

MHCC03-000414-2011



Presented on 11/07/2011  
Registered on 11/07/2011  
Decided on 20/04/2020  
Duration Yrs. M. Days  
10 09 09

**EXH.66**

**IN THE COURT OF SESSION FOR GREATER BOMBAY  
SESSIONS CASE NO.508 OF 2011**

The State of Maharashtra  
(at the instance Bhoiwada  
Police Station in C.R.No.279/2010)

...Complainant

**VERSUS**

...Accused

**APPEARANCE:-**

Mrs. Ranjana Budhwant Ld. APP for the State/complainant.  
Mr. Devendra M. Yadav Ld. advocate for accused.

**CORAM : JUDGE SHRI AJAY C. DAGA  
(C.R.NO. 23)**

**DATED : 20<sup>th</sup> APRIL 2022.**

**JUDGMENT  
(Delivered on 20/04/2022)**

Accused is facing trail for an offence punishable under section 302, 317 of the Indian Penal Code (IPC in short).

2. Prosecution case in brief that; 26/10/2010 at about 5.00a.m.

telephone call was received at Security Guard Office of KEM Hospital, that one and half month old girl child was missing from cot no.5 in ward no. 2 of KEM Hospital. Accordingly, the security officers went in ward no. 2, collected information from the nurse Anushri. The nurse Anushri told that, the accused was saying that her girl child was missing. The security officer along-with the husband of accused went out for search for girl child and when he went in bathroom of ward no.2 he heard noise regarding crying of small child from behind the bathroom. Accordingly, the security guard along-with husband of accused went there and saw that one girl child was lying on a piece of cloth, her ear was broken, she had received injuries on her head. That girl child was brought in the hospital, treatment was given. On perusal of CCTV footage it appears that, on same day at about 4.50 hours accused was seen taking one child towards the bathroom and while she came back she was not having that child in her hand. Accordingly, FIR no. 279 of 2010 was registered for an offence punishable under section 317 of IPC by Bhoiwada Police Station subsequently as girl child was died therefore section 302 of IPC was added.

3. On receipt of case dairy investigating officer investigated into the crime, recorded statement of witnesses, prepared spot panchanama, seized CCTV footage, prepared seizure panchanama, prepared inquest panchanama, sent body to postmortem, collected postmortem report. Collected all the other relevant documents, arrested accused and on completion of investigation filed charge-sheet.

4. By order passed below Exh.1 dated 10/06/2011 the Learned Metropolitan Magistrate, 29<sup>th</sup> Court, Dadar, Mumbai, had committed

the matter to this Court.

5. During the course of trial accused was released on bail. Charge for an offence punishable under section 302,317 of the Indian Penal Code was framed vide Exh.4 by my learned predecessor Shri Ms. C. M. Salunke. Plea of accused was recorded vide Exh.5. Accused pleaded not guilty and claimed to be tried.

6. To prove its case prosecution examined in all nine witnesses and closed its side. Examination of accused under section 313 of Cr.P.C. was recorded vide Exh.59. Defence of accused is of denial and she pleaded that at that time she was under depression. Her first son died in the year 2001. She give birth to girl child in the year 2004 that girl died. Accordingly, she was under depression and have taken treatment about it. The accused have lead evidence by examining defence witness Dr. Shubhangi Raghunathh Parkar.

7. Considering facts of the case following points arose for my determination and I have recorded my findings thereon with reasons as under :-

<b>Sr. No.</b>	<b>POINTS</b>	<b>FINDINGS</b>
1.	Is the death of girl child of the accused is homicidal?	In the affirmative.
2.	Does the prosecution prove that on 26/10/2010 at KEM Hospital Ward No.2 Parel, Mumbai, accused being mother of newly born female child, accused had	In the affirmative.

thrown one child from the window of bathroom with intention of wholly abandoning it and thereby committed an offence punishable under section 317 of IPC.?

3. Does the prosecution prove that on same day, date and time place and in the course of same transaction accused committed murder of her newly born female child by throwing her from the window of bathroom and intentionally and knowingly causing death of her newly born female child and thereby committed and offence punishable under section 302 of IPC. In the affirmative.
4. What order ? As per final order.

8. To prove its case prosecution examined in all nine witnesses. PW-1 Vaishali Krishna Morlikar at Exh.14, PW-2 Sanjay Babulal Tiwari at Exh.20, PW-3 Prashant Pandit Pawar at Exh.24, PW- 4 Vinayak Kisan Parte at Exh.25, PW-5 Mrs. Anushree Anand Nakashe at Exh.30, PW-6 Rahul Bhimrao Kamble at Exh.36, PW-7 Dr. Manojkumar Keshavran Barai at Exh.38, PW-8 Dr. Ravindra Baliram Devkar at Exh.42 and PW-9 Popat Nivrutti Avhad at Exh.47 and closed its side.

9. The prosecution has also relied on following documentary evidence of in support of its contention.

<b>Sr.</b>	<b>Exhibits</b>	<b>Documents/ Particulars</b>
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**No.**

1	1	Charge-sheet.
2	15	Spot panchanama
3	39	KEM hospital letter to police dtd. 26/10/2010
4	43	Postmortem report dtd. 26/10/2010
5	48	FIR
6	49	I.O. issued letter to FSL Kalina dated 28/10/2010
7	50	CCTV footage panchanama dtd. 27/10/2010.

10 The prosecution further relied on the following articles/Muddemal for proving charge against accused.

<b>Sr. Articles/ No Muddemal</b>	<b>Description.</b>
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1 Article-A	Pen-drive
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### REASONS

#### AS TO POINT NO.1 :

11. There is no dispute that the girl child of accused has died. From the evidence of PW-8 Dr. Ravindra Baliram Devkar it has been brought on record that he has done postmortem of the girl child and has given opinion regarding cause of her death as, “*cerebellum compression due to generalized cerebellar edema with intra cerebellum hemorrhage as result of blunt trauma to the head, contributed to by Pulmonary edema with intrapulmonary hemorrhage in a low birth weight infant (unnatural).*” Accordingly, PW-8 issued postmortem report Exh.43. Considering the evidence of PW-8 along-with the postmortem report it appears that death of girl child of accused is unnatural and she died because she was thrown by force. Accordingly, her death is homicidal, as such I answer point in affirmative.

**AS TO POINT NO.2 and 3 :**

12. It is admitted position that the accused has given birth to two child one male and female. It is also admitted position that both the child were admitted in KEM hospital in ward no.2.

13. PW-1 Vaishali Krishna Morlikar during her evidence stated that she was called to act a panch witness and the panchanama was prepared of the spot in her presence, which is at Exh.15. During cross she was asked that whether the windows of the bathroom were having grill, to which she said that she does not remember about it. It's important to note that that panchanama was prepared in the year 2010 and her evidence was recorded in year 2019. Accordingly, as the witness is deposing after span of nine years, it is not possible for any person having no interest in the matter to remember minute details of it. Accordingly, from the mouth of PW-1 the spot of incident i.e. bathroom no.2 is proved.

14. PW-2 Sanjay Babulal Tiwari during his evidence have stated that he was working as a Security Guard at KEM hospital and on the given date was on duty at 4.45a.m. he got a call from ward no.2, went there the mother of child was claiming that her child was stolen. The mother of the child is accused. PW-2 during further evidence stated that, he went along-with the husband of accused in search of child, reached in bathroom and heard noise of cry of child, went behind the bathroom and saw that the child was lying with his ear broken and peeling of skin on head. PW-2 during further evidence stated that he asked accused but she said that, she was washing cloth in bathroom and pointed out towards one cloth but some was not wet. PW-2 during further evidence

stated that, again when he asked loudly accused said that, she has thrown her girl child from window of bathroom no.2. PW-2 went there and saw the window glass was broken. PW-2 then saw CCTV footage and saw that the accused took child in bathroom and came out empty hands.

15. During cross of PW-2 stated that he told police during statement that he touched the cloth and found that same was not wet. PW-2 could not assign any reason as to why said statement was not recorded by the police. It's important to note that, though investigating officer was examined but he was not asked about the omission which was attempted to be brought on record during evidence of PW-2. As such accused failed to prove the omission.

16. During further cross PW-2 he was asked much on the CCTV footage and about intimating police etc.. It is important to note that, the evidence of PW-2 that the accused said that she had thrown her girl child from the window of bathroom no.2 has gone unchallenged during cross. This piece of evidence amounts to extra judicial confession. Though it's weak piece of evidence, fact remains that no cross was made on the point to PW-2. Accordingly, confession of the accused has been brought on record from the mouth of PW-2.

17. PW-3 Prashant Pandit Pawar during his evidence have stated that, he has given copy of CCTV footage of relevant day to investigating officer and had seen a lady picking a body, taking her close to her abdomen and went towards bathroom side. Whole, cross of PW-3 was

regarding his qualification, training and not personally witness of incident. There was no cross to PW-3 regarding what he saw in the CCTV footage. At the most that part of evidence of PW-3 can be used as corroborative piece of evidence.

18. PW-4 Vinayak Kisan Parte during his evidence have deposed as per evidence of PW-3 again he was not crossed by suggesting that he did not see any lady in the CCTV footage.

19. PW-5 Mrs. Anushree Anand Nakashe during her evidence have stated that she is staff nurse and was on duty at relevant time she said that accused told that she went to attend natural call when she came back her girl child was missing. Accordingly, security guard was called and went for search. PW-5 during further evidence stated that, in bathroom she heard noise of girl child outside it, sent security guard, had seen CCTV footage and found accused taking child under her Panjabi Dress Kurta.

20. During cross PW-5 have stated that, she never left ward while on duty and have seen CCTV footage after duty hours. PW-5 was not crossed on the point what she was saw in the CCTV footage.

21. PW-6 Rahul Bhimrao Kamble during his evidence have stated that, he admitted his child in KEM hospital on 21/10/2010 in ward no. 2, cot of his child was near bathroom, accused made inquiry about his child. During further evidence of PW-6 stated that on 26/10/2010 while PW-6 was near cot of child he saw accused going to bathroom at two times and after some time started shouting that her child was missing.



22. During cross-examination of PW-6 stated that portion mark-A i.e. Exh.37 of the statement was recorded as per his say. During further cross of PW-6 stated that he has not seen accused carrying girl child.

23. During cross examination it has been positively brought on record from the mouth of PW-6 that portion mark-A of his statement is recorded as per his say and thereafter there was no cross on portion mark-A, Accordingly, if portion mark-A i.e. Exh. 37 of the statement of PW-6 is read into then it appears that while giving statement to police PW-6 have stated that, *“at about 4.45p.m. the accused was looking here and there in doubtful condition and had gone towards bathroom, thereafter she came back from bathroom, after some time accused started shouting by saying that her child is missing”*.

24. PW-7 Dr. Manojkumar Keshavran Barai during his evidence have stated that, on given date he was on duty he heard accused shouting that her child was missing thereafter there was search in hospital for her child, after half an hour child was found behind bathroom of ward no.2. During further evidence of PW-7 stated that he made inquiry with mother of child and she said that the child was behind the bathroom and she herself has thrown the child there.

25. During further cross of PW-7 stated that, both child of accused were pre-terms and having less weight and breathing problem. He has also stated that, the child found was referred to casualty without treatment.

26. PW-8 Dr. Ravindra Baliram Devkar during his evidence have

stated that he has conducted postmortem of girl child and has given report Exh.43 as well as has given final cause of death mentioned in Exh.43 as, "*cerebellum compression due to generalized cerebellar edema with intra cerebellum hemorrhage as result of blunt trauma to the head, contributed to by Pulmonary edema with intrapulmonary hemorrhage in a low birth weight infant (unnatural).*" During further evidence said witness has stated that if child was thrown by force such injury are possible. During cross-examination said witness have stated that the provisional cause of death was reserved pending accessory the investigation. He also stated that he has issued death certificate Exh.44.

27. PW-9 Popat Nivrutti Avhad he is investigating officer who during his evidence have stated about investigation done by him, preparing all the documents etc., During cross said witness have stated about collection of CCTV footage in Pen-drive, registration of ADR at KEM hospital Exh.51 and registration of FIR. He has also stated that the report of Kalina is inconclusive which is at Exh.52. During further cross said witness have stated that, he made inquiry with Dr. Shubangi Palkar who told that accused is having suicidal tendency and was admitted in hospital.

28. During the course of argument the learned APP submitted that, there is ample evidence on record which goes to point towards accused as one who had abandoned her girl child by throwing it from window of bathroom, resulting into her death. She has also stated that, from the evidence of PW-2 and 7 it has been clearly brought on record that the accused in their presence has confessed about committed crime, accordingly, same amounts to extra judicial confession which has gone

unchallenged during cross.

29. The learned advocate for accused during course of argument stated that, in spot panchanama there is no mention that window was broken. No documents about training of CCTV to employee. No reason why mother will kill her child. PW-2 and 5 during evidence have stated that CCTV footage was taken in CD. There is no extra judicial confession but same was obtained by putting pressure on the accused. No independent witness examined, provisional cause of death was reserved, first FIR was registered then ADR was registered. Hence, FIR is goes away. There is variance regarding time of incident as per evidence of witnesses.

30. Considering the case of the prosecution and defence taken by the accused it appears that, there is no dispute that the girl child of accused was admitted in hospital and on given date in morning was taken away by the accused or was missing from the cot. Let us take first probability that the girl child was missing from cot. If, at all that is so then either of the witnesses of the prosecution during their evidence would have stated that on seeing of CCTV footage they saw some another lady or male taking away the girl child from the cot. None of them have stated it, on the contrary the witness no.6 who is independent witness not affiliated with the KEM hospital have specifically stated that, while he was near cot of his child, the accused under the suspicion was looking here and there and had gone twice towards the bathroom. He has also stated that after some time accused started shouting that her child was missing. No explanation was brought on record during cross of any of the witnesses of prosecution as to why accused went twice towards the

bathroom. During evidence of PW-2,3,4 and 5 are prosecution witnesses who during evidence have stated that they have seen the CCTV footage and all of them have specifically stated that it is accused who was seen carrying the child along-with her towards bathroom. As such the probability almost child missing goes away.

31. The Pen-drive in which CCTV footage was taken was not displayed in the Court may be because during the evidence of PW-4, the learned advocate for accused submitted that its copy is not visible. It appears that, the copy of footage was taken in the year 2010 and since then neither it was opened nor displayed. Therefore, it appears that due to passing of time its copy was not visible. Accordingly, the CCTV footage could not have been displayed/played in the Court.

32. The evidence of PW-2 to 5 saying that they saw accused going towards bathroom with child, in CCTV footage has totally gone unchallenged during cross-examination. Secondly, PW-2 during evidence have stated that, when he asked loudly accused said that she had thrown her girl child from window of bathroom no.2. Though the learned advocate for the accused submitted that this confession was extracted by using force on the accused, if that is so then the witness no.7 Dr. Manojkumar during evidence have stated that he made inquiry with mother of child and she said that the child was behind the bathroom and she herself have thrown child there. The confession made by accused before Dr. Manojkumar does not appears to be taken by force. If, at all so then it was the accused to cross Dr. Manojkumar PW-7 Sanjay Tiwari PW-2 on the point of extra judicial confession. Not a single suggestion was put forth to them stating that the confession was

obtained by force, coercion etc.. Accordingly, from the mouth of PW-7 and 2 it has been specifically brought on record that the accused has confessed about throwing her girl child behind the bathroom with an intention to abandoned her and kill her.

33. The learned advocate for accused during the course of argument has relied upon judgment in the matter of **Teena Vs State of Kerala** from Criminal Appeal No. 917 of 2020 and submitted that as to how the extra judicial confession is to be made and recorded. I have carefully gone through said judgment, in fact in that matter it has been held that, in case Magistrate act in private capacity or a relative etc., then extra judicial confession can be made to him. In that matter accused was brought by the I.O. himself before the Magistrate and therefore he could not have been acted in a private/personal capacity. In this matter it is not that the confession was made in presence of Magistrate. As such said judgment is of no help to the accused.

34. The learned advocate for accused raised point by saying that, the report received from Kalina is inconclusive and the provisional cause of death was reserved. The report received from Kalina is at Exh.52 which is regarding the blood group and not regarding cause of death, as such same being inconclusive is not vital for the prosecution.

35. So for as the cause of death is concerned. PW-8 Dr. Ravindra during evidence has specifically stated that firstly the provisional cause of death was reserved for the accessory investigation but subsequently cause of death was given in Exh. 43 which is already reproduced above. As such there is no ambiguity in my mind about cause of death of girl

child of the accused. It is only because accused have thrown her girl child and has abandoned her resulting into injury on her head, inside her head causing her death.

36. The learned advocate for accused during course of argument submitted that why the mother will kill her child and have also stated that no intention or motive has been brought on record by prosecution. I do not agree with the argument advanced by learned advocate for accused for the reason that when defence is taken by the accused that the due to poverty and certain incident prior to birth of twins due to which there was fear in the mind of accused, coupled with the fact that the twins were underweight and expenses were required to be made for there survival. Therefore, only the mother took one child and had abandoned her behind the bathroom by throwing her. The intention and motive has been addressed by learned APP by saying that, the accused was in full conscious state of mind while picking her girl child else she could have picked boy child also and abandoned him but deliberately she picked her girl child and thrown her behind the bathroom from the window. The argument advanced by the learned APP appears to be more logical and probable. Accordingly, only intention to kill girl child appears to cut the medical expenses and off brining expenses of a girl child.

37. The learned advocate for accused during course of argument has invited my attention by saying that, there is vast difference amongst the evidence of PW- 2,3 and 6 regarding the time of the incident. All of them have stated different time of incident and therefore as per him they cannot be relied into. From the evidence of PW-2, it appears that,

while he had seen CCTV footage he found that at about 4.30a.m. accused was carrying her child towards bathroom. PW-3 during evidence have stated that he has given CCTV footage for the period from 4.39a.m. to 5.18a.m. Whereas, witness No. 6 during evidence have stated that at 4.00a.m. he had been to the cot of his child and was sitting near his child, then he saw accused going to bathroom at two times.

38. As per the evidence of PW-6 it appears that 4.00a.m. is time when PW-6 come near cot of his child, then he was sitting there and subsequently saw accused going towards to bathroom. Nowere PW-6 is given exact time accused went towards bathroom.

39. PW-3 has only stated about giving of footage of CCTV for a particular period and has not stated exact time when he saw accused going towards bathroom.

40. PW-2 during evidence have stated that at about 4.30a.m. he saw in CCTV footage accused going towards bathroom. At the most from evidence of PW- 2 and 3 their appears minor variance in the time of incident of eight to ten minutes. It is important to note that, the incident took place in the year 2010, whereas the evidence of witnesses was recorded in the year 2015 and 2016. Such minor variance is often hallmark regarding truthfulness of the version of witnesses and goes to show that they are not tutored. As such there is no force in the argument advanced by the learned advocate for accused.

41. Considering the evidence of prosecution witnesses, the

prosecution has completed chain of circumstantial evidence pointing out towards the accused as the sole person who had thrown her daughter from window of bathroom no.2 and therefore it has been specifically brought on record that it is accused who has firstly abandoned her girl child and knowingly that if the girl child is thrown from the window of the bathroom will die has thrown her and therefore has committed murder.

42. Defence is taken that the accused at the relevant time was suffering from postpartum depression and therefore was not in position to understand what she was doing. To establish the defence accused has examined defence witness no.1 Dr. Shubhangi Raghunathh Parkar vide Exh.61. Dr. Shubhangi Raghunathh Parkar during her evidence have stated that on 26/10/2010 [redacted] was admitted for the evaluation with the alleged history of infanticide. She has also stated that she collected history from her husband and in the history it was stated that, she was having sadness of mood and was not having hunger and after birth of twins she did not have sleep for about one and half month and did not get rest properly. During further evidence of DW-1 stated that, after birth of twins accused and her husband were continuously in one hospital to other hospital due to one reason or another. Accused told DW-1 that they were not sure whether the twins will survive or not and were under constant tension and fear. During further evidence of DW-1 stated that she examined [redacted] and have assessed that she was having depressive symptoms. She was not thinking positively and was not in position to talk properly, was having tears in her eyes. Earlier two child of [redacted] accused had died. DW-1 diagnoses that accused was suffering from postpartum disorder and therefore she kept accused away from



her child. On 04/11/2010 DW-1 found that accused was talking less and was not stable therefore she apprehend that accused might have tendency to commit suicide, accordingly she admitted her in ward no.4-A.

43. During further evidence of DW-1 have stated meaning of postpartum disorder and have also stated that the income of the accused and her husband was very less, they were required to go from one hospital to another, they have borrowed money. After birth of twins accused was told that twins were serious, girl child was more serious and her chance of survival was very less, she was asked to wait and watch till next day. She told that accused would have pay of Rs.200 per day per child if kept in ICU. Accordingly, they were under tremendous pressure. Accused thought that her twins will die. Accused was behaving like mental parlays person and was speaking very less and slowly. Her discharge card which is at Exh.62 and letter received from advocate is at advocate Exh.63.

44. During cross of DW-1 she has stated that on 26/10/2010 accused was referred in night. Prior to 26/10/2010 accused never had been to DW-2 for examination or treatment, nor she took any treatment and never consult any psychiatrist. She has also stated that for the period from 09/10/2010 to 25/10/2010 she did not receive any call regarding accused. During further cross of DW-1 stated that it might be possible that after treatment girl child could have survived. She has also stated that after taking history she has given opinion regarding mental status of accused prior to 26/10/2010.

45. Relying on the evidence of Dr. Shubhangi Raghunath Parkar the learned advocate for accused submitted that as at the time of incident accused was suffering from postpartum depression and was not in position to know consequences of the act committed by her therefore he said that instance case squarely falls under the provision of section 84 of IPC.

46. During further argument the learned advocate for accused relied upon judgment in the matter of **Savita Manish Chaudhari Vs The State of Maharashtra and another** from Criminal Application No. 6883 of 2016. I have carefully gone through said judgment in that matter, the Hon'ble High Court used its inherent power under section 482 of Cr.P.C. and have quashed proceeding pending before the Additional Session Judge. In that matter there were affidavits of the husband and family members as well as other witnesses stating about mental illness of the applicant, same were filed at the time of releasing applicant on bail. Thereafter, the applicant was referred to Civil Surgeon and was certified that during the relevant period the applicant was suffering from mental ailment. Relying on all these documents the Hon'ble High Court in the matter of Savita Manish Chaudhari quashed the proceeding.

47. In the instant matter I am not required to decide as to whether the proceeding is to be quashed or not? Secondly, there are no affidavits of the family members as well as other witnesses disclosing about mental illness of the accused. Thirdly accused has not examined her husband and other relatives on this point. As such the judgment cited by learned advocate for accused differs in the fact and circumstance with

the case in hand and therefore is not applicable.

48. Considering the defence raised by the accused about accused being suffering from postpartum depression. Accordingly, it appears that accused has raised ground at the time of commission of offence she was of unsound mind and therefore is governed by section 84 of the IPC.

49. Section 84 of IPC is reproduce as under for the sake of convenience;

“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.”

50. Reliance can be placed upon the judgment in the matter of **Surendera Mishra Vs State of Jharkhand** from Criminal Appeal No. 177 of 2006. Wherein, the Hon'ble Apex Court discussed about provision of section 84 of IPC and the requirement of the law for proving that the matter was under section 84 of IPC.

51. Paragraph seven onwards of said judgment is reproduce as under for the sake convenience;

7. From a plain reading of the aforesaid provision it is evident that an act will not be an offence, if done by a person who, at the time of doing the same by reason of unsoundness of mind, is incapable of knowing the nature of the act, or what he is doing is either wrong or contrary to law. But what is unsoundness of mind? This Court had the occasion to consider this question in the case of Bapu alias

Gujraj Singh v. State of Rajasthan, (2007) 8 SCC 66, in which it has been held as follows:

"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."

8. The scope and ambit of the Section 84 of the Indian Penal Code also came up for consideration before this Court in the case of Hari Singh Gond v. State of Madhya Pradesh, (2008) 16 SCC 109 = AIR 2009 SC 31 in which it has been held as follows:

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

9. 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 behaviour or the behaviour is queer are not sufficient to attract the application of Section 84 of the Indian Penal Code.

10. Next question which needs consideration is as to on whom the onus lies to prove unsoundness of mind. In law, the presumption is that every person is sane to the extent that he knows the natural consequences of his act. The burden of proof in the face of Section 105 of the Evidence Act is on the accused. Though the burden is on the accused but he is not required to prove the same beyond all reasonable doubt, but merely satisfy the preponderance of probabilities. The onus has to be discharged by producing evidence as to the conduct of the accused prior to the offence, his conduct at the time or immediately after the offence with reference to his medical condition by production of medical evidence and other relevant factors. Even if the accused establishes unsoundness of mind, Section 84 of the Indian Penal Code will not come to its rescue, in case it is found that the accused knew that what he was doing was wrong or that it was contrary to law. In order to ascertain that, it is imperative to take into consideration the circumstances and the behaviour preceding, attending and following the crime. Behaviour of an accused pertaining to a desire for concealment of the weapon of offence and conduct to avoid detection of crime go a long way to ascertain as to whether, he knew the consequences of the act done by him. Reference in this connection can be made to a decision of this Court in the case of *T.N. Lakshmaiah v. State of Karnataka*, (2002) 1 SCC 219, in which it has been held as follows:

"9. Under the Evidence Act, the onus of proving any of the exceptions mentioned in the Chapter lies on the accused though the requisite standard of proof is not the same as expected from the prosecution. It is sufficient if an accused is able to bring his case within the ambit of any of the general exceptions by the standard of preponderance of probabilities, as a result of which he may succeed not because that he proves his case to the hilt but because the version given by him casts a doubt on the prosecution case.

10. In *State of M.P. v. Ahmadull*, AIR 1961 SC 998, this Court held that the burden of proof that the mental condition of the accused was, at the crucial point of time, such as is described by the section, lies on the accused who claims the benefit of this exemption vide Section 105 of the Evidence Act [Illustration (a)]. The settled position of law is that every man is presumed to be sane and to possess a sufficient degree of reason to be responsible for his acts unless the contrary is proved. Mere ipse dixit of the accused is not enough for availing of the benefit of the exceptions under Chapter IV.

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."

52. Considering law laid down by Hon'ble Apex Court in the matter of *Surendra Mishra*, now it has to be seen whether the accused lead any

evidence as to her conduct prior to, her conduct at the time or immediately after offence with reference to her medical condition by production of medical evidence etc. The behavior of accused immediately after committing offence is also important to ascertain her mental condition.

53. Accused has only led an offence of Dr. Shubhangi Raghunath Parkar who examined in night on 26/10/2010 whereas the incident as per prosecution took place 26/10/2010 in morning. Dr. Shubhangi Raghunath Parkar during her evidence have stated that she had collected history from the husband of accused and found that due to history given, that the accused was having depressive symptoms and she was not thinking positively, having tears in her eyes, lost her two earlier child and therefore opined that accused was suffering from postmortem disorder. Even, if the evidence of Dr. Shubhangi Raghunath Parkar taken as it is then nothing on record which goes to show what was the mental status of accused prior 26/10/2010 and on 26/10/2010 in morning. Inference is required from the conduct of the accused. Not a single witness for the prosecution during his or her cross-examination was asked about mental status of accused while her children were admitted in the hospital and were taking treatment. Nothing on record which goes to show that prior to 26/10/2016 at any point of time the accused was refer to psychiatrist. This itself reflects towards only fact that the accused was not under any postpartum disorder therefore she was not refereed to a psychiatrist though she was present in hospital along-with her children.

54. DW-1 gave opinion regarding mental status of accused on the

basis of history received. It was for accused to examine her husband on this point to prove her mental status at the time of incident or prior to it. That has not been done. Accordingly, accused failed to lead the best available evidence to prove her mental status at the time of incident.

55. Now coming to the behavior of the accused immediately prior to the incident and after the incident to ascertain whether the accused was having knowledge of what is she doing and what can be its consequences.

56. Evidence of witnesses i.e. PW-2,5,6 and 7 is of immense important. They have stated that immediately after the incident the accused started shouting that her child was missing from the cot. This piece of evidence of all the witness have gone unchallenged during cross-examination. This piece of evidence which has gone unchallenged goes to show mental position about thinking of the accused, that she was in fit state of her mind and when she has abandon her child after throwing her girl child behind the bathroom, she come there and with an intention to blame some other person started shouting that her one child was missing. This itself clearly goes to show that the accused at the relevant time of incident was in fit state of mind, was knowing that what she had done is wrong and therefore with an intention to save herself started shouting that her one child was missing from the cot. Therefore, the accused failed to satisfy by preponderance of probability that at relevant point of time she was suffering from postmortem disorder.

57. Once it is brought on record that the accused failed to establish



that her case is governed by the provision of section 84 of the IPC, then it follows that whatsoever accused did is an offence punishable under law.

58. In view of my aforesaid discussion and considering the evidence of prosecution witnesses as discussed above coupled with the fact that extra judicial confession made by the accused about crime in presence of PW-2 and 7, i have no hesitation in arriving at a conclusion that the prosecution proved beyond all reasonable doubt that it is the accused who knowingly with an intention to abandon and was aware of the fact that if the girl child is thrown from the window of bathroom will die have thrown her girl child from window of bathroom, resulting into her death. As such I answer point no. 2 and 3 in affirmative.

59. Having answered point No. 1 to 3 in affirmative at this juncture I stop to hear the accused on the point of sentence.

**(A. C. DAGA)**  
**Additional Session Judge**  
**City Civil & Sessions Court,**  
**Gr. Mumbai.**

**Date : 20/04/2022.**

60. Heard learned advocate for accused, and accused, on on the point of sentence. The learned advocate for accused submitted that considering the age, mental state of accused, coupled with the fact she has to look after her child, therefore prayed for lenience in sentence.

61. The Learned APP submitted that the case of prosecution is proved

therefore considering the nature of offence maximum punishment be imposed.

62. Considering the nature of offence it does not fall in category of rarest of rare case and therefore death sentence cannot be imposed. After hearing both side at length I think that following sentence will be just and proper in the interest of justice. Accordingly, I pass following order.

**ORDER**

1. Accused \_\_\_\_\_ is convicted under section 235 of Cr.P.C. for an offence punishable under Sections 302 of the Indian Penal Code and is directed to undergo imprisonment for life and to pay fine of Rs.5,000/- in default of payment of fine accused is directed to undergo simple imprisonment for **three** months.
2. Accused \_\_\_\_\_ is also convicted under section 235 of Cr.P.C. for an offence punishable under Sections 317 of the Indian Penal Code and is directed to undergo rigorous imprisonment for **three** years.
3. Pre-conviction detention period is from 23/11/2010 to 30/12/2010 accordingly under section 428 of Cr.P.C set off is given for said period.
4. Under section 427 of Cr.P.C. both sentence to run concurrently.
5. Accused is directed to surrender to her bail bonds.
6. Marked and unmarked muddemal property, being worthless be

destroyed after appeal period is over.

7. Record and proceeding be sent to the Record Department.

**(A. C. DAGA)**  
**Additional Session Judge**  
**City Civil & Sessions Court,**  
**Gr. Mumbai.**

**Date : 20/04/2022.**

1. Dictated on :12,13, 18,19 & 20/04/2022.
2. Transcribed on :13,18,19 & 20/04/2022.
3. Signed on :20/04/2022.

**Note:-** Judgment is dictated and pronounced in open Court and copy of judgment is provided to the accused free of cost. The understanding is given to the accused that in case she is not in agreement with the aforesaid findings expressed in this judgment, she is having an every right to approach to the appellate forum to redress his grievance by filing an appeal.

**(A. C. DAGA)**  
**Additional Session Judge**  
**City Civil & Sessions Court,**  
**Gr. Mumbai.**

Date : 20/04/2022.

'CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER.'

UPLOAD DATE AND TIME  
20/04/2022

NAME OF THE STENOGRAPHER  
MR. Gopal N. Sutar

Name of the Judge(with Court Room no.	Shri A. C. DAGA, Court room no.23.
Date of pronouncement of JUDGMENT/ORDER	20/04/2022
JUDGMENT/ORDER Signed by P.O. on	20/04/2022
JUDGMENT/ORDER uploaded on	20/04/2022