

State of Karnataka Vs. Jatti

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Court : Karnataka

Decided On : Jan-28-1992

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Judge : A.B. Murgod and ;P.K. Shyamsundar, JJ.

Appeal No. : Criminal Appeal No. 240 of 1990

Appellant : State of Karnataka

Respondent : Jatti

Advocate for Def. : M.V. Seshachala, Amicus Curiae

Advocate for Pet/Ap. : S.R. Bannurmath, Addl. State Public Prosecutor

Judgement :

1. This appeal by the State arises out of and is directed against the judgment of the learned Sessions Judge, Karwar in S.C. No. 19/1989. The learned Sessions Judge, by an order made in that case on the 7th day of November, 1989, acquitted the accused of the offence levelled against him, acting under S. 334 of the Code of Criminal Procedure ('Cr.P.C.' for short), extending to him the benefit of the exception contained in S. 84 of the Indian Penal code ('IPC' for short), but directed the accused to be detained in safe custody until the wife of the accused examined in the case as P.W. 1 arrived before Court to take charge of the accused as

ordered therein. We are told that the wife did appear before Court and took charge of her husband on 13-11-89 after executing a bond assuring the safe conduct of the accused. The State considers the acquittal of the accused to be somewhat unmerited and not merely that, it takes exception to the procedure adopted by the learned Judge in endeavouring to brand the accused as an insane person just to work out an acquittal in his favour. The grievance made is that albeit the accused himself not having pleaded the defence of insanity and evidence led by the prosecution indicating that the accused was quite sane at the time he committed the crime alleged against him, the learned Judge had acted in a somewhat precarious manner in adjudging the accused insane merely by the observations he had made of the accused during the trial. It is said on such very thin, tenuous and insufficient material, the learned Judge, who did not have the benefit of medical evidence to infer that the accused was mentally insane at the time of committing the crime and which the accused himself partly owned during the course of his examination under S. 313, Cr.P.C. and what is more, even to the charge as framed by the Court below, the accused having entered a full-throated plea of not guilty in relation to the attack on his wife and children, which was a part of the charges framed against him that included the further charge of arson punishable under S. 436, I.P.C., indictment being that he had later set fire to the house of P.W. 2 Chandu as also the further case of assaulting P.Ws. 3 and 4 Kaniya and Shivu respectively, and it is contended that such a man could not have been branded as insane. The accused made no bias about admitting that he had indeed assaulted his wife and children but denied having either set fire to the house of P.W. 2 or assaulting P.Ws. 3 and 4. At the trial, on the strength of the prosecution evidence, the learned Judge did conclude that in most of its facets, the case of the prosecution is true but however went on to hold that the man either when he was belabouring his wife and children or his neighbours or when he set fire to the house of his neighbour P.W. 2, was totally unaware of what he was doing or the consequence of what he had done. In other words, he finds the man was at the time of commission of these acts, absolutely deprived of the power of reason, the ability to perceive the right or wrong of his action, with the result he declared him to be mentally insane and gave him the benefit or the exception enjoined by S. 84, I.P.C., which declares that nothing is an offence when it is found to be committed

by a person who is mentally insane. In that view of the matter learned Judge acquitted the accused of the offence with which he stood charged, but did not however direct the accused be held in any asylum or direct that the accused be treated for his mental affliction, but simply rested content by ordering the accused be let into the custody of his wife and that of course appears to have since been done and that is where probably the accused remains.

2. After having heard the learned Additional State Public Prosecutor Sri. Bannurmah who appears in support of this appeal and Mr. M. V. Seshachala, the very amiable amicus curiae, who accepted the brief on behalf of the respondent (to be referred to hereinafter as 'the accused'), since as it was in the Court below, in this Court also he made no arrangements for his defence and therefore it is, we had to request Sri. M. V. Seshachala to appear on behalf of the accused acting as amicus curiae to assist us in the matter. We had the benefit of the learned submissions made by him and after a consideration of the same, we think that this appeal ought to succeed and the judgment of the learned Sessions Judge acquitting the accused of the charges levelled against him taking the view that he was mentally insane, was clearly unsupportable.

3. Before we venture to give our reasons therefor, it behoves we also state a few facts that have led us to this appeal.

4. The accused herein is one Jatti s/o. Jatti Mukri, who during the trial was 42 years old and that makes it about 45 years right now, said to be an agriculturist in a village near Honnavar, where he stayed with his wife Hanumi, accompanied by Mahadevi, Durgi, Nagaveni and Lakshmi, all children of tender years. The evidence also discloses that at the time of the incident, wife Hanumi was carrying a fifth child. The prosecution story goes back to the night of the incident, being night of 29-3-89, on which date the accused had gone to bed as usual with his wife and children after his night meal. It appears that suddenly around 10 p.m., he woke up and he suddenly started strangulating his wife and thereupon the wife Hanumi managed to escape from the clutches of her husband and drew away from him and switched on the light, at which stage she found her husband rushing towards her with a sickle (M.O. 1) with which he tried to hit her and as a matter of

fact, managed to hit her face. Thereafter the lady came out of the house crying out, all the time said to have been pursued by her husband, who caught up with her and assaulted her on her nose with the sickle. It also appears that in the meanwhile, when the children woke up following this furore, the accused is said to have assaulted them with the sickle, resulting in some injuries to all these children. At that stage, the case is that the neighbours, attracted by the cries inside the house of the accused, rushed there and amongst those who thus came to the scene were P.W. 2, P.W. 3, P.W. 4 and P.W. 7. But their appearance, it is said, only helped in stroking the furore further in that the accused seeing all of them, started chasing them with the result all of them escaped into safety of their own houses taking care to fasten themselves inside their houses from within. But the accused, in a mood of rampage, started rapping the doors of the house of P.W. 2 and finding that he made it fasten from inside and access was therefore barred, the accused then set fire to the house of P.W. 2, which is said to have caused extensive damage according to the prosecution, amounting to nearly Rs. 10,000/-. After doing all this, after this fire work, the accused is said to have run away, vanished into the dark night and thereafter the wife Hanumi and children of the accused were taken to the hospital by some kindly neighbours and from the hospital the (sic) treatment of these people, when the story relating to incident transpired, the doctor P.W. 5 Dr. T. N. Bhaskar summoned the jurisdictional police from Honnavar, which resulted in arrival of P.W. 12 Janardhan, Assistant Sub-Inspector, who recorded the statement of the wife Hanumi, who later examined as P.W. 1 and that statement being Ex.P 15 served as the first information report on the basis of which investigation ensued leading to the arrest of the accused on the next day. The prosecution claimed pursuant to the voluntary statement made by the accused after interrogation by the Police Ex.P 17 that led to the recovery of M.O. 1 sickle from behind the house of accused himself. That was seized under mahazar Ex.P 12. That is all we state about the prosecution case because we do not have, save for the report of the Chemical Examiner at Ex.P 18 which states some stains of blood, anything else to take us beyond that. We do not have the Serologist report certifying further whether it is of human origin etc. etc. On the strength of his investigation, the accused was formally charge sheeted by the Honnavar Police in Criminal Case No. 79/1989 before the Magistrate at Honnavar

who in due course, sent up the accused to take up trial before the Court of Session, wherein he was charged on three counts namely for the offence punishable under S. 307, IPC touching the attempt made on the life of the wife Hanumi, for the offence punishable under S. 324 IPC for having voluntarily caused hurt to his children and P.Ws. 3 and 4 with dangerous weapon and lastly for the offence punishable under S. 436, IPC, offence of arson touching the alleged incident of setting fire to the house of P.W. 2. As we have pointed out in relation to these charges, the accused, while admitting that he had assaulted his wife and children, denied having assaulted anybody else and denied having set fire to the house of P.W. 2. Subsequently, at the time of trial, the wife of the accused, examined as P.W. 1, the neighbours P.Ws. 2, 3, 4 and 7 etc., Police witnesses and panchas was recorded. It is not necessary for us to refer to it in the course of this judgment.

5. It transpires the Investigating Officer had sent up the accused for a medical examination and the doctor P.W. 5 Dr. T. N. Bhaskar who conducted a physical check-up of the accused, certified that he was quite healthy. A requisition to the doctor is to be found at Ex.P 8. We do not know why the Investigating Officer found it necessary to send the accused for medical check-up for whatever it is worth, but then P.W. 5 was examined in trial and he did say that the accused was not merely physically sound, but he was also mentally sound, although in the report he made to the Investigating Officer he confined it only to the physical condition. At the trial, the wife of the accused while she did tell the Court of the attack by her husband on her and her children on the night of the incident, she did not speak to the fact of the accused setting fire to the house of P.W. 2 although she appears to have spoken to the police about it and as transpiring from the complaint Ex.P 15 itself. Because of that omission, prosecution treated her as hostile and cross-examined her, which resulted in notching up of some contradictions. But otherwise she stood her ground so far as the attack on her and her children by her husband, the accused. The other witnesses P.Ws. 2, 3 and 4 admittedly neighbours and close relations of the accused, since they happen to be the uncle and nephews of P.W. 1 Hanumi, furnished details of the incident and state of fashion in which the accused was behaving and that they also spoke to having seen Hanumi and her children injured and the fact that the accused was,

for some reason, in high-dudgeon and was in great fury, so much so when they ventured out to the rescue of wife and children, the accused chased them sickle-wielding and therefore they had to run back to the safety of their houses where they made themselves secure. But the unabated fury of the accused led to the man setting fire to the house of P.W. 2 etc. etc. All those, more or less remain without any serious contradictions excepting in the matter of the arson incident in respect of which Mr. M. V. Seshachala has been able to point out some contradiction in the evidence of these witnesses P.Ws. 2, 3 and 4 on the basis of which he seeks to contend that the charge of having set fire to house of P.W. 2 could not be said to have been sustained materially.

6. The evidence, in particular of Hanumi, the wife of the accused examined as P.W. 1, does not doubt indicate that the accused, who had settled down in the night after his dinner had no reason at all to throttle, attack or injure her. However, she managed to escape from his clutches. Then, the accused assaulted her with a sickle and injured her and also attacked the neighbours who came to the house attracted by the cries for help. The neighbour is a close relative of P.W. 2. He also chased away two other neighbours who had come there with the sickle. At the same time, all of them stated in their evidence that the accused was normally well-behaved and was nothing less than an affectionate parent to his children and well-mannered husband who owned the house in which they were all living and was gainfully occupied by tilling a piece of land owned by him. They all said that the accused was a person who was quiet, composed and tranquil in nature. The wife stated that before this incident there was no quarrel nor any kind of domestic discord creating disturbances in the family.

7. It is this person who it is said on that night suddenly attacked his wife and children and also attacked the friendly neighbours who were none other than the close kin of his wife. It was also pointed out that the Investigating Officer had sent the accused for a medical check-up. He was certified to be physically alright. In other words, he was certified to be not suffering from any illness.

8. We then find, after the arrest of the accused, the Investigating Officer recorded the statement of accused who gave out a statement on his own and pursuant to

this he took the Police and Panchas near his house and there, out of a bush near his house, he pulled out a knife and a match-box. The articles were seized as per recovery panchanama P-12. During trial, when the charge framed against him was read out, he pleaded guilty to the charge of assault on his wife and children but, with regard to the other charges touching the assault on P.W. 2, he appears to have demurred and stated that he did not know anything about the burning of the house, apparently referring to the house of P.W. 2. At no stage of trial or investigation he appears to have pleaded a case of insanity.

9. The doctor who had occasion to examine the accused told the Court that the accused was found to be physically and mentally fit. As noticed earlier, requiring of certification of medical soundness by the Doctor did not find mention in the requisition of the I.O. at Exhibit P-8. But still, we must say that whatever medical evidence there was, even a speck of it was against assuming insanity at the time of the incident in question. Even so, the learned Judge went on to record a finding that he was insane and therefore took the view that S. 84 of IPC would come to play. Therefore, the learned Judge thought that he can rely on S. 84, IPC to declare that the accused did not commit any of the offences he had stood charged with.

10. The view of the learned Judge as aforesaid, undoubtedly appears against the trend of the prosecution's case and although it has granted to the accused a reprieve from punishment, nonetheless, the accused has got that benefit without seeking the same. He did not claim to have become insane at the time of the incident. Rightly the question raised therefore in this appeal by the learned Public Prosecutor is whether the plea of insanity can be raised suo motu by the Court and believed as well in the absence of evidence such as the evidence of a competent doctor testifying in that behalf. Could the benefit of an exception to the general rule that a person who is found guilty of a crime which is held to have been committed, be punished, could have been accorded to the accused at all.

11. Having heard the learned Prosecutor and Mr. Seshachala Amicus Curiae, we think that although the learned Judge may not have erred in taking upon himself the responsibility of raising an issue touching the insanity of the accused, but had

certainly erred in holding the same to be established merely on the basis of his own observations of the accused and impressions he gained during the trial of the accused. It does not seem to us that the learned Judge has allowed himself to be over-whelmed by the physical condition of the accused during the trial and the circumstance that each and everyone of the witnesses tended to lavish sympathy on him, that the wife and daughter of the accused who were brought into the Court but not examined had burst out in deep grief at the plight of the accused imploring the Court to restore the accused back to the fold of the family. It has been both on human and compassionate grounds that the learned Judge reacted in his Judgment. For example, in para 33, the learned Judge says :

'When the accused was brought before the Court after the committal of the case, his appearance found of a man who has nothing to do in the affairs of this world and when this Court asked him about engaging a legal practitioner, he was simply shaking his hands and looking at the Advocates sitting inside the Court. When charges are framed, readover, he has pleaded guilty to the charge of assaulting his wife and children and with regard to the burning of the house, he said he do not know.'

Again in para 34, he says :

'This Court has observed the accused from the date of his production till the date of the argument on merits and found that in every phase of his movement he is required a Police Constable to hold and made him to walk either to the accused dock or to take back from the dock. When the daughter of the accused Mahadevi was brought by the Prosecution to record her evidence, she started crying by looking at her father and was not able to say anything when she was questioned. When this Court asked her as to what she wants, she raised her voice of crying and asked the Court to release her father.'

Then there is the dilemma in which he was placed.

'The witnesses who have received injuries and lost a residential house still have their sympathetic look at the accused when they were giving evidence.'

'The Prosecutor kept maintained that the defence has not taken up the defence of any insanity on the part of the accused at the time of commission of this offence and if the accused wanted to get the exception of Section 84 of IPC, the existence of such circumstance should be proved by the accused under S. 105 of the Evidence Act.'

12. After taking note of the fact that those who were injured at the instance of the accused and had lost their houses spoke on behalf of the accused and on finding that he had before him a very sensitive question touching the mental faculty of the accused at the time of commission of the alleged offence, the learned Judge went on to quote a passage from Richard Brandt said to have been excerpted from out of the Judgment of the Supreme Court in *Rajendra Prasad v. State of U.P.* : 1979 CriLJ792 in which the question at issue was the advisability of awarding death sentence in a case of murder and more particularly about the special reasons which the Court had to formulate an opinion in support of its decision to award death sentence. We have read the decision and the passage cited by the learned Judge and as pointed out, it is all about special reasons to be adduced while imposing death sentence being a primordial requirement under S. 353 of Cr.P.C. We do not see how that passage could be said to have a bearing on this case because what was material for purposes of sentencing cannot be very relevant for purposes of deciding whether a person had committed the offence with which he has been charged. That issue can be decided only on the evidence on record. There is no room for exercising discretion at the stage of assessing the guilt or otherwise of the accused which has got to be arrived at on the weight of the evidence produced in the case.

13. The learned Judge after adverting to Richard Brandt touching on the modality aforesaid in the matter of sentence went thereafter to Section 84 of IPC and S. 105 of the Indian Evidence Act. S. 84 lays down that nothing as an offence done by a person, without knowing, who had no balanced state of mind, who was unable to appreciate the nature of the act or not knowing that the said act was wrong or contrary to law. Section 105 of the Evidence Act puts the burden of establishing a case on the accused. What we find after adverting to S. 84, IPC and S. 105 of Evidence Act is that the requirement enjoined by law is the accused

takes the burden of establishing the guilt. Although he should discharge that burden, the onus on him may not be so heavy as compared to the load which the prosecution carried in establishing the guilt of the accused. The learned Judge appears to have thought that medical evidence would not be so apposite to decide the issue relating to sanity or the lack of it and that even in the absence of medical evidence that issue can be decided by reading the face of the accused.

14. The relevant observation of the learned Judge found at para 39 is as follows :

'Section 84 mentions the legal test of responsibility in case of alleged unsoundness of mind. It is by this test, as distinguished from medical test, that the criminality of the act is to be determined. This section, in substance is the same as the Mc. Naughten rules. These rules in spite of long passage of time was still regarded as authoritative statement of law as to criminal responsibility. In order to bring the case within the exemption under this Section, the accused must prove that at the time of committing the offence he was labouring under a defect of reason which had been caused by unsoundness of mind, with the result that he was rendered incapable of knowing the nature of the act that he was doing was either wrong or contrary to law. To get the benefit to the Section, the accused must establish any one of the three elements necessary under the sections, namely, (1) incapability of knowing the nature of the Act, or (2) that the act was contrary to law, or (3) that it was wrong.'

15. Thereafter, learned Judge goes on to elucidate the standard of proof which the accused must produce before he could be allowed to avail of the benefit of Section 84, an aspect with which at this moment we are not concerned. The learned Judge relied on a Bench decision of the Calcutta High Court in *Queen-Empress v. Kader Nasyer Shah* reported in (1896) ILR 23 Cal 604. That was a case where the accused was charged with the offence of murdering a boy aged 8 years. At the time of committal, the accused pleaded that he was mad. The Judge was assisted by assessors who found the accused was insane at the time of committing the offence. The learned Judge disagreed with their opinion and convicted the accused of the offence of murder under S. 302, IPC and awarded him transportation for life. The question that arose for consideration in that appeal was

whether the accused was entitled for the palliation attracting S. 84. His Lordship on a consideration of the evidence held :

'Applying then the law as we understand it to the facts of this case, we must say we are unable to hold that it has been shown that the accused, at the time he killed the child, was, by reason of unsoundness of mind, incapable of knowing the nature of his act, or that he was doing what was either wrong or contrary to law. The circumstances attending the murder go to show that he could not have been devoid of such knowledge, though they go to show that he must at that time have been suffering from mental derangement of some sort. We must therefore dismiss the appeal and confirm the conviction for murder and the sentence of transportation for life which is the only sentence besides the sentence of death which the law prescribes for that offence.'

16. However, the learned Judge in that case made a recommendation to the Government that the accused was entitled for some consideration because he had acted without any motive. It was therefore held by their Lordships that under S. 401, Cr.P.C. the accused merited a more mitigated sentence than the one imposed by the Court. But so far as the application of S. 84 of IPC on the basis of which a stand had been taken by the accused, should (Sic) though their Lordships pointed out that even in cases where the accused was neither totally sane nor totally insane, the Courts could extend the benefit of general exception to the accused, their Lordships however ultimately concluded that under S. 84 of IPC it would not be possible to take such a view. This is what their Lordships say :

'But at the same time we think we ought to take the course that the Bombay High Court took in the case just cited, *Queen-Empress v. Lakshman Dagdu* (1886-ILR 10 Bom 512), which was somewhat similar to this; and we accordingly direct that the proceedings be forwarded to His Honour the Lieutenant Governor with a copy of our judgment and our recommendation that the case may be dealt with the local Government under S. 401 of the Code of Criminal Procedure in such manner as it thinks fit. We make no special recommendation as to how the prisoner should be dealt with; but we deem it right to observe that, though having regard to the language of S. 84 of the Indian Penal Code was must hold that the accused is not

entitled to be acquitted, we think that the murder was committed without any apparent sane motive; that the accused was at the time suffering for mental derangement of some sort.'

17. Whatever their Lordships might have said in earlier parts of the Judgment and that is the aspect highlighted by the learned Judge in the passage borrowed from that judgment, ultimately their Lordships had come to the view that S. 84 being clear, a person who was totally insane can plead and get away from the consequences of one's own acts pleading that under certain circumstances without reason, he had done something, without being aware of what he was doing and therefore the law must bail him out and not condemn him for his action and conduct, which according to him was totally involuntary. Under the law as it now stands in this country, such a view cannot be taken at all. As pointed out by the Calcutta High Court and we also feel that to condemn persons who at the time of committing a crime were under some kind of stress or duress, resulting ultimately in doing something that amounted to a crime notwithstanding the fact that it was all done without the person being conscious of what he was doing, but even so would still be liable to be dealt with as if he had knowledge of the act he was doing to be totally inhuman. Very refreshing views on the healing attitude to be adopted by Courts find reference in the book 'Homicide - The Law and the Proofs' by Prof. Nash and by Mr. C. K. Jayasimha Rao published in 1980. In the Chapter - 'Insanity at the time of Commission of the Crime' at page 20 of the treatise, the learned authors have set out in extenso S. 27 of the Criminal Code which is a modified version of the well-known Mc. Naughten Rules prevailing in a modified form in the State of Queen's Land (Australia).

'A person is not criminally responsible for an act or omission if at the time of doing the act or making the omission he is in such a state of mental disease or natural mental infirmity as to deprive him of capacity to understand what he is doing, or of capacity to control his actions, or of capacity to know that he ought not to do this act or make the omission.

A person whose mind, at the time of his doing or omitting to do an act, is affected by delusions on some specific matter or matters, but who is not otherwise entitled

to the benefit of the foregoing provisions of this section, is criminally responsible for the act or omission to the same extent as if the real state of things had been such as he was induced by the delusions to believe to exist.'

18. We are also of the same view and think in circumstances where a person is goaded to commit a criminal act while under some kind of delusion seized by a fit of activity that compels him to move and to do something, which otherwise he would not have done at all, the person would be totally incapable of resisting the momentary impulse which forces him to act in a certain manner, in such a case there is always an element of involuntarily and total lack of deliberation. It is a kind of psychic action that occurs not because the person desires it, but because the person cannot help doing it as he is literally driven to do it because of the psychogenic conflict that takes place in his mind and if the aftermath of such action turns out to be an offence in the eye of law, the man renders himself liable for punishment albeit there being no intention on his part to commit the offence. Therefore, we should, as the countries of the West have done, suitably modify the provisions of S. 84, IPC so that the reprieve the law grants to a totally insane person is also made available to a person who is not wholly innocent but nonetheless not guilty either.

19. Coming back to the facts of this case, we are satisfied that what the learned Judge did in declaring the accused to be of unsound mind and giving him the benefit of general exception embodied under S. 84 of IPC was clearly unsupportable and could not have been resorted to. There was no medical evidence indicating that the accused at the time of the incident was suffering from some kind of a mental instability or was actually insane.

20. We notice that is a case in which neither the accused nor the prosecution had advanced the plea of insanity. Even so, we are not saying that the Judge was not at liberty to raise the issue of insanity himself and investigate it but all that we say is that if he thought the man was insane, he could have called for evidence and given an opportunity to the prosecution to lead evidence in that behalf in the absence of which he could not have, on the basis of his own observations of the accused, come to the conclusion that the man was unsound and had remained so

even at the time of commission of the crime.

21. The defence as aforesaid is not in this case conducive to such a conclusion and certainly does not entail the Judge to take up cudgels on behalf of the accused. If he thought the accused was under some mental instability, he could have submitted the accused to some kind of psychiatric examination and should have armed himself with some data touching the mental condition of the accused before pronouncing him to be unsound. We think that the same is very essential although it is true that particularly when a District and Sessions Judge performs multifold tasks ranging from maintaining asylums, prisons, Borstal schools and often times to act as guardian of orphans and destitutes all of which makes a District and Sessions Judge a person who is required to play many a role. But still, there certainly are limitations on the power he exercises and when he declares an accused who does not claim to be insane but nevertheless lacked the mental stability of a normal person as a person of unsound mind. Such a declaration while enabling the accused to escape from punishment is still likely to cause many problems to him, and society does not take kindly to someone who is (sic) by the Court to be an insane fellow. Society shuns such a person. What is more, when the man is found to be insane, but nonetheless as we find in this case he is restored to the family without taking any precaution as to the care to be taken of him in future in that, whether his condition required any treatment to be afforded at specialised institutions. As a matter of fact, the learned Judge has acted under S. 334 of Cr.P.C. which enjoins acquittal on ground of insanity of mind, but the provision which follows the same i.e. 335 requires that the Court should report to the State Government the action taken by the Court under sub-section (1) under which the Court can either direct a person to be detained in safe custody in some place or order such person to be treated in a specialised institution which includes producing the person concerned for inspection of a prescribed Officer. In this case, the learned Judge has directed the accused to be let into the custody of his wife subject to the execution of a bond by her. But, he has omitted to make any direction that the accused should be produced before an Inspecting Officer appointed by Government in this behalf and he could have made a request to the Government as enjoined under S. 335(4) which she does not appear to have done. Be that as it may, we think that the learned Judge could not have recorded a

verdict of insanity merely on the basis of his own intuitive thoughts and the impression he gathered of the man during his presence at the time of trial. He was duty bound to have called evidence in this behalf after notice to both sides. This aspect has been highlighted in R. v. Dickie (1984) 3 All ER 173. The head note of this decision sets out the ratio of the case as follows :

'Criminal law - Insanity - Issue of insanity - Raising of issue - Issue raised by Judge - Whether Judge entitled to raise issue of his own volition.

In certain exceptional circumstances a judge can of his own volition raise an issue of insanity and leave the issue to the jury to decide if there is relevant evidence which goes to all the factors involved in the M'Naghten Rules. However before the Judge leaves the issue of insanity to the jury he should give counsel for the defence and for the prosecution the opportunity to call such evidence as they deem necessary, having regard to his expressed intention to deal with the issue, even if that involves an adjournment of the case so that such evidence can be raised.'

22. That was a case in which the accused was found in a hired lodging displaying total apathy to a fire raging all round him burning everything down including four flats that belonged to the landlord. The evidence in the case was that the man had himself set fire to his own belongings after locking-up himself in the house. While the fire was raging all round him, he was simply sitting and staring vacantly at a television set which was not on. From the aforesaid characteristic trait of the accused, the learned Judge thought that 'he should direct the Jury to return a verdict that, the accused had not committed the offence but he was insane'. We also notice from the facts of the case that the defence had produced material to show that a little before the incident, the accused was under treatment of a doctor for a disease called hypomania, a malady which affects the mental condition. The evidence also was that for some time before the incident, the accused had stopped taking the drugs prescribed for keeping the malady under check so as to prevent it from exceeding limits beyond which the afflicted person would be acting in an abnormal way. The result was, the man being out of treatment had restored to setting fire to his own belongings and while everything was going up in flames,

he was sitting calmly staring at a vacant television set. In such circumstances, the learned Judge directed the jury to return a verdict of 'Not guilty by reason of insanity'. The accused took exception to the verdict declaring him to be an insane person and hence the appeal by him. In the course of their Judgment their Lordships of the Court of appeal made this very interesting observation :

'In is of course, tempting to think that in the circumstances of the present case a jury ought to be allowed to resolve such an issue because laymen looking at the matter would easily conclude that only a lunatic would sit watching the blank face of a television set while behind him some of his possession which he had set alight were going up in flames. Counsel for the appellant submits that this merely shows how dangerous it is to allow so calamitous a result to ensue save by a defendant's initiative.

We have come to the conclusion that we are unable to say there are no circumstances in which a judge may not of his own volition raise an issue of insanity and leave it to a jury, provided that if he chooses to do so there is relevant evidence which goes to all the factors involved in the M'Naghten test. We envisage, however, that circumstances in which a judge will do that will be exceptional and very rare. If a judge embarks on such a course he will have to be careful to ensure that before he leaves the issue to the jury he will have given counsel for the prosecution, and, of course, for the defence, ample opportunity to call such evidence as they deem necessary, having regard to his expressed intention to deal with the issue, even if that involves an adjournment of the case so that such evidence can be adduced. It would be quite wrong if a judge took the initiative in this respect and did not afford the defence in particular an opportunity to call such evidence or further evidence as it felt the need to.'

23. We agree with the statement of law declared as aforesaid by their Lordships in the two judgments and more so with the dictum of the Court of appeal. The Calcutta High Court in Kader Nasyer Shah's case (1896 ILR 23 Cal 604) which we have referred to hereinbefore, held that the Judge may be entitled to resolve an issue of insanity all by himself although not pleaded by the accused, but before reaching any conclusion in that behalf he must necessarily have a set of facts

produced in evidence by appropriate medical sources which could only be through doctors competent to testify in that behalf. In the absence of such evidence, the Judge (sic) could not have proceeded to acquit the accused on grounds of insanity on his own. That error having been committed, we are constrained to correct the same by allowing this appeal and setting aside the verdict of acquittal.

24. But the question now arises as to what really we should do. We have given our anxious consideration to the options that are open to us, one of which is to remit the case back to the Court below, asking the Judge to call appropriate evidence and thereafter to dispose of the matter once again. The other being, to assess the action of the accused as if he was a normal person and to decide whether he could be found guilty of the charges on which he was indicted at the trial.

25. A reading of the evidence obtained in this case shows that it is not a case of clear insanity, but is just a case of some aberration in the mind of the accused that had resulted in abnormal behaviour leading to the assault on his wife, children and others who came to their rescue. The evidence otherwise indicates that the man was a normal being, who was not remiss in the matter of providing his wife and children with shelter and food. He owned a house, some land and was gainfully occupied in cultivating his land. Who knows what had happened between the closed precincts of the house on that night Although the wife did deny that prior to the incident they had no domestic discord, but, we think there might well have been some cause or reason which had triggered off some explosive action leading to the incident which possibly has been held back from the investigating agency in the anxiety to save the accused from the consequences of his act. Even otherwise, there may have been some circumstance, some kind of stress and strain resulting in a momentary imbalance robbing him of rational thinking so on and so forth. We may spell out many reasons for his act and conduct, but none of them would suffice to hold that he was totally insane in which event alone he could be bailed out by the Court taking resort to S. 84 of IPC. As pointed out earlier, the medical evidence goes against the plea of total insanity and the evidence of the witnesses does not support recording such a close verdict that would totally alter the personality of the man and if he was really not insane, we cannot call him insane although by doing so, we may save him from the throes of punishment, but

to do only that, one should not brand a person a mad man or call him insane.

26. We therefore think, the Judge was wrong in branding the accused a lunatic and a totally insane person by merely observing his physical condition and his conduct in Court which to a large extent could possibly be traced to the solemn atmosphere in the Court and circumstance that the accused was before a Judge who could sentence him either to death or imprisonment for life. All these possibly could have not merely unnerved him, but also depicting him as a person not in normal state of mind.

27. We thus think that it is not necessary to send this case back to the Court below for a fresh trial and more so, as the incident is of the year 1989. Four years have elapsed, but on the other hand we think taking into consideration the state of the evidence on record, the charge under S. 307, IPC cannot be sustained. Evidence produced is not adequate to sustain the charge under S. 307, IPC. On the other hand, regard being had to the nature of injuries sustained by P.Ws. 1, 2, 3 and 4, although they are incised injuries, they are fairly simple even granting that they had been caused by a sickle. Regard being had to the simple nature of the injuries the offence committed could only be of simple hurt punishable under S. 324 of IPC. The learned Public Prosecutor also agrees with our assessment of the law thereon as aforesaid.

28. Touching the charge under S. 436 IPC the learned Judge observes as follows :

'Since this Court is in clear opinion that the accused was out of his senses when this act is committed and the element of mens rea was also completely absent on the basis of the opinion expressed by the prosecution witnesses about his character and antecedents, the benefit under S. 84 of the Indian Penal Code shall be extended to the accused to give a finding that the accused was not knowing of what he did during that night.'

29. While the finding supra of course appears to be incongruent with some observations he had made earlier pointing out the evidence to be unsatisfactory, we are however inclined to hold that the alleged act of setting fire to the house of P.W. 2 by the accused is not satisfactorily established. While not disputing that the

house of P.W. 2 had been set on fire, we should state that there is no clinching evidence to say that it is the (sic) accused. What is more, the learned Prosecutor also points out, the evidence of P.Ws. 2 and his son P.W. 7 contradicted each other and we therefore hold that the aforesaid charge is not established beyond doubt and in that view of the matter, the accused cannot be held guilty of the said charge.

30. The resulting position is that, we acquit the accused of the charges under sections 307 and 436 of IPC, but we convict the accused of a charge under S. 324 of IPC. Regarding the sentence to be imposed on him, we find that he has been in detention for a period of 8 months. We think that ends of justice would be met with by imposing a sentence of 8 months for the offence under S. 324, IPC and that the period of detention undergone be treated as equivalent to sentence imposed. There will therefore be no need for the accused to undergo any further sentence. However, if any bond has been executed by P.W. 1 Hanumi, wife of the accused under S. 355 of Cr.P.C., now that we have taken the view that the accused was not insane, that bond shall stand cancelled.

31. Order accordingly.