

CASE NO.:
Appeal (crl.) 1313 of 2006

PETITIONER:
Bapu @ Gajraj Singh

RESPONDENT:
State of Rajasthan

DATE OF JUDGMENT: 04/06/2007

BENCH:
Dr. ARIJIT PASAYAT & D.K. JAIN

JUDGMENT:

J U D G M E N T

Dr. ARIJIT PASAYAT, J.

1. Challenge in this appeal is to the judgment of a Division Bench of the Rajasthan High Court at Jodhpur dismissing the appeal filed by the appellant who was convicted for offence punishable under Section 302 of the Indian Penal Code, 1860 (in short the 'IPC') and was sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.500/- with default stipulation. The order of conviction was recorded by learned Special Judge SC/ST, (Prevention of Atrocities) and Additional Sessions Judge, Partap Garh, Rajasthan.

2. Prosecution version as unfolded during trial is as follows: On 26.8.1995 at about 8 a.m. Mithu Singh (PW1) heard the scream that "run run he will kill her". On hearing the scream he rushed towards the house of appellant where Smt. Bhanwar Kanwar, Smt. Nand Kanwar, Smt. Jagdish Kanwar and Smt. Mohan Kanwar were shouting loudly. Smt. Phool Kanwar told him that the accused is beating his wife. It was found by the informant on looking inside from the roof top that the accused was carrying a sickle in one hand and the chopped head of Smt. Govind Kanwar (hereinafter referred to as the 'deceased') in other hand. The sickle was blood stained and the blood was flowing on the floor from the body. Number of other persons including Ram Singh and Chain Singh came to the spot. Sohanlal and Udai Singh who belonged to the police force also reached at the spot. Constable Udai Singh climbed up to the roof and looked into the house. He also found that the accused was standing in the house with the chopped head of a lady in one hand and a blood stained sickle in the other hand. With efforts made by the people present at the spot, door was unbolted by the accused and he was arrested by the police.

3. Information was lodged at Partap Garh police station at about 8.30 p.m. After investigation charge sheet was filed. To further prosecution version 15 witnesses were examined. The learned trial Judge also examined the accused under Section 313 of the Code of Criminal Procedure, 1973 (in short the 'Cr.P.C.'). Five witnesses resiled from their statements made during investigation. However, considering the evidence on record the trial court found the evidence to be credible and cogent and accordingly convicted and sentenced the accused-Gajraj Singh. During trial a plea was taken that the accused was of unsound mind and, therefore, entitled to protection

under Section 84 IPC. Same was rejected by trial Court. The High Court also found that the plea regarding applicability of Section 84 IPC was not acceptable. It found that though some of the witnesses stated about the accused suffering from unsoundness of mind, the crucial question was whether at the time of commission of offence the accused was incapable to understand the nature of the act committed by him or suffered from insanity and had to be given protection under Section 84 IPC. The High Court found that Section 84 IPC has correctly been applied.

4. Learned counsel for the appellant with reference to the evidence of some of the witnesses submitted that the police officials themselves wanted protection from the Court being disturbed by the violent behavior of the appellant. It was submitted that grand father and the uncle of the accused suffered from insanity and, therefore, the trial Court and the High Court were not justified in refusing the protection under Section 84 IPC.

5. Learned counsel for the respondent-State on the other hand supported the judgment of conviction as recorded by the trial Court and as upheld by the High Court. According to him though there is material on record to show that the accused appellant at some point of time suffered from unsoundness of mind, that is not sufficient to bring in application of Section 84 IPC. Additionally, the application filed by the father of the accused was after about one year of the incident.

6. We shall first deal with the question whether Section 84, IPC has application to the facts of the case.

7. 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".

8. 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.

9. 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 men-us 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.

10. 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*).

11. 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 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, however 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.

12. 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.

13. Order of the trial Court shows that because of abnormal behaviour appellant was under treatment. Mother of the appellant (PW-8) stated that appellant had remained mentally fit for about four years after treatment. During trial also pursuant to Court's order he was sent for treatment and his conduct was normal thereafter.

14. Considering the principles set out above in the background facts, the present case is not one where the protection under Section 84 IPC can be applied. However, as and when jail authorities feel that the appellant needs treatment, the same should be immediately treated, preferably at Man Singh Medical Hospital, Jaipur, where he was earlier treated or any other mental hospital of repute.

15. Appeal is without any merit and is dismissed.