HIGH COURT OF MADHYA PRADESH: MAIN SEAT AT JABALPUR

(DIVISION BENCH: HON. SHRI S.K. SETH AND HON. RAJEEV KUMAR DUBEY, JJ)

Criminal Appeal No.748/2008

Appellant : Gul Singh @ Gulab

V E R S U S

Respondent : State of Madhya Pradesh

Shri Khalid Noor Fakhruddin, Advocate for the appellant.

Shri Prakash Gupta, Panel Lawyer for the respondent/State.

Whether approved for reporting - **Yes**
Law Laid Down- **Defence of Legal Sanity**
Significant Paragraph No.- **11**

J U D G M E N T

(Delivered on 26th of October, 2017)

Per Seth, J.

In this appeal, the only question that arises for our consideration is of the defence of insanity for an offence under Section 302 of the Indian Penal Code.

2. Admittedly, appellant and Urmila (PW-12) are husband and wife. They had three daughters. On the date of incident, appellant threw two minor daughters Suryaka aged about 2 years and Priya aged about 2 months, in a reservoir, where

they died of drowning. The accused was sent up for trial to the sessions on the charge of double murder before the Sessions Judge, Betul. Learned Sessions Judge framed charges and recorded plea of accused of not guilty. No defence of insanity was taken at that stage that the accused was insane when the incident was alleged to have taken place and was not capable of understanding the nature of his act. At the stage of recording statement of the accused under section 313 of the Cr.P.C., no such defence was claimed nor was any defence evidence adduced. The plea of insanity has been raised before us in appeal on the basis of admissions made in cross examination by some of the relatives of the appellant.

3. The learned Sessions Judge considered the entire evidence placed before him and came to the conclusion that the accused had failed to satisfy that when he committed the murder of his two daughters, he was incapable to know the nature of the act and that what he did was either wrong or contrary to law. The appellant committed crime out of depravity because he could not sire a son. Learned Sessions Judge convicted him

under Section 302 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for life. Hence present appeal before us on the point of insanity at the time of commission of offence.

4. Learned counsel for the appellant contended that the trial Court, having believed the evidence of the prosecution witnesses, should have held that the accused had discharged the burden placed on him of proving that at the time of commission of offence, he was incapable of knowing the nature of his act or what he was doing was either wrong or contrary to law. He further contended that even if he had failed to establish that fact conclusively, the evidence adduced was such as to raise a reasonable doubt in the mind of the Judge as regards one of the ingredients of the offence, namely; criminal intention, and, therefore, the Court should have acquitted him for the reason that the prosecution had not proved the case beyond any reasonable doubt. He placed reliance on the decision of the Supreme Court in the case of **Bapu @ Gajraj Singh vs. State of Rajasthan** reported in **(2007)8 SCC 66**.

5. In view of the plea raised, it is desirable to consider the meaning of the expression "unsoundness of mind" in the context of Section 84 of the Penal Code. Section 84 of the Penal Code is found in its Chapter IV, which deals with general exceptions. From a plain reading of the aforesaid provision, it is evident that an act will not be an offence, if done by a person who, at the time of doing the same by reason of unsoundness of mind, is incapable of knowing the nature of the act or what he is doing is either wrong or contrary to law. There is no definition of "unsoundness of mind" in the Indian Penal Code. 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. An accused who seeks exoneration from liability of an act under Section 84 of the Penal Code is to prove legal insanity

and not medical insanity. 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 subjected 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 Penal Code.

6. The 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 production of medical evidence and other relevant factors. Even if the accused establishes unsoundness of mind, Section 84 of the 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.

7. It is a fundamental principle of criminal jurisprudence that an accused is presumed to be innocent and, therefore, the burden lie 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 Indian Penal Code. This general burden never shifts and it always rests on the

prosecution. But, as Section 84 of the Indian Penal Code 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 said circumstances existed or their existence was so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that they did exist. To put it in other words, the accused will have to rebut the presumption that such circumstances did not exist, by placing material before the Court sufficient to make it consider the existence of the said circumstances so

probable that a prudent man would act upon them. The accused has to satisfy the standard of a "prudent man". If the material placed before the court such, as, oral and documentary evidence, presumptions, admissions or even the prosecution evidence, satisfies the test of "prudent man", the accused will have discharged his burden. The evidence so placed may not be sufficient to discharge the burden under Section 105 of the Evidence Act, but it may raise a reasonable doubt in the mind of a judge as regards one or other of the necessary ingredients of the offence itself. It may, for instance, raise a reasonable doubt in the mind of the judge whether the accused had the requisite intention laid down in Section 299 of the Indian Penal Code. If the judge has such reasonable doubt, he has to acquit the accused, for in that event the prosecution will have failed to prove conclusively 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.

8. In Halsbury's Laws of England, 3rd Edn., Vol. 10, at p. 288, it is stated thus:

> *"The onus of establishing insanity is on the accused. The burden of proof upon him is no higher than which rests upon a party to civil proceedings."*

Glanville Williams in his book Criminal Law, General Part, 2nd Edn., places the relevant aspect in the correct perspective thus, at p. 516:

> *"As stated before, to find that the accused did not know the nature and quality of his act is, in part, only another way of finding that he was ignorant as to some fact constituting an ingredient of the crime; and if the crime is one requiring intention or recklessness he must, on the view advanced in this book, be innocent of mens rea. Since the persuasive burden of proof of mens rea is on the prosecution no question of defence, or of disease of the mind, arises, except insofar as the prisoner is called upon for his own safety to neutralise the evidence of the prosecution. No*

persuasive burden of proof rests on him, and if the jury are uncertain whether the allegation of mens rea is made out the benefit of the doubt must be given to the prisoner, for, in the words of Lord Reading in another context, "the Crown would then have failed to discharge the burden imposed on it by our law of satisfying the jury beyond reasonable doubt of the guilt of the prisoner."

9. Their Lordships' of the Supreme Court in **K.M. Nanavati v. State of Maharashtra AIR 1961 SC 112** had to consider the question of burden of proof in the context of a defence based on the exception embodied in Section 80 of the Indian Penal Code. In that context the law is summarized thus:

"The alleged conflict between the general burden which lies on the prosecution and the special burden imposed on the accused under Section 105 of the Evidence Act is more imaginary than real. Indeed, there is no conflict at all. There may arise three different situations: (1) A statute may throw the burden of proof of all or some of the ingredients of an offence on the accused: (see Sections 4 and 5 of the

Prevention of Corruption Act). (2) The special burden may not touch the ingredients of the offence, but only the protection given on the assumption of the proof of the said ingredients: (see Sections 77, 78, 79, 81 and 88 of the Indian Penal Code). (3) It may relate to an exception, some of the many circumstances required to attract the exception, if proved, affecting the proof of all or some of the ingredients of the offence: (see Section 80 of the Indian Penal Code) ....

* * *

In the third case, though the burden lies on the accused to bring his case within the exception, the facts proved may not discharge the said burden, but may affect the proof of the ingredients of the offence."

After giving an illustration, Supreme Court proceeded to state:

"That evidence may not be sufficient to prove all the ingredients of Section 80 of the Indian Penal Code, but may prove that the shooting was by accident or inadvertence i.e. it was done without any intention or requisite state of mind, which is the essence of the

> *offence, within the meaning of Section 300, Indian Penal Code, or at any rate may throw a reasonable doubt on the essential ingredients of the offence of murder. In this view it might be said that the general burden to prove the ingredients of the offence, unless there is a specific statute to the contrary, is always on the prosecution, but the burden to prove the circumstances coming under the exceptions lies upon the accused."*

10. What is said of Section 80 of the Indian Penal Code will equally apply to Section 84 thereof. A Scottish case, H.M. Advocate v. Fraser4 noticed in Glanville Williams' Criminal Law, General Part, 2nd Edn., at p. 517, pinpoints the distinction between these two categories of burden of proof. There, a man killed his baby while he was asleep; he was dreaming that he was struggling with a wild beast. The learned author elaborates the problem thus:

> *"When the Crown proved that the accused had killed his baby what may be called an evidential presumption or presumption of fact arose that the killing was murder. Had no evidence been adduced for the defence the jury could have*

> *convicted of murder, and their verdict would have been upheld on appeal. The burden of adducing evidence of the delusion therefore lay on the accused. Suppose that, when all the evidence was in, the jury did not know what to make of the matter. They might suspect the accused to be inventing a tale to cover his guilt, and yet not be reasonably certain about it. In that event the accused would be entitled to an acquittal. The prosecution must prove beyond reasonable doubt not only the actus reus but the mens rea."*

11. 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 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.

12. Perusal of the trial Court record shows that appellant is capable of putting his signature. Before framing of charges, as per order of the learned Sessions Judge, appellant was examined by a Medical Board comprising of three Doctors. The Medical Board found mild hearing disability with no psychiatric disorder as the appellant was well oriented to time, place, persons and space. From the evidence of brother, father and wife of the appellant, it is clear that appellant was not suffering

from any legal insanity. In this view of the matter, we find that learned Sessions Judge committed no illegality in holing the appellant guilty and ordering his conviction. There is no merit and substance in appeal. It is hereby ***dismissed***.

13. Ordered accordingly.

(S.K. SETH)
J U D G E

(RAJEEV KUMAR DUBEY)
J U D G E

@shish