

SURENDERA MISHRA

v.

STATE OF JHARKHAND

(Criminal Appeal No.177 of 2006)

JANUARY 6, 2011

[HARJIT SINGH BEDI, P. SATHASIVAM AND
CHANDRAMAULI KR. PRASAD, JJ.]

Penal Code, 1860: s.84 – Applicability of – 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 – Burden to prove unsoundness of mind u/s.105 of Evidence Act is on the accused – In order to ascertain that, it is imperative to take into consideration the circumstances and the behaviour preceding, attending and following the crime – Even if the accused establishes unsoundness of mind, s.84 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 the instant case, the case of the accused did not come within the exception contemplated u/s.84 – The prosecution had proved that immediately after the accused shot dead the deceased, he threatened his driver of dire consequences – Not only that, he ran away from the place of occurrence and threw the weapon of crime in the well in order to conceal himself from the crime – The said conduct of the accused subsequent to the commission of the offence clearly suggest that he knew that whatever he had done was wrong and illegal – Moreover, the fact that the accused was running a medical shop showed that he was mentally fit for same – The accused though suffered from certain mental instability even before and after the incident but from that one cannot infer on a balance of preponderance of probabilities that he at the time of the commission of the offence did not know the nature of his act

A *that it was either wrong or contrary to law – Evidence Act, 1872 – s.105.*

Words and phrases: Expression 'unsoundness of mind' – Meaning of.

B The prosecution case was that on 11.8.2000, the deceased was going in a car driven by PW-1. He stopped the car near a shop and called PW-2. While the deceased was talking to PW-2, the accused-appellant came there with a pistol and pushed PW-2 and fired at point blank range at the deceased. The accused threatened the driver who then fled away from the place of occurrence and informed the family members of the deceased about the incident. Thereafter, the deceased was rushed to hospital where he was declared dead. During trial, the only plea of appellant was that by virtue of unsoundness of mind, the act done by him would come within general exception under Section 84, IPC and, therefore, he cannot be held guilty for the act done by him. The trial court did not accept the said plea and convicted the appellant under Section 302 and Section 27 of Arms Act. The High Court upheld the conviction. The instant appeal was filed challenging the order of the High Court.

Dismissing the appeal, the Court

F HELD: 1.1. A plain reading of Section 84, IPC shows 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. An accused who seeks exoneration from liability of an act under Section 84, IPC is to prove legal insanity and not medical insanity. Expression "unsoundness of mind" has not been defined in the IPC and it has mainly been

treated as equivalent to insanity. But the term insanity carries different meaning in different contexts and describes varying degrees of mental disorder. Every person who is suffering from mental disease is not *ipso facto* exempted from criminal liability. The mere fact that the accused is conceited, odd, irascible and his brain is not quite all right, or that the physical and mental ailments from which he suffered had rendered his intellect weak and affected his emotions or indulges in certain unusual acts, or had fits of insanity at short intervals or that he was subject to epileptic fits and there was abnormal behaviour or the behaviour is queer are not sufficient to attract the application of Section 84, IPC. [Paras 7, 9] [141-C-D; 142-D-G]

Bapu alias Gujraj Singh v. State of Rajasthan (2007) 8 SCC 66 *Hari Singh Gond v. State of Madhya Pradesh* (2008) 16 SCC 109 – relied on.

State of Punjab v. Mohinder Singh (1983) 2 SCC 274 *Shrikant Anandrao Bhosale v. State of Maharashtra* (2002) 7 SCC 748 – distinguished.

1.2. 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, IPC will not come to its rescue, in case it is found that the accused knew that what he was doing was wrong or that

A 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
 B avoid detection of crime go a long way to ascertain as to
 whether, he knew the consequences of the act done by
 him. [Para 10] [142-G-H; 143-A-D]

C *T.N. Lakshmaiah v. State of Karnataka* (2002) 1 SCC
 219 – relied on.

D 1.3. The first evidence in regard to the unsoundness
 of mind as brought by the appellant was the medical
 prescription dated 18th October, 1987 (Ext. A-1) in which
 symptom of the appellant was noted as psychiatric with
 E paranoid features and medicine was advised for sleep.
 Other prescriptions were dated 9th January, 1988 (Ext. A)
 and 5th of September 1998 in which only medicines had
 been prescribed. Other prescriptions (Exts. A-5 to A-7)
 also did not spell out the disease the appellant was
 F suffering but gave the names of the medicines, he was
 advised to take. The occurrence took place on 11th of
 August 2000. From these prescriptions, the only
 inference that could be drawn is that the appellant had
 G paranoid feeling but that too was not proximate to the
 date of occurrence. To establish that acts done are not
 offence and come within general exception, it is required
 to be proved that at the time of commission of the act,
 accused by reason of unsoundness of mind was
 incapable of knowing that his acts were wrong or
 contrary to law. In the instant case, the prosecution had
 H proved beyond all reasonable doubt that immediately
 after the appellant had shot- dead the deceased,
 threatened his driver PW.1, of dire consequences! Not
 only that, he ran away from the place of occurrence and
 threw the country-made pistol, the weapon of crime, in

the well in order to conceal himself from the crime, which was recovered later on. The said conduct of the appellant subsequent to the commission of the offence clearly suggest that he knew that whatever he had done was wrong and illegal. Further, he was running a medical shop and came to the place of occurrence and shot dead the deceased. Had the appellant been a person of unsound mind, it may not have been possible for him to run a medical shop. The appellant though suffered from certain mental instability even before and after the incident but from that one cannot infer on a balance of preponderance of probabilities that the appellant at the time of the commission of the offence did not know the nature of his act; that it was either wrong or contrary to law. The plea of the appellant did not come within the exception contemplated under Section 84, IPC. [Para 11] [144-D-H; 145-A-D]

Case Law Reference:

(1983) 2 SCC 274	distinguished	Paras 4, 12
(2002) 7 SCC 748	distinguished	Para 5, 12
(2007) 8 SCC 66	relied on	Para 7
(2008) 16 SCC 109	relied on	Para 8
(2002) 1 SCC 219	relied on	Para 10

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 177 of 2006.

From the Judgment & Order dated 29.6.2005 of the High Court of Jhrakhand at Ranchi in Criminal Appeal No. (DB) 446 of 2004.

Tanmaya Agarwal and Dr. Kailash Chand for the Appellant.

D.N. Goburdhan for the Respondent.

The Judgment of the Court was delivered by

A **CHANDRAMAULI KR. PRASAD, J.** 1. Sole appellant was put on trial for commission of the offence under Section 302 of the Indian Penal Code as also Section 27 of the Arms Act. The trial court held him guilty on both the counts and sentenced him to undergo imprisonment for life under Section
B 302 of the Indian Penal Code but no separate sentence was awarded under Section 27 of the Arms Act. His conviction and sentence has been upheld by the High Court in appeal and hence the appellant is before us with the leave of the Court.

C 2. According to the prosecution, on 11th of August, 2000 the deceased Chandrashekhar Choubey was going in a car driven by PW.1, Vidyut Kumar Modi and when reached Chas Nala crossing, he asked the driver to stop the car and call Shasdhhar Mukherjee (PW.2), the owner of Sulekha Auto Parts. As directed, the driver called said Shasdhhar Mukherjee and the
D deceased started talking to him from inside the car. According to the prosecution all of a sudden the appellant, the owner of the Medical Hall came there with a country-made pistol, pushed Shasdhhar Mukherjee aside and fired at point-blank range at the
E deceased. The driver fled away from the place of occurrence and informed the family members of the deceased, leaving the deceased in the car itself. PW.4, Vinod Kumar Choubey along with the driver came back and rushed the deceased to the Chas Nala Colliery Hospital, where he was declared dead. On
F the basis of the aforesaid report a case under Section 302 of the Indian Penal Code and Section 27 of the Arms Act was registered against the appellant. After usual investigation police submitted the charge-sheet and ultimately the appellant was put on trial for commission of the offence under Section 302 of the Indian Penal Code and Section 27 of the Arms Act.

G 3. In order to bring home the charge the prosecution altogether examined nine witnesses besides a large number of documents were exhibited. Only plea of the appellant during the trial was that by virtue of unsoundness of mind, the act done by him comes within general exception under Section 84 of the
H Indian Penal Code and, therefore, he cannot be held guilty for

the act done by him. The aforesaid plea did not find favour with the trial court as also by the High Court, in appeal. In this connection the High Court has observed as follows:

“On the basis of the evidence, adduced on behalf of both the parties regarding mental status of accused Surendra Mishra, learned court below came to a safe conclusion that accused was not suffering from mental instability even prior to the incident or at the time of incident. I also find no ground to differ with such finding.

I have noticed the observations of the learned court below that although some evidence were placed by the defence in support of the mental trouble of the accused, in absence of specific finding by the doctor or degree and nature of mental trouble, it can not be relied upon to declare the accused Surendra Mishra mentally unfit or that he was insane at the time of occurrence.”

4. Mr. Tanmaya Agarwal, learned Counsel appearing on behalf of the appellant submits that the appellant being a person of unsound mind at the time of the commission of the offence, his act comes within general exception as provided under Section 84 of the Indian Penal Code and hence the appellant deserves to be acquitted. In support of the submission he has placed reliance on a judgment of this Court in the case of *State of Punjab v. Mohinder Singh*, (1983) 2 SCC 274, in which it has been held as follows:

“The doctor had examined accused a little before as also a little after the occurrence and he was found insane. The detailed reasons given by both Dr. Harbans Lal and Dr. Ramkumar have been corroborated by each other. From the evidence also it is clear that he was talking in a very unusual manner saying things to the effect that he had seen Lord Shiva in front of him and the alike. It cannot be said that the finding of the High Court was wrong. In view of these circumstances we are not in a position to take a different

A view particularly when the appellant was suffering from schizophrenia.”

B 5. Another decision of this Court on which reliance has been placed is in the case of *Shrikant Anandrao Bhosale v. State of Maharashtra*, (2002) 7 SCC 748, and our attention has been drawn to the following passage from paragraph 20 of the judgment:

C “In the present case, however, it is not only the aforesaid facts but it is the totality of the circumstances seen in the light of the evidence on record to prove that the appellant was suffering from paranoid schizophrenia. The unsoundness of mind before and after the incident is a relevant fact. From the circumstances of the case clearly an inference can be reasonably drawn that the appellant was under a delusion at the relevant time. He was under an attack of the ailment. The anger theory on which reliance has been placed is not ruled out under schizophrenia attack. Having regard to the nature of burden on the appellant, we are of the view that the appellant has proved the existence of circumstances as required by Section 105 of the Evidence Act so as to get the benefit of Section 84 IPC. We are unable to hold that the crime was committed as a result of an extreme fit of anger. There is a reasonable doubt that at the time of commission of the crime, the appellant was incapable of knowing the nature of the act by reason of unsoundness of mind and, thus, he is entitled to the benefit of Section 84 IPC. Hence, the conviction and sentence of the appellant cannot be sustained.”

G 6. Nobody had appeared on behalf of the respondent. However, we have perused the records and bestowed our consideration to the submission advanced by Mr. Agarwal and we do not find any substance in the same. In view of the plea raised it is desirable to consider the meaning of the expression
H “unsoundness of mind” in the context of Section 84 of the Indian

SURENDERA MISHRA v. STATE OF JHARKHAND 141
[CHANDRAMAULI KR. PRASAD, J.]

Penal Code and for its appreciation, we deem it expedient to reproduce the same. It reads as follows:

“84. Act of a person of unsound mind.—Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.”

Section 84 of the Indian Penal Code is found in its Chapter IV, which deals with general exceptions.

7. 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. But what is unsoundness of mind? This Court had the occasion to consider this question in the case of *Bapu alias Gujraj Singh v. State of Rajasthan*, (2007) 8 SCC 66, in which it has been held as follows:

“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.”

8. The scope and ambit of the Section 84 of the Indian Penal Code also came up for consideration before this Court in the case of *Hari Singh Gond v. State of Madhya Pradesh*, (2008) 16 SCC 109 = AIR 2009 SC 31 in which it has been

A held as follows:

B “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 IPC. 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.”

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

G 10. Next question which needs consideration is as to on whom the onus lies to prove unsoundness of mind. In law, the presumption is that every person is sane to the extent that he knows the natural consequences of his act. The burden of proof in the face of Section 105 of the Evidence Act is on the accused. Though the burden is on the accused but he is not

H

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 Indian Penal Code will not come to its rescue, in case it is found that the accused knew that what he was doing was wrong or that it was contrary to law. In order to ascertain that, it is imperative to take into consideration the circumstances and the behaviour preceding, attending and following the crime. Behaviour of an accused pertaining to a desire for concealment of the weapon of offence and conduct to avoid detection of crime go a long way to ascertain as to whether, he knew the consequences of the act done by him. Reference in this connection can be made to a decision of this Court in the case of *T.N. Lakshmaiah v. State of Karnataka*, (2002) 1 SCC 219, in which it has been held as follows:

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

10. In *State of M.P. v. Ahmadull*, 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

A possess a sufficient degree of reason to be responsible for his acts unless the contrary is proved. Mere ipse dixit of the accused is not enough for availing of the benefit of the exceptions under Chapter IV.

B 11. In a case where the exception under Section 84 of the Indian Penal Code is claimed, the court has to consider whether, at the time of commission of the offence, the accused, by reason of unsoundness of mind, was incapable of knowing the nature of the act or that he is doing what is either wrong or contrary to law. The entire
C conduct of the accused, from the time of the commission of the offence up to the time the sessions proceedings commenced, is relevant for the purpose of ascertaining as to whether plea raised was genuine, bona fide or an
D afterthought."

D 11. In the background of what we have observed above, we proceed to consider the facts of the present case. The first
E evidence in regard to the unsoundness of mind as brought by the appellant is the medical prescription dated 18th October, 1987 (Ext. A-1) in which symptom of the appellant has been noted as psychiatric with paranoid features and medicine was
F advised for sleep. Other prescriptions are dated 9th January, 1988 (Ext. A) and 5th of September 1998 in which only medicines have been prescribed. Other prescriptions (Exts. A-5 to A-7) also do not spell out the disease the appellant was suffering but give the names of the medicines, he was advised
G to take. The occurrence had taken place on 11th of August 2000. From these prescriptions, the only inference one can draw is that the appellant had paranoid feeling but that too was not proximate to the date of occurrence. It has to be borne in
H mind that to establish that acts done are not offence and come within general exception it is required to be proved that at the time of commission of the act, accused by reason of unsoundness of mind was incapable of knowing that his acts were wrong or contrary to law. In the present case the prosecution has proved beyond all reasonable doubt that

immediately after the appellant had shot- dead the deceased, threatened his driver PW.1, Vidyut Kumar Modi of dire consequences. Not only that, he ran away from the place of occurrence and threw the country-made pistol, the weapon of crime, in the well in order to conceal himself from the crime. However, it was recovered later on. The aforesaid conduct of the appellant subsequent to the commission of the offence clearly goes to suggest that he knew that whatever he had done was wrong and illegal. Further, he was running a medical shop and came to the place of occurrence and shot dead the deceased. Had the appellant been a person of unsound mind, it may not have been possible for him to run a medical shop. We are of the opinion that the appellant though suffered from certain mental instability even before and after the incident but from that one cannot infer on a balance of preponderance of probabilities that the appellant at the time of the commission of the offence did not know the nature of his act; that it was either wrong or contrary to law. In our opinion, the plea of the appellant does not come within the exception contemplated under Section 84 of the Indian Penal Code.

12. As regards the decisions of this Court in the cases of *Mohinder Singh* (supra) and *Shrikant Anandrao Bhosale* (supra), relied on by the appellant same are clearly distinguishable. In those decisions, this Court on fact found that the accused at the time of commission of crime was suffering from Schizophrenia and in that background held that accused is entitled to the protection under Section 84 of the Indian Penal Code. Here on fact, we have found that the appellant was not suffering from unsoundness of mind at the time of commission of the crime and therefore the decisions relied on in no way advance the case of the appellant.

13. We do not find any merit in the appeal and it is dismissed accordingly.