



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Cr. A. No. 335 of 2016

Reserved on: 07.08.2023

Date of decision: 09.08.2023

Krishan Dev Singh ...Appellant

Versus

State of Himachal Pradesh ...Respondent

Coram

The Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.

The Hon'ble Mr. Justice Ranjan Sharma, Judge.

Whether approved for reporting? No.

For the Appellant : Mr. O. C. Sharma, Advocate.

For the Respondent: Mr. Anup Rattan, A.G. with Mr. Ramakant Sharma, Ms. Sharmila Patial, Addl. A.Gs., Mr. J. S. Guleria, Dy. A.G and Mr. Rajat Chauhan, Law Officer.

Tarlok Singh Chauhan, Judge.

The appellant has been convicted and sentenced by the learned Court below and aggrieved thereby has filed the instant appeal.

2. As per the prosecution, the brief facts of the case are that Shri Jaram Singh and Harnam Singh are the real brothers and their houses adjoin each other, at place Basantpur. The house of Harnam Singh is having two parts, one in-front of the other. One part was occupied by his wife, Geeta Devi, and son, the appellant Krishan Dev, whereas in the other part the other son of Harnam Singh, namely, Raj

Kumar lived with his wife deceased Rachana Devi and two minor sons. Geeta Devi had gone to her parental house and Krishan Dev was alone in their part of the house, but he was not there during the night of 30.08.2013.

3. On 31.08.2013 around 7:30 a.m. Jaram Singh was cutting grass in his fields, near the house of his brother Harnam Singh. He heard screams of Rachna Devi on which he rushed to its source and saw that the appellant Krishan Dev was having an axe in his hand and he gave its blow on the head of Rachna Devi, on which she fell down on the ground and blood started oozing out from her head. The children started crying, Jaram Singh intervened to rescue. Krishan Dev with intent to kill Jaram Singh attempted to give an axe blow on his head, which was blocked by Jaram Singh. Thereafter, the appellant chewed the little finger of the left hand of Jaram Singh. In the meanwhile the son of Jaram Singh, namely, Chander Mohan and one Balbir Singh came there and they rescued Jaram Singh.

4. Balbir Singh and Chander Mohan took the deceased Rachna Devi and Jaram Singh to CHC Jawali from where the police was informed. SI/SHO Ramesh Singh went to CHC Jawali and recorded the statement of Jaram Singh, Ex. PW-1/A, on the basis of which FIR No. 102/2013 under Sections 302, 307, 325, 323 of the IPC was registered.

5. The SI/S.H.O. Ramesh Singh entered into investigation, prepared the spot map, photographed the scene of crime, clothes of injured Jaram Singh i.e. half pants and shirt were taken into possession. One axe was recovered from the scene of crime and the blood scattered at the scene of crime was also lifted. The sketch of the axe was prepared. The scene of crime was demarcated through revenue agency. Inquest papers of deceased Rachna Devi were filed and her post-mortem was conducted.

6. on completion of investigation, the police report was submitted before the court of Ld. Judicial Magistrate 1st Class- Jawali, District Kangra, H.P.. who vide its order dated 06.02.2014 committed the case to Ld. Sessions Judge, Kangra at Dharamshala from where it was received by way of assignment in the Court of learned Additional Sessions Judge. After receipt of FRSL report, the supplementary police report was presented.

7. The learned trial Court charged the appellant/accused for the commission of offences punishable under Sections 302, 325, 323 of I.P.C. to which he pleaded not guilty and claimed trial. The learned trial Court, during the framing of charges, dropped the offence under Section 307 I.P.C..

8. The prosecution, in order to prove its case, has examined as many as 20 witnesses. On closure of prosecution evidence, the statement of appellant/accused under Section 313 Cr.P.C. was recorded to which he pleaded innocence, denial simplicitor and other that he is not mentally sound.

9. The learned Court below after recording evidence and evaluating the same, sentenced the appellant to undergo imprisonment for life and to pay a fine of Rs. 10,000/- under Section 302 IPC. In default of payment of fine, he was further ordered to undergo rigorous imprisonment for six months. He was also sentenced to undergo rigorous imprisonment for three years and to pay a fine in the sum of Rs. 5,000/- under Section 325 IPC. In case of default of payment of fine, he was further ordered to undergo rigorous imprisonment for three months.

10. It is vehemently contended by Shri O.C. Sharma, learned Advocate that the findings recorded by the learned Court below are totally perverse as it has failed to take into consideration the material contradiction and inconsistency in the prosecution case and still convicted the appellant as aforesaid Even though both the punishments have been ordered to be run concurrently.

11. On the other hand Shri J. S. Guleria, learned Deputy Advocate General, would argue that in all criminal cases the normal discrepancies are bound to occur in

deposition of witnesses due to normal errors of observations, namely, errors of memory loss due to lapse of time or due to mental disposition, such as shock and horror at the time of occurrence and its only where the omission amount to contradictions creating a serious doubt about the truthfulness of the witnesses and other witnesses also make material improvement while deposing in the Court, that it may not be safe for the Court to rely such evidence, whereas this is not a fact situation obtaining in the instant case.

We have heard learned counsel for the parties and have gone through the records of the case.

12. In order to appreciate the rival submissions, it would be necessary to have a glance at the material coming on record by way of oral and documentary evidence.

13. PW1 Shri Jaram Singh deposed that his house was adjoining to the house of his brother Harnam Singh, which was then occupied by his wife Geeta Devi and his two children Raj Kumar and the appellant Krishan Dev. In one part of the house Raj Kumar lived with his deceased wife Rachna Devi and two children, whereas the other part, in front, was occupied by the appellant Krishan Dev and his mother. Smt. Geeta Devi had gone to her parental house.

14. On 31.08.2013 at about 7:30 a.m., while Jaram Singh was cutting grass near the house of his brother Harnam

Singh, he heard noise "Maar Diya, Maar Diya". He saw Krishan Dev assaulting Rachna Devi with axe on her head, as a result thereof she fell down on the floor and blood was oozing out from her head. When he went to rescue Rachna Devi, the appellant assaulted him also and chewed his little finger of the left hand and also tried to assault him with axe, He was rescued by his son Chander Mohan and one Balbir.

15. Jaram Singh reported the matter to the police vide his statement Ext. PW-1/A. He handed over to the police his half pants Ex.P-2, blood stained torn shirt Ex.P-3, police sealed them in a parcel, Ex.P-1 and seized them vide memo Ex.PW-1/B. This witness further deposed that police recovered axe Ex.P-5, from the spot and after sealing it in a parcel, Ex.P4, took it into possession vide seizure memo Ex.PW-1/C. The blood stained soil was lifted from the spot and it was poured in vials Ex. P-8 and Ext. P-9, which were sealed in parcels Ex.P-6 and Ex. P-7, respectively and were taken into possession vide seizure memo Ex. PW-1/C.

16. During cross-examination, Jaram Singh admitted that Harnam Singh was not in the village on 31.8.2013 and distance between his house and the house of Harnam Singh is 15-20 meters. He admitted that the screams were not of deceased Rachna Devi but volunteered that they were of Rachna's daughter. He admitted that his relation with Harnam

Singh were strained since long and there was litigation with him. He further deposed that he knows Krishan Dev since his childhood but he cannot tell that whether the mental condition of the appellant was not healthy. He further deposed that the axe was taken into possession from the spot on the same day and at that time many persons were present there. He denied all the suggestions made contrary to his version given in his examination-in-chief.

17. PW-2, Shri Satwinder Singh, testified that in his presence PW-1 Shri Jaram Singh had produced his half pants, Ex.P-2, and shirt, Ex.P-3, before the police which was sealed in a parcel, Ex.P-1, and were taken into possession vide seizure memo, Ex.PW- 1/B. Police had also recovered axe, Ex.P-5, and sealed it in parcel, Ex.P-4, and lifted blood stained soil, Ex.P-10, from the spot, which was put into vials, Ex.P-8 & Ex.P-9, and were sealed in parcels Ex.P-6 & Ex.P-7, and taken into possession vide seizure memo, Ex.PW-1/C. He further testified that the outline sketch of axe, Ex.PW- 2/A, was also prepared. During cross-examination, he deposed that he was called to the spot after two hours of the occurrence. He reached there within 30 minutes and the police was already there. He denied the suggestion contrary to his version given in his examination-in-chief.

18. PW-3, Baby Kajal, a child witness, daughter of deceased, testified that on 31.8.2013 around 7:30 A.M her mother was washing clothes in the Varandah and she was with her. In the meantime, the appellant came there armed with an axe and hit her mother on her head, as a result whereof she fell down and blood started oozing out from her head. She immediately went backside of the house and called her grandfather. The appellant also assaulted Jaram Singh. The appellant chewed the little finger of the Jaram Singh. Her mother and grandfather were taken to hospital and her mother died while she was taken to hospital. During cross-examination, she testified that she cannot tell from which side the appellant came to the spot and from where the appellant procured the axe. She denied the suggestion that the mental health of the appellant Krishan Dev was not good. She further deposed that Jaram Singh was cutting grass at a distance of 15 feet away from the place of occurrence and was having sickle in his hand. She denied the suggestion contrary to her version given in her examination-in-chief.

19. PW-4, Balbir Singh, testified that on 31.8.2013 he was present in his house and around 7:30 A.M he heard noise coming from the house of Raj Kumar. He went to the source of noise and saw the appellant assaulting Jaram Singh. He also saw that the appellant chewed little finger of Jaram Singh and

was armed with an axe. He and Chander Mohan intervened and rescued Jaram Singh and had they not rescued Jaram Singh, the appellant would have killed him. He also saw Rachna was lying in a pool of blood in her Varandah (courtyard). He and Chander Mohan took Rachna and Jaram Singh to CH Jawali from where Rachna Devi was referred to CH Nurpur on the way she succumbed to the injuries.

20. During cross-examination, Balbir Singh deposed that he had heard the noise of Kajal and reached the spot within 2-3 minutes. He further deposed that the appellant is his cousin and his relation with him are cordial and the relations of Raj Kumar with Jaram Singh were strained. He denied the suggestion that the appellant was not having good mental health. He denied all the suggestion contrary to his version given in his examination-in-chief.

21. PW-5, Raj Kumar, testified that on 30.8.2013 he was off to Shimla with his taxi alongwith passengers on board. On the next day en-route Shimla he received a phone call of his cousin at place Shalaghat, who asked him to come back home due to some emergency. On reaching home he came to know that his wife has been killed by the appellant with an axe. After post-mortem the dead body of his wife Rachna was handed over to him vide memo Ex.PW-5/A. He also testified that the appellant and his mother used to harass the

deceased. During cross-examination, he deposed that on 31.8.2013 on his return his children disclosed regarding the incidence.

22. PW-6, Shri Tarsem Singh, testified that on 31.8.2013, he was sleeping in his house which is adjacent to the house of Raj Kumar and around 7:30 A.M Baby Kajal came running to his house and disclosed that the appellant killed Rachna Devi with an axe. He went with his father Jaram Singh, Chander Mohan and Balbir Singh to the house of Raj Kumar. He saw an axe in the hands of the appellant, who criminally intimidated Jaram Singh. He further deposed that his father Jaram Singh went ahead of him. The appellant chewed little finger of Jaram Singh. He over-powered the appellant, who thereafter fled away from the spot. Rachna Devi was lying in the pool of blood. He took Rachna Devi to CH Jawali and thereafter she was referred to Tanda but they took her to Pathankot, where she was declared dead. While chasing the appellant, he sustained injuries. They informed P.S. Jawali and police directed them to take the dead body to CH Nurpur where postmortem was conducted. During cross-examination, he admitted that he and his father simultaneously went to the spot. Ms. Kajal disclosed the incidence to both of them. He admitted that the appellant had not assaulted Rachna Devi in his presence and Rachna Devi had disclosed this fact to him.

23. PW-7, Shri Harnam Singh, testified that his son the appellant-Krishan Dev and his wife Geeta Devi used to quarrel with Raj Kumar and Rachna Devi and due to this reason he left his house and started living in rented accommodation at Fatehpur. His daughter Kamla Devi informed him that the appellant had killed deceased Rachna Devi. During cross-examination, he deposed that he is living separately for the last 8 years.

24. PW-8, Shri Daljeet Singh, Kanungo deposed that on the application of police Ex.PW-8/A he issued Jamabandi Ex.PW-8/B and Tatima Ex.PW-8/C.

25. PW-9, Shri Sawran Singh, photographed the scene of crime on the request of the police and developed the photographs which are Ex.P-11 to P-16 and prepared its CD Ex.P-17.

26. PW-10, Shri Rajinder Soga, deposed that on 31.8.2013 he photographed the dead body and developed the photographs which are Ex.P-18 to P-24.

27. PW-11, Master Dara Singh, son of deceased, deposed that on 31.8.2013 during morning hour around 6:30-7:00 A.M he went to market to fetch milk and on his way the appellant met him and criminally intimidated him with dire consequences and thereafter the appellant went towards his house and he proceeded towards market and on his return he

met Sunita Bhabi, who disclosed that his mother was assaulted by the appellant with an axe and was taken to CHC Jawali. During cross-examination, he admitted that the appellant had not assaulted his mother in his presence. ◊

28. PW-12, Dr. Amodh Kumar Singh, on the application of police Ex.Pw-12/A conducted post-mortem examination of Rachna Devi and issued post-mortem report Ex.Pw-12/C and after the receipt of RFSL report, Ex.P-A, he opined that the cause of death is head injury with intra-cranial hemorrhage with laceration of brain matter with cervical injury with hemorrhage leading to shock and death and injuries No. 1 to 5 in PMR are incised wounds and all the injuries are ante mortem in nature. He further opined that the possibility of the injuries seems to be caused by an axe and these injuries were sufficient to cause death of a person.

29. PW-13, Dr, Abhishek Thakur, deposed that he on the application of police Ex.Pw-13/A medically examined the appellant-Krishan Dev. No injury was found present on the person of the appellant and he issued MLC, Ex.Pw-13/B.

30. PW-14, Dr. Richa Sharma, on the application of police Ext. PW-14/A medically examined Tarsem Singh and issued MLC, Ex.Pw-14/B. Tarsem Singh was having a bite mark on the left forearm.

31. PW-15, Inspector Hari Pal, deposed that he presented the police report in the court.

32. PW-16, MHC, Ramesh Kumar, deposed that he entered GD entry Ex.Pw-16/A and on receipt of statement Ex.Pw-1/A, he registered FIR Ex.Pw-16/B. SI Ramesh Kumar deposited with him four sealed parcels containing axe, blood lifted from spot and clothes of Jaram Singh. C. Mumtaz deposited with him two parcels containing viscera and clothes of the deceased. HC Subhash Chand deposited with him two sealed parcels containing clothes and blood sample of the appellant. He kept all these articles in the store (Malkhana) after making relevant entry Ex.Pw-16/D. Thereafter, he sent the parcels through HHC Parmodh to RFSL vide RC Ex.PW-16/E. He also issued certificate in terms of section 65-B of the Indian Evidence Act Ex.PW-16/F.

33. PW-17, ASI Rattan Singh, deposed that he moved application Ex.PW-12/A for postmortem examination of deceased and filled inquest papers Ex.PW-12/B.

34. PW-18, ASI Push Raj, deposed that he moved application Ex.PW-13/A for medical examination of the appellant-Krishan Dev and procured MLC, Ex.Pw-13/B, and recorded the statement of witnesses and handed over the case file to SI Ramesh Chand. He also moved application

Ex.Pw-14/A for medical examination of Tarsem Singh and obtained his MLC.

35. PW-19, Shri Ramesh Singh, testified that on G.D. entry Ex.PW-16/A, he went to CHC Jawali and recorded the statement of Jaram Singh Ex.PW-1/A. Thereafter, he went to spot and prepared the spot map, Ex.PW-19/A, photographed the scene of crime and procured photographs, Ex.P-11 to P-16 and its CD Ex.P-17. Jaram Singh's clothes i.e. half pants, Ex.P-2, Shirt Ex.P-3, were sealed in a parcel, Ex.P-1, and were taken into possession vide memo EW.Pw- 1/B. Axe, Ex.P-5, was sealed in a parcel Ex.P-4 and blood stains Ex.P- 9 lying on the spot were lifted with the help of gauge and put in the vials, Ex.P-8 & Ex.P-9, and sealed the vials in parcels, Ex.P-6, and Ex.P-7, and were taken into possession vide memo Ex.Pw-1/C and prepared the sketch of axe Ex.Pw-2/A. He moved application Ex.Pw-8/A for obtaining demarcation of the spot, Jamabandi Ex.Pw-8/B and Tatima Ex.Pw-8/C were obtained. Application Ex.Pw-19/C was made for medical examination of injured Jaram Singh and Rachna Devi.

36. After the receipt of RFSL report Ex.P-B and completion of investigation handed over the case file to SHO.

37. During cross- examination, this witness denied all the suggestion contrary to his version given in his examination-in-chief. He admitted that blood was oozing out

from the fingers of Jaram Singh. He went to the spot at 9:30 A.M. At that time family members of Jaram Singh and Rachna Devi were also present. He also admitted the suggestion that during investigation it was found that Jaram Singh was cutting grass with the sickle and he also saw that the field adjoining to the spot and the distance between field was about 7-8 meters from the place where Rachna Devi was lying.

38. PW-20, Dr. Vijay Kalia, on the application of police medically examined Jaram Singh and Rachna Devi and found following injuries present on the person of deceased Rachna Devi:

1. A Cut mark 2" inch X ½ inch over occipital person.
2. A cut mark of 3" X 2 inch and 2 inch away from the previous injury.
3. One and half inch X ½ inch cut mark over the back of neck.

He found blood oozing out from the injuries and grey matter was also seen with the blood. He concluded that the skull bone was damaged alongwith brain tissue as the glasgow coma score was quite high and there was danger to her life. He issued MLC, Ex.Pw-20/A. He opined that injuries on the person of Rachna Devi are possible with an axe. He also examined Jaram Singh and found to have lost his little finger with distal half and the injury was possible by the teeth bite.

39. During cross-examination, the witness deposed that he had called the police. He denied the suggestion that injuries on the person of Rachna Devi were possible by sickle whereas the injuries on the person of Jaram Singh were possible with the sickle while cutting grass.

40. The appellant in his defence examined one witness i.e. DW-1 Dr. Sajay Bhardwaj, who deposed that he examined accused during his jail tenure and referred him to Dr. RPGMC Tanda as well as Zonal Hospital Dharamshala and as per the prescriptions of these hospitals he had given medicines for his psychiatric ailment and for epilepsy. The appellant was also suffering from tuberculosis for which he was cured in the jail. This witness was unable to state that due to attack from ailments, a person could commit the crime of murder. He further testified that he is doctor of general medicine and no specialization in psychiatry hence cannot state that accused under the attack of epilepsy can commit the offence of murder. He had seen the appellant under the attack of epilepsy for 5-6 times. He also testified with respect to medical record of accused Ex. D-1 to Ex. D-4.

41. During cross-examination, this witness deposed that he had not seen the appellant causing injury to anybody while under attack though there were other inmates in the jail. He admitted that the record Ex.D-1 to D-4 pertains to different

medical organization and are not given by him and these documents are also not attested.

42. It would be noticed that as per the prosecution case, there are two eye witnesses i.e. PW1 Jaram Singh and PW-3 Baby Kajal, who have witnessed the appellant inflicting the axe blow on the head of the deceased Rachna Devi, which proved to be fatal. PW 3 Baby Kajal categorically deposed that on 31.08.2013 at about 7:30 am her mother was washing clothes in the varandah and she was with her. In the meantime, the appellant came there armed with an axe and hit her mother on her head, as a result whereof she fell down and blood started oozing out from her head. She immediately went back side of the house and called her grand father.

43. Likewise, PW-1 Jaram Singh deposed that in response to screaming of baby Kajal i.e. PW-3, he rushed to the scene of crime and saw the appellant with an axe and the appellant gave its blow on the head of the deceased Rachna Devi. It has come in the evidence of the prosecution that Jaram Singh was cutting grass and at a distance of hardly 15-20 meters from the scene of crime. Thus, in such circumstances, it is clearly established on record that the appellant gave blow of axe Ex. P-1 on the head of the deceased as a result of which she died.

44. The cause of death has been duly proved and supported by Dr. Amodh Kumar Singh (PW-12), who conducted postmortem examination of the deceased Rachna Devi. As the cause of death, according to him, was head injury with intracranial hemorrhage with laceration of brain matter with cervical injury with hemorrhage leading to shock and death and injury No. 1 to 5 in PMR are incised wounds and all the injuries are ante mortem in nature. He further opined that the possibility of the injuries seemed to be caused by an axe and these injuries were sufficient to cause death of a person.

45. Even though this witness has been cross-examined on behalf of the appellant but his evidence remained uncontroverted and unrebutted and clearly established and proved on record that the death of Rachna Devi was caused on account of the injuries inflicted on her head and these injuries were possible by an axe Ext. P-5.

46. The version of PW1 Jaram Singh and PW3 Baby Kajal was duly corroborated by PW-11 Master Dara Singh son of the deceased, who deposed that on 31.08.2013, he went to market to fetch milk. The appellant met him and criminally intimidated him with dire consequences and thereafter the appellant went towards his house. The appellant was in infuriated condition and proceeded towards the scene of the crime just before the incident.

47. Likewise, PW-4 Balbir Singh has stated that on 31.08.2013 at about 7:30 am, he heard noise coming from the house of Raj Kumar and when he went there, he saw the appellant assaulting Jaram Singh (PW-1) and the appellant had chewed his little finger. He also saw the deceased lying in the pool of the blood in the courtyard. This witness reached at the scene of crime after Jaram Singh and by that time the accused had already inflicted blow on the deceased. Thus, this testimony corroborates the eye-witnesses that after assaulting the deceased the appellant had tried to assault Jaram Singh with the axe and chewed his little finger.

48. Another such circumstance which corroborates the prosecution case is the prompt lodging of the FIR. The incident occurred on 31.08.2013 at about 7:30 am and the police was immediately informed at 7:45 am vide DD entry Ex.PW6/A and pursuant thereof statement of Jaram Singh (PW-1) was recorded around 9:05 am and the case was registered vide FIR Ext. PW16/B at 9:30 am, which lends credence to the testimony of the informant Jaram Singh and also supports the case of the prosecution.

49. Even the other medical and forensic evidence led by the prosecution support its case. As already observed above, deceased Rachna Devi died because of the injuries caused on her head and such injuries are possible with the

weapon of offence i.e. axe Ext. P-5. Further, the blood Group B of Rachna Devi was also found on the weapon of offence as per RFSL Report Ext. PB. Thus, the medial and forensic evidence also corroborates the eye-witnesses.

50. However, the learned counsel for the appellant is at pains to argue that the prosecution has not been able to establish the 'motive' in the instant case.

51. Needless to say, in the presence of eye-witnesses i.e to say where there is direct evidence, the 'motive' becomes irrelevant. However, motive becomes relevant as an additional circumstance where the prosecution seeks to prove the guilt of the accused by circumstantial evidence only.

52. Apart from above, it has come on record in the statement of the father of the appellant Harnam Singh (PW-7) that the appellant and his wife Geeta Devi used to quarrel with Raj Kumar and Rachna Devi and due to this reason he (Harnam Singh) has left his house and started living in rented accommodation at Fatehpur. This fact is corroborated by the testimony of Raj Kumar (PW-5), the husband of the deceased. Thus, what stands established on record is that the accused had strained relation with the deceased and, therefore, could have a motive to kill her.

53. Lastly, it is argued by Shri O. C. Sharma, learned Advocate that since the appellant was of unsound mind,

therefore, he could not have been convicted, as he was entitled to the general exception contained in Section 84 of the IPC. No doubt, the appellant, while cross-examining the prosecution witnesses tried to suggest that the mental health of the appellant was not normal but none of the witnesses agreed to such suggestion. The appellant, in fact, even examined Dr. Sanjay Bhardwaj (DW-1) in his defence, who stated that he had examined the appellant during the jail and had put him on medication for psychiatric ailments of epilepsy and he had seen the appellant under the attack of epilepsy for 5-6 times. During cross-examination, this witness deposed that he examined the appellant for the first time on 02.11.2013 and he did not know the history of illness of the appellant prior to this date.

54. It is more than settled that in charge of murder, the burden to prove that as a result of unsoundness of mind, the accused was incapable of knowing the consequences of his act, is only defence as duly exemplified by Section 105 (III) (a) of the Evidence Act. Further, Court shall presume absence of the circumstance, so as to take the case within any of the exception in IPC. There must be material on record to indicate that the appellant was medically treated as a person of unsound mind, or was legally required to be taken as a person of unsound mind, which is not a fact situation obtaining in this

case. (See **Prem Singh vs. State (NCT of Delh) (2023) 3 SCC 372**).

55. To similar effect is the another recent judgment of the Hon'ble Supreme Court in **Prakash Nayi alias Sen vs. State of Goa (2023) 5 SCC 673**, wherein the Hon'ble Supreme Court held that Section 84 IPC recognises only an act which could not be termed as an offence. Such an act shall emanate from an unsound mind. Therefore, the existence of an unsound mind is a sine qua non to the applicability of the provision. A mere unsound mind per se would not suffice, and it should be to the extent of not knowing the nature of the act. Such a person is incapable of knowing the nature of the said act. Similarly, he does not stand to reason as to whether an act committed is either wrong or contrary to law. The test is from the point of view of a prudent man. Therefore, a mere medical insanity cannot be said to mean unsoundness of mind. There must be an inability of a person in knowing the nature of the act or to understand it to be either wrong or contrary to the law. "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". The element of incapacity emerging from an unsound mind shall be present at the time of commission.

56. Section 84 IPC is founded on the maxim, *actus non reum facit nisi mens sit rea* i.e. an act does not constitute guilt unless done with a guilty intention. It is a fundamental principle of criminal law that there has to be an element of mens rea in forming guilt with intention. A person of an unsound mind, who is incapable of knowing the consequence of an act, does not know that such an act is right or wrong. He may not even know that he has committed that act. When such is the position, he cannot be made to suffer punishment. This act cannot be termed as a mental rebellion constituting a deviant behaviour leading to a crime against society. He stands as a victim in need of help, and therefore, cannot be charged and tried for an offence. His position is that of a child not knowing either his action or the consequence of it.

57. The burden of proof under Section 105 of the Evidence Act, 1872 does lie on the accused to prove to the satisfaction of the court that one is insane while doing the act prohibited by law. Such a burden gets discharged based on a prima facie case and reasonable materials produced on his behalf. However, Section 105 of the Evidence Act, 1872, which places the burden of proving, has its exceptions. Though, as a general principle, the onus is upon the person accused to bring his case under the exception, dealing with the case under Section 84 IPC, one has to apply the concept of

preponderance of probabilities. This is for the reason that a person of unsound mind is not expected to prove his insanity beyond a reasonable doubt. Secondly, it is the collective responsibility of the person concerned, the court and the prosecution to decipher the proof qua insanity by not treating it as adversarial. Though a person is presumed to be sane, once there are adequate materials available before the court, the presumption gets discharged. Section 105 has to be read along with Section 8 of the Evidence Act, 1872. The better way to reconcile the aforesaid provision would be to have a look into the behaviour and conduct before, during and after the occurrence.

58. As Section 84 IPC has its laudable objective behind it, the prosecution and the court have their distinct roles to play. The agency has to take up the investigation from the materials produced on behalf of the person claiming unsoundness. It has to satisfy itself that the case would not come within the purview of Section 84 IPC. The court on its part has to satisfy itself as to whether the act was done by a person with an unsound mind within the rigour of Section 84 IPC.

59. Adverting to the facts of the instant case, there is no material placed on record by the appellant to indicate that

he was medically treated as a person of unsound mind, which is not the fact situation obtaining in the instant case.

60. In view of the aforesaid discussion, we find no reason to interfere with the judgment of conviction and sentence so passed by the learned Court below. Consequently, there is no merit in the instant appeal and the same is accordingly dismissed.

(Tarlok Singh Chauhan)
Judge

09.08.2023
(sanjeev)

(Ranjan Sharma)
Judge

High Court of J&K