Vidhya Devi Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jan-08-2004

Reported in : 2004CriLJ2332; RLW2004(2)Raj1261; 2004(2)WLC691

Judge : Rajesh Balia and; Sunil Kumar Garg, JJ.

Acts : Indian Penal Code (IPC) - Sections 84, 302, 307 and 324; Evidence Act - Sections 105

Appeal No. : D.B. Criminal Jail Appeal No. 921 of 2002

Appellant : Vidhya Devi

Respondent : State of Rajasthan

Advocate for Pet/Ap. : K.R. Vishnoi, Public Prosecutor; Pradeep Choudhary, Amicus Curiae

Disposition : Appeal allowed

Judgement :

Sunil Kumar Garg, J.

1. This appeal has been filed by the accused appellant from jail aggrieved from the judgment and order dated 9.10.2002 passed by the learned Addl. Sessions Judge (Fast Track), Bhilwara in Sessions Case No. 51/2001 by which he convicted the

accused appellant for the offence under Sections 302, 307 and 324 IPC and sentenced her in the following manner:-

Name of ac-

cused appellantConvicted

under section Sentence awarded to

the accused appellant

Vidhya Devi302 IPC Life imprisonment and to pay fine of Rs. 1000/-, in default of payment of fine, to further undergo 2 months RI.

307 IPC Seven years RI and to pay fine of Rs. 500/-, in default of payment of fine, to further undergo one month RI.

324 IPC Two years RI and to pay fine of Rs. 500/-, in default of payment of fine, to further undergo 15 days RI.

All the above substantive sentences were ordered to run concurrently.

2. It may be stated here that this Court vide order dated 8.12.2003 appointed Shri Pradeep Choudhary, Advocate as Amicus Curiae to assist the Court and he has argued the case on behalf of the accused appellant.

3. It arises in the following circumstances:-

On 18.2.1996 at about 3.45 PM, PW1 Debilal lodged an oral report (Ex.P/1) with the Police Station Hamirgarh District Bhilwara before PW10 Bahadur Singh, who was at that time SHO of that Police Station stating inter-alia (hat on 18.2.1996 at about 2.30 PM when he was in his house, he heard the cries of Magni wife of Gulab to the effect 'Maro-Maro' and upon this, he rushed towards the house of Man Singh (hereinafter referred to as 'the deceased') and saw that the accused appellant Vidhya Devi wife of deceased Man Singh was having kulhari in her hand and she was giving kulhari blow on the head and neck of deceased, as a result of which blood came out and thereafter, after taking 2-3 hiccups, deceased died on

the spot. It was further stated in the report Ex.P/1 by PW1 Debilal that the kulhari from the hands of the accused appellant was snatched by him and PW5 Smt. Alol with some difficulty and at that time, the accused appellant was very much furious and violent and therefore, she was caught hold with difficulty and her hands were tied after putting them back and thereafter, he rushed towards the police and lodged the report. On motive, it was stated in the report Ex.P/1 that the accused appellant might have domestic quarrel with the deceased and, therefore, for that, she had killed her husband deceased and when her mother-in-law Magni intervened, she was also given kulhari blow by the accused appellant. It was further staled in the report Ex.P/1 that had the accused appellant would have not been controlled, she would have also killed her mother-in-law Magni.

The said report was reduced into writing by PW10 Bahadur Singh in the shape of Ex.P/1 and regular FIR Ex.P/14 was chalked out and investigation was started.

During investigation, Ex.P/2 site plan was got prepared and through arrest memo Ex.P/15 the accused appellant was got arrested on 19.2.1996 and on the information of the accused appellant Ex.P/8, kulhari was got recovered and seized through fard Ex.P/9.

The post mortem of the dead body of the deceased was got conducted by PW6 Dr. A.K. Mathur and the post mortem report is Ex.P/10B where it was opined that the deceased died of hemorrhagic shock due to multiple injuries and injury to brain.

During investigation, Magni was also got medical examined by PW6 Dr. A.K. Mathur and her injury report is Ex.P/11, which shows that she received three simple injuries.

After usual investigation, police submitted challan for the offence under Sections302, 307, 324, 323 IPC against the accused appellant in the Court of Addl. Chief Judicial Magistrate, Bhilwara on 26.4.1996 and from where, the case was committed to the Court of Session on 3.3.1999.

On 18.4.2002, the learned Addl. Sessions Judge (Fast Track), Bhilwara framed the charges for the offence under Sections 302, 307 and 324 IPC against the accused appellant. The charge's were read over and explained to the accused appellant, who pleaded not guilty and claimed trial.

During trial, the prosecution got examined as many as 10 witnesses and exhibited several documents. Thereafter, the statement of the accused appellant under section 313 Cr.P.C. was recorded. No evidence was led by the accused appellant in defence.

After conclusion of trial, the learned Addl. Sessions Judge (Fast Track), Bhilwara through judgment and order dated 9.10.2002 convicted the accused appellant for the offence under Sections 302, 307 and 324 IPC and sentenced her in the manner as stated above holding inter-alia:-

(i) That the statement of PW1 Debilal as an eye witness was fully corroborated by another two eye witnesses PW4 Chhogalal and PW5 Smt. Alol and thus, placing reliance on the statements of these three eye witnesses, the learned trial Judge came to the conclusion that the accused appellant caused the murder of the deceased by kulhari.

(ii) That the theory as putforward by the accused appellant that she was a lady of unsound mind at the time of alleged incident, was not accepted by the learned trial Judge.

(iii) That no doubt there was no apparent motive on the part of the accused appellant to murder deceased, still placing reliance on the statements of eye witnesses, the learned trial Judge convicted and sentenced the accused appellant in the manner as indicated above.

Aggrieved from the said judgment and order dated 9.10.2002 passed by the learned Addl. Sessions Judge (Fast Track), Bhilwara, this appeal has been filed by the accused appellant from jail.

4. In this appeal, the following submissions have been made by the learned Amicus Curiae for the accused appellant:-

(i) That the so-called eye witnesses PW1 Debilal, PW4 Chhogalal and PW5 Alol, on which reliance has been placed by the learned trial Judge, are relatives of the deceased and therefore, they are interested witnesses and thus, their statements should have not been believed by the learned trial Judge.

(ii) That the case of the prosecution that on the information of the accused appellant, kulhari in question was recovered is palpably wrong as there is ample evidence on record that kulhari was handed over to the police by PW1 Debilal.

(iii) That at the time of alleged incident, the accused appellant was suffering from the mental disease schizophrenia and therefore, she was entitled to the benefit of Section 84 IPC.

Thus, it was prayed that the findings of conviction recorded against the accused appellant be set aside and she be acquitted of all the charges framed against her.

5. On the other hand, the learned Public Prosecutor supported the impugned judgment and order passed by the learned Addl. Sessions Judge (Fast Track), Bhilwara.

6. We have heard the learned counsel appearing for the accused appellant and the learned Public Prosecutor and gone through the record of the case.

7. Before proceeding further, we would like to first see the medical evidence of this case which is found in the statement of PW6 Dr. A.K. Mathur.

8. PW6 Dr. A.K. Mathur in his statement recorded in Court has stated that on 18.2.1996 he was Medical Jurist in M.G. Hospital, Bhilwara and on that day, he conducted the post mortem of the dead body of the deceased and found the following four injuries on his body:-

(i) Incised wound 1' x 0.3' x bone deep frontol bone.

(ii) Incised wound 2' x 0.7' x 0.3' right eye at lower border.

(iii) Incised wound 3' x 1' x 0.3' below right ear.

(iv) Incised wound (3) 1' x 0.2' x 0.2' Rt. cheek on the mendible.

(v) Incised wound 4' x 2' x 0.7' neck (Rt.).

(vi) Incised wound 2' x 0.7' x 0.3' head (R) (temporal region).

He has further stated that the cause of death of the deceased was hemorrhagic shock due to multiple injuries and injury to brain. He has proved the post mortem report Ex.P/10B.

He has further stated that on the same day i.e. on 18.2.1996, he has also got medically examined Magni and found the following injuries on her person:-

(i) Incised wound 2' x 1' x 0.2' behind Rt. ear.

(ii) Incised wound 1.2' x 0.3' x 0.2' on neck (back).

(iii) Incised wound 1' x 0.1' x 0.1' F head.

He has further stated that the above injuries were simple in nature and he has proved the injury report Ex.P/11.

9. Thus, from the statement of PW6 Dr. A.K. Mathur, it is very much clear that the deceased died because of hemorrhagic shock due to multiple injuries and injury to brain and thus, it can be said that the death of the deceased was homicidal one.

10. It is also clear from the statement of PW6 Dr. A.K. Mathur that Magni received three simple injuries.

11. PW1 Debilal is the star witness, who lodged the oral report Ex.P/1 before PW10 Bahadur Singh, who was at that time SHO of Police Station Hamirgarh and the name of another eye witness PW5 Smt. Alol is also found in that report Ex.P/1.

In his statement recorded in Court, PW1 Debilal has clearly stated that when he reached on the spot, he saw the accused appellant committing murder of the deceased with kulhari and he snatched the kulhari from the accused appellant. On point whether the accused appellant was a lady of unsound mind, he has stated that he could not say. He has further admitted that when police came he handed

over the kulhari in question to the police.

12. PW4 Chhogalal, another eye witness, has stated that deceased was his relative and the deceased was murdered by his wife accused appellant. He has further stated that the accused appellant also caused injuries to her mother-in-law Magni by kulhari. In cross-examination, he has admitted that deceased brought the accused appellant in nata. He has further admitted that kulhari in question was snatched from the accused appellant.

13. PW5 Smt. Alol is another eye witness, who has stated that the accused appellant gave kulhari blow on the head and neck of the deceased, as a result of which, he died. She has further stated that kulhari in question was snatched from the accused appellant and thereafter, the accused appellant was tied with pillar. In cross-examination, she has admitted that deceased was her Devar and she has further stated that she could not say whether the accused appellant was mad or not.

Point No. 1

14. PW1 Debilal, PW4 Chhogalal and PW5 Smt. Alol might be relatives of the deceased and if they are relatives of the deceased, they also become relatives of the accused appellant.

15. In our considered opinion, looking to the statements of the eye witnesses PW1 Debilal, PW4 Chhogalal and PW5 Smt. Alol, their testimony cannot be rejected merely on the ground that they are relatives of the deceased.

16. It may be stated here that a close relative, who is a very natural witness in the circumstances of a case, cannot be regarded as an 'interested witness'. No doubt for accepting the evidence of a relative witness it should be subjected to careful and close scrutiny and interested witnesses are not necessarily false witnesses. Simply because an eye witness happens to be relative of the deceased, his evidence cannot be discarded if his testimony is otherwise acceptable.

17. In the present case, PW1 Debilal is the author of the report Ex.P/1 and the name of PW5 Smt. Alol is also found in that report Ex.P/1 and their statements on

the point that the accused appellant committed the murder of the deceased with kulhari and the accused appellant also caused injuries to her mother-in-law Magni with kulhari appear to be straight forward, reliable and trustworthy and fully corroborated by the medical evidence which is found in the statement of PW6 Dr. A.K. Mathur. It cannot reasonably be inferred or presumed that they were telling lie or falsely implicating the accused appellant.

Thus, if the learned trial Judge placing reliance on the statements of eye witnesses PW1 Debilal, PW4 Chhogalal and PW5 Smt. Alol has come to the conclusion that the accused appellant has committed the murder of the deceased with kulhari and she has also caused injuries to her mother-in-law Magni with kulhari, he has committed no illegality in doing so. Simply because PW1 Debilal, PW4 Chhogalal and PW5 Smt. Alol happen to be relatives of the deceased, their evidence cannot be discarded, as their testimony is worth reliable and fully corroborated by medical evidence.

18. Hence, the argument of the learned counsel for the accused appellant that since PW1 Debilal, PW4 Chhogalal and PW5 Smt. Alol are relatives of the deceasedtherefore, they are interested witnesses and thus, their statements should have not been believed by the learned trial Judge, stands rejected because of the reasons mentioned above.

Point No. 2.

19. So far as the argument that kulhari in question was not recovered at the instance of the accused appellant is concerned, there is some force in that argument as PW1 Debilal has specifically stated that kulhari in question was handed over by him to the police and therefore, the statement of PW10 Bahadur Singh that he recovered the kulhari in question at the instance of the accused appellant cannot be accepted. Hence, the evidence of recovery is of no use to the prosecution.

20. But, it may be stated here that where there is direct evidence, the evidence of recovery is of little importance and thus, if the evidence of recovery of kulhari at the instance of the accused appellant is rejected, it would not affect the testimony

of the eye witnesses.

Point No. 3

21. On point No. 3, the case of the learned counsel for the accused appellant is that the accused appellant was suffering from mental disease schizophrenia at the time of alleged incident and from the record, it is also very much clear that the trial could have not proceeded because she remained in the Mental Hospital, Jaipur for many years and thus, since at the time of commission of crime, the accused appellant was a lady of unsoundness of mind and incapable of knowing the nature of the act, therefore, causing of death of the deceased by the accused appellant was not an offence and she was entitled to acquittal.

22. To appreciate the above contention, first factual scenario of the present case has to be kept in mind and may be summarized in the following manner:-

(i) That there is no dispute on the point that the deceased was husband of the accused appellant and at the time of commission of crime, the accused appellant was a young lady of 27 years of age and apparent motive is not available on the record; which could have thrown light as to for what purpose, the accused appellant committed the murder of the deceased. Thus, there is a lack of motive in this case.

(ii) That a perusal of the FIR Ex.P/14 shows that when PW1 Debilal reached on the spot, he found that the accused appellant was very much furious and, violent and that is why, with the help of PW5 Smt. Alol and one another person, both the hands of the accused appellant were tied down after putting them back. Thus, the fact that the accused appellant was very much violent and furious when she gave kulhari blow to the deceased is well established from the FIR Ex.P/14.

(iii) That another feature of the FIR Ex P/14 is that it was also stated in it that had the hands of the accused appellant would have not been tied down, she would have also committed the murder of her mother-in-law Magni. This fact also reveals that the accused appellant was very much violent and furious at that time.

(iv) That the arrest memo of the accused appellant is Ex.P/15, which shows that she was arrested on 19.2.1996 and at that time, she was having some injuries and in that arrest memo Ex.P/15, it was also mentioned that she should be got medically examined, but the prosecution has not produced any medical examination report of the accused appellant after her arrest.

(v) That in this case, the incident took place on 18.2.1996 and challan was filed on 26.4.1996, but the order-sheets of the committal court show that when the challan was filed on 26.4.1996, the accused appellant was not produced in the Court and rather through letter dated 16.4.1996, she was sent to Jaipur for medical treatment in the Mental Hospital.

(vi) That the order-sheet dated 27.7.1996 further reveals the fact that the accused appellant was not produced in the Court, but on warrant it was endorsed that she had been sent to Jaipur for medical treatment.

(vii) That from 26.4.1996 when the challan was filed in the Court of Addl. Chief Judicial Magistrate, Bhilwara in absence of accused appellant till 3.3.1999, she remained at Jaipur for medical treatment. Thus, this fact reveals that the accused appellant remained at Jaipur for medical treatment for nearabout three years.

(viii) That the papers available in the file of the committal Court also reveal that the accused appellant was suffering from the mental disease schizophrenia.

(ix) That the order-sheet of the committal Court dated 3.3.1999 reveals that the accused appellant for the first time appeared in the Court on 3.3.1999 and on that day, the learned Addl. Chief Judicial Magistrate, Bhilwara committed the case to the court of Session and for appearance of the accused appellant, the date was given as 17.3.1999.

(x) That the order-sheet of the Court of Session, Bhilwara dated 17.3.1999 reveals that the case was put up after committal from the Court of ACJM, Bhilwara, but on that day, the accused appellant was not present in the Court and she also did not appear in the Court on the next dates, which were given by the Court of Session.

(xi). That from the order-sheets of the Court of Session, it further appear that no lawyer was engaged by the accused appellant and therefore, through order dated 6.10.1999, Shri Manohar Shankar Tripathi, Advocate was appointed as Amicus Curiae.

(xii) That thereafter, the accused appellant appeared before the Court of Session on 12.10.1999 when the arguments on charge were heard, but the learned trial Judge found that the behaviour of the accused appellant was not normal one and therefore, she was again sent to the Mental Hospital, Jaipur for medical treatment and report was also sought for from the Mental Hospital, Jaipur about the mental state of the accused appellant.

(xiii) That thereafter, the file continued in anticipation of the report from the Mental Hospital, Jaipur and reminders were issued from time to time.

(xiv) That the order-sheet of the Court of Session dated 12.12.2000 reveals that report was received form the Mental Hospital, Jaipur stating that she was not in a position to understand the trial of the court, though she was present in Court on 12.12.2000 and looking to the abnormal condition of the accused appellant, the charges were not framed and she was again sent to Mental Hospital, Jaipur for treatment under the provisions of Section 329 Cr.P.C. and further, she was sent to Nari Niketan, Jaipur and file was consigned to record till the accused appellant returned with full treatment and the report of her mental condition was sought from the Mental Hospital, Jaipur. The above facts reveal that since the date of commission of crime, the accused appellant was found abnormal in her behaviour.

(xv) That the order-sheet of the Court of Session dated 18.12.2001 reveals that through letter dated 20.11.2001, it was informed to the Court that now the mental condition of the accused appellant has improved and she could face trial.

(xvi) That thereafter, the charges were framed against the accused appellant on 18.4.2002 and the trial commenced and ended in conviction of the accused appellant through impugned judgment and order dated 9.10.2002.

(xvii) That in the Court of Session as well as in this Court in appeal, nobody was appearing for the accused appellant and that is why, Amicus Curiae for the accused appellant was appointed by the trial court as well as by this Court. This fact also shows that the accused appellant was left alone because she was a mental case.

23. The question for consideration is whether in the facts and circumstances just stated above, the accused appellant is entitled to benefit of Section 84 1PC or not.

24. For convenience, Section 84 IPC is reproduced here:-

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

25. Before proceeding further, some thing should be said about the fundamental principle of criminal law.

26. A fundamental principle of criminal law is that mens rea (guilty mind) is an essential element in every offence and no crime can be said to have been committed if the mind of the person doing the act is not guilty. Since criminal act is an indispensable element in every crime, a person incapable of entertaining such intent cannot incur legal guilt. Idiots and lunatics are, therefore, not liable in criminal law for their acts. It has been said that a mad man is best punished by his own madness. (Furiosus furore suo punier); or that a mad man has no will (Furiosus nulla voluntus est); or a mad man is like one who is absent (Furiosus absentis loco est).

27. To establish that an act done cannot be said to be an offence as covered by Section 84 IPC, the following elements must be present:-

(i) the accused was of unsound mind at the time of commission of the act; and

(ii) by reason of unsoundness of mind, the accused was incapable of knowing the nature of the act or that he was doing what was either wrong or contrary to law.

28. Apart from this, there are certain principles to be borne in mind before applying Section 84 IPC and they are as follows:-

(a) every type of insanity is not legal insanity; the cognitive faculty must be so destroyed as to render one incapable of knowing the nature of his act or that what he is doing is wrong or contrary to law;

(b) the Court shall presume the absence of such insanity'

(c) the burden of proof of legal insanity is on the accused though it is not as heavy as on the prosecution to prove an offence;

(d) the Court must consider whether the accused suffered from legal insanity at the time when the offence was committed;

(e) in reaching such a conclusion, the circumstances which preceded, attended or followed the crime are relevant consideration; and

(f) the prosecution in discharging its burden in the face of the plea of legal insanity has merely to prove the basic fact and rely upon the normal presumption of law that everyone knows the law and the natural consequences of his act.

29. There are four kinds of persons, who may be said to be non compos mentis (not of sound mind):

(i) an idiot;

(ii) one made non compos by illness;

(iii) a lunatic or madman; and

(iv) a drunkard i.e. one who is drunk.

30. A lunatic is one who is, as described by older English writers, 'afflicted by mental disorder only at certain periods and vicissitudes; having intervals of reason. Such persons during their frenzy are criminally as irresponsible as those whose disorder is fixed and permanent.

31. To establish a defence on the ground of insanity it must clearly be proved that at the time of committing the act, the party accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing or if he did know it, that he did not know he was doing what was wrong or contrary to law. The first aspect refers to the offender's consciousness of the bearing of his act on those who are affected by it and the second and third, to his consciousness of its relation to himself. If he did not know it, he was responsible. The crucial point of time at which unsoundness of mind should be established is the time when the crime is actually committed. The mere fact that on former occasions the accused had been occasionally subject to insane delusions or had suffered from derangement of the mind or that subsequently he had at times behaved like a mentally deficient person is per se insufficient to bring his case within the exemption. However, in a generality of cases, it may not be possible to prove unsoundness of mind at the exact time of commission of the offence. In order to ascertain whether the accused was insane at the time of commission of the offence, it may be relevant to consider the state of such person's mind immediately preceding as well as subsequent to the commission of the offence. The state of mind before and after the act is relevant though not conclusive. Generally speaking, the pattern of 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 was either wrong or contrary to law.

Unsoundness of mind

32. The Code does not define 'unsoundness of mind'. But to exempt a man from criminal liability, unsoundness of mind, must reach that degree which is described in the latter part of this exception. It is not every person suffering from mental disease that can avoid responsibility for a crime by invoking the plea of insanity.

An idiot or a lunatic, even if he is conscious of his act, has no capacity to know its nature and quality, he is not responsible. Mad men, especially those under the

influence of some delusion, may have capacity enough to know the nature of the act, but unless they also know that they are doing 'what is either wrong or contrary to law' they are not responsible. A common instance is, where a man fully believes that the act he is doing, e.g. killing another man, is done by the immediate command of God.

It is only unsoundness of mind which materially impairs the cognitive faculties of the mind that can form a ground of exemption from criminal responsibility, the nature and the extent of the unsoundness of mind required being such as would make the offender incapable of knowing the nature of the act, or that he is doing what is wrong or contrary to law.

33. There is no dispute on the point that the accused appellant was suffering from the disease 'schizophrenia' and it is one of the types of insanity.

Schizophrenia

34. The disease 'schizophrenia' has been defined in the Medical Dictionary for Lawyers by Bernard S. Maloy (third edition) in the following manner:-

'schizophrenia (skiz-o-fre'ne-ah) (Gr. schizein, to divide + phren, mind). Dementia praecox, or adolescent insanity, an affection marked by melancholia and self-absorption, terminating in mental weakness.'

35. Schizophrenia has been defined in Livingstone's Medical Dictionary as a group of mental illness characterised by disorganisation of the patient's personality, often resulting in chronic life long ill-health and hospitalization. In its simple form the patient is dull, withdrawn, solitary and inactive.

36. Schizophrenia is one of the forms of insanity. Each case of schizophrenia has to be considered on its own merits. It is an illness of slow insidious onset developing over years. There may be report of strange, odd inappropriate behaviour.

37. In State v. Mohinder Singh (1), where the evidence disclosed that the accused was suffering from schizophrenia and this state existed before and after the

occurrence, it was held that the defence of insanity had been established.

On burden of proof

38. The burden of proof that the mental condition of the accused was, at the crucial point of time, such as is described in Section 84IPC lies on the accused, who claims the benefit of this exemption.

39. In Dahyabhai Chhaganbhai Thakkar v. State of Gujrat (2), the Hon'ble Supreme Court has stated the legal position regarding the burden of proof in the context of the plea of insanity in the following propositions:-

(i) 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 upon the prosecution from the beginning to the end of the trial;

(ii) There is a rebuttal presumption that the accused was not insane, when he committed the crime, in the sense laid down in Section 84; 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 which rests upon a party in civil proceedings, that is, to prove his defence by a preponderance of probability;

(iii) 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 resting on the prosecution has not been discharged.

40. When a plea of insanity is set up by the accused, the burden of proof is on him to prove it. But a man, who is insane will not be able to defend himself properly and effectively. It is, therefore, the duty of the court to look after the defence of the accused in the light of the evidence on record.

41. It is a fundamental principle of criminal jurisprudence that an accused is presumed to be innocent and therefore, the burden lies on the prosecution to prove the guilt of the accused beyond reasonable doubt. The prosecution, therefore, in a case of homicide shall prove beyond reasonable doubt that the accused caused death with the requisite intention described in Section 299 IPC. This general burden never shifts and it always rests on the prosecution. But, Section 84 IPC provides that nothing is an offence if the accused at the time of doing that act, by reason of unsoundness of mind, was incapable of knowing the nature of his act or what he was doing was either wrong or contrary to law. This being an exception, under Section 105 of the Evidence Act, the burden of proving the existence of circumstances bringing the case within the said exception lies on the accused and the Court shall presume the absence of such circumstances. Under Section 105 of the Evidence Act read with the definition of 'shall presume' in Section 4 thereof, the Court shall regard the absence of circumstances as proved unless, after considering the matters before it, it believes that the said circumstances 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 the said circumstances so probable that a prudent man would act upon them. The accused has 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 his 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 299 IPC. 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 the guilt of the accused. 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.

42. To sum up, the doctrine of the burden of proof and the nature of evidence necessary to discharge this burden, in cases where the accused claims the benefit of the general exceptions in the Indian Penal Code or of any special exception or proviso contained in any other part of the same Code or in any other law, can be stated as below:-

(1) The case shall fall in one of the three categories depending upon the wording of the enactment:-

(i) The statute places the burden of proof of all or some of the ingredients of the offence on the accused himself;

(ii) The special burden placed on the accused does not touch the ingredients of the offence but only the protection given on the assumption of the proof of the said ingredients; and

(iii) The special burden relates to an exception, some of the many circumstances required to attract the exception, if proved, affecting the proof of all or some of the ingredients of the offence.

(2) In the first two categories the onus lies upon the accused to discharge the special burden, and on failure he can be convicted of the offence provided that the prosecution has succeeded to discharge its general burden of proof, that is, to establish the case beyond any reasonable doubt.

(3) In cases falling under the third category inability to discharge the burden of proof shall not, in each and every case, automatically result in the conviction of the accused. The Court shall still have to see how the facts proved affect the proof of the ingredients of the offence. In other words, if on consideration of the total evidence on record a reasonable doubt exists in the mind of the court as regards one or more of the ingredients of the offence including mens rea of the accused, he shall be entitled to its benefit and hence to acquittal of the man offence even though he had not been in a position to prove the circumstances to bring his case within the exception. This shall be on the ground that the general burden of proof

resting on the prosecution was not discharged.

(4) The burden of proof on the prosecution to establish its case rests from the beginning to the end of the trial and it must prove beyond reasonable doubt that the accused had committed the offence with the requisite mens rea.

(5) The burden placed on the accused is not so onerous as on the prosecution. The prosecution has to prove its case beyond reasonable doubt, but in determining whether the accused has been successful in discharging the onus, the Court shall look into the preponderance of probabilities in the same manner as in a civil proceeding. In other words, the Court shall have to see whether a prudent man would, in the circumstances of the case, act on the supposition that the case falls within the exception or proviso as pleaded by the accused.

(6) In a case in which any General Exception in the Indian Penal Code, or any special exception or proviso contained in another part of the same Code or in any law defining the offence is pleaded or raised by an accused person and the evidence led in support of such plea, judged by the test of the preponderance of probability, as in a civil proceeding, fails to displace the presumption arising from Section 105 of the Evidence Act, in other words, to disprove the absence of circumstances bringing the case within the said exception; but upon a consideration of the evidence as a whole, including the evidence given in support of the plea based on the said exception or proviso, a reasonable doubt is created in the mind of the court, as regards one or more of the ingredients of the offence, the accused person shall be entitled to the benefit of the reasonable doubt as to his guilt and hence to acquittal of the said offence.

43. Keeping the above principles in mind and looking to the factual position enumerated above, in our considered opinion, in the present case, the accused appellant has proved the existence of circumstances bringing her case within the purview of Section 84 IPC in the following manner:-

(i) That the FIR Ex.P/14 shows that at the time of committing the murder of deceased, the accused appellant was very much furious and violent and she was controlled with difficulty and if she would not have been controlled, she would have

also committed murder of her mother-in-law Magni and that fact clearly establishes that at the time of committing the murder of deceased, the accused appellant was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act she was doing or, if she did know it, that she did not know she was doing what was wrong or contrary to law.

(ii) That no doubt crucial point of time at which unsoundness of mind should be established is the time when the crime is actually committed and the facts just narrated above clearly establish that the accused appellant was unsoundness of mind when she committed the murder of deceased and further developments also clearly reveal that she was a patient of mental disease 'schizophrenia', which is one of the forms of insanity.

(iii) That before the challan was filed in the Court of Magistrate on 26.4.1996 and after the alleged incident on 18.2.1996, the accused appellant was sent to Mental Hospital, Jaipur for treatment and she remained in the Mental Hospital at Jaipur upto 12.10.1999 and this period clearly shows that her disease was chronic in nature and that is why, she had to face treatment continuously for three years at Mental Hospital, Jaipur.

Not only this, when the accused appellant was produced before the Court on 12.10.1999, the learned trial Judge found that her behaviour was abnormal and that is why, she was again sent to the Mental Hospital, Jaipur and that fact also reflects that the mental condition of the accused appellant was abnormal and she was suffering from unsoundness of mind.

Furthermore, the fact that she remained again in the Mental Hospital, Jaipur for treatment from 12.10.1999 to 20.11.2001 itself reflects that since the date of commission of crime i.e. 18.2.1996 till 20.11.2001, she was suffering from unsoundness of mind and she was a patient of mental disease 'schizophrenia' and she was under regular treatment for the mental ailment at Mental Hospital, Jaipur.

(iv) That the facts just narrated above clearly disclosed that the accused appellant was suffering from the mental disease 'schizophrenia' and that state existed before and after the occurrence and therefore, in these circumstances, it can easily be

concluded that the defence of insanity stands proved.

44. Thus, having regard to the nature of burden on the accused appellant, we are of the view that the accused appellant has proved the existence of circumstances as required by Section 105 of the Evidence Act so as to get benefit of Section 84 IPC. Apart from this, at the time of commission of the crime, the accused appellant was incapable of knowing the nature of the act by reason of unsoundness of mind and thus, she is entitled to the benefit of Section 84 IPC.

In coming to the above conclusion, the decision of the Hon'ble Supreme Court in Shrikant Anandrao Bhosale v. State of Maharashtra (3), may be referred to where the appellant of that case was also suffering from the same disease 'schizophrenia' and the facts of that case and the present case are similar to some extent and in that case, the Hon'ble Supreme Court came to the conclusion that the accused appellant of that case was entitled to benefit under Section 84 IPC.

45. For the reasons stated above, this appeal deserves to be allowed and the impugned judgment and order dated 9.10.2002 passed by the learned Addl. Sessions Judge (Fast Track), Bhilwara are liable to be set aside and the accused appellant is entitled to acquittal after giving benefit of Section 84 IPC.

Accordingly, this appeal filed by the accused appellant from jail is allowed and the impugned judgment and order dated 9.10.2002 passed by the learned Addl. Sessions Judge (Fast Track), Bhilwara are set aside and the accused appellant is acquitted of all the charges framed against her.

Since the accused appellant is in jail, she be released forthwith, if not required in any other case.