

Narain (In Jail) Vs. the State

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Court : Allahabad

Decided On : Oct-19-1989

Reported in : 1991CriLJ1610

Judge : H.C. Mital and ;M.N. Lal, JJ.

Acts : Evidence Act - Sections 104 and 105; [Indian Penal Code \(IPC\), 1860](#) - Sections 84, 147, 149, 201, 295, 295A, 298 and 302; Code of Criminal Procedure (CrPC) - Sections 161, 164, 334 and 335

Appeal No. : Criminal Appeal No. 1432 of 1978

Appellant : Narain (In Jail)

Respondent : The State

Advocate for Def. : Dy. Govt. Adv.

Advocate for Pet/Ap. : A.D. Prabhakar and ;P.N. Misra, Adv.

Disposition : Appeal allowed

Judgement :

H.C. Mital, J.

1. Narain has preferred this appeal against his conviction and sentence Under Section 302, 201 and 295A, IPC to life imprisonment, seven years' R.I. and three

years' R.I. respectively passed by Sri N. N. Sharma, the then District and Sessions Judge, Moradabad on 13th March 1978.

2. The facts of the case according to the first information report (Ex. Ka-1) submitted at police station Sambhal District Moradabad at 7 a.m. are that at 5-30 a.m. the informant, Akbar Ali (P.W. 1) had gone to offer prayer at the Jama Masjid as usual he had to remain standing outside the main door as the door was closed. There he met Ashfaq Hussain (P.W. 4), Ismail and other residents of the Mohalla who had also gone to offer prayers and when the door did not open they tried to get it opened and called the Mulla. When no response came from inside then one of them went up the roof and jumped inside and opened the door and then they all went inside. They saw about seven persons, five or six of them managed to escape. Inside the Masjid they found a dead body burning, and a person was trying to drag it. They caught hold of him and brought him to the police station; that the dead body was of Imam Saheb of Jama Masjid; that near the dead body they found burnt pages of Quran Sharif. On the basis of the report a case was registered and the appellant was taken into custody. The investigation followed. After inquest report of the dead body its post-mortem took place in the mosque itself as the crowd did not permit the dead body to be taken to the mortuary.

Dr. Man Mohan Sahai Mathur (P.W. 3) conducted the autopsy and prepared the post mortem report (Ex. Ka-2) and following ante mortem injuries were detected :

1. Lacerated wound 4 cm. x 3 cm on right side of scalp bone deep.
2. Lacerated wound 2 1/2 cm. x 2 cm x bone deep on front of scalp 4 cm above right eye brow.
3. Lacerated wound 8 cm x 3 cm x abdomen deep intestines were protruding out on left iliac fossa and were charred.
4. Lacerated wound 6 cm x 4 cm x abdomen deep with intestines protruding out and charred.
5. Fracture of upper end of left femur with charred muscles around it and leg was attached with body with tags of muscles and skins.

6. Lacerated wound 4 cm x 3 cm x bone deep on left side of chin, and bone of left side of lower jaw fractured under it.

The aforesaid injuries could have been caused by a blunt weapon like rod and were sufficient to cause instantaneous death :

Following post mortem burns were detected :

'Skin of head, face, neck front of chest, front of abdomen, right upper limb, right lower limb were charred, skin, muscles upto bone were charred and shrunk upto bone on left forearm left leg from thigh to ankle, right leg below knee. There was no charring or blackening on back from shoulder to hips.

3. On internal examination doctor found skin of scalp charred and back. There was depressed fracture of frontal bone and right temporal bones under injuries 1 and 2; membrane were congested and lacerated; cerebrum on rightside was lacerated in front. Blood was present in frontal and rightmiddle fossa; Parts of small intestines were protruding out of abdomen and charred; part of peritoneum was charred stomach was empty and pale. Intestines contained gases and faecal matter. Bladder was half full. Death was due to shock and haemorrhage caused by ante mortem injuries. The doctor also opined that victim could have met his death on the night of 28th and 29th Feb. 1976 and about 2-30 a.m.

4. The accused also made a judicial confession which was recorded by Sri Teerath Raj (P.W. 6) Addl. Munsif Magistrate and thereafter on completion of the investigation charge-sheet was submitted and the appellant was committed to the court of Sessions, where he was charged Under Sections 147, 302/149, 201 and 295A, IPC and a charge Under Section 302, IPC simpliciter was also framed against him. The appellant pleaded not guilty to all the charges.

5. The prosecution based its case on the following three circumstances only as there were no eye witnesses of the murder:

(i) apprehension of accused in suspicious circumstances from the spot.

(ii) extra judicial confession, (iii) Judicial confession.

6. The learned Sessions Judge believed the prosecution evidence on the above circumstance (i) and (iii) but disbelieved the circumstance No. (ii) hence he convicted and sentenced the appellant as above. The fact that Mohd. Hussain, Imam of Jama Masjid was homicidal and had taken place sometime in the night in between 28th and 29th Feb. 1976 stands proved by the testimony of Dr. M. S. Mathur (P.W. 3). It is further proved that death was caused due to the ante mortem injuries caused by some blunt object weapon like Lathi and Danda as the burn injuries were post mortem. On behalf of the appellant the same has also not been challenged.

7. On behalf of the appellant it has been urged that the prosecution has failed to prove to the hilt that the accused was apprehended from the mosque as alleged and that the judicial confession recorded by the Magistrate was not free from suspicion. It was also urged that even if in the judicial confession and the evidence of the witnesses was believed then it was apparent that the accused was not in a state of sound mind when the alleged offence was committed, and he did not understand the criminality of the nature of the act committed by him. That apart, according to the confession itself the deceased had first given two danda blows to the appellant and only thereafter the appellant after snatching that danda had wielded it on the deceased hence in that view of the evidence he had not committed any offence.

8. In support of the contention that the arrest of the appellant in the circumstances as alleged by the prosecution was doubtful it was pointed out that in Ex. Ka-8 Nakal Report No. 6 dated 29-2-1976 at 6-15 a.m. there was no reference in the general diary that any person was apprehended on the spot and it was noteworthy that the entry made at the outpost Samthal P. S. Sambhal which is very near to the scene of occurrence would have mentioned the fact of arrest of the accused as by that time it would have been generally known. Ex. Ka-8 contains as follows:

'Ish Samatjanta Ke Longo Se Gyat Hua Ki Jama Masjid Par Kaphi Sankhiya Me Musalman Jama Ho Rahe Hai Aur Shor Sharaba Ho Raha Hai.'

Thereupon the head-constable Kripa Shanker along with some constable left for the Jama Masjid and also informed on telephone to the police station. To expect

that at that time the head-constable would have also known that the accused had been apprehended was not plausible and therefore if that fact was not mentioned there was nothing unusual about it and the entries only contained the information received.

9. It was next contended that no injuries were caused to the accused by any of the witnesses although he is alleged to have been arrested soon after the incident and it was further argued that the nature of offence would have invited wrath of the Muslims especially after hearing the statement made to them by the accused himself. Hence the absence of the injuries on his person indicated that either he was not arrested as alleged by the prosecution or the witnesses were convinced that he was insane.

10. It is true that no such injuries were found on the person of the accused as normally should have been found if he was apprehended under the circumstances alleged particularly when the muslims had come to know that he had killed their Imam of the Masjid and that he had also torn the Quran Sharif and burnt it. On behalf of the prosecution there is no explanation of the absence of such injuries on the person of the appellant; that circumstance no doubt raises a strong conviction to the fact that the persons who had apprehended him knew that he was an insane person and, therefore, they did not manhandle him and had taken him to the police station immediately after the arrival of Sub Inspector, Sri Mathur.

11. The fact that the appellant was apprehended inside the mosque has been fully corroborated by the testimony of P.W. 1 Akbar Ali, P.W. 2 Abdul Gafoor and P.W. 5 Mustaq Beg. P.W. 4 Ashfaq Hussain, has, however, been reticent in stating whether this appellant was apprehended or not and has stated that he could not say whether this very appellant or somebody else was apprehended. But a person was apprehended and he was taken to the Police Station by Akbar Ali and others. That apart, there is absolutely no reason to disbelieve the testimony of P.W. 15 S.I. H. R. S. Mathur who had gone to the mosque along with the constables on receipt of the message on telephone from the police Chauki and had taken Narain into custody. Therefore, there can be no doubt to hold that the appellant was apprehended from the mosque in question and taken to the Police Station

Sambhal at 7 a.m. by S.I. H.R.S. Mathur and informant Akbar Ali and others.

12. The reliability of the judicial confession has been challenged on behalf of the appellant on the following grounds:

(i) The learned Magistrate did not ascertain the duration of the custody of the accused in jail nor he asked the accused as to how long the accused remained in custody of police nor he asked the accused from whose custody he had been produced.

(ii) The learned Magistrate did not ascertain from the appellant the treatment meted out in jail.

(iii) The learned Magistrate omitted to mention about the mental state of the accused prior to recording his confession nor any medical examination of the accused was conducted.

(iv) The accused was not given sufficient time for reflection before his statement was recorded.

(v) The learned Magistrate did not put a question to accused as to why he wanted to make confession.

(vi) No record of any warning was maintained by the learned Magistrate prior to the recording of statement of the accused when time was given to him for reflection.

13. It is true that recording of confession is an important matter and can in a given case constitute a very important circumstance in the trial, nay, the very foundation of conviction as in the present case. It is also true that the learned Magistrate does not appear to have realised, the seriousness and importance of how and what precaution should be taken before recording a confession. It is, however, to be seen whether the lapses on the part of the Magistrate are such which may lead to the conclusion that the confession recorded by him ceased to be reliable. The law is well settled that the act of recording confession is a very solemn act and in discharging his duties the Magistrate must take care to see that the various

requirements of Section 164, Cr. P.C. are fully satisfied. It is also settled in order that evidence of a confession of a prisoner may be admissible, it must be affirmatively proved that such confession is free and voluntary and that it was not proceeded by any inducement to the prisoner to make a statement held out by a person in authority or that it was not made until after such inducement had clearly been removed.

14. In the instant case Sri Tirath Raj, Judicial Magistrate had no interest in the conviction of the accused. He cannot be regarded acting on behalf of the police or at their behest. The prisoner had come from judicial custody and not from police custody. Merely because 24 hours time or more than that time was not given after giving him a warning would not vitiate the confession unless it is found that it was not voluntary. Merely because Sri Tirath Raj (P.W. 6) did not regard the warning which was given and simply recorded that he had warned the accused and in spite of that the accused was willing to make a confession and he recorded it would not mean that the warnings as required in law were not given particularly when in his statement on oath Sri Tirath Raj has stated the necessary warning which he had given to him. It was not suggested to him that he had not given any warning. That apart, the voluntariness of the confession cannot be doubted because besides the fact about which prosecution has given evidence namely, that the accused had visited a Cinema carrying a danda and ladies purse with him and that he had taken milk at a restaurant. It is also in the statement which could not occur to the investigating agency, as stated by him that after beating the Imam, burning the Quran etc. he had left the mosque, got into a standing bus on the Bus Stand, remained lying there for sometime on its back seat. Then again came out from the bus and again climbed over the mosque and occupied the place near the fire and started smoking Biri where he was found by the witnesses and apprehended. This part of the statement of the confession is such which could not have been put in his mouth if the confession had not been voluntary. Therefore after having considered all the objections raised, we do not feel that there has not been substantial compliance of the various provisions of law while recording the confession which might vitiate it to be admissible in evidence and that it was not voluntary.

15. In his judicial confession the appellant specifically admitted to have inflicted the fatal injuries with a danda to the deceased though he has also stated that he had been first hit by that deceased with that danda which he had snatched from the deceased and had wielded the same. It is also proved that the deceased had died as a result of the injuries caused by the Danda blows. In that view of the evidence that the appellant was apprehended from the mosque in the morning on 28th February 1976, taken to the police station and subsequently after a few days he made the judicial confession admitting to have caused injuries with a Danda with which he had been first hit by the deceased and thereafter he had placed him on the fire, it cannot be doubted that homicidal death of the deceased on account of the ante mortem injuries was due to the act of the appellant.

16. Coming then to the main aspect, namely, the claim of the accused for protection under Section 84 of the Indian Penal Code we have to consider the relevant testimony not only of the defence witness but also of the prosecution witnesses. To find out whether in terms of Section 84, I.P.C. it could or could not be said, not beyond reasonable doubt but in all probability that at the time of the offence in question the accused, by reason of unsoundness of mind was incapable of knowing the nature of his act or that what he was doing was either wrong or contrary to law. Before proceeding further, it may be safely accepted as an undisputed fact emerging from the totality of the evidence that the accused was not a normal person and that his mental condition cannot be said to be that of a normal man.

17. It is, of course, true that it is for the accused to discharge the burden that lies on him rebutting the presumption of sanity and bringing his case within the ambit of Section 84, I.P.C. Equally settled, however, is the legal position that this burden for onus on the accused is not as heavy as that on the prosecution.

18. In *Dahyabhai Chhaganbhai Thakkar v. State of Gujarat*, AIR 1964 SC 1563 : (1964(2) Cri LJ 472) it has been held that when a plea of legal insanity is set up, the Court has to consider whether at the time of commission of the offence the accused, by reason of unsoundness of mind, was incapable of knowing the nature of the act or that he was doing what was either wrong or contrary to law. The

crucial point of time for ascertaining the state of mind of the accused is that time when the offence was committed. Whether the accused was in such a state of mind as to be entitled to the benefit of Section 84 of I.P.C. can only be established from the circumstances which preceeded, attended and followed the crime. According to Section 105 of the Evidence Act, the burden of proving the existence of circumstances bringing the case within the exception lies on the accused; and the Court shall presume the absence of such circumstances. Section 105 of the Evidence Act read with Section 104 thereof, the court shall regard the absence of such circumstances as proved unless after considering the matters before it, it believes that the said circumstance existed or their existence was so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that they did exist. To put it in other words, the accused will have to rebut the presumption that such circumstances did not exist by placing material before the Court sufficient to make it consider the existence of said circumstances so probable that a prudent man would act upon them. The accused had to satisfy the standard of a prudent man. If the material placed before the Court, such as, oral and documentary evidence, presumptions, admissions or even the prosecution evidence, satisfies the test of prudent man, the accused will have discharged the burden. The evidence so placed may not be sufficient to discharge the burden under Section 105 of the Evidence Act, but it may raise a reasonable doubt in the mind of a Judge as regards one or other of the necessary ingredients of the offence itself. It may, for instance, raise a reasonable doubt in the mind of the Judge whether the accused had the requisite intention laid down in Section 298 of the Penal Code. If the Judge has such reasonable doubt, he has to acquit the accused, for in that event the prosecution will have failed to prove conclusively that guilt of the accused. The doctrine of burden of proof in the context of the plea of insanity may be stated in the following propositions:

- (1) The prosecution must prove beyond reasonable doubt that the accused had committed the offence with the requisite mens rea; and the burden of proving that always rests on the prosecution from the beginning to the end of the trial.
- (2) There is a rebuttable presumption that the accused was not insane, when he committed the crime, in a sense laid down by 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 no higher than that rests upon a party to civil proceedings;

(3) Even if the accused was not able to establish conclusively that he was insane at the time he committed the offence, the evidence placed before the Court by the accused or by the prosecution may raise a reasonable doubt in the mind of the Court as regards one or more of the ingredients of the offence, including mens rea of the accused and in that case the Court would be entitled to acquit the accused on the ground that the general burden of proof resting on the prosecution was not discharged.

19. The Principle laid down in *Dahyabhai Chhaganbhai Thakkar v. State of Gujarat*, AIR 1964 SC 1563 : (1964 (2) Cri LJ 472) has also been reiterated in *Jailal v. Delhi Administration*, AIR 1969 SC 15 ; (1969 Cri LJ 259). It has been held in that decision that on the question of insanity the state of mind of the accused before and after the crucial time is relevant. If a person 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 he cannot be guilty of any criminal intent. Such a person lacks the requisite mens rea and is entitled to an acquittal. The general burden is on the prosecution to prove beyond reasonable doubt not only the acting reus but also the mens rea.

20. Although no hard and fast rule can be laid down and the conclusion would vary according to the facts and circumstances of each case, certain broad tests based on objective standards are generally looked into by Courts. These are antecedent and subsequent conduct of the person accused of the offence. Such conduct is not per se enough, but is relevant only to show what is the state of mind of the accused was at the time of the commission of the act. Some indication of the precise state of the offender's mind at the time of the commission of the act is often furnished by the words of the offender used while committing the act or immediately before or after the commission. Speaking generally the pattern of the crime, the circumstances under which it was committed, the manner and method of its execution, and the behaviour of the offender before or after the commission

of the crime furnish some of the important clues to ascertain whether the accused had no cognitive faculty to know the nature of the act or that what he was doing is either wrong or contrary to law.

21. In order to find whether the accused was by reason of unsoundness of mind incapable of knowing the nature of the act, a Court may rely not only on defence evidence, but also on what is elicited from the prosecution witnesses as well as on circumstantial evidence consisting of the previous history of the accused and his subsequent conduct in the surrounding circumstances including absence of motive. Generally, a case in which the sanity of the accused is called in question, motivation for the crime with which he is charged assumes unusual importance because if a serious crime like murder is committed by a man, who had absolutely no rational motive to commit it, the plea of unsoundness of mind can be more easily established than in other cases.

22. Now the relevant testimony has to be considered. Prior to the occurrence regarding the conduct of the appellant there is evidence of P.W. 8 Ahmad Noor alias Babu (examined by the prosecution on 3-2-1978), that about two years back when he was sitting at the Kolhu of his uncle, appellant came there with a Purse and Danda and sat there and started talking without any sense then he said 'KATUON AAP KI KAZA GHER RAHI HAI' (Muslims your end is near) thereupon 'Shabir who was sitting there lost temper and got up to assault him but he was saved by Alim Uddin, who was also there and told Shabir, 'ISHE AISE HI RAHNE DO.' The accused thereafter left with the Purse and Danda.

23. In his cross-examination he further stated that when the accused had said 'KATUON TUMHARI OAZA AA RAHI HAI ISH PAR SHABIR KO GUSSA AA GAYA THA. ISH PAR ALEEM UDDIN NE YEH KAH KAR YEH NARAIN PAITIYA KA SIRRI HAI AUR KABHI KABHI AISE HI OONT PATANG BAKTA HAI BEECH BACHAO KAR DIYA THA.'

24. P.W. 5 Aleem Uddin has also been examined by the prosecution and has corroborated the above incident and stated that the accused was carrying a purse and danda and he came there and told them that their end was near. Thereupon Habib picked up a danda and beat him but he had intervened. Thereafter the

appellant had said SAM-BHAL JALA OONGG and then the appellant had left. That on the same night murder of Imam Saheb of Jama Masjid had taken place. According to the witness the appellant had made the above statement at about 9 p.m. in the same night. In his cross-examination Aleem Uddin (P.W. 9) has further stated, JAB MULJIM KE YEH KAHNE PAR KI KATOON TUMHARI OAZA AAI HAI PAR SHABIR KO GUSSA AAYATHA TO MAINI USHE YEH KAH KAR ROK DIYA THA KI YEH NARAIN PAITIYA KA SIRRI HAI AUR AISI OONT PATANG BAAT KARTA HAT. He further repeated that his statement was correct that Narain was Sirri and talked irrelevant but he still stated that he was not a mad person.

25. P.W. 10 Kishan is a gate-keeper of Rama Talkies at Sambhal and he corroborated the prosecution case that on the night of the incident at about 10 p.m. the appellant, Narain, had gone to see a picture carrying a Purse and a Danda; that he got his Danda deposited on the gate and subsequently the Danda was given by him to the C.I.D. Inspector on 21-3-1976 i.e. after almost a month. In his cross-examination this witness has also admitted that he had identified the witnesses in the Court because of his abnormal condition and behaviour as he was carrying a ladies Purse and Danda; that though he was not mad but was 'Sirri' and talked much.

26. P.W. 12 Sohan Singh was examined by the prosecution to prove that the ladies purse recovered from the accused was seen by him earlier and he told him that he would give it in the marriage of his niece. This witness is resident of village Paitia to which the appellant belongs. In his cross-examination he has stated that brothers of the accused have not given him any share of the land 'TABHI SE IS MULJIM KA, KAREEB DAS SAL SE, DIMAG KUCH SANKI SA HO GAYA HAI. SANAK ME YEH KHUB OONT PATANG BATEN KARTA HAI AUR KABHI KABHI MARPEET BHI KAR BAITHTA HAI. MAINE SUNA THA KE SANAK ME MULJIM NE RASHOOL-PUR KE DOCTOR KA TRANSISTOR BHI UTHA LIYA THA.

KAREEB SAT SAL PAHLE MULJIM NE APNA BAKRA KAAT LIYA THA. AUR SAR AUR DHAR KO MILA KAR SAMNE BAITH GAYA THA AUR KATHA THA KI MAI ISHRD JINDA KAR DOONGA. AAZ SE KAREEB CHAR SAL PAHILE ISH MULJIM NARAIN NE APNI LARKI KE MAR JANE PAR APNI JANG KAAT KAR

KHOON LARKI PAR CHARAYA THA KI YEH KHOON LARKI KO JINDA KAR DEGA. YEH MULJIM KABHI KABHI APNE KO BHAGWAN KA AVTAR BHI BATATA THA. MULJIM SAMBHAL KI JAMA MASJID KO HARIHAR KA MANDIR BHI BATATA THA : YEH MULJIM PAGAL NAHI HAI SIRRI HAI.'

27. Now coming to the conduct of the accused at the time of the occurrence P.W. 1 Akbar Ali, the informant has stated in his examination in chief itself that when he found the accused inside the mosque, warming himself near the fire and enquired whether Imam was there, he replied YAHAN KOI MULLA ULLA NAHIN NAI AB ALLAH UDAL KA RAJYA HAI. The witness has further stated in his cross-examination that the witness was warming himself near the fire and when he was accosted, he told as above and did not try to escape from there.

28. P.W. 4 Ashfaq Hussain admitted in his cross-examination by the State Counsel (as he was declared hostile because he refused to identify the accused to be the person at the scene of occurrence that he had correctly stated in his statement under Section 161, Cr. P.C. MULJIM NE KAHA USHNE HARIHAR KE MANDIR ME JAL CHARHAYA THA. THAND LANE KE KARAN QURAN SHARIF, TAT KE PARDE? BANSH, AADI JALAYEE THI MULLA NE AAKAR USHE DO DANDE MARE ISH-LIYE USHNE MULLA KO USHI DANDE SE KHUB MAARA AUR JAN MAR DIYA. MULLA KILASH KO JALA DIYA.

29. P.W. 5 Mushtaq Beg has also stated that on being asked the accused had said YEH HARIHAR JI KA MANDIR HAI ISHME JAL CHARAYA THA. JARA LANGE KI BAJAH SE QURAN SHARIF WAPARDE AUR ALMARI BHI JALA DALE. MULLA NE MERE DO DANDE MARE. MAINI WAHI DANDA CHEEN KAR MULLA KO BAHUT MARA AUR JAN SE MAR DALA AUR KHOON UCHHAL DIYA AUR MULLA JI KO JALA DIYA.

30. There is also evidence of P.W. 3 Dr. Manmohan Sahai Mathur who had done the autopsy on the dead body of the deceased and had examined the mental condition of the accused in the district Hospital from 26th April to 5th May 1976. He has stated in his cross-examination that he had found abnormality in the accused but he could not say whether the mind of the accused was also abnormal on account of the abnormality noted by him and therefore he had referred the case

for further investigation.

31. Dr. Anil Kumar Agarwal (D.W. 1) was Reader in King George Medical College, Lucknow and the appellant was sent there for expert opinion regarding his mental condition. Even though he had given a report against the accused to the effect that he had found that the accused was not insane even then he was examined by the defence but he admitted 'JO AADMI BAKRE KE SAR AUR DHAR KO KAT KAR ALHDA KAR DE AUR PHIR YEH KAHE KI MAI ISHE JINDA KAR DOONGA YE APNT LARKI KE MAR JANE PAR APNI JANGH KAT KAR KHOON LARKI PAR CHARAYA AUR USHKI JINDA KAR DOONGA YA APNE AAP KO BHAGWAN KA AVTAR MANNE YEH LAKCHAN PAGALPAN KE HI HO SAKTE HAI YA MASJID KO HARTHAR KA MANDIR KAHE YE KEWAL BINA KISHI CONTEXT KE YAH KAHTA HAI TAB YEH PAGALPAN KA LACHHAN HO SAKTA HAI.'

'YADI KOI VYAKTI KAHTA HO KI KATHUON TUMHARI QAJA KAHA HAI AUR SAMBHAL; AUR SARAT TAREEN KO JALA DOONGA? AUR JO ULOOL JOOLOOL KAPRE PAHNE HO. OONT PATANG BAKTA HO AUR LADIES PURSE LIYA HO AUR JJSKI CASE HISTORY UPROKT HO TO AISEE HALAT ME USH VYAKTI KO KEVAL ISH HISTORY KE OOPAR BINA EXAMINE KIYE YAH KAHNA THEEK NAHI HOGA KI WAH VYAKTI SANKI YA PAGAL HAI KINTU YEH LACHHAN PAGALPAN KE HO SAKTE HAI. SIRRI CRACK KO KAHTE HAI KOI AADMI AAP KA KAHNA NA MANE USHE BHI SIRRI KAH DETE HAI. PAGAL KO BHI SIRRI KAHTE HAI. PAGAL AADMI KE HARKAT KA DISTINGUISHING FEATURE INKE KAM BINA MOTIVE KE HOTE HAIN.'

32. Dr. Agarwal thus stated as a medical expert that the aforesaid conduct indicated insanity and that the distinguishing feature in the conduct of a man is that his actions are without motive.

33. It is in evidence that a large mohalla crowd had gathered and even then before the accused was taken to the mosque none of them gave him any beating. This circumstance itself indicates and the only plausible and cogent explanation for such conduct on the part of the muslims who subsequently got so much infuriated could be that the muslims who had gathered knew that he was not a sane person otherwise those very persons who did not permit the Investigating Officer to take

the dead body after inquest report and the doctor had to come to perform post-mortem in the mosque itself and that too at the personal request of the District Magistrate who had reached there and who could pacify the Muslims. In spite of that the condition became so hot and almost beyond control that it led to riots and curfew had to be imposed. All this is in the evidence of the Investigating Officer.

34. To sum up, firstly, it is in the evidence of P.W. 12 Sohan Singh that about ten years prior his evidence mind of the appellant was abnormal since his brothers had deprived him of his share in the land. Due to that his behaviour became abnormal. He used to talk non-sense and also indulged in violence and committed theft under his mental abnormal conditions. About seven years prior to the evidence of the witness the appellant had cut down his goat and claimed to make it alive by joining its head with trunk. When appellants daughter died about four years back he poured his blood after cutting his thigh and claimed that he would make her alive. Sometimes he claimed himself to be an Avtar of God and used to call Jama Masjid of Samthal, Temple of Harihar. In the opinion of the witness he was S1RRI i.e. SIR PHIRA i.e. with an abnormal mind.

35. Secondly, it is in the evidence P. W. 8 Ahmad Noor and P. W. 9 Allemuddin that at about 9 p.m. prior to the occurrence the appellant addressed them, Habib and Sabir despicably KATUON (Muslims) their end was near. Thereupon Sabir and Habib got infuriated and Habib even picked up a danda to hit him but the witnesses pacified them saying that he was S1RRI and talked non-sense that is he neither understood nor meant what he talked.

Thirdly, it is in the evidence of P. W. 10 Kishan that because of his abnormal condition and behaviour he was 'S1RRI'.

Fourthly, it is in the evidence of P.W. 1 Akbar Ali, P. W. 4 Ashfaq Husain, and P. W. 5 Mushtaq Beg that when they found the appellant in the mosque, he was smoking a Biri, warming himself with the fire lit of the torn pieces of Holy Quran Sharif and other material of the mosque, had non-sense of personal safety and did not try to escape but causally stated that it was not mosque but temple of Hari Har, that it was reign of Allab Udal. That he offered water in the temple. That when he shivered he lit the fire after tearing of the Quran Sharif, curtains and Bamboos etc.

That when the Mulla had hit him twice with a Bamboo, he had snatched it and killed the Mulla by wielding blows with the same Bamboo and then placed his body on the fire.

Fifthly, admittedly in spite of the above happening, seeing the torn pieces of Holy Quarn and burnt dead body of the Mulla the appellant was not at all given any thrashing least he was lynched as normally would have been particularly, when subsequently the Muslims of the locality got so much infuriated that rioting took place in spite of the arrival of the district authorities and curfew imposed. It singularly indicates that these witnesses and others who had arrived till the appellant was taken to the police station did not touch him as it was in their knowledge that he had an abnormal mind and did not understand what he had done.

Sixthly, there is evidence of Dr. M. S. Mathur P. W. 3 that on examination of his mental condition in the District Hospital from 26th April to 5th May 1976 he had found abnormality in him.

Seventhly, there is testimony of D. W. 1 Dr. A. K. Agarwal an expert that the various symptoms of the appellant cutting the throat of goat and then trying to make it alive, calling himself incarnate of God, and after the death of his daughter pouring his blood after cutting his own thigh on the dead body to revive her were symptoms of insanity and the main distinguishing feature in the conduct of a mad man is that his actions are without motive.

Lastly, it was a motiveless murder. The appellant was not at all conscious of his act, hence had no sence of his personal safety which he had virtually thrown to winds by remaining there and making no effort to escape. In his judicial confession it is further there that though he had first got out of the mosque after committing the act went to the bus stand, took some rest on the back seat of a bus and after sometime he again went inside the mosque and was found warming himself near the fire lit by him after tearing of the Quran Sharif, curtains and bomboos of the mosque.

36. In any event, the totality of the above evidence before the Court and the cogent facts and circumstances emerging therefrom raise qua the charge against the accused, more than reasonable doubt in the mind of the Court. The prosecution must hence be held to have failed to bring home to the accused the impugned charge beyond reasonable doubt. The inevitable end result would, therefore be an order of acquittal. The impugned conviction is, therefore, liable to be quashed.

37. However, in the context of Section 334, Cr. P.C. a finding is here recorded to the effect that the appellant had, in fact, committed the act of resulting in the death of Mohd. Hussain Mulla of the Mosque. That this is so stands proved in view of his admission in his confession Under Section 164, Cr. P.C. before the Magistrate and corroborated by the fact that was apprehended on the spot immediately after the incident. He has, however, succeeded in getting protection of Section 84, I.P.C.

38. In the result, the appeal succeeds and is allowed. The impugned order of his conviction and sentence recorded by the Sessions Judge in S.T. No. 594 of 1977 is set aside and the appellant is acquitted of the charges Under Sections 302, 201 and 295 and 295A of the Penal Code.

39. This, however, is not a case where the appellant can be set free but one wherein an order Under Section 335, Cr. P.C. requires to be made. He is on bail. He shall, therefore, be taken into custody forthwith and examined by a competent doctor regarding his fitness to live in society. It shall be open to the Sessions Judge to deliver the appellant to his relative or friend upon application of such relative or friend and on his giving security to the satisfaction of the Sessions Judge that the appellant shall be properly taken care of and prevented from doing injury to himself or any other person; be produced for the inspection of such officer, and at such time and place, as the State Government may direct. The Sessions Judge shall report to the State Government the action taken as provided under Section 335, Cr. P.C. in case any friend or relation does not come forward and furnishes security as stated above, he shall be detained in safe custody wherever provided by the State Government jail or any particular jail for such prisoners until certified to be mentally fit to live in society.

