REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 321 OF 2007

Hari Singh Gond ...Appellant

Vs.

State of M.P. ...Respondent

J U D G M E N T

Dr. ARIJIT PASAYAT, J.

1. Challenge in this appeal is to the judgment of a Division Bench of the Madhya Pradesh High Court at Jabalpur confirming the conviction of the appellant for offences punishable under Sections 302 and 201 of the Indian Penal Code, 1860 (in short the 'IPC') as recorded by learned Sessions Judge Mandla in Sessions Case No. 66 of 1995 who imposed

sentences of imprisonment for life and three years respectively.

2. Background facts, as projected by the prosecution, during trial are as follows:

Harilal Gond (hereinafter referred to as the 'deceased') was the maternal grandfather in law of the accused and in the night of incident accused, deceased and his samdhi Motilal were sleeping in the same house.

Shyamlal (PW1), son in law of the deceased brought his son in law accused Hari Singh on 23.2.1995 to Mohda from Singanpuri for treatment. On 25.2.1995 in the evening Motilal (PW2) the father of Shyamlal and his samdhi i.e. deceased and son in law i.e. accused Hari Singh were sleeping in the same room after having their meal. Shyamlal alone was sleeping in his room. Shyamlal got up around 3-3.30 after hearing the shouting of his son in law who was pushing his door. Then accused ran towards him to beat and in fact beat Shyamlal with the lathi which he was carrying in his hand. Shyamlal

ran away and went to the house of Baldan. After sometime he observed that his house was burning. Then he came running towards his house and conveyed the same to the villagers. When he went alognwith villagers to his house then the villagers Mulloo Singh, Chamru Singh etc. caught hold of accused Hari Singh and they observed that there was a fire in the room where Harilal the father in law of Shyamlal was sleeping and his father in law was burnt and had died. Motilal the father of the Shyamlal told him that Hari Singh had slapped him at his cheek and had also kicked him at his back and by taking lathi and trishul he ran after him, then he also ran away. Then accused started beating deceased Harilal with stick and accused hit Harilal several times due to which Harilal died. Then accused put some grains on fire which were lying in that room, due to which not only the house caught the fire but Harilal was also burnt. The incident was reported by Shyam Lal in writing to police chowki Maneri of police station Bija Dandi at 9.00 A.M. in the morning and the report is Ex. P-1. On conducting the post-mortem of Harilal, the whole dead body was found to have been burnt, there were many

injuries on his body and there was fracture in the head and all the injuries were ante mortem.

After investigation, charge sheet was filed. Since accused pleaded innocence, trial was held.

The trial court relied on the evidence of eye witness Moti Lal (PW 2) while Kali Bai (PW 4) corroborated the statement of eye witness about the unusual behaviour of the accused.

The trial court found the evidence to be cogent and accordingly recorded conviction and imposed sentence as noted above. It did not accept the plea that Section 84 IPC has application. In appeal before the High Court the stand about unsoundness of mind and protection under Section 84 IPC was pressed into service.

The prosecution on the other hand submitted that Section 84 has no relevance or application. High Court accepted State's stand and accordingly dismissed the appeal.

3. In the present appeal it was submitted that the unusual behaviour of the accused has been stated by even the eye witness PW2 and PW 4 and, therefore, the courts below were not justified in rejecting the plea of protection under Section 84 of the Act.

4. Learned counsel for the respondent on the other hand supported the judgment of the trial court and the High Court.

5. Section 84 lays down the legal test of responsibility in cases of alleged unsoundness of mind. There, is no definition of "unsoundness of mind" in the IPC. Courts have, however, mainly treated this expression as equivalent to insanity. But the term "insanity" itself has no precise definition. It is a term used to describe varying degrees of mental disorder. So, every person, who is mentally diseased, is not ipso facto exempted from criminal responsibility. A distinction is to be made between legal insanity and medical insanity. A Court is concerned with legal insanity, and not with medical insanity. The burden of proof rests on an accused to prove his insanity,

which arises by virtue of Section 105 of the Indian Evidence Act, 1972 (in short the 'Evidence Act') and is not so onerous as that upon the prosecution to prove that the accused committed the act with which he is charged. The burden on the accused is no higher than that resting upon a plaintiff or a defendant in a civil proceeding. (See Dahyabhai v. State of Gujarat AIR 1964 SC 1563). In dealing with cases involving a defence of insanity, distinction must be made between cases, in which insanity is more or less proved and the question is only as to the degree of irresponsibility, and cases, in which insanity is sought to be proved in respect of a person, who for all intents and purposes, appears sane. In all cases, where previous insanity is proved or admitted, certain considerations have to be borne in mind. Mayne summarises them as follows:

> "Whether there was deliberation and preparation for the act; whether it was done in a manner which showed a desire to concealment ; whether after the crime, the offender showed consciousness of guilt and made efforts to avoid detections whether, after his arrest, he offered false excuses and made false statements. All facts of this sort are material as bearing on the test, which Bramwall, submitted to a jury in such a case :

> 'Would the prisoner have committed the act if there had been a policeman at his elbow ? It is to be remembered that these tests are good for cases in which previous insanity is more or less established. These tests are not always reliable where there is, what Mayne calls, "inferential insanity".

6. Under Section 84 IPC, a person is exonerated from liability for doing an act on the ground of unsoundness of mind if he, at the time of doing the act, is either incapable of knowing (a) the nature of the act, or (b) that he is doing what is either wrong or contrary to law. The accused is protected not only when, on account of insanity, he was incapable of knowing the nature of the act, but also when he did not know either that the act was wrong or that it was contrary to law, although he might know the nature of the act itself. He is, however, not protected if he knew that what he was doing was wrong, even if he did not know that it was contrary to law, and also if he knew that what he was doing was contrary to law even though he did not know that it was wrong. The onus of proving unsoundness of mind is on the accused. But where during the investigation previous history of insanity is

revealed, it is the duty of an honest investigator to subject the accused to a medical examination and place that evidence before the Court and if this is not done, it creates a serious infirmity in the prosecution case and the benefit of doubt has to be given to the accused. The onus, however, has to be discharged by producing evidence as to the conduct of the accused shortly prior to the offence and his conduct at the time or immediately afterwards, also by evidence of his mental condition and other relevant factors. Every person is presumed to know the natural consequences of his act. Similarly every person is also presumed to know the law. The prosecution has not to establish these facts.

7. There are four kinds of persons who may be said to be *non compos mentis* (not of sound mind), i.e., (1) an idiot; (2) one made *non compos* by illness (3) a lunatic or a mad man and (4.) one who is drunk. An idiot is one who is of non-sane memory from his birth, by a perpetual infirmity, without lucid intervals; and those are said to be idiots who cannot count twenty, or tell the days of the week, or who do not know their

fathers or mothers, or the like, (See Archbold's Criminal Pleadings, Evidence and Practice, 35th Edn. pp.31-32; Russell on Crimes and Misdemeanors, 12th Edn. Vol., p.105; 1 Hala's Pleas of the Grown 34). A person made non compos mentis by illness is excused in criminal cases from such acts as are-committed while under the influence of his disorder, (See 1 Hale PC 30). A lunatic is one who is afflicted by mental disorder only at certain periods and vicissitudes, having intervals of reason, (See Russell, 12 Edn. Vol. 1, p. 103; Hale PC 31). Madness is permanent. Lunacy and madness are spoken of as acquired insanity, and idiocy as natural insanity.

8. 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*).

9. The section itself provides that the benefit is available only after it is proved that at the time of committing the act, the accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or that even if he did not know it, it was either wrong or contrary to law then this section must be applied. The crucial point of time for deciding whether the benefit of this section should be given or not, is the material time when the offence takes place. In coming to that conclusion, the relevant circumstances are to be taken into consideration, it would be dangerous to admit the defence of insanity upon arguments derived merely from the character of the crime. It is only unsoundness of mind which naturally impairs the cognitive faculties of the mind that can form a ground of: exemption from criminal responsibility. Stephen in 'History of the Criminal Law of England, Vo. II, page 166 has observed that if a person cuts off the head of a sleeping man because it would be great fun to see him looking for it when he woke up, would obviously be a case where the perpetrator of the act would be incapable of knowing the physical effects

of his act. The law recognizes nothing but incapacity to realise the nature of the act and presumes that where a man's mind or his faculties of ratiocination are sufficiently dim to apprehend what he is doing, he must always be presumed to intend the consequence of the action he takes. Mere absence of motive for a crime, howsoever atrocious it may be, cannot in the absence of plea and proof of legal insanity, bring the case within this section This Court in Sherall Walli Mohammed v. State of Maharashtra: (1972 Cr.LJ 1523 (SC)), held that the mere fact that no motive has been proved why the accused murdered his wife and child or the fact that he made no attempt to run away when the door was broken open would not indicate that he was insane or that he did not have necessary mens rea for the offence. Mere abnormality of mind or partial delusion, irresistible impulse or compulsive behaviour of a psychopath affords no protection under Section 84 as the law contained in that section is still squarely based on the outdated Naughton rules of 19th Century England. The provisions of Section 84 are in substance the same as that laid down in the answers of the Judges to the questions put to

them by the House of Lords, in M Naughton's case (1843) 4 St. Tr. (NS) 847. Behaviour, antecedent, attendant and subsequent to the event, may be relevant in finding the mental condition of the accused at the time of the event, but not that remote in time. It is difficult to prove the precise state of the offender's mind at the time of the commission of the offence, but some indication thereof is often furnished by the conduct of the offender while committing it or immediately after the commission of the offence. A lucid interval of an insane person is not merely a cessation of the violent symptoms of the disorder, but a restoration of the faculties of the mind sufficiently to enable the person soundly to judge the act; but the expression does not necessarily mean complete or prefect 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.

10. The standard to be applied is whether according to the ordinary standard, adopted by reasonable men, the act was right or wrong. The mere fact that an accused is conceited, odd irascible and his brain is not quite all right, or that the physical and mental ailments from which he suffered had rendered his intellect weak and had affected his emotions and will, or that he had committed certain unusual acts, in the past or that he was liable to recurring fits of insanity at short intervals, or that he was subject to getting epileptic fits but there was nothing abnormal in his behaviour, or that his behaviour was queer, cannot be sufficient to attract the application of this section.

11. The trial Court and the High Court have, on the facts of the case, rightly held that Section 84 IPC has no application.

12. It is submitted that the accused-appellant is in custody since 23.1.1996 and Section 339 of the Code of Criminal Procedure, 1973 (in short the 'Cr.P.C') has application. We express no opinion in that regard.

13. Appeal is dismissed.

.....J.
(Dr. ARIJIT PASAYAT)

.....J.
(Dr. MUKUNDAKAM SHARMA)

New Delhi,
August 29, 2008