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**In the High Court of Punjab and Haryana at Chandigarh****CRA-D-363-DB-2013 (O&M)****Reserved on: 16.1.2025****Date of Decision: 4.2.2025**

Dhanna Ram

.....Appellant

Versus

State of Haryana

.....Respondent

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE VIKAS SURI**

Argued by: Ms. Sharmila Sharma, Advocate (Amicus Curiae) with
Mr. H.P.S.Ishar, Advocate
for the appellant.

Mr. Pardeep Prakash Chahar, Sr. DAG, Haryana.

SURESHWAR THAKUR, J.

1. The instant appeal is directed against the impugned verdict, as made on 21.3.2013, upon Sessions Case bearing No. 3 of 2012, by the learned Sessions Judge, Panchkula, wherethrough in respect of charges drawn against the accused-appellant qua offences punishable under Sections 302 and 376(f) IPC, thus the learned trial Judge concerned, proceeded to record a finding of conviction against him under Section 302 IPC.

2. Moreover, through a separate sentencing order dated 22.3.2013, the learned trial Judge concerned, sentenced the convict-appellant to undergo life imprisonment for an offence punishable under Section 302 of the IPC, besides also imposed, upon the convict-appellant, the sentence of fine, comprised in a sum of Rs. 5000/-, and, in default of payment of fine amount, she sentenced the convict-appellant to undergo imprisonment for a period of six months.

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3. The period of detention undergone by the convict-appellant, during the investigations, and, trial of the case, was, in terms of Section 428 of the Cr.P.C., rather ordered to be set off from the above imposed sentence(s) of imprisonment.

Factual Background

4. The genesis of the prosecution case becomes embodied in the appeal FIR, to which Ex. PE is assigned. The narrations carried in Ex. PE are, that Rita Devi wife of Dhanna Ram accused made a complaint to the police on 15.11.2011, wherein she has stated that she had been married to Dhanna Ram for the last ten years and had four children. The eldest daughter, Simran and eldest son Ankush had died on account of illness.

5. On the fateful night they had dinner as usual and she and her husband alongwith the two children Mansi aged 3 years and Vishnu aged one year went to sleep. At about 2/2.30 A.M., she heard the shrieks of her daughter Mansi. She woke up and saw her husband strangulating their daughter. She intervened and tried to save her daughter but she was pushed, as a result she fell down. The complainant alleged therein that her husband was saying that she (Mansi) was a witch and would eliminate his son. The complainant again ran to rescue her daughter but she was thrown back. Dhanna Ram then picked up a "Tava" and hit his daughter. The complainant shouted for help. She further stated therein, that their neighbour Mukh Ram and some other persons arrived and on seeking them, her husband fled from the spot. The complainant had stated that her daughter was killed by her husband. On the basis of the said statement, the appeal FIR became registered against the accused.



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Investigation proceedings

6. During the course of investigations, the police reached the spot and a photographer was called at the crime scene. Accused Dhanna Ram was produced before one Hukam Chand, before whom the accused suffered an extra judicial confession. The accused was interrogated. He suffered statement Ex.PD and got his blood stained shirt and vest recovered and stated that he had raped his daughter. After conclusion of investigations, the investigating officer concerned, proceeded to institute a report under Section 173 of the Cr.P.C., before the learned committal Court concerned.

Committal Proceedings

7. Since the offences under Section 302 and 376(f) of the IPC were exclusively triable by the Court of Session, thus, the learned committal Court concerned, through a committal order made on 13.1.2012, hence proceeded to commit the accused to face trial before the Court of Session.

Trial Proceedings

8. The learned trial Judge concerned, after receiving the case for trial, made an objective analysis of the incriminatory material, adduced before her. Resultantly, she proceeded to draw charges against the accused, for offences punishable under Sections 376(f) and 302 IPC. The afore drawn charges were put to the accused, to which he pleaded not guilty, and, claimed trial.

9. In proof of its case, the prosecution examined 15 witnesses, and, thereafter the learned Public Prosecutor concerned, closed the prosecution evidence.

10. After the closure of prosecution evidence, the learned trial Judge concerned, drew proceedings, under Section 313 of the Cr.P.C., but



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thereins, the accused pleaded innocence, and, claimed false implication. The accused led two defence witnesses into the witness box.

Submissions of the learned counsels for the appellant

11. The learned counsels for the aggrieved convict-appellant have argued before this Court, that both the impugned verdict of conviction, and, consequent thereto order of sentence, thus require an interference. They support the above submission on the ground, that they are based on a gross misappreciation, and, non-appreciation of evidence germane to the charge. They further submit that the plea of unsoundness of mind, as became raised by the appellant before the learned trial Court, became duly corroborated by the medical record. They also submits that since the appellant did discharge the onus cast upon him thus to prove the plea of insanity, thereby the onus shifted upon the prosecution to prove, that the accused was not of unsound mind at the time of commission of offence. Furthermore, the learned counsels submit that the appellant was kept in isolation ward, with effect from 17.11.2011, thus owing to psychiatric illness, and, was also being treated by the psychiatrist in General Hospital, Ambala. Moreover, since the supra factum also becomes corroborated by the statement of Dr. K.S.Rana (DW-2), thereby the exception to criminal liability, as becomes created under Section 84 becomes proven. Resultantly, it is prayed that both the impugned verdict of conviction, and, consequent thereto order of sentence, be quashed and set aside.

Submissions of the learned State counsel

12. On the other hand, the learned State counsel has argued before this Court, that the verdict of conviction, and, consequent thereto sentence(s) (supra), as become imposed upon the convict, are well merited, and, do not require any interference, being made by this Court in the exercise of its appellate jurisdiction. Therefore, he has argued that the instant appeal, as



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preferred by the convict, be dismissed.

Inference of this Court

13. Before analyzing the statements of the witnesses concerned i.e. PW-1, PW-2 and PW-12, whereons the present appellant has banked the plea of insanity, it is necessary to allude to the pre-requisites, thus in proof whereof cogent evidence to be adduced, whereby alone the convict would be entitled to claim the benefit of the exception to criminal liability, as becomes embodied in Section 84 IPC.

Unsoundness of mind

A person suffering from unsoundness of mind is Non compos mentis i.e. 'not of sound mind'. Compos mentis means a composed mind. Non compos mentis means not having control or composure over one's mind. Unsoundness of mind may be temporary such as in case of lunatics, permanent (idiocy), natural or supervening, by birth or by illness, e.g., Schizophrenics, and sometimes also by extreme consumption of, or addiction to alcohol or drugs.

Unsoundness to exist at the time of the commission of the offence -

Whenever a plea of legal insanity is set up, the court has to consider whether at the time of commission of the offence, the accused was suffering from unsoundness of mind or not. The crucial point of time for ascertaining the state of mind of the accused is the material time when the offence takes place. In the case of *Amrit Bhushan Gupta v. Union of India*, AIR 1977 SC 608, it was held that "unless the Court comes to the conclusion that the accused was insane at the point of time he committed the offence he cannot be absolved of the responsibility of the offence even if it is found by the Court that he was insane either earlier or in the later point of time of the commission of offence". If the accused is at that crucial moment found to be laboring under such a defect of reason as not to know the nature of the act he

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was doing, or that even if he knew it, he did not know it was either wrong or contrary to law then section 84 applies. The state of mind which entitles the accused to avail the benefit of Section 84 of the Indian Penal Code is to be established from the circumstances which preceded, attended and followed the crime. There is a duty on the defence to prove the unsound state of mind of the accused at the time of commission of the offence. One who is subject to recurring fits of insanity will be entitled to exemption from criminal liability only if he was subjected to such a fit at the time of the commission of the crime. If he was capable of understanding the nature and consequences of his actions at the time when he committed the offence, he would not be entitled to the protection of Section 84 and would be liable to punishment.

Incapacity in the accused person to know

The words ‘incapable of knowing’ clarifies that an accused has to prove that he was rendered incapable of understanding his actions owing to unsoundness of mind. The capacity to know a thing is quite different from what a person knows. Whether he knew the nature of his actions or not is immaterial because what is protected under Section 84 is an inherent or organic incapacity and not a wrong or erroneous belief which might be the result of perverted potentiality. This incapability may be due to arrested development of the mind, sudden fit of insanity or delusion or some other medically accepted ground. In the case of *Lakshmi v. State, AIR 1959 ALL 534*, the Court observed, “A person might believe so many things. His beliefs can never protect him once it is found that he possessed the capacity to distinguish between right and wrong. If his potentialities lead him to a wrong conclusion, he takes the risk and law will hold him responsible for the



deed which emanated from him. What the law protects is the case of a man in whom the guiding light that enables a man to distinguish between right and wrong and between legality and illegality is completely extinguished. Where such light is found to be still flickering, a man cannot be heard to plead that he should be protected because he was misled by his own misguided intuition or by any fancied delusion which had been haunting him and which he mistook to be a reality. Our beliefs are primarily the offsprings of the faculty of intuition. On the other hand the content of our knowledge and our realization of its nature is born out of the faculties of cognition and reason. If cognition and reason are found to be still alive and gleaming, it will not avail a man to say that at the crucial moment he had been befogged by an overhanging cloud of intuition which had been casting its deep and dark shadows over them.”

Knowledge of nature of the act

Nature of the act refers to the physical nature and quality of the act, rather than the moral quality. It covers those situations wherein the doer does not know what he is physically doing. For example, a person who cuts another's finger under the delusion that he is chopping a vegetable; or a person who strikes another, and in consequence of an insane delusion thinks he is breaking a jar. In both these examples the accused is not aware of the nature of his act. In the case of *Chirangi v. State*, 1952 CrilJ 1212, the accused, Chirangi, Lohar, a 45 year old widower who was very much devoted to his 12 year old son, was tried for killing his son with an axe while they had gone to Budra Meta atop a hillock. In defence he pleaded that he killed his son under a delusion believing him to be a tiger who was about to attack. Medical testimony showed that it was possible for Chirangi, who was



suffering from bilateral cataract prior to the relevant date, to have because of this disability mistaken 'bona fide' his son for a tiger. There was an abscess in his leg could have produced a temperature which might well have been responsible after the fall for a temporary delirium which might have created a secondary delusion to magnify the image created by the defect in vision. Chirangi suffered from cardio-vascular disease which would have resulted in temporary confusion, and the injury to his eyebrow could have caused a state of concussion during which he might have inflicted the injuries on his son without being conscious of his actions. All this showed clearly enough that Chirangi's fall combined with his existing physical ailments could have produced a state of mind in which he in good faith thought that the object of his attack was a tiger and was not his son. The appellant's conduct after the occurrence was in consonance with that estimate, and it was manifest that he had had no intention of doing wrong or of committing any offence. Thus he was acquitted.

Knowledge of wrongfulness of act or the act being contrary to law

Knowledge of wrongfulness of act implies the lack of substantial capacity in the accused person to know or appreciate that his conduct is wrong. Section 84 applies where a person, as a result of mental disease or defect, lacks substantial capacity to know or appreciate either that the conduct was against the law or that it was against commonly accepted moral principles, or both. For example:

- (i) A person may kill a child under an insane delusion that he is saving him from sin and sending him to heaven. Here he is incapable of knowing by reason of insanity that he is doing what is morally wrong; or



(ii) A person may under insane delusion believe an innocent man whom he kills to be a man that was going to take his life in which case, by reason of his insane delusion, he is incapable of knowing that he is doing what is contrary to the law of the land.

In the case of *Ashiruddin Ahmed v. The King*, AIR 1919 Cal 182, the accused had a dream in which he was commanded by someone in paradise to sacrifice his own son of five years. The next morning the accused took his son to a mosque and killed him by thrusting a knife in his throat. He then went straight to his uncle, but, finding a chaukidar nearby took his uncle to a tank at some distance and slowly told him the story. On these facts it was held by a Bench of the Calcutta High Court that the accused did not know that his act of killing his son was wrong as he was labouring under a belief that his dream was a reality. Acting under delusion of his dream, he made this sacrifice believing it to be right. Thus he was granted the defence of insanity under Section 84.

However, the above judgment has been criticized in later judgments. In the case of *Lakshmi v. State* (supra) the court observed, “We find ourselves unable to endorse this view of section 84, I.P.C., and must therefore, express our respectful disagreement with it. We are further of opinion that once this view is accepted to be correct, it will lead to serious consequences as it will be open to an accused in every case to plead that he had dreamt a dream enjoining him to do a criminal act, and believing that his dream was a command by a higher authority, he was impelled to do the criminal act, and he was therefore, protected by section 84. We are of opinion that such a plea would be untenable, and would not fall within the four corners of section 84.”

**BURDEN TO PROVE INSANITY LIES ON THE ACCUSED**

The doctrine of burden of proof in the context of the plea of insanity was stated by the Hon'ble Supreme Court in the case of T.N. Lakshmaiah v. State of Karnataka, AIR 2001 SC 3828 in the following propositions:

- i. The prosecution must prove beyond reasonable doubt that the accused had committed the offence with the requisite mens rea and the burden of proving that always rests on the prosecution from the beginning to the end of the trial.
- ii. 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 party to civil proceedings i.e. on a preponderance of probabilities.
- iii. 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.

In the case of Butu @ Madhu Oram v. State, 1985 (II) OLR 398, the Court explained that accused is not to be called upon to prove the ingredients of section 84, IPC beyond reasonable doubt in order to get an acquittal. Though the burden lies on the accused to prove his insanity at the time of occurrence it will be sufficient if the materials on record lead to an inference that the requirements of section 84, IPC may be reasonably



probable. Such an inference can be drawn from materials on record, past history of the accused, conduct of the accused during the occurrence and thereafter. Absence of motive though not a sine qua non, is a relevant factor for consideration.

V. ‘MCNAUGHTEN RULES’, THE ‘IRRESISTIBLE IMPULSE TEST’ AND THE ‘DURHAM RULE’

McNaughten rules, are principles expounded in 1843 by a panel of fifteen judges in the House of Lords in response to five hypothetical questions asked by the Lord Chancellor to understand the application of law to determine the liability for crimes committed by mentally challenged people. These principles lay down a standard to test the criminal liability of persons of unsound mind. The McNaughten rules also known as the "right-wrong" test, required the acquittal of defendants who could not distinguish right from wrong.

In 1929, the District Court of Columbia developed the “irresistible impulse” test which allowed a jury to inquire as to whether the accused suffered from a "diseased mental condition" that did not allow him or her to resist an insane impulse. It required a jury's determination that the accused was suffering from a mental disease and that there was a causal relationship between the disease and the act. In the year 1954, the Durham rule was adopted by an American Court in the case of *Durham v. U.S.*, 214 F.2d 862. Popularly known as the ‘product test’ the rule lays down that “an accused is not criminally responsible if his unlawful act was the product of mental disease or mental defect”. This rule perpetuated the dominant role of expert testimony in determining criminal responsibility instead of a jury. However, in subsequent cases the courts overturned this rule and it was rejected by the federal courts, because of its broad spectrum and range which helped people



such as alcoholics and drug addicts to seek exemption from criminal liability. The Indian law on insanity contained in section 84 of the IPC is loosely based on the M'Naughten's principles.

VI. ASCERTAINING UNSOUNDNESS

When a Magistrate holding an inquiry has reason to believe that the person against whom the inquiry is being held is of unsound mind and consequently incapable of making his defence, the Magistrate shall inquire into the fact of such unsoundness of mind, and shall cause such person to be examined by the civil surgeon of the district or such other medical officer as the State Government may direct, and thereupon shall examine such surgeon or other officer as a witness and shall reduce the examination to writing. The words "reason to believe" mean a belief which a reasonable person would entertain on facts before him. The burden lies on the accused to establish that he was suffering from the unsoundness of mind. The provisions regarding the enquiry in the unsoundness of mind are mandatory and the Magistrate is bound to enquire before he proceeds with the case. Such enquiry is to be held at the threshold. The plea of medical insanity must first be determined by recording the medical evidence. The mandate of Section 329 of the Code is that when the plea of insanity is raised before a Court it shall try the fact of unsoundness of mind and incapacity of the accused in the first instance. Sub-section (2) of this section makes, the preliminary trial, of this fact, a part of the trial before the Court. 15 According to Section 2(w) of the Mental Healthcare Act, 2017 "prisoner with mental illness" means a person with mental illness who is an under-trial or convicted of an offence and detained in a jail or prison. The conduct of the accused, from the time of the commission of the offence upto the time the proceedings commenced, is



relevant for the purpose of ascertaining as to whether the plea of unsoundness raised was genuine, bona-fide or an after-thought. Courts usually rely on the following to ascertain the state of mind of the accused at the time of offence.

- i. Presence or lack of motive.
- ii. Deliberation and preparation
- iii. Manner in which the crime was committed
- iv. Nature of weapon used.
- v. Attempt at concealment of the dead body, weapon of offence or other telltale signs.
- vi. Efforts to avoid detection or evade apprehension by authorities.
- vii. Conduct of the appellant immediately before the incident, at the time of the incident and shortly after the incident.
- viii. Subsequent conduct of the appellant and his conduct during the trial of the case.
- ix. Previous history if any of attacks of insanity, hospitalization or treatment of insanity.
- x. Family history of unsoundness if any as sometimes heredity plays a part

In the case of Raghu Pradhan v. State Of Orissa, 1993 CriLJ 1159, he accused pleaded unsoundness of mind as a defence to the charge of murdering his wife and minor children. He was also tried for assaulting a neighbor who tried to intervene and the constable who came to apprehend him. It was clear from the evidence of the witnesses and the discharge certificate that prior to the occurrence the appellant was becoming insane periodically and during that period he was assaulting persons at random for which he was being treated medically. It had also been proved that there was absence of motive for commission of such crime as he had cordial relations with his wife. PW 2 had categorically deposed that at the time of occurrence



the accused was behaving like a mad man. The evidence of the A. S. I. (PW 16) also disclosed that immediately after the occurrence when he reached the place the accused was in a violent mood. Accused was sent for medical examination as his behaviour was abnormal. The opinion of the Doctor (PW 19), the medical report and opinion of D. W. 1 proved that immediately after the occurrence there was contusion in the brain of the accused which is one of the symptoms of insanity. Thus after considering all the materials on record, the Court concluded that when the appellant committed the offence, he was not in a position to understand the nature of his act owing to insanity at the crucial point of time. The facts, evidence and circumstances, indicated above would clearly make out a case of legal insanity as provided in section 84 of the Code.

VII. PREMENSTRUAL STRESS SYNDROME AS A DEFENSE TO CRIMINAL CHARGE

"Premenstrual stress syndrome (PMS syndrome) is a disorder afflicting many women.' The symptoms of PMS syndrome include excessive thirst and appetite, bloating, headaches, anxiety, depression, irritability, and general lethargy. Diagnosis depends on the timing of the symptoms rather than on their type, number, or severity; not all patients experience all possible symptoms. The symptoms develop and increase in intensity from seven to fourteen days prior to the onset of menses and disappear rapidly thereafter. PMS syndrome can range in severity from mild to incapacitating, in both a physical and psychological sense.

Hormonal changes can cause women to commit crime during menstruation. Premenstrual tension is often accompanied by irritability, lethargy, depression and water retention, and these symptoms alone may be



responsible for certain crimes, for example, irritability and loss of temper may lead to violence and assault, lethargy may lead to child neglect, and depression may lead to suicide. Menstrual psychosis is a term describing psychosis with a brief, sudden onset related to the menstrual cycle, often in the late luteal phase just before menstruation. The symptoms associated to it are dramatic and may include delirium, mania or mutism. Premenstrual dysphoric disorder (PMDD) is a very severe form of premenstrual syndrome (PMS), which can cause many emotional and physical symptoms every month during the week or two before you start your period. In the matter of Regina v. Craddock, the accused Sandie Craddock was an East London barmaid with 45 prior convictions. She was accused of stabbing a fellow barmaid thrice in her chest, in a fit of rage. She pleaded diminished responsibility owing to premenstrual stress syndrome. Craddock was convicted only of manslaughter and released on probation. A year later Craddock was re-arrested for an attempt to murder a policeman. Convicted on three new charges, Craddock again argued premenstrual stress syndrome to mitigate her sentence and again received probation which was also upheld in appeal. The Indian law on PMS induced insanity is not well developed. However in the case of Kumari Chandra v. State of Rajasthan, 21 three children were taken by the accused who was their bhua (aunt) from school on the pretext of showing them a temple. She further instructed them to follow her so as to show them the well of Nasia also. Thereupon, she took all the three at the well and then pushed them into the well. Two children could be pulled out alive while one drowned. In appeal against the judgment of a trial court convicting her under sections 302 and 307 IPC, she pleaded insanity triggered by premenstrual stress syndrome. The court ruled that, “The



appellant has been able to probabalize her defence that at the time of incident she was suffering from unsoundness of mind and was labouring under a defect of reason triggered by premenstrual stress syndrome. Even if the material placed before the court is held to be not sufficient to discharge the burden under Section 105 of the Evidence Act, 22 it still raises a reasonable doubt as to the existence of mens rea on the part of the accusedappellant, thus making out a case for extending benefit of doubt to her.”

VIII. LEGAL INSANITY DIFFERENT FROM MEDICAL INSANITY

Every person suffering from mental disease cannot be allowed to avoid responsibility for a crime by invoking the plea of insanity. A person whose cognitive faculties are so impaired as to make it impossible for him to know the nature of his act or that what he was doing was wrong or contrary to law, is exempted from criminal responsibility and comes within the purview of legal insanity.

Legal insanity means incapability of a person to understand the nature or consequences of his actions at the time of the commission of the offence. Medical insanity deals with a person’s behavior and conduct at all times. A person subject to fits of insanity will be termed as medically insane. Mere abnormalities of mind, partial delusion, irresistible impulses or compulsive behavior of psychopaths all constitute instances of medical insanity. It includes cases where insanity affects the emotions and the will subjecting the offender, while the cognitive faculties are left unimpaired. A person subjected to fits of insanity will get the defence of legal insanity only if he was subjected to the fit of insanity at the time of the commission of the crime. It is only unsoundness of mind which materially impairs the cognitive



faculties of the mind that can form a ground for exemption from criminal liability. In order to constitute legal insanity the nature and extent of the unsoundness of mind required is such as renders the offender incapable of knowing the nature of the act, or that he is doing what is wrong or contrary to law. It is only legal insanity that is a total defence to a criminal charge. Medical insanity needs to be accompanied by legal insanity in order to be accepted as a defence.

IX. CONCLUSION

Insanity does not render a person inhuman. Human rights continue to vest in all human beings irrespective of their mental condition. Persons of unsound mind who commit a criminal act are not criminals. They do not deserve punishment, however, they require medical help. They can be a source of threat to the society and to their own selves, thus it is important to keep them under supervision. Punishment cannot reform them so they are to be placed either in safe custody or delivered to some relative or friend or be kept in an asylum.

Whenever a person is acquitted on the grounds of insanity, the court shall specifically state its findings whether the act had been committed by the accused or not. Upon acquittal such persons are to be kept in safe custody in such place and manner as the court deems fit. Some friend or relative may be allowed to keep the person upon their making an application and furnishing security to the Court that such person shall be properly taken care of and prevented from doing injury to himself or any other person. But, where it is not possible for a mentally ill person to live with his family or relatives, or where a mentally ill person has been abandoned by his family or relatives, the appropriate Government shall provide support as appropriate



including legal aid and to facilitate exercising his right to family home and living in the family home. Under Section 27, a person with mental illness shall be entitled to receive free legal services to exercise any of his rights given under the law and it shall be the duty of magistrate, police officer, person in charge of such custodial institution as may be prescribed or medical officer or mental health professional in charge of a mental health establishment to inform the person with mental illness that he is entitled to free legal services under the Legal Services Authorities Act, 1987 or other relevant laws or under any order of the court if so ordered and provide the contact details of the availability of services.

14. The principles which can be summarized from the above are that-

- (a) The benefit of Section 84 IPC is to be endowed to the accused only when he establishes the said plea through the circumstances which preceded, attended and followed the crime.
- (b) The onus is on the defence to prove the unsoundness of mind of the accused at the time of commission of the crime event.
- (c) The accused who is subjected to recurring fits of insanity will be entitled to exemption from criminal liability, only if he was subjected to such a fit at the time of the commission of the crime. However, if he was capable of understanding the nature and consequences of his actions at the time when he committed the offence, thereupon he would not be entitled to the protection of Section 84 and



would be liable to punishment.

- (d) The inherent requirement of Section 84 IPC is the existence of organic incapacity in the accused, and, the said incapability may be on account of lack of development of the mind, sudden fit of insanity or delusion or some other medically accepted fact or in the face of the organic incapacity or lack of development of mind, thus the accused becoming disabled to distinguish between right and wrong and between legality and illegality.

15. Bearing in mind the above principles, they are required to be mounted, besides are required to be applied to the hereafter made acquiescence, as occur in the cross-examination of the eye witness to the occurrence.

Analysis of the depositions of the prosecution witnesses

16. Complainant Rita Devi, wife of accused Dhanna Ram, stepped into the witness box as PW-12, and, in her examination-in-chief, she thus made an articulation, that she was married to accused Dhanna Ram about ten years ago, and, out of the said wedlock, four children were born. Out of said children, two elder kids namely Ankush and Simran had died, and, deceased Mansi was aged about 3½ years. She further deposed that on 15.11.2011, in the night she heard shrieks of her daughter Mansi, whereupon she woke up and saw that her husband was trying to strangle her. When she tried to save her daughter from her husband, he pushed her. She again tried to save her daughter and, removed the knife from the hands of the accused. The said witness further deposed that the accused tried to tear apart the legs of



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the deceased, and, she went to open the door to call the neighbours. She further states that thereafter she did not know what happened inside the house, and, she saw her daughter with blood oozing from her head. Subsequently when she opened the door of her house, her husband left the house for police post. The said witness further deposed that she found a bent *tava* soaked with blood, and, that blood was splashed all over the place. The said witness further deposed that the police came at the spot and she got recorded her complaint (Ex. PQ) and signed the same at Mark A. Thereafter, the said witness was declared hostile.

17. After the said witness becoming declared hostile, thereupon she was subjected to cross-examination by the learned Public Prosecutor concerned. During the course of her cross-examination she denied that she had told the police that Dhanna Ram had picked up a *tava* and inflicted injuries rather with the user thereof on her daughter. However, the said witness became confronted with portion A to A of Ex. PQ, wherein, the said fact was recorded. However, in the cross-examination as became conducted upon the said witness, by the learned defence counsel, she made therein the hereinafter extracted echoings.

“My husband Dhanna Ram was having fits of madness for about two-two and half years. We had not got him treated from any hospital but only got treatment from a ‘Tantrik’ and he had given ‘Tabeej’ treatment to my husband and whenever he used to throw away that Tabeej, he used to behave abnormally. Prior to our going to sleep, my husband was not behaving normally. At the time of those spell of fits, my husband claimed himself to be Vaishnu Devi and used to say that he will kill everybody. He used to say that Vaishnu Devi tells him that he has to finish all the evils on this earth. My husband had also hit one Anoop in our neighbour with a brick on his face over a trival matter when the said Anoop had slapped my daughter lovingly. My husband used to love my daughter Mansi very much and even used to hit me whenever I scolded her. My husband never remembered what he had done during the spell of those fits of madness.

x x x x

My husband was hurt due to death of our two siblings but was



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normal then. He only started behaving abnormally for about two-two half years. Once we had gone to Vaishnu Devi and our daughter went missing, upon which my husband got upset and stated that if the daughter is not found, he would end his life.

x x x x"

18. It is on the above underlined portion, which exists in the cross-examination of the witness (supra), that the defence has founded the plea that the crime event falls within the domain of Section 84 IPC, with manifestations therein vis-a-vis the principles qua if an accused suffers from legal insanity, inasmuch as, at the time of commission of the crime event, he was unaware of the nature the act, or that what he was doing, thus is either wrong or contrary to law. Resultantly, it is argued, that since the said ingredients cast in Section 84 IPC become cogently established. As such, it is further argued, that when the said exception became proven by the deposition comprised in the cross-examination of the witness (supra), thereupon the onus shifted upon the prosecution to lead rebuttal evidence thereto. However, when after shifting of the apposite onus, upon, the prosecution, yet the prosecution did not adduce any cogent rebuttal evidence theretos, thereby this Court is required to be endowing the benefit of Section 84 IPC to the accused.

19. The reason for stating so becomes founded upon the application of the hereinabove principles, vis-a-vis the supra made echoings by the witness (supra) in the cross-examination, as became conducted upon her by the learned defence counsel. The said principles become culled out by this Court, after its making an analyses, of the relevant principles governing the makings of well application(s) qua the principles engrafted in Section 84 IPC.

20. Since the prime witness, who is also the eye witness to the occurrence, has clearly underscored in her cross-examination, as became



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made upon her by the learned defence counsel that the present appellant was suffering from some mental ailment, which resulted in his previously behaving abnormally. Moreover when therebys, it emerges, that the said abnormality which beset him, thus was a repeatedly recurring abnormality. In addition, when though he was not stated by the witness (supra) to be undertaking psychiatric treatment, yet when he is stated to be wearing a *tabeez*, to rid himself of the said abnormality, besides in her further stating that as and when, he was shedding the said *tabeez*, thereupon he was abnormally misbehaving. Resultantly therebys, and, also when the said witness unrebuttedly stated that the appellant used to constantly speak that he was under some misconception that he was receiving claring calls from Maa Vaishno Devi to thus eliminate all the evil, which earlier also led him to, for no cause, hit his neighbour one Anoop with a brick, but only on a trivial matter relating to the said Anoop lovingly slapping her deceased daughter. Moreover also when she further stated that the present appellant used to love his daughter, and, used to even chastise her, as and when she scolded her. Consequently, when she has also stated, that her husband never remembered that what he had done during the spell of those fits of madness, as but a natural corollary thereto, the cumulative therefrom inferences but are that-

- (a) No mens rea etching in the mind of the present appellant at the time of the crime event taking place.
- (b) Since the present appellant has been unrebuttedly proven by the witness (supra) to be labouring under some mental disorder for a prolonged duration of time.
- (c) The said abnormality though being treated through his



wearing a *tabeez*, but as and when the appellant was shedding the said *tabeez*, his taken to behave abnormally.

(d) Since therebys, the appellant was under some organic disability, wherebys he was precluded to distinguish between right and wrong, wherebys, it is to be further inferred, that at the time of commission of the crime event, he was not able to distinguish that what he was doing, was either wrong or contrary to law. Resultantly therebys, he is deemed to become encumbered with legal insanity, as defined in Section 84 IPC.

(e) The unrebutted testification of the witness (supra), that the appellant was fond of his daughter, when becomes corroborated from the medical evidence, spoken by DW-2 Dr. K.S.Rana, who has also testified that on examination of the appellant, he was found to be under the influence of some super natural power/religious power/Vaishnu Devi/voices/directions, which as per the medical term, is known as ‘Auditory Hallucination’. Since even the said evidence remained unrebutted.

21. To prove the plea of insanity, the accused has also led Dr. K.S.Rana into the witness box as DW-2, who proved the medical record of the accused Ex. DA. The said witness in his examination-in-chief has made the hereinafter extracted echoings.

“x x x x

I had examined the accused present in the Court firstly on 19.11.2011 on my visit to jail.

At that time, he was presented with muttering to self lack of sleep, talking irrelevantly, weeping and crying in between, suspicious behaviour, violent and aggressive behaviour off and on. The



inmates had also disclosed about the irrelevant behaviour of Dhanna Ram on being asked. On examination, I found that the patient was under the influence of some super natural power/religious power/Viashnu Devi/voices/directions which as per medical terms is known as 'Auditory Hallucination'. At that time his thoughts were pre-occupied with instructions of Vaishnu Devi. He had also deterioration in perception, affect and cognition (mental function). He was kept on anti-psychiatric medications and followed him repeated jail visit. He was being maintained on anti-psychiatric medications. His dose of medicine was subsequently reduced after 18.5.2012 and he is maintaining satisfactory thereafter.

The disease with which the accused is suffering, and when the patient is under the influence of the psychiatric signs and symptoms as mentioned he is unaware about the act done by him during that spell. After 10..7.2012, he is maintaining well without medications."

22. A circumspect reading of the above articulations occurring in the testification of DW-2, discloses, that the same corroborates the testifications of PW-1, PW-2, and, of PW-12, whereby also the defence has proven the plea of insanity. Since the defence has proven the said plea, thereby too, the onus shifted onto the prosecution to shred the efficacy of the said raised plea through leading cogent rebuttal evidence theretos, but when the said onus remained undischarged by the prosecution, resultantly, it has to be concluded that as such, the defence has cogently discharged the onus to prove that the accused at the relevant time, was labouring under a mental insanity.

23. Resultantly thereby this Court concludes, that there was no *mens rea* in the mind of the present appellant, thus to murder his deceased daughter. Contrarily, in the light of the principles (*supra*), which have been culled out by this Court, and, also on the said principles becoming applied to



the supra echoings, which occur in the cross-examination of the eye witness to the occurrence, thereby this Court is of the formidable view, that at the time of commission of the offence, the present appellant was neither aware of the nature of the act, nor he was aware that what he was doing, was either wrong or contrary to law. As such, the appellant is to be declared to be suffering from legal insanity at the time of commission of the offence. Therefore, the benefit of Section 84 IPC is required to be endowed to him.

24. The more striking reason for endowing benefit to the said exception to criminal liability further ensues from the factum, that when through the supra adduced evidence, the defence has discharged the apposite onus cast upon it. Resultantly, thereafter the onus shifted upon the prosecution to lead cogent rebuttal evidence theretos. Since the prosecution has failed to adduce cogent evidence to rebut the cogent discharging evidence, as, became adduced by the defence to prove the plea of insanity. In sequel, the lack of discharge of the apposite onus by the prosecution after the same became shifted onto it, subsequent to the defence discharging the said onus, thus begets an inference that thereby, the prosecution concedes to the credibility, besides the potency of the apposite evidence adduced by the defence, whereby the defence claimed that thereby the benefit of the plea of insanity be endowed vis-a-vis the accused-appellant.

25. Though, PW-1 Rakesh Kumar deposed in his examination-in-chief, that on 15.11.2011, when he was sleeping in his house, he heard the cries. In sequel, he went outside and found that the daughter of Dhanna Ram had received multiple injuries, and, Dhanna Ram was not present in the house. He further deposed, that the wife of the accused told him, that Dhanna Ram killed his daughter, as the child was under the influence of evil



spirits, and, Dhanna Ram feared that she would kill his son. Thereafter, the said witness turned hostile. The statement Ex. PA was read over to him. He denied that he had heard shouts of ‘*mar dia mar dia*’ from the house of Dhanna Ram. He also denied that he had seen Dhanna Ram carrying his daughter in his hands. However, upon his being cross-examined by the learned defence counsel, he made the hereinafter extracted echoings.

“I am known to the accused for the past 5-6 years. As per my knowledge, Dhanna Ram is not in a fit state of mind for the last one and half years. About one year back, Dhanna Ram had thrown a brick upon one Anoop of our colony when the said person had touched his deceased daughter. It is correct that accused even on small matters, loses his cool and attacks the person. At the time of his aggressive behaviour he is unaware of the consequences and is also in habit of forgetting what he has done in that spell of time. Accused Dhanna Ram had lost two siblings in the last 3-4 years and due to this reason, he remains disturbed. Accused Dhanna Ram was being treated for his erratic behaviour by a Tantrik where his wife used to take him. He was not being treated for his ailment in any hospital or by any doctor. Accused Dhanna Ram is in a habit of talking to himself on irrelevant matter. As per my knowledge, the accused had summoned the police after the occurrence himself and he had gone to the police station on his own in underwear and baniyan.

x x x x

The accused used to tell me that he is being guided by the voice of Vaishnu Mata and he follows those instructions. The accused was very attached to his deceased daughter and did not allow anybody even to touch her. When the said daughter was two years old, she was lost at the Vaishnu Devi Shrine, due to which he was very disturbed and even tried to commit suicide.”

26. The witness (supra) in his cross-examination deposed, that the appellant was not in a fit state of mind for the last one and half years, and, the appellant had also thrown a brick on his face, when he touched his deceased daughter. Moreover, he further testified, that the at the time of his aggressive behaviour, the appellant was unaware of its consequences, and, was also in the habit of forgetting what he has done in that spell of time. Resultantly, since the supra prime prosecution witness, who is the eye witness to the occurrence, had resiled from her previously made statement, and, rather has through the supra made echoings in her cross-examination,



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thus has declared that at the time of the commission of the offence, the present appellant was labouring under a legal insanity. Resultantly when PW-1, testifies qua his receiving the apposite information only from the wife of the deceased, thereby the testification (supra) makes the same to be merely hearsay evidence, or the same is declared to be not corroborated by the eye witness to the occurrence, who made the intimation to PW-1. Moreover, when the witness (supra) has corroborated the echoings (supra), as borne in the cross-examination of PW-12, whereby, this Court is led to conclude, that the time of the commission of offence, the appellant became encumbered with a legal insanity, as becomes defined in Section 84 IPC.

27. PW-2 Hukam Chand before whom the accused purportedly made an extra judicial confession, deposed, that on 15.11.2011, he along with one Suresh Mishra was sitting at his shop when Dhanna Ram came to him. The said witness further deposed that at that time, Dhanna Ram was worried, and, told them that at late night, he suddenly woke up and committed rape upon his daughter, and, he be produced before the police. Thereafter the witness (supra) along with Suresh Mishra took him to Police Post, Sector-16, Panchkula, where Dhanna Ram got recorded his statement. He further deposed that apart from the above, no proceedings were carried out. Subsequently, the said witness was declared hostile. On cross-examination, being conducted upon the said witness, he made the hereinafter extracted echoings.

“x x x x

I am known to Dhanna Ram for few years. Dhanna Ram was mentally disturbed for the last one and a half years. It is not in my knowledge as to what type of activities the accused did due to disturbed state of mind. Some of the neighbourers had told me about the same. It is incorrect to suggest that accused was already in the police custody and had not come to us. Dhanna Ram used to come to depot for ration but he was not having friendly relations with me



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or Suresh Mishra.”

28. Though, the appellant is stated to make a purported extra judicial confession before the witness (supra). However, the said extra judicial confession rather has no evidentiary value, given the said witness partly resiling from his previously made statement in writing. Resultantly, when in his cross-examination, he made the supra echoings, which but corroborate the deposition of PW-12 (wife of the appellant) and PW-1, therebys when reinforced vigour becomes lent to the supra made inference by this Court, that at the time of commission of offence, the appellant was under a legal insanity, thus therebys the making of the purported extra judicial confession by the appellant before the witness (supra), also loses its evidentiary efficacy.

29. Moreover when also the said witness, in his cross-examination, has stated that the appellant was not having friendly relations with him or with one Suresh Mishra, therebys too, when for the well makings of a credible extra judicial confession, the maker is required to be making the said extra judicial confession either to his confidante or to his friend, whereas, the said witness stating that the appellant was not having friendly relations with him. Resultantly therebys, it appears that the makings, if any, of any extra judicial confession, by the accused-appellant before the witness (supra), lacks in evidentiary value, besides therebys the previously made statement in writing to the said effect by the witness (supra) before the police officer, but is also to be declared to be a sheer concoction.

Signed disclosure statement of convict-appellant
Dhanna Ram (Ex. PD)

30. During the course of investigations, being made into the appeal FIR, convict-appellant Dhanna Ram, thus made his signed disclosure



statement, to which Ex. PD becomes assigned. The signed disclosure statement, as made by the accused is *ad verbatim* extracted hereinafter.

“x x x x
In the night of 14/15.11.11, I and my family including my wife Rita Devi, son namely Vishnu and daughter Mansi aged about three years, were sleeping together on the cot in the room. My son Vishnu was sleeping with my wife Rita Devi and my daughter Mansi was sleeping with me. At about 2/2.30 A.M. I woke up and the devil inside me woke up. I took up my daughter Mansi in my arms from the cot who was sleeping with me with intent to commit sexual assault upon her and laid down her on the mat lying in the corner by putting my hand on her mouth and tore her trouser from the lower side and committed rape upon her. When the girl felt pain she started crying loudly then I strangled her. On hearing noise my wife woke up. On seeing my wife awakening, I gave blow with knife and Tawa' lying there, on the face and head of my daughter Mansi. When my wife tried to save her I let her falling down by pushing her. On making noise by my wife, number of people from neighbourhood came in front of the house. When I came outside in the courtyard having my daughter in my arms, many people were standing there. I laid down my dead daughter in the courtyard and took my shirt from the house and ran away. Knife and Tawa' left there. The vest which I was wearing at the time of committing rape upon my daughter Mansi and also at the time of killing her, I kept concealed that vest in the bushes standing in pit near tubewell at village Budanpur. The shirt which I brought with me I wore that shirt. The shirt got blood stains from my blood stained hands which I am wearing. The place where I kept concealed the torn blood stained vest; I can get recovered alongwith you that after demarcation and can also demarcate my residential house. The place where I committed rape upon my daughter Mansi and murdered her by giving blow of knife and Tawa' and after committing murder where I left the dead body and ran away, can also demarcate that places by going with you.”

31. Pursuant to the above made signed disclosure statement, the convict-appellant Dhanna Ram ensured the recovery of a blood stained half sleeve torn vest, which was taken into police possession, through a recovery memo, to which Ex. PD/2 becomes assigned.

Post-mortem report

32. The post-mortem report, to which Ex. PO is assigned, became proven by PW-11. PW-11 in her examination-in-chief, has deposed that on



an autopsy being conducted on the body of deceased by her along with Dr. Davinder, thus theirs noticing thereons the hereinafter ante mortem injuries-

- “1. An incised wound spindle shaped with gaping edges everted, 7 cm x 2 cm x 4mm in depth on left side face, making a pocket at lower third of wound dissecting the muscles of face apart.
2. Another incised wound spindle shaped 7.3 cm x 3 cm bone deep in left occipito parietal region, underlying bones fractures and brain matter coming out of wound, multiple fractures frontal bone parietal bone and occipital bone.
3. Contusion right side forehead 1 cm x 1 cm.
4. Contusion left side forehead 2 cm x 3 cm.
5. Multiple contusions just lateral to right lower lip on chin of neck on right side and on neck right side and on back.
6. Contusion lower lip mucosal side left side.
7. Just below the vaginal opening there is a 1 cm tear with clotted blood around the tear. Vaginal orifice admits one finger.
8. On dissecting scalp, clotted blood present in frontal, parietal, temporal and occipital region.
9. Multiple fractures present in frontal, parietal and occipital bones.
10. All the meninges torn at various places. Both cerebral hemispheres lacerated at places with torn pieces of brain matter coming out of wound.

Crush injury on scalp, missing both frontal, parietal, temporal and occipital bone. Both eyes missing. In thorax no evidence of any injury. In heart very little blood present. In abdomen organs were pale.

Hymen was not present. Just below the vaginal opening there is a 1 cm tear with clotted blood around the tear. Vaginal orifice admits one finger."

33. Furthermore, PW-11 also made speakings in his examination-in-chief, that the cause of demise of the deceased was owing to massive head injury causing causing shock and death. The said witness upon being shown the FSL report, deposed that possibility of rape cannot be ruled out.

Report of the FSL concerned, to which Ex. PM becomes assigned

34. Through RC No. 297 dated 23.11.20, 14 sealed cloth parcels became sent, through Ct. Naveen Kumar-1/331 to the FSL concerned. The



FSL concerned, thus upon making examinations of all the incriminatory items, as became sent to it in sealed cloth parcels, hence made thereons an opinion, opinion whereof, becomes *ad verbatim* extracted hereinafter.

“X X X X

Description of parcel(s) and condition of seal(s)

Fourteen sealed parcel(s). The seal(s) were intact and tallied with the specimen seal(s) as per forwarding authority letters.

Description of article (s) contained in parcel(s)

Parcel No.	No. and seal impression	Description of parcel(s)
I.	3-AK	It contained exhibit-1 <u>Exhibit-1:</u> One tava with round rusty metallic plate bent at one side & wooden hand grip.
II.	3-AK	It contained exhibit-2a to 2b <u>Exhibit-2a:</u> One knife (approx. 18 cm) with bent shiny mettalic blade and black plastic hand grip. <u>Exhibit-2b:</u> One all rusty metallic knife (approx. 15 cm) with bent metallic blade.
III.	3-AK	It contained exhibit-3a to 3b <u>Exhibit-3a:</u> One cover/lid of pressure cooker with black plastic hand grip stained with small size few brownish stains. <u>Exhibit-3b:</u> One all shiny stainless steel round lid..
IV.	3-AK	It contained exhibit-4a to 4c <u>Exhibit-4a:</u> One black dora/thread with two tabiz and one separate tabiz of cloth.. <u>Exhibit-4b:</u> One golden metallic tabiz and ghungroo. <u>Exhibit-4c:</u> Few broken red and green glass bangles with some reddish and silver coloured bangles.
V.	3-AK	It contained exhibit-5. <u>Exhibit-5:</u> One bluish saffron coloured plastic chatai/mat stained with dark brown stains.
VI.	3-AK	It contained exhibit-6a to 6c. <u>Exhibit-6a:</u> One cut piece of white cloth marked “A” described as blood from near dead body. <u>Exhibit-6b:</u> One cut piece of cloth marked “B” described as blood from floor of room. <u>Exhibit-6c:</u> One cut piece of cloth marked “C” described as blood from high place of room.
VII.	3-SM	It contained exhibit-7. <u>Exhibit-7:</u> One tear and torn black pyjami pinkish at lower end with elastic stained with brownish stains.
VIII.		It contained exhibit-8.



- Exhibit-8:** Fwd to Biology Division.
- IX. 1-SM It contained exhibit-9.
Exhibit-9: One glass vial containing dark brownish liquid described as blood of Mansi.
- X. 1-SM It contained exhibit-10.
Exhibit-10: One glass vial containing dark brown liquid described as blood of Mansi.
- XI. 3-AK It contained exhibit-11.
Exhibit-11: One stripped shirt stained with dew brownish stains.
- XII. 3-AK It contained exhibit-12.
Exhibit-12: One white striped banian stained with few brownish stains.
- XIII. -- It contained exhibit-13.
Exhibit-13: Fwd to Biology Division as such.
- XIV. -- It contained exhibit-14.
Exhibit-14: Fwd to Biology Division as such.

Laboratory Examination

Laboratory examinations were carried out to detect the presence of blood on the exhibits through chemical tests. Blood thus detected was subjected to serological tests to determine its species of origin. Based upon these examinations the results obtained are given below:-

1. Blood was detected on exhibit-1 (Tava); exhibit-2a (knife); exhibit-3b(Lid); exhibit-4a (Dora/thread); exhibit-4b (Tabiz); exhibit-4c (Bangles); exhibit-6a(blood); exhibit-6b(blood); exhibit-6c(blood); exhibit-9(blood) and exhibit10a(blood)
2. Exhibit-3a (Cover/lid of pressure cooker); exhibit-5 (mat); exhibit-7 (pyjama); exhibit-11 (shirt) and exhibit-12 (banian) were stained with blood stains.
3. Traces of blood too small for serological analysis was detected on exhibit-2b (knife).

Parcel No. VII, VIII, XIII, XIV were forwarded to Biology division on 15.3.2012 and report from Biology division is attached herewith.”

Results of serological analysis of blood

Sr. No.	Name of exhibit	Origin	Group
1.	Tava	Material Disintegrated	
2a.	Knife	Material Disintegrated	
3a.	Lid of pressure cooker	Material Disintegrated	
3b.	Lid	Material Disintegrated	
4a.	Dora/tabiz	Material Disintegrated	
4b.	Tabiz with ghungroo	Material Disintegrated	
4c.	Bangles	Material Disintegrated	



5.	Mat	Human	Inconclusive
6a.	Blood	Human	Inconclusive
6b.	Blood	Human	Inconclusive
6c.	Blood	Human	Inconclusive
7.	Pyjami	Human	Inconclusive
9.	Blood	Human	Inconclusive
10.	Blood	Human	Inconclusive
11.	Shirt	Human	Inconclusive
12.	Banian	Human	Inconclusive

Report of the FSL concerned, to which Ex. PN becomes assigned

35. The FSL concerned, thus upon making examinations of all the incriminatory items, as became sent to it in four sealed cloth parcels, hence made thereons an opinion, opinion whereof, becomes *ad verbatim* extracted hereinafter.

“X X X X

Description of parcel(s) and condition of seal(s)

Description of article (s) contained in parcel(s)

Parcel No.	No. and seal impression	Description of parcel(s)
VII	3-Sero FSL (H)	Sealed paper envelope containing exhibit-7. <u>Exhibit-7</u> One dirty black and white cut and torn pyhami.
VIII.	3-SM	Sealed plastic jar containing exhibit-8a & 8b. <u>Exhibit-8a:</u> One microscopic glass slide. <u>Exhibit-8b:</u> One cottonwool swab with stick kept inside glass test tube described as swab.
XIII	3-SM	Sealed cloth parcel containing exhibit-13. <u>Exhibit-13.</u> One dirty brown underwear.
XIV	1-SM	Sealed plastic container containing exhibit-14. <u>Exhibit-14.</u> One cottonwool swab with stick described as swab.

Laboratory Examination

Laboratory examinations were carried out to detect the presence of semen in the exhibits by performing Chemical test and Microscopy. Based upon these examinations the results obtained are given below:-

1. Human semen was detected on exhibit-13 (underwear) and exhibit-14 (swab). However, semen could not be detected n rest of the exhibits mentioned above.”

36. However, even though *prima facie* some evidentiary vigour,



thus is acquired by the supra medical and forensic evidence, but since for the reasons (supra), this Court has endowed to the accused, the benefit of Section 84 IPC, thereby the efficacy, if any, of the supra respectively made disclosure statement, and, the consequent thereto recovery, besides also the medical/forensic evidence(s) (supra), do all lose their evidentiary worth.

37. The provisions of Section 335 Cr.P.C. become extracted hereinafter.

“Section 335- Person acquitted on such ground to be detained in safe custody.

(1) Whenever the finding states that the accused person committed the act alleged, the Magistrate or Court before whom or which the trial has been held, shall, if such act would, but for the incapacity found, have constituted an offence, -

(a) order such person to be detained in safe custody in such place and manner as the Magistrate or Court thinks fit; or

(b) order such person to be delivered to any relative or friend of such person.

(2) No order for the detention of the accused in a lunatic asylum shall be made under clause (a) of sub-section (1) otherwise than in accordance with such rules as the State Government may have made under the [Indian Lunacy Act, 1912 ([4 of 1912](#))] [Now repealed by the Mental Health Act, 1987 ([14 of 1987](#))].

(3) No order for the delivery of the accused to a relative or friend shall be made under clause (b) of sub-section (1), except upon the application of such relative or friend and on his giving security to the satisfaction of the Magistrate or Court that the person delivered shall-

(a) be properly taken care of and prevented from doing injury to himself or to any other person;

(b) be produced for the inspection of such officer, and at such times and places, as the State Government may, direct.

(4) The Magistrate or Court shall report to the State Government the action taken under sub-section (1).”

Final order

38. The result of the above discussion, is that, this Court finds merit in the appeal, and, is constrained to allow it. Consequently, the appeal is allowed. The impugned judgment convicting, and, sentencing the appellant,



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and, as becomes recorded by the learned trial Judge concerned, is quashed, and, set aside. The appellant is acquitted of the charge framed against him. The fine amount, if any, deposited by him, be, in accordance with law, refunded to him. The personal, and, surety bonds of the accused shall stand forthwith cancelled, and, discharged. The case property be dealt with, in accordance with law, but after the expiry of the period of limitation for the filing of an appeal. The appellant, if in custody, and, if not required in any other case, be forthwith set at liberty. Release warrants be prepared accordingly.

39. However, in terms of the hereinabove reproduced provisions of Section 335 Cr.P.C., the District Welfare Officer concerned, shall ensure that the appellant is produced before the learned trial Court concerned, so that in terms of the hereinabove extracted provisions of Section 335 Cr.P.C., an order may become(s) rendered.

40. Records be sent down forthwith.

41. The miscellaneous application(s), if any, is/are also disposed of

(SURESHWAR THAKUR)
JUDGE

(VIKAS SURI)
JUDGE

February 4th, 2025
Gurpreet

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No