

**IN THE HIGH COURT OF MADHYA PRADESH
AT J A B A L P U R
BEFORE**

JUSTICE SUJOY PAUL

&

JUSTICE ACHAL KUMAR PALIWAL

CRIMINAL APPEAL No.3087 OF 2013

BETWEEN:-

**HEMRAJ SINGH S/O PREMNARAYAN SINGH
SOLANKI, AGED ABOUT 42 YEARS, OCCUPATION-
LABOUR, R/O PADAM NAGAR, KHANDWA, POLICE
STATION MOGHAT ROAD, DISTRICT KHANDWA
(MADHYA PRADESH)**

.....APPELLANT

(BY SHRI ANIL SAKLE – ADVOCATE)

AND

**THE STATE OF MADHYA PRADESH, THROUGH
POLICE STATION MOGHAT ROAD, DISTRICT
KHANDWA (MADHYA PRADESH)**

.... RESPONDENT

(BY SHRI YOGESH DHANDE – GOVERNMENT ADVOCATE)

Reserved on : 03.08.2023

Pronounced on : 11.09.2023

This criminal appeal having been heard and reserved for judgment, coming on for pronouncement this day, Justice Achal Kumar Paliwal pronounced the following:

J U D G M E N T

This is an appeal filed under Section 374(2) of the Code of Criminal Procedure, 1973 (In short "Cr.P.C.") against the judgment dated 26.10.2013 passed in Sessions Trial No.55/2013 by learned Sessions Judge, Khandwa, whereby the appellant was held guilty for committing an offence punishable under Section 302 of Indian Penal Code (hereinafter referred as "IPC") and directed to undergo sentence of life imprisonment with fine of Rs.5000/- with default stipulation.

2. Prosecution story in brief is that on 19.12.2012, complainant Shiv Pal Singh (PW-1) lodged a report at the Police Outpost Padamnagar, Police Station Moghat Road, Khandwa to the effect that on 19.12.2012 at about 10.30 in the morning, complainant was at his shop, when women of the house told on mobile to come home immediately. Thereafter, he reached the house and persons present at the spot told him that a fight is going on between Hemraj and Deepmala inside the house. Then, he reached near their house, sound of screaming was heard inside. He entered the house and saw that Hemraj was assaulting his wife with knife and he ran, in the meantime, Suraj Bai (PW-2) also came from behind. Hemraj assaulted Deepmala with the intention to kill him and Hemraj has murdered Deepmala. On the basis of above information, I.O. Sher Singh Bahgel (PW-10) registered F.I.R. (Ex.P-1) under Section 302 of IPC against accused Hemraj. Thereafter, it was sent to Police Station Moghat Road, Khandwa for registration and thereupon Head Constable Komal More (PW-5) registered F.I.R./Crime No.592/2012 Ex.P-9.

3. Head Constable Shyambihari (PW-9) registered Marg (Ex.P-17) on the basis of *Tehrir* presented by Ward Boy of District Hospital.

During investigation, I.O. Sher Singh Bahgel (PW-10) prepared naksha panchayatnama (Ex.P-2) and recovered blood stained soil and plain soil from the scene of incident vide recovery memo (Ex.P-5). Dr. Bijay Singh Makwama (PW-8) conducted post mortem and prepared report (Ex.P-15). Head Constable Suresh Dabar (PW-6) seized deceased's sealed clothes on being presented by Constable Sunil from hospital vide seizure memo Ex.P-10. During investing, I.O. Sher Singh Bahgel (PW-10) recorded statements of witnesses and arrested accused vide arrest memo Ex.P-15. Thereafter, he interrogated accused and prepared memorandum Ex.P-13 and thereafter, in pursuance of above memorandum, he recovered a knife and blood stained clothes of accused, after the accused presented the same, vide recovery memo Ex.P-14. During investigation, he also sent knife for query to concerned medical officer vide query memo Ex.P-16 and thereupon Dr. Bijay Singh (Pw-8) furnished his opinion vide Ex.P-16A. Investigating Officer also recovered agreement Ex.P-18 vide recovery memo Ex.P-19. The recovered articles were sent to FSL vide FSL draft Ex.P-20 and FSL report is Ex.C-1. After completion of investigation, charge sheet was filed in the court of J.M.F.C. Khandwa and the case was committed to the court of Sessions.

4. The trial court framed the charge against the appellant for the offence under Section 302 of IPC. The appellant pleaded not guilty & he claimed to be tried for the aforesaid offence. To bring home the charge against the appellant, the prosecution has examined in all 11 witnesses. The prosecution also brought on record documentary evidence through aforesaid witnesses.

5. After completion of prosecution evidence, appellant was examined u/s 313 of CrPC. The appellant pleaded total denial & also stated that Suraj Bai is his neighbour & on account of that, there was dispute & animosity between them & therefore, she has deposed falsely & remaining witnesses deposes falsely on account of being wife's relatives. Appellant has also stated therein that he had gone to the temple before the incident. When he came back home from the temple, his wife was lying in the house in injured condition, door of the house was half open, seeing his wife's condition, he shouted, then, people came. He is innocent & he has been falsely implicated. In defence, appellant has examined Dr. Smita Agarwal (DW-1) and Dr. Veerandra Singh Pal (DW-2) and has also produced medical documents Ex.D-3 to D-5 in support of his defence. After evaluation/appreciation of evidence that came on record, learned trial Court convicted and sentenced the appellant as above.

SUBMISSIONS OF LEARNED COUNSEL FOR APPELLANT:-

6. Learned counsel for the appellant submits that trial Court has not properly appreciated the evidence on record and has not taken into consideration the contradictions/omissions/improvements in the testimony of prosecution witnesses. It is also urged that PW-1 and PW-2 have turned hostile and they have stated different story from that which was narrated by them in FIR/statement under section 161 and 164 of Cr.P.C. Most of the prosecution witnesses are interested and related witnesses and independent witnesses examined have not supported the prosecution. The medical evidence on record does not support the prosecution case. The evidence of prosecution witnesses is

not corroborated by other evidence on record. Evidence on record clearly shows that there is no eye witness to the incident.

7. Learned counsel for the appellant after referring to evidence of prosecution witnesses Shiv Pal Singh (PW-1) and Man Singh Tomar (PW-4) etc. and defence witnesses Dr. Smita and Dr. Veerandra and also medical documents Ex.D-3 to D-5 and relying upon **Shrikant Anandrao Bhosale vs. State of Maharashtra, (2002) 7 SCC 748, Ratan Lal vs. State of M.P. 1970 (3) SCC 533, Ashish Chaturvedi vs. State of M.P., 2022 SCC OnLine MP 2027, Devidas Loka Rathod vs. State of Maharashtra, (2018) 7 SCC 718, Ashok Singh Vs. State of M.P.** passed in Cr.A. 504/2010 decided on 10.12.2021 by M.P. High Court Bench at Gwalior, **Kumar @ Selvakumar vs. State of Tirunelveli** passed in Cr. Appeal No.313/2017 decided on 24.10.2019 by Madras High Court, bench Madurai, **Mohd Rafiq Shahabuddin Shaikh vs. State of Maharashtra** passed in Cr.A. No.731/2013 decided on 29.6.2018 by Bombay High Court & **Dahyabhai Chhaganbhai Thakkar Vs. State of Gujrat, AIR 1964 SC 1563 (3-judge Bench)** has vehemently submitted that at the time of alleged incident, appellant was suffering from paranoid schizophrenia and a person suffering from the paranoid schizophrenia is under hallucination that someone is assaulting him and under that impression such person causes injury to any person. Learned trial court has not considered above aspect. Learned Govt. Prosecutor has not cross examined defence witnesses about appellant's above defence and learned trial Court has also not put any question with respect to appellant's above defence to defence witnesses. It is also submitted that appellant is not required to prove his defence under Section 84 of IPC

beyond reasonable doubt and in this connection, the degree of burden of proof on appellant is similar to that in civil cases and appellant has discharged the burden of proof in this respect.

8. Learned counsel for the appellant has submitted that learned trial Court has rejected appellant's above defence without any cogent reason. Since 2014, appellant is continuously under treatment with respect to paranoid schizophrenia. Learned counsel has also referred to appellant's application under Section 389 of CrPC for suspension of sentence/temporary bail and medical documents received from jail to argue that appellant is also undergoing treatment with respect to mental illness/paranoid schizophrenia continuously even while undergoing sentence in the instant case. There is a difference between legal and medical insanity. Appellant has proved that he was suffering from paranoid schizophrenia before incident, during incident and after incident.

9. It is also urged on behalf of appellant that he was not present at the time of incident in the house and after receiving information, he reached the house and found her wife in injured condition. In this connection, learned counsel for appellant has relied upon **State of Kerala vs. Anilachandran @ Madhu, (2009) 13 SCC 565**. Witnesses of memorandum/seizure are hostile. No motive for commission of offence has been proved. There is no evidence that appellant wanted to sale her house, otherwise also, motive is a weak piece of evidence. Learned counsel after referring to measurement/size of injuries as mentioned in post mortem report and the size of weapon/blade allegedly recovered in the instant case, submits that

injuries found on the person of deceased could not have been caused by the weapon allegedly recovered in the instant case.

10. Learned counsel after referring to recovery of various articles, FSL draft and FSL report submits that articles have been sent for Forensic examination almost after 1 ½ months and it is not proved that after recovery and before sending the same for forensic examination, where they were kept. Therefore, FSL report Ex.C-1 cannot be relied upon. In this connection, learned counsel has relied upon **Vijay Singh vs. State of M.P., 2004 (4) MPLJ 543** and **Hardeo Singh vs. Central Bureau of Narcotic, Neemuch 2004 (2) MPLJ 541**. It is also urged that on account of property dispute, the incident had taken place all of a sudden and appellant has not caused any injuries intentionally and there was a scuffle between the appellant and deceased and deceased sustained injuries in the said scuffle.

11. As incident had taken place all of a sudden on account of property dispute, therefore, no offence u/s 302 of IPC is made out and instead, only offence u/s 304 of IPC can be said to have been made out. In this connection, learned counsel for appellant has relied upon **Satish Narayan Sawant vs. State of Goa, (2009) 17 SCC 724**, **Bangaru Venkata Rao vs. State of Andhra Pradesh, (2008) 9 SCC 707** & **Suresh Kumar vs. State of Himachal Pradesh, (2008) 13 SCC 459**. Therefore, on the basis of above grounds, it is submitted that learned trial Court has erred in law and facts and wrongly convicted and sentenced the appellant. Hence, the same deserves to be set aside & appellant be acquitted.

SUBMISSIONS OF LEARNED GOVERNMENT COUNSEL:-

12. Learned Government Advocate has vehemently opposed the contentions made by the learned counsel for the appellant and has submitted that prosecution witness Suraj Bai (PW-2) is wholly reliable and her presence as well as she having seen the incident, is clearly proved and there are only minor contradictions between her testimony and Police statement (Ex.D-1). It is not correct that PW-1 is hostile but he has admitted that PW-2 was present before he reached the place of incident. Knife has been recovered from appellant and in FSL report, human blood has been found thereon. From the evidence of PW-1, PW-2 and PW-3, it is not established that at the time of incident, appellant was suffering from any kind of mental illness. The application under Section 233 of Cr.P.C. has been filed only on 4.7.2013 and defence under section 84 of IPC has been taken for the first time when above application was filed. No suggestion has been given to any of the prosecution witnesses, including investigating officer, that appellant was suffering from paranoid schizophrenia at the time of incident/was under effect of the said illness. Learned Government Advocate after referring to the judgment of Hon'ble Apex Court in **Bapu @ Gujraj Singh vs. State of Rajasthan, (2007) 8 SCC 66** submits that in the instant case, requirement of Section 84 of IPC are not fulfilled, therefore, appellant cannot take benefit of Section 84 of IPC. Learned trial Court has properly appreciated the evidence on record and has rightly convicted & sentenced the appellant under Section 302 of the I.P.C., therefore, the appeal is liable to be dismissed.

13. We have heard learned counsel for the parties and perused the record of the learned trial Court minutely.

FINDINGS:-

14. In the instant case, it is not in dispute that death of deceased is homicidal in nature and it is also not in dispute that incident has taken place inside the house of appellant in the morning at about 10.30 & that appellant & deceased are husband and wife.

15. Now the question arises whether it is appellant who, at alleged date, time and place, has committed murder of his wife. Evidently prosecution's case primarily rests on testimony of eye witnesses & to some extent also on recoveries/FSL report & other circumstantial evidence. Perusal of evidence adduced by the prosecution reveals that there were two eye witnesses and out of them, complainant Shiv Pal Singh (PW-1), who had lodged the FIR, has turned hostile and has denied to have seen the incident. Therefore, as eye witness, only evidence of Suraj Bai (PW-2) remains on record.

EYE WITNESSES:-

16. So far as evidence of eye witness Suraj Bai (PW-2) is concerned, she has deposed in her examination-in-chief as under:-

1. आरोपी हेमराज मेरा पड़ोसी है। दीपमाला। हेमराज की पत्नी थी। दीपमाला मर चुकी है। करीब तीन महीने पहले उसकी मृत्यु हो चुकी है। दिन के ग्यारह बजे की बात होगी। मैं अपने घर में थी। आरोपी के घर तरफ से चिल्लाने की आवाज आयी थी जिस पर मैं गयी थी व कहा था कि क्यों चिल्ला रहे हो जिस पर दीपमाला ने अपने घर में से ही चिल्लाकर बोला था कि आंटीजी आप आगे से आ जाओ। मैं उसके घर के पीछे गयी थी। तब मैं उसके घर के आगे पहुची थी व दरवाजे को तीन चार बार खटखटाया था। दरवाजा जल्दी नहीं खोला था। दस पंद्रह मिनट बाद आरोपी हेमराज ने दरवाजा घर के अंदर से खोला था। मैं आरोपी के घर के अंदर गयी थी। मैंने आरोपी की पत्नी दीपमाला को घर के अंदर कीचन में जमीन में नीचे पड़े हुए देखा था तब मैंने आरोपी से कहा था कि भैया तुमने

यह क्या कर दिया । आरोपी मुझे घूरकर देखने लगा था। मैंने आरोपी से कहा था कि मैं तुम्हारी बुआ को बुलाकर ला रही हूँ कहीं मत जाना।

2. जहाँ दीपमाला पड़ी थी वहाँ खून वगैरह पड़ा हुआ था तथा बह रहा था । मुझे डर लगा था। मैं आरोपी की बुआ के घर बुलाने चली गयी थी । आरोपी अपने घर में ही खड़ा रहा था मैं उसे छोड़कर चली गयी थी ।

3. दीपमाला की तीन देवरानी भी आ गयी थीं। उनके नाम नहीं जानती। दीपमाला का देवर व शिवपालसिंह भी आ गये थे । देवर का भी नाम नहीं मौलूम ।

5. दोनों पति पत्नी के बीच संबंध कैसे रहते थे। मुझे नहीं मालूम क्योंकि दरवाजा बंद रहता था । मैंने कोई लड़ाई झगड़ा नहीं सुना था। घटना के दिन भी लड़ाई झगड़ा नहीं सुना। मुझे तो दीपमाला के चिल्लाने की आवाज आयी थी तब मैं दीपमाला के घर गयी थी। जब मैं दीपमाला के घर पहुंची तो दीपमाला को पड़े हुए देखा था । वह बोल नहीं रही थी। दीपमाला घटना दिनांक को ही मर गयी थी।

17. Perusal of prosecution witness Suraj Bai's testimony in court and her police statement Ex.D-1 reveals that there are no material contradiction/omissions/discrepancies/improvements, which would go to the root of the case and would make Suraj Bai a wholly/partially unreliable witness. Further, from deposition of complainant Shiv Pal Singh (PW-1) and report lodged by him Ex.P-1 and from testimony of Suraj Bai herself & appellant's examination under section 313 of CrPC, it is clear that Suraj Bai and deceased are neighbour and their houses are adjacent to each other. Further from evidence on record, especially from testimony of Suraj Bai & appellant's examination under section 313 of Cr.P.C., it is not proved at all that there was any enmity/animosity between Suraj Bai and appellant or Suraj Bai had any motive or grudge to falsely implicate the appellant.

18. Further, if we go through the deposition of complainant Shiv Pal Singh (PW-1) and his report Ex.P-1 and deposition of Suraj Bai

herself, then, it is clearly established that Suraj Bai had reached at the scene of incident before complainant reached at the scene of incident and presence of Suraj Bai during the incident is completely proved from the evidence on record. Further, cross-examination of Suraj Bai reveals that Suraj Bai has not been cross-examined at all about presence of appellant during the incident and no suggestion has been given to Suraj Bai that, at the time of incident, appellant was not present at the scene of incident & that he had come after the incident had already taken place.

19. Therefore, in this court's opinion, Suraj Bai is a wholly reliable eye witness & she is an independent witness. She is neither related witness nor interested witness.

20. From deposition of complainant Shiv Pal Singh and Investigating Officer Sher Singh Baghel and FIR Ex.P-1, it is evident that FIR Ex.P-1 has been lodged immediately after the incident on the date of incident itself and therein appellant has been named as accused. It is correct that complainant Shiv Pal Singh has turned hostile and has not supported the prosecution with respect to the main incident and has stated that he did not saw Hemraj on the spot and in that connection, he has contradicted his report Ex.P-1 and police statement Ex.P-6 and P-7. But reason for his turning hostile is there in the testimony of witness himself, wherein he has admitted that Hemraj is son of his maternal uncle (*Mama*).

21. But from the deposition of Shiv Pal and his report Ex.P-1, it is clear that after receiving information, he had reached the scene of incident and from there, he went to lodge the FIR Ex.P-1 & in the FIR, he has clearly stated that before he reached at the scene of incident,

Suraj Bai was already there. Shiv Pal Singh has clearly stated in his examination-in-chief that before he reached at the scene of incident, Suraj Bai was already there & Shiv Pal Singh's this statement has remained unchallenged in his cross-examination. Thus, on above aspect, Suraj Bai's testimony also gets corroborated from the testimony of complainant Shiv Pal.

22. Perusal of testimony of prosecution witness Dipendra Singh (PW-3) and Man Singh Tomar (PW-4) reveals that they are not eye witnesses.

RECOVERIES FROM APPELLANT:-

23. So far as recoveries from appellant is concerned, Investigating Officer Sher Singh Baghel has deposed in his examination-in-chief that accused had told him that he has concealed the knife in the middle room of his house and he will get it recovered therefrom. He prepared memorandum of accused/appellant Ex.P-13. Thereafter, he took accused to his house in Padam Nagar and there, he took out the knife from his house and blood stained clothes i.e. pant, white shirt and banyan etc., which were seized by him vide recovery memo Ex.P-14. Perusal of deposition of Investigating Officer Sher Singh Baghel, especially his cross-examination, reveals that substantially his statement with respect to appellant's memorandum and recovery has remained uncrossed and there is nothing in his cross-examination to show that he is deposing falsely on above points and is not reliable/trustworthy. Otherwise also, there is nothing in his evidence which would show that the witness is not trustworthy on above points. Hence, in this Court's opinion, prosecution witness Sher Singh Baghel is wholly reliable on the point of memorandum and recovery as above.

24. Further, Sheikh Bashir (PW-7), who is a witness of memorandum Ex.P-3 and recovery Ex.P-14, has deposed almost identically with respect to appellant's interrogation and preparation of memorandum Ex.P-13. Though, he is not reliable with respect to recovery Ex.P-14, as he has stated in his evidence that he remained in Chowki and Police Personnel had come after recovering the knife from accused's house. Perusal of PW-7 Sheikh Bashir's testimony reveals that on the point of memo, there is no substantial cross-examination and on the point of memorandum, his testimony has remained almost unchallenged in his cross-examination. Therefore, Investigating Officer Sher Singh Baghel's testimony, with respect to memorandum, also gets corroborated from the testimony of Sheikh Bashir.

25. In view of above, in this Court's opinion, recovery of knife and clothes of appellant in pursuance of his memorandum is clearly proved in the case.

26. It is evident from the testimony of Investigating Officer and Dr. Bijay Singh Makwama (PW-8) and application Ex.P-16/report Ex.P-16A that knife recovered from the appellant was sent to Dr. Bijay Singh for perusal and examination & he has opined that the injuries found on the person of deceased are possible from the said knife. Perusal of testimony of Dr. Bijay Singh Makwama (PW-8) shows that during his cross-examination, no specific suggestion has been given to the witness that injuries found on the person of the deceased can not be caused from the knife recovered from the appellant & neither he has himself opined as such. In this Court's opinion, there are no such differences between the shape/measurement of injuries and the knife recovered from appellant, so as to show that the injuries found on the

person of deceased cannot or could not have been caused from the knife seized from the appellant. Hence, medical evidence also supports/ corroborates prosecution story & testimony of eye witness Suraj Bai.

27. Perusal of deposition of Shyambihari (PW-9) and I.O. Sher Singh Baghel (PW-10) and query application Ex.P-16, recovery memo Ex.P-5, P-10, P-11, FSL report Ex.P-20, FSL receipt Ex.P-21 etc. reveal that recoveries from the scene of incident were made on 19.12.2012, recovery of knife and clothes from appellant has been made on 20.12.2012 and deceased's clothes were seized at Police Outpost on 21.12.2012 vide recovery memo Ex.P-11 and same has been recovered by Police Station Moghat Road on 23.1.2013 vide seizure memo Ex.P-10 and query application Ex.P16 was sent to Dr. Bijay Singh on 24.1.2013 and above articles have been sent to FSL on 31.1.2013 and they have been received in FSL Indore on 5.2.2013 and FSL report Ex.C-1 is dated 14.3.2013.

28. Learned counsel for the appellant after referring to prosecution evidence, recovery memo and FSL report has submitted that above incriminating articles have been sent for FSL examination belatedly and it is not proved from evidence on record as to where they were kept after recovery and in what condition they were kept. Therefore, FSL report cannot be relied upon. In this connection learned counsel has relied upon *Hardeo Singh* (supra) and *Vijay Singh* (supra).

29. It is correct that I.O. Sher Singh Baghel (PW-8) has admitted in his cross-examination that he has not filed any documents to show that after recovery and before being sent to FSL examination, where articles were kept but perusal of I.O. Sher Singh Baghel's cross-examination

shows that neither from his testimony, it is established nor any such suggestion has been given to the witness that articles sent for FSL were not those which were allegedly recovered as above or they were not sent immediately because there was any manipulation. Further, query report Ex.P-16A, FSL draft Ex.P-20 and FSL report Ex.C-1 and recovery memo Ex.P-5, P-10, P-14 etc. reveals that the seized articles were sealed & seal affixed thereon has been found intact when they were received in FSL Indore for FSL examination. Therefore, it cannot be said that delay in sending the above articles for FSL was intentional or it was with some oblique purpose.

30. Therefore, on account of delay in sending the articles for FSL examination, FSL report Ex.C-1 cannot be discarded. FSL report Ex.C-1 shows that human blood has been found on appellant's shirt, banyan and knife recovered from him and appellant has not explained above facts in his examination under Section 313 of Cr.P.C. and he has only stated that the report is false. Hence, in the facts & circumstances of the case, principles laid down in *Hardeo Singh* (supra) and *Vijay Singh* (supra) do not help appellant in any way. Thus, above recoveries & FSL report Ex.C-1 also corroborates testimony of prosecution witness Sarju Bai & prosecution story.

MOTIVE:-

31. So far as motive on the part of the appellant to commit the crime is concerned, prosecution witness Dipendra Singh (PW-3), elder brother of deceased Deepmala, has stated in his examination-in-chief that sometimes, there was dispute between Deepmala & accused. He came 15 days before Deepmala's death to her house. Then, there was a dispute between the two over the sale of land. The accused wanted to

sale land, on this Deepmala said that child is too young, don't sale now. Then, accused assaulted Deepmala from behind by *Fookni* used to light the *Chullah*. But this witness has stated in his cross-examination that above incident did not occur in his presence, instead, Deepmala had told him about the same about 15 days prior to her death and he did not tell the same to Police.

32. Prosecution witness Man Singh Tomar (PW-4) has deposed in his examination-in-chief that he has information that accused had sold land to his younger brother Devendra a day before the incident but he has no information about anybody objecting to the same. But present incident had occurred on the next date of sale of land. It is correct that after sale of land, Hemraj wanted to sale house, for which his wife was objecting. He cannot tell that accused wanted to sale house, therefore, on being objected by his wife, he murdered his wife on account of above dispute. This witness has stated in his cross- examination that it is correct that marriage was solemnized in the year 2001 and after marriage, Deepmala and his husband used to live affectionately. On 18.12.2012, Hemraj had sold one acre of agricultural land to Devendra in lieu of Rs.7.00 lakh. This transaction was done amicably and there was no dispute. When accused discussed sale of Jyotinagar house with Deepmala, then, Deepmala had told him that child is too young, therefore, they have not to sale house right now. Thereupon, Hemraj agreed to the same and there was no dispute between husband and wife.

33. Prosecution witness Raghuraj Singh (PW-11) has also deposed in his examination-in-chief that accused had struck deal with his younger brother Devendra to sale his agricultural land a day before 18.12.2012.

He had come to accused's house on 18.12.2012 after receiving information from accused. Accused also wanted to struck deal to sale his house along with agricultural land, on which Deepmala objected that child is too young, don't sale house and after sale of house, what the child would do i.e. Deepmala had prevented accused from making a deal of the house. At that time, accused had agreed not to sale the house. Agreement to sale Ex.P-18 was recovered in his presence vide seizure memo Ex.P-19.

34. Prosecution witness Raghuraj Singh (PW-11) has also stated in his cross-examination that Deepmala had not objected to agreement to sale Ex.P-18 & deal with respect to land was struck amicably. It is correct that Deepmala had objected to sale of the house & on this accused had agreed.

35. Thus, from the depositions of above witnesses, including Shiv Pal and Suraj Bai, it is not proved that before occurrence of present incident, there was any dispute etc. between appellant and his wife deceased. But is it proved from above evidence that a day before the present incident, appellant had sold agricultural land to his younger brother Devendra vide agreement to sale Ex.P-18 and he also wanted to sale his house along with above land and on this deceased had objected and from depositions of Man Singh and Raghuraj Singh, it appears that after deceased objected to the same, appellant agreed not to sale the house. Thus, it cannot be said that appellant did not have any motive to commit the crime.

36. Further, present case is based on testimony of eye witnesses along with other evidence, therefore, even if it is assumed that prosecution has failed to prove any motive, still only on the ground of

absence of motive, it cannot be said that appellant did not commit the instant offence.

DEFENCE OF APPELLANT:-

37. Perusal of suggestions given on behalf of appellant to prosecution witnesses, defence evidence adduced by the appellant, appellant's examination under section 313 of Cr.P.C. and submissions of learned counsel for the appellant show that appellant had taken two fold defence. First, appellant had taken a plea of alibi i.e. that at the time of incident, he was not present in his house and second that, he was suffering from paranoid schizophrenia at the time of incident and thereby taking defence under Section 84 of IPC. Now, we will discuss appellant's above defences one by one.

PLEA OF ALIBI:-

38. In the instant case from evidence on record, it is clearly established that the incident had occurred inside the house of appellant. Depositions of prosecution witnesses Shiv Pal Singh (PW-1), Suraj Bai (PW-2), Dipendra Singh (PW-3), Man Singh Tomar (PW-4), Raghuraj Singh (PW-11) and I.O. Sher Singh Baghel (PW-10) reveal that on behalf of appellant, no such suggestion has been given to any of the above prosecution witnesses that at the time of incident, he was not present in his house and no such suggestion has also been given to any of the above prosecution witnesses that if he was not present in his house at the time of incident, then, when, how and where he got information about murder of his wife and when did he return to his house. Further, from depositions of above witnesses and documents Ex.P-3 naksha panchnama, Ex.P-4 site map, Ex.P-5 recovery of blood stained/plain soil from the scene of incident, Ex.P-15 post mortem

application/report, it is apparent that above documents do not contain appellant's signature & therefore, indicating that above proceedings did not take place in appellant's presence. Whereas, appellant being husband of the deceased, it was but natural that appellant should have been present during above proceedings & they must have appellant's signature thereon. But it is not so & Appellant has not furnished any explanation whatsoever with respect to above.

39. In this connection, it is also important to refer answer to question No.53 of appellant's examination under Section 313 of Cr.P.C. wherein appellant has stated that he had gone to the temple before the incident. When he came back home from the temple, his wife was lying in the house in injured condition, door of the house was half open, seeing his wife's condition, he shouted, then, people came. But no such suggestion has been given to any of the prosecution witnesses. Further, appellant has not explained that if he had returned to the house from temple and he found his wife lying in injured condition, then, why did not he lodge report and why did not above documents Ex.P-3, P-4, P-5 and P-15 contain his signature. Further, appellant has not produced any evidence to prove his defence with respect to plea of alibi as mentioned by him in his examination under Section 313 of Cr.P.C.

40. Hence, in view of above, in this court's opinion, it is not proved from the evidence on record that at the time of incident, appellant was not present in his house, instead, he had already gone to the temple and after incident had occurred, he returned from temple and saw his wife lying in the injured condition. The plea of alibi is not proved at all from the evidence on record. Therefore, principle laid down by Hon'ble

Apex Court in *State of Kerala Vs. Anil* (supra) does not apply to the facts of the present case.

DEFENCE UNDER SECTION 84 OF IPC:-

41. Learned counsel for the appellant's submissions reveal that learned counsel after referring to evidence of Shiv Pal Singh (PW-1), Dipendra Singh (PW-3), Man Singh Tomar (PW-4), Raghuraj Singh (PW-11) and defence witness Dr. Smita (DW-1) and Dr. Veerandra Singh Pal (DW-2) and medical prescriptions Ex.D-2 to D-5 and also appellant's treatment while undergoing the sentence in the instant case, has submitted that at the time of incident appellant was suffering from paranoid schizophrenia, therefore, he is entitled to the benefit of exception as laid down in Section 84 of IPC. In this connection, learned counsel for appellant has relied upon *Ratan Lal, Kumar @ Selvakumar, Mohd Rafiq Shahabuddin Shaikh, Asish Chaturvedi, Ashok Singh, Devidas Loka Rathod* and *Dahyabhai Chhaganbhai Thakkar* (supra).

42. Before proceeding further, we would like to examine the law relating to defence taken by appellant under Section 84 of IPC. Hon'ble Apex Court in *Prakash Nayi @ Sen vs. State of Goa, 2023 LiveLaw (SC) 71* has laid down as under:-

“14. This court in a recent decision in *Devidas Loka Rathod Vs. State of Maharashtra, (2018) 7 SCC 718*, has held that:

“11. Section 84 of the IPC carves out an exception, 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. But this onus on the accused, under Section 105 of the Evidence Act is not as stringent as on the prosecution to be established beyond all reasonable doubts. The accused has only to establish his defence on a preponderance of probability, as observed in **Surendra Mishra vs. State of Jharkhand, (2011) 11 SCC 495**, after which the onus shall shift on the prosecution to establish the inapplicability of the exception. But, it is not every and any plea of unsoundness of mind that will suffice. The standard of test to be applied shall be of legal insanity and not medical insanity, as observed in **State of Rajasthan vs. Shera Ram, (2012) 1 SCC 602**, as follows :*

“19.Once, a person is found to be suffering from mental disorder or mental deficiency, which takes within its ambit hallucinations, dementia, loss of memory and selfcontrol, at all relevant times by way of appropriate documentary and oral evidence, the person concerned would be entitled to seek resort to the general exceptions from criminal liability.”

*12. The crucial point of time for considering the defence plea of unsoundness of mind has to be with regard to the mental state of the accused at the time the offence was committed collated from evidence of conduct which preceded, attended and followed the crime as observed in **Ratan Lal vs. State of Madhya Pradesh, 1970 (3) SCC 533**, as follows:*

“2. It is now wellsettled 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 accused. In D.G. Thakker v. State of Gujarat it was laid down that “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 which rests upon a party to civil proceedings”.

*13. If from the materials placed on record, a reasonable doubt is created in the mind of the Court with regard to the mental condition of the accused at the time of occurrence, he shall be entitled to the benefit of the reasonable doubt and consequent acquittal, as observed in **Vijayee Singh vs. State of U.P., (1990) 3 SCC 190.**”*

43. Hon’ble Apex Court has also summarized relating to Section 84 of IPC in **Shrikant Anandrao Bhosale vs. State of Maharashtra, (2002) 7 SCC 748** as under:-

“10. What is paranoid schizophrenia, when it starts, what are its characteristics and dangers flowing from this ailment. Paranoid schizophrenia, in the vast majority of cases, starts in the fourth decade and develops insidiously. Suspiciousness is the characteristic symptom of the early stage. Ideas of reference occur, which gradually develops into delusions of persecution. Auditory hallucinations follow, which in the beginning, start as sounds or noises in the ears, but are afterwards changes 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 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 gives 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. Since so many people are against him and are interested in his ruin, he comes to believe that he must be a very important man. The nature of delusions thus may change from persecutory to the grandiose type. He entertains delusions of grandeur, power and wealth, and generally conducts himself in a haughty and overbearing manner. The patient usually retains his money and orientation and does not show signs of insanity, until the conversations is directed to the particular type of delusion from which he is suffering. When delusions affect his behaviour, he is often a source of danger to himself and to others. [Modi's Medical Jurisprudence and Toxicology (22nd Edn.)]

11. Further, according to Modi, the cause of schizophrenia is still not known but hereditary plays a part. The irritation and excitement are effects of illness. On delusion affecting behaviour of patient, he is source of danger to himself and to others.”

44. Hon’ble Apex Court in ***Bapu @ Gujraj Singh vs. State of Rajasthan, (2007) 8 SCC 66*** has summarized the law relating to Section 84 of IPC as follows:-

“7. 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 IPC. 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 (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:*

“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, 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 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.

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, Vo. II, page 166 has observed that if a persons cut 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 recognizes 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 Moh. v. State of Maharashtra: (1972 Cr.LJ 1523 (SC))**, held that

“ The mere fact that no motive has been proved why the accused murdered his wife and child or the fact that he made no attempt to run away when the door was broken open would not indicate that he was insane or that he did not have necessary mens rea for the offence.”

12. 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 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's case. (1843) 4 St. Tr. (NS) 847. 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.

13. *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.”*

45. Now, we will examine the facts of present case in the light of above legal parameters. The primary question that arises for consideration is whether at the time of incident, appellant was suffering

from paranoid schizophrenia and whether he committed the murder of his wife under the influence of/on account of paranoid schizophrenia. Prosecution witness Shiv Pal, who is son of appellant's maternal uncle (*Mama*) has stated in para 19 of his cross-examination that he is not aware that Hemraj is mentally ill. He is also not aware that he is having any such treatment. He is not having any contact with the accused. Prosecution witness Dipendra, who is brother of deceased, has stated in para 6 of his cross-examination that to his knowledge, appellant is not mentally ill and neither he got treated for any such ailment. It is wrong to say that accused is suffering from mental illness paranoid schizophrenia, for which he took accused to Indore many times.

46. Prosecution witness Man singh Tomar, who is brother-in-law of accused Hemraj, has stated in para 9 of his cross-examination that accused has been treated in Indore. He does not know for which ailment and for how much time, he has been treated. It may be that he is being treated from mental health expert in Indore, then, he will be having some mental illness. Prosecution witness Raghuraj Singh, who is maternal uncle (*Mama*) of deceased, has stated in para 9 of his cross-examination that he has no knowledge that appellant was mentally ill and he has no knowledge about the treatment of the same. Testimonies of prosecution witnesses Suraj Bai and I.O. Sher Singh reveal that on behalf of appellant, no suggestion has been given to above witnesses that appellant has been suffering from paranoid schizophrenia.

47. Thus, from depositions of above witnesses, including Suraj Bai and I.O. Sher Singh, it is not established at all & neither any suggestion has been given to any of the prosecution witnesses that at the time of incident/just before the incident or just after the incident, appellant was

being treated for any sort of mental illness/paranoid schizophrenia and he committed offence under the effect/influence of/on account of paranoid schizophrenia.

48. Further, if we go through the appellant's examination under Section 313 of Cr.P.C. then, it is evident that appellant has categorically denied having committed murder of his wife and being present at the time of incident. He has nowhere stated in his above examination that at the time of incident, he was suffering from paranoid schizophrenia and on account of/under the influence of paranoid schizophrenia, he committed murder of his wife. On the contrary, appellant has stated in his examination under Section 313 of Cr.P.C that he had gone to the temple before the incident. When he came back home from the temple, his wife was lying in the house in injured condition, door of the house was half open, seeing his wife's condition, he shouted, then, people came.

49. It is correct that on the date of his examination under section 313 of Cr.P.C., appellant did file application under section 233 of Cr.P.C. on 4.7.2013 and stated therein that he is mentally ill namely i.e. he is suffering from paranoid schizophrenia since long time and he has been treated at Indore by different Psychiatrist specialists.

50. Defence witness Dr. Smita Agarwal has stated in her examination-in-chief and cross-examination as under:-

1- मैं एम०डी साईकाइट्री डी०पी०एम० हूँ तथा वर्तमान में मेरा अपना इंदौर में क्लीनिक है। क्लीनिक का कोई नाम नहीं है। प्रकरण में संलग्न पर्चा मेरे द्वारा लिखा हुआ है। इससे संबंधित मरीज हेनराजसिंह सोलंकी मेरे पास दिनांक 09.05.2012 को उपचार के लिये आया था। पर्चा प्रदर्श डी-3 है जिसके अ से अ भाग में मेरे दस्तखत हैं। इस पर्चा अनुसार मैंने हेमराज का परीक्षण किया था। मैं इस मरीज का रिकार्ड लेकर आयी हूँ। मरीज को

पेरोनाईड सिजोफेनिया था । यह मानसिक रोग है। जब मरीज को लाया गया था तब उसे शंकाएँ होती थी और उसके कानों में आवर्जें आती थीं। उसे नींद नहीं आती थी। मैंने प्रदर्श डी-3 के पर्चे पर उपचार लिखा है। प्रदर्श डी-3 पर फाईल नंबर दर्ज है।

प्रतिपरीक्षण द्वारा श्री बी. एल. मंडलोई, लोक अभियोजक वास्ते अभियोजन :-

2. यह सही है कि जब मरीज मेरे पास परीक्षण के लिये आया था तब मैंने उससे जो पूछताछ की थी उसका वह सही जवाब दे रहा था। बातचीत में वह सामान्य बातचीत कर रहा था, किंतु कुछ असामान्य तथा कुछ बहकी असामान्य बातें भी कर रहा था। यह सही है कि प्रदर्श डी-3 के पर्चे पर मैंने मरीज की बीमारी की हिस्ट्री वगैरह लेख नहीं की। यह सही है कि मैंने प्रदर्श डी-3 के पर्चे पर लेख नहीं किया कि मरीज मानसिक रोगी है तथा उसे शंकाएँ होती हैं तथा कानों में आवर्जें आती हैं । स्वतः कहा कि ये जीचें हम अपनी फाईल में लिखते हैं । मरीज अकेला नहीं आया था, कोई उसे लेकर आया था। प्रदर्श डी-3 में इस बात का उल्लेख नहीं है कि उसे कौन लेकर आया ।

51. Defence witness Dr. Veerandra Singh has stated in his examination-in-chief and cross-examination as under:-

1- एम०जी० [साईकाईट्री हूँ तथा महात्मा गांधी में एसोसिएट प्रोफेसर पदस्थ हूँ तथा मेरा निजी भी है जो गीता भवन इंदौर में है।

2- मेरे प्रायवेट क्लीनिक पर 20.01.2011 को हेमराज परीक्षण के लिये आया था। मैंने उसका परीक्षण किया था उसे पेटेनाईड सिजोफेनिया की बीमारी.. थी। चूंकि मरीज की स्थिति ठीक नहीं थी जिस कारण उसे भर्ती रहकर इलाज कराने का सुझाव दिया था वह प्रायवेट सुयश अस्पताल में 20 जनवरी 2011 से 28. जनवरी 2011 तक भर्ती रहा था। सुयश अस्पताल में भर्ती के दौरान भी मेरा इलाज चला था । भर्ती एवं डिस्चार्ज कार्ड प्रदर्श डी- है। मरीज मेरे ही अंडर में भर्ती रहा है लेकिन डिस्चार्ज कार्ड जुनीयर डॉक्टर बनाकर देते हैं इस कारण प्रदर्श डी-4 पर मेरे दस्तखत नहीं हैं। ग्रीफ हिस्ट्री के रूप में मरीज जिस दिन आया था उस दिन उसने डर की शिकायत की थी। Herita जिस कारण और लोगों को मारने की धमकी दे रहा था। अपनी पत्नी के चरित्र पर शंका करते थे

तथा आत्महत्या के विचार भी थे। मैंने ये जो बातें बतायी हैं यह अपने पर्सनल रिकार्ड पर से बतायी है जो कि डॉक्टर द्वारा मेनटेन किया जाता है तथा आज मैं उसे लेकर आया हूँ।

3- इसके बाद भी मरीज मेरे पास 19.02.2011 को आया था। इसके बाद 21.03.2011 को भी आया था तब भी मेरे द्वारा इलाज किया गया था। जिस बाबत इलाज की पर्ची प्रदर्श डी-6 है।

प्रतिपरीक्षण द्वारा श्री बी. एल. मंडलोई, लोक अभियोजक वास्ते अभियोजन:-

4- यह सही है कि मैंने जो मरीज की हिस्ट्री बतायी कि वह भयभीत था। ऐसा उल्लेख नहीं है साक्षी ने स्वतः कहा कि डी-4 के पर्चे में लिखा है कि वह असंगत बात करता था इधर उधर बेचैन होकर घूमता था तथा उत्तेजना में था। आदि लिखा हुआ है। यह सही है कि जी-4 में पत्नी पर शंका करने व उसको मारने के विचार रखने व आत्महत्या की प्रवृत्ति होने वाली बात नहीं लिखी। स्वतः कहा कि मैंने अपने पर्सनल रिकार्ड में उल्लेख किये हैं। यह सही है कि मरीज अंतिम रूप से 21.03.2011 को मेरे पास आया था इसके बाद मेरे पास नहीं आया। उपचार से मरीज में कुछ सुधार आया था लेकिन वह दवाई वगैरह के लिये तैयार नहीं हुआ जिस कारण उसे एक माह तक के लिये असर करने वाले इंजेक्शन एवं दवाइयों भी दी थीं। चूंकि मरीज हमारे पास 21.09.2011 के लंब में नहीं आया जिस कारण मैं नहीं कह सकता कि वह पूर्ण रूप से ठीक हुआ था या नहीं।

न्यायसालय द्वारा :-

प्रश्न- क्या इस तरह के मरीज पूरी तरह से ठीक हो जाते हैं ? उत्तर- इस बीमारी से ग्रसित मरीज को दवाइयों द्वारा कंट्रोल में रखा जा सकता है। यदि दवाई ठीक से नहीं लेते हैं तो पूर्ण रूप से ठीक होने की संभावना कम रहती है। यह बीमारी दवाइयों से नियंत्रित की जा सकती है किंतु पूर्ण रूप से ठीक नहीं हो सकती है।

प्रश्न- जिस अवधि में आपने मरीज का परीक्षण व इलाज किया उस अवधि में क्या ऐसी बीमारी थी जो उपचार से भी ठीक नहीं हो सकती थी ?

उत्तर- इस बीमारी को ज्वाइयों के द्वारा नियंत्रित रखा जा सकता है, यदि दवाइयों में लापरवाही होती है तो इसकी पुनरावृत्ति की संभावनाएँ बहुत ज्यादा होती हैं।

प्रतिपरीक्षण:-

5- यह कहना गलत है कि मरीज ने डर लगने वाली कोई हिस्ट्री नहीं बतायी। यह भी गलत है कि मैंने ऐसी हिस्ट्री का रिकार्ड बाद में तैयार किया है व उसे अपना पर्सनल रिकार्ड होना बताया है।

52. In the instant case, incident occurred on 19.12.2012 and as per Dr. Smita and her prescription Ex.D-3, she has treated appellant on 9.5.2012/26.5.2012 and as per Dr. Veerandra Singh Pal's testimony and his prescription Ex.D-4 and D-5, appellant was admitted for treatment relating to paranoid schizophrenia from 20.1.2011 to 26.1.2011 and he also treated him on 19.2.2011 and 21.3.2011. Therefore, in this court's opinion, from the evidence of above defence witnesses, it cannot be said that at the time of/on the date of incident, appellant was under the influence of paranoid schizophrenia and on account of above illness, he committed murder of his wife.

53. It is also so because from above, it is not established that just before the incident, he was treated for paranoid schizophrenia. Further appellant has not filed any medical documents to show that immediately after the incident, while he was lodged in jail from 20.12.2012, he was treated for paranoid schizophrenia i.e. from date of arrest i.e. 20.12.2012 up to the date of judgment. Thus, from evidence on record, it is not proved that either just before the incident or immediately after the incident, appellant was treated for paranoid schizophrenia.

54. Learned counsel for the appellant has also referred to some medical documents which are for the period while appellant was undergoing the sentence in the instant case after passing of judgment on 26.12.2013 to show that appellant has been treated for paranoid schizophrenia while he is in jail but in this court's opinion, from the above, it cannot be inferred that on the date of incident also, appellant was under the influence of paranoid schizophrenia.

55. Further from above, it is also apparent that appellant has taken contradictory defences. On the one hand, he has taken the plea of alibi i.e. that he was not present at the time of incident and he did not commit murder and on the other hand, he has also taken the plea that at the time of incident, he was under the influence of paranoid schizophrenia and on account of that, he committed murder of his wife. But from discussion in the foregoing paras, it is evident that with respect to defence relating to paranoid schizophrenia, no factual background has been laid neither during the cross-examination of prosecution witnesses nor any witness has been produced to prove the facts showing that at that time of incident, appellant was under the influence of paranoid schizophrenia. No evidence with respect to appellant's conduct just before the incident, during the incident or just after the incident is on record to show/indicate that appellant has committed murder under the influence of/on account of paranoid schizophrenia.

56. From principles laid down by Hon'ble apex court in *Prakash Nayi @ Sen (supra)*, *Shrikant Anandrao Bhosale (supra)*, *Bapu @ Gujraj Singh, (supra)*, it is apparent that the most crucial point of time to determine whether accused is entitled to benefit of section 84 of IPC

or not, is that whether *at the time of incident* accused was under the effect/influence of said mental illness/was suffering from such mental illness/committed the incident under the effect/influence/on account of such mental illness. Same principle is also discernible from *Ratan Lal, Kumar @ Selvakumar, Mohd Rafiq Shahabuddin Shaikh, Asish Chaturvedi, Asok Singh, Devidas Loka Rathod and Dahyabhai Chhaganbhai Thakkar* (supra). In the instant case, it is not established that *at the time of incident* appellant was under influence of paranoid schizophrenia & that he committed murder of his wife on account of/under influence of paranoid schizophrenia.

57. Therefore, in view of discussion in the forgoing paras and in view of overall evidence on record, we are of the considered opinion that from evidence on record, it is not proved at all that appellant committed murder of his wife on account of/under influence of paranoid schizophrenia. In view of above, decisions in *Ratan Lal, Kumar @ Selvakumar, Mohd Rafiq Shahabuddin Shaikh, Asish Chaturvedi, Asok Singh, Devidas Loka Rathod and Dahyabhai Chhaganbhai Thakkar* (supra) do not help appellant in any way. Hence, appellant is not entitled to take benefit of section 84 of IPC.

WHETHER OFFENCE UNDER SECTION 304 IPC IS MADE OUT:-

58. Learned counsel for the appellant after relying on *Satish Narayan Sawant vs. State of Goa (supra)*, & *Suresh vs. State of Himachal Pradesh (supra)* has submitted that in the instant case, a sudden quarrel had taken place between appellant and his wife and during the course of sudden quarrel, appellant inflicted knife blows, therefore, no offence under section 302 of IPC is made out.

59. From evidence on record and discussion in the forgoing paras, it is not established at all that any sudden quarrel took place between the appellant and his wife at alleged date, time & place and during course of this sudden quarrel, appellant had assaulted his wife. Further, testimony of Dr. Bijay Singh and his post mortem report shows that appellant has inflicted six stab wounds on deceased and all the wounds/injuries have been caused by knife on abdomen and upper side of abdomen/breast etc. On account of above, it cannot be said that case of appellant comes within the purview of Section 304 part I or part II of IPC.

CONCLUSIONS:-

60. In view of discussion in the foregoing paras and analysis/appreciation of evidence on record, we are of the considered opinion that learned trial court has appreciated the evidence on record appropriately and as per settled principles of law & there is no illegality or perversity in the findings recorded by the trial court. The view taken by the learned trial court is plausible one. Therefore, we are of the opinion that no interference is required regarding conviction and sentence of appellant by the learned trial court. Resultantly, this criminal appeal is **dismissed**. The impugned judgment dated 26.10.2013 passed in Sessions Trial No.55/2013 by learned Sessions Judge, Khandwa, is hereby affirmed.

61. A copy of this judgment be sent forthwith to Sessions Judge, Khandwa & to concerned jail for information and compliance.

(SUJOY PAUL)
JUDGE

(ACHAL KUMAR PALIWAL)
JUDGE