HIGH COURT OF MADHYA PRADESH

BENCH AT GWALIOR

DIVISION BENCH

BEFORE: G.S.AHLUWALIA

AND

RAJEEV KUMAR SHRIVASTAVA, JJ.

Criminal Appeal No.504/2010

Ashok Singh S/o Raghuveer Singh Yadav
Resident of Gormi, Police Station Gormi
District Bhind (MP)

Versus

State of Madhya Pradesh
Through Police Station Gormi
District Bhind (MP)

Shri Mahaveer Pathak, counsel for the appellant.
Shri Naval Gupta, Public Prosecutor for the respondent/ State.

Reserved on : **24/11/2021**
Whether approved for reporting : YES

J U D G M E N T
(10/12/2021)

Per Rajeev Kumar Shrivastava, J.:

1. The instant Criminal Appeal is preferred under Section 374 of CrPC, against the judgment of conviction and sentence dated 18.05.2010 passed by Fourth Additional Sessions Judge, Bhind (M.P.) in Sessions Trial No. 20/2004, whereby appellant has been convicted under Section 302 of IPC (on two counts) and sentenced to undergo life imprisonment and fine of Rs.5000-5000/- each for committing murder of Monu and Vishal, with default stipulation as also under Section 307 of IPC, sentenced to undergo five years R.I. with fine of Rs.1000/- due to non causing of any damage to victim Rajabhaiya, with default

stipulation. Both the sentences were directed to run concurrently.

2. The prosecution story in short is that complainant Rajabhaiya and the accused persons were residing in the same locality at Village Gormi. Three months prior to the alleged incident accused Ashok had abused in a drunken condition, on the basis of which the complainant had tried to solve the dispute. On that, it appears that there was enmity between accused Ashok and the complainant party. On a day before the incident i.e. 14.10.2003, the son of the complainant Monu had gone to attend the call of nature near the door of accused Ashok, on which accused Ashok had abused the complainant. Thereafter, the complainant has cleansed the latrine but accused Ashok had threatened him not to do the same in future otherwise he would kill him. On the date of incident while complainant along with his son Monu was roaming on the road in front of the house of accused Ashok, at that time, accused Ashok abused him by saying that as to why he is roaming here then complainant said that why are you abusing. Thereafter, co-accused Gudda and Raghuveer Singh who are brother and father of Ashok in relation instigated to accused Ashok to cause fire. Then accused Ashok caused fire which hit at the son of the complainant, as a result of which, he died on the spot. Thereafter, co-accused Gudda who was having a 12 bore adhiya has caused fire which did not hit anybody. The complainant tried to rescue his son Monu in the house of Nathuram. Thereafter, accused Ashok caused 2-3 fires. On hearing the sound of firing, Mahaveer Singh, Gajendra Singh and others came on the spot and brought the son of the complainant Monu to the house of the complainant. After some time Vishal and his brothers Mayaram and Nathu Singh reached near the dead body of Monu, at that time, accused Ashok on the terrace of the house said

that you are the previous enemy and how will you save your life. Thereafter, he also caused fire at Vishal, as a result of which, Vishal also died on the spot.

3. On the basis of dehatinalishi (Ex-P/7), FIR (Ex-P/8) was registered. The panchayatnama of dead bodies of both the deceased was prepared vide Ex-P/1 and Ex-P/2 and sent the same for postmortem vide Ex-P/10. Spot map (Ex-P/13) was prepared. After completion of investigation, charge sheet was filed before the court against accused Ashok and Raghuveer Singh while the challan could not be filed against accused Gudda because he did not appear before the court. Thereafter, the accused were directed to appear before the court by issuing notice under Section 319 of Cr.P.C. Thereafter, the evidence of the witnesses were recorded.

4. In order to prove its case the prosecution has examined as many as seven witnesses including i.e. Mahaveer Singh (PW/1), Gajendra Singh, (PW/2) Mayaram Singh (PW/3), Rabudi Singh (PW/4), Upendra Singh (PW/5), Dr. A.K. Jaiswal (PW/6) and Dr. R.K. Verma (PW/7). The eyewitness and the complainant Rajabhaiya during the trial were died by which they could not be examined before the trial Court.

5. In order to lead the defence evidence, the accused abjured guilty and pleaded complete innocence. In support of their defence evidence, accused persons have examined Krishnaveer, Hulasiram, Dr. Susheel Kumar Gupta, Swami Nityanand, Purnasantosh Anand, Sishupal, Laturi Singh, Parmal Singh, Raghuveer Singh, Dr. Kuldeep Singh and Dr. K.N. Maheshwari as (DW/1), (DW/2), (DW/3), (DW/4), (DW/5), (DW/6), (DW/7), (DW/8), (DW/9), (DW/10) and (DW/11) respectively. The defence witnesses while examined before the trial Court produced requisite documents Ex-P/3 to Ex-P/9.

6. The learned trial Court after appreciating the documentary and oral evidence as well as the medical evidence available on record passed the impugned judgment of conviction and sentence against the appellant/accused as indicated in para one of this judgment.

7. Challenging the impugned judgment of conviction and sentence it is submitted by the learned counsel for the appellant that the learned trial Court has committed an error in passing the impugned judgment of conviction and sentence against the appellant. It is further submitted that the appellant can be convicted under Section 304 Part II of IPC instead of Section 302 of IPC. It is further submitted that there is some contradiction and omission between the medical evidence and the prosecution witnesses. The complainant Rajabhaiya who is alleged to be an eyewitness has not been examined before the trial Court and the dehatinalishi recorded at the police station concerned is not supported to the prosecution case. It is further submitted that at the time of incident the accused Ashok was not state of mind and was suffering from mental disease. As per Dr. Kuldeep Jain (DW/10) his treatment was undergoing prior to the incident near about 8-10 days, therefore, it appears that appellant/accused Ashok Singh has not committed any alleged offence. Under these circumstances, the appeal filed by the appellant assailing his conviction and sentence deserves to be set aside and it is prayed that by allowing the appeal, the appellant be acquitted from the charges levelled against him.

8. Per contra, the learned counsel for the State supported the impugned judgment of conviction and sentence and submitted that there is no infirmity or illegality in the impugned judgment of conviction and sentence passed by the learned trial Court and it is

prayed that the appeal filed by the appellant deserves to be dismissed.

9. Heard the learned counsel for the rival parties and perused the record.

10. Dr. A.K. Jaiswal (PW/6) has deposed in his statement that on 16.10.2003 he was posted as Medical Officer in Community Health Centre Mehgaon, District Bhind. On that date Constable No.184 Vishwanath Singh of Police Station Gormi brought dead of deceased Monu S/o Rajabhaiya, aged around 4 years. He has further stated that he conducted the postmortem of the deceased wherein he found gunshot injuries over the chest of the deceased. There was entry wound and one exit wound and one another lacerated wound over the left side of chest. This witness has opined that the cause of death of deceased was syncope due to excessive bleeding. The nature of death was homicidal. He has also stated that on the same date the dead body of Vishal was also brought by same Constable. This witness has also conducted postmortem of dead body of Vishal wherein he found antimortem injuries on the chest of the deceased. There was entry wound and exit wound. He has also opined that the cause of death was syncope due to excessive bleeding. Death was caused within 24 hours of postmortem.

11. The aforesaid deaths of deceased Monu and Vishal were culpable homicide in nature.

12. Before considering the merits of the case, it would be appropriate to throw light on relevant provisions of Sections 299 and 300 of Indian Penal Code.

Law relating to Sections 299 & 300 of IPC:-

13. The Law Commission of United Kingdom in its 11th Report proposed the following test :

> "The standard test of 'knowledge' is, Did the person whose conduct is in issue, either knows of the relevant circumstances or has no substantial doubt of their existence?"

[See Text Book of Criminal Law by Glanville Wiliams (p.125)]

"Therefore, having regard to the meaning assigned in criminal law the word "knowledge" occurring in clause Secondly of Section 300 IPC imports some kind of certainty and not merely a probability. Consequently, it cannot be held that the appellant caused the injury with the intention of causing such bodily injury as the appellant knew to be likely to cause the death of Shivprasad. So, clause Secondly of Section 300 IPC will also not apply."

14. The enquiry is then limited to the question whether the offence is covered by clause Thirdly of Section 300 IPC. This clause, namely, clause Thirdly of Section 300 IPC reads as under: -

> "Culpable homicide is murder, if the act by which the death is caused is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death."

The argument that the accused had no intention to cause death is wholly fallacious for judging the scope of clause Thirdly of Section 300 IPC as the words "intention of causing death" occur in clause Firstly and not in clause Thirdly. An offence would still fall within clause Thirdly even though the offender did not intend to cause death so long as the death ensues from the intentional bodily injury and the injuries are sufficient to cause death in the ordinary course of nature. This is also borne out from illustration (c) to Section 300 IPC which is being reproduced below: -

> "(c) A intentionally gives Z a sword-cut or club-wound sufficient to cause the death of a man in

> the ordinary course of nature. Z dies in consequence. Here A is guilty of murder, although he may not have intended to cause Z's death."

Therefore, the contentions advanced in the present case and which are frequently advanced that the accused- appellants had no intention of causing death of deceased Sheoprasad (Shivprsasad) is wholly irrelevant for deciding whether the case falls in clause Thirdly of Section 300 IPC.

15. The scope and ambit of clause Thirdly of Section 300 IPC was considered by the Supreme Court in the decision in **Virsa Singh vs. State of Punjab** reported in **AIR 1958 SC 465** and the principle enunciated therein explains the legal position succinctly. The accused Virsa Singh was alleged to have given a single spear blow and the injury sustained by the deceased was "a punctured wound 2"x =" transverse in direction on the left side of the abdominal wall in the lower part of the iliac region just above the inguinal canal. Three coils of intestines were coming out of the wound." After analysis of the clause Thirdly, it was held: -

> "The prosecution must prove the following facts before it can bring a case under S. 300 "Thirdly"; First, it must establish, quite objectively, that a bodily injury is present; Secondly, the nature of the injury must be proved. These are purely objective investigations. Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended.
>
> Once these three elements are proved to be present, the enquiry proceeds further and, Fourthly, it must be proved that the injury of the type, just described, made up of the three elements set out above, is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and

> inferential and has nothing to do with the intention of the offender. Once these four elements are established by the prosecution (and, of course, the burden is on the prosecution throughout), the offence is murder under S. 300 "Thirdly". It does not matter that there was no intention to cause death, or that there was no intention even to cause an injury of a kind that is sufficient to cause death in the ordinary course of nature (there is no real distinction between the two), or even that there is no knowledge that an act of that kind will be likely to cause death. Once the intention to cause the bodily injury actually found to be present is proved, the rest of the enquiry is purely objective and the only question is whether, as a matter of purely objective inference, the injury is sufficient in the ordinary course of nature to cause death."

16. In the case of **Arun Nivalaji More vs. State of Maharashtra (Case No. Appeal (Cri.) 1078-1079 of 2005)**, it has been observed as under :-

> "**11**. First it has to be seen whether the offence falls within the ambit of Section 299 IPC. If the offence falls under Section 299 IPC, a further enquiry has to be made whether it falls in any of the clauses, namely, clauses 'Firstly' to 'Fourthly' of Section 300 IPC. If the offence falls in any one of these clauses, it will be murder as defined in Section 300IPC, which will be punishable under Section 302 IPC. The offence may fall in any one of the four clauses of Section 300 IPC yet if it is covered by any one of the five exceptions mentioned therein, the culpable homicide committed by the offender would not be murder and the offender would not be liable for conviction under Section 302 IPC. A plain reading of Section 299 IPC will show that it contains three clauses, in two clauses it is the intention of the offender which is relevant and is the dominant factor and in the third clause the knowledge of the

offender which is relevant and is the dominant factor. Analyzing Section 299 as aforesaid, it becomes clear that a person commits culpable homicide if the act by which the death is caused is done

(i) with the intention of causing death; or

(ii) with the intention of causing such bodily injury as is likely to cause death; or

(iii) with the knowledge that the act is likely to cause death."

If the offence is such which is covered by any one of the clauses enumerated above, but does not fall within the ambit of clauses Firstly to Fourthly of Section 300 IPC, it will not be murder and the offender would not be liable to be convicted under Section 302 IPC. In such a case if the offence is such which is covered by clauses (i) or (ii) mentioned above, the offender would be liable to be convicted under Section 304 Part I IPC as it uses the expression "if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death" where intention is the dominant factor. However, if the offence is such which is covered by clause (iii) mentioned above, the offender would be liable to be convicted under Section 304 Part II IPC because of the use of the expression "if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death" where knowledge is the dominant factor.

12. What is required to be considered here is whether the offence committed by the appellant falls within any of the clauses of Section 300 IPC.

13. Having regard to the facts of the case it can legitimately be urged that clauses Firstly and Fourthly of Section 300 IPC were not attracted. The expression "the offender knows to be likely to cause death" occurring in clause Secondly of

Section 300 IPC lays emphasis on knowledge. The dictionary meaning of the word 'knowledge' is the fact or condition of being cognizant, conscious or aware of something; to be assured or being acquainted with. In the context of criminal law the meaning of the word in Black's Law Dictionary is as under: -

> "An awareness or understanding of a fact or circumstances; a state of mind in which a person has no substantial doubt about the existence of a fact. It is necessary ... to distinguish between producing a result intentionally and producing it knowingly. Intention and knowledge commonly go together, for he who intends a result usually knows that it will follow, and he who knows the consequences of his act usually intends them. But there may be intention without knowledge, the consequence being desired but not foreknown as certain or even probable. Conversely, there may be knowledge without intention, the consequence being foreknown as the inevitable concomitant of that which is desired, but being itself an object of repugnance rather than desire, and therefore not intended."

In Blackstone's Criminal Practice the import of the word 'knowledge' has been described as under: -

> 'Knowledge' can be seen in many ways as playing the same role in relation to circumstances as intention plays in relation to consequences. One knows something if one is absolutely sure that it is so although, unlike intention, it is of no relevance whether one wants or desires the thing to be so. Since it is difficult ever to be absolutely certain of anything, it has to be accepted that a person who feels 'virtually certain' about something can equally be regarded as knowing it."

17. Section 299 of Indian Penal Code runs as under :-

> "299. Culpable homicide.-- Wheoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide."

18. Section 299 of IPC says, whoever causes death by doing an act with the bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide. Culpable homicide is the first kind of unlawful homicide. It is the causing of death by doing :

> (i) an act with the intention of causing death;
> (ii) an act with the intention of causing such bodily injury as is likely to cause death; or
> (iii) an act with the knowledge that it is was likely to cause death.

Without one of these elements, an act, though it may be by its nature criminal and may occasion death, will not amount to the offence of culpable homicide. 'Intent and knowledge' as the ingredients of Section 299 postulate, the existence of a positive mental attitude and the mental condition is the special *mens rea* necessary for the offence.The knowledge of third condition contemplates knowledge of the likelihood of the death of the person. Culpable homicide is of two kinds : one, culpable homicide amounting to murder, and another, culpable homicide not amounting to murder. In the scheme of the Indian Penal Code, culpable homicide is genus and murder is species. All murders are

culpable homicide, but not *vice versa*. Generally speaking, culpable homicide *sans* the special characteristics of murder is culpable homicide not amounting to murder. In this section, both the expressions 'intent' and 'knowledge' postulate the existence of a positive mental attitude which is of different degrees.

19. Section 300 of Indian Penal Code runs as under :-

> "**300. Murder.**-- Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or--
>
> *Secondly*.-- If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or--
>
> *Thirdly*.-- If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or--
>
> *Fourthly.*-- If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid."

20. "Culpable Homicide" is the first kind of unlawful homicide. It is the causing of death by doing ;(i) an act with the intention to cause death; (ii) an act with the intention of causing such bodily injury as is likely to cause death; or, (iii) an act with the knowledge that it was likely to cause death.

21. Indian Penal Code recognizes two kinds of homicide :(1) Culpable homicide, dealt with between Sections 299 and 304 of IPC (2) Not-culpable homicide, dealt with by Section 304-A of IPC. There are two kinds of culpable homicide; (i) Culpable

homicide amounting to murder (Section 300 read with Section 302 of IPC), and (ii) Culpable homicide not amounting to murder (Section 304 of IPC).

22. A bare perusal of the Section makes it crystal clear that the first and the second clauses of the section refer to intention apart from the knowledge and the third clause refers to knowledge alone and not the intention. Both the expression "intent" and "knowledge" postulate the existence of a positive mental attitude which is of different degrees. The mental element in culpable homicide i.e., mental attitude towards the consequences of conduct is one of intention and knowledge. If that is caused in any of the aforesaid three circumstances, the offence of culpable homicide is said to have been committed.

23. There are three species of *mens rea* in culpable homicide. (1) An intention to cause death; (2) An intention to cause a dangerous injury; (3) Knowledge that death is likely to happen.

24. The fact that the death of a human being is caused is not enough unless one of the mental sates mentioned in ingredient of the Section is present. An act is said to cause death results either from the act directly or results from some consequences necessarily or naturally flowing from such act and reasonably contemplated as its result. Nature of offence does not only depend upon the location of injury by the accused, this intention is to be gathered from all facts and circumstances of the case. If injury is on the vital part, i.e., chest or head, according to medical evidence this injury proved fatal. It is relevant to mention here that intention is question of fact which is to be gathered from the act of the party. Along with the aforesaid, ingredient of Section 300 of IPC are also required to be fulfilled for commission of offence of murder.

25. In the scheme of Indian Penal Code, “Culpable homicide” is genus and “murder” is its specie. All “Murder” is “culpable homicide” but not vice versa. Speaking generally 'culpable homicide sans special characteristics of murder' if culpable homicide is not amounting to murder.

26. In the case of **Anda vs. State of Rajasthan** reported in **1966 CrLJ 171,** while considering “third” clause of Section 300 of IPC, it has been observed as under:-

> “It speaks of an intention to cause bodily injury which is sufficient in the ordinary course of nature to cause death. The emphasis here is on sufficiency of injury in the ordinary course of nature to cause death. The sufficiency is the high probability of death in the ordinary way of nature and when this exists and death ensues and causing of such injury was intended, the offence is murder. Sometimes the nature of the weapon used, sometimes the part of the body on which the injury is caused, and sometimes both are relevant. The determinant factor is the intentional injury which must be sufficient to cause death in the ordinary course of nature.”

27. In the case of **Mahesh Balmiki vs. State of M.P.** reported in **(2000) 1 SCC 319,** while deciding whether a single blow with a knife on the chest of the deceased would attract Section 302 of IPC, it has been held thus :-

> “There is no principle that in all cases of single blow Section 302 I.P.C. is not attracted. Single blow may, in some cases, entail conviction under Section 302 I.P.C., in some cases under Section 304 I.P.C and in some other cases under Section 326 I.P.C. The question with regard to the nature of offence has to be determined on the facts and in the circumstances of each case. The nature of the injury, whether it is on the vital or non-vital part of the body, the weapon used, the circumstances in which the injury is caused and the manner in

> which the injury is inflicted are all relevant factors which may go to determine the required intention or knowledge of the offender and the offence committed by him. In the instant case, the deceased was disabled from saving himself because he was held by the associates of the appellant who inflicted though a single yet a fatal blow of the description noted above. These facts clearly establish that the appellant had intention to kill the deceased. In any event, he can safely be attributed knowledge that the knife blow given by him is so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death."

28. In the case of **Dhirajbhai Gorakhbhai Nayak vs. State of Gujarat** reported in **(2003) 9 SCC 322**, it has been observed as under :-

> "The Fourth Exception of Section 300, IPC covers acts done in a sudden fight. The said exception deals with a case of prosecution not covered by the first exception, after which its place would have been more appropriate. The exception is founded upon the same principle, for in both there is absence of premeditation. But, while in the case of Exception 1 there is total deprivation of self-control, in case of Exception 4, there is only that heat of passion which clouds men's sober reason and urges them to deeds which they would not otherwise do. There is provocation in Exception 4 as in Exception 1; but the injury done is not the direct consequence of that provocation. In fact Exception 4 deals with cases in which notwithstanding that a blow may have been struck, or some provocation given in the origin of the dispute or in whatever way the quarrel may have originated, yet the subsequent conduct of both parties puts them in respect of guilt upon equal footing. A 'sudden fight' implies mutual provocation and blows on each side. The homicide committed is then clearly not traceable to unilateral provocation, nor in such cases could the whole blame be placed on one side. For if it

were so, the Exception more appropriately applicable would be Exception 1. There is no previous deliberation or determination to fight. A fight suddenly takes place, for which both parties are more or less to be blamed. It may be that one of them starts it, but if the other had not aggravated it by his own conduct it would not have taken the serious turn it did. There is then mutual provocation and aggravation, and it is difficult to apportion the share of blame which attaches to each fighter. The help of Exception 4 can be invoked if death is caused (a) without premeditation, (b) in a sudden fight; (c) without the offender's having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the 'fight' occurring in Exception 4 to Section 300, IPC is not defined in the IPC. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties have worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two and more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in cruel or unusual manner. The expression 'undue advantage' as used in the provision means 'unfair advantage'."

29. In the case of **Pulicherla Nagaraju @ Nagaraja vs. State of AP** reported in **(2006) 11 SCC 444**, while deciding whether a case falls under Section 302 or 304 Part-I or 304 Part-II, IPC, it

was held thus :-

> "Therefore, the court should proceed to decide the pivotal question of intention, with care and caution, as that will decide whether the case falls under Section 302 or 304 Part I or 304 Part II. Many petty or insignificant matters plucking of a fruit, straying of a cattle, quarrel of children, utterance of a rude word or even an objectionable glance, may lead to altercations and group clashes culminating in deaths. Usual motives like revenge, greed, jealousy or suspicion may be totally absent in such cases. There may be no intention. There may be no pre-meditation. In fact, there may not even be criminality. At the other end of the spectrum, there may be cases of murder where the accused attempts to avoid the penalty for murder by attempting to put forth a case that there was no intention to cause death. It is for the courts to ensure that the cases of murder punishable under section 302, are not converted into offences punishable under section 304 Part I/II, or cases of culpable homicide not amounting to murder, are treated as murder punishable under section 302. The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances : (i) nature of the weapon used; (ii) whether the weapon was carried by the accused or was picked up from the spot; (iii) whether the blow is aimed at a vital part of the body; (iv) the amount of force employed in causing injury; (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight; (vi) whether the incident occurs by chance or whether there was any pre- meditation; (vii) whether there was any prior enmity or whether the deceased was a stranger; (viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation; (ix) whether it was in the heat of passion; (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; (xi) whether the accused dealt a single blow or several blows. The above list of circumstances is, of course, not

> exhaustive and there may be several other special circumstances with reference to individual cases which may throw light on the question of intention. Be that as it may."

30. In the case of **Sangapagu Anjaiah v. State of A.P. (2010) 9 SCC 799,** Hon'ble Apex Court while deciding the question whether a blow on the skull of the deceased with a crowbar would attract Section 302 IPC, held thus**:-**

> "**16.** In our opinion, as nobody can enter into the mind of the accused, his intention has to be gathered from the weapon used, the part of the body chosen for the assault and the nature of the injuries caused. Here, the appellant had chosen a crowbar as the weapon of offence. He has further chosen a vital part of the body i.e. the head for causing the injury which had caused multiple fractures of skull. This clearly shows the force with which the appellant had used the weapon. The cumulative effect of all these factors irresistibly leads to one and the only conclusion that the appellant intended to cause death of the deceased."

31. In the case of **State of Rajasthan v. Kanhaiyalal** reported in **(2019) 5 SCC 639,** this it has been held as follows:-

> "**7.3** In **Arun Raj [Arun Raj v. Union of India, (2010) 6 SCC 457 : (2010) 3 SCC (Cri) 155]** this Court observed and held that there is no fixed rule that whenever a single blow is inflicted, Section 302 would not be attracted. It is observed and held by this Court in the aforesaid decision that nature of weapon used and vital part of the body where blow was struck, prove beyond reasonable doubt the intention of the accused to cause death of the deceased. It is further observed and held by this Court that once these ingredients are proved, it is irrelevant whether there was a single blow struck or multiple blows.
>
> **7.4** ***In Ashokkumar Magabhai Vankar***

[Ashokkumar Magabhai Vankar v. State of Gujarat, **(2011) 10 SCC 604 : (2012) 1 SCC (Cri) 397]** , the death was caused by single blow on head of the deceased with a wooden pestle. It was found that the accused used pestle with such force that head of the deceased was broken into pieces. This Court considered whether the case would fall under Section 302 or Exception 4 to Section 300 IPC. It is held by this Court that the injury sustained by the deceased, not only exhibits intention of the accused in causing death of victim, but also knowledge of the accused in that regard. It is further observed by this Court that such attack could be none other than for causing death of victim. It is observed that any reasonable person, with any stretch of imagination can come to conclusion that such injury on such a vital part of the body, with such a weapon, would cause death.

7.5 A similar view is taken by this Court in the recent decision in Leela Ram (supra) and after considering catena of decisions of this Court on the issue on hand i.e. in case of a single blow, whether case falls under Section 302 or Section 304 Part I or Section 304 Part II, this Court reversed the judgment and convicted the accused for the offence under Section 302 IPC. In the same decision, this Court also considered Exception 4 of Section 300 IPC and observed in para 21 as under: (SCC para 21)

> "**21**. Under Exception 4, culpable homicide is not murder if the stipulations contained in that provision are fulfilled. They are: (i) that the act was committed without premeditation; (ii) that there was a sudden fight; (iii) the act must be in the heat of passion upon a sudden quarrel; and (iv) the offender should not have taken undue advantage or acted in a cruel or unusual manner."

32. In the case of **Bavisetti Kameswara Rao v. State of A.P.** reported in **(2008) 15 SCC 725,** it is observed in paragraphs 13 and 14 as under:-

"**13.** It is seen that where in the murder case there is only a single injury, there is always a tendency to advance an argument that the offence would invariably be covered under Section 304 Part II IPC. The nature of offence where there is a single injury could not be decided merely on the basis of the single injury and thus in a mechanical fashion. The nature of the offence would certainly depend upon the other attendant circumstances which would help the court to find out definitely about the intention on the part of the accused. Such attendant circumstances could be very many, they being (i) whether the act was premeditated; (ii) the nature of weapon used; (iii) the nature of assault on the accused. This is certainly not an exhaustive list and every case has to necessarily depend upon the evidence available. As regards the user of screwdriver, the learned counsel urged that it was only an accidental use on the spur of the moment and, therefore, there could be no intention to either cause death or cause such bodily injury as would be sufficient to cause death. Merely because the screwdriver was a usual tool used by the accused in his business, it could not be as if its user would be innocuous.

14. In **State of Karnataka Vedanayagam [(1995) 1 SCC 326 : 1995 SCC (Cri) 231]** this Court considered the usual argument of a single injury not being sufficient to invite a conviction under Section 302 IPC. In that case the injury was caused by a knife. The medical evidence supported the version of the prosecution that the injury was sufficient, in the ordinary course of nature to cause death. The High Court had convicted the accused for the offence under Section 304 Part II IPC relying on the fact that there is only a single injury. However, after a detailed discussion regarding the nature of injury, the part of the body chosen by the accused to inflict the same and other attendant circumstances and after discussing clause Thirdly of Section 300 IPC and further relying on the decision in Virsa Singh vs. State of Punjab [AIR 1958 SC 465] , the Court set aside the acquittal under Section 302 IPC and convicted the accused for that offence. The Court (in

Vedanayagam case [(1995) 1 SCC 326 : 1995 SCC (Cri) 231] , SCC p. 330, para 4) relied on the observation by Bose, J. in Virsa Singh case **[AIR 1958 SC 465]** to suggest that: (Virsa Singh case **[AIR 1958 SC 465],** AIR p. 468, para 16)

> "16. With due respect to the learned Judge he has linked up the intent required with the seriousness of the injury, and that, as we have shown, is not what the section requires. The two matters are quite separate and distinct, though the evidence about them may sometimes overlap."

The further observation in the above case were: **(Virsa Singh case [AIR 1958 SC 465]** , AIR p. 468, paras 16 & 17)

> "**16.** The question is not whether the prisoner intended to inflict a serious injury or a trivial one but whether he intended to inflict the injury that is proved to be present. If he can show that he did not, or if the totality of the circumstances justify such an inference, then, of course, the intent that the section requires is not proved. But if there is nothing beyond the injury and the fact that the appellant inflicted it, the only possible inference is that he intended to inflict it. Whether he knew of its seriousness, or intended serious consequences, is neither here nor there. The question, so far as the intention is concerned, is not whether he intended to kill, or to inflict an injury of a particular degree of seriousness, but whether he intended to inflict the injury in question; and once the existence of the injury is proved the intention to cause it will be presumed unless the evidence or the circumstances warrant an opposite conclusion. But whether the intention is there or not is one of fact and not one of law. Whether the wound is serious or otherwise, and if serious, how serious, is a totally separate and distinct question and has nothing to do with the question whether the prisoner intended to inflict the injury in question.…

> 17. It is true that in a given case the enquiry may be linked up with the seriousness of the injury. For example, if it can be proved, or if the totality of the circumstances justify an inference, that the prisoner only intended a superficial scratch and that by accident his victim stumbled and fell on the sword or spear that was used, then of course the offence is not murder. But that is not because the prisoner did not intend the injury that he intended to inflict to be as serious as it turned out to be but because he did not intend to inflict the injury in question at all. His intention in such a case would be to inflict a totally different injury. The difference is not one of law but one of fact."

33. Mahaveer Singh (PW/1) and Gajendra Singh (PW/2) in their evidence deposed that 3-4 days prior to the incident i.e. 15.10.2003 there was a dispute between accused Ashok and Rajabhaiya (father of Monu). These witnesses stated that on 14.10.2003 Monu had come near the door of the house of accused Ashok for attending the call of nature, due to which accused Ashok had abused him. Thereafter, Rajabhaiya had cleansed the place of latrine but accused Ashok had threatened him not to come in future for latrine otherwise he would kill him. Thereafter, when the complainant Rajabhaiya along with his son Monu was roaming in front of the house of the Ashok, accused Ashok who was having a 12 bore gun caused fire which hit on the chest of Monu as a result of which he died on the spot. This witness further stated that at the time of causing fire co-accused Raghuveer and Gudda were present. Co-accused Gudda was having an *Adhiya* while co-accused Raghuveer was barehanded. Co-accused Raghuveer exhorted co-accused Gudda for causing fire at Rajabhaiya by which co-accused Gudda caused fire at Rajabhaiya by means of *Adhiya*. But the gunshot fire did not hit Rajabhaiya and

Rajabhaiya saved himself by entering in the house of one Nathu. This witness further stated that after the incident he had taken the dead body of Monu from the spot. This witness in paragraph 8 has stated that accused Raghuveer and Gudda have already fled away when Vishal reached the spot. This witness further denied that at the time of incident accused Raghuveer had sustained any fracture on his legs. This witness in paragraph 19 of his cross-examination admitted that not only he was having a licensed gun but Rajabhaiya and Gajendra were having licensed gun. Accused Ashok has caused firearm injury at Vishal from the terrace of his house. This witness in paragraph 26 of his cross-examination denied that no gunshot fire was caused.

34. That means aforesaid act was done by the accused/appellant Ashok Singh.

35. Now it has to be seen whether at the time of committing the aforesaid act the appellant-Ashok Singh was in sound state of mind. For this purpose the behavioural attitude of accused/appellant has to be examined.

36. Mahaveer Singh (PW/1) has stated in para 3 of his statement that ''विशाल ने मोनू की लाश देखकर अशोक से कहा कि यह क्या कर दिया तो अशोक ने अपनी बंदूक से गोली चलायी जो विशाल को सीने पर बाएं तरफ लगी जिससे विशाल की भी मौके पर ही मृत्यु हो गयी ।''

Similarly in para 2 of his statement he has deposed as under:-

> ''फिर राजाभैया मोनू सहित रास्ते में अभियुक्त अशोक के घर के सामने से जैसे ही निकल के जाने लगा तो अशोक ने बारह बोर बंदूक से गोली मारी जो मोनू को लगी, गोली मोनू को सामने सीने पर लगी थी गोली लगने से मोनू वहीं मौके पर मर गया । जिस समय अशोक ने गोली चलायी उस समय अभियुक्त रघुवीर व एक गुडडा पिता रघुवीर भी मौजूद थे, गुडडा अधिया बंदूक लिए था व रघुवीर खाली हाथ था । रघुवीर ने गुडडा से कहा कि राजाभैया को गोली मारो तो गुडडा ने अधिया बंदूक से राजाभैया पर फायर किया पंरतु गोली राजाभैया को नहीं लगी राजाभैया नाथू के घर में घुस गया, फिर गजेन्द्र ने राजाभैया से कहा कि मोनू की लाश रोड पर पड़ी है उसको उठा लो, तो फिर राजाभैया अपने

लड़के मोनू की लाश उठाकर अपने घर ले आया था । मोनू की लाश उठाने के पहले अभियुक्त अशोक ने अपने घर से दो तीन गोली और चलायी थी ।''

In para 12 of his statement he has deposed as under:

''साक्षी स्वतः कहता है कि अशोक घटना स्थल वाले मकान में रहता है । मैं अशोक को अक्सर बन्दूक अपने साथ लिये देखता था ।

In para 13 of his statement he has stated that ''घटना के पहले भी मैंने अशोक को रोज देखा था । घटना के दिन अशोक घटना के लगभग एक–दो घ ाण्टे पहले से अपनी छत पर बन्दूक लिये बैठा था, छत खुली हुई है इसलिये बाहर से ही दिखता है ।

In para 17 of his statement he has deposed that ''गोली चलने व घ ाटना होने के बाद अशोक अपने मकान में अन्दर रहा है । जब मौंके पर पुलिस आयी थी उस समय भी अशोक अपने घर में अन्दर था । रात में अशोक के घर में अशोक के अलावा और कौन–कौन था यह मुझें जानकारी नहीं है । पुलिस ने अशोक को रात्रि में ही पकड़ लिया था । जब अशोक को पुलिस ने पकड़ा था उस समय मैं मौजूद था । पुलिस ने अशोक को घेरा डालकर पकड़ा था और पकड़ कर थाने ले गई थी, इसलिए मैं नहीं बता सकता कि अशोक को कोई चोटे थी अथवा नहीं । ''

In para 21 of his statement he has deposed that ''विशाल अचानक घटना स्थल पर आया था व उसने मोनू को गोली मारने के संबंध में अशोक को टोका था तो उसके भी गोली मार दी। ''

37. Gajendra Singh (PW/2) has also affirmed the aforesaid statement in para 1 of his examination-in-chief. In para 6 of his statement he has stated as under:-

''घटना के करीब तीन–चार घंटे बाद पुलिस ने अभियुक्त अशोक को उसके घर से निकलवाया था । अशोक घर के अंदर था । पुलिस ने मायक से अशोक को बाहर आने के लिए एलाउसं कराया था जिस पर अभियुक्त अशोक दोनों हाथ ऊपर करके आया था व पुलिस ने उसे गिरफतार कर लिया था ।''

38. Mayaram Singh (PW/3) has deposed in para 20 of his statement that घटना के बाद व पुलिस आने तक अशोक अपनी छत पर ही रहा था । ''

39. Dr. Kuldeep Singh (PW-10) has also deposed in his statement that on 18/10/2003, the appellant Ashok Singh was brought to mental hospital Gwalior and was admitted for his treatment. He was suffering from Bipolar Effective Disorder and he was discharged on 10/03/2004. Again he was admitted on 01/08/2004 and discharged on 02/12/2004. He has also stated that in such type of disease, attacks may repeat at any time. This witness has also stated that 8-10 days prior to 18/10/2003, the appellant's condition would have been same when his behavior was abnormal and was advised to get treatment. He has also stated that at the time of commission of offence as the appellant was suffering from mental disease, therefore he was not able to understand the nature and wrongfulness of the act.

40. At this juncture, it would be appropriate to discuss the relevant law relating to Section 84 of IPC.

Section 84 of IPC runs as under:-

> **"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.

41. In the case of **Bhikari v. State of Uttar Pradesh ,** reported in **(AIR 1966) SC 1,** the Supreme Court while considering a defence under Section 84 of the Evidence Act, while explaining its earlier decision in, **Dahyabhai Chhagnbhai v. State of Gujrat** laid down the law in the following terms:

> "Section 84 of the Penal Code is one of the provisions in Chapter IV of the Penal Code which deals with "General Exceptions provides as follows:
>
> "**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."

Under Section 105 of the Indian Evidence Act, 1872, the burden of proving the existence of circumstances bringing the case within any of the exceptions specified in the Penal Code lies upon the accused person. It further provides that in such a case the Court shall presume the absence of such circumstances. Illustration (a) to that provision runs as follows:
"A accused of murder, alleged that by reason of unsoundness of mind, he did not know the nature of the Act.

The burden of proof is on A.

Learned counsel, however, relies upon a decision of this Court in Dahyabhai Chhaganbhai Thakur v. State of Gujarat , and contends that it is for the prosecution to establish the necessary mems rea of the accused, and that even though the accused may not have taken the plea of insanity or led any evidence to show that was insane when he committed an offence of which intention is an ingredient the prosecution must satisfy the Court that the accused had the requisite intention. There is no doubt that the burden of proving an offence is always on the prosecution and that it never shifts. It would, therefore, be correct to say that intention when it is an essential ingredient of an offence, has also to be established by the prosecution. But the State of mind of a person can ordinarily only be inferred from circumstances Thus, if a person deliberately strikes another with a deadly weapon, which according to the common experience of mankind is likely to cause an injury and sometimes even a fatal injury depending upon the quality of the weapon and the part of the body on which it is struck, it would be reasonable to infer that what the accused did was accompanied by the intention to cause a kind of injury which in fact resulted from the act. In such a case the prosecution must be deemed to have discharged the burden which rested upon it to establish an essential ingredient of the office, namely the intention of the accused inflicting a blow with a deadly weapon. Section 84 of the Indian Penal Code cannot doubt be invoked by a person for nullifying the evidence adduced by the prosecution by establishing that he was at the relevant time incapable of knowing the nature of the act or that what he was doing was either wrong or contrary to law. Now it is not for the prosecution to establish that a person who strikes another with a deadly weapon was incapable of knowing the nature of the actor of knowing that what he was doing was either wrong or contrary to law. Every one is presumed to know the

natural consequences of his act. Similarly every one is also presumed to know the law. These are not facts which the prosecution has to establish. It is for this reason that Section 105 of the Evidence Act places upon the accused person the burden of proving of the exception upon which he relies. Mr. Varma, however, relies upon the following passage occurring in the aforementioned judgment of this court:-

"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 the sense laid down by s. 84 of the Indian 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."

42. In the case of **Ajaya Mahakud vs State,** reported in **1993, CriLJ 1201** wherein it is held as under:-

"Section 84 lays down the legal test of responsibility in cases of alleged unsoundness of mind. There, is no definition of "unsoundness of mind" in the Indian Penal Code. Courts have, however, mainly treated this expression as equivalent to insanity. But the term "insanity" itself has no precise definition. It is a term used to describe varying degrees of mental disorder. So, every person, who is mentally diseased, is not ipso facto exempted from criminal responsibility. A distinction is to be made between legal insanity and medical insanity. A Court is concerned with legal insanity, and not with medical insanity, The burden of proof rests on an accused to prove his insanity, which arises by virtue of Section 105 of the Indian Evidence Act, 1972 and is not so onerous as that upon the prosecution to prove that the

> accused committed the act with which he is charged. The burden on the accused is no higher than that resting upon a plaintiff or a defendant in a civil proceeding. (See Dahyabhai v. State of Gujarat : AIR 1964 SC 1563). In dealing with cases involving a defence of insanity, distinction must be made between cases, in which insanity is more or less proved and the question is only as to the degree of irresponsibility, and cases, in which insanity is sought to be proved in respect of a person, who for all intents and purposes, appears sane. In all cases, where previous insanity is proved or admitted, certain considerations have to be borne in mind. Mayne summarises them as follows :
>
> "Whether there was deliberation and preparation for the act; whether it was done in a manner which showed a desire to concealment ; whether after the crime, the offender showed consciousness of guilt and made efforts to avoid detections ; whether, after his arrest, he offered false excuses and made false statements. All facts of this sort are material as bearing on the test, which Bramwall, J. submitted to a jury in such a case : 'Would the prisoner have committed the act if there had been a policeman at his elbow ? It is to be resmembered that these tests are good for cases in which previous insanity is more or lass established. These tests are not always reliable where there is, what Mayne calls, inferential insanity'."

43. The Supreme Court in the case of **Sudhakaran Vs. State of Kerala,** reported in **(2010) 10 SCC 582** have distinguished the legal insanity with medical insanity as under:

> “17. The defence of insanity has been well known in the English Legal System for many centuries. In the earlier times, it was usually advanced as a justification for seeking pardon. Over a period of time, it was used as a complete defence to criminal liability in offences involving mens rea. It is also accepted that insanity in medical terms is distinguishable from legal insanity. In most cases, in India, the defence of insanity seems to be pleaded where the offender is said to be suffering from the disease of Schizophrenia. The plea taken in the present case was also that the appellant was suffering from "paranoid schizophrenia". The term has been defined in Modi's Medical Jurisprudence and Toxicology1 as follows:
>
> "Paranoia is now regarded as a mild form of paranoid schizophrenia. It occurs more in males than in females. The main characteristic of this illness is a well-elaborated

delusional system in a personality that is otherwise well preserved. The delusions are of persecutory type. The true nature of this illness may go unrecognized for a long time because the personality is well preserved, and some of these paranoiacs may pass off as a social reformers or founders of queer pseudo- religious sects. The classical picture is rare and generally takes a chronic course.

Paranoid Schizophrenia, in the vast majority of case, starts in the fourth decade and develops insidiously. Suspiciousness is the characteristic symptom of the early stage.

Ideas of reference occur, which gradually develop into delusions of persecution. Auditory hallucinations follow which in the beginning, start as sound or noises in the ears, but later change into abuses or insults. Delusions are at first indefinite, but gradually they become fixed and definite, to lead the patient to believe that he is persecuted by some unknown person or [23rd Ed. Page 1077] some superhuman agency. He believes that his food is being poisoned, some noxious gases are blown into his room and people are plotting against him to ruin him. Disturbances of general sensation give rise to hallucinations which are attributed to the effects of hypnotism, electricity, wireless telegraphy or atomic agencies. The patient gets very irritated and excited owing to these painful and disagreeable hallucinations and delusions. " The medical profession would undoubtedly treat the appellant herein as a mentally sick person. However, for the purposes of claiming the benefit of the defence of insanity in law, the appellant would have to prove that his cognitive faculties were so impaired, at the time when the crime was committed, as not to know the nature of the act.

A bare perusal of the aforesaid section would show that in order to succeed, the appellant would have to prove that by reason of unsoundness of mind, he was incapable of knowing the nature of the act committed by him. In the alternate case, he would have to prove that he was incapable of knowing that he was doing what is either wrong or contrary to law. The aforesaid section clearly gives statutory recognition to the defence of insanity as developed by the Common Law of England in a decision of the House of Lords rendered in the case of R. Vs. Daniel Mc Naughten2. In that case, the House of Lords formulated the famous Mc Naughten Rules on the basis of the five questions, which had been referred to them with regard to the defence of insanity. The reference came to be

made in a case where Mc Naughten was charged with the murder by shooting of Edward Drummond, who was the Pvt. Secretary of the then Prime Minister of England Sir Robert Peel. The accused Mc Naughten produced medical evidence to prove that, he was not, at the time of committing the act, in a sound state of mind. He claimed that he was suffering from an [1843 RR 59: 8ER 718(HL)] insane delusion that the Prime Minister was the only reason for all his problems. He had also claimed that as a result of the insane delusion, he mistook Drummond for the Prime Minister and committed his murder by shooting him. The plea of insanity was accepted and Mc Naughten was found not guilty, on the ground of insanity. The aforesaid verdict became the subject of debate in the House of Lords. Therefore, it was determined to take the opinion of all the judges on the law governing such cases. Five questions were subsequently put to the Law Lords. The questions as well as the answers delivered by Lord Chief Justice Tindal were as under:-

"Q.1 What is the law respecting alleged crimes committed by persons afflicted with insane delusion in respect of one or more particular subjects or persons: as, for instance, where at the time of the commission of the alleged crime the accused knew he was acting contrary to law, but did the act complained of with a view, under the influence of insane delusion, of redressing a revenging some supposed grievance or injury, or of producing some public benefit?

Answer "Assuming that your lordships' inquiries are confined to those persons who labour under such partial delusions only, and are not in other respects insane, we are of opinion, that, notwithstanding the party did the act complained of with a view, under the influence of insane delusion, of redressing or revenging some supposed grievance or injury, or of producing some public benefit, he is nevertheless punishable, according to the nature of the crime committed, if he knew, at the time of committing such crime, that he was acting contrary to law, by which expression we understand your lordships to mean the law of the land.

Q.2. What are the proper questions to be submitted to the jury when a person alleged to be afflicted with insane delusion respecting one or more particular subjects or persons, is charged with the commission of a crime (murder, for example), and insanity is set up as a defence?

Q.3. In what terms ought the question to be left to the jury as to the prisoner's state of mind at the time when the act

was committed?

Answers - to the second and third questions That the jury ought to be told in all cases that every man is presumed to be sane, and to possess a sufficient degree of reason to be responsible for his crimes, until the contrary be proved to their satisfaction; and that, to establish a defence on the ground of insanity, it must be clearly proved that, at the time of the committing of 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. The mode of putting the latter part of the question to the jury on these occasions has generally been, whether the accused, at the time of doing the act, knew the difference between right and wrong, which mode, though rarely, if ever, leading to any mistake with the jury, is not, as we conceive, so accurate when put generally, and in the abstract, as when put as to the party's knowledge of right and wrong in respect to the very act with which he is charged. If the question were to be put as to the knowledge of the accused, solely and exclusively with reference to the law of the land, it might tend to confound the jury, by inducing them to believe that an actual knowledge of the law of the land was essential in order to lead to a conviction, whereas the law is administered upon the principle that every one must be taken conclusively to know it without proof that he does know it. If the accused was conscious that the act was one which he ought not to do, and if that act was at the same time contrary to the law of the land, he is punishable; and the usual course, therefore, has been to leave the question to the jury, whether the party accused had a sufficient degree of reason to know that he was doing an act that was wrong: and this course, we think, is correct, accompanied with such observations and explanations as the circumstances of each particular case may require.

Q.4. If a person under an insane delusion as to the existing facts commits and offence in consequence thereof, is he thereby excused?

Answer The answer must, of course, depend on the nature of the delusion, but making the same assumption as we did before, that he labours under such partial delusion only, and is not in other respects insane, we think he must be considered in the same situation as to responsibility as if the facts with respect to which the delusion exists were real. For example, if, under the influence of his delusion,

he supposes another man to be in the act of attempting to take away his life, and he kills that man, as he supposes in self- defence, he would be exempted from punishment. If his delusion was that the deceased had inflicted a serious injury to his character and fortune, and he killed him in revenge for such supposed injury, he would be liable to punishment.

Q.5. Can a medical man, conversant with the disease of insanity, who never saw the prisoner previously to the trial, but who was present during the whole trial, and the examination of all the witnesses, be asked his opinion as to the state of the prisoner's mind at the time of the commission of the alleged crime, or his opinion whether the prisoner was conscious, at the time of doing the act, that he was acting contrary to law, or whether he was labouring under any and what delusion at the time?

Answer We think the medical man, under the circumstances supposed, cannot in strictness be asked his opinion in the terms above stated, because each of those questions involves the determination of the truth of the facts deposed to, which it is for the jury to decide; and the questions are not mere questions upon a matter of science, in which case such evidence is admissible. But where the facts are admitted or not disputed, and the question becomes substantially one of science only, it may be convenient to allow the question to be put in that general form, though the same cannot be insisted on as a matter of right." 3 A comparison of answers to question no. 2 and 3 and the provision contained in Section 84 of the IPC would clearly indicate that the Section is modeled on the aforesaid answers.

44. In the case of **Ratanlal vs State of Madhya Pradesh,** reported in ***1970 (3) SCC 533,*** it is held as follows:-

> “Every man is presumed to be sane and to possess a sufficient degree of reason to be responsible for his acts unless the contrary is proved. To establish insanity it must be clearly proved that at the time of committing the act the party is labouring under such defect of reason as not to know the nature and quality of the act which he is committing-that is, the physical nature and quality as distinguished from the moral - or, if he does know the nature and quality of the act he is committing, that he does not know that he is doing wrong.... There is, however, evidence of a medical character before the jury,

> and there are statements made by the prisoner himself, that he has suffered from epileptic fits. The Court has had further evidence especially in the prison records, of his having had attacks of epilepsy. But to establish that is only one step; it must be shown that the man was suffering from an epileptic seizure at the time when he committed the murders; and that has not been proved."

45. In the case of **Ram Bahadur Thapa vs State of M.P. (Cr.A.881/2011)** decided on 28.10.2021 the Supreme Court in the case of **Hari Singh Gond Vs. State of M.P.** reported in **(2008) 16 SCC 109** has held as under :

> "Section 84 lays down the legal test of responsibility in cases of alleged unsoundness of mind. There is no definition of 'unsoundness of mind' in I.P.C.. The courts have, however, mainly treated this expression as equivalent to insanity. But the term 'insanity' itself has no precise definition. It is a term used to describe varying degrees of mental disorder. So, every person, who is mentally diseased, is not ipso facto exempted from criminal responsibility. A distinction is to be made between legal insanity and medical insanity. A court is concerned with legal insanity, and not with medical insanity. The burden of proof rests on an accused to prove his insanity, which arises by virtue of Section 105 of the Evidence Act, 1872 (in short 'the Evidence Act') and is not so onerous as that upon the prosecution to prove that the accused committed the act with which he is charged. The burden on the accused is no higher than that resting upon a plaintiff or a defendant in a civil proceeding. (See Dahyabhai Chhaganbhai Thakkar v. State of Gujarat) AIR 1964 SC 1563. In dealing with cases involving a defence of insanity, distinction must be made between cases, in which insanity is more or less proved and the question is only as to the degree of irresponsibility, and cases, in which insanity is sought to be proved in respect of a person, who for all intents and purposes, appears sane. In all cases, where previous insanity is proved or admitted, certain considerations have to be borne in mind. Mayne summarises them as follows:
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> > "Whether there was deliberation and preparation for the act; whether it was done in a manner which showed a desire to concealment; whether after the crime, the offender showed consciousness of guilt and made efforts to avoid detections, whether after

his arrest, he offered false excuses and made false statements. All facts of this sort are material as Ram Bahadur Thapa Vs. State of M.P. (Cr.A. No.881 of 2011) bearing on the test, which Bramwall, submitted to a jury in such a case: "Would the prisoner have committed the act if there had been a policeman at his elbow?" It is to be remembered that these tests are good for cases in which previous insanity is more or less established.' These tests are not always reliable where there is, what Mayne calls, 'inferential insanity".

8.Under Section 84 I.P.C., a person is exonerated from liability for doing an act on the ground of unsoundness of mind if he, at the time of doing the act, is either incapable of knowing (a) the nature of the act, or (b) that he is doing what is either wrong or contrary to law. The accused is protected not only when, on account of insanity, he was incapable of knowing the nature of the act, but also when he did not know either that the act was wrong or that it was contrary to law, although he might know the nature of the act itself. He is, however, not protected if he knew that what he was doing was wrong, even if he did not know that it was contrary to law, and also if he knew that what he was doing was contrary to law even though he did not know that it was wrong. The onus of proving unsoundness of mind is on the accused. But where during the investigation previous history of insanity is revealed, it is the duty of an honest investigator to subject the accused to a medical examination and place that evidence before the court and if this is not done, it creates a serious infirmity in the prosecution case and the benefit of doubt has to be given to the accused. The onus, however, has to be discharged by producing evidence as to the conduct of the accused shortly prior to the offence and his conduct at the time or immediately afterwards, also by evidence of his mental condition and other relevant factors. Every person is presumed to know the natural consequences of his act. Similarly every person is also presumed to know the law. The prosecution has not to establish these facts.

10. Section 84 embodies the fundamental maxim of criminal law i.e. actus non facit reum nisi mens sit rea (an act does not constitute guilt unless done with a guilty intention). In order to constitute an offence, the intent and act must concur; but in the case of insane

persons, no culpability is fastened on them as they have no free will (furiosi nulla voluntas est).

11. The section itself provides that the benefit is available only after it is 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 that even if he did not know it, it was either wrong or contrary to law then this section must be applied. The crucial point of time for deciding whether the benefit of this section should be given or not, is the material time when the offence takes place. In coming to that conclusion, the relevant circumstances are to be taken into consideration, it would be dangerous to admit the defence of insanity upon arguments derived merely from the character of the crime. It is only unsoundness of mind which naturally impairs the cognitive faculties of the mind that can form a ground of exemption from criminal responsibility. Stephen in History of the Criminal Law of England, Vol. II, p. 166 has observed that if a person cuts off the head of a sleeping man because it would be great fun to see him looking for it when he woke up, would obviously be a case where the perpetrator of the act would be incapable of knowing the physical effects of his act. The law recognises nothing but incapacity to realise the nature of the act and presumes that where a man's mind or his faculties of ratiocination are sufficiently dim to apprehend what he is doing, he must always be presumed to intend the consequence of the action he takes. Mere absence of motive for a crime, howsoever atrocious it may be, cannot in the absence of plea and proof of legal insanity, bring the case within this section. This Court in Sheralli Wali Mohammed v. State of Maharashtra (1973) 4 SCC 79 held that: (SCC p.79) Ram Bahadur Thapa Vs. State of M.P. (Cr.A. No.881 of 2011) '... The mere fact that no motive has been proved why the accused murdered his wife and children or the fact that he made no attempt to run away when the door was broke open, would not indicate that he was insane or that he did not have necessary mens rea for the commission of the offence.' Mere abnormality of mind or partial delusion, irresistible impulse or compulsive behaviour of a psychopath affords no protection under Section 84 as the law contained in that section is still squarely based on the outdated M'Naughton

> rules of 19th century England. The provisions of Section 84 are in substance the same as that laid down in the answers of the Judges to the questions put to them by the House of Lords, in M'Naughton case, (1843) 4 St Tr NS 847 (HL). Behaviour, antecedent, attendant and subsequent to the event, may be relevant in finding the mental condition of the accused at the time of the event, but not that remote in time. It is difficult to prove the precise state of the offender's mind at the time of the commission of the offence, but some indication thereof is often furnished by the conduct of the offender while committing it or immediately after the commission of the offence. A lucid interval of an insane person is not merely a cessation of the violent symptoms of the disorder, but a restoration of the faculties of the mind sufficiently to enable the person soundly to judge the act; but the expression does not necessarily mean complete or perfect restoration of the mental faculties to their original condition. So, if there is such a restoration, the person concerned can do the act with such reason, memory and judgment as to make it a legal act; but merely a cessation of the violent symptoms of the disorder is not sufficient.
>
> The standard to be applied is whether according to the ordinary standard, adopted by reasonable men, the act was right or wrong. The mere fact that an accused is conceited, odd irascible and his brain is not quite all right, or that the physical and mental ailments from which he suffered had rendered his intellect weak and had affected his emotions and will, or that he had committed certain unusual acts in the past or that he was liable to recurring fits of insanity at short intervals, or that he was subject to getting epileptic fits but there was nothing abnormal in his behaviour, or that his behaviour was queer, cannot be sufficient to attract the application of this section."

46. In the case of **Sudhakaran Vs. State of Kerala** reported in **AIR 2011 SC 265**, the Supreme Court has held as under :

> "19. It is also a settled proposition of law that the crucial point of time for ascertaining the existence of circumstances bringing the case within the purview of Section 84 is the time when the offence is committed. We may notice here the observations made

by this Court in the case of Ratan Lal v. State of Madhya Pradesh (1970 (3) SCC 533. In Paragraph 2 of the aforesaid judgment, it is held as follows:- "It is now well-settled that the crucial point of time at which unsoundness of mind should be established is the time when the crime is actually committed and the burden of proving this lies on the appellant."

47. The Supreme Court in the case of **Surendra Mishra vs. State of Jharkhand** reported in **AIR 2011 SC 627** has held as under:-

9. In our opinion, an accused who seeks exoneration from liability of an act under Section 84 of the Indian Penal Code is to prove legal insanity and not medical insanity. Expression "unsoundness of mind" has not been defined in the Indian Penal Code and it has mainly been treated as equivalent to insanity. But the term insanity carries different meaning in different contexts and describes varying degrees of mental disorder. Every person who is suffering from mental disease is not ipso facto exempted from criminal liability. The mere fact that the accused is conceited, odd, irascible and his brain is not quite all right, or that the physical and mental ailments from which he suffered had rendered his intellect weak and affected his emotions or indulges in certain unusual acts, or had fits of insanity at short intervals or that he was subject to epileptic fits and there was abnormal behaviour or the behaviour is queer are not sufficient to attract the application of Section 84 of the Indian Penal Code.

10. Next question which needs consideration is as to on whom the onus lies to prove unsoundness of mind. In law, the presumption is that every person is sane to the extent that he knows the natural consequences of his act. The burden of proof in the face of Section 105 of the Evidence Act is on the accused. Though the burden is on the accused but he is not required to prove the same beyond all reasonable doubt, but merely satisfy the preponderance of probabilities. The onus has to be discharged by producing evidence as to the conduct of the accused prior to the offence, his conduct at the time or immediately after the offence with reference to his medical condition by Ram Bahadur Thapa Vs. State of M.P. (Cr.A. No.881 of 2011) production of medical evidence and other relevant factors. Even if the accused establishes unsoundness of mind, Section 84 of the Indian Penal Code will not come to its rescue, in case it

is found that the accused knew that what he was doing was wrong or that it was contrary to law. In order to ascertain that, it is imperative to take into consideration the circumstances and the behaviour preceding, attending and following the crime Behaviour of an accused pertaining to a desire for concealment of the weapon of offence and conduct to avoid detection of crime go a long way to ascertain as to whether, he knew the consequences of the act done by him. Reference in this connection can be made to a decision of this Court in the case of T.N. Lakshmaiah v. State of Karnataka, (2002) 1 SCC 219 : (AIR 2001 SC 3828), in which it has been held as follows:

"9. Under the Evidence Act, the onus of proving any of the exceptions mentioned in the Chapter lies on the accused though the requisite standard of proof is not the same as expected from the prosecution. It is sufficient if an accused is able to bring his case within the ambit of any of the general exceptions by the standard of preponderance of probabilities, as a result of which he may succeed not because that he proves his case to the hilt but because the version given by him casts a doubt on the prosecution case.

In State of **M.P. v. Ahmadulla, AIR 1961 SC 998**, this Court held that the burden of proof that the mental condition of the accused was, at the crucial point of time, such as is described by the section, lies on the accused who claims the benefit of this exemption vide Section 105 of the Evidence Act [Illustration (a)]. The settled position of law is that every man is presumed to be sane and to possess a sufficient degree of reason to be responsible for his acts unless the contrary is proved. Mere ipse dixit of the accused is not enough for availing of the benefit of the exceptions under Chapter IV.

11. In a case where the exception under Section 84 of the Indian Penal Code is claimed, 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 is doing what is either wrong or contrary to law. The entire conduct of the accused, from the time of the commission of the offence up to the time the sessions proceedings commenced, is relevant for the purpose of ascertaining as to whether plea raised was genuine, bona fide or an afterthought. Dealing with the plea of

insanity, the scope of Section 84 I.P.C., the attending circumstances and the burden of proof, this Court in Dahyabhai Chhaganbhai Thakkar v. State of Gujarat held: (AIR pp. 1566-67, para 5) "It is 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 of the Penal Code, 1860. This general burden never shifts and it always rests on the prosecution. But, Section 84 of the Penal Code, 1860 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 such 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 Ram Bahadur Thapa Vs. State of M.P. (Cr.A. No.881 of 2011) 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 of the Penal Code, 1860. 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."
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> 12. After referring to various textbooks and the earlier pronouncements of this Court, it was further held: (AIR p. 1568, para 7) "7. 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 the sense laid down by Section 84 of the Penal Code, 1860: 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, Ram Bahadur Thapa Vs. State of M.P. (Cr.A. No.881 of 2011) 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."

48. In the case of **Shrikant Anandrao Bhosale vs State Of Maharashtra,** reported in **(2002) 7 SCC 748,** wherein it has been observed as under:-

> “The burden to prove that the appellant was of unsound mind and as a result thereof he was incapable of knowing the consequences of his acts is on the defence. Section 84 IPC is one of the provision in Chapter IV IPC which deals with "general exceptions". That section provides 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 burden of proving the existence of circumstances bringing the case within the purview of Section 84 lies upon the accused under Section 105 of the Indian Evidence Act. Under the said section, the Court shall presume the absence of such circumstances. Illustration (a) to Section 105 is as follows :] "(a) A, accused of murder, alleges that, by reason of unsoundness of mind, he did not know the nature of the act.

The burden of proof is on A."

The question whether the appellant has proved the existence of circumstances bringing his case within the purview of Section 84 will have to be examined from the totality of circumstances. The unsoundness of mind as a result whereof one is incapable of knowing consequences is a state of mind of a person which, ordinarily can be inferred from the circumstances. If, however, an act is committed out of extreme anger and not as a result of unsoundness of mind, the accused would not be entitled to the benefit of exception as contained in Section 84 IPC. In fact, that is the contention of the learned counsel for the State. It was contended that the prosecution evidence has established that the appellant by nature was an angry person and under the fit of extreme anger, he committed the murder of his wife as there was fight between them that morning and there is nothing to show that at the relevant time the appellant was under an attack of paranoid schizophrenia.

At this stage, it is necessary to notice the nature of the burden that is required to be discharged by the accused to get benefit of Section 84 IPC. In Dahyabhai Chhaganbhai Thakker v. State of Gujarat [(1964) 7 SCR 361] this Court has held that 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 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. The burden of proof on the accused to prove insanity is no higher than that rests upon a party to civil proceedings which, in other words, means preponderance of probabilities. This Court held that : "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 the sense laid down by s.84 of the Indian Penal Code: the accused may rebut it by placing before the court all the relevant evidenceoral, 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."

In support of the contention that the crucial point of time for ascertaining the existence of circumstances bringing the case within the purview of Section 84 IPC is the time when the offence is committed, the learned counsel relied upon the following passage from the aforenoticed case :

"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 the time when the offence was committed. Whether the accused was in such a state of mind as to be entitled to the benefit of s.84 of the Indian Penal Code can only be established from the circumstances which preceded, attended and followed the crime."

Undoubtedly, the state of mind of the accused at the time of commission of the offence is to be proved so as to get the benefit of the exception.

49. The Supreme Court in the case of **Hari Singh Gond vs State of M.P, (2008) 16 SCC 109** has held as under :

“6. Under Section 84 IPC, a person is exonerated from liability for doing an act on the ground of unsoundness of mind if he, at the time of doing the act, is either incapable of knowing (a) the nature of the act, or (b) that he is doing what

is either wrong or contrary to law. The accused is protected not only when, on account of insanity, he was incapable of knowing the nature of the act, but also when he did not know either that the act was wrong or that it was contrary to law, although he might know the nature of the act itself. He is, however, not protected if he knew that what he was doing was wrong, even if he did not know that it was contrary to law, and also if he knew that what he was doing was contrary to law even though he did not know that it was wrong. The onus of proving unsoundness of mind is on the accused. But where during the investigation previous history of insanity is revealed, it is the duty of an honest investigator to subject the accused to a medical examination and place that evidence before the Court and if this is not done, it creates a serious infirmity in the prosecution case and the benefit of doubt has to be given to the accused. The onus, however, has to be discharged by producing evidence as to the conduct of the accused shortly prior to the offence and his conduct at the time or immediately afterwards, also by evidence of his mental condition and other relevant factors. Every person is presumed to know the natural consequences of his act. Similarly every person is also presumed to know the law. The prosecution has not to establish these facts.

7. There are four kinds of persons who may be said to be non compos mentis (not of sound mind), i.e., (1) an idiot; (2) one made non compos by illness (3) a lunatic or a mad man and (4.) one who is drunk. An idiot is one who is of non-sane memory from his birth, by a perpetual infirmity, without lucid intervals; and those are said to be idiots who cannot count twenty, or tell the days of the week, or who do not know their fathers or mothers, or the like, (See Archbold's Criminal Pleadings, Evidence and Practice, 35th Edn. pp.31-32; Russell on Crimes and Misdemeanors, 12th Edn. Vol., p.105; 1 Hala's Pleas of the Grown 34). A person made non compos mentis by illness is excused in criminal cases from such acts as are- committed while under the influence of his disorder, (See 1 Hale PC 30). A lunatic is one who is afflicted by mental disorder only at certain periods and vicissitudes, having intervals of reason, (See Russell, 12 Edn. Vol. 1, p. 103; Hale PC 31). Madness is permanent. Lunacy and madness are spoken of as acquired insanity, and idiocy as natural insanity.

50. In the present case accused/appellant Ashok Singh behaviour was not normal as after caused death of one person he had not fled away from the place of incident rather continued to

stay in his house terrace and thereafter again caused the death of other person and till police arrived at the place of incident he remained inside of his house armed with gun. When police asked him to come out again and again then he surrendered himself. After committing the incident he had not left the place rather remained thereby holding his firearm in his hand. Furthermore, during the trial, trial was stayed considering the mental status of the appellant and various treatment prescriptions are also annexed with the file of lower court regarding treatment of unsoundness of mind of appellant. It is also relevant to mention here that the appellant was earlier in army. Under the aforesaid conditions of the case Section 84 of IPC has to be analysed.

51. Under the Evidence Act, the onus of proving any of the exceptions lies on the accused though the requisite standard of proof is not the same as expected from the prosecution. It is sufficient if an accused is able to bring his case within the ambit of any of the general exceptions by the standard of preponderance of probabilities, as a result of which he may succeed not because that he proves his case to the hilt but because the version given by him casts a doubt on the prosecution case. It is also true that the burden of proof that the mental condition of the accused was, at the crucial point of time, as described by the section, lies on the accused who claims the benefit of this exemption. Where the exception under Section 84 of Indian Penal Code is claimed, 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.

52. The basic principle of criminal jurisprudence is 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. But under Section 105 of Evidence Act the burden of proving the existence of circumstances bringing the case within the said exception lies on the accused. But Section 165 of the Evidence Act expects from a Judge as under:-

> "The Judge may, in order to discover, or, to obtain proper proof of relevant facts, ask any question, he pleases, in any form, at any time, of any witness, or of the parties, about any fact relevant or irrelevant; and may order the production of any document or thing; and neither the parties, nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question:
>
> Provided that the Judgment must be based upon facts declared by this Act to be relevant, and duly proved:
>
> Provided also that this section shall not authorize any Judge to compel any witness to answer any question, or to produce any document which such witness would be entitled to refuse to answer or produce under sections 121 to 131, both inclusive, if the questions were asked or the documents were called for by the adverse party; nor shall the Judge ask any question which it would be improper for any other person to ask under section 148 or 149; nor shall he dispense with primary evidence of any document, except in the cases hereinbefore excepted."

53. The fundamental maxim of criminal law i.e. actus non facit reum nisi mens sit rea (an act does not constitute guilt unless done with a guilty intention). In order to constitute an offence, the intent and act must concur; but in the case of insane persons, no culpability is fastened on them as they have no free will. The Section itself provides that the benefit is available only after it is proved that at the time of committing the act, the accused was labouring under such a defect of reason, from disease of mind, as not to know the nature and quality of the act which he was doing,

or that even he did not know it, is either wrong or contrary to law then this section shall be applied. The crucial point of time for deciding whether the benefit of this section should be given or not, is the material time when the offence takes place. It is also true that mere abnormality of mind or partial delusion, irresistible impulse or compulsive behaviour of a psychopath affords no protection under Section 84 of IPC. Behaviour, antecedent, attendant and subsequent to the event, may be relevant in finding the mental condition of the accused at the time of the event, but not that remote in time. It is very difficult to prove the precise state of the offender's mind at the time of commission of the offence, but some indication thereof is often furnished by the conduct of the offender while committing it or immediately after the commission of the offence.

54. Mahaveer Singh (PW/1) has stated in para 12 of his statement that he had seen that accused/appellant Ashok always kept gun with him. In para 13 of his statement he has stated that he had seen Ashok prior to incident on the same date of incident. He has also stated that Ashok was sitting on his terrace armed with his gun 1-2 hours prior to the incident. His terrace has no parapet wall wall. This witness has also stated in para 17 of his statement that after firing gun and after the incident appellant-Ashok remained inside of his house and when police came there Ashok continued to remain inside of his house. Ashok was arrested by the police by confining him in his house. Similar statements have been given by Gajendra Singh (PW/2).

55. The doctor has opined that the present appellant is suffering from Bipolar Effective Disorder wherein at interval the graph of behavioural attitude goes ups and downs, accordingly, reactions of the person concerned changes. As discussed above, the modus

operandi of commission of offence by accused and after commission of offence the behaviour of the appellant reflects that he was not in the state of soundness of mind. Therefore, in such situations the intent of Section 165 of Evidence Act should also be taken by the Judges to achieve the ends of justice. The Judges should not sit as silent spectator during trial. Similarly, they are also supposed to utilize their authority to discover or to obtain the facts relevant for implementation of real justice. Aforesaid behaviour of the appellant indirectly reflects that at the time of commission of offence the appellant was not in state of soundness of mind and a Judge while deciding a case on merits may take note of it and benefit under Section 84 of IPC could be awarded to the person concerned if prosecution remained failed to prove the *mens rea*. Furthermore, jail record of the appellant also shows that the appellant used to become aggressive and used to attack the other persons and his treatment is going on. It is true that only abnormal behaviour does not mean that the appellant was suffering from legal insanity. But in the present case as discussed above the appellant was suffering from state of unsoundness of mind at the time of commissioning of offence.

56. On the basis of above, it is apparent that in the present case accused is entitled to get the benefit of Section 84 of the Code as the aforesaid fact has been established by credible evidence and at the time of commissioning of offence the appellant was not having any motive or *mensrea.* Therefore, the act done by the appellant cannot be defined as an offence.

57. On the basis of above discussions and settled position of law, we are of the considered view that at the time of commissioning of the aforesaid acts, the appellant/accused Ashok

Singh was not in the state of soundness of mind and was incapable of knowing the nature of act and was also not knowing that what he was doing. Either it was wrong or contrary to law. Therefore, in the light of above discussions, we are of the considered view that the act of appellant is covered under Section 84 of Indian Penal Code. Therefore, appellant-Ashok Singh is hereby exonerated from the liability of doing the aforesaid acts on the ground of unsoundness of mind.

58. Hence, the appeal filed is hereby allowed. The impugned judgment of conviction and sentence passed by the trial Court is hereby set aside. Appellant is hereby acquitted of the charges u/Ss. 302 and 307 of IPC levelled against him. Appellant Ashok Singh is serving his sentence in the concerned jail. Appellant be intimated with the result of his appeal through the concerned Jail Superintendent and he be released forthwith, if he is not required in any other crime.

59. The appellant is still suffering from unsoundness of mind and he remained in custody since last more than 10 years. Therefore, his further treatment be done at the exchequer of State.

60. A copy of this order be sent to the Chief Secretary of State, Bhopal (M.P.) for necessary information and compliance.

Let a copy of this judgment along with record of the trial Court be sent back immediately.

(G.S.Ahluwalia)
Judge

(Rajeev Kumar Shrivastava)
Judge

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