CASE NO.:
Appeal (crl.) 1210 of 1999

PETITIONER:
T.N. LAKSHMAIAH

RESPONDENT:
STATE OF KARNATAKA

DATE OF JUDGMENT: 16/10/2001

BENCH:
MB. SHAH & R.P. SETHI

JUDGMENT:
JUDGMENT

2001 Supp(4) SCR 200

The Judgment of the Court was delivered by

SETHI, J. Claiming insanity at the time of commission of offence of murdering his own wife Gayathramma and teen aged son Bhaskar, the appellant has prayed for setting aside the judgment of the trial court as well as the High Court by which he has been convicted under Section 302 of the Indian Penal Code and sentenced to life imprisonment. Without leading evidence in support of his claim, the appellant urged that there was sufficient material on record which probabilised the existence of circumstances justifying the benefit of the exception as incorporated under Section 84 of the Indian Penal Code. It is also submitted that the prosecution had failed to establish his guilt beyond reasonable doubt.

In order to appreciate the submissions of the appellant, it is relevant to take note of the prosecution case as alleged and proved against him vide the judgment impunged in this appeal. The appellant was a Government servant employed in the Department of Agriculture from the year 1991. He was residing with his wife and son in one of the quarters allotted to him by the Department. The appellant's deceased son was a student of 7th standard at the time of occurrence. On 12.1.1991, the appellant applied to avail casual leave on 14.1.1991, The accused, along with his wife and son, had left his house on 11.1.1991 and gone to Thadagavadi. On 16.1.1991, he took his wife and son along with him on the pretext of showing them Shivanasamudra, a picnic spot where the River Kaveri makes a fall. He purchased half kilogram of apples from Devegowda (PW11) in a village shop at Malavalli. At about 9 O'clock in the morning, the appellant with his wife and son got down from the bus at Satyagola Hand Post where they purchased and consumed tender coconut. All the three thereafter walked on foot towards Shivanasamudra. The accused took his wife and son to the extreme end to show them Gagana Chukki Falls. He led them downwards telling that he would show the beauty of the falls from a very near point. He is alleged to have pushed down Bhaskar from that place who fell on a rock which was 150 feet below. He thereafter caught hold of his wife and forcibly tied her hands with a red waste thread and dgragged her to a rock, notwithstanding her pleadings and protests. He tied her saree arount the neck of his wife and killed her by tightening the knot. Despite being a picnic spot, he had chosen the spot for commission for the offence where no tourist normally went. He left the place of occurrence at 4.30 in the evening, got a bus and went towards Malavalli. He was seen reaching his horn at about 7.30 p.m. by Sri Kalaiah (PW8). On the next day, the appellat left his house and went to Kollegal Rural Police Station in the afternoon where he gave a statement confessing his crime. On the basis of his statement, a case was registered for offence punishable under Section 302 IPC. As per his disclosure, made in the statement, the dead body of the wife was recovered from the place pointed out by him. The body of the son was seen lying on the rock/gorge where the police could not reach on the

first day. When, on the next day, the body of the child was recorded, he was alive and brought to the Kollegal Hospital and thereafter sent for better treatment in NIMHANS at Bangalore, where he breathed his last on 19.1.1999.

On completion of the investigation, the final report was produced, the case committed to the Sessions and charges framed against the appellant. To prove their case, the prosecution examined 30 witnesses. It is conceded that there was no eye-witness to the occurrence. In his statement, recorded under Section 313 of the Code of Criminal Procedure, the appellant accepted that he was residing with his wife and son in the quarters belonging to the Agriculture Department. He also admitted the fact of having applied for casual leave. He admitted to have left his house on the evening on 11.1.1991 with his wife and son. He denied the charge of having taken his wife and son to Gagana Chukki Falls and instead stated that he had gone to Talagawadi with his family. He stated that he only remembered that his wife had nagged him to eat the meals on 13.1.1991 but does not remember anything thereafter. He claims to have seen himself in the prison in June, 1991 and stated that he did not remember as to what had happened in the intervening period.

To ascertain as to whether the accused had committed the crime or not, the trial court formulated eight points for its determination and after appreciating the evidence, hearing the arguments and taking note of the attending circumstances, concluded that the appellant was guilty for the commission of the crime of murders of his wife and son. The appeal filed by him was dismissed by the High Court vide the order impugned in this appeal.

Mr.S. Muralidhar, Amicus curiae who appeared for the appellant submit-ted that the conduct of the accused at or about the time of occurrence, his having remained a patient of mental illness and the record produced during the trial probabilised his being insane within the meaning of Section 84 of the Indian Penal Code which entitled him acquittal. He has further contended that as the case of the prosecution rests only on the circumstantial evidence, the prosecution has failed to connect the accused with the commission of the crime as, according to the learned counsel, the chain of circumstances is not so complete to draw the only inference of the accused being guilty of the offence charged.

To allay all apprehensions, this Court vide order dated 15.11.1999 di-rected the Superintendent of the Central Jail, New Central Prison, Bangalore to forward the medical report, if any, concerning him for facilitating the court to ascertain his mental condition. In response, the Senior Superintendent of Central Prison, Bangalore has submitted the medical report dated 6.12.1999 issued by the psychiatrist of the prison Hospital. In the report it is stated that the appellant was examined and diagnosed as suffering from "moderate depression". He was put on treatment and had shown improvement. At the time of submission of the report his mental condition was stated to be satisfactory.

Section 84 of the Indian Penal Code provides that nothing is an offence which is done by a person who, at the time of doing it, by reason of unsound-ness of mind, is incapable of knowing the nature of the act, or that what he is doing is either wrong or contrary to law. The section forms part of Chapter IV dealing with general exceptions. The importance of the chapter was highlighted by Lord Macaulay before the House of Commons at the time of introduction of the Bill as under :

"This chapter has been framed in order to obviate the necessity of repeating in every penal clause a considerable number of limitations. Some limitations relate only to a single provision, or to a very small class of provisions... Every such exception evidently ought to be appended to the rule which it is intended to modify. But there are other exceptions which are common to all the penal clauses of the Code, or to a greater variety of clauses dispersed over many chapters. It would obviously be inconvenient to

repeat these exceptions several times in every page. We have, therefore, placed them in a separate chapter and, we have provided that every definition of an offence, every penal provision, and every illustration of a definition or penal provision, shall be construed subject to the provisions contained in that chapter".

The principle embodied in the chapter is based upon the maxim "actus non facit reum nisi mens sit rea", i.e., an act is not criminal unless there is criminal intent.

Under the Evidence Act, the onus of proving any of the exception 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 of the version given by him casts a doubt on the prosecution case.

In State of Madhya Pradesh 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 ipsi dixit of the accused is not enough for availing of the benefit of the exceptions under chapter IV.

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. Entire conduct of the accused, from the time of the commission of the offence upto the time, the Sessions proceedings commenced, is relevant for the purpose of ascertaining as to whether plea raised was genuine, bonafide or after-thought. Dealing with the plea of insanity, the scope of Section 84 IPC, the attending circumstances and the burden of proof, this Court in Dahyabhai Chhaganbhai Thakkar v. State of Gujarat, AIR (1964) SC 1563, held.

"It is fundamental principle of criminal jurisprudence of that an ac-cused 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 S.299 of the Indian Penal Code. This general burden never shifts and it always rests on the prosecution. But, S.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 S.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 circum-stances. Under S.105 of the Evidence Act, read with the definition of "shall presume" in S.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 exist-ence was so probable that a prudent man ought, under the circum-stances of the particular case, to act upon the opposition that they did exist. To put 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 evi-dence,

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 S.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 S.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."

After referring to various text books and the earlier pronouncements of this Court, it was further held :

"The doctine 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 that 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 may 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 circumstan-tial, 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."

To the same effect is the judgment in Bhikari v. The State of Uttar Pradesh, AIR (1966) SC 1.

It is admitted that the appellant in this case, has not led any evidence in proof of the plea of insanity. There is nothing on the record to infer that the accused was of unsound mind at or about the time of occurrence. His behaviour at the time and subsequent to the commission of the crime clearly indicates that he knew and was capable of knowing the nature of the act done by him. Being annoyed with the attitude of the deceased, he appears to have taken a conscious decision of taking them away from the house and committed the crime at a secluded place. He had all faculties to safely reach home and sleep for the night. At no point of time his behaviour is shown to be abnormal. The plea, though not strictly but by implication, appears to have been taken by the accused for the first time when his statement was recorded under Section 313 of the Code of Criminal Procedure. We have found no record allegedly showing the appel-lant to be suffering from any mental disease when he is stated to have applied for bail. The plea raised, on the face of it, is after-thought and bereft of any substance. The opinion of the doctor obtained after about 8 years also does not indicate any history of medical disorder of the appellant. Even at the time of examination in the year 1999, he was diagnosed of suffering from "moderate depression" which is likely to be there in the circumstances where such person is confined in prison on the charge of the murder of his wife and son. We are satisfied that the appellant was sane and understood the implications of the act done by him and in no case was having unsound mind within the meaning of Section 84 of the Indian Penal Code, at the relevant time.

We are also not satisfied with the submission of the learned counsel of the appellant that the prosecution had failed to prove the complete chain of

circumstances connecting the accused with the commission of the crime. In its detailed judgment the trial court has referred to proved circumstances which lead to the only inference of the involvement of the accused in the commission of the crime. Similarly, the High Court, in its detailed judgment, has referred to relevant evidence and the incriminating circumstances. We do not find any ground to draw any other inference in the present case.

There is no substance in this appeal which is accordingly dismissed.