



IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

**CRIMINAL APPEAL Nos. 2069-2070 OF 2022**

**RUPESH MANGER (THAPA)**

**...APPELLANT**

**VERSUS**

**STATE OF SIKKIM**

**.... RESPONDENT**

**J U D G M E N T**

**PRASHANT KUMAR MISHRA, J.**

1. These appeals would call in question the legality and validity of the judgment of conviction and order of sentence dated 24.08.2022 and 05.09.2022 passed by the High Court of Sikkim at Gangtok in Criminal Appeal No. 08 of 2020 whereby the High Court has reversed the order of acquittal of the Trial Court dated 30.10.2018 and convicted the appellant-accused for the offence punishable under Section 302 of the Indian Penal Code, 1860 ( for short 'IPC') and sentenced him to undergo simple imprisonment for life.

2. The prosecution case, in brief, is that the appellant-accused committed murder of his grandfather Krishna Bahadur Rai (hereinafter called 'deceased'). An FIR was lodged to the said effect by Reeta Rai (PW-1), daughter of the deceased informing the police that her father (deceased) aged 81 years who was living with her had been murdered with a sharp-edged weapon (*Patang*).

3. Upon completion of the investigation, chargesheet was submitted against the appellant-accused for committing offence under Section 302 of IPC and, during the course of trial, the prosecution examined 17 witnesses to prove its case. However, even before the commencement of trial the appellant-accused raised a plea of insanity. Thereafter, he was referred to the Psychiatric Unit of the STNM Hospital, Gangtok for examination of his mental state which was conducted by Dr. Netra Thapa (CW-1), Consultant Neuro Psychiatrist. Although, the defence of insanity has not been expressly pleaded by the appellant-accused in his examination under Section 313 of the Code of Criminal Procedure, 1973 wherein he would mainly claim ignorance about the occurrence of the incident; at the same time, denying that he had attacked his grand father (deceased).

4. The Trial Court considered the matter within the ambit of Section 84 of IPC and on the basis of material on record concluded that the appellant-accused was incapable of knowing the nature of his acts by reason of unsoundness of mind and it is highly probable that he was unaware of what he was doing was

either wrong or contrary to law. The Trial Court, thus, acquitted the appellant-accused against which the State of Sikkim preferred an appeal which stands allowed by the impugned judgment of conviction and order of sentence dated 24.08.2022 and 05.09.2022 respectively.

5. Mr. A. Sirajudden learned senior counsel appearing on behalf of the appellant-accused at the very outset submitted that the judgment of acquittal can be reversed by the appellate court only when there is perversity and not by taking a different view on reappraisal of evidence. He further submitted that the presumption of innocence of the accused is strengthened by the fact of acquittal of the accused under the criminal jurisprudence and it is a well settled law that if two views are possible on the evidence adduced, in that case, the one favourable to the accused, may be adopted by the court. In support of his submissions, he placed reliance upon the decision of this Court in the case of ***State of Rajasthan vs. Abdul Mannan.***<sup>1</sup>

6. Learned senior counsel next submitted that the appellant-accused was a person of unsound mind within the ambit of Section 84 of the Indian Penal Code, 1860 (“IPC”) at the time of the incident. The fact of lunacy of a person which prevented him from knowing the nature of his act must be considered from his past, present and future conduct. The only criteria to prove such

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1 (2011) 8 SCC 65

lunacy is “reasonable doubt” and this criterion is well approved by this Court in the case of *Devidas Loka Rathod v. State of Maharashtra*.<sup>2</sup>

7. *Per contra*, Mr. Sameer Abhyankar, learned counsel for the respondent/State submitted that the High Court after careful examination of the medical records of the appellant-accused and other material placed on record rightly came to the conclusion that the case of the appellant-accused did not fall within the exception created by Section 84 of IPC.

8. After hearing the learned senior counsel for the appellant-accused as well as learned counsel for the respondent/State and having meticulously perused the material placed on record, the only question that falls for our consideration is, whether the case of the appellant-accused falls within the exception under Section 84 of IPC or not.

9. The fact that the appellant had committed murder of the deceased have been found established concurrently by the Trial Court as well as the High Court, therefore, we would discuss the evidence in this regard very briefly.

10. PW-1 (Reeta Rai) is the daughter of the deceased and the aunt of the appellant-accused as well. She lodged the FIR and has categorically deposed that the deceased used to stay in her house. The deceased had gone to celebrate Dussehra in the house of her elder sister and returned to her house at village Rolep on 15.10.2016 along with the appellant-accused. Around 10.00 a.m. she

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<sup>2</sup> (2018) 7 SCC 718

had gone to a nearby water stream for washing the household utensils and heard someone saying 'aaya aaya' and also heard some strange sound such as 'chyak chyak'. She rushed back to her house and saw the appellant-accused aiming the sharp-edged weapon towards the deceased. After struggling with the accused she snatched the weapon from him but saw the deceased with pool of blood all over his face and neck. The appellant-accused had already assaulted her father. She would further depose that after snatching the weapon she hid it under some rod materials but when she looked back, she again saw the accused with his hand on the neck of the deceased trying to take out the windpipe from the neck of the deceased which was already cut. She separated the appellant-accused from the deceased.

11. PW-13 (Geeta Chettri) had arrived at the place of occurrence on hearing PW-1's scream. When she reached the house of the deceased, she saw the appellant-accused pulling the deceased by his neck. The statements of both the above witnesses have not been demolished or shaken during the cross-examination.

12. PW-14 (Dr. Siddhant Basnett) examined the deceased when he was brought dead to the Singtam PHC who found the following visible injuries on the body of the deceased:

- (a) laceration of throat (slit throat) measuring 05 x 06 x 05 cms;
- (b) laceration-lateral to the lateral canthus of right eye 0.5 x 2 cms;

- (c) laceration of the right side of chin 0.5 x 7 cms;
- (d) laceration on the right shoulder 04 x 05 cms.

13. PW-15 (Dr. O.T. Lepcha) conducted the autopsy and found the following *ante mortem* injuries in his report (Exhibit-11):

- (a) Linear shaped injury (7.5 x 0.5 cms) placed over the right-side face 5 cm below and lateral to the right eye;
- (b) Spindle shaped incised injury (3 x 0.5 cms) placed along injury No. (a) above;
- (C) Spindle shaped incised injury (7 x 0.8 x muscle) over the right mandible
- (d) Chop injury (10 x 3 cms) placed just above the thyroid cartilage with bevelled margin over the superior margin ( 7 x 1 cms). The injury involved the skin, muscle, the jugular and carotid vessels of both the sides and the trachea ( chopped; and
- (e) Chop wound (7 x 3 cms) placed over the right upper end of the shoulder/arm.

14. Basing upon the evidence of PW-1 and PW-13 and the medical evidence adduced, it is fully proved that the appellant-accused had attacked the deceased with sharp-edged weapon causing his death.

### **ISSUE OF INSANITY**

15. Right since the inception, the appellant-accused has set up the plea of insanity and has examined his mother Gita Manger (Rana) (DW-1) in support of

his plea. To consider this plea we would hereinafter discuss the evidence available on the record.

16. PW-2 (Ajoy Rai), cousin of the appellant-accused admitted during his cross-examination that the appellant-accused was studying in Dehradun and that he was brought back to Sikkim as he was suffering from mental illness. PW-1 also admits this fact. However, she did not know whether the appellant-accused had been brought back from Dehradun to Sikkim on account of his mental illness. PW-7 (Bikash Rai) and PW-8 (Dal Bahadur Rai) also admit that they had heard about the appellant-accused being brought back to Sikkim due to some sickness. DW-1 (mother of the accused) speaks about her son's mental illness. According to this witness, in the year 2015, one of his friends telephoned her that the appellant-accused had fallen ill, and he is fighting with his friends. He was, accordingly, brought back to Sikkim. He was taken to some quakes/spiritual healers for treatment as also to Lama/Priest but to no avail. Thereafter he was taken to the Central Referral (Manipal) Hospital for his treatment by a psychiatrist. After a week in the hospital, he was brought back, and he was advised to continuously take medicines for keeping his mental status healthy. This evidence finds corroboration from the evidence of CW-1 (Dr. Netra Thapa) who was initially examined by the Trial Court on 04.05.2017. During preliminary examination, this witness categorically deposed that going by the case history of the accused prepared by the Central Referral (Manipal)

Hospital, Tadong he had earlier been treated for acute and transient psychotic disorder w.e.f. 05.10.2015 to 10.10.2015. As per the opinion of this witness, the appellant-accused seemed to have major depressive disorder with psychotic feature. On examination, the appellant-accused was found to have partially impaired judgment due to perceptive auditory hallucinations. When this witness again examined before the Trial Court on 11.09.2017 and was subjected to cross-examination he proved the discharge summary of the appellant-accused issued by the Central Referral (Manipal) Hospital. He admitted that the medicines prescribed therein were for the accused's psychiatric ailments and the ailment was relapseable and there is every chance of attack anytime.

17. Apart from the above medical evidence, the abnormal/insane behaviour of the appellant-accused at the time of the assault and immediately thereafter is worth notice. Star witnesses of the prosecution namely, PW-1 (Reeta Rai) would state that the appellant-accused was fond of the deceased and he loved the deceased a lot. Similarly, the evidence of PW-13 would show that when she was leaving the spot, the appellant-accused came near her and asked what I have done to my grandfather. In her cross-examination, she admits that accused-appellant even told her that he did not know as to what he had done to his grandfather/deceased. The other villagers who reached at the spot soon after the incident have stated that when they arrived at the spot the appellant-accused was



present and was not trying to flee from there. This behaviour of the appellant-accused was not of a normal person.

18. When the appellant-accused was arrested, PW-14 medically examined him and found that he appeared to be clinically under the influence of some psychotropic substance. This witness also admitted that in the discharge summary of the appellant-accused (Exhibit-D), he was prescribed the tablet *Lorazepam* which is a psychotropic substance apart from being an anxiolytic agent. It is also to be seen that after the appellant-accused attacked the deceased by a sharp-edged weapon which was later snatched by PW-1, he was trying to take out the windpipe from the neck of the deceased which was already cut. This action of the appellant-accused was weird and abnormal. This is clearly indicative of the fact that he was suffering from insanity at the time of incident.

19. Section 84 of the IPC provides that:

“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.”

20. It is settled that the standard of proof to prove the lunacy or insanity is only ‘reasonable doubt’. For this, we may profitably refer to a judgment of this Court in “*Dahyabhai Chhaganbhai Thakker vs. State of Gujarat*”<sup>3</sup> wherein,

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3 (1964) 7 SCR 361

referring to Section 84 of IPC and the rule of evidence as contained in Sections 4, 101 and 105 of the Evidence Act this Court held thus:

“It is a fundamental principle of criminal jurisprudence that an accused is presumed to be innocent and, therefore, the burden lies on the prosecution to prove the guilt of the accused beyond reasonable doubt. The prosecution, therefore, in a case of homicide shall prove beyond reasonable doubt that the accused caused death with the requisite intention described in [Section 299](#) of the Indian Penal Code. This general burden never shifts, and it always rests on the prosecution. But, as [Section 84](#) of the Indian Penal Code provides that nothing is an offence if the accused at the time of doing that act, by reason of unsoundness of mind was incapable of knowing the nature of his act or what he was doing was either wrong or contrary to law. This being an exception, under [Section 105](#) of the Evidence Act the burden of proving the existence of circumstances bringing the case within the said exception lies on the accused; and the court shall presume the absence of such circumstances. Under [Section 105](#) of the Evidence Act, read with the definition of "shall presume" in [Section 4](#) thereof, the court shall regard the absence of such circumstances as proved unless, after considering the matters before it, it believes that said circumstances existed or their existence was so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that they did exist. To put it in other words, the accused will have to rebut the presumption that such circumstances did not exist, by placing material before the court sufficient to make it consider the existence of the said circumstances so probable that a prudent man would act upon them. The accused has to satisfy the standard of a "prudent man". If the material placed before the court, such as, oral and documentary evidence, presumptions, admissions or even the prosecution evidence, satisfies the test of "prudent man", the accused will have discharged his burden. The evidence so placed may not be sufficient to discharge the burden under [Section 105](#) of the Evidence Act, but it may raise a reasonable doubt in the mind of a judge as regards one or other of the necessary ingredients of the

offence itself. It may, for instance, raise a reasonable doubt in the mind of the judge whether the accused had the requisite intention laid down in [s. 299](#) of the Indian Penal Code. If the judge has such reasonable doubt, he has to acquit the accused, for in that event the prosecution will have failed to prove conclusively the guilt of the accused. There is no conflict between the general burden, which is always on the prosecution, and which never shifts, and the special burden that rests on the accused to make out his defence of insanity...

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 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. (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 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.”

21. The above proposition has been reiterated by this Court in *[Devidas Loka Rathod vs. State of Maharashtra](#)*<sup>4</sup> and *[Ratan Lal vs. The State of Madhya Pradesh](#)*<sup>5</sup>

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4 (2018) 7 SCC 718

5 (1970) 3 SCC 533

22. In **Surendra Mishra vs. State of Jharkhand**<sup>6</sup>, **Hari Singh Gond vs. State of M.P.**<sup>7</sup> and **Bapu vs. State of Rajasthan**<sup>8</sup> this Court has held that an accused who seeks exoneration from liability of an act under Section 84 of IPC has to prove legal insanity and not medical insanity. Since the term insanity or unsoundness of mind has not been defined in the Penal Code, it carries different meaning in different contexts and describes varying degrees of mental disorder. A distinction is to be made between legal insanity and medical insanity. The court is concerned with legal insanity and not with medical insanity.

23. In a recent judgment of this Court in **Prakash Nayi Alias Sen vs. State of Goa**<sup>9</sup> after reiterating the above principles it is held that the procedure prescribed in Chapter XXV of the Code of Criminal Procedure, 1973 clearly indicates that there cannot be an acquittal on the ground of unsoundness of mind unless the act is actually done. The whole idea 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. This Court held in para 17 thus:

“17. Having noted the scope and ambit of Chapter XXV CrPC, 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 IPC. If a friendly approach is required to be followed during the trial, when

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6 (2011) 11 SCC 495

7 (2008) 16 SCC 109

8 (2007) 8 SCC 66

9 (2023) 5 SCC 673

adequate powers have been conferred upon the court to even discharge an accused on the ground of a n unsound mind, the same reasoning will have to be applied with much force when it comes to Section 84 IPC.”

24. In addition to the above, it is significant to note that the present is a case where the appellant-accused was acquitted by the Trial Court and the High Court has reversed the judgment of acquittal upon appeal preferred by the State.

It is settled that the judgment of acquittal can be reversed by the Appellate Court only when there is perversity and not by taking a different view on reappreciation of evidence. If the conclusion of the Trial Court is plausible one, merely because another view is possible on reappreciation of evidence, the Appellate Court should not disturb the findings of acquittal and substitute its own findings to convict the accused. See *State of Rajasthan vs. Abdul Mannan* (supra).

25. In the case at hand, the High Court had reversed the finding of acquittal and convicted the appellant mainly on reappreciation of evidence by holding that the Trial Court erred in extending the benefit of Section 84 of IPC, without even recording a finding that the Trial Court’s finding is perverse.

26. In the light of the evidence discussed by the Trial Court including the medical evidence about the mental illness of the appellant-accused and his

abnormal behaviour at the time of occurrence, it does not appear that the view taken by the Trial Court was perverse or that it was based on without any evidence. We are, therefore, of the view that the High Court erred in setting aside the judgment of acquittal rendered by the Trial Court.

27. We, accordingly, set aside the judgment impugned dated 24.08.2022 and the order dated 05.09.2022 passed by the High Court and affirm the judgment of acquittal dated 30.10.2018 passed by the Trial Court. We, accordingly, allow the appeals and acquit the appellant-accused of the charge under Section 302 IPC. The appellant shall be set at liberty forthwith, if not required in any other case.

.....J.  
(J.B. PARDIWALA)

.....J.  
(PRASHANT KUMAR MISHRA)

SEPTEMBER 13, 2023.  
NEW DELHI.

ITEM NO.1501

COURT NO.6

SECTION II

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Criminal Appeal Nos. 2069-2070/2022

RUPESH MANGER (THAPA)

Appellant(s)

VERSUS

THE STATE OF SIKKIM

Respondent(s)

( [ HEARD BY : HON'BLE J.B. PARDIWALA AND HON'BLE PRASHANT KUMAR MISHRA, JJ. ] )

Date : 13-09-2023 These appeals were called on for pronouncement of judgment today.

For Appellant(s) Mr. A. Sirajuddin, Sr. Adv.  
Mr. Tilak Raj Pasi, Adv.  
Mr. Samrath Mohanty, Adv.  
Mr. S. Xavier Felix, Adv.  
Mr. H. Rajasekhar, Adv.  
Mr. Satyapal Khushal Chand Pasi, AOR

For Respondent(s) Mr. Sameer Abhyankar, AOR  
Ms. Vani Vandana Chhetri, Adv.  
Ms. Nishi Sangtani, Adv.  
Mr. Naman Jain, Adv.

Hon'ble Mr. Justice Prashant Kumar Mishra has pronounced the reportable judgment comprising Hon'ble Mr. Justice J.B. Pardiwala and His Lordship.

The impugned judgment dated 24.08.2022 and the order dated 05.09.2022 passed by the High Court are set aside and the judgment of acquittal dated 30.10.2018 passed by the Trial Court is affirmed.

The appeals are allowed in terms of signed reportable judgment. The appellant-accused is acquitted of the charge under Section 302 IPC and shall be set at liberty forthwith, if not required in any other case.

Pending application(s), if any, shall stand disposed of.

(RAJNI MUKHI)  
COURT MASTER (SH)

(DIPTI KHURANA)  
ASSISTANT REGISTRAR

(signed reportable judgment is placed on the file)