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Debeswar Bhuyan Vs. State of Assam

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Court : Guwahati

Decided On : Apr-28-2011

Judge : Amitava Roy &Amp; a.K. Goswami

Appeal No. : Criminal Appeal No. 45 of 05

Appellant : Debeswar Bhuyan

Respondent : State of Assam

Judgement :

ORAL:

AMITAVA ROY, J.

1. This appeal from jail witnesses a challenge to the judgment and order dated 10.3.2005 passed by the learned Sessions Judge, Jorhat in Sessions Case 9(J-J)/2004 convicting the accused/appellant under Section 302 of the Indian Penal Code (for short, hereinafter referred to as 'the Code') and sentencing him to suffer imprisonment for life and also to pay a fine of Rs. 1,000/-, in default, to undergo rigorous imprisonment for further three months.

2. We have heard Mr Ajoy Phukan, learned amicus curiae for the appellant and Mr Z Kamar, learned Public Prosecutor for the State respondent.

3. The information laid with the Officer-in-Charge, Titabor Police Station vide the FIR dated 20.6.2003 reveals a revolting episode. It was alleged therein that the appellant at about 1.30 p.m. of the date of information i.e. 20.6.2003 had cut his son Biki aged about 11/2 years to death and was intercepted while he was preparing to bury the dead body by digging a pit. The informant is the mother of the murdered child and the wife of the accused/ appellant.

4. On receipt of the FIR, Titabor P.S. Case No. 47/03 under Section 302 of the Code was registered and on the culmination of the investigation, chargesheet was laid against the accused/appellant also under the said provision of law. The offence being one exclusively triable by the Court of Sessions, he was charged under Section 302 of the Code to which he pleaded "not guilty" and claimed to be tried. The prosecution at the trial examined eleven witnesses including the doctor who had performed the post mortem examination as well as the Investigating Officer. In course of the examination of the accused/appellant under Section 313 Cr.P.C. and at its closing stages the learned Trial Court on 19.6.2004 noticed a visible abnormal behaviour of his for which it passed an order so as to cause his (accused/appellant) mental state to be ascertained by a psychiatrist of the Jorhat Civil Hospital. In compliance with the said order, Dr. Adi Nath Sarma examined the accused/appellant on the basis of the history of the facts furnished to him with effect from 21.6.2003, whereafter, he submitted a report on 3.8.2004 to the effect that the accused/appellant had been suffering from Schizophrenia and that he was not in a fit state to stand trial. Subsequent thereto, the learned Trial Court arranged for the treatment of the accused/appellant at the Lokapriya Gopinath Bordoloi Regional Institute of Mental Health at Tezpur vide its order dated 4.10.2004 and after undergoing treatment thereat he was produced before it on 25.2.2005 with a report on his improved mental state. The hospital authority by its letter dated 18.1.2005 having certified that he was fit for discharge after treatment, the learned Trial Court proceeded to complete his examination under Section 313 Cr.P.C. and did so on 15.2.2005. The learned Trial Court on a consideration of the evidence on record having convicted him under Section 302 of the Code, the accused/appellant was afforded an opportunity of hearing on the question of sentence, whereafter, by the impugned judgment and order he was awarded the punishment mentioned hereinabove.

5. Though in course of the cross-examination of the prosecution witnesses noticeably no plea of unsoundness of mind of the accused-appellant had been taken by the defence, the learned amicus curiae has persuasively projected the same before us contending that in view of the medical evidence on record, the accused/appellant in terms of Section 84 of the Code is entitled to a clear acquittal. This, however, Mr Phukan urged, is without prejudice to the plea that the prosecution even otherwise has failed to prove the charge against the accused/appellant.

6. This contention, however, has been stoutly resisted by the learned Public Prosecutor. In this premise, we consider it appropriate to deal with the evidence briefly at the threshold before examining the aspect of applicability or otherwise of Section 84 of the Code to the facts of the present case

7. P.W.1, Dr. K.K. Sarma who at the relevant point of time was serving as the Senior Medical and Health Officer at Jorhat Civil Hospital deposed on oath to have detected the following injury on the deceased:

"A 2" x 3" cut injury on right had and near right wrist joint. Rigor mortis present. Head portion is completely severed and it tallies with the portion of the body. The cut head portion and the cut injury is just above the clavicle line. Other organs are healthy and contested. Injuries are ante- mortem in nature."

The witness opined that the cause of death was due to syncope and coma as a result of the injuries sustained by the deceased. The defence did not offer to cross-examine this witness.

8. P.W.2, Smt. Ela Bhuyan is the mother of the ill fated child. She stated on oath that the deceased at the time of his death was 1 1/2 hears old and that on the date of the incident when she returned from the latrine she saw her husband (accused/appellant) hacking Biki with a 'dao'. According to her, the assault was committed inside the house. She also identified the weapon of assault to be Mat. Exhibit-1 which she claimed to be theirs. This witness stated that at the sight of the incident she called line chowkidar Mohan and her sister-in-law. According to this witness, she found her son in a dead state. She also mentioned that the FIR was

filed through the Manager of Bokahola Tea Estate. She stated that at the time of lodging the information with the police station, the accused/ appellant was making preparation for burying the dead body by digging a pit. She proved the seizure of the 'dao' by the police. In cross-examination, she expressed her ignorance as to whether the accused/appellant was suffering from any mental disease at the time of the occurrence but disclosed that he used to talk less and to keep himself inside the house.

9. P.W.3, Smt. Juli Bhuyan, sister of the accused/appellant stated that she having received information about the incident from P.W.1 arrived at the spot and found Biki in a dead state. She also stated to have seen the accused/appellant sitting nearby with a 'dao' in hand and that when she asked him about the incident he did not respond. This witness proved the seizure of the 'dao' by the police and identified the weapon as Mat. Exhibit-1. In cross-examination, this witness stated that the accused/appellant used to talk less and generally keep himself indoors. She conceded of not having seen the accused/appellant assaulting the deceased.

10. P.W.4, Sri Ram Bhuyan is the father-in-law of P.W.1. While stating that the deceased was his grandson, he deposed that he came to the house of the accused/appellant on getting information about the incident and found the dead body of Biki there. He stated that the police who visited the spot later apprehended the accused/appellant from the house along with the 'dao' in hand. The witness was not cross-examined.

11. P.W.5, Mohan Gowala also is a reported witness. He, however, stated on oath that Ela Bhuyan, P.W.1 did not tell him very clearly that the accused/appellant had killed Biki by cutting and that she only disclosed that she had found after returning from the latrine that her son had been killed by cutting during her absence and that the accused/appellant was there with the deceased. This witness proved the inquest report (Exhibit-1) with his signature thereon as Exhibit-1(1). He also proved the seizure of the 'dao' vide Exhibit-2. He affirmed further that when the accused/appellant was asked about the occurrence he did not respond.

12. P.W.6, Debu Bhuyan, who at the relevant point of time was a labourer engaged in the work of laying road nearby, stated that P.W.2 had told him that her

son Biki had been killed by her husband by cutting. This witness claimed to have informed the matter to P.W.4. He, however, proved the seizure of the 'dao' (Mat. Exhibit-1) from the possession of the accused/appellant. This witness was not cross-examined by the defence.

13. P.W.7, Mangra Bhuyan is a reported witness and has not stated anything in addition to those already referred to hereinabove. P.W.8, Kulai Manki is a witness to the inquest of the dead body of the deceased. P.W.9, Sona Ram Manki is a reported witness and claimed to have learnt about the incident from P.W.2. P.W.11, Kishore Kamal Bezbaruah, who at the relevant time was the Manager of Bokahola Tea Estate, stated that on the date of the incident i.e. 20.6.2003 P.W.2 had informed him that her husband (accused/appellant) had killed their 1 1/2 year old son by cutting him with a 'dao'. This witness claimed to have forwarded the FIR to the police station. P.W.7,8,9 and 11 were not cross-examined by the defence.

14. P.W.10, Jogendra Nath Gogoi is the Investigating Officer of the case. In his evidence he stated in details regarding the steps taken by him in connection therewith. He, amongst others, proved the inquest report (Exhibit-1), FIR (Exhibit-3), sketch map (Exhibit-4) and also the weapon of assault (Mat. Exhibit-1) seized from the accused/appellant at the place of occurrence.

15. The accused/appellant in course of his examination under Section 313 Cr.P.C. on 19.6.2004 though consistently claimed himself to be innocent, answered to the question No.7 as follows:

"Q. No. 7:-If you have to say anything in respect of the above evidence against you, or if you have to say anything in support of your innocence, you are free to state before this Court.

Answer:-I am not sure why I killed my son."

16. As referred to hereinabove, the accused/appellant had been forwarded on 19.6.2004 for psychiatric treatment, the Court having noticed unusual conduct and/or behaviour of his at the time of his examination under Section 313 Cr.P.C. The attending doctor, Dr. Adi Nath Sarma was examined by the Court on

4.10.2004. This witness stated that he had examined the accused/appellant on 3.8.2004 and had found the following:

"C/C. Sleeplessness, speaks irrelevant or cumbersome behaviourm withdrawn, lacks personal hygiene. M.F.T. Less cooperative, posturing, inappropriate mood.

CFTNAD

Judgment/Insight impaired.

Opinion:- Schizophrenia

In my opinion patient Sri Debeswar Bhuyan has been suffering from schizophrenia.

Exhibit-A is my report where Exhibit-A(1) is my signature.".

He explained Schizophrenia from which the accused/appellant had been suffering from 21.6.2003 to be as hereunder:

"Schizophrenia is a major psychiatric illness. It comes under Psychosis. In psychosis, generally patient loses reality touch and he lives in his own world. He loses his insight. He is not aware of hhis own illness."

Referring to the report to the above effect (Exhibit-A) this witness stated that for the ailment from which he was suffering, the accused/appellant was not fit to stand trial. The contents of the certificate (Exhibit-1) being substantially the same as in the aforementioned extract revealing the symptoms and the diagnosis made, it is considered inessential to repeat the same.

17. Admittedly, the accused/appellant undertook treatment at the Lokapriya Gopinath Bordoloi Regional Institute of Mental Health at Tezpur, whereafter, he was reproduced before the Trial Court and his examination under Section 313 Cr.P.C. was completed on 15.2.2005 by putting only the following question:-

"Q. Will you adduce your evidence?

Ans. I shall not adduce"

18. Evidently, the learned Trial Court while convicting and sentencing the accused/appellant analyzed the above recited evidence of the prosecution witnesses and also the answers provided by the accused/appellant in course of his examination under Section 313 Cr.P.C. recorded on 19.6.2004 and 25.2.2005.

19. The learned amicus curiae has insistently argued that the evidence of P.W.2 when read in conjunction with that of P.W.5 demolishes the case of the prosecution and that on that count alone, the conviction recorded and the sentence awarded to the accused/appellant is liable to be set aside. These two witnesses having provided irreconcilable versions of the same incident, the accused/appellant is entitled to the benefit of doubt, he urged. Terming the alleged act of the accused/appellant vis--vis the deceased to be inconceivable qua a person with a normal state of mind, Mr Phukan has endeavoured to impress upon us to accept that at the relevant point of time he (accused/appellant) was in a disabling ailing mental state to be deprived of the normal faculties and senses either to discern the right from the wrong or to understand the implication of his acts and deeds. According to the learned amicus curiae, the indication of such a challenged state of mind of the accused/appellant though available in traces from the evidence of the prosecution witnesses, the testimony of the doctor read with his report (Exhibit-1), establishes beyond doubt that the accused/appellant, even if his involvement in the alleged act of assault is otherwise proved, cannot be held guilty of the offence of murder with which he has been charged.

20. Elaborating on the concept of Schizophrenia from which the accused/appellant had been diagnosed to be suffering, Mr Phukan has contended that as medically proclaimed, such an illness can neither be contacted overnight nor developed instantaneously and, therefore, it can be convincingly pre-supposed that such state of mind of the accused/appellant had prevailed from much before the date of the incident and had subsisted at all relevant points of time. In order to demonstrate the symptoms of Schizophrenia and the bearing thereof on the conduct, behaviour and other faculties of the person affected, the learned amicus curiae has drawn our attention to the celebrated treatise to this effect as contained in Modi's Medical Jurisprudence and Toxicology (23rd Edition). Mr Phukan on the basis of this has laboured to contend that the symptoms as discussed therein are

demonstrably akin to those from which the accused/appellant at the relevant point of time was possessed of and that, therefore, it can by no means be contended that he had the required mens rea to render the alleged act of assault to be any offence under the Indian Penal Code. To buttress his arguments, Mr Phukan has placed reliance on the decisions of the Apex Court in Dahyabhai Chhaganbhai Thakkar -vs- State of Gujarat, AIR 1964 SC 1563 as well as in Shrikant Anandrao Bhosale -vs- State of Maharashtra, (2002) 7 SCC 748.

21. Mr Kamar per contra referring to Section 84 of the Indian Penal Code as well as Section 105 of the Indian Evidence Act, 1872 (for short, hereinafter referred to as 'the Evidence Act'), has argued that even assuming that the accused/appellant was suffering from Schizophrenia on and from 21.6.2003, it cannot, in any view of the matter, be supposed that he was in the grip of such ailment at the time of the occurrence. According to him, even if it is so, as the ailment detected in the accused/appellant cannot be equated with unsoundness of mind as enumerated in Section 84 of the Code, he is not entitled to the benefit thereof. Heavily relying on the relevant excerpts from Field's Expert Evidence (Third Edition), the learned Public Prosecutor has maintained that Schizophrenia cannot be identified with mental unsoundness as contemplated in Section 84 of the Code and that the accused/appellant having failed to establish that he had been either insane or a lunatic at the time of commission of the offence, in the face of the otherwise unimpeachable evidence of the prosecution, no interference with the impugned judgment is called for. According to Mr Kamar, the fact that at the time of the assault the accused/appellant was in a sound mental state is apparent from his conduct of making an endeavour to bury the dead child in a pit which he had dug. This post-offence conduct of the accused/appellant leaves no manner of doubt that he was in a normal state of mind at the time of commission of the offence, he contended. While insisting that the evidence of P.W.2, the mother of the child and the wife of the accused/appellant clearly proves the charge, the learned Public Prosecutor has submitted that as some abnormality in his (accused/appellant) conduct and behaviour had been noticed by the Trial Court only after completion of his examination under Section 313 Cr.P.C, the omission to examine him afresh after his return from treatment does not in any way vitiate the trial. In support of his submission, Mr Kamar has placed reliance on the decisions of the Apex court in

Hari Singh Gond -vs- State of Madhya Pradesh, (2008) 16 SCC 109; Siddhapal Kamala Yadav -vs- State of Maharashtra, 2009 CRI. L.J. 372 and in Sudhakaran -vs- State of Kerala, (2010) 10 SCC 582.

22. We have extended our anxious consideration to the evidence on record and the submissions advanced on behalf of the parties. Obviously, except P.W.2, the prosecution has not offered any other witness who had seen the gruesome act of cutting the hapless child to murder. This witness who happens to be the informant as well, admittedly, is the mother of the deceased who at the relevant time was aged 1 1/2 years. The accused/appellant is her husband and the father of the child. P.W.3,4,5,6 and 7 are all reported witnesses, they having come to learn of the incident from P.W.2. Though P.W.5 in his deposition has stated that P.W.2 did not clearly disclose to him that the accused/appellant was the assailant and had disclosed that when she arrived at the place of occurrence, she had found her son already dead, in view of the otherwise unambiguous and emphatic statement of this witness (P.W.2) identifying him (accused/appellant) to be the assailant, we do not feel persuaded to reject her testimony in this regard. We are, therefore, of the unhesitant opinion that the accused/appellant was the assailant and that due to the cut injuries sustained by his assaults the deceased met his untimely death.

23. vis--vis the mental state of the accused/appellant at the relevant point of time, all that can be gathered from the evidence of the prosecution witnesses is that he was reticent by nature and used to keep himself indoors and interact only when he was compelled to do so. The medical evidence, the authenticity and the credibility whereof has not been questioned by the prosecution, however, reveals the following additional symptoms:

i) sleeplessness,

ii) irrelevant speech,

iii) wandersome behaviour,

iv) withdrawn personality,

v) lack of personal hygiene,

vi) inappropriate mood,

vii) non-cooperative etc.

According to Dr. Adi Nath Sarma who had examined the accused/appellant, the composite effect of these symptoms is that the accused/ appellant was suffering from impaired insight resulting from Schizophrenia. The doctor has clarified that Schizophrenia is a major psychiatric illness in which generally the patient looses reality touch and dwells in his own world. Not only he looses his insight, he also remains unaware of his own illness. In this premise and on the basis of the diagnosis made by him the witness stated in specific terms that because of such ailment from which the accused/appellant had been suffering he was not in a fit state to stand trial. Not only the Trial Court accepted this medical opinion as required by the Criminal Procedure Code, the trial was also stalled and the accused/appellant was forwarded for treatment to the Lokapriya Gopinath Bordoloi Regional Institute of Mental Health at Tezpur. The accused/appellant took treatment thereat and was made to stand trial on his release from the said hospital after 3 1/2 months.

24. Schizophrenia as has been dealt with in Modi's Medical Jurisprudence and Toxicology (23rd Edition) is of various kinds, namely, Simple Schizophrenia, Hebephrenia, Katatonia, Paranoid Schizophrenia, Schizo-Affective Psychosis, Pseudo- Neurotic Schizophrenia etc. Though the different varieties of Schizophrenia present multiple ranges of symptoms, conduct and behaviour, it is apparent therefrom that in all such conditions the person affected is deprived of his normal faculties. In Simple Schizophrenia there is, amongst others, a gradual loss of interest in the outside world, from which the person withdraws. There is an all round impairment of mental faculties and the patient emotionally becomes flat and apathetic. He looses all ambition and drifts along in life swelling the ranks of the chronically unemployed. Though complete disintegration of the personality generally does not occur, when it occurs it does so after a number of years.

25. Hebephrenia is characterized by disorderly thinking coupled with incoherence of thought, periods of wild excitement along with illusions and hallucinations. Frequent bizarre delusions are also present. Impulsive and senseless conduct in

response to such hallucination or delusions also occur resulting in complete disintegration of the personality of the individual effected.

26. In Katatonia the patient is in a state of wild excitement and is destructive, violent and abusive. He is prone to impulsively assault anyone without the slightest provocation and may make homicidal and suicidal attempts in course of such fits. He is often negative and refuses to take food or medicines and to carry out his daily routine activities. His face is expressionless and his gaze vacant. He may understand clearly everything that is going on around him, and sometimes without warning and without any apparent cause, suddenly attack any person standing nearby. To him the whole picture may change and a state of extreme excitement may set in.

27. In Paranoid Schizophrenia, the person affected lives in a state of constant fear being haunted by the belief that he is being poisoned, some noxious gases are blown into his room and that all are plotting against him to ruin him. The patient gets very irritated and excited owing to equally painful and disagreeable hallucinations and delusions.

28. Pseudo-Neurotic Schizophrenia is characterized by neurotic symptoms and begins with obsessional personality which for a long time may remain disguised as an apparently obsessional illness.

29. The above sketch of the salient traits of the different kinds of Schizophrenia has been referred to by us in absence of the categorization thereof by the doctor who had examined the accused/appellant. In the ultimate analysis, however, according to us, having regard to the characteristics of the different forms of Schizophrenia referred to hereinabove, it can be safely concluded that a patient suffering therefrom does not subsist in a normal state of mind and remains withdrawn in his own world of obsession, hallucination and delusion with totally unpredictable conduct and behaviour, thus handicapped to discern the implications of his acts and deeds. The patient is denuded of his power of insight and conducts instinctively.

30. Section 84 of the Code needs to be extracted at this stage:

"84. Act of person of unsound mind.-Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.".

That the burden of proving the existence of the circumstances bringing the case within the purview of Section 84 of the Code lies upon the accused in terms of Section 105 of the Evidence Act is not in doubt.

31. Section 105 of the Evidence Act enumerates thus:

"105. Burden of proving that case of accused comes within exceptions.-When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code (45 of 1860), or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances."

The rival pleas having a bearing on the availability or otherwise of Section 84 of the Code to the benefit of the accused/appellant, thus, has to be tested in the above factual and legal background

32. It would be apt, at this stage, to briefly refer to the authorities cited at the Bar for a proper navigation of the adjudicative course on the issue. In Dahyabhai Chagganbhai Thakkar (supra) their Lordships of the Apex Court while dealing with the plea of legal insanity contemplated under Section 84 of the Code in conjunction with Section 105 of the Evidence Act had observed that the fundamental principle of criminal jurisprudence is that an accused is presumed to be innocent and that, therefore, the burden lies on the prosecution to prove the guilt of the accused beyond reasonable doubt. It was underlined that this burden never shifts and it always rests on the prosecution. Recalling the prescription of Section 84 of the Code and Section 105 of the Evidence Act, their Lordships also referred to the expression "shall presume" appearing in Section 4 of the Evidence Act, understandably to indicate the standard of proof required of an accused person even in order to establish his plea of unsoundness of mind under Section

84 of the Code. It was held with reference to the expression "shall presume" appearing in Section 4 of the Evidence Act that the Court would regard such circumstances as proved if it believes that the same existed or that their existence was so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that these did exist. Their Lordships propounded that the accused will have to rebut the presumption that such circumstances did not exist, by placing materials before the Court sufficient to make it consider the existence of the said circumstances so probable that a prudent man would act upon them. It was, thus, emphasized that the accused has to satisfy the standard of a "prudent man" so much so that 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 would be said to have discharged his burden.

33. Their Lordships enunciated that 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. Their Lordships were of the view that 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. This view was sought to be reinforced with reference to various texts on criminal law bearing on this aspect of proof.

34. Their Lordships held that the doctrine of burden of proof in the context of the plea of insanity may be stated to comprise of:

(1)proof by the prosecution beyond reasonable doubt that the accused had committed the offence with the requisite mens rea;

(2)the burden of proof rests always on the prosecution from the beginning to the end of the trial; (3) there is a rebuttable presumption that the accused was not insane when he committed the crime;

(3) in terms of Section 84 of the Penal Code 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 not higher than that rests upon a party to civil proceeding;

(4) even if the accused is 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 regard 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.

35. In Hari Singh Gond (supra), the Apex Court recalled its observations in Bapu -vs- State of Rajasthan, (2007) 8 SCC 66 that 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) and that in order to constitute an offence, the intent and act must concur. It was held that in case of insane persons no culpability is fastened on them as they have no free will (furiosi nulla voluntas est). That the burden on the accused to prove his plea of unsoundness of mind under Section 84 of the Penal Code is not higher that that rests upon a part to civil proceedings was reiterated.

36. In Siddhapal Kamala Yadav (supra), their Lordships while treading the same course, however, observed that mere abnormality or partial delusion, irresistible impulse or compulsive behaviour of a psychopath affords no protection under Section 84 of the Penal Code. In Sudhakaran (supra), the accused/appellant was charged with the offence of murdering his wife by assaulting her with a chopper on her neck while sparing the child. His plea of insanity under Section 84 of the Code in the facts of the case was rejected. The burden of proof required to be discharged by an accused vis--vis Section 84 of the Code as above was, however, reiterated by placing reliance on Dahyabhai Chhaganbhai Thakkar's case.

37. The legal proposition that has stood the test of time is as had been enunciated in Dahyabhai Chhaganbhai Thakkar (supra). In other words, an accused in pursuit of his endeavour to avail the benefit of Section 84 of the Code has to adduce evidence so much as that a "prudent man" is moved to accept the existence of the

circumstances reinforcing his contention and to act upon the same. In such a case the accused person can be said to have discharged his burden under Section 105 of the Evidence Act. Coupled with the fact that in a criminal trial the burden of proof is always on the prosecution to establish the charge and that the same never shifts, if the impact of the evidence produced by the accused which has to be judged on the touchstone of preponderance of probability is to either neutralize or efface one of the essential ingredients of the offence with which he/she is charged with, he/she would be entitled to be acquitted thereof.

38. Admittedly, the accused/ appellant in the present case has been charged with the offence of murder under Section 302 of the Penal Code and in terms of the maxim act us non facit reum nisi mens sit rea, in order to hold him guilty the prosecution has to prove that the act of assault and his guilty mind i.e. mens rea did co-exist at the relevant point of time. In other words, the act said to have been committed by the accused/appellant, in order to constitute the offence of murder under the Penal Code, has to be invariably accompanied by his guilty mind or mens rea. If the evidence on record vis--vis the mental state of the accused casts a doubt with regard to the mental culpability of his, to that extent it has to be inevitably held that the prosecution has failed to prove the charge of murder against him. This is permissible even if the accused/appellant has not been able to prove beyond doubt that at the relevant point of time he was of unsound mind. He is relieved of that burdensome responsibility as is evident from the consistent decisions of the Apex Court referred to hereinabove.

39. On an analysis and assessment of the evidence available on record, both from the witnesses of the prosecution as well as of the doctor, we are of the unhesitant opinion that at the point of time when the accused/appellant had committed the act of assault he was not in a normal state of mind so as to infer that he had the mens rea to commit the offence with which he has been charged.

40. In the above view of the matter, we are inclined to grant the benefit of doubt to the accused/appellant in the attending facts and circumstances of the case.

41. The appeal is, thus, allowed. The impugned judgment and order is set aside.

42. Before parting, we record our appreciation for the valuable assistance rendered by Mr Phukan, learned amicus curiae and Mr Kamar, learned Public Prosecutor in enabling this Court to dispose of this appeal. As Mr Phukan had been requested to assist this Court as amicus curiae, we hereby order payment of his professional fee of Rs. 5,000/- to him which will be paid by the State Government forthwith.

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