

**Meh Ram Vs. State**

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**Court :** Rajasthan

**Decided On :** Jan-14-1994

**Reported in :** 1994CriLJ1897; 1994(1)WLC499; 1994(1)WLN17

**Judge :** J.R. Chopra and; Rajendra Saxena, JJ.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 84 and 302; Code of Criminal Procedure (CrPC) - Sections 313

**Appeal No. :** Criminal Appeal Nos. 339 and 359 of 1985

**Appellant :** Meh Ram

**Respondent :** State

**Advocate for Def. :** V. R. Mehta, Public Prosecutor

**Advocate for Pet/Ap. :** D.S. Shishodia, Sr. Adv. and; Suresh Kumbhat, Amicus Curiae

**Disposition :** Appeal dismissed

**Judgement :**

**Rajendra Saxena, J.**

1. By filing aforementioned regular and jail appeals, accused-appellant Meh Ram has challenged the judgment dated 5-9-1985 passed by Sessions Judge, Mertain

Sessions Case No. 53/84 whereby he has been convicted for the offence under Section 302, I.P.C. and sentenced to life imprisonment.

2. Briefly, the facts unfolded during trial are that in the night intervening 11th & 12th June, 1984, a 'Satsang' (prayer meeting) was organised at the Dhuna of late Shiv Nath Ji Maharaj in the Math situated near village Rol Chandawata, wherein hundreds of male and female devotees participated. One old lady aged about 75 years, who had renounced the world and become Sanyasin and whose dead body was later on identified as that of Smt. Ganga by her son PW 6 Devi Chand also attended the said 'Satsang,' wherein she also sung 2-3 Bhajans. It is alleged that at about 4.00 a.m. Smt. Ganga went out side the Math for passing urine. Immediately, thereafter PW 1 Roop Nath, the disciple of late Shiv Nath Ji and Incharge of the Math, PW 2 Moola, PW 3 Sawai Singh, PW 4 Girdhari and others heard the cries 'Mare Re - Mare Re'. Thereupon the afore-mentioned persons along with Nathu Singh and others reached near the gate of the Math, where they saw appellant inflicting blow on the head of Smt. Ganga by a 'Babool' stick popularly known as 'Jattu'. Thereupon, the afore-mentioned persons caught hold of the appellant. Smt. Ganga, who had sustained two injuries on her head, fell down and within a few minutes died. It is alleged that the appellant, who is resident of village Godeda had accompanied PW 2 Moola Ram and had come in latter's cart in the preceding night at about 9.00 p.m. from village Rol Chandawata and attended the 'Stasang'. On 12-6-1984 at about 7-45, PW 2 Moola Ram submitted a written report Ex. P1 about the said incident before PW 9 Jagdish Singh, the then SHO, Police Station, Merta Road. Jagdish Singh scribed the formal FIR Ex P12, visited the site, which was about 12 kms. away from the Police Station and found that dead body of Smt. Ganga was lying at about 14 ft. away from the gate of Bhuna, having injuries on the head. He prepared the site-plan Ex. P.4, memo thereof Ex. P.3, inquest report of the dead body Ex. P5 and the inquest report Ex. P.6. He also arrested the appellant, who was apprehended by the devotees vide arrest memo Ex. P.7 and seized the 'Babool' stick 'Jattu' Article 1.

3. P. W. 7 Dr. Mohd. Shoukat, conducted the post-mortem of the dead body of Smt. Ganga. He found an extensive lacerated wound 7 cm. x 1 1/2 cm. x 1 1/2 cm. over the frontal region of the scalp underlying the frontal bone, causing fracture.

He also found another extensive lacerated wound 9 cm. x 2 cm. x 2 cm. over the occipital of the scalp, 9 cm. posterior upper margin of ear extending downwards. The underlying occipital bone was fractured. On dissection, he noticed subdural haemorrhage at the frontal and occipital region of the scalp and the brain was lacerated. In his opinion, the cause of death was laceration of brain and shock due to extensive haemorrhage. The Investigation Officer also got the dead body of that lady photographed. The photo being Ex. P. 10. He also sent the appellant for his medical examination for his physical and mental assessment PW 7 Dr. Mohd. Shoukat examined the appellant on 13-6-1984. He found that the appellant bore normal gait and that his behaviour was normal. The appellant was fully conscious of the environment. He responded the questions put to him in full sense and in normal way. The appellant was found neither anxious nor excited. He bore normal presence of mind and his physical power was normal. The doctor vide his report Ex. P. 11 opined that the appellant bore normal physical and mental status at the time pletion of the investigation, the police submitted a challan against the appellant in the court of learned Additional Sessions Judge, Merta, who committed the case to the learned Sessions Judge. Merta. The appellant denied the indictment for the offence under Section 302 I.P.C. and asserted that he did not commit the murder of Smt. Ganga Bai and claimed trial. The prosecution examined nine witnesses. The appellant in his plea recorded under Section 313 Cr.P.C. denied all the circumstances appearing against him in the prosecution evidence and stated that on the day of alleged incident, he had not gone to the Dhuna of Shiv Nath Ji Maharaj, that he was in his village Godedi from where the police had arrested him. He further stated that he was not of sound mind and that he was sent to Jodhpur for his treatment. However, he did not adduce any evidence in his defence except an undated certificate of Dr. S. C. Bhargava and his discharge certificate dated 15-9-1984, wherein he was diagonised for the disease of Schizophrenia. However, those certificates were not got proved. The learned Sessions Judge held that the appellant had inflicted fatal blows on the head of Smt. Ganga by 'Jattu' Article 1 and committed her murder and that he was not under any legal insanity at the time of the alleged incident and as such he was not entitled for protection of provisions of Section 84 IPC. He accordingly by his impugned judgment found the appellant guilty under Section 302 IPC and

sentenced him as aforesaid. Hence this appeal.

4. We have heard Shri D. S. Shishodia, the learned Senior Counsel, who was assisted by Shri Suresh Kumbhat, Amicus Curiae and Shri V.R. Mehta, the learned Public Prosecutor at length and carefully perused the record of the learned lower court in extenso.

5. The learned counsel for the appellant have not disputed the facts that the appellant had inflicted fatal injuries to Smt. Ganga, who had died within a few minutes and that the appellant was apprehended by the prosecution witnesses immediately thereafter. However, they have emphatically argued that from the facts and circumstances brought on record it is abundantly apparent that at the time of committing the impugned act the appellant was clearly labouring under such a defect of reason from disease of mind as not to know the nature or quality of the act he was doing and, therefore, he is entitled to the benefit of Section 84 I.P.C. They have submitted that as per statements of the prosecution witnesses, after inflicting two blows to the old lady, the appellant did not try to run away. On the other hand, he kept on sitting there till the police arrived. The appellant had also stated that the deceased as an evil spirit (Bhutni), who was visible to him all the time and who had eaten his liver and as such he had dealt 'Jattu' blows to her. They have pointed out that PW 2 Moola Ram has stated that prior to the alleged incident, the appellant used to come to his village and some times became of unsound mind. Similarly PW 3 Sawai Singh has admitted that after the incident, the appellant till he remained on the place of occurrence some times folded his hands, lit an incense stick and was talking like a fool and that after being pacified he used to talk like a normal person. According to them the appellant was also admitted as an indoor patient in the Mahatma Gandhi Hospital, Jodhpur from 18-8-84 to 15-9-84 and received treatment for Schizophrenia. Shri D. S. Shishodia and Shri Suresh Kumbhat have, therefore, submitted that the learned trial Judge has erred in law in not appreciating the afore-mentioned clear and positive evidence on record and in holding that the accused appellant did not suffer from legal insanity and was not entitled for the protection of the provisions of Section 84 I.P.C.

6. On the other hand, Shri V.R. Mehta, the learned Public Prosecutor has vehemently contended that there was not a fringe of evidence worth the name to establish that at the time of committing the impugned act namely inflicting fatal blows by 'Jattu' Article 1 on the head of the deceased, the appellant was of unsound mind or was suffering legal insanity. He has reiterated the reasonings given by the learned trial Judge and supported the impugned judgment.

7. We have bestowed our anxious consideration to the rival submissions. The fact of homicidal death of Smt. Ganga stands amply proved by the testimony of PW 7 Dr. Mohd. Shoukat, who has proved the post-mortem examination report Ex. P. 10/1. He has deposed that the lacerated wounds sustained by the deceased causing fracture of her frontal and occipital bones, subdural haemorrhage and laceration of brain were sufficient in the ordinary course of nature to cause death. He has also stated that those injuries could be caused by 'Jattu' Article 1.

8. Eye-witnesses, PW 2 Roop Nath, PW 3 Sawai Singh and PW 4 Girdhari have deposed in unequivocal terms that Smt. Ganga, who was putting on white dress and who appeared as a Sanyasin had sung 2-3 Bhajans in the 'Satsang', that at about 4 a.m. she went out side the 'Math' probably to urinate and that thereafter they heard her cries 'Mare Re - Mare Re' that they immediately rushed towards her and when they reached near the gate of 'Math, they saw appellant inflicting a blow by a 'Babool' stick ('Jattu') on her head, that thereafter she fell down and that thereafter they had caught hold of the appellant. However, PW 2 Moola has been declared hostile, because he stated that he had not seen the appellant inflicting the 'Jattu' blows on the head of the deceased and that when he reached near the place of occurrence, he simply saw the appellant standing. In our considered opinion, the learned trial Judge has discussed, analysed, scanned and evaluated the prosecution evidence in a right perspective and rightly held that the appellant had inflicted the said fatal injuries to the deceased causing her death.

9. Now, the crucial controversy, which arises for our consideration, is as to whether at the time of the alleged incident, the appellant was suffering from legal insanity so as to entitle him to the protection of the provisions of Section 84 I.P.C. This Section proclaims that 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. The policy of the law is to control not only the sane, but so far as is possible, also the insane. It is not, therefore, every person mentally diseased who, ipso facto, is exempted from criminal responsibility. Such exemption is allowed only where the insane person is 'incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law'. This section lays down the legal test of responsibility in cases of alleged unsoundness of mind. It will suffice to mention that every type of insanity is not legal insanity; the cogency must be so destroyed as to render him incapable of knowing the nature of the act or that what he is doing is wrong or contrary to law. The court shall presume the absence of such insanity. However, this presumption is rebuttable. The burden of proof of legal insanity is on the accused, though it is not as heavy as on the prosecution. The court must consider whether the accused suffered legal insanity at the time when the offence was committed and in reaching such a conclusion, the circumstances which preceded, attended or followed by the crime are relevant considerations. 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 every one knows the law and the natural consequences of his act.

10. To establish a defence on the ground of insanity it must be clearly proved that at the time of committing the act, the 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 crucial point of time for deciding whether the benefit of Section 84 I.P.C. should be given or not is the material time when the offence takes place. If at that moment a person is found labouring under such a defect of reason as not to know the nature of the act he was doing or that, even if he knew it, he did not know it was either wrong or contrary to law, then the provisions of Section 84 I.P.C. can be pressed into service. In coming to that conclusion, the relevant circumstances are the behaviour of the accused before the commission of the offence and his behaviour after the commission of the offence, whether the accused showed consciousness of his guilt or made efforts to avoid his guilt and offered false excuses and made false statements. 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 subsequently he had at times behaved like a mentally deficient person is per se insufficient to bring his case within the exemption provided by Section 84 I.P.C.

11. Keeping in view the afore-mentioned well crystallised principles of law, let us now scan the evidence adduced in this case. W 1 Roop Nath, who is the Incharge of the 'Math', has deposed that after hearing the cries of the old lady, he rushed to the place of occurrence, where he saw the appellant inflicting a 'Jattu' blow on her head, that thereafter in his presence the appellant again tried to give another blow on that old lady and that thereupon he caught hold the appellant's lathi ('Jattu'). He has deposed that the appellant in their presence had admitted to have killed that old lady. In his Cross-examination, he has stated that the appellant did not participate in the 'Satsang' and was sitting near the cart from where he had taken out the 'Jattu'. He has, however, stated that the appellant had come to his dhuna (Math) prior to the alleged incident and that at that time he was talking as an idiot. He has deposed that the appellant had told them that the deceased was an evil spirit (Bhutni), who had eaten his liver and, therefore, he had killed her. Apparently the appellant had taken a false excuse to justify his act and to avoid his guilt.

12. P.W. 2 Moola Ram, who has been declared hostile and who has resiled from the contents of this written report Ex. P.1 to the police has stated that the appellant had accompanied him in his cart and come to the 'Satsang'. He has stated that prior to the incident the appellant used to come to his village and that he was a bit of unsound mind. This witness has resiled from his earlier statement and given self contradictory statement. He is also distantly related to the appellant. Therefore, in our opinion, he is not a reliable witness. PW 3 Sawai Singh has deposed that after the incident the appellant had told them that the said lady was a Dakan (evil spirit), who had come to eat him, and therefore, he had killed her. He has also stated that after the alleged incident, the appellant remained there till the police came, that during that period some times he folded his hands and lit incense stick and that some times after becoming calm he talked properly. PW 4 Girdhari has stated that after the incident the appellant kept on sitting there till the police came there and did not run away.

13. The appellant has not adduced even a fringe of evidence to show/establish that prior to the incident, he was suffering from any mental illness or was of unsound mind. On the other hand, PW 9 Jadish Singh, I.O., after the incident immediately referred the appellant for his medical examination. PW 7 Dr. Mohd. Shoukat, Medical Officer, Government Hospital, Merta Road has deposed that on 13-6-1984 at 9 a.m. he had examined the appellant, who was putting on Kurta and Dhoti, that his garments were intact, that he bore normal behaviour and normal gait, that he was fully conscious of environment and responded questions in full sense and in a normal way. He has further deposed that at the time of his medical examination, the appellant was neither anxious nor excited and that he bore normal physical power and normal presence of mind. He had further deposed that in his opinion the appellant bore normal physical and mental status. He has proved appellant's medical examination report Ex. P11. Thus, from the testimony of Dr. Mohd. Shoukat, the appellant, immediately after the incident, was behaving like a normal person and bore normal physical and mental status and was not a person of unsound mind. During the trial, the appellant, after hearing the charge framed by the learned trial Judge against him, had denied the indictment and stated that he had not committed the murder of Smt. Ganga Bai. Thereafter, during his plea recorded under Section 313 Cr.P.C., he categorically denied to have gone to the place of occurrence and asserted that he was in his village Godedi from where he was arrested by the police. He, however, further stated that his mind was not functioning well and that he was also sent to Jodhpur for treatment. The appellant, however, did not examine any witness in his defence. He even did not care to get the certificate of Dr. S.C. Bhargava or the discharge certificate issued by the Resident Doctor of the Mahatma Gandhi Hospital, Jodhpur proved. Even for argument sake, if we treat these certificates to be correct still then at the most it can be held that the appellant was admitted in the M.G. Hospital, Jodhpur for his treatment of Schizophrenia on 18-8-1984 and was discharged on 15-9-1984. Apparently the plea taken by the appellant stands squarely falsified by the testimony of eye-witnesses, who had apprehended him on the spot and handed over to the police. Hence, the appellant has miserably failed to establish that at the time of the alleged incident he was suffering from any legal insanity or that by reason of unsound-ness of mind was incapable of knowing the nature of the act or

that he was doing what was either wrong or contrary to law. Simply because the appellant did not know the deceased previously or had no enmity with her and as such had no motive to kill her, it cannot be presumed that at the time of the alleged incident he was suffering from legal insanity. After the incident the appellant was nabbed by PW 1 Roop Nath, PW 3 Sawai Singh PW4 Girdhari and other persons on the spot and he was under their constant custody till the police reached there and arrested him. In such circumstances, it cannot be held from his behaviour that the appellant did not try to run away. On the other hand it is reflected that he was fully conscious of the act, he had committed, because as per statement of PW 1, PW 3 and PW 4, he had told them that the deceased old lady was a 'Dakan' or 'Bhutni', who wanted to kill him, and therefore, he had murdered her. In this case, there is no credible evidence to show that the appellant was an idiot or of unsound mind either prior to the alleged incident or thereafter. On the other hand it stands firmly established that the appellant at the time of alleged incident was not of unsound mind or was suffering from any legal insanity.

14. The learned counsel for the appellant have cited the case of Binja Ram v. State of Rajasthan, 1983 (2) Crimes 960 (2). In that case, the appellant was arrested on the charge of murdering his wife in December, 1967. During trial in March, 1968 he was medically examined and it was found that he was of unsound mind and incapable of making his defence. The Sessions Judge, therefore, ordered for his detention in Jodhpur jail and kept the trial in abeyance. The accused was declared sane in Jan., 1967. After trial, the Sessions Judge found him guilty of the offence under Section 302 I.P.C. on the basis of his extra judicial confession and other circumstantial evidence. The Sessions Judge further held that his case did not fall under Section 84 I.P.C. In that case, the prosecution witnesses had deposed that accused was mad before occurrence and was kept tied up and locked inside his house and that even at the time of his arrest, he refused to run away and his answers to questions posed to him were totally unintelligible. Later on, the doctor of mental hospital found him as insane and incapable of making his defence. The Division Bench of this Court taking in view the aforementioned factors held that the appellant suffered from legal insanity at the time of committing the offence and gave benefit of Section 84 I.P.C. Apparently such are not the facts of the case in hand. Therefore, this case renders

little assistance to the appellant.

15. The next case relied on behalf of the appellant is *Dharama Pal v. The State of U.P.*, 1984 (2) Crime 788 : (1984 All LJ 1203) wherein the learned Allahabad High Court has held that if the accused had previous history of lunacy, the burden shifts on the prosecution to establish negatively that the accused was not of unsound mind when he committed the offence. In that case, the murder was committed in very strange circumstances, viz., by burning the deceased after tying him to a pole. The accused was a resident of District Rohtak and the murder was committed in District Moradabad far away from his hosue. The accused had no motive to commit the murder in such a strange manner. Even during the peak winter period, he was wearing an 'Angocha' and had tied a 'Loongi' on his ears and was not wearing any thing else. At the time of the alleged incident and thereafter he was talking incoherently. He also had a previous history of mental illness. In such circumstances, it was held that the burden shifted on the prosecution to establish negatively that the accused was not of unsound mind when he committed the offence. Apparently the facts of the case in hand are clearly distinguishable. Here the appellant has miserably failed to prove any previous history of his mental illness. Immediately after the incident, he was neither talking incoherently nor his behaviour was abornmal or strange. On the other hand, he admitted to have killed the deceased as he thought that she was an evil spirit. Therefore, in this case, the initial burden to establish that the appellant was of unsound mind at the time of committing the alleged offence squally lay on the appellant, which he has miserably failed to discharge and to show that at the time of committing the offence he was either insane or of unsound mind. Therefore, Dharm Pal's case does not come to his rescue.

16. The next case cited on behalf of the appellant is that of *Gopal v. The State of Rajasthan*, 1985 Criminal Law Reporter (Raj) 218. In that case the accused committed the murder of his niece Kumari Geeta. The prosecution witnesses had clearly admitted that the accused was of unsound mind and was living with his sister at Mirzapur, that at the time of the alleged incident also the accused was in a state of unsound mind, that he used to run away from village to village and that he was apprehended after 10-12 days of the alleged incident and was suffering from

insanity. It was also borne out from the prosecution evidence that the accused was incapable of knowing the nature of this good or bad acts. He was also referred to psychiatric centre at Jaipur and was diagnosed suffering from Schizophrenia. Keeping in view the afore-mentioned peculiar facts and circumstances of that case, it was held that the defence had succeeded in providing that at the time of committing the act the accused was labouring under such a defect of reason as not to know the nature and quality of the act which he was committing. Hence he was given the benefit of the provisions of Section 84 IPC Apparently such are not the facts of the instant case. Therefore, Gopal's case does not help the appellant.

17. The last case relied upon by the learned counsel for the appellant is that of *Nivrutti Dhondiba Shinde v. State of Maharashtra*, 1985 CR LJ 449 (Bom). In that case when the accused came home from work, his unusual appearance was indicative of the fact that every thing was not alright with him in the morning of the day of the incident. He was obsessed with an idea that his life and the life of his wife were in danger at the hands of his own son, who was a devil and as such dangerous to him and his wife as also, to the whole world and, therefore, he should be killed. Any amount of entreatment from his wife and mother did not dislodge him from this obsession. He was afraid of being killed at the hands of his son and was, therefore, crying on account of fear. He sat down in a corner of his house and did not eat his food as usual which indicated that he was withdrawing from day today life because of fear from the devil, his own innocent two month's old child. He was eating turmeric powder the whole day. This was perhaps with a view to keep the devil away from him. He was continuously weeping and repeating that the devil (his two months old son Madhu) has to be killed otherwise he and his wife have to die. This went on till evening when he closed the door of his house, pushed aside his wife and gave 2-3 blows with a stick to Madhu on his stomach and leg. Thereafter he caught hold of Madhu by his legs and thrashed him on the pounding stone thrice with the result the child died on the spot. Keeping in view this abnormal behaviour of the accused, it was held that though the appellant did not adduce any evidence to prove his insanity still he can take advantage of the evidence adduced by the prosecution and raise a reasonable doubt in the mind of court that at the time of committing the impugned act, he was insane. It was also

held that the burden of proving insanity at the time of commission of the act is on the accused but that burden upon him is not that heavy as it is on the prosecution and that such a burden can be discharged by preponderance of evidence. We respectfully agree with this principle of law, but the facts of Nevruetti's case are at poles apart with the facts of the case in hand. In this case, there is not an iota of evidence to show any abnormal or unusual behaviour of the appellant prior to the alleged incident. He had no occasion to meet or see Smt. Ganga deceased. Thus, there was no question of seeing any evil spirit or taking her to be a 'Bhutni' or 'Dakan'. There is no evidence to the effect that prior to the incident the appellant had told to any witness that he had seen a Bhutni/Dakan, who was eating his liver. The behaviour and conduct of the appellant immediately after the incident was also not unusual or strange. Simply by folding hands or lighting an incense stick, it cannot be inferred that the appellant was suffering from any legal insanity at the time of the commission of the offence or that he was incapable of knowing the nature of the act by reason of unsoundness of mind or that he did not know that what he was doing was either wrong or contrary to law. In such circumstances, Nevruetti's case does not come to the rescue of the appellant.

18. In the premise of above discussion, we are of the considered opinion that there is no evidence worth the name from which it can be inferred that the appellant was suffering from a legal insanity at the time when the offence was committed. The totality of the circumstances, which preceded, attended or followed by the alleged incident, also do not show or establish that the appellant suffered from such legal insanity and was of non-composment is (not of sound mind). In our considered opinion, appellant has utterly failed to discharge the burden as required by law to seek the protection and benefit of the provisions of Section 84 IPC. The learned Sessions Judge has, therefore, neither committed any illegality of fact or of law in convicting the appellant for the offence under Section 302 IPC. Therefore, the impugned judgment does not warrant any interference.

19. The up-shot of the above discussion is that these appeals are devoid of any force and substance and these are hereby dismissed.