Cr.P.C., to the extent that his sister had woken him up and told him that their father had caused injuries to their mother with a 'danda' on her head as she was sleeping, and thereafter had run away, but thereafter there are some discrepancies in the statement, due to which, in fact, he had been declared to be hostile.

These inconsistencies are to the extent that his statement before the court was that he and his younger brother, Suresh, both had taken their mother to PHC Ateli (in a camel cart) and thereafter, he took her in a vehicle to General Hospital, Narnaul and then towards PGIMS, Rohtak. Before the court, he also stated that when he brought the dead body of his mother to their house, his father and three four other persons were present there. He further stated that his father threatened (consistent with his earlier statement) and thereafter confined him to a room (inconsistent). He also stated that he did not know how his mother was cremated and by whom. It was on account of this, that he was declared hostile. In his crossexamination, he could not give the name of the doctor or the name or make of the vehicle by which he had taken his mother from General Hospital, Narnaul, towards Rohtak. He further stated in the cross-examination that his mother had told him on the way to Ateli, that his father had given herdanda blows. He denied that he was deliberately not giving the correct time of cremation.

(8) Most material also, is the testimony of PW10 Manisha, daughter of the accused-appellant and the deceased. She deposed that she woke up at about 4.00 AM in the morning on 18.6.2006 upon hearing noise of a quarrel between her father and mother and that her father Deep Chand gave a danda blow on the head of her mother, who was sleeping on the cot. Thereafter upon her query from her father, he threatened her to keep quiet and gave another blow on the head of her mother and fled away. Thereafter, she called her elder brother Ravinder, who was sleeping in the nearby field and told him that their father had hit their mother on her head by a 'danda'. Her brother took her mother in a camel cart to CHC, Ateli, from where "we took her to Civil Hospital, Narnaul". She further deposed that her mother was referred to PGIMS, Rohtak. When her brother, after arranging a vehicle was taking her mother towards Rohtak, on the way her mother had succumbed to her injuries and thereafter, her dead body was brought back to their well in the field by her brother Ravinder. In her cross-examination, the only discrepancy is that she stated that before she got up, her mother had been hit by a danda by her father and thereafter, he inflicted one more danda blow after they woke up. She also specifically denied that her mother had been hit on the head by a buffalo and on account of that, she had fallen down and had sustained injuries. She denied that her father was of unsound mind and that he had not caused injuries to her mother.

(9) Testimony of PW11 Ravinder has already been discussed herein above. However, the cross-examination by learned Public Prosecutor (after he was declared hostile) and learned counsel for the accused, can be discussed herein again. In the first cross-examination, he denied that he told the police that his mother had been cremated between 8.00 and 9.00 PM, though his statement (Ex.PN) recorded so.

The other discrepancy in his cross-examination arose with regard to the fact that though he had initially stated before the police that his mother was unconscious, before the court he deposed that she was conscious at the time when his sister called him and that she had even disclosed to him on the way to Ateli that his father had given her danda blows. He also disclosed in his cross-examination that his mother was kept at CHC, Ateli, for about an hour and after first aid, he brought her to General Hospital, Narnaul, where she remained admitted for about two and half hours.

(10) PW12 Suresh is the younger son of the appellant and deceased. He materially gave the same version with regard to the incident as his other two siblings (PW10 and PW11), except that he described the weapon of offence as 'lathi' instead of 'danda'. He also stated that he called his brother Ravinder, who checked their father but thereafter again, their father gave another blow on the head of their mother and ran away. He said that he, along with his brother, took their mother to the clinic at Ateli. Thereafter, he returned home. In the evening, his brother brought the dead body of their mother at home. He reiterated that his mother had died due to lathi blows given by his father.

In his cross-examination, he stated that his mother remained unconscious after the incident till reaching Ateli. He denied that she had been hit by a buffalo and had sustained injuries on account of the same.

(11) The other important witness examined by the prosecution before the trial court was Dr.Sanjay Vishnoi (PW1), who stated on solemn affirmation that he had medico legally examined deceased Bhagwati wife of the accused on 18.6.2006 and found two injuries on her person described as under:-

> "1. 16 cms x 12 cms huge bruise red in colour, situated over right temporal, parietal, frontal region of skull, right eye and right side of fact 3 cms lateral to midline.
>
> 2. 6 cms rounded bruise red in colour, situated over upper part of left side of chest, 6 cms lateral to midline and 1 cm below left clavicle."

Opinion on the injuries was kept reserved till the x-ray/CT scan reports were received. However, he stated that both the injuries had been caused by a blunt weapon as per MLR, which bore his signatures. He further stated that on 7.8.2006, the police had produced a danda and sought his opinion with regard to the injuries being possibly caused by the same. He opined in the affirmative to the effect that possibility of injuries being caused by the said stick could not be ruled out. He also identified the wooden stick shown to him in the court as being the same as was shown to him by the police on 7.8.2006. In his cross-examination, he stated that possibility of the injuries being sustained from the blows of an animal could not be ruled out and that there could also be possibility of the injuries being caused by a fall from the roof etc.

(12) PW4, HC Amardeep, testified that on 20.6.2006, he had been asked by PW14 Inspector/SHO Raghubir Singh to go to the cremation ground of the village and take photographs and that he had done so. Though he had not developed them himself but had got the same developed from M/s Tarun Lab, Narnaul.

(13) PW8, Ram Chander son of Umrao, is the uncle of Ravinder (PW11) and of PWs 10 and 12. He deposed that he had been called on telephone by his nephew Ravinder on 19.6.2006 and that he had reached the said village at about 9.00 AM and that the wooden stick (danda) was recovered from the house of the appellant in his presence and that recovery memo (Ex.PL) was attested by him along with Hanuman. Nothing negative is discernible from his cross-examination.

(14) The complainant, i.e., Ram Chander, Lambardar (PW9), also testified and reiterated his version of the incident, as per complaint filed by him on 19.6.2006. He also proved recovery of ashes and bones (Ex.PM) from the cremation ground. He stated that he had heard about the appellant beating his wife Bhagwati often, though in his cross-examination, he stated that no such complaint had been given to him.

(15) In his statement under Section 313 Cr.P.C., the accused, other than saying that he had been falsely involved in this case, did not take any material stand in his favour, though he stated that he would lead evidence in his defence.

(16) In defence before the trial court, Dr.Hitesh Khurana, Reader, Department of Psychiatry, PGIMS, Rohtak, was examined as DW1. He stated that the appellant was admitted to the Psychiatry Ward of PGIMS, Rohtak, on 13.10.2006 and was discharged on 15.11.2006. He further stated that he was one of the members of the Medical Board, which had given reports dated 8.2.2007 and 12.2.2007 (Ex.DC and Ex.DD), respectively. As per the last report (Ex.DD), Deep Chand was mentally fit and there was no impediment and his cognition level was alright.

Ex. DA is the report dated 15.11.2006 by which, Deep Chand was diagnosed as 'likely to be suffering from Persistent Delusional Disorder'. Some drugs were also prescribed and follow up advised.

Ex.DB is also a report dated 11.12.2006 of the Medical Board which states that the patient was suffering from 'Persistent Delusional Disorder like condition'. He was discharged on 16.11.2006 on anti psychotic medication, with advice for follow up in the Psychiatry OPD after two weeks, though he did not report up till 11.12.2006, i.e. the date of report (Ex.DB).

Ex.DC and Ex.DD are the same reports, one received by registered post and the other by speed post, where again the appellant was stated to be suffering from Persistent Delusional Disorder. It was stated that 'he has shown remission with the treatment prescribed and currently does not have any psychopathology'. He was also stated to be fit to stand trial but was advised continued medication.

As per this witness, it is not possible to opine as to when the above disease (Persistent Delusional Disorder) develops but it only develops in adults and not in children. The doctor further stated that he agreed with the observations given at page 449, para 11 of Modi's Medical Jurisprudence and Toxicology (21st Edition), which runs as under:-

> "11. DELUSION: A false or erroneous belief, in the face of contrary evidence, is held with conviction and unmodifiable by appeals to reason or logic that would be acceptable to persons of the same religious or cultural background.

> Delusions may be of grandeur or exaltation, of suspicion, of depression, of reference, of jealousy, and of infidelity. Delusion of grandeur and delusion of persecution are often together in the same person. For instance, a man who imagines himself to be very rich may also imagine that his enemies are conspiring to ruin him financially.
>
> Delusions are very important from the medico-legal point of view, as they often affect the conduct and action of the sufferer, and may lead him to commit suicide, murder or some other crime. The judge and the lawyer attach great importance to the presence of delusions as the sign of insanity. Hence it is essential for a medical man to carefully make a note of any delusions he has been able to elicit during the examination."

In his cross-examination, he stated that it is not possible to tell, even approximately, as to when patient Deep Chand might have got a manifestation of this disease, or when this disease had started. However, he stated that it is certain that this disease never gives abrupt manifestation. Once the patient is cured, he may not even get this disease again.

(17) DW2 Dr.O.P.Sarowa, Medical Officer, District Jail, Narnaul, deposed that the appellant was transferred as per court order dated 6.8.2006 to District Jail, Rohtak, for his treatment at PGIMS, Rohtak. He also stated in his cross examination that, as per report (Ex.DF), his (appellants') mental condition was not fine and that is why, he was later referred to PGIMS, Rohtak.

Ex. DF is the letter addressed by the Medical Officer, District Jail, Narnaul, to the Superintendent, District Jail, Narnaul, stating therein that the appellant is suffering from schizophrenia. The letter further stated that though he was taking treatment from District Jail, Narnaul and Government Hospital, Narnaul, but he was not responding adequately and since there is no Psychiatrist in district Mohindergarh, he should be transferred to District Jail, Rohtak.

(18) We have heard Shri Gurinder Singh Goraya (learned counsel appearing through the legal aid cell), for the appellant and Shri Paramjeet Batta, learned Additional Advocate General, Haryana, for the respondent.

(19) Learned counsel for the appellant brought to our notice discrepancies in the statements of material witnesses, i.e., the three children of the deceased and the appellant, namely, Manisha (PW10), Ravinder (PW11) and Suresh (PW12), and submitted that in view of the discrepancies, death of Bhagwati did not take place due to any blows given by the appellant but was the result of the injuries sustained by her due to other reasons such as a fall on account of a buffalo hitting her, or otherwise.

We do not find any merit in this argument, and dismiss it, in view of the fact that, though there were certain discrepancies in the statements of the three children, to the extent that whereas PW10 first stated that her father gave a 'danda' blow on the head of her mother as she was sleeping on the cot and on her asking for the reasons, he threatened her and gave another blow on the head of her mother and ran away; in the crossexamination, she stated that the first blow had already been given before she got up and the second blow after she (PW10) woke up. In crossexamination, she further stated that her brother, Suresh, also accompanied her mother and her elder brother Ravinder, when she was taken to Ateli on a camel cart.

PW11 Ravinder stated before the trial court that he and his brother Suresh had taken their mother to Ateli, whereas in his statement under Section 161 Cr.P.C., he did not mention that Suresh had accompanied him to Ateli.

PW12 Suresh stated that he too saw his father giving lathi blows to his mother and thereafter running away and that he and his brother both had taken their mother to Ateli. Further, Ravinder in his statement before the police, had stated that some villagers had collected in the evening after dead the body of his mother was brought back, but the cause of death was not disclosed due to a threat given by his father to all the children. He had further stated that his mother was cremated at about 8/9.00 PM at night. On the other hand, in his testimony before the trial court, he stated that he had been threatened by his father and confined to a room and did not know what happened thereafter. He also denied stating that his mother had been cremated at 8/9.00 PM. Further, in cross-examination, he had also stated that his mother was conscious on the way to Ateli and even told him that

his father had given her 'danda' blows. On the other hand, Suresh specifically stated that his mother had remained unconscious after sustaining injuries till the time she reached Ateli.

There is also some confusion in the statements with regard to the presence of people at the time of cremation and arrival of the police thereafter.

(20) These discrepancies, in our considered opinion, are not of such a nature as would be fatal to the prosecution case.

With regard to the discrepancies of one place or other place after PW10 Manisha awoke, in our opinion it is too minor discrepancy in view of the fact that early in the morning at 4.00 a.m. the exact sequence of events may not be clear in her mind. However, what is most material is that she and her brother have both stated that their father hitting their mother on the head with the stick. Hence, we do not find any fatal discrepancy about the occurrence itself.

As regards the extent of time and manner of cremation. Possibly, all these three witnesses, i.e., Manisha, Ravinder and Suresh, children of the deceased and the appellant, had come to know that they could be prosecuted under Section 201 IPC for destroying evidence to the extent that, without informing the police or having a postmortem conducted on the dead body of their mother, she had been cremated/got cremated. Therefore, to avoid any incrimination, they had given slightly different versions with regard to the cremation, which, in our opinion, do not, in any manner whatsoever, absolve the appellant from the guilt of having given danda blows on his wife's head, leading to her subsequent death.

(21) In fact, there is absolutely no reason, whatsoever, for all three children, who are stated to be adults or perhaps slightly under the age of 18 in the case of Suresh, at the time of occurrence, to depose falsely against their own father, when there is not even a remote suggestion of any enmity between them and him. The improvement in the statement of Ravinder to the extent that his mother had told him on the way to Ateli that his father had given her danda blows was, obviously, only to ensure that his father did not escape under any pretext, from the guilt of having killed his mother. Since he was not an eye witness to the actual occurrence of the danda blows

on the head of his mother by his father, possibility of having improved upon his statement to reiterate what his brother and sister saw, cannot obviously be ruled out.

However, even disregarding his improved statement, the eyewitness account given by his brother and sister who actually saw theappellant hitting their mother with the 'danda' and then running away, and then the corroboration of threat by all the three children given to them by their father in case they disclosed the incident that led to the death of their mother, leaves no manner of doubt whatsoever, in our mind, that it is the appellant who inflicted 'danda' blows on his wife, leading to her death. The introduction of a buffalo during the trial, that hit the deceased, leading to her death, is too obvious a bogey, which finds not even a vague corroboration from anywhere.

(22) The medico legal report shows two injuries on the person of the deceased, which have already been described above. Both the injuries are stated to have been caused by a blunt weapon in the MLR. Obviously, a wooden 'danda'/'lathi' is a blunt weapon and even in the absence of a postmortem report, co-relating the medico legal report along with testimonies of the eye witnesses, who are the appellants' own children, we hold that it is the appellant who caused the injuries to his wife, leading to her death, in the manner detailed above.

(23) The next argument of learned counsel for the appellant was that the appellant was suffering from a mental disease, which made him incapable of understanding the nature of his actions and as such, he could not be held guilty under Section 302 IPC. In this regard, he has relied upon the medical evidence in the form of testimony of DW1 Dr.Hitesh Khurana as also medical reports in respect of the appellant, i.e., Ex.DA to Ex.DE.

(24) Modi's observations with regard to delusions are, that they often affect the conduct and action of the sufferer, and may lead him to commit suicide, murder or some other crime. In the instant case, the appellant had been diagnosed to be suffering from Persistent Delusional Disorder by the Medical Board of PGIMS, Rohtak. Obviously, such reports cannot be disregarded and have to be given their due importance and weightage.

As such, this aspect has to be gone into, in detail.

(25) PW9 Lambardar Ram Chander, complainant, and husband of Sarpanch of Village Salimpur Turkiawas, in his cross-examination, stated that he cannot say about the mental status of Deep Chand. PW10 Manisha, daughter of the appellant, in her cross-examination, stated that it was incorrect to suggest that her father is not of sound mind. PW11 Ravinder, son of the appellant, in his examination-in-chief and cross-examination has not stated any thing with regard to the mental condition of his father. PW12 Suresh, another son of the appellant, also stated in his cross-examination that it is incorrect to suggest that his father was a person of unsound mind.

PW8, Ram Chander son of Umrao, resident of Village Jharoda, stated to be uncle of PWs 10, 11 and 12, also deposed, in crossexamination, that he does know that Deep Chand is of unsound mind. It is to be noted that he is obviously not the maternal uncle of PWs 10, 11 and 12 but a relation from the paternal side, because he referred to PW11 as his 'Bhatija', not 'Bhanja', in his testimony. However, he is obviously not the real brother of the accused, going by parentage.

What cannot be lost sight of is that, all the three witnesses, i.e., children of the appellant (of teen age), have stated that they had checked their father when they saw him hitting their mother but, despite that, he had hit her again and then run away. Thereafter, he had again threatened them when the dead body of the deceased (their mother) was brought home by PW11 Ravinder. Obviously, the appellant cannot be said to be unaware of the consequences of his action. However, whether or not he can be given benefit of doubt on account of unsoundness or temporary unsoundness of his mind, is to be examined as per the legal position, in India, on the issue.

(26) The question, therefore, is, whether in the light of the fact that the appellant has been diagnosed with Persistent Delusional Disorder, is he entitled to the benefit of Section 84 of the Indian Penal Code, which is reproduced hereinunder:-

> "**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."

No doubt, as per Modi's description of the effects of the disease, is to the extent that it "often affects the conduct and action of the sufferer and may lead him to commit suicide, murder or some other crime". However, courts in India have always drawn a distinction between medical insanity, and legal insanity, to the effect that, what the doctor may find to be unsoundness of mind, may not be of such a nature or level so as to make a person incapable of understanding the effects of his action, so as to exonerate him from having the guilt of knowing what he is doing, and the consequences thereof to the victim.

(27) In this regard judgments of the Supreme Court may be referred to, on the issue, as are discussed hereinafter:-

(i) In a case upholding the plea of unsoundness of mind in ***Shrikant Anand Rao Bhosale*** versus ***State of Maharastra (1),*** the Supreme Court held as under:-

"18. We have already noticed earlier that unsoundness of mind preceding occurrence and following the occurrence stands proved. It has rightly not been questioned by learned counsel for the State. Regarding the state of mind of the accused at the time of commission of offence, in our opinion, ordinarily that would be an aspect to be inferred from the circumstances. Further, as earlier noticed, the nature of the burden of proof on the accused is no higher than that which rests upon a party to civil proceedings.

19. The circumstances that stand proved in the case in hand are these:

1. The appellant has a family history his father was suffering from psychiatric illness.

2. Cause of ailment not known - hereditary plays a part.

3. Appellant was being treated for unsoundness of mind since 1992 Diagnosed as suffering from paranoid schizophrenia.

4. Within a short span, soon after the incident from 27th June to 5th December, 1994, he had to be taken for treatment of ailment 25 times to hospital.

(1) (2002) 7 SCC 748

5. Appellant was under regular treatment for the mental ailment.

6. The weak motive of killing of wife being that she was opposing the idea of the appellant resigning the job of a Police Constable.

7. Killing in day light no attempt to hide or run away.

20. Mr. Arun Pednekar relies upon Sheralli Wali Mohammed v. The State of Maharashtra [(1973) 4 SCC 79] to contend that mere fact that the appellant did not make any attempt to run away or that he committed the crime in day light and did not try to hide it or that motive to kill his wife was very weak, would not indicate that at the time of commission of the act the appellant was suffering from unsoundness of mind or he did not have requisite mens rea for the commission of the offence. It is correct that these facts itself would not indicate insanity. 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 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 benefit of Section 84 IPC. We are unable to hold that the crime was committed as a result of 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 and, thus, he is entitled to the benefit of Section 84 IPC. Hence, the conviction and sentence of the appellant cannot be sustained.

On the other hand, judgments rejecting the plea of defence u/s. 84 are as below:-

(ii) ***State of Rajasthan*** versus ***Shera Ram @ Vishnu Dutta (2),*** wherein it was discussed as under :-

"17. To commit a criminal offence, mens rea is generally taken to be an essential element of crime. It is said furiosus nulla voluntas est. In other words, a person who is suffering from a mental disorder cannot be said to have committed a crime as he does not know what he is doing. For committing a crime, the intention and act both are taken to be the constituents of the crime, actus non facit reum nisi mens sit rea. Every normal and sane human being is expected to possess some degree of reason to be responsible for his/her conduct and acts unless contrary is proved. But a person of unsound mind or a person suffering from mental disorder cannot be said to possess this basic norm of human behavior.

18. In Surendra Mishra v. State of Jharkhand, the Court was dealing with a case where the accused was charged for an offence under Section 302 IPC and Section 27 of the Arms Act. While denying the protection of Section 84 of the IPC to the accused, the Court held as under: (SCC pp.499-500, para 11)

> "11. In our opinion, an accused who seeks exoneration from liability of an act under Section 84 of the Indian Penal Code is to prove legal insanity and not medical insanity. Expression "unsoundness of mind" has not been defined in the Indian 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 the 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 behavior or the behavior is queer are not sufficient to attract the application of Section 84 of the Penal Code."

(2) (2012) 1 SCC 602

19. From the above-stated principles, it is clear that a person alleged to be suffering from any mental disorder cannot be exempted from criminal liability ipso facto. The onus would be on the accused to prove by expert evidence that he is suffering from such a mental disorder or mental condition that he could not be expected to be aware of the consequences of his act. Once, a person is found to be suffering from mental disorder or mental deficiency, which takes within its ambit hallucinations, dementia, loss of memory and self-control, at all relevant times by way of appropriate documentary and oral evidence, the person concerned would be entitled to seek resort to the general exceptions from criminal liability.

(iii) In ***T.N. Lakshmaiah*** versus ***State of Karnataka (3),*** wherein, after discussing the background of Section 84 being included in the general exception carved out in Chapter IV of the Penal Code, it was observed as under:-

> "8. The principle embodied in the Chapter is based upon the maxim actus non facit reum, nisi mens sit rea i.e. An act is not criminal unless there is criminal intent.
>
> 9 & 10 x x x x x
>
> 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. The entire conduct of the accused, from the time of the commission of the offence up to the time the sessions proceedings commenced, is relevant for the purpose of ascertaining as to whether plea raised was genuine, bona fide or an afterthought."

(iv) Again in ***Bapu @ Gujraj Singh*** versus ***State of Rajasthan (4),*** it was held as under:-

> "11. The section itself provides that the benefit is available only after it is proved that at the time of committing the act, the

(3) (2002) 1 SCC 219
(4) (2007) 8 SCC 66

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*, Vol. II, p. 166 has observed that if a persons cut 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 Mohd. v. State of Maharashtra held that: (SCC p.79)

> "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."

12. 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 M' 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. 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 prefect 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.

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."

(v) In ***Elavarasan*** versus ***State (5),*** the plea of unsound mind as a defence to the charge of murder was discussed by the Supreme Court as under :- (This judgment is being discussed in extenso as some parallel can be drawn to the extent that it was also a case of a

(5) (2011) 7 SCC 110

husband killing his wife during a quarrel, after which the defence of unsoundness of mind was taken).

x x x x x x

"22. The question, however, is whether the appellant was entitled to the benefit of Section 84 of Indian Penal Code which provides that 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 who is incapable of knowing that what he is doing, is either wrong or contrary to law. Before adverting to the evidence on record as regards the plea of insanity set up by the appellant, we consider it necessary to refer to two aspects that bear relevance to cases where a plea of insanity is raised in defence by a person accused of a crime. The first aspect concerns the burden of proving the existence of circumstances that would bring the case within the purview of Section 84 of the I.P.C. It is trite that the burden of proving the commission of an offence is always on the prosecution and that the same never shifts. Equally well settled is the proposition that if intention is an essential ingredient of the offence alleged against the accused the prosecution must establish that ingredient also.

23. There is no gainsaying that intention or the state of mind of a person is ordinarily inferred from the circumstances of the case. This implies that, if a person deliberately assaults another and causes an injury to him then depending upon the weapon used and the part of the body on which it is struck, it would be reasonable to assume that the accused had the intention to cause the kind of injury which he inflicted. Having said that, Section 84 can be invoked by the accused for nullifying the effect of the evidence adduced by the prosecution. He can do so by proving that he was incapable of knowing the nature of the act or of knowing that what he was doing was either wrong or contrary to law. But what is important is that the burden of bringing his/her case under Section 84 of the IPC lies squarely upon the person claiming the benefit of that provision.

24. Section 105 of the Evidence Act is in this regard relevant and may be extracted:

> "105. **Burden of proving that case of accused comes within exceptions.**-When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code, (45 of 1860) or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances."

25. A careful reading of the above would show that not only is the burden to prove an exception cast upon the accused but the Court shall presume the absence of circumstances which may bring his case within any of the general exceptions in the Indian Penal Code or within any special exception or provision contained in any part of the said Code or in law defining the offence. The following passage from the decision of this Court in Dahyabhai Chhaganbhai Thakkar v. State of Gujarat may serve as a timely reminder of the principles governing burden of proof in cases where the accused pleads an exception: (AIR p. 1568, para 7)

> "7. 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 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."

26. The second aspect which we need to mention is that the standard of proof which the accused has to satisfy for the discharge of the burden cast upon him under Section 105 (supra) is not the same as is expected of the prosecution. A long line of decisions of this Court have authoritatively settled the legal proposition on the subject. Reference in this connection to the decision of this Court in State of U.P. v. Ram Swarup, should suffice where this court observed:(SCC p.774, para 19)

> "19. The burden which rests on the accused to prove the exception is not of the same rigour as the burden of the prosecution to prove the charge beyond a reasonable doubt. It is enough for the accused to show, as in a civil case, that the preponderance of probabilities is in (his) favour....."To the same effect is the decision of this Court in Bhikari v. State of UP.

27. Let us now consider the material on record in the light of the above propositions to determine whether the appellant had discharged the burden of bringing his case under Section 84 of the IPC. The appellant has led no evidence in defence to support the plea of legal insanity. That may be a significant aspect but by no means conclusive, for it is open to an accused to rely upon the material brought on record by the prosecution to claim the benefit of the exception. Evidence in defence may be a surplusage in cases where the defence can make out a case for the acquittal of the accused based on the evidence adduced by the prosecution.

28. What falls for consideration in the light of the above is whether the present is one such case where the plea of insanity - is proved or even probabilised by the evidence led by the prosecution and the court witnesses examined at the Trial. Depositions of two prosecution witnesses viz. PW2, Dhanalakshmi and PW3, Valli immediately assume significance to which we may at this stage refer. PW2,

Dhanalakshmi has, apart from narrating the sequence of events leading to the incident, stated that her husband is a government servant getting a monthly salary of Rs.4000/- which he would hand over to the witness to meet the household expenses. She further stated that the couple had a peaceful married life for five years but there was a dispute between the appellant and his maternal uncle by name Kannan in regard to the property a part of which the appellant had already sold and the remainder he wanted to sell. The appellant had according to the witness started the quarrel around 12 p.m. but assaulted her an hour later. The witness further stated that for sleeplessness, the appellant used to take some medicine but she did not recall the name of the Clinic from where he was taking the treatment. According to the witness, the Psychiatrist who was treating the appellant had diagnosed his medical condition to be the effect of excessive drinking and advised that if the appellant took the medicines regularly he would get cured.

29. That brings us to the deposition of PW3, Smt. Valli, the mother of the appellant. This witness has in cross examination stated that the appellant was working as a Watchman at PWD bungalow and that she used to deliver his lunch at the appellant's office. She also referred to the dispute between the appellant and his paternal uncle regarding family properties in which connection he had filed a complaint to the police station. On the date of the incident, the family had their dinner at around 9 p.m. and gone to bed. But the couple started quarreling around 1 p.m. leading to an assault on PW2, Dhanalakshmi. The witness stated that the appellant was undergoing treatment with a Psychiatrist in a clinic situated at Perumal Kovi street and that the doctor had diagnosed the appellant to be a case of mental disorder because of which he could get angry very often.

30. 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.

31. That leaves us with the deposition of two medical experts who examined the appellant under the orders of the Court during the course of the trial. Dr. B. Srinivasan, Specialist in Psychiatry, in his deposition stated that the appellant was admitted to the government hospital, Karaikal on 29th July, 2002 pursuant to an order passed by the Trial Court directing his medical examination so as to evaluate his mental condition and ability to converse. The witness further stated that the appellant was kept under observation on and from the afternoon of 29th July 2000 till 6th August, 2002 during which time he found him to be conscious, ambulant dressed adequately and able to converse with the examiner.

32. The doctor has described the condition of the appellant during this period in the following words:

> "He has restlessness, suspicious looking around at time inappropriate smile has complaints of some inner voice telling to him (abusive in nature at times), has fear and worries about others opinion about him, wants to be left alone, says he needs a few pegs of alcohol to sleep peacefully at night. He has confusion at times about the whisper within him, feels some pulling connection between his chest and brain, that prevents him from taking freely with people and with the examiner. I am

of the opinion that the above individual is of unsound mind. The possible medical dispenses being psychosis. The differential diagnosis considered in this case are:

1. Paranoid Psychosis (Schizophrenia)

2. Substance induced Psychosis (Alcohol induced)

3. Organic Psychosis /organic mental disorder

(Head injury sequelae & personality changes)

I, therefore, request this Hon'ble Court be kindly arrange for a second opinion by another consultant Psychiatrist in this case and also Psychological assessment by a clinical psychologist." (emphasis supplied)

33. The appellant was, in the light of the recommendations made by Dr. B. Srinivasan referred to JIPMAR hospital at Pondicherry, where he remained under the observation of Dr. R. Chandrashekhar, CW2 who happened to be Professor and Head of the Department of Psychiatry in that Hospital. In his deposition before the Court Dr. Chandrashekhar has stated that the appellant was admitted on 30th September, 2002 but escaped from the hospital on 1st October, 2002 in which connection the doctor made a report marked Ex.P1. After examining the relevant record the witness deposed that the appellant did not have any psychataxia symptoms. In the detailed report proved by the witness and marked Ex.P2 the medical condition of the appellant is described as under:

"He was well groomed. Rapport was established. No abnormal motoric behavior was present. He was cooperative. His mood appeared euthymic and speech was normal. There was no evidence of formal thought disorder or disorder of possession or thought content. No perceptual disorder was evident. Attention was arousable and concentration well sustained. He was oriented to time, place, person. The immediate recall, recent and remote memory was intact. Abstraction was at functional level. Judgment was preserved. Insight was present."

34. In the final report the doctor has drawn the following pen picture about the appellant's mental health and psycho-diagnostic evaluation.

"Psycho-diagnostic Evaluation:

Patient's perception, memory and intelligence were slightly impaired (Memory Quotient was 70 and performance quotient was 72). Mixed psychotic picture with predominantly affective disturbances was seen. He requires further support and guidance in occupational area.

The examination is suggestive of a lifetime diagnosis of Psychosis (not otherwise specified) and currently in remission. Patient was on treatment with vitamins and chlorpromazine 100 mg. per day during his stay in the ward. The course in the hospital was uneventful except for the fact that he absconded from the ward on 1.10.2002. I am of the opinion that the above individual does not currently suffer from any mental symptom, which can interfere with the capability of making his defence.

Sd/-

(DR. R. CHANDRASHKARAN)
Head of Department of Psychiatry
JIPMER,

Dt. 5-10-2002 Pondicherry-6."

35. 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 proceeded, 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.

36. 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 probabilised."

(28) It may be apposite to again mention here, in the present case, that, prior to the expert medical opinion of PGIMS, Rohtak, the Medical Officer, District Jail, Narnaul, had written to the Superintendent of the jail to the effect that the appellant is suffering from schizophrenia, though eventually it was diagnosed as "Persistent Delusional Disorder Like Condition". With regard to the disease of schizophrenia, the following judgments of the Supreme Court can be successfully reproduced, wherein the plea of defence under Section 84 IPC was again rejected:

(i) ***Sudhakaran*** versus ***State of Kerala (6),*** wherein it has been observed:

"9. The trial court thereafter considered the defence pleaded by the appellant under Section 84 IPC. Upon examination of the entire medical evidence, the trial court concluded that there is no material to indicate that at the time of the commission of the offence or immediately before the occurrence of the incident, the appellant was

(6) AIR 2011 (SC) 265

suffering from any mental illness. Although he had taken some treatment in the year 1985 for mental illness but he had fully recovered from that. Subsequently, long after that he had married the deceased. Even though they were living a disturbed married life, a child was born out of the wedlock. The child was 8 months old at the time when the crime was committed. The trial court also noticed that, although the appellant was irregular, he used to take on casual jobs for his sustenance. The trial court concluded that even after taking note of the evidence produced by the defence, the conclusion was that the appellant was capable of understanding the nature of the act and the consequences thereof.

10 to 15 x x x x x

16. As far as, the defence under Section 84 is concerned, we also see no reason to differ with the opinion expressed by the trial court as also the High Court. The evidence given by DW1, Assistant Surgeon of Idduki District Hospital has been rightly discarded by the High Court. It is true that DW1 had stated on the basis of the out patient register that the appellant had come for consultation. However, no records were produced as to what treatment had been given to him. Even the out patient ticket was not produced. Ultimately, this doctor admitted that he cannot say that the appellant had come there for psychiatric treatment. He did not even remember the medicine which had been given to the appellant. Similarly, the evidence of Superintendent of Jail DW2 also only indicates that the appellant had been sent to Medical Health Centre. Even the evidence of the Health Centre was incomplete and wholly unreliable. The entire medical evidence produced was not sufficient to show that at the time of the commission of the murder the appellant was medically insane and incapable of understanding the nature of the consequences of the act performed by him.

17. 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. 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 Toxicology 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 wellelaborated 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 a social reformers or founders of queer pseudo-religious 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 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."

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. Section 84 of the Indian Penal Code recognizes the defence of insanity. It is defined as under:- (emphasis applied)

> "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."

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. The aforesaid section clearly gives statutory recognition to the defence of insanity as developed by the Common Law of England in a decision of the House of Lords rendered in the case of ***R.V.*** versus ***Daniel Mc Naughten (7).*** In that case, the House of Lords formulated the famous Mc Naughten Rules on the basis of the five questions, which had been referred to them with regard to the defence of insanity.

(29) On the issue of how delusions are to be dealt with in reference to the question of determination of an accused's guilt, the Supreme Court referred to the Mc Naughten Rules laid down by the House of Lords in the case of R.vs. Daniel Mc Naughten, 1843 RR 59: 8 ER 718 (HL). Again quoting from the judgment of the Supreme Court in Sudhakaran's case (supra), the following passages are cited:-

> 17. x x x x x
>
> "The reference came to be made in a case where Mc Naughten was charged with the murder by shooting of Edward Drummond, who was the Pvt. Secretary of the then Prime Minister of England Sir Robert Peel. The accused Mc Naughten produced medical evidence to prove that, he was not, at the time of committing the act, in a sound state of mind. He claimed that he was suffering from an insane delusion that the Prime Minister was the only reason for all his

(7) 1843 RR 59 : 8 ER 718 (HL)

problems. He had also claimed that as a result of the insane delusion, he mistook Drummond for the Prime Minister and committed his murder by shooting him. The plea of insanity was accepted and Mc Naughten was found not guilty, on the ground of insanity. The aforesaid verdict became the subject of debate in the House of Lords. Therefore, it was determined to take the opinion of all the judges on the law governing such cases. Five questions were subsequently put to the Law Lords. The questions as well as the answers delivered by Lord Chief Justice Tindal were as under:-

"Q.1 What is the law respecting alleged crimes committed by persons afflicted with insane delusion in respect of one or more particular subjects or persons: as, for instance, where at the time of the commission of the alleged crime the accused knew he was acting contrary to law, but did the act complained of with a view, under the influence of insane delusion, of redressing a revenging some supposed grievance or injury, or of producing some public benefit?

Answer

"Assuming that your lordships' inquiries are confined to those persons who labour under such partial delusions only, and are not in other respects insane, we are of opinion, that, notwithstanding the party did the act complained of with a view, under the influence of insane delusion, of redressing or revenging some supposed grievance or injury, or of producing some public benefit, he is nevertheless punishable, according to the nature of the crime committed, if he knew, at the time of committing such crime, that he was acting contrary to law, by which expression we understand your lordships to mean the law of the land.

Q.2. What are the proper questions to be submitted to the jury when a person alleged to be afflicted with insane delusion respecting one or more particular subjects or persons, is charged with the commission of a crime (murder, for example), and insanity is set up as a defence?

Q.3. In what terms ought the question to be left to the jury as to the prisoner's state of mind at the time when the act was committed?

Answers – to the second and third questions

That the jury ought to be told in all cases that every man is presumed to be sane, and to possess a sufficient degree of reason to be responsible for his crimes, until the contrary be proved to their satisfaction; and that, to establish a defence on the ground of insanity, it must be clearly proved that, at the time of the committing of the act, the party 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 if he did know it, that he did not know he was doing what was wrong. The mode of putting the latter part of the question to the jury on these occasions has generally been, whether the accused, at the time of doing the act, knew the difference between right and wrong, which mode, though rarely, if ever, leading to any mistake with the jury, is not, as we conceive, so accurate when put generally, and in the abstract, as when put as to the party's knowledge of right and wrong in respect to the very act with which he is charged. If the question were to be put as to the knowledge of the accused, solely and exclusively with reference to the law of the land, it might tend to confound the jury, by inducing them to believe that an actual knowledge of the law of the land was essential in order to lead to a conviction, whereas the law is administered upon the principle that every one must be taken conclusively to know it without proof that he does know it. If the accused was conscious that the act was one which he ought not to do, and if that act was at the same time contrary to the law of the land, he is punishable; and the usual course, therefore, has been to leave the question to the jury, whether the party accused had a sufficient degree of reason to know that he was doing an act that was wrong: and this course, we think, is correct, accompanied with such observations and explanations as the circumstances of each particular case may require.

Q.4. If a person under an insane delusion as to the existing facts commits and offence in consequence thereof, is he thereby excused?

Answer

The answer must, of course, depend on the nature of the delusion, but making the same assumption as we did before, that he labours under such partial delusion only, and is not in other respects insane, we think he must be considered in the same situation as to responsibility as if the facts with respect to which the delusion exists were real. For example, if, under the influence of his delusion, he supposes another man to be in the act of attempting to take away his life, and he kills that man, as he supposes in self defence, he would be exempted from punishment. If his delusion was that the deceased had inflicted a serious injury to his character and fortune, and he killed him in revenge for such supposed injury, he would be liable to punishment.

Q.5. Can a medical man, conversant with the disease of insanity, who never saw the prisoner previously to the trial, but who was present during the whole trial, and the examination of all the witnesses, be asked his opinion as to the state of the prisoner's mind at the time of the commission of the alleged crime, or his opinion whether the prisoner was conscious, at the time of doing the act, that he was acting contrary to law, or whether he was labouring under any and what delusion at the time?

Answer

We think the medical man, under the circumstances supposed, cannot in strictness be asked his opinion in the terms above stated, because each of those questions involves the determination of the truth of the facts deposed to, which it is for the jury to decide; and the questions are not mere questions upon a matter of science, in which case such evidence is admissible. But where the facts are admitted or not disputed, and the question becomes substantially one of science only, it may be convenient to allow the question to be put in that general form, though the same cannot be insisted on as a matter of right.

A comparison of answers to question no. 2 and 3 and the provision contained in Section 84 of the IPC would clearly indicate that the Section is modeled on the aforesaid answers."

(30) Further, quoting from an earlier judgment of the Apex Court in ***Ratan Lal*** versus ***State of Madhya Pradesh (8),*** the following passages were cited, in Sudhakaran (supra):-

> 19. x x x x x x
>
> "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."

In conclusion, it was held in Sudhakaran's case (supra):

> "21. The High Court took into consideration the totality of the circumstances and came to the conclusion that there was no evidence indicating that appellant was suffering from mental illness at the crucial time. The only evidence placed on record shows that the appellant had been treated in a Psychiatric Hospital for 13 days in the year 1985 even at that time the doctor had diagnosed the disease as psychotic disorder. The record did not indicate that the patient was suffering from such mental disability which incapacitated him to know the nature of the act that he had committed. The High Court further observed that there was no evidence to indicate that the appellant suffered from mental illness post 1985. The High Court, in our opinion, rightly concluded that the appellant was capable of knowing the nature of the act and the consequences thereof on the date of the alleged incident. Whilst he had brutally and callously committed the murder of his wife, he did not cause any hurt or discomfort to the child. Rather he made up his mind to insure that the child be put into proper care and custody after the murder. The conduct of the appellant before and after the incident was sufficient to negate any notion that he was mentally insane, so as not to be possessed of the necessary mens rea, for committing the murder of his wife.
>
> 22. In such view of the matter, we see no reason to interfere with the concurrent findings recorded by the courts below. The appeal is dismissed."

(8) (1970) 3 SCC 533

(31) After reproduction of the principle set out in the above mentioned judgments, the obvious question now is, as to whether the present appellant is entitled to the benefit of the provisions of Section 84 of the Indian Penal Code or not?

(32) Before we again, briefly, come to the evidence led in this regard before the trial court, it is relevant to state here that the plea of unsoundness of mind was taken on the ground that it was the Medical Officer of District Jail Narnaul, who had opined that the appellant is schizophrenic and that he be referred to PGIMS, Rohtak. He was then transferred to District Jail, Rohtak, where he was counselled by the Psychiatrist in August and September 2006 (starting two months after the occurrence) and was thereafter, admitted to the hospital on 13.10.2006, from where he was discharged after being declared fit to face trial by the Medical Board on 08.02.2007, after having diagnosed him and finding suffering from Persistent Delusional Disorder.

(33) Now, to see whether the appellant can be termed to be "legally innocent" so as to grant him the protection of Section 84 of the IPC, the evidence recorded by the prosecution witnesses with regard to his behaviour at the time of occurrence needs to be seen.

One plea that can be easily raised is whether anybody, who is in a sound mind, would resort to wife beating, or hitting his spouse on the head, and that too in the wee hours of the morning, without any grave provocation; the obvious answer is, as per common sense, that no sane man would do so.

However, would this mean that every person accused of the crime of murder in the circumstances, as in the present case, be allowed to take the benefit of the exception carved out in Section 84? We think not. To take the benefit of the section of this exception, it has to be proved, even if not on the same strength of proof, as required by the prosecution, but nevertheless, still to a plausible extent, that the accused was incapable of understanding the nature of his act. The behaviour of the appellant in the present case does not show any such complete lack of understanding of his action, so as to term him of unsound mind, to give him the benefit of the exception.

As per PWs 10, 11 and 12, all his own children, as already discussed, there was no evidence, at all, of any unsoundness of mind prior to even on the date of occurrence.

As per PW10, i.e. the daughter aged about 18-19 years at the time of the offence, she woke up on hearing the noise of the quarrel between her parents and found her father giving a blow to her mother with a 'danda'. However, upon her questioning him, he told her to keep quiet and threatened to beat her. Upon her making a noise, he again gave her (his wife) a 'danda' blow on the head and thereafter fled away from the spot. The same version is given by PW12, who was 17-18 years' old, and was also sleeping in the same room. PW11, i.e. the eldest son, slightly older than PW10, also stated that he saw his father running away by the time he reached, after being called by his sister. He is also stated to have threatened his children at the time of the cremation (though that part of the testimony is under cloud, as discussed earlier). However, in any case, he was obviously aware of his act, in view of the threat given to his daughter and as evidenced by his running away after commutting the crime.

PWs 8 and 9 (both named Ram Chander), the former being a relative who was informed by PW11 of the incident and came from his own village thereafter, and the later being the Lambardar of the village and a former defence personnel, both expressed ignorance with regard to any unsoundness of mind of the appellant. Obviously, nobody had ever seen the appellant in any such state of mind, which may be regarded as unsound or incapable of knowing the consequences of his actions.

(34) Now coming again to what has been formulated in the Mc Naughten Rules, as referred to in the judgment of the Hon'ble Supreme Court in Sudhakaran's case (supra), the relevant part of the questions and answers delivered in the Mc Naughten case and, as reproduced earlier in this judgment are as follows:-

> Answer to question (i) ".....we are of the opinion that notwithstanding the party did the act complained of with a view, under the influence of insane *delusion*, of redressing or revenging some supposed grievance or injury, or of producing some public benefit, he is nevertheless punishable, according to the nature of the crime committed, if he knew, at the time of committing such crime, that he was acting contrary to the law of the land.

Question No.4. If a person under an insane delusion as to the existing facts commits an offence in consequence thereof, is he thereby excused?

Answer: The answer must, of course, depend on the nature of the delusion, but making the same assumption as we did before, that he labours under such partial delusion only and is not in other respects insane, we think he must be considered in the same same situation as to responsibility as if the facts with respect to which the delusion exists were real. For example, if, under the influence of his delusion, he supposes another man to be in the act of attempting to take away his life, and he kills that man, as he supposes in self defence, he would be exempted from the punishment. If his delusion was that the deceased had inflicted a serious injury to his character or fortune, and he killed him in revenge for such supposed injury, he would be liable to punishment."

(35) In our considered opinion, after going through the entire evidence, there is no such indication, whatsoever, that the deceased, who was the appellants' wife, was, at any time, in a threatening position to him so as to lead him to believe that he was acting in self defence; in fact, no such plea was taken by him even in his statement under Section 313 Cr.P.C. ,which was recorded after he was declared fit for trial. Therefore, even if he was under any delusion at the time of committing the offence that she had inflicted any kind of injuries to his character or fortune, or was, in any manner, not kindly disposed towards him, even so, being aware of the consequences of his action, even as per Mc Naughten Rules, he would be liable for punishment.

Thus, as per the law discussed, he would have to be shown to be completely incapable of understanding the nature of his action, to take the benefit of Section 84 IPC. We are of the firm opinion that he was in no such mental state, as per the evidence led in the trial court.

(36) Though, at one point, we were inclined to refer the matter to medical experts again, at the PGI Chandigarh, the futility of such a direction became obvious and hence we proceeded with the matter, on the basis of medical and other evidence already before us. We say 'futility', in view of the fact that any diagnosis, now 6 ½ years after the incident and after his

having spent that much time in jail, cannot possibly accurately describe his state of mind on the night of 17/18.06.2006. The closest, we can get to that point of time is by referring to the diagnosis already given by the PGIMS, Rohtak, after observing the appellant in the months from Aug.'' 2006 to February 2007. On the basis of the same, the testimony of DW1 Dr. Hitesh Khurana, Department of Psychiatric PGIMS, Rohtak, can again be referred to, wherein he stated that it is not possible to exactly tell as to when the initial problem arose or when it started.

(37) Therefore, after appreciating the entire evidence, we have no matter of doubt that the appellant is guilty of having committed the murder of his wife under Section 302 IPC and he is not entitled to the benefit of taking the defence of the exception: provided in Section 84 thereof.

As such, this appeal is dismissed, upholding his conviction under Section 302 IPC, for an offence falling under Clause iv of Section 300 IPC. The sentence imposed, of 'imprisonment for life', is also,consequently, upheld.

J.S. Mehndiratta

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