

GAHC010177452019



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CrI.A./376/2019

ZAKIR HUSSAIN
S/O- ALI HUSSAIN, R/O- VILL.- CHALBANDA (BOROKHANDA), P.S.
BILASIPARA, DIST.- DHUBRI.

VERSUS

THE STATE OF ASSAM AND ANR
REP. BY THE P.P., ASSAM.

2:ANOWAR ALI
S/O- LATE UMOR ALI
R/O- VILL.- JOGIRMAHAL
TIAPARA
P.S. BILASIPARA
DIST.- DHUBRI

Advocate for the Petitioner : MR H R A CHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM
HONOURABLE MRS. JUSTICE MALASRI NANDI

Date of hearing : **19.05.2022.**

Date of judgment : **29.06.2022.**

JUDGMENT & ORDER (CAV)

(Suman Shyam, J)

Heard Mr. A. Ahmed, learned counsel appearing for the appellant. We have also heard Ms. B. Bhuyan, learned Additional Public Prosecutor, Assam, appearing for the State.

2. By the judgment dated 27.06.2019/01.07.2019 passed by the learned Additional Sessions Judge, Bilasipara in connection with Sessions Case No.66/2014 the sole appellant in this case was convicted under Section 302 of the Indian Penal Code (IPC) for committing the murder of his wife and sentenced to undergo rigorous imprisonment for life and also to pay fine of Rs.5000/- with default stipulation.

3. The prosecution case, in a nutshell, is that on 13.12.2012 the appellant had hacked his wife Manjuara Bibi on her neck with a dao and thereafter, he tried to commit suicide. On 14.12.2012, Md. Anowar Ali i.e. the father of the victim had lodged an ejahar before the Officer-in-Charge, Bilasipara Police Station reporting that the appellant, who had got married to his deceased daughter, about 10 years back, used to harass and torture her by demanding money. On the previous day i.e. on 13.12.2012 the accused person had killed his daughter by cutting her neck. In the ejahar dated 14.12.2012 four persons including the appellant herein were projected as accused persons.

4. Upon receipt of the ejahar, Bilasipara P.S. Case No.841/2012 was registered under Sections 498(A)/302/34 of the IPC. The police had carried out investigation in the matter and on completion of investigation, submitted charge-sheet against the

appellant/accused under Section 302/309 of the IPC, based on which, charge had been framed against the accused/appellant. But since the accused had pleaded innocence and claimed to be tried, the matter went up for trial.

5. The case of the prosecution is entirely based on circumstantial evidence. In order to prove the charge brought against the accused, the prosecution had examined as many as 18 witnesses including the doctor who had conducted the post-mortem examination on the dead body of the victim (PW-11) as well as the two Investigating Officers (IOs) who had conducted investigation in connection with the aforesaid case and submitted charge-sheet, as PWs-13 and 18 respectively. The confessional statement of the accused was also recorded under Section 164 Cr.P.C. wherein, he had admitted of having killed his wife by hacking her with a dao. Taking note of the evidence brought on record as well as the confessional statement of the accused, the learned trial court had convicted him for committing the offence under Section 302 of the IPC. The accused/appellant was, however, acquitted in respect of the charge framed under Section 309 of the IPC.

6. By referring to the impugned judgment passed by the learned Additional Sessions Judge, Bilasipara, Mr. Ahmed, learned counsel for the appellant has argued that save and except the confessional statement of the accused there is nothing on record to establish the charge brought against the appellant under section 302 of the IPC. According to Mr. Ahmed, even the confessional statement was not recorded by following the due procedure of law. Moreover, submits Mr. Ahmed, the learned Magistrate recording the confessional statement of the accused had also failed to

enquire about the injuries seen in the body of the accused and has also failed to offer the services of Legal Aid Counsel to the accused as a result of which, the judicial confession stood vitiated. By referring to the evidence adduced by the appellant in the form of DWs-1 and 2 Mr. Ahmed has argued that it is established from the materials available on record that at the time of the incident the accused was suffering from some form of psychological disorder and therefore, he was incapable of understanding the consequences of his action. Under the circumstances, even if it is assumed that the appellant is responsible for killing his wife, even then, this is a case which would come within the fold of Section 84 of the IPC as a result of which the appellant would be entitled to an order of acquittal on the ground of unsoundness of mind. In support of his above arguments, Mr. Ahmed has relied upon the following decisions :-

- 1) **Shrikant Anandrao Bhosale vs. State of Maharashtra [(2002)7 SCC 748]**
- 2) **State of Assam vs. Rabindra Nath Guha [1981 Cri LJ 216]**
- 3) **State of Assam vs. Anupam Das [2007 (3) GLT 697]**
- 4) **Shivappa vs. State of Karnataka [(1995) 2 SCC 76]**
- 5) **Sankhi Chiba and another vs. State of Arunachal Pradesh [2008 (1) GLT 388].**

7. Responding to the above arguments, the learned Additional Public Prosecutor, Assam Ms. B. Bhuyan has argued that there is reliable evidence available on record which goes to show that the incident took place at the dead of night inside the house of the accused wherein, he was living with his deceased wife and the minor child. Soon after the incident, the appellant was found in an injured condition whereafter, the police had taken him to the hospital for treatment. The

appellant has admitted that he tried to commit suicide after hacking his wife. There is no explanation from the accused as to the circumstances under which his wife had died. As such, it cannot be said that the prosecution had failed to establish the charge brought against the appellant beyond reasonable doubt.

8. In so far as the confessional statement of the accused is concerned, Ms. Bhuyan has argued that from the evidence of the learned Magistrate (PW-16), who had recorded the confessional statement of the appellant/accused, it is apparent that all procedural safeguards had been provided to the accused before recording his statement. Further, the version of the accused in his statement recorded under Section 164 Cr.P.C. matches the other evidence available on record which undeniably goes to show that it is none other than the accused who had committed the murder of his wife. As such, submits Ms. Bhuyan, the learned trial court has rightly convicted the accused/appellant and sentenced him as aforesaid. Therefore, interference with the impugned judgment is not called for.

9. We have considered the submissions made by the learned counsel for both sides and have also gone through the materials available on record. On examination of the record we find that out of the 18 witnesses examined by the prosecution, as many as 5 of them, including the informant/father of the victim (PW-1), the mother of the victim (PW-2) and her brother (PW-14) were declared as hostile witnesses during trial.

10. PW-1, Md. Anowar Ali i.e. the informant in this case, is the father of the victim and he has deposed that about 12 years back, his daughter had got married to the

appellant. On the date of the occurrence, early in the morning, he got the information that his daughter had been killed. Immediately, he had rushed to the house of his daughter and saw the dead body inside the room. He had also seen cut injuries on the head of his son-in-law. On the same day he had lodged the ejahar before the Bilasipara Police Station against the accused as well as his family members. This witness has stated that he suspected the accused and his family members were behind the murder of his daughter. At this stage, the witness was declared hostile. During his cross-examination by the prosecution, PW-1 has denied of having stated before the I.O. that the accused used to torture his wife for want of dowry and that since Rs.10,000/- was not given to the accused as dowry, he had tortured his daughter physically.

11. PW-2, Mst. Sahida Bibi is the mother of the victim. She had only stated that on the date of the incident she had heard about the death of her daughter and then immediately went there and saw the dead body. Thereafter, her husband had lodged an ejahar suspecting that the accused persons might be behind the murder. This witness was then declared hostile. In her cross-examination by the defense side PW-2 has stated that the ejahar was lodged out of suspicion and that when she went to the house of her daughter, she had seen injury on the body of her son-in-law.

12. PW-3, Mst. Jahida Bibi has deposed that on the date of the occurrence she had heard that the daughter of the complainant had been killed at her matrimonial home. She went to the place of occurrence and saw the daughter of the complainant lying dead. She had seen deep cut injury on the neck of the deceased

but did not know who had caused death to her. PW-3 has also stated that the police did not record her statement. In her cross-examination, PW-3 has stated that she is one of the neighbours of the accused but she did not hear about any dispute or quarrel between the accused and the deceased and that they were living a happy and peaceful conjugal life.

13. PW-4, Mosim Ali has stated in his evidence that having heard that the wife of the accused was killed, he went to the place of occurrence and saw the victim was dead. He had seen two cut injuries on the body of the deceased and had also seen some injuries on the head of the accused. Executive Magistrate was present at the place of occurrence. The body was sent immediately for post-mortem examination. The inquest report Ext-2 bears his signature.

14. PW-5, Ruhul Amin Ahmed is a seizure witness and he has deposed that he had put his signature in Ext-3 seizure-list by means of which, the police had seized certain materials. This witness has also deposed that he knows the accused but did not know anything about the incident.

15. PW-6, Mubarak Ali is another inquest witness and he had identified his signature Ext-2(2) in the inquest report. Md. Aktar Ali, PW-7, is another witness who did not see the incident but has deposed that his house is situated about 1½ Kms. away from the house of the accused. He knew nothing about the incident. The deceased was his niece. This witness was also declared hostile and the prosecution had cross-examined him with the permission of the court wherein he had denied having stated before the police that on the night of the incident the appellant had killed his wife

Manjuara by pressing her neck.

16. PW-8, Md. Sultan Ali is the grandfather of the deceased. He has deposed that on the date of the incident, after he had come back having offered 'Namaj', the complainant Anowar Ali had informed him that his daughter had died. Later on, he went to the place of occurrence and saw the dead body. At that time, he did not find the accused there. In his cross-examination, PW-8 has stated that the accused and the deceased had three children who are presently residing with their father. He did not see any quarrel between his grand-daughter and her husband. He did not know how the deceased had died.

17. PW-9, Abu Hussain is another seizure witness of Ext-3 and Ext-4 seizure-lists. However, this witness has stated that police had obtained his signature in blank paper.

18. PW-10, Jahangir Ahmed is also a seizure witness of seizure-list Ext-3. However, there is nothing incriminating in his evidence.

19. PW-11, Dr. Harun Al Rasid was the Senior Medical & Health Officer on duty at the Dhubri Civil Hospital on 14.12.2012 when the dead body of the victim was brought there for conducting post-mortem examination. The doctor has proved the post-mortem report Ext-5 and has also deposed as regards the injuries found on the dead body which are as follows :-

“External appearance :-

An average built female dead body is examined. Rigor mortis is present. Injury incised theopul (sic) cut injury neck, involving all the neck muscles, larynx,

nacheal & vatefow (3rd curricule level) from left side of the neck. Edges- Clean, blood clot is present.

Cranium and spinal canal :-

- i) Scalp & Skull : as discussed.
- ii) Membrane :- Healthy.
- iii) Brain and spinal cord : Healthy.

Thorax :-

- 1. Walls ribs and cartilage : Healthy.
- 2. Pleurae : Healthy.
- i) Larynx and trachere : Larynx, trachea is cut theopul
- ii) Right lung : Healthy.
- iv) Left lung : Healthy.
- v) Pericardium : Healthy.
- vi) Heart : Healthy.
- vii) Vessels : Healthy.

Abdomen :-

- 1. Walls : Healthy.
- 2. Peritonum : Healthy.
- 3. Mouth Pharynx, oesophagus : Healthy.
- 4. Stomach and its contents : Healthy and contains partly digested food.
- 5. Small intestine and its contents : Healthy and contains semisolid digested matters.
- 6. Large intestine and its contents : healthy and contains faecal matters.
- 7. Liver : Healthy.

8. *Spleen : Healthy.*
9. *Kidneys : Healthy.*
10. *Bladder : Healthy.*
11. *Organs of generation, external and internal : Healthy.*

The changes described are anti-mortem in nature. Healthy."

According to the doctor, the cause of death is due to haemorrhage and shock as a result of cut injury sustained by the deceased which was anti-mortem in nature.

20. PW-12, Sri Dwipen Kalita was the Sub-Inspector on duty at the Nayahat Police Outpost under Bilasipara Police Station on 14.12.2012 when the information regarding the death of Manjuara Bibi was received over telephone. PW-12 has stated that on receipt of such information he went to the house of the appellant and found the dead body of the deceased. He got to know that after committing murder of his wife the appellant had also attempted to commit suicide outside his house near the National Highway. He had recovered the dead body of the deceased as well as injured accused/appellant Zakir Hussain, seized the dao from the possession of the accused by means of which the deceased was murdered. Thereafter, he had sent the dead body of the deceased to the Dhubri Civil Hospital for post-mortem examination and the appellant was sent to Dhubri Hospital for treatment. Later on, the Officer-in-Charge had registered Bilasipara P.S. Case No.841/2012 under Sections 498(A)/302/34 IPC and endorsed the investigation to him. He had recorded the statements of witnesses, got the confessional statement of the accused recorded under Section 164 Cr.P.C. and had also prepared sketch map of the place of occurrence. PW-12 has further deposed that he had seized one pair of sandal, one

towel, one bed cover and two pillows from the place of occurrence vide seizure-lists Exts-3 and 4 which bears his signature.

21. In his cross-examination, PW-12 has confirmed that the ejahar was lodged on 14.12.2012 and that the Executive Magistrate had conducted inquest on the dead body in his presence. This witness has, however, denied the suggestion that he did not seize the 'dao' from the possession of the accused and that is why he did not mention about the 'dao' in the seizure list. But the PW-13 has admitted that the seized materials were not sent to FSL for examination. He had also not collected the medical fitness certificate of the accused from the hospital nor did he record the statements of the people who lived nearby the place of occurrence.

22. PW-13, Dr. N. M. Ahmed had rendered medical treatment to the accused on 14.12.2012 while he was working as SMO in the Dhubri Civil Hospital. According to PW-13, on examining the accused the following injuries were noticed :-

“i. *Deglobing injury over scalp, forehead to mid vertex, size was 10 cm X 5 cm X scalp deep.*

ii. *Abrasion over right chest on its back.* “

This witness has stated that the accused was hospitalized from 14.12.2012 to 21.12.2012 and in his opinion, the injury No.1 was grievous whereas the injury No.2 was a simple injury. Both the injuries were caused by blunt object.

23. PW-14, Abu Sayed Ali is the brother of the deceased. He came to know about the incident from his father i.e. the informant in this case. PW-15, Rahidul Islam had also heard about the incident from someone else. Both these witnesses were

declared hostile and were cross-examined by the prosecution. However, nothing significant has come out from the evidence of PWs-14 and 15.

24. PW-16, Imdad Ahmed was the Magistrate on duty on 21.12.2021 on which date, the confessional statement of the accused was recorded by him under Section 164 Cr.P.C. on being produced by the police. PW-16 has proved Ext-8 as the confessional statement of the accused recorded by him and has also deposed that Ext-8(A) was the certificate bearing his signature. According to PW-16, the accused was produced before him at 2:00 p.m. on 21.12.2021 for the purpose of recording his confessional statement. He had allowed the accused time till 4:30 p.m. for reflection and during that period the accused was placed in his official chamber which was not accessible to the police. After 4:30 p.m. he had recorded the statement of the accused after explaining him the mandatory provisions of law and also on being satisfied that the accused was ready to record his confessional statement voluntarily. PW-16 has also confirmed that all procedural formalities prescribed under Section 164 Cr.P.C. had been complied with before recording the confessional statement of the accused. In his cross-examination PW-16 has stated that the accused was produced before him from the Dhubri Civil Hospital but he did not obtain any certificate of the doctors to find out as to whether the accused was mentally fit or not so as to record his confessional statement. He has further stated that the office peon was continuously with the accused during the period of reflection and he was satisfied that the accused understood everything and stated before him in his own "Goalparia dialect".

25. PW-17 is Sri Udayaditya Gogoi, who is the inquest Magistrate. He has proved the inquest report Ext-2 by identifying his signature therein. In his deposition PW-17 has stated that he had conducted the inquest at the place of occurrence and at that time he had found the dead body lying on the bed. During inquest he had found deep cut injury on the neck of the deceased with blood stains. No other injury was found on the remaining part of the body of the deceased.

26. PW-18, Sri Samsul Ali was the 2nd Investigating Officer who had conducted investigation in connection with Bilasipara P.S. Case No.841/2012 . He took over the investigation from PW-12 after the transfer of the former and thereafter, submitted charge-sheet on completion of investigation. He had also recorded the statements of witnesses. In his cross-examination, PW-18 has stated that he took charge of the investigation on 21.01.2013. He did not visit the place of occurrence but had recorded the statements of seizure witnesses Rahidul Islam, Abu Hussain, Ruhul Amin Ahmed, Ibrahim Ali and Zahangir Ahmed as well as the inquest witness Mobarak Hussain.

27. After recording the evidence of the prosecution witnesses, the statement of the accused was recorded under Section 313 of the Cr.P.C. wherein he had admitted that at the time of the incident he was present at home but could not say as to how his wife had sustained injuries. The accused had stated that he was present inside the room where the murder of his wife took place but he could not say as to who had killed his wife. The accused has also admitted that he had recorded his confessional statement before the Magistrate and that the Magistrate had also

apprised him of certain facts before putting the questions which he could not remember. The accused has also stated that he had made a statement before the Magistrate that on the day of the incident he, his wife Manjuara and daughter Afsana were sleeping in the house after dinner. The defense side, however, did not adduce any evidence.

28. Taking note of the evidence brought on record as well as the confessional statement of the accused (Ext-8) the learned trial Court has held that the accused was guilty of committing the murder of his wife and accordingly, convicted convicting him under Section 302 of the IPC. The learned trial Court had, however, acquitted the accused/appellant in respect of the charge framed under Section 309 of the IPC.

29. It would be pertinent to note here-in that the appellant did not take the plea of insanity before the trial court. However, during the pendency of the appeal before this Court, the appellant as applicant, had filed a separate application being I.A. (Crl.) No.809/2019 arising out of Crl. Appeal No.376/2019 with a prayer to suspend the jail sentence, release him on bail and also to direct the learned trial court to verify the mental condition of the appellant in terms of section 391 CrPC. In support of his above prayer the applicant/ appellant had relied upon a medical certificate dated 01.08.2010 issued by Dr. B. C. Nath as well as admission slip of Neuro OPD department of Rahaman Hospital dated 05-12-2013 to show that he was admitted in the said hospital by his uncle in the year 2013 due to neurological problems.

30. It appears that taking note of the above plea of the applicant, this Court had

passed order dated 04.10.2019 calling for a report from the Superintendent of District Jail, Dhubri indicating the health status and mental condition of the applicant. A direction was also issued to produce the applicant/appellant before a Board of Doctors at the Dhubri Civil Hospital for examination of his physical and mental condition.

31. Based on the aforesaid order of this Court, a three member Medical Board was constituted and the applicant was examined by the Medical Board headed by the Superintendent of Dhubri Civil Hospital. The report dated 25.10.2019 submitted by the Medical Board goes to show that the applicant was a known patient of "Schizophrenia" and was taking medicine which includes anti-psychiatric drugs. The aforesaid medical report prompted this Court to make further enquiry as to the mental condition of the applicant Accordingly, by order dated 02-09-2021 passed in I.A. (Crl.) 809 of 2019, this court, by invoking jurisdiction under sections 311 r/w 391 of the CrPC had directed the learned trial court to record evidence of the accused/ appellant and thereafter transmit the records, by keeping this appeal pending before this court. In view of the order dated 02-09-2021, the appellant had adduced evidence of two witnesses as DWs 1 and 2. Thereafter, the evidence of the two witnesses i.e. Dr. Bankim Ch. Nath (DW-1) and Mobarak Hussain (DW-2) were transmitted by the trial court.

32. From the evidence adduced by the accused/ appellant, it appears that DW-1, Dr. Bankim Ch. Nath, has deposed that he had examined the appellant about 10 years back and had prescribed medicines vide prescription dated 01.08.2010. Ext-A

was the medical prescription dated 01.08.2010 which bears his signature. This witness has deposed that the diagnosis was of a provisional nature of psychological disorder as he had mentioned about symptoms of excessive CM (i.e. excessive compulsive manner) and unreasonable thoughts and fears.

33. DW-2, Mobarak Hussain is the uncle of the appellant and he has deposed that the appellant was a mentally unstable person. He could not understand whatever they said nor could he comprehend the matter. Around the year 2010, the appellant had visited Dr. B. Nath of Bilasipara for treatment and was thereafter, hospitalized at the Rahman Hospital at Guwahati. DW-2 has also stated that he had himself taken the appellant to the Rahman Hospital. In his cross-examination DW-2 has stated that he had served in the Army and had superannuated in the year 2003. The house of the appellant was situated near his house. The prosecution has not lead any evidence in rebuttal.

34. From the evidence of PW-11 it is firmly established that the deceased had died a homicidal death due to cut injuries suffered by her on the neck. The date and time of the incident is also well established from the evidence of the witnesses examined by the prosecution. As noted above, there is no eye-witness to the occurrence and considering the time of the incident and the fact that at the time of the incident, the appellant was living at his house along with his wife and minor daughter, the possibility of having any eye witness to the occurrence was practically nil. From the evidence of PWs-3, 4, 12 and 17 it is established beyond doubt that the occurrence took place inside the house of the appellant and the deceased and the dead body

was also found lying on the bed. There is also cogent evidence available on record which indicates that soon after the incident the appellant had gone out of the house and later on, he was seen to have injuries on his head.

35. In his statement recorded under Section 164 of the Cr.P.C. (Ext-8) the appellant has narrated the circumstances under which the incident had occurred. As per Ext-8 the appellant had stated before the Magistrate that on the date of occurrence, his wife Manjuara and daughter Afsana and himself were sleeping after taking meal. At about 3 O'clock he felt distressed. Various unpleasant thoughts came to his mind. His wife (deceased) had not been talking to him properly since 2/3 months and their relationship was also not as good as it used to be. He got up at 3:00 a.m. but could not sleep that night. He felt a sense of hatred towards his wife and got enraged. Then he picked up a 'dao' found inside the house and prepared himself to assault his wife. He had hacked his wife twice on the neck with the 'dao' and she died instantly. His infant daughter was asleep. His wife had shouted as soon as he had hacked her and having heard the scream of his wife, the wife of his neighbour Nazrul came running, but by that time he had fled the place of occurrence as a result of which, Nazrul's wife did not see him. He had thrown the dao by the side of the road behind Barkanda School. Later on, having found him lying unconscious on the road, police had picked him up. As he had intended to commit suicide after killing his wife by dealing blows on his head by the dao, he had sustained injury on his head and was lying unconscious by the side of the road. Police got him treated in a hospital.

36. We have taken note of the arguments advanced by the appellant to the

effect that the Magistrate (PW-16) had failed to enquire about the injury on the head of the accused before recording his confessional statement and since the accused was not afforded the assistance of legal aid counsel and also considering the fact that only two hours time for reflection was allowed, the confessional statement (Ext-8) was not valid in the eye of law and therefore, the same ought not to have been relied upon by the learned trial court for convicting the accused. Although we find the submission of Mr. Ahmed is very attractive, yet, after a close scrutiny of the evidence available on record we are unable to accept his submission that the confessional statement (Ext-8) of the appellant suffers from any infirmity. This we say so on account of the fact that in his confessional statement the accused/appellant had given a graphic description of the occurrence that took place on that night leading to the homicidal death of his wife as well as the injuries sustained by him and such version of the accused is supported by the other evidence available on record. The appellant has also admitted in his statement recorded under Section 313 of the Cr.P.C. that he did record his confessional statement before the Magistrate. It is no doubt correct that only two hours was permitted to the accused for reflection and the service of a legal aid counsel has not been offered to him. However, we also find from the evidence available on record that the appellant was produced before the Magistrate from the hospital and all procedural safe guards mandated under section 164(2) CrPC had been observed by the learned Magistrate before recording his confession. PW-16 has also deposed that he had explained to the accused in the local dialect the consequences of the exercise and the accused had understood the same. On being satisfied that the accused was voluntarily willing to record his

confessional statement, the same was recorded by the PW-16.

37. In the above context it would also be significant to note here-in that on the day of the incident, the appellant was found with injury on his head for which he had received treatment in the hospital from 14.12.2012 to 21.12.2012. Save and except the version appearing in Ext-8 where-in the appellant has stated that he had received injury while trying to commit suicide after hacking his wife, there is no other explanation as to how the accused had sustained injury on his head. The version of the accused appearing in Ext-8 also perfectly fits into the prosecution story as regards the cause of death of the victim. The version appearing in Ext-8 also finds support from the testimony of PW-3 who had also deposed that on going to the place of the deceased she had seen the dead body of the victim lying there with deep cut injury on the neck but nobody was found at home. There is no other explanation from the accused about his whereabouts at that time, save and except what is apparent from Ext-8. We are, therefore, convinced that the judicial confession of the accused/ appellant recorded as Ext-8 was both voluntary and truthful and hence, the same had been rightly relied upon by the learned trial court.

38. Having held as above, we now turn to the next issue raised by the appellant's counsel viz., the plea of "mental unsoundness" suffered by the accused/ appellant in or around the time of the occurrence. We have already discussed the evidence brought on record by the appellant in support of his plea of mental unsoundness by examining two witnesses i.e. DWs-1 and 2. The evidence of the two defense witnesses bring on record the paranoid features involving the appellant thereby strongly

suggesting that he was suffering from some form of “mental un-soundness” just a few months before the occurrence. The opinion of the Medical Board also supports such a conclusion.

39. Apart from the above, if the confessional statement of the accused is taken on the face value, then also we find that there are sufficient symptoms demonstrating some form of “ psychiatric disorder” akin to “ bipolar disorder” suffered by the accused/ appellant even at the time of the incident which could have denuded the appellant of his ability of thinking and judgment. We say so because unless a person was suffering from some form of “depression” it wouldn't be possible for him to kill his wife sleeping next to him for no rhyme or reason and then try to commit suicide by hitting his head with a ‘dao’ by ignoring the fact that he had small children at home. The accused also did not try to flee or destroy any evidence although he had the opportunity to do so. We are, therefore, of the opinion that the appellant would not have resorted to such a behavior had he been in a position to comprehend the consequences of his conduct.

40. Section 84 of the Indian Penal Code lays down the consequences that would follow in case of a person suffering from unsoundness of mind is facing a criminal charge. Section 84 is reproduced herein below for ready reference :-

“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 that is either wrong or contrary to law.”

41. In the case of **Shrikant Anandrao Bhosale vs State of Maharashtra** reported in

(2002) 7 SCC 748, the apex court has held that burden of proving that the circumstances do exist so as to bring the case within the purview of section 84 of IPC lies on the accused.

42. The parameters that would come into play so as to ascertain as to whether, due to unsoundness of mind the accused was not capable of understanding the consequences of his act so as to get the benefit under section 84 of the IPC was discussed in the case of **Surendra Mishra vs. State of Jharkhand** reported in **(2011) 11 SCC 495** wherein it was observed that the accused must prove "legal unsoundness" of mind and not merely medical unsoundness of mind at the time of occurrence. The burden to prove such fact was upon the accused but the accused is not required to prove the same beyond all reasonable doubt but has merely to satisfy the requirement of preponderance of probability. The observations made in paragraph 13 are relevant and therefore, are being reproduced herein below :-

"13. 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.”

43. An issue of similar nature came up for consideration in the case of **X vs. State of NCT of Delhi** reported in **2018 246 DLT 204** wherein the defence had taken the plea of insanity under section 84 of the IPC and prayed for acquittal of the accused in respect of the offence with which he was charged. Delving deep into various forms of depressions and the impact it might have on an accused, the Division Bench of the Delhi High Court had elaborately discussed the relevant medical literature so as to consider the facets of “Bipolar Disorder” as “Manic Depressive Psychosis”. The observations made in paragraphs 46, 47, 48 and 49 of the said decision would be relevant for the purpose of this case and therefore, the same are reproduced herein below for ready reference :-

“46. In the Cambridge Handbook of Forensic Psychology edited by Jennifer M. Brown and Elizabeth A. Campbell, (4th Printing 2013), it is inter-alia observed that bipolar disorder, previously known as manic depression, has a mean onset age of about 30 and is characterized by mood swings that can range from extreme happiness (mania) to extreme sadness (depression) over a period of days or months. It is further noted that:

“In the depressive phase, symptoms include feeling sad and hopeless, lack of energy, difficulty concentrating, loss of interest in everyday activities, difficulty sleeping, feelings of worthlessness and despair, and suicidal thoughts. In the manic phase, which usually comes after several periods of depression, symptoms may include feeling elated and full of energy, talking very quickly,

and feeling self-important with great ideas not known to others, but also being easily distracted, irritated or agitated, not sleeping or eating, and doing things that bring negative consequences, such as over spending and dominating others.

Delusions stemming from these disorders can lead the individuals concerned to become violent, for example if they believe that the lives of their families have become intolerable (depressive phase), or where they believe that no one must stand in the way of their important plans (manic phase). The mental disorder can contribute directly to serious violence, e.g. multiple homicide of 10 loved family members. As with schizophrenia, the precise cause of bipolar disorder is unknown, although it is thought to involve physical, environmental and social factors, with about 10-15% of sufferers nearest relatives also being affected."

47. In an article titled *Patients with Affective Disorders admitted to Maximum Secure Care (1999-2003)* authored by T. White, a Consultant Forensic Psychiatrist based in Perth, Australia (printed in *Med.Sci.Law* (2005) Vol. 45 No. 2 p.142), it is noted that:

"The McArthur Violence Risk Assessment Study (Steadman et al., 1998) recently reported that patients with bipolar disorder or major depression were more likely than those with schizophrenia to be violent over the course of a year. Similarly, Swanson et al. (1990) in an early analysis of the National Institute for Mental Health Catchment Area Study, reported an equally strong association for depression, bipolar disorder and schizophrenia with reported violence. In addition, the National Confidential Inquiry into Suicides and Homicides (Appleby, 1999) appeared to demonstrate a stronger relationship between depressive symptoms than positive psychotic symptoms in mentally disordered homicide offenders."

Reasons that weigh with the Court

48. The Court is of the view that in the present case, the defence of the

Appellant with reference to Section 84 IPC ought to have been accepted by the trial Court for the reason that there was sufficient relevant material as regards the treatment being received by the Appellant for chronic bipolar disorder which, if fully examined with the help of experts, might have conclusively established such a defence. It is sufficiently clear that the Appellant has been suffering from chronic depression for a long period. There are records to show that he had been receiving treatment at least from 2007 onwards and continuous treatment at IHBAS for a severe condition for five months in 2010, less than six months prior to the occurrence. He attempted suicide less than a month prior to the occurrence.

49. *While one might never know what his precise frame of mind on the fateful day was, it is fairly evident that he was suffering from chronic depression throughout. The failure by the investigating agency, and later by the trial Court, to thoroughly examine the available materials resulted in the Appellant being denied the opportunity to establish his plea of defence of unsoundness of mind under Section 84 IPC. As explained in Sidhapal Kamala Yadav vs. State of Maharashtra (supra), the resultant benefit of doubt created must enure to the Appellant."*

44. Having regard to the facts of this case, we are of the opinion that the appellant is responsible for the death of his wife Manjuara Bibi by hacking her in the neck with a 'dao'. However, the appellant has also succeeded in establishing, by preponderance of probability, that he was suffering from "unsoundness of mind" not only before and after the occurrence but also at the time of the incident which was of such nature that it can be referred to as "legal insanity". In other words, we are of the opinion that the appellant has succeeded in creating a reasonable doubt in the mind of this court that he was in all probability suffering from "mental un-soundness" at the time of the occurrence, which was of such a degree that he was unable to

under-stand the consequences of his actions. We are therefore, of the view that the necessary circumstances so as to bring this case within the ambit of section 84 of IPC has been cogently established by the appellant.

45. Having held as above, we deem it proper to refer to the provision of Section 335 of the Cr.P.C. which deals with the procedure to be adopted when a person is acquitted on the ground of unsoundness of mind as laid down in Section 334 of the Cr.P.C. For the purpose of ready reference, Section 335 of the Cr.P.C. is reproduced herein below for ready reference :-

“335. Person acquitted on such ground to be detained in safe custody.—(1) *Whenever the finding states that the accused person committed the act alleged, the Magistrate or Court before whom or which the trial has been held, shall, if such act would, but for the incapacity found, have constituted an offence,—*

(a) order such person to be detained in safe custody in such place and manner as the Magistrate or Court thinks fit; or

(b) order such person to be delivered to any relative or friend of such person.

(2) No order for the detention of the accused in a lunatic asylum shall be made under clause (a) of sub-section (1) otherwise than in accordance with such rules as the State Government may have made under the Indian Lunacy Act, 1912 (4 of 1912).

(3) No order for the delivery of the accused to a relative or friend shall be made under clause (b) of sub-section (1) except upon the application of such relative or friend and on his giving security to the satisfaction of the Magistrate or Court that the person delivered shall—

(a) be properly taken care of and prevented from doing injury to himself

or to any other person;

(b) be produced for the inspection of such officer, and at such times and places, as the State Government may direct.

(4) The Magistrate or Court shall report to the State Government the action taken under sub-section (1)."

46. For the reasons stated herein above the appellant is hereby acquitted from the charge brought under Section 302 of the IPC on the ground of "mental unsoundness". However, in view of our findings recorded above, we are not inclined to order the release of the appellant at this stage. Rather, we direct that the appellant be detained in safe custody, in such a place and in such a manner, as the learned trial court may think fit and proper so as to eliminate the potential threat to the life of any person(s) living in his close proximity. The learned trial court is also granted liberty to consider application, if any, filed by a near relative or friend of the appellant under Section 335(1)(b) of the Cr.P.C. after recording proper satisfaction that the conditions mentioned in sub-section (3) of Section 335 of the Cr.P.C. are fully satisfied.

With the above observation, the appeal stands disposed of.

Send back the LCR.

JUDGE

JUDGE

T U Choudhury

Comparing Assistant