IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

&

HON'BLE SHRI JUSTICE RAJEEV KUMAR SHRIVASTAVA

ON THE 20th OF JULY, 2022

CRIMINAL APPEAL No.704 of 2017

Between:-

TUFAN @ TOFAN

……..APPELLANT

(BY SHRI C.P. SINGH - ADVOCATE)

AND

STATE OF MADHYA PRADESH, THROUGH POLICE STATION INDAR, DISTRICT SHIVPURI (MADHYA PRADESH).

......RESPONDENT

(BY SHRI A.K. NIRANKARI– PUBLIC PROSECUTOR)

Reserved on	:	14th of July, 2022
Delivered on	:	20th of July, 2022

This appeal coming on for final hearing this day, ***Hon'ble Shri***

Justice G.S. Ahluwalia, *passed the following:*

JUDGEMENT

1. This Criminal Appeal has been filed against the judgment and sentence dated 27-4-2017 passed by 3rd Additional Sessions Judge, Shivpuri, in S.T. No 400169 of 2012, and convicted and sentenced the Appellant for the following offences :

Convicted under Section	Sentence
302 of IPC	Life Imprisonment and fine of Rs.1,000/- in default 2 months R.I.
307 of IPC	R.I. for 5 years and fine of Rs.1,000/- in default 2 months R.I.

All sentences shall run concurrently.

2. The facts necessary for disposal of present appeal in short are that on 26-3-2012 at about 16:30, the complainant Daujaram (father of the Appellant) lodged an FIR in an injured condition that he, his wife and Asha were in the house. At about 1:00 P.M., Anguri bai made a complaint that the Appellant always sits outside her house, and he should not sit there. When he asked his son (Appellant) as to why he sits in front of the house of others, then the Appellant became angry and assaulted Phuliabai (mother of Appellant and wife of Complainant) twice by lathi. Blood started oozing out from her head and both ears. When the complainant tried to save her, the Appellant started assaulting the complainant also. Lathi blows were given thrice as a result he has sustained multiple injuries on his head. Lathi blow was given on left thigh as well as on his shoulders. When he tried to catch hold the lathi, then he sustained injuries on his thumb. His daughter-in-law Asha

shouted to come inside the room and accordingly, he and his daughter-in-law locked themselves inside the room. After some time, the Appellant went away. Thereafter, the complainant came out and found that his wife had already expired and her dead body is lying there. Accordingly, the FIR was lodged. The complainant was sent for medical examination. The post-mortem of the dead body was got done. The statements of witnesses were recorded. The Appellant was arrested. The police after completing investigation filed charge sheet against the Appellant for offence under Sections 302,307 of IPC.

3. The Trial Court framed charges under Sections 302,307 of IPC

4. The Appellant abjured his guilt and pleaded not guilty.

5. The prosecution examined Anguribai (P.W.1), Daujaram (P.W.2), Ashabai (P.W.3), Ramprasad (P.W.4), Ishaq Khan (P.W.5), Sultan Khan (P.W.6), Dr. Shambhudayal Barua (P.W.7), Dr. A.P. Singh (P.W.8), Gahlaut Semliya (P.W.9), Devendra Singh Kushwaha (P.W.10) and Yudhishthar Singh (P.W.11).

6. The Appellant did not examine any witness in his defence.

7. The Trial Court by the impugned judgment and sentence convicted the Appellant for the above mentioned offence.

8. Challenging the judgment passed by the Court below, the Appellant has not challenged the findings that the deceased Phuliya bai died a homicidal death, and also not challenged the findings that the prosecution has proved its case beyond reasonable doubt, but submitted that the Appellant was lunatic at the time of incident, and his treatment was also done during the pendency of the Trial, therefore, he is entitled for the benefit of Section 84 of IPC.

9. Per contra, it is submitted by the Counsel for the State that there is nothing on record to suggest that by reason of unsoundness of mind, the Appellant was incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law

10. Heard the learned Counsel for the parties.

11. Although the Counsel for the Appellant has not challenged the fact that the death of Phuliya Bai was homicidal in nature, but in order to consider the defence of unsoundness of mind, this Court is of the considered opinion, that it would be appropriate to consider the nature of injuries sustained by the deceased Phuliya Bai.

12. Dr. Shambhudayal Barua (P.W.7) has conducted the post-mortem of the dead body of Phuliya Bai and found following injuries on her body:

> (i) Lacerated wound with blood at side 6 cm x 1.5 cm x 3 cm tragus of the right ear to back side of lower part of pinna.
> (ii) Lacerated wound 5 cm x ½ cm ½ cm deep to scalp right mastoid part of head
> (iii) Bruise 8 cm x 4 cm red bluish in colour over left temporal region. On dissection of the head at injury side, clotted blood inside subcutaneous tissue and muscle present.
> On dissection of left temporal side, hematoma present, clotted blood size 6 cm x 4 cm linear fracture (10 cm) over left temporal region.
> Compound fracture 6 cm x 1 cm over fight temporal bone, brain material comes from right side compound wound fracture.
> Mode of Death : that death mode is coma due to excessive injury over head, brain (vital organ) and hemorrhage.
> Type : Homicidal. Time since within 30 hours (24 to 30 Hours) of PM.
> Circumstantial evidences should be taken into consideration.
> The Post-mortem report is Ex. P.10.

13. Only one question was put to this witness in cross-examination and it was admitted by this witness, that the injuries could have been sustained due to fall from height.

14. There is nothing on record to suggest that the deceased could have fallen from any height. Thus, it is held that the death of deceased Phuliya Bai was homicidal in nature.

15. Douja (P.W.2) was medically examined by Dr. A.P. Singh (P.W. 8) who found following injuries on his body :

(i) Lacerated wound 6 cm x 2 cm x 1 cm mid parietal region of skull
(ii) Swelling 4 cm x 4 cm left hand
(iii) Swelling 6 cm x 4 cm left shoulder
(iv) Swelling 10 cm x 6 cm left thigh.
The MLC is Ex. P. 11.

16. This witness was cross-examined. In cross-examination, he stated that injuries could have been sustained by reason of fall or due to dashing against the wall.

17. Thus, it is clear that Douja had sustained four injuries.

18. Now the next question for consideration is that whether the Appellant is the author of the incident or not?

19. Anguri Bai (P.W.1) has stated that the Appellant was sitting in front of her house. When She objected to it, then he went back to his house. Thus, this witness turned hostile and did not support the prosecution case regarding making complaint to the father of the Appellant.

20. Doujaram (P.W.2) is the father of the Appellant. He has supported the prosecution case. He stated that his son was mad. He gave a lathi blow to his mother as a result She died. When he tried to intervene in the

matter, then he too was assaulted by the Appellant. He saved himself by locking him inside the room. FIR, Ex. P.2 was lodged by him. Safina form is Ex. P.3. The Lash Panchnama is Ex. P.4. The spot map is Ex. P.5. In cross-examination, he stated that his son is mad for the last 10-12 years and he attacks anybody. He did not show any improvement inspite of treatment. When the Appellant had assaulted his wife, he was in a state of madness. The appellant had assaulted his wife repeatedly. He denied that since, his wife was old, therefore, she died due to fall. He denied that he was fed up with his son, therefore, he wanted to send him to jail.

21. Asha Bai (P.W.3) has also claimed that the Appellant is mad. He had killed the deceased by assaulting by lathi. Dauja was also assaulted by the Appellant. FIR was lodged by her father-in-law. Safina form, Ex. P.3 contains her signature. Lash Panchnama, Ex. P.4 also contains her signature. The spot map is Ex. P.5 and contains her signature. In cross-examination, She also stated that for the last 10-12 years, he was in a state of unsoundness and was in habit of assaulting anybody. On the date of incident also, he was in the state of madness.

22. Ramprasad (P.W. 4) is a witness of seizure of lathi from the possession of the Appellant vide seizure memo Ex. P.7. In cross-examination, he stated that on the date of incident, the Appellant was in a state of madness.

23. Ishaq Khan (P.W.5) and Sultan Khan turned hostile and did not support prosecution case.

24. Gahlaut Semliya (P.W. 9) had arrested the appellant near Kutwara bus stand. A lathi was also seized. The arrest memo is Ex. P. 6. Memorandum is Ex. P.7 ad seizure memo is Ex. P.8. In cross-

examination, he denied that during investigation, he was told that the appellant was mad. However, he admitted that during investigation, he had come to know that for the last 5-6 months, the Appellant was being treated for mental weakness.

25. Although the original prosecution story was that Anguri Bai (P.W.1) had made a complaint that the Appellant was sitting in front of her house and when Doujaram asked the Appellant as to why he was sitting in front of her house, then not only, he assaulted his mother but also assaulted his father/complainant as a result, his mother lost her life. However, Anguri Bai (P.W.1) turned hostile on the question of making complaint to the effect that the Appellant was sitting in front of her house, but admitted that the Appellant was sitting in front of her house and when She objected then he went back to his house. Thus, it is clear that the Appellant was sitting in front of the house of Anguri Bai (P.W.1).

26. Doujaram (P.W.2) and Asha (P.W.3) have stated about the assault made by Appellant on Phuliya bai and Doujaram (P.W.2).

27. From the ordersheets of the Trial Court, it appears that on 8-8-2012, the Appellant was produced before the Court and he also stated that he is unable to engage any lawyer. Accordingly, letter was forwarded to Secretary, Distt. Legal Services Officer, and accordingly, Shri Prem Narayan Bhargav, filed his memorandum on behalf of the Appellant. On 4-9-2012, the Appellant was not produced from Jail. It was also mentioned that an application was made to the remand magistrate for sending the Appellant for his mental treatment and accordingly by order dated 2-4-2012, he was sent to Central Jail, Gwalior. On 8-8-2012, the Appellant was produced and on that date, his

mental condition was good. As the Appellant was not produced from Central Jail Gwalior, therefore, the Court below directed for submitting the report regarding mental condition of the Appellant. Thereafter, on 21-9-2012, a report was submitted that the Appellant is suffering from psychosis and accordingly the trial was stayed. On 3-9-2013, a report was submitted that the Appellant has improved and he is fit to enter into defence. The Appellant was also produced before the Trial Court. Trial Court also verified by asking questions to the Appellant and found that the Appellant is fit to enter into defence and accordingly, charges were framed.

28. The Appellant did not examine any witness in his defence and also did not produce any document to show that even before the date of incident, his treatment was going on.

29. It is submitted by the Counsel of the Appellant that since, Doujaram (P.W.2), Asha (P.W.3) and Ram Prasad (P.W.4) have specifically stated that the treatment of the Appellant was already going on and on the date of incident, he was mentally sick, coupled with the fact, that the Trial remained suspended for one year, it is clear that the Appellant was of unsound mind at the time of incident.

30. Considered the submissions made by the Counsel for the parties.

31. Before considering the submissions made by the Counsel for the Appellant, this Court thinks it apposite to consider the law governing the defence of unsoundness.

32. The Supreme Court in the case of **Mohd. Anwar v. State (NCT of Delhi),** reported in **(2020) 7 SCC 391** has held as under :

> **17.** Mere production of photocopy of an OPD card and statement of mother on affidavit have little, if any, evidentiary

value. In order to successfully claim defence of mental unsoundness under Section 84 IPC, the accused must show by preponderance of probabilities that he/she suffered from a serious-enough mental disease or infirmity which would affect the individual's ability to distinguish right from wrong. Further, it must be established that the accused was afflicted by such disability particularly at the time of the crime and that but for such impairment, the crime would not have been committed. The reasons given by the High Court for disbelieving these defences are thus well reasoned and unimpeachable.

33. The Supreme Court in the case of **Hari Singh Gond Vs. State of M.P.** reported in **(2008) 16 SCC 109** has held as under :

10. "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 I.P.C.. 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. The burden of proof rests on an accused to prove his insanity, which arises by virtue of Section 105 of the Evidence Act, 1872 (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 Chhaganbhai Thakkar* 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 I.P.C., 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. 1, p. 105; 1 *Hale's Pleas of the Crown* 34). A person made *non compos mentis* by illness is excused in criminal cases from such acts as are committed while under the influence of this 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*, 12th 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 facit reum 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 (*furiosi 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*, Vol. II, p. 166 has observed that if a person cuts off the head of a sleeping man because it would be great fun to see him looking for it when he woke up, would obviously be a case where the perpetrator of the act would be incapable of knowing the physical effects of his act. The law recognises 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 *Sheralli Wali Mohammed* v. *State of Maharashtra* (1973) 4 SCC 79 held that: (SCC p. 79)

'… The mere fact that no motive has been proved why the accused murdered his wife and children or the fact that he made no attempt to run away when the door was broke open, would not indicate that he was insane or that he did not have necessary mens rea for the commission of 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 *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 case, (1843) 4 St Tr NS 847 (HL)*. 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.

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."*

34. In the case of **Bapu Vs. State of Rajasthan** reported in **(2007) 8 SCC 66**, the Supreme Court has held as under :

> **"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. 1, p. 105; 1 *Hale's Pleas of the Crown* 34). A person made non compos mentis by illness is excused in criminal cases from such acts as are committed while under the influence of this 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, 12th Edn., Vol. 1, p. 103; Hale PC 31). Madness is permanent. Lunacy and madness are spoken of as acquired insanity, and idiocy as natural

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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*, Vol. II, p. 166 has observed that if a person cuts off the head of a sleeping man because it would be great fun to see him looking for it when he woke up, would obviously be a case where the perpetrator of the act would be incapable of knowing the physical effects of his act. The law recognises 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 *Sheralli Wali Mohd.* v. *State of Maharashtra (1973) 4 SCC 79* held that: (SCC p. 79)

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would not indicate that he was insane or that he did not have the necessary mens rea for the commission of 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 those 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 (HL)*. 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.

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."

35. In the case of **Sudhakaran Vs. State of Kerala** reported in **AIR**

2011 SC 265, the Supreme Court has held as under :

> **"19**. It is also a settled proposition of law that the crucial point of time for ascertaining the existence of circumstances bringing the case within the purview of Section 84 is the time when the offence is committed. We may notice here the observations made by this Court in the case of Ratan Lal v. State of Madhya Pradesh (1970 (3) SCC 533. In Paragraph 2 of the aforesaid judgment, it is held as follows:-
> "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."

36. The Supreme Court in the case of **Surendra Mishra Vs. State of Jharkhand** reported in **AIR 2011 SC 627** has held as under :

> **"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 : (2007 AIR SCW 3808), 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, of 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 I.P.C.. 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 : (AIR 2001 SC 3828), 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."

37. The Supreme Court in the case of **T.N. Lakshmaiah v. State of Karnataka,** reported in **(2002) 1 SCC 219** has held as under :

7. Section 84 of the Penal Code, 1860 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 that what he is doing is either wrong or contrary to law. The section forms part of Chapter IV dealing with general exceptions. The importance of the Chapter was highlighted by Lord Macaulay before the House of Commons at the time of introduction of the Bill as under:

"This Chapter has been framed in order to obviate the necessity of repeating in every penal clause a considerable number of limitations. Some limitations relate only to a single provision, or to a very small class of provisions…. Every such exception evidently ought to be appended to the rule which it is intended to modify. But there are other exceptions which are common to all the penal clauses of the Code, or to a greater variety of clauses dispersed over many chapters. It would obviously be inconvenient to repeat these exceptions several times in every page. We have, therefore, placed them in a separate chapter and, we have provided that every definition of an offence, every penal provision, and every illustration of a definition or penal provision, shall be construed subject to the provisions contained in that chapter."

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. 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. *Ahmadulla* 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 Penal Code, 1860 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. Dealing with the plea of insanity, the scope of Section 84 I.P.C., the attending circumstances and the burden of proof, this Court in *Dahyabhai Chhaganbhai Thakkar* v. *State of Gujarat* held: (AIR pp. 1566-67, para 5)

"It is fundamental principle of criminal jurisprudence that an accused is presumed to be innocent and, therefore, the burden lies on the prosecution to prove the guilt of the accused beyond reasonable doubt. The prosecution, therefore, in a case of homicide shall prove beyond reasonable doubt that the accused caused death with the requisite intention described in Section 299 of the Penal Code, 1860. This general burden never shifts and it always rests on the prosecution. But, Section 84 of the Penal Code, 1860 provides that nothing is an offence if the accused at the time of doing that act, by reason of unsoundness

of mind was incapable of knowing the nature of his act or what he was doing was either wrong or contrary to law. This being an exception, under Section 105 of the Evidence Act the burden of proving the existence of circumstances bringing the case within the said exception lies on the accused, and the court shall presume the absence of such circumstances. Under Section 105 of the Evidence Act, read with the definition of 'shall presume' in Section 4 thereof, the court shall regard the absence of such circumstances as proved unless, after considering the matters before it, it believes that the said circumstances existed or their existence was so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that they did exist. To put it in other words, the accused will have to rebut the presumption that such circumstances did not exist, by placing material before the court sufficient to make it consider the existence of the said circumstances so probable that a prudent man would act upon them. The accused has to satisfy the standard of a 'prudent man'. If the material placed before the court, such as oral and documentary evidence, presumptions, admissions or even the prosecution evidence, satisfies the test of 'prudent man' the accused will have discharged his burden. The evidence so placed may not be sufficient to discharge the burden under Section 105 of the Evidence Act, but it may raise a reasonable doubt in the mind of a Judge as regards one or other of the necessary ingredients of the offence itself. It may, for instance, raise a reasonable doubt in the mind of the Judge whether the accused had the requisite intention laid down in Section 299 of the Penal Code, 1860. If the Judge has such reasonable doubt, he has to acquit the accused, for in that event the prosecution will have failed to prove conclusively the guilt of the accused. There is no conflict between the general burden, which is always on the prosecution and which never shifts, and the special burden that rests on the accused to make out his defence of insanity."

12. After referring to various textbooks and the earlier pronouncements of this Court, it was further held: (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 Penal Code, 1860: the accused may rebut it by placing before the court all the relevant evidence — oral, documentary or circumstantial, but the burden of proof upon him is no higher than that rests upon a party to civil proceedings. (*3*) Even if the accused was not able to establish conclusively that he was insane at the time he committed the offence, the evidence placed before the court by the accused or by the prosecution may raise a reasonable doubt in the mind of the court as regards one or more of the ingredients of the offence, including mens rea of the accused and in that case the court would be entitled to acquit the accused on the ground that the general burden of proof resting on the prosecution was not discharged."
>
> **13.** To the same effect is the judgment in *Bhikari* v. *State of U.P.*

38. Section 84 lays down the legal test of responsibility in cases of crime committed by a person with mental illness. "Unsoundness of mind" has not been defined in IPC. Even insanity is not exempted under Section 84 of IPC. Every person who is mentally ill is not ipso facto exempted from criminal responsibility. There is a distinction between legal insanity and medical insanity. In order to take benefit of Section 84 of IPC, the accused must prove legal insanity, and not medical insanity. Any person, who is suffering from any kind of mental weakness is called "medical insanity," however "legal insanity" means, person suffering from mental illness should also have a loss of reasoning power. Furthermore, the legal insanity must be at the time of incident. In other

words, it can be said that in order to attract legal insanity, a person should be incapable of knowing the nature of the act, or he is doing what is either wrong or either contrary to law. Thus, mere abnormality of mind or compulsive behavior is not sufficient to take benefit of Section 84 of IPC.

39. On 21-9-2012, it was reported that the Appellant is suffering from Psychosis. However, when the Appellant was produced before the Trial Court for the first time, no abnormality in his behavior was noticed by the Trial Court. This fact is also mentioned in order dated 4-9-2012. The Appellant was again produced before the Trial Court on 3-9-2013, and the Appellant was found fit for entering into his defence. Thus, whenever, the Appellant was produced before the Trial Court, no abnormality was noticed by the Court. Thus, it is clear that the effect of psychosis was not continuous. Under these circumstances, the medical documents would have thrown much light in the matter. But the Appellant did not produce even a single document to show that he was being treated for mental illness.

40. In the present case, the Appellant had given repeated blows on the head of his mother Phuliya Bai and had also assaulted his father/complainant repeatedly on his head, leg, shoulder etc. Phuliya Bai lost her control. The Appellant was arrested from the bus stand with lathi. At the time of arrest, the arresting officer, did not notice any mental illness. Even the Trial Court did not notice any mental illness on the date when he was produced for the first time. Even assuming that he was suffering from psychosis, then it is clear that it was not in continuity but was in intervals. Therefore, the moot question is that whether the

Appellant was suffering from unsoundness of mind at the time of incident or not?

41. The incident took place on 26-3-2010 at 1:00 P.M. The Appellant was arrested on 27-3-2012 at 17:30 i.e., on the next day. No mental unsoundness was noticed by Gahlaut Semliya (P.W. 9),who had arrested the Appellant. Furthermore, the Appellant was arrested on the next day, therefore, it is clear that after committing the offence, he absconded. Thus, it is clear that he was able to understand the gravity of his act. Therefore, it cannot be said that the Appellant was of unsound mind at the time of incident.

42. Thus, the Appellant is not entitled for the benefit of Section 84 of IPC.

43. Under these circumstances, this Court is of the considered opinion, that the prosecution has succeeded in establishing the guilt of the Appellant beyond reasonable doubt. Accordingly, his conviction under Section 302 and 307 of IPC is upheld.

44. So far as the question of sentence is concerned, the minimum sentence is Life Imprisonment. Therefore, the sentence awarded by the Trial Court doesnot call for any interference.

45. Consequently, the judgment and sentence dated 27-4-2017 passed by 3rd Additional Sessions Judge, Shivpuri, in S.T. No.400169 of 2012 is hereby affirmed.

46. The Appellant is in jail and shall undergo the remaining jail sentence.

47. Let a copy of this Judgment be immediately provided to the Appellant free of cost.

48. The record of the Trial Court be sent back along with copy of this Judgment for necessary information and compliance.

49. The Appeal fails and is hereby **Dismissed.**

(G.S. AHLUWALIA) **JUDGE**	**(RAJEEV KUMAR SHRIVASTAVA)** **JUDGE**