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IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
B.R. GAVAI; J., M.M. SUNDRESH; J.
CRIMINAL APPEAL NO. 2010 OF 2010; 12 January, 2023
Prakash Nayi @ Sen *versus* **State of Goa**

Indian Penal Code, 1860; Section 84 - Indian Evidence Act, 1872; Section 105, 8 - The burden of proof does lie on the accused to prove to the satisfaction of the Court that one is insane while doing the act prohibited by law. Such a burden gets discharged based on a prima facie case and reasonable materials produced on his behalf. The extent of probability is one of preponderance. This is for the reason that a person of unsound mind is not expected to prove his insanity beyond a reasonable doubt. Secondly, it is the collective responsibility of the person concerned, the Court and the prosecution to decipher the proof qua insanity by not treating it as adversarial. Though a person is presumed to be sane, once there are adequate materials available before the Court, the presumption gets discharged - The behaviour and conduct before, during and after the occurrence has to be looked into. *(Para 8-9)*

Indian Penal Code, 1860; Section 84 - The existence of an unsound mind is a sine qua non to the applicability of the provision. A mere unsound mind per se would not suffice, and it should be to the extent of not knowing the nature of the act - A mere medical insanity cannot be said to mean unsoundness of mind. There may be a case where a person suffering from medical insanity would have committed an act, however, the test is one of legal insanity to attract the mandate of Section 84 of the IPC. There must be an inability of a person in knowing the nature of the act or to understand it to be either wrong or contrary to the law. *(Para 4-7)*

Code of Criminal Procedure, 1973; Chapter XXV; Sections 328 to 339 - Though procedural in nature, Chapter XXV becomes substantive when it deals with an accused person of unsound mind - There is not even a need for an application under Section 329 of Cr.P.C. in finding out as to whether an accused would be sound enough to stand a trial, rather it is the mandatory duty of the Court -The whole idea under the provisions discussed is to facilitate a person of unsound mind to stand trial, not only because of his reasoning capacity, but also to treat him as the one who is having a disability. The role of the Court is to find the remedial measures and do complete justice. *(Para 15-16)*

For Appellant(s) Mr. Aftab Ali Khan, AOR (SCLSC) Mr. M.Z. Chaudhary, Adv. Mr. Shahbaz, Adv. Mr. Arvind Kr. Kanva, Adv. Mr. Sayyed Imtiyaz Ali, Adv. Ms. Amna Darakshan, Adv. Mr. Ali Safeer Farooqi, Adv.

J U D G M E N T

M. M. Sundresh, J.

“Was’t Hamlet wronged Laertes? Never Hamlet. If Hamlet from himself be ta'en away, And when he's not himself does wrong Laertes, Then Hamlet does it not; Hamlet denies it. Who does it, then? His madness. if't be so, Hamlet is of the faction that is wronged; His madness is poor Hamlet's enemy.”

-William Shakespeare

(Source: Hamlet, W.S. (Play) Act-5 Scene-2 Line-245)

1. While acknowledging the hurt that he has caused to Laertes for causing the death of his father, whom he murdered by way of a mistaken identity, Hamlet pleads temporary madness. While pleading so, he disassociates himself from the act as if it was done by a third person and he was made to suffer the consequence. He thus pleads to treat him as a victim rather than an offender. Though the act of Hamlet does constitute a culpable homicide coming within the definition of Section 300 of the Indian Penal Code, 1860 an act of unsound mind would not attract the same**.** Through these lines, Shakespeare brings out the agony of a man having to justify his act of madness.

2. Raising the plea of insanity on the mandate of Section 84 of the Indian Penal Code, 1860 (hereinafter 'the IPC'), the appellant seeks reversal of the order of conviction passed by the Division Bench of the High Court of Bombay at Goa, confirming the order of the Additional Sessions Judge, S.G. Margao-II. As we are dealing with the seminal issue of applicability of Section 84 of the IPC and in the light of the focus made by the counsel for the appellant, we do not propose to go into the merits.

3. We have heard Shri Aftab Ali Khan, the counsel appointed from the Supreme Court Legal Services Committee.

SECTION 84 of The Indian Penal Code, 1860

"**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."

4. Section 84 of the IPC recognizes only an act which could not be termed as an offence. It starts with the words "nothing is an offence". The said words are a clear indication of the intendment behind this laudable provision. Such an act shall emanate from an unsound mind. Therefore, the existence of an unsound mind is a *sine qua non* to the applicability of the provision. A mere unsound mind *per se* would not suffice, and it should be to the extent of not knowing the nature of the act. Such a person is incapable of knowing the nature of the said act. Similarly, he does not stand to reason as to whether an act committed is either wrong or contrary to law. Needless to state, the element of incapacity emerging from an unsound mind shall be present at the time of commission.

5. The provision speaks about the act of a person of unsound mind. It is a very broad provision relatable to the incapacity, as aforesaid. The test is from the point of view of a prudent man. Therefore, a mere medical insanity cannot be said to mean unsoundness of mind. There may be a case where a person suffering from medical insanity would have committed an act, however, the test is one of legal insanity to attract the mandate of Section 84 of the IPC. There must be an inability of a person in knowing the nature of the act or to understand it to be either wrong or contrary to the law.

6. The aforesaid provision is founded on the maxim, *actus non reum facit nisi mens sit rea*, i.e., an act does not constitute guilt unless done with a guilty intention. It is a fundamental principle of criminal law that there has to be an element of *mens rea* in forming guilt with intention. A person of an unsound mind, who is incapable of knowing the consequence of an act, does not know that such an act is right or wrong. He may not even know that he has committed that act. When such is the position, he cannot be made to suffer punishment. This act cannot be termed as a mental rebellion constituting a deviant behaviour leading to a crime against society. He stands as a victim in need of help, and therefore, cannot be charged and tried for an offence. His position is that of a child not knowing either his action or the consequence of it.

7. We wish to place reliance on the following decisions of this Court:

- ***Surendra Mishra* v. *State of Jharkhand* (2011) 11 SCC 495**

"11. In our opinion, an accused who seeks exoneration from liability of an act under Section 84 of the Penal Code is to prove legal insanity and not medical insanity. Expression "unsoundness of mind" has not been defined in the 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 Penal Code."

- ***Hari Singh Gond* v. *State of Madhya Pradesh* (2008) 16 SCC 109**

"10. "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. 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..."

- ***Bapu @ Gajraj Singh* v. *State of Rajasthan* 2007 8 SCC 66**

"10. Section 84 embodies the fundamental maxim of criminal law i.e. *actus non reum facit nisi mens sit rea* (an act does not constitute guilt unless done with a guilty intention). In order to constitute an offence, the intent and act must concur; but in the case of insane persons, no culpability is fastened on them as they have no free will (*furios is nulla voluntas est*).

11. The section itself provides that the benefit is available only after it is proved that at the time of committing the act, the accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or that even if he did not know it, it was either wrong or contrary to law then this section must be applied. The crucial point of time for deciding whether the benefit of this section should be given or not, is the material time when the offence takes place. In coming to that conclusion, the relevant circumstances are to be taken into consideration, it would be dangerous to admit the defence of insanity upon arguments derived merely from the character of the crime. It is only unsoundness of mind which naturally impairs the cognitive faculties of the mind that can form a ground of exemption from criminal responsibility. Stephen in *History of the Criminal Law of England*, Vol. II, p. 166 has observed that if a person 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…"

Section 105 of the Indian Evidence Act 1872

"105. Burden of proving that case of accused comes within exceptions. —When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code, (45 of 1860), or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances."

8. The burden of proof does lie on the accused to prove to the satisfaction of the Court that one is insane while doing the act prohibited by law. Such a burden gets discharged based on a *prima facie* case and reasonable materials produced on his behalf. The extent

of probability is one of preponderance. This is for the reason that a person of unsound mind is not expected to prove his insanity beyond a reasonable doubt. Secondly, it is the collective responsibility of the person concerned, the Court and the prosecution to decipher the proof *qua* insanity by not treating it as adversarial. Though a person is presumed to be sane, once there are adequate materials available before the Court, the presumption gets discharged.

9. Section 105 of the Indian Evidence Act, which places the burden of proving, has its exceptions. Though, as a general principle, the onus is upon the person accused to bring his case under the exception, dealing with the case under Section 84 of the IPC, one has to apply the concept of preponderance of probabilities. The aforesaid provision has to be read along with Section 8 of the Indian Evidence Act. The better way to reconcile the aforesaid provision would be to have a look into the behaviour and conduct before, during and after the occurrence.

10. As Section 84 of the IPC has its laudable objective behind it, the prosecution and the Court have their distinct roles to play. The agency has to take up the investigation from the materials produced on behalf of the person claiming unsoundness. It has to satisfy itself that the case would not come within the purview of Section 84 of the IPC.

11. The Court on its part has to satisfy itself as to whether the act was done by a person with an unsound mind within the rigour of Section 84 of the IPC.

12. We wish to place reliance on the classical decision of this Court in ***Dahyabhai Chhaganbhai Thakkar* v. *State of Gujarat (AIR 1964 SC 1563)***, wherein the Court held that:

"(7) The doctrine of burden of proof in the context of the plea of insanity may be stated in the following propositions:

(1) The prosecution must prove beyond reasonable doubt that theaccused had committed the offence with the requisite mens rea; and the burden of proving that always rests on the prosecution from the beginning to the end of the trial.

(2) There is a rebuttable presumption that the accused was not insane,when he committed the crime, in the sense laid down by Section 84 of the Indian Penal Code: the accused may rebut it by placing before the court all the relevant evidence oral, documentary or circumstantial, but the burden of proof upon him is no higher than that rests upon a party to civil proceedings.

(3) Even if the accused was not able to establish conclusively that hewas 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."

13. This Court in the case of **Bapu (supra)** has held that:

"8. …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.

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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 *M'Naughton* rules of 19th century England. The provisions of Section 84 are in substance the same as those 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 (HL)]. Behaviour, antecedent, attendant and subsequent to the event, may be relevant in finding the mental condition of the accused at the time of the event, but not that remote in time. It is difficult to prove the precise state of the offender's mind at the time of the commission of the offence, but some indication thereof is often furnished by the conduct of the offender while committing it or immediately after the commission of the offence. A lucid interval of an insane person is not merely a cessation of the violent symptoms of the disorder, but a restoration of the faculties of the mind sufficiently to enable the person soundly to judge the act; but the expression does not necessarily mean complete or perfect restoration of the mental faculties to their original condition. So, if there is such a restoration, the person concerned can do the act with such reason, memory and judgment as to make it a legal act; but merely a cessation of the violent symptoms of the disorder is not sufficient."

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

"11. Section 84 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* v. *State of Jharkhand* (2011) 11 SCC 495 : (2011) 3 SCC (Cri) 232, 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* v. *Shera Ram* (2012) 1 SCC 602 : (2012) 1 SCC (Cri) 406, as follows: (*Shera Ram,* SCC p. 614, para 19)

"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 self-control, 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 ofunsoundness 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* v. *State of M.P.* (1970) 3 SCC 533 : 1971 SCC (Cri) 139, as follows: (SCC pp. 533-34, para 2)

"2. It is now well settled that the crucial point of time at which unsoundness of mind should be established is the time when the crime is actually committed and the burden of proving this lies on the accused. In *Dahyabhai Chhaganbhai Thakkar* v. *State of Gujarat* (1964) 7 SCR 361 : AIR 1964 SC 1563, 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 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 createdin 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* v. *State of U.P.* (1990) 3 SCC 190 : 1990 SCC (Cri) 378."

CHAPTER XXV OF THE CODE OF CRIMINAL PROCEDURE 1973

15. Chapter XXV of the Code of Criminal Procedure 1973 (hereinafter 'Cr.P.C.'), though procedural in nature, also becomes substantive when it deals with an accused person of unsound mind. A well-laid procedure is contemplated under Sections 328 to 339 of Cr.P.C. There is not even a need for an application under Section 329 of Cr.P.C. in finding out as to whether an accused would be sound enough to stand a trial, rather it is the mandatory duty of the Court. Under Section 330, the Court can even go to the extent of discharging such a person if his inability to stand trial continues with a rigid chance of improvement. As per Section 334 of Cr.P.C., the judgment of the Court shall include a specific finding that the act was committed due to unsoundness of mind, though it was actually done. The reason is simple as there cannot be an acquittal on the ground of unsoundness of mind unless the act is actually done.

16. The whole idea under the provisions discussed is to facilitate a person of unsound mind to stand trial, not only because of his reasoning capacity, but also to treat him as the one who is having a disability. The role of the Court is to find the remedial measures and do complete justice.

17. Having noted the scope and ambit of Chapter XXV of Cr.P.C., including the provisions incorporated by way of amendments in the year 2009, one has to take into account the fact that the Court has a larger role to play while considering the case under Section 84 of the IPC. If a friendly approach is required to be followed during the trial, when adequate powers have been conferred upon the Court to even discharge an accused on the ground of an unsound mind, the same reasoning will have to be applied with much force when it comes to Section 84 of the IPC.

18. We find adequate materials on the assessment and evaluation of legal and medical insanity, which are totally different from each other. We shall furnish the following relevant material on medical jurisprudence:

Jaisingh P. Modi, A Textbook on Medical Jurisprudence and Toxicology, 26th Edn. 2018, pg. 938

"**Ascertainment of Mental Illness: Clinical assessment and Questions that would require to be addressed. -**Forensic psychiatry attempts to help Courts determine the mental condition of the accused to determine whether the person could have intended to commit the crime and whether he is in a fit state to stand the trial. Medical insanity and legal insanity are not necessarily congruent. A mental illness that requires institutional care or administration of therapeutic care for medical insanity may not still be sufficient insulate the person from consequences of a criminal act and punishment if s/he is not legally insane. The assessment shall be to elicit such information as the law qualifies the general exception for proof of culpability under Section 84 of IPC. Is the accused mentally unsound? Is the mental unsoundness such that s/he is not capable of knowing (i) the nature of act; or (ii) the act is wrong, or (iii) contrary to law? These questions are directly related to testing the requirement of law. Is s/he capable of understanding the nature of proceedings in Court and stand trial? This shall be necessary to ensure that he has sufficient ability to consult with is counsel instruct him for a fair trial and defence. Every accused is bound to know the nature of proceedings against him/her. What was the mental condition of the accused, when the crime took place? Is it likely that the accused is malingering mental illness? The answers will point out to fixing the criminal responsibility to the acts attributed to him/her. Post-trial care may issue questions like: What is prognosis for cure for the mental illness? Will s/he be dangerous not to be let at large? In many a foreign jurisdiction, the questions may vary depending on the nature of proof of insanity and its intensity that is relevant under law to appraise criminal responsibility for the act: Could there have been an irresistible impulse to commit the act charged with? Was the mental condition so severe that s/he had no capacity to control his/her behaviour?

Was s/he under any form of delusion to inflict the criminal assault to fend off falsely perceived personal harm or injury?

The evaluation process.-The evaluation process generally includes, broadly, three major components or sources of data: (a) an interview with the accused (b) forensic assessment instruments, and (c) third party information including (but by no means limited to) collateral reports, witness statements, victim statements, police reports, and records of various sorts (i.e., mental health, treatment, school, medical, crime scene, etc.). Along with these sources, the role of delusions in evaluations of criminal responsibility (as the nature and quality of the accused 'delusionality') is often central in determining the extent of impairment in mental state at the time of the offence, especially in contested cases that may have a bearing on limiting responsibility if not completely exonerating him from the offence charged with. The role of the expert is not to present legal conclusions or formal psychopathological diagnoses. Rather, the role of examiner, as expert, is to import state of-the-art/science knowledge about the existence of various psychopathological conditions and their relationship to various behavioural, perceptual, cognitive and judgmental capacities into the legal/moral decisional process."

SCHIZOPHRENIA

19. Now, we shall come to the mental illness caused by Schizophrenia. We do not wish to go into the said issue as it being one within the exclusive knowledge of the experts, except to quote the relevant text available:

Jaisingh P. Modi, a textbook on Medical Jurisprudence and Toxicology, 26th Edn. 2018, pg. 922

"***(ii) Schizophrenia*. -**Kraepelin (Emil Kraepelin, German psychiatrist.), in 1896, named this disease as 'dementia praecox'. In 1911, Eugen Bleuler (Paul Eugen Bleuler, Swiss psychiatrist and Eugenicist.) introduced the term 'schizophrenia' which literally means disintegration of mind. The term dementia praecox was changed because it implied that the disease always ended in dementia, which it did not. The term praecox meant that the disease developed at the time of puberty or adolescence, but in many cases developed outside that period. Since it was thought that the disease always ended in dementia, it meant a hopeless prognosis, which created a spirit of defeatism in the minds of people."

Elizabeth A. Martin (2007), "Oxford Concise Medical Dictionary (7th edition)", pg. 642

"**Schizophrenia** n. a severe *mental illness characterised by a disintegration of the process of thinking, of contact with reality, and of emotional responsiveness. **Positive symptoms**, such as *delusions and *hallucinations (especially of voices), are common, and any *Schneiderian first-rank symptoms are particularly indicative of the illness. **Negative symptoms** include social withdrawal, impairment of ego boundaries, and loss of energy and initiative. Schizophrenia is diagnosed only if symptoms persist for at least one month. The illness can spontaneously remit, run a course with infrequent or frequent relapses, or become chronic. The prognosis has improved with *anti-psychotic drugs and with vigorous psychological and social management and rehabilitation. The many causes include genetic factors, environmental stress, and possibly illicit drug use."

- **American Psychiatric Association 2013, Diagnostic and Statistical Manual of Mental Disorders : DSM-5, 5th Edn, American Psychiatric Association, Washington DC. pg. 87**

"Schizophrenia spectrum and other psychotic disorders include schizophrenia, other psychotic disorders, and schizotypal (personality) disorder. They are defined by abnormalities in one or more of the following five domains: delusions, hallucinations, disorganized thinking (speech), grossly disorganized or abnormal motor behavior (including catatonia), and negative symptoms."

20. We thus, appreciate that Schizophrenia is certainly an over-powering mental illness.

FACTS AND ANALYSIS

21. The case of the prosecution is that the appellant attacked the deceased at a store in which he was working, which belonged to the brother of his grandfather, who did not have any issue. There was no motive and the overt act attributed is that he assaulted the deceased with an iron locking plate without any provocation and premeditation. The occurrence took place on 14.05.2004 at 6:00 a.m. It was seen by PW2. He took the material object and came out of the shop and went to the bus stand. Thereafter, he came back to the shop and left it there. He once again walked to the bus stand and was sitting on a chair. He neither moved away from the said place nor made any attempt to leave.

22. A treatment was indeed given to him at the GMC Hospital, Bhiwani in the State of Haryana prior to the occurrence. He was taken as an in-patient for a period from 17.11.2003 till 26.11.2003. He was suffering from anxiety neurosis with reactive depression and had symptoms of acid peptic disease and mild hypertension. The treatment given to him was akin to one meant for schizophrenia. Accordingly, he was prescribed the medicine 'Thioril'.

23. Before the Court of Sessions, an application under Section 329 of Cr.P.C. was filed on behalf of the appellant. Even while considering the application for bail, the Court noticed the inability of the appellant to understand the ongoing proceedings. Two doctors were examined as AWs 1 and 2, for the fact that he was indeed suffering from schizophrenia. AW2 was examined to show that he was taking the treatment earlier at GMC Hospital at Bhiwani. AW1 is the doctor who examined him after the occurrence on the orders of the trial court. She had deposed that he was indeed suffering from chronic schizophrenia. She was further examined as DW1. She once again made a clear deposition in tune with the certificate issued by her earlier that he was suffering from schizophrenia, and it must have been from the age of 14 or 15 years. The fact that he was unable to understand the act committed, and his subsequent incarceration was taken note of. While issuing the first certificate, this Government doctor in clear terms had stated that the appellant was not fit enough to stand the trial. However, she gave another certificate after treating him as an in-patient to the effect that he could stand trial thereafter.

24. The Court of Sessions and the High Court rendered the conviction on merits. The plea of insanity was also taken. It was accordingly rejected on the ground that PW6, the brother of the grandfather of the appellant, did not find any abnormality and that his mother has not been examined. Further, PW10 being the doctor who physically examined the accused after the incident, stated that the accused was mentally well.

25. However, the evidence of the Government doctor who deposed as AW1 and DW1 was brushed aside, so also the evidence of DW2, who was the uncle of the accused, and clearly spoke about the earlier treatment received by the accused. The evidence of AW2 was not even taken note of. The conduct, though subsequent, of the appellant, was ignored.

26. Before this Court, a report was called for from the District and Sessions Judge, Bhiwani as the medicine prescription and other documents could not be deciphered, and there was no discussion on the prior treatment given. We are of the view, that the aforesaid exercise would not have been warranted, had the evidence of AW2, which could be deciphered from the records furnished before us, been brought to the notice of the Court. In the report, it was stated that it could not be confirmed that the appellant was suffering from schizophrenia. We may note that the statements of the doctors were recorded after 16 years of the occurrence. In fact, they had also found it difficult to remember the nature

of the treatment given to the appellant. In any case, that is a material which actually will go in favour of the appellant as the factum of treatment is not in dispute, particularly when it is corroborated by the evidence of AW2 on more than one occasion.

27. We may also add that this report merely records the statements of the doctors who have not been examined before the Court. Suffice it to say, that the evidence of the Government doctor as DW1 who withstood crossexamination ought to have been accepted. The mere fact that the appellant subsequently became fit to face the trial is sufficient enough to render an order of acquittal as it is indicative of his prior insanity. We do feel that both the Trial Court and the High Court were influenced by the nature of the act while ignoring the condition of the appellant and the fact that the burden on the accused is one of preponderance of probability. We have also been informed that the appellant has recovered fully and mixed well with the society.

28. For the aforesaid reasons, we are unable to give our imprimatur to the conviction rendered against the appellant as he is certainly entitled to the benefit conferred under Section 84 of the IPC.

29. The order dated 25.07.2006 of the trial court of conviction and sentence of the appellant punishable under Section 302 of the IPC and the judgment and order dated 02.06.2008 of the High Court affirming the same are set aside.

30. The appellant is acquitted of all the charges charged with. The bail bonds of the accused shall stand discharged. Pending application(s), if any, shall stand disposed of.