(2013) 06 GAU CK 0006

Gauhati High Court

Case No: Criminal Appeal No. 104 (J) of 2008

Ghana Gogoi		APPELLANT
	Vs	
State of Assam		RESPONDENT

Date of Decision: June 18, 2013

Acts Referred:

- Constitution of India, 1950 - Article 21, 39A
- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Evidence Act, 1872 - Section 101, 102, 105, 106, 15
- Penal Code, 1860 (IPC) - Section 302, 6, 84, 96

Citation: (2013) 3 GLT 723

Hon'ble Judges: Iqbal Ahmed Ansari, J; Indira Shah, J

Bench: Division Bench

Advocate: R. De, Amicus Curiae and Mr. K. Goswami, for the Appellant; Z. Kamar, PP, for the Respondent

Judgement

Iqbal Ahmed Ansari, J.

This is an appeal against the judgement and order, dated 13.06.2008, passed, in Sessions Case No. 33 (S-C) 2007, by the learned Sessions Judge (FTC), Sivasagar, convicting the accused-appellant, Ghana Gogoi, u/s 302 IPC and sentencing him to suffer imprisonment for life and pay fine of Rs. 2,000/- and, in default of payment of fine, suffer simple imprisonment for a period of 2 (two) months. The case of the prosecution, as unfolded at the trial, may, in brief, be described thus:

(i) Deceased, Ila Gogoi, was the wife of the accused and they used to live together with their son. On 13.06.2006, at about 5-30 P.M., the accused gave several blows to his wife, by means of dao, causing injuries on her person. On hearing Ha Gogoi crying out of pain, people from the neighbourhood came and saw the accused, Ghana Gogoi, standing near his wife, holding a dao in his hand. The accused was caught hold of by his brother and other co-villagers and the dao was taken away

from his possession. Though the injured was taken to civil hospital, she succumbed to her injuries.

(ii) On the basis of an Ejahar, lodged, with regard to the occurrence, by Puna Gogoi, at Sonari Police Station, Sonari Police Station Case No. 113/2006, u/s 302 IPC, was registered against the accused treating the said Ejahar as First Information Report (in short, ''FIR'').

(iii) During investigation, police visited the place of occurrence, held inquest over the said dead body and the same was also subjected to post-mortem examination, which revealed that Ila Gogoi died, because of shock and hemorrhage, which resulted from a number of injuries sustained by her. At the place of occurrence, police also seized, vide Seizure list (Exhibit 3), a dao, which was allegedly used by the accused for assaulting and killing his wife. On completion of investigation, police laid a charge-sheet, u/s 302 IPC, against the accused.

2. At the trial, when a charge, u/s 302 IPC, was framed against the accused, he pleaded not guilty thereto.

3. In support of their case, prosecution examined altogether 8 (eight) witnesses. The accused was, then, examined u/s 313 Cr.P.C. and, in his examination aforementioned, and the prior thereto, during recording of evidence, the accused took the plea of insanity. No evidence was, however, laid by the accused in support of his plea of insanity.

4. Having come to the conclusion that the accused was guilty of the offence, which he stood charged with, inasmuch as the accused, according to the learned trial Court, failed to prove the plea of insanity, which he had taken, the learned trial Court convicted him accordingly and passed sentence against him as mentioned above. Aggrieved by his conviction and the sentence, which has been passed against him, the accused, as a convicted person, has preferred this appeal.

5. We have heard Mr. R. De, learned counsel, and Mr. K. Goswami, learned counsel, who have appeared as amicus curiae. We have also heard Mr. Z. Kamar, learned Public Prosecutor, Assam.

6. While considering the present appeal, it is apposite to take note of the medical evidence on record. It may be pointed out, in this regard, that it is not in dispute that PW5 (doctor) was the one, who had performed, on 14.06.2006, post mortem examination on the dead body of Ila Gogoi and found as follows:

External appearance:

She was not stout, not decomposed, not emaciated

Wounds:

Injury over right hand 4" length 1" depth.

Cranium and Spinal Canal

Scalp injury 1/2" above right eye of 1 1/2" length and 1/4" depth.

Second injury was in front of left ear 2 1/2" length 1" depth and 1" length 1/2" depth with fracture of scalp.

Haematoma present below the fractural scalp brain.

Thorax: All organs normal.

Abdomen: All organs normal.

Muscles bones and joints:

Injury over right wrist joint Below the injury part of the right wrist joint. Other part is lost Injuries are ante mortem in nature. Rigor mortis was present

7. In the opinion of the doctor (PW5), death was caused due to shock following hemorrhage, which had resulted from the injuries sustained by the said deceased, injury No. 1 being sufficient to cause death of a person in ordinary course of nature. It is also in the evidence of the doctor (PW5) that Ila Gogoi''s death could have been caused by the dao (Material Ext. 1).

8. The above evidence of the doctor, and his opinion, with regard to the cause of death, have remain undisputed. We, too, do not notice anything inherently incorrect or improbable in the evidence given by the doctor.

9. In the circumstances mentioned above, we have no reason to doubt the findings of the doctor and his opinion with regard to the cause of death.

10. Bearing in mind the fact that Ila Gogoi met with homicidal death as a result of multiple injuries caused, on her person, by means of a weapon, such as, dao (Material Ext. 1), let us, now, come to the evidence of PW3, Puna Gogoi, who is the brother and the informant of this case.

11. According to the evidence of PW3, on the day of the occurrence, when he was having, on returning from his work, tea, in his house, he, having heard cries coming from the house of the accused, asked his wife PW1 (Promila Gogoi), to see what had happened and, a short while thereafter, on finishing his tea, when he went out, he saw his wife (PW1) returning and, on enquiry made by him, his wife responded by saying that someone had hacked Ila to death and left her on road. It is in the evidence of PW3 that he saw the accused standing near tea factory and the wife of the accused lying injured near the accused and, in the meanwhile, other people gathered there and they snatched away the dao from the hands of the accused. It is also in the evidence of PW3 that the injured, Ila Gogoi, was taken to hospital, but she died at the hospital and that he lodged an Ejahar (Ext. 1) presuming that the accused had killed his wife.

12. PW3 has deposed that police came, examined the dead body, he handed over the dao aforementioned to the police, the same was seized by the police and he put his signature on the seizure list.

13. Close on the heels of the evidence of PW3, PW1 (Promila), wife of PW3, has deposed that on the day of the occurrence, at about 5-30 P.M., she heard screams from the house of the accused and, upon hearing the screams, when she went towards the house of the accused, she saw the accused standing with a dao in his hand and his wife, Da Gogoi, lying injured in front of the house of the accused and that her husband, Nityananda Gogoi @ Puna Gogoi (PW3), reached there, her husband caught hold of the accused, tied the accused and took the dao away from the hands of the accused. It is also in the evidence of PW1 that her co-villagers gathered there, injured Ila was taken to hospital, at Sonari, but Ila Gogoi died at Sonari hospital.

14. Broadly in tune with the evidence of PW1 and PW3, PW2, who is wife of the younger brother of the accused, has deposed that, on the day of the occurrence, when she was feeding her baby in the evening, on hearing cries of Ila Gogoi by saying, "Moriluou Ma", "Moriluou Ma" ("Mother, I am crying"; "Mother, I am dying"), she ran towards the house of the accused and she saw Ila Gogoi lying injured in front of the house of the accused and the accused sitting at the veranda with a dao in his hand and, thereafter, their co-villagers arrived there, caught hold of the accused and handed him over to the police.

15. It is in the evidence of PW2 that injured Da Gogoi was taken to civil hospital, at Sonari, but she died there.

16. Let us pause here and take notice of the evidence of PW4 (Drona Gogoi), who is also younger brother of the accused. His evidence is that when he was at home in the evening hours of the day of the occurrence, he heard his sister-in-law screaming, "Moriluou Ma", "Moriluou Ma" and, upon hearing his sister-in-law so screaming, he ran towards the house of the accused and found the accused standing inside the garden, with a dao in his hand, and his wife lying injured near the accused and that he (PW4) snatched away the dao from the accused and, at that very point of time, his elder brother, Puna (PW3), also arrived there and though Da was taken to hospital, she died and that PW3, accompanied by his co-villagers, took the accused to the police station and handed him over to the police and, on being handed over, the police took the accused into custody, police came to the place of occurrence and seized the dao, which had been used by the accused to assault his wife.

17. We may hasten to point out that though PW4 has claimed, in his evidence, that the said seized dao was the one, which had been used by the accused to assault his wife, the fact remains that this evidence is nothing, but presumptuous inasmuch as PW4 had not, admittedly, seen the accused assaulting his wife. This part of the

evidence of PW4 needs to be, therefore, kept excluded from the purview of our consideration.

18. So far as PW6 is concerned, he is sister-in-law of the accused. Her evidence is that, on the day of the occurrence, she was at the local Namghar (place of worship) and that some persons came there and told that Ghana Gogoi (i.e., the accused-appellant) had cut his wife and, on hearing this, she, along with others, rushed to the house of the accused and, on reaching there, she saw the accused tied to a pillar and that Ila Gogoi, with injuries on her person, was put on a cart and taken to a doctor and that Ila Gogoi told her (PW6), on being asked by her (PW6), that Ghana Gogoi (i.e., accused-appellant) had cut her (Ila Gogoi).

19. Coming to the evidence of PW7, we notice that, according to this witness, he is a neighbour of the accused and knew Ila Gogoi, wife of the accused. As regards the occurrence, PW7 has deposed that, on the day of the occurrence, in the evening, on hearing hue and cry, he went to the house of the accused and saw the accused sitting at the verandah of his house with a dao in his hand and the wife of the accused lying in the garden nearby the house of the accused with cut injuries on her person and that the injured was taken to hospital, but the injured died.

20. It is also in the evidence of PW7 that police came to the place of occurrence and seized the dao by a seizure list and he put his signature thereon.

21. From the above evidence of the prosecution witnesses, what becomes clear is that none of the witnesses had seen the accused-appellant, Ghana Gogoi, assaulting and injuring his wife by means of dao. However, on hearing the screams of Ila Gogoi (wife of the accused-appellant), when the relatives and neighbours of the accused-appellant came running to the house of the accused-appellant, they found Ila Gogoi lying on the ground, in injured condition, and the accused was, according to the evidence of PWs 1, 3 and 4, standing near his injured wife, holding a dao in his hand. While PW1, PW3 and PW4 have deposed that the accused was standing near the injured with a dao in his hand, PW2 and PW7 have deposed that they found the accused sitting on the edge of the verandah of his house.

22. Let us, now, take into consideration the evidence given by these witnesses in their cross-examination.

23. From the cross-examination the prosecution witnesses, it becomes clear that though they had not seen the accused assaulting his wife, Ila, the fact remains that, on immediately coming to the place of occurrence, they found the accused-appellant near injured Ila with a dao in his hand. The said dao was, admittedly (as the evidence on record reveals), snatched away and, later on, handed over to the police. There is, however, not even a particle of evidence to show that the said dao bore any blood stain nor was the said dao subjected to serological test to ascertain if the dao bore any stain of human blood and, if so, whether the blood was of the deceased, Ila Gogoi.

24. It is, therefore, not only hazardous, but also impossible to hold, with any degree of certainty, that the said dao (M. Ext.1) was the weapon of offence.

25. Coupled with the above, while considering the cross-examination of PW6, we notice that though this witness has deposed, in her examination-in-chief, that after having been assaulted by her husband, when injured Ila Gogoi was being taken to the hospital, Ila Gogoi, on being asked by her (PW6), told her (PW6) that her husband, Ghana Gogoi, had cut her, yet in her cross-examination, this witness (PW6) has clearly deposed that she never stated before the police that when she had gone to the place of occurrence, Ila was in a position to speak or that when she (PW6) asked Ila, Ila said that her husband, Ghana Gogoi, had cut her.

26. Notwithstanding, therefore, the fact that PW6 had claimed, in her examination-in-chief, that injured Ila had reported to her (PW6) that her husband (i.e., the accused) had hacked her, in such statement having been made by PW6, when her statement was recorded during investigation, it logically follows that the claim of PW6, made, for the first time, at the trial, that she had been reported by injured Ila that her husband (i.e., the accused) had hacked her, cannot be safely believed in, or relied upon.

27. From the above discussion of the evidence on record, what clearly emerges is that there is no eye witness to the alleged occurrence of assault on Ila Gogoi by the accused-appellant. This apart, there is no evidence that the said seized dao (M. Ext. No. 1) was the weapon of offence. There is also no reliable evidence that injured Ha was in a position to make any statement or that she had made any statement to PW6 to the effect that her husband had hacked her.

28. Having considered the evidence of the prosecution witnesses and, in the light of law on circumstantial evidence, what clearly emerges is that there is no witness, who has claimed to have seen the accused-appellant assaulting his wife, Ila Gogoi. The prosecution''s case rests, therefore, on circumstantial evidence.

29. There is only one incriminating circumstance appearing against the accused-appellant, the circumstance being that the accused-appellant was found standing near his injured wife with a dao in his hand. There is, however, no material, in the evidence of any of the witnesses, to show that the said dao, which was seen in the hand of the accused, bore any stain of human blood, particularly, the blood of the deceased, Ila Gogoi.

30. In the circumstances mentioned above, it is not only difficult, but well-nigh impossible to confidently hold that it was the accused-appellant, who had hacked his wife to death. The evidence on record, thus, undoubtedly, gives rise to grave suspicion that the accused-appellant was the one, who had killed his wife; but suspicion, howsoever strong, cannot take place of proof and, in such circumstances, the accused-appellant deserved to be accorded benefit of doubt.

31. There is yet another aspect, which has caught our attention and which, we believe, should be deliberated upon even though we have found that the accused-appellant is entitled to be acquitted on benefit of doubt This unexplored aspect is that the evidence of prosecution witnesses have revealed that accused-appellant suffered from some traits of insanity. We believe that we should take this as an opportunity to deal with the law with respect to insanity, the mode of proof and the role of Courts irrespective of the fact whether such a plea is or is not specifically taken by an accused.

32. When we come to the issue of insanity, it needs to be borne in mind that it is Section 84 IPC, falling under Chapter IV (General Exceptions), which provides for a complete defence to every offence on a proven plea of insanity. It is often said that there is a difference between legal insanity and medical insanity and that Section 84 IPC makes a plea of legal insanity a General Exception and it is, therefore, legal insanity, which is a complete defence to any offence, but not medical insanity. As one can reasonably understand, medical insanity is insanity, which, according to Medical Science, is an insanity; whereas legal insanity is what Section 84 IPC, in substance, defines.

33. In order to, therefore, have a clear perception about legal insanity, let us have a look at what Section 84 IPC provides. For this purpose, Section 84 IPC is reproduced Below

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 what he is doing is either wrong or contrary to law.

34. From a bare reading of Section 84 IPC, it becomes clear that an offence will not be treated as an offence, if it is committed by a person, who, at the time of committing the offence, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that what he is doing is either wrong or contrary to law meaning thereby that a person, in order to succeed in his defence of insanity, must, at the time of committing the offence, be, by reason of unsoundness of mind, incapable of knowing the nature of the act or that what he is doing is either wrong or contrary to law.

35. In other words, in order to take help of the plea of insanity, an accused must prove that at the time of committing the offence, he was, by reason of unsoundness of mind, incapable of knowing the nature of the act, or that what he was doing was either wrong or contrary to law. Unless, therefore, any of the aforesaid two requirements of Section 84 IPC is satisfied, the benefit of Section 84 IPC cannot be derived by an accused. This, in turn, means that an accused has to prove that either he was, by reason of unsoundness of mind, (i) incapable of knowing the nature of the act, or (ii) incapable of knowing that what he was doing was either wrong or contrary to law.

36. Imperative, therefore, it is that one clearly comprehends as to when any of the preconditions of insanity, as embodied in Section 84 IPC, can be said to have been proved by an accused. This requirement necessarily brings one to the question of paramount importance, namely, what shall be regarded as standard of proof of defence of insanity embodied in Section 84 IPC or, in other words, when can an accused be said to have succeeded in proving the defence of insanity.

37. A close analysis of the scheme of the Indian Penal Code would show that the Chapter, on General Exceptions, precedes the penal provisions embodied in the Code, the idea being that the acts or omissions, which are punishable under the Indian Penal Code, would become so punishable only if a case is not covered by one or the other of the General Exceptions. It is, therefore, not difficult to understand from a reading of Section 6 of the Indian Penal Code that every penal provision, in the Penal Code, inheres the existence of General Exceptions. Section 6 of the IPC, being relevant in this context, is reproduced below:

6. Definitions in the Code to be understood subject to exceptions.--Throughout this Code, every definition of an offence, every penal provision and every illustration of every such definition or penal provision, shall be understood subject to the exceptions contained in the Chapter entitled" General Exceptions", though those exceptions are not repeated in such definition, penal provision or illustration.

38. The fundamental principle, which runs through all the General Exceptions, is that every man is presumed to know the consequences of his acts or omissions; but law recognizes certain circumstances, as provided under the General Exceptions, whereunder the presumption of knowledge and intention is done away with or, at least, relaxed.

39. Now, so far as a plea of insanity, or for that matter, any plea of General Exceptions, is concerned, one has to bear in mind the provisions of Section 105 of the Evidence Act, which reads as follows:

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

(Emphasis is added)

40. A cursory reading of Section 105 of the Evidence Act leads one to the conclusion that whenever a plea of General Exception, such as, insanity, is raised, the burden of proving the plea would lie on the accused. The striking feature of Section 105, however, lies in the words, "the Court shall presume the absence of such circumstances." The effect of raising ''presumption'', as envisaged by Section 105, is that when an accused takes the plea of insanity, the Court ''shall presume'' that he

was sane and not insane.

41. Commonly known it is that law requires prosecution to prove its case beyond all reasonable doubt The standard of proof, in criminal cases, is, therefore, proof beyond reasonable doubt. This principle is an offshoot of the principle that an accused is presumed to be innocent until proved guilty.

42. It is, therefore, not, ordinarily, open to the prosecution to prove its case to a certain point and, thereafter, urge the Court to presume the circumstances, which raise an inference about the guilt of the accused. In contrast with the heavy degree of burden, which the prosecution so carries, Section 105 gives to an accused opportunity to discharge the burden, placed on him by Section 105, to the extent of rebutting the presumption only. Undoubtedly, rebutting of presumption is lighter, or easier, than proving a case beyond reasonable doubt.

43. Notwithstanding, therefore, the presumption, which the law binds the Court to raise against an accused, when an accused takes the plea of insanity, the burden of the accused goes to the extent of merely rebutting the presumption raised by the Court.

44. Logically speaking, there is a subtle, but cardinal distinction between the standard of proof, which is demanded by the prosecution, namely, ''proof beyond reasonable doubt'' vis-�-vis the standard of proof, which is placed on an accused by Section 105. For the purpose of enabling him to prove his plea of General Exception, including insanity, standard of proof, placed on an accused, is far lighter than that on the prosecution. In fact, the standard of proof, placed on an accused, not higher than the one, which a party has in a civil proceeding, namely, ''proof on preponderance of evidence'' or ''proof on preponderance of probabilities''.

45. To put, what is observed above, a little differently, when the burden of proving an issue is on the prosecution, the issue must be proved beyond reasonable doubt When, however, the burden of proving an issue is on the accused, he is not, in general, called upon to prove the issue beyond reasonable doubt unless a statute specifically so requires. Ordinarily, therefore, it is sufficient if the accused succeeds in proving a prima facie case or in probablising the plea, which he takes, and the onus, then, shifts to the prosecution, which haste still discharge its original and onerous burden that never shifts, namely, that of establishing the whole of its case by proving the guilt of the accused beyond reasonable doubt This rule of evidence was succinctly explained by the House of Lords in the case of 1935 AC 462 Woolmington vs. The Director of Public Prosecutions . The relevant observations, appearing in Woolmington (supra), in this regard, read as under:

...at the end of the evidence it is not for the prisoner to establish his innocence, but for the prosecution to establish his guilt. Just as there is evidence on behalf of the prosecution so there may be evidence on behalf of the prisoner which may cause a doubt as to his guilt. In either case, he is entitled to the benefit of the doubt. But

while the prosecution must prove the guilt of the prisoner, there is no such burden laid on the prisoner to prove his innocence and it is sufficient for him to raise a doubt as to his guilt; he is not bound to satisfy the jury of his innocence.

(Emphasis supplied)

46. In short, thus, in England, in the light of Woolmington''s case (supra), while prosecution is required to prove the whole of its case beyond reasonable doubt, an accused can discharge his burden of proving an issue, such as, the issue of insanity, on the basis of ''preponderance of probabilities'' or ''preponderance of evidence'' or by even creating a reasonable doubt, in the mind of the Court, that the plea of insanity, which the accused has taken, might be true or might not be untrue.

47. Coming to India, we may point out that as per the scheme of the Indian Penal Code, the chapter, on General Exceptions, starts, as already indicated above, before the commencement of penal provisions with the idea that the acts or omissions, which are punishable under the Indian Penal Code, become so punishable only if the case is not covered by any one or the other General Exceptions. A reading of Section 6 of the Indian Penal Code, which has been quoted above, would show that every penal provision, in the Indian Penal Code, inheres the existence of General Exceptions.

48. While dealing with Indian situation, one may note that in the case of AIR 1937 83 (Rangoon) Dunkley, J., having accepted the law, as enunciated in the case of Woolmington''s case (supra), held as follows:

The conclusion therefore is that if the Court either is satisfied from the examination of the accused and the evidence adduced by him, or from circumstances appearing from the prosecution evidence, that the existence of circumstances bringing the case within the exception or exceptions pleaded has been proved, or upon a review of all the evidence is left in reasonable doubt whether such circumstances do exist or not, the accused, in the case of a General Exception. is entitled to be acquitted, or, in the case of special exception, can be convicted only of the minor offence....

(Emphasis added)

49. From the decision, in Damapala''s case (supra), what can be safely gathered is that the Court took the view, in Damapala''s case (supra), that even when a Court, upon review of all evidence, is left in reasonable doubt whether the plea of General Exception, such, as insanity, which an accused may have taken, does or does not exist, the accused would, in such a case, too, be entitled to acquittal.

50. In short, what Damapala (supra) laid down was that even when the accused had, otherwise, failed to prove his plea of General Exception, including insanity, by preponderance of evidence or preponderance of probabilities, the accused would nevertheless be entitled to receive, at least, benefit of doubt if he succeeded in creating reasonable doubt, in the mind of the Court, as regards the existence of the

General Exception, such as, the plea of insanity, which he may have taken.

51. The observations, made in the case of Woolmington (supra), and, later, in Damapala''s case (supra), though seemed to settle the law as regards the onus of the accused in the event he takes the plea of a General Exception, such as, insanity, it took a few years to get the issue settled in India and, in this regard, the main controversy was with respect to the interpretation of the expression, "the Court shall presume the absence of such circumstances", appearing in Section 105 of the Evidence Act. The controversy arose, because of the term ''shall presume'', which stands defined in Section 4 of the Evidence Act.

52. In order to clearly understand as to what, ordinarily, the expression ''shall presume'' would mean and convey, we reproduce hereinbelow Section 4, which reads:

"May presume" - Whenever it is directed by this Act that the Court may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it.

"Shall presume"- Whenever it is provided by this Act that the Court shall presume a fact. it shall regard such fact as proved, unless and until it is disproved.

(Emphasis is added)

53. Since Section 4 uses the expression unless and until it is disproved, one has to per force turn to Section 3, which defines not only ''prove'' and ''not proved'' but also ''disproved''. Section 3 reads, "A fact is said to be ''disproved'', when, after considering the matters before it'', the Court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist."

54. A conjoint reading of Section 3 and 4 shows that when a statute requires that a Court shall presume a fact, the Court shall regard such fact as proved unless and until the fact is disproved. No wonder, therefore, that in a case of insanity, an accused, in the light of Section 105 read with Section 4 of the Evidence Act, would, ordinarily, be required to bring--by eliciting evidence from the prosecution witnesses or by adducing evidence--such matters as would make the Court either believe that the accused was insane or the Court must consider existence of insanity so probable that a prudent man ought, under the circumstances of a particular case, to act on the supposition that the accused was insane.

55. What follows from the above, at the first blush, is that when a statute requires that a Court shall presume a fact, the Court is required to treat such fact as proved unless and until the fact is found to have been disproved within the meaning of Section 3 of the Evidence Act.

56. If the above view is strictly followed, then, in a case of insanity or self-defence, which falls under General Exceptions, when an accused takes the plea of self-defence or insanity, the Court has to regard that the accused did not act in self-defence and/or that accused was not insane; rather, sane. When such a presumption is raised, then, the accused cannot, ordinarily, be said to have discharged his onus, u/s 105, unless and until he succeeds in proving his plea that he had acted in self-defence or that he was insane, as the case may be. Notwithstanding, however, such a high standard of proof, which Section 105, at the first glance, appears to place on the accused, Damapala''s case (supra), which was decided, in the light of the law laid down in Woolmington (supra), appears to suggest that even if an accused fails to prove his plea of self-defence or insanity, he can still be given ''benefit of doubt'' if he succeeds in creating reasonable doubt in the mind of the Court that the plea, which the accused has so taken, might have been, according to reasonable standard, true.

57. In the case of Parbhoo and Others Vs. Emperor, the learned Judge, Braund, found himself disagreeing with the position of law as had been laid down in Damapala''s case (supra), the disagreement being on the ground that such a principle of appreciation of evidence, as had been propounded in Damapala (supra), gives to the accused person the right of saying that though he had produced evidence of circumstances tending to show the exercise of aright of self-defence and though the evidence, so given with regard to the exercise of right of self-defence, was not proved affirmatively to the satisfaction of the Court, he was nonetheless entitled to the benefit of his plea of self-defence if the Court is left in reasonable doubt whether the accused person is or is not entitled to the benefit of General Exception, which he has taken. The further issue, raised in the case of Parbhoo (supra), before its reference to Full Bench, was whether, in a case, wherein an accused person takes the plea of self-defence, the burden of proof would be thrown upon the prosecution not only to prove the crime, but also to prove the absence of the plea of a General Exception, which an accused might have taken.

58. Parbhoo''s case (supra), thus, came to be referred to a Full Bench of Allahabad High Court and the reference read as follows: "Whether, having regard to Section 96, Penal Code, and Section 105, Evidence Act, in a case in which any General Exception in the Penal Code is pleaded by an accused person and evidence is adduced to support such plea, but such evidence fails to satisfy the Court affirmatively of the existence of circumstances bringing the case within the General Exception pleaded, the accused person is entitled to be acquitted, if, upon a consideration of the evidence as a whole (including the evidence given in support of the plea of the said General Exception), a reasonable doubt is created in the mind of the Court whether the accused person is or is not entitled to the benefit of the said exception?

59. The decision, which the Full Bench gave, was a split decision. While the majority, comprising Iqbal Ahmed, J., Bajpai, J., Mulla, J., and Md Ismail, J., answered the reference in the affirmative, Collister, Allsop, and Braund JJ., dissented.

60. Before analyzing the majority view in Parbhoo''s case (supra), it would be proper to discuss the minority view so that the two contrasting opinions could be clearly comprehended and easily understood.

61. Having considered the provisions of Section 105, in the light of the provisions of Sections 3 and 4 of the Evidence Act, it was concluded by Collister, J., in Parbhoo''s case (supra), that a court shall regard as proved the absence of the circumstances, pleaded by the accused person, unless, upon a review of all the evidence, the Court either believes that such circumstances did exist or considers the fact of existence of such circumstances so probable that a prudent man ought to act upon the supposition that the circumstances, as pleaded by the accused, did exist.

62. The learned dissenting Judges were also of the view, in Parbhoo''s case (supra), that since the law of evidence, in India, has been codified in the form of Indian Evidence Act, it is the statute, which would prevail and, as a corollary thereof, the principle of law, laid down in the case of Woolmington (supra) and later followed in the case of Damapala (supra), would not apply to cases in India.

63. From the discussions held above, it would appear that though, in absolute theoretical sense, the minority view was correct that burden of proving a General Exceptions, in the light of the provisions of Section 105 lies, when read in the context of Sections 3 and 4, is on the accused and this burden of the accused goes to the extent of proving that the circumstances, as pleaded by the accused, bringing his case within the fold of one of the General Exceptions, did exist or that existence of such circumstances was so probable that a prudent man ought to act upon the supposition that the circumstances, as pleaded by the accused, did exist, yet what was not considered by the minority was the cardinal rule of criminal jurisprudence that prosecution''s burden to prove the charge never shifts to the accused.

64. No doubt, Section 105 speaks of burden of an accused; but what Section 105 does not lay down, in specific terms, is the mode and manner in which the burden is to be discharged nor does Section 105 postulates that in the event of failure, on the part of the accused, to prove his plea of General Exception, which he may have taken, prosecution''s case, as a corollary, be treated to stand proved beyond reasonable doubt. The catch is on the expression ''reasonable doubt'' inasmuch as unlike the prosecution, it is not mandatory for the accused to adduce evidence. The accused may elicit facts from prosecution evidence itself in order to derive support for his plea; but, while the prosecution must prove the guilt of the accused and that, too, beyond reasonable doubt, there is no corresponding burden laid on the accused to prove his innocence beyond reasonable doubt and it is sufficient for him to raise a reasonable doubt as to his guilt.

65. With regard to the above, even though elaborate independent findings of the learned Judges, constituting majority of opinion, are worth quoting here, yet respect for brevity demands that some of the relevant observations of Iqbal Ahmed, J., forming majority ruling, be quoted here for a clear understanding of the matter. The relevant observations read asunder:

17. ...in cases falling within the purview of Section 105. Evidence Act the evidence produced by the accused person, even though falling short of proving affirmatively the existence of circumstances bringing the case within the exception pleaded by him, can be utilized as part of the entire evidence in the case for the purpose of showing that a reasonable doubt exists as to his guilt. In view of the judicial pronouncements noted above I should, I feel, in the absence of cogent and convincing reasons, hesitate to take the contrary view. It is however argued that, as the law of evidence regulating judicial proceedings in this country is governed by the Evidence Act it is not permissible to travel beyond the provisions of that Act and to allow the decision of the question under consideration to be coloured or influenced by the decision of the House of Lords in 1935 AC 462 Woolmington vs. The Director of Public Prosecutions There are, to my mind two obvious answers to this contention. In the first place the Indian Evidence Act is little more than an attempt to reduce the English law to the form of express propositions arranged in their natural order, with some modifications rendered necessary by the peculiar circumstances of India. So far back as in the year 1880, it was pointed out by the Calcutta High Court in the Full Bench case in Fatten Lall Vs. Gujju Lall, that with some few exceptions the Indian Evidence Act was intended to, and did, in fact consolidate the English law of England, and in the same year West J. rightly pointed out in Munchershaw Bezonji v. New Dhurumsey Spinning & Weaving Co. (1980) 4 Bom. 576 (at p. 581), that the Evidence Act was drawn up chiefly from Taylor on Evidence. It follows that even though a matter has been expressly provided for by the Evidence Act, recourse may be had to English decisions in order to interpret particular provisions of the Act when they are of doubtful import owing to the obscurity of the language in which they have been enacted. As was observed by Edge C.J. in Collector of Gorakhpur v. Palakdhari Singh (1990) 12 All. 1 (FB):
No doubt cases frequently occur in India in which considerable assistance is derived from the consideration of the law of England or of other countries. In such cases we have to see how far such law was founded on common sense and on the principles of justice between man and man, and may safely afford guidance to us here....

18. In the second place, even though, the Evidence Act does in certain respects differ from English law and supplies a distinct body of law as to the rules of evidence. I decline to believe that the framers of the Indian law could or did intend to depart from the English law on the subject under discussion.

(Emphasis is added)

66. In order to harmonize the relationship between the expression, "Court shall presume the absence of such circumstances", appearing in Section 105 of the Evidence Act, on the one hand, and the definitions of ''shall presume'' and ''disproved'', as contained in Sections 4 and 3 respectively, on the other, emphasis was laid, by Iqbal Ahmed, J., on the expression "matter before it", which appears in the definition of ''proved'' in Section 3.

67. Thus, according to the majority, in Parbhoo''s case (supra), what the Court is required to consider is not the prosecution''s evidence or defence evidence separately; rather, the proper approach would be to consider, in its entirety, the matters, placed in the form of evidence by either the prosecution or the defence, and, then, to come to a conclusion whether the fact has been proved or not.

68. In a proceeding, there may be various ''facts in issue'' and, in the cases, falling within the purview of Section 105, the law places on the accused the minor burden of bringing his case within the ''exceptions'' or ''proviso'' relied upon by him. It would be wrong to say that that the failure of the accused to discharge the burden lightens the burden placed on the prosecution by Section 101 and/or Section 102 of the Evidence Act One of the cases, relied upon, in order to support this proposition, by Iqbal Ahmed, J., was Hori Lal Vs. Emperor wherein it was held as under:

It is an essential principle of criminal law in English jurisprudence that a criminal charge has got to be established by the prosecution beyond reasonable doubt, and "the onus never changes." It is, therefore, manifest that even in cases to which Section 105 applies, the prosecution has to prove the guilt of the accused. Section 3, Evidence Act, lays down that:

A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

21. By this provision the Court, in determining the question whether the case for the prosecution is or is not proved, is enjoined to consider "the matters before it." The Court must therefore, consider not only the evidence for the prosecution but also the evidence adduced by the accused with a view to discharge the burden laid on him by Section 105. There may be cases - indeed such cases are numerous - in which the evidence produced by the accused is not sufficient to discharge the burden cast on him by Section 105. All the same that evidence'' is a "matter" in the case and the Court. while considering all the matters before it had therefore, to take that evidence into consideration. But great stress is laid on the words "the Court shall presume the absence of such circumstances" which find a place in the concluding portion of Section 105 and, it is urged that. in the event of the failure of the accused to discharge the burden placed on him by that Section, the Court must proceed on the assumption that the circumstances bringing the case within any "exception" or

"proviso" did not exist. The argument is that, unless the accused succeeds in proving that his case comes within the exception or proviso pleaded by him, the evidence led by him must be totally discarded and the Court must proceed on the definite supposition that mere was an entire absence of the "exception" or "proviso" relied upon by the accused. In connection with this argument reliance is placed on para. 2 of Section 4 of the Act which provides that:

Whenever it is directed by this Act that the Court shall presume a fact, it shall regard such fact as proved unless and until it is disproved.

22. It is contended that as by Section 105 the Court is enjoined to "presume the absence of such circumstances." it must do so. until "the absence of such circumstances" is disproved. I find it impossible to assent to these propositions. To accede to the contention would be to introduce in Section 4 a paragraph to the following effect: "Whenever it is directed by this Act that the Court shall presume the absence of a fact, it shall regard such fact as disproved unless and until it is proved." There is however no such provision in that Section and it is therefore, not permissible to introduce such a paragraph. Section 4 no doubt enjoins that when the Act directs that a fact shall be presumed the Court must regard such fact as proved unless and until it is disproved. It does not, however. follow from this that the converse of that proposition is also necessarily true. At any rate when we are dealing with a codified law we cannot import in that law provisions which are not there.

23. To my mind the concluding portion of Section 105 means no more than this: that, in considering the evidence for the defence relating to an "exception" or "proviso"'' pleaded by the accused the Court must start with the assumption that circumstances bringing the case within the "exception" or proviso do not exist. It must then decide whether the burden of proof has or has not been discharged by the accused. If it answers the question in the affirmative it must give effect to its conclusion by acquitting the accused or punishing him for the lesser offence. If on the other hand, it holds that the burden has not been discharged, it cannot from that conclusion jump to the further conclusion that the existence of circumstances bringing the case within the exception or proviso has been disproved. All that it can do in such a case is to hold that those circumstances are "not proved." It would be noted that Section 3 draws distinction between the words "proved," "disproved" and "not proved." It enacts that "a fact is said not to be proved when it is neither proved nor disproved." The burden of bringing his case within an "exception" or "proviso" is put on the accused by Section 105, but there is no provision in the Act to justify the conclusion that the failure to discharge that burden is tantamount to disproof of the existence of circumstances bringing the case within the "exception" or "proviso" pleaded.

(Emphasis supplied)

69. The main discerning feature in the minority as well as the majority view, in Parbhoo''s case (supra), is application of English principles in Indian context. The minority opinion went by the view that it is the codified law, contained in Section 105 of Evidence Act, which has to be followed in the light of the definitions of shall presume and disprove, warranting thereby the accused (who sets up a plea of self-defence or insanity, as embodied in General Exceptions), to prove his plea to the extent that the Court is in a position to hold that the plea of General Exception did exist at the relevant point of time, or that its existence was so probable that a prudent man ought, under me circumstances of the case, to act upon the supposition that the circumstances, as pleaded by the accused, did exist. However, the majority held a contrary view that since the fundamental principles of criminal jurisprudence, in England and India, remain the same, it would be inappropriate to escape from the principle of law laid down in the case of Woolmington (supra).

70. A careful analysis of the two contrasting opinions, in Parbhoo''s case (supra), would show that the majority view undertook a finer analysis from a practical standpoint, rather than, confining itself to a pure pedantic view, Thus, the hypothetical situation, quoted in para 24, referred to hereinafter in the judgment of Iqbal Ahmed, J., explains the issue in a more explicit manner:

24. That this is so will be apparent by taking the following hypothetical case into consideration: In a trial for the murder of B the accused A pleads that he had received grave and sudden provocation from B and produces evidence in support of that plea. The evidence is not of such a quality as to justify a finding in the affirmative in A''s favour. All the same it is such as leaves the Court in a state of reasonable doubt as to whether the plea of the accused is or is not well founded. In this state of the evidence the Court while holding that the burden that was on A has not been discharged, cannot proceed further and record a finding that the plea of A was wholly unfounded. It will have to content itself with the finding that the plea is "not proved." "What then is the Court to do in such a case? Should it in the consideration of the question whether A is guilty of murder, put aside the evidence produced by A, so to say, in a watertight compartment and exclude that evidence entirely from consideration? Or should it take that evidence, for what it is worth into consideration along with the other evidence in the case and then make up its mind as to the guilt or innocence of A? I cannot but hold that it is only the latter alternative which is open to the Court and this is what follows from the definition of "proved" in the Act. It is one thing to hold that the "exception" or "proviso" pleaded has not been proved and it is quite another thing to say that it has been disproved. If a reasonable doubt as to the existence of the exception or proviso exists the Court cannot, while considering the evidence as a whole, deny to the accused the benefit of that doubt.

71. With utmost respect, what escaped the attention of the minority, in Parbhoo''s case (supra), is that if the accused is able to rebut the presumption, as mandated by

Section 105 of the Evidence Act, he would definitely be entitled to an acquittal and such an acquittal would be a clear and clean acquittal; but the minority view ignored those cases, where, though the circumstances may fall short of the expected standard, yet if the circumstances create reasonable doubt in the mind of the Court that accused might not be telling a lie, when he spoke of such circumstances, would he not receive, or should he not be extended, benefit of doubt. It is the majority view, which answers the issue clearly that the accused, in such circumstances, would be entitled to benefit of doubt if not a clear acquittal.

72. What logically follows from the above discussion is that if minority view, in Parbhoo''s case (supra), had been accepted, the result would have been that whenever an accused happened to take resort to any of the General Exceptions, such as, a plea of self-defence or a plea of insanity, he would have been convicted if he would have failed to prove that his plea was true. If such was the interpretation of law, then, the consequence would have been that in the case of General Exceptions, either an accused was entitled to a clean acquittal or he was bound to be convicted. Resultantly, therefore, in such cases, there would have been no scope or occasion for any accused to receive benefit of doubt even if he could have created reasonable doubt in the mind of the Court that the plea, which he had taken, was likely to be true.

73. The ratio, laid down in the case of Parbhoo''s case (supra), came to be questioned in the case of Rishi Kesh Singh and Others Vs. The State, The reference, in this case, was as follows:

Whether the dictum of this Court in the case of Parbhoo and Others Vs. Emperor, to the effect that the accused who puts forward a plea based on a General Exception in the Indian Penal Code is entitled to be acquitted if upon a consideration of the evidence as a whole (including the evidence given in support of the plea based on such a General Exception) a reasonable doubt is created in the mind of the Court whether the accused person is entitled to the benefit of the said exception is still good law?

74. The majority decision followed the ratio, summed up by Mathur, J., who, after having analysed the relevant law, summarized his findings as follows:

92. To sum up, the doctrine of the burden of proof and the nature of evidence necessary to discharge this burden in cases where the accused claims the benefit of the General Exceptions in the Indian Penal Code or of any special exception or proviso contained in any other part of the same Code, or in any other law, can be stated as below:

1. The case shall fall in one of the three categories depending upon the wording of the enactment:--

(i) The statute places the burden of proof of all or some of the ingredients of the offence on the accused himself;

(ii) the special burden placed on the accused does not touch the ingredients of the offence, but only the protection given on the assumption of the proof of the said ingredients; and

(iii) the special burden relates to an exception, some of the many circumstances required to attract the exception, if proved, affecting the proof of all or some of the ingredients of the offence.

2. In the first two categories the onus lies upon the accused to discharge the special burden, and on failure he can be convicted of the offence provided that the prosecution has succeeded to discharge its general burden of proof, that is, to establish the case beyond any reasonable doubt.

3. In cases falling under the third category, inability to discharge the burden of proof shall not, in each and every case, automatically result in the conviction of the accused. The Court shall still have to see how the facts proved affect the proof of the ingredients of the offence. In other words, if on consideration of the total evidence on record, a reasonable doubt exists in the mind of the Court as regards one or more of the ingredients of the offence, including mens rea of the accused, he shall be entitled to its benefit and hence to acquittal of the main offence even though he had not been in a position to prove the circumstances to bring his case within the exception. This shall be on the ground that the general burden of proof, resting on the prosecution, was not discharged.

4. The burden of proof on the prosecution to establish its case rests from the beginning to the end of the trial and it must prove beyond reasonable doubt that the accused had committed the offence with the requisite mens rea. 5. The burden placed on the accused is not so onerous as on the prosecution. The prosecution has to prove its case beyond reasonable doubt, but in determining whether the accused has been successful in discharging the onus, the Court shall look into the preponderance of probabilities in the same manner as in a civil proceeding. In other words, the Court shall have to see whether a prudent man would, in the circumstances of the case, act on the supposition that the case falls within the exception or proviso as pleaded by the accused.

93. In this view of the matter the dictum laid down in Parbhoo and Others Vs. Emperor, is partly erroneous and requires modification, though the decision, read as a whole is in conformity with the law. The dictum can be modified as below:-

In a case in which any General Exception in the Indian Penal Code, or any special exception or proviso contained in another part of the same Code, or in any law defining the offence, is pleaded or raised by an accused person and the evidence led in support of such plea, judged by the test of the preponderance of probability, as in

a civil proceeding, fails to displace the presumption arising from Section 105 of the Evidence Act, in other words, to disprove the absence of circumstances bringing the case within the said exception; but upon a consideration of the evidence as a whole, including the evidence given in support of the plea based on the said exception or proviso, a reasonable doubt is created in the mind of the Court, as regards one or more of the ingredients of the offence, the accused person, shall be entitled to the benefit of the reasonable doubt as to his guilt and hence to acquittal of the said offence.

75. In short, what was held, in Rishi Kesh Singh (supra), was that when an accused takes recourse to General Exceptions and a reasonable doubt is created in the mind of the Court, as regards one or more of the ingredients of the offence, the accused shall be entitled to benefit of doubt as to his guilt. For instance, in a case of murder, mens rea is imperative. When, however, possibility of an accused being insane cannot be ruled out on the basis of the evidence on record, the accused would be still entitled to acquittal by extending to him benefit of doubt.

76. The finding, arrived at in the case of Rishi Kesh Singh (supra), was finally approved by the Supreme Court, in the case of Partap Vs. The State of Uttar Pradesh, wherein M.H. Beg, J., one of the Judges in the case of Rishi Kesh Singh (supra), quoted the following paragraph of Parbhoo''s case (supra) with approval:

The legal position of a state of reasonable doubt may be viewed and stated from two opposite angles. One may recognise, in a realistic fashion, that, although the law prescribes only the higher burden of the prosecution to prove its case beyond reasonable doubt and the accused''s lower burden of proving his plea by a preponderance of probability only, yet, there is, in practice, a still lower burden of creating reasonable doubt about the accused''s guilt and that an accused can obtain an acquittal by satisfying this lower burden too in practice. The objection to stating the law in this fashion is that it looks like introducing a new type of burden of proof, although, it may be said, in defence of such a statement of the law, that it only recognises what is true. Alternatively, one may say that the right of the accused to obtain the benefit of a reasonable doubt is the necessary outcome and counterpart of the prosecution''s undeniable duty to establish its case beyond reasonable doubt and that this right is available to the accused even if he fails to discharge his own duty to prove fully the exception pleaded. This technically more correct way of stating the law was indicated by Woolmington''s case and adopted by the majority in Parbhoo''s case, and, after that, by the Supreme Court.
(Emphasis supplied)

77. What logically follows from the above discussion is that one of the necessary outcome, as a corollary of the prosecution''s undeniable duty to prove its case beyond reasonable doubt, is the right of the accused to obtain the benefit of reasonable doubt even in a case of General Exception, wherein he fails to discharge

his own duty to prove fully the plea of a General Exception, which he may have taken recourse to.

78. The law, which has been laid down since Parbhoo''s case (supra), with respect to interpretation of Section 105 Evidence Act, has been followed in several cases thereafter and one may refer, in this context, to the cases of State of U.P. Vs. Ram Swarup and Another, , Vijayee Singh and others Vs. State of U.P.,

79. What can be deduced from the above discussion is that the expression "Court shall presume absence of such circumstances" does not mean to place upon the accused the same standard of burden of proof, which the prosecution, otherwise, has in proving the charge beyond all reasonable doubt. In the words of Beg, J., in the case of Rishi Kesh Singh (supra), the law may be summed up as follows:

An accused''s plea, of an exception may reach one of three not sharply demarcated stages, one succeeding the other, depending upon the effect of the whole evidence in the case judged by the standard of a prudent man weighing or balancing probabilities carefully. These stages are:

Firstly, a lifting of the initial obligatory presumption given at the end of Section 105 of the Act;

Secondly, the creation of a reasonable doubt about the existence of an ingredient of the offence: and

Thirdly a complete proof of the exception by ''a preponderance of probability'', which covers even a slight tilt of the balance of probability in favour of the accused''s plea.

The accused is not entitled to an acquittal if '' his plea does not go beyond the first stage. At the second stage, he becomes entitled to acquittal by obtaining a bare benefit of doubt. At the third stage, he is undoubtedly entitled to an acquittal. This, in my opinion, is the effect of the majority view in Parbhoo''s case which directly relates to first two stages only.

(Emphasis is added)

80. Thus, the law, as we have today, in India, the fundamental principle, governing proof, in a criminal trial, is that prosecution is required to prove the guilt of the accused beyond reasonable doubt. The burden is so heavy on the prosecution, because an accused is, in English law, which we have followed, in India, presumed to be innocent until proved guilty beyond reasonable doubt

81. The burden of proof, in a criminal trial, necessarily therefore, rests on the prosecution inasmuch as Section 101 of the Evidence Act clearly lays down that whoever desires any Court to give judgment as to any legal right or liability dependent on the existence to facts, which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the

burden of proof lies on that person. Consequently, if no evidence is adduced by the prosecution, the case of the prosecution would necessarily fail. Prosecution is, therefore, required to prove its case by adducing all such evidence, which would prove the accused guilty beyond reasonable doubt.

82. Section 105 of the Evidence Act, while placing burden of proof on the accused to prove existence of circumstances bringing his case within any of the General Exceptions, embodied in the Indian Penal Code, or within any special exception or proviso, requires that the Court shall presume absence of such circumstances''.

83. If the meaning of the expression ''shall presume,'' occurring in Section 105, is interpreted in the light of the provisions of Section 4 of the Evidence Act, then, the expression ''shall presume'' would mean that a Court shall regard such fact as proved unless and until it is disproved. It further logically follows that disproved would mean, as defined in Section 3, that when, after considering the matters before it'', the Court either believes that the circumstances, as pleaded by the accused, do exist, or considers existence of such circumstances so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that the circumstances, as pleaded by the accused, do exist.

84. Are we to understand, from the reading of the provisions of Section 105, that while placing the burden of proof on the accused to prove the existence of circumstances bringing his case within the four comers of any of the General Exceptions, embodied in the Indian Penal Code, the legislature wanted the accused to prove his case with such rigour as lies on the prosecution? The answer to this question is not very difficult to seek, though development of the law, leading to the answer, makes an interesting legal history, which we have already discussed above.

85. In English Law, the standard of burden of proof, placed on an accused, was laid in the case of 1935 AC 462 Woolmington vs. The Director of Public Prosecutions and the standard, which was laid therein by the House of Lords, has been consistently followed

86. In Woolmington (supra), it was pointed out that throughout the web of the English Criminal Law, one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner''s guilt subject to any statutory exception.

87. Woolmington''s case (supra) pointed out that the standard of proof, demanded by the prosecution, is proof beyond reasonable doubt and, when a plea of general exception, such as, self defence, is taken by an accused, he is not required to prove his plea beyond reasonable doubt Even if, therefore, the evidence on record, adduced by prosecution and/or adduced by the defence, creates a reasonable doubt in the mind of the Court as regards existence of facts, which the prosecution is required to prove, the accused is entitled to benefit of doubt. This is the precise difference between prove and disprove. A fact is said to be proved unless and until it is disproved and a fact is disproved, when, after considering the ''matters before it'',

the Court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist.

88. If the standard, as attributable to the word disproved, is required to be applied in the case of the defence, then, the standard of burden of proof, placed on the accused, would be as rigorous as on the prosecution, which, again, is not an accepted position of law.

89. Resultantly, therefore, when an accused succeeds in probablising his defence, he is entitled to acquittal. However, even if the accused fails to prove the plea of a General Exception by preponderance of probabilities, he would, nonetheless, be entitled to acquittal under benefit of doubt if he succeeds in creating a reasonable doubt, in the mind of the Court, as to the existence of the ingredients of offence, which the prosecution is required to prove.

90. Thus, an accused, when succeeds in proving his plea of a General Exception by preponderance of probabilities, he is entitled to claim acquittal. If he, however, does not succeed in establishing his plea by preponderance of probabilities, but he succeeds nonetheless in creating a reasonable doubt in the mind of the Court as regards existence of the ingredients, which, in a given case, are required to be proved by the prosecution, the accused would be still entitled to acquittal under benefit of doubt.

91. Reverting to the issue of insanity, now, there is a complex issue involved, which is, perhaps, overlooked invariably by the trial Courts. Unlike the other exceptions, provided in Chapter IV, a plea of insanity is, ordinarily, taken by the lawyers on the basis of briefing given by the family of the accused, for, if the accused is, indeed, insane, it would be impossible for him to take such a plea on his production before the Court after he is taken into custody by police inasmuch as it would amount to telling the Court, "I know that I did not know the consequences of what I did, because I was insane at that time or that I am still insane".

92. A reading of the provisions of Section 84 IPC would make it clear that it contemplates a situation, which offers an excuse acting as an intervener between the commission of an act or omission, on the one hand, and the knowledge of the consequences thereof, on the other. As a result, even if the commission of an act or omission, constituting an offence, is proved, the Court is precluded from applying the penal consequences provided under the penal law.

93. The plea of insanity and its consequences were long back considered by the House of Lords in the case of Daniel Mac Noughtons, reported in (1843) 10 C & F 200, and certain guidelines came to be issued to the Juries for considering the plea of insanity. Their Lordships, in Daniel Mac Noughtons (supra), observed thus:

Insanity affects not only the cognitive faculties of the mind which guide our actions, but also our emotions which prompt our actions and the Will by which our actions are performed. And they say that: Our actions and the Will by which our actions which our acting are that: It is only unsoundness of mind which materially imparts the cognitive faculties of the mind that can form a ground of exemption from the criminal responsibility.

94. The law, on the subject of insanity, has come to be crystallized, in India, in Dahyabhai Chhaganbhai Thakker Vs. State of Gujarat, wherein the Supreme Court has held that even if the accused was not able to establish conclusively that he was insane at the time he committed the offence, yet the evidence, placed before the Court, 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 such a 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 Dahyabhai Chhaganbhai Thakker (supra) further clarifies that the burden of proof on the accused to prove insanity is no higher than what rests upon a party to a civil proceeding, which, in other words, means preponderance of probabilities and that the plea of insanity can be proved by not only direct, but also by circumstantial evidence.

95. From the case of Dahyabhai Chhaganbhai Thakker (supra), it is abundantly clear that the accused may rebut the presumption of insanity by placing before the Court not only oral or documentary evidence, but also circumstantial evidence. It further logically follows that in a given case, an accused may be able to succeed, in his plea of insanity, if there exists circumstantial evidence sufficient to give rise to a reasonable doubt in the mind of the Court that the accused has not been proved, beyond reasonable doubt, to have acted with requisite criminal intent or mens rea. In such circumstances, the accused ought to be given benefit of doubt. Logically extended, it would mean that the medical evidence is not, in all cases, necessary to found the accused guilty, because of his and his family''s illiteracy and lack of financial resources may not have ever been treated by a doctor, else, an accused, too, may receive benefit of the plea of insanity u/s 84 IPC if he, otherwise, succeeds in rebutting the presumption, which Section 105 of the Evidence Act may raise against him. The relevant observations, appearing in Dahyabhai Chhaganbhai Thakker (supra), read as under:

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 rebuttal 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.

(Emphasis is added)

96. The principle No. 3, propounded in Dahyabhai Chhaganbhai Thakker (supra), is an extension of the ratio laid down in the case of Parbhoo (supra) followed in Rishi Kesh Singh (supra). Thus, in a given case, when there exist circumstances before the Court, which, otherwise, does not offer proof, as required u/s 105 of Evidence Act, to the extent of rebutting the presumption, raised by Section 105 of the Evidence Act, enabling the Court to hold that the accused was insane at the time of commission of offence; yet, if such circumstances, when taken together with the prosecution''s evidence, create a reasonable doubt as to the plea of insanity, the accused would be still entitled to benefit of doubt.

97. In the case of Hari Singh Gond Vs. State of M.P., 10% various intricacies, especially legal and medical aspects of the plea of insanity, have been discussed. The striking feature, surfacing from the case of Hari Singh Gond (supra), is that irrespective of the fact whether the plea of insanity is taken by accused or not, if during investigation, history of the insanity of the accused is discovered, it becomes the duty of the investigator to get the accused examined on the aspect of his insanity and if such fact is later discovered during trial without being investigated, it creates an infirmity in the prosecution''s case and the benefit of doubt has to be given to the accused. The relevant observations, made in Hari Singh Gond (supra), read as follows:

6....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." (See also Debeswar Bhuyan Vs. State of Assam,

(Emphasis is added)

98. Though the above discussion, on the plea of General Exception, more particularly, insanity, is sufficient to dispose of this appeal, we consider it necessary to point out that one of the highlights of the case of Dahyabhai (supra) is that the crucial time of insanity is the time in and around the occurrence of crime. Ordinarily, if an accused has been insane, all along, so much so that he is required to be kept in fetters, Courts would not face problem in assessing the level of insanity inasmuch as a person, who is wholly insane, cannot be expected to know the consequences of his acts. However, such cases are very rare and, in most of the cases, which come to Courts, the insanity is of those types, where accused suffers from periodical fits.

99. No doubt, medical evidence can guide a Court in ascertaining the nature of insanity, but it may not be of assistance to come to a conclusion whether the accused had or had not been suffering from such phase of insanity at the time of commission of offence that he did not know that what he was doing was an offence or that what he was doing was either wrong or contrary to law.

100. The issue, therefore, becomes that of conscious state of mind of the accused and, on such issues, sufficient direct evidence would be seldom available.

101. It may be pointed out here that a plea, as to insanity, or, for that matter, any other plea, falling under General Exception, becomes a fact in issue at the trial, because an answer, be it affirmative or negative, on the issue of such a plea, determines the extent of liability or disability on the part of the accused. A reading of the definition of facts in issue would be necessary to elucidate the matter further. Section 3 of the Evidence Act, being relevant in this regard, is quoted below:

Section 3 "Facts in issue".-The expression "facts in issue" means and includes--any fact from which, either by itself or in connection with other facts, the existence, non-existence, nature or extent of any right, liability, or disability asserted or denied in any suit or proceeding, necessarily follows.

102. The plea of insanity, or any other plea under the General Exception, if established, would result in acquittal of the accused, because such a plea negates the existence of mens rea in the commission of the crime. Now, whether the accused committed the crime with requisite intention or knowledge is a fact in issue in a given trial and any fact, which enables the Court to arrive at a definite answer on the existence of intention or knowledge, be in the negative or affirmative, also becomes a fact in issue.

103. At this juncture, we may also take note of the provisions of Section 5 of the Evidence Act, which reads as follows:

Section 5 - Evidence may be given of facts in issue and relevant facts

Evidence may be given in any suit or proceeding of the existence or non-existence of every fact in issue and of such other facts as are hereinafter declared to be relevant, and of no others.

104. As the definition makes it clear, if plea of insanity is a fact in issue in a given trial, the facts, relevant to establish the plea of insanity, may be tendered in evidence. Even if the facts have not been tendered in evidence with the intention of strengthening the plea, yet such facts may surface mingled with other facts. In such a situation, too, it becomes the duty of the Court to sift those facts, which are relevant to the facts in issue, and, then, come to a finding whether such fact in issue existed or not.

105. A criminal trial in subordinate Court depends on many factors other than procedural and substantive aspects of law. What would be the nature of the defence; whether a particular plea should be taken or not are areas falling within the realm of management of a trial, which, at times, may be mismanaged as well. The Supreme Court had the occasion to dwell, on such aspect of a trial, in the case of Rajendra Prasad Vs. The Narcotic Cell Through its Officer in Charge, Delhi, The relevant observations, made therein, read as follows:

8. Lacuna in the prosecution must be understood as the inherent weakness or a latest wedge in the matrix of the prosecution case. The advantage of it should normally go to the accused in the trial of the case, but an oversight in the management of the prosecution cannot be treated as irreparable lacuna. No party in a trial can be foreclosed from correcting errors. If proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the court should be magnanimous in permitting such mistakes to be rectified. After all, function of the criminal court is administration of criminal justice and not to count errors committed by the parties or to find out and declare who among the parties performed better.

(Emphasis is added)

106. The fact that most of the accused, coming to subordinate Courts, cannot afford the services of an eminent lawyer and may be deprived of setting up correct plea in their defence, have been visualized in a recent judgment reported as State Vs. Jitender, wherein Delhi High Court, while dealing with a case of death penalty, had the occasion to observe as follows:

76. The Court is aware that in this case accused, Jitender did not enter the plea of insanity anytime during the trial. Yet, it cannot help noticing that all circumstances point to his alienation from his surroundings, his family, near relatives and others. The first thing that strikes one about the incident is not only the gory nature of the sacrifice, (which incidentally appears to have horrified and perhaps even

overwhelmed the Trial Court-evident from the first sentence of the impugned judgment, which refers to "patricide") but also that the accused had to depend on legal aid. The Trial Court proceedings are testimony to the fact that he was virtually abandoned by members of his family-perhaps because of the crime. The prosecution insisted right through that he was practicing Devi pooja, and had committed the crime to propitiate the Goddess. However, the Trial Court did not deem it appropriate to have the appellant evaluated psychiatrically to determine whether he was in control of his senses, and could determine right from wrong. The authorities cited previously point to the Court, in such cases, undertaking such a responsibility. This court underscores this fact because penury, destitution, poverty and illiteracy are barriers which accused often have to face, when confronted with serious and often capital charges. When the crime is a ghastly one, the motive for which is based on superstitious belief in occult or black magic or the like, and the accused is disempowered for any such reason, the Court has to discharge a greater responsibility. Article 39A of the Constitution of India, and the accused''s right to life under Article 21 in a sense impose an obligation upon the concerned judge, when such allegations are leveled, to prima facie satisfy herself (or himself) that the accused was in a sound state of mind, or is in a position to distinguish between right and wrong. This is not to say that the Court should embark upon an elaborate inquiry into the mental state of the accused; what is being stated is that if there are such unusual or peculiar features in the allegations leveled which excite the suspicions of the judge at a preliminary stage that there is a possibility of the accused labouring under some mental disorder, the court should record so, and send the accused for psychiatric or mental evaluation. Disempowerment on account of multiple and sometime intersecting conditions such as poverty, illiteracy. illnesses-be they mental or other disabilities and other such factors would act as double barriers for such a class of accused, who would be unaware of the right to take the pleas available to them, under the law.
(Emphasis is added)

107. One cannot ignore that insanity is a behavioural disorder and perception of people on some traits of behaviour, in a person, lead them to believe that such a person is or is not insane. Such perception, though, strictly speaking, may not help the Court to answer, in positive terms, the issue of insanity; nonetheless, these are facts, which are relevant. The relevancy of such facts can be understood from the perspective of Sections 7, 8, and 15 of the Evidence Act too. In this context, we may revert to the case of Dahyabhai (supra), wherein one of the highlights was the principle No. 2, which we have already reproduced above and which lays down as follows:

(2) There is a rebuttal 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 man that rests upon a party to civil proceedings.

(Emphasis is added)

108. Thus, even though, ordinarily, Courts look for medical opinion to consider the plea of insanity, yet irrespective of the fact whether a plea of insanity has been taken or not or whether medical opinion has been adduced in evidence or not, if it has been brought on record, otherwise, that the accused, at times, attempted to commit suicide or immolate himself for trifle reasons, like someone denying him tea, or such other conduct of the accused either before or after the occurrence of offence, which lends credence to the plea that no sane person can bear such conduct, Court will have to consider such facts as these are facts, which are relevant to the fact in issue, for instance, insanity. No doubt, Court will proceed with the presumption that accused was sane at the time of commission of offence; yet when facts are placed before the Court by oral, documentary or circumstantial evidence, which create a reasonable doubt that the accused may not be sane at the time of commission of offence, the burden would shift to the prosecution to establish, once again, and beyond doubt that the facts, which create doubt of insanity, is only a fanciful plea and without substance.

109. It may be pointed out that the term, beyond reasonable doubt, contains an implicit statement that doubt as to sanity should also be removed. In R. Vs. Lifchus, [1997] 3 S.C.R. 320, Justice Cory of the Supreme Court of Canada summarizes the principles of reasonable doubt in the following manner:

• the standard of proof beyond a reasonable doubt is inextricably intertwined with that principle fundamental to all criminal trials, the presumption of innocence;

• the burden of proof rests on the prosecution throughout the trial and never shifts to the accused;

• a reasonable doubt is not a doubt based upon sympathy or prejudice; rather, it is based upon reason and common sense;

• it is logically connected to the evidence or absence of evidence;

• it does not involve proof to an absolute certainty; it is not proof beyond any doubt nor is it an imaginary or frivolous doubt; and

• more is required than proof that the accused is probably guilty - a jury, which concludes only that the accused is probably guilty, must acquit.

(Emphasis is added)

110. Thus, when we speak of reasonable doubt, we speak of doubt based on proven facts and/or circumstances. How, and in what manner, such facts or circumstances will stare at the Judge would depend on the peculiarities of each case. In case of

insanity, it can be said that a Judge would be correct to extend benefit of reasonable doubt to the accused if he comes to a conclusion that the plea may probably be true.

111. What crystallizes from the above discussion is that the General Exception of proving the guilt of the accused is always on the prosecution and this burden never shifts. Even in the cases, which are covered by Section 105, prosecution is not absolved of its primary duty of discharging the burden, which it carries. An accused may raise the plea of General Exception, such as, insanity, either by pleading the same specifically or by relying upon the probabilities and circumstances obtaining in a case. He may choose to. adduce evidence in support of his plea directly or relying on the prosecution''s case itself or, in a given case, he may indirectly introduce such circumstances by way of cross-examination. Notwithstanding the initial presumption against the accused regarding non-existence of circumstances, relating to General Exception, the Court may, on examination of the materials placed before it, give benefit of doubt to the accused if the accused succeeds in raising a reasonable doubt, in the mind of the Court, as regards the plea, which he may have taken. A reference, in this regard, may be made to the case of Vijayee Singh and others Vs. State of U.P., wherein the Supreme Court has observed:

The general burden of establishing the guilt of accused is always on the prosecution and it never shifts. Even in respect of the cases covered by Section 105 the prosecution is not absolved of its duty of discharging the burden. The accused may raise a plea of exception either by pleading the same specifically or by relying on the probabilities and circumstances obtaining in the case. He may adduce the evidence in support of his plea directly or rely on the prosecution case itself or, as stated above, he can indirectly introduce such circumstances by way of cross-examination and also rely on the probabilities and the other circumstances. Then the initial presumption against the accused regarding the non-existence of the circumstances in favour of his plea gets displaced and on an examination of the material if a reasonable doubt arises the benefit of it should go to the accused. The accused can also discharge the burden u/s 105 by preponderance of probabilities in favour of his plea. In case of general exceptions, special exceptions, provisos contained in the Penal Code or in any law defining the offence, the court, after due consideration of the evidence in the light of the above principles, if satisfied, would state, in the first instance, as to which exception the accused is entitled to, then see whether he would be entitled for a complete acquittal of the offence charged or would be liable for a lesser offence and convict him accordingly.

(Emphasis is added)

112. To sum up, we may safely hold, and we do hold, that Section 84 IPC requires proof of legal insanity in order to enable an accused receive the benefit of Section 84 IPC. Since Section 84 IPC demands proof of legal insanity, it is clear that medical insanity is distinct and different from legal insanity, the ingredients of legal insanity

having been embodied in Section 84 IPC.

113. When Section 84 IPC demands legal insanity and not medical insanity, it is not imperative that without proof of medical insanity, an accused cannot receive the benefit of legal insanity as envisaged by Section 84 IPC, or else, an illiterate man or a poor man, who has no means of receiving medical treatment for his insanity, will never be able to get the benefit of the plea of insanity as stands incorporated in Section 84 IPC. Logically extended, it would mean that even without evidence of medical insanity, an accused may, in a given case, be given the benefit of Section 84 IPC. When the evidence, placed before a Court--be the evidence medical, oral, documentary or circumstantial--convinces the Court that the accused has been able to prove, on the basis of preponderance of evidence or preponderance of probability, that he was of unsound mind at the time of the alleged occurrence, he would be entitled to acquittal. Even when, however, the accused does not succeed, according to the Court, in proving, on the basis of preponderance of evidence or preponderance of probability, the plea of insanity, the accused may, nevertheless, be acquitted by according him benefit of doubt if the Court, on the basis of the medical evidence, oral evidence or documentary evidence, or circumstantial evidence, or on a combination of all these classes of evidence, or on a combination of more than one of these classes of evidence, finds that the accused has succeeded in creating a reasonable doubt, in the mind of the Court, that the accused, at the time of commission of the alleged occurrence, was, by reason of unsoundness of mind, incapable of knowing the nature of the act, or that what he was doing was either wrong or contrary to law.

114. We must take precaution to point out, at this stage, that the principles, governing proof of a General Exception, which we have discussed above, are not applicable, in their entirety, to a plea of alibi inasmuch as in the plea of alibi, the burden entirely rests on the defence. No wonder, therefore, that a plea of alibi is not covered by Section 105 of the Evidence Act; rather, a plea of alibi is covered by Section 106 of the Evidence Act. This aspect has been taken note of by the Court, in Vijayee Singh (supra), at para 32, wherein the Court has held as under:

At this stage we have to point out that these principles cannot be made applicable to a case where the accused sets up alibi. There the burden entirety lies on him and plea of alibi does not come within the meaning of these exceptions. Circumstances leading to alibi are within his knowledge and as provided u/s 106 of the Act he has to establish the same satisfactorily.

115. Reverting, now, to the facts of the case what transpires, from the cross-examination of PW1, is that the accused-appellant, Ghana Gogoi, was never seen or heard having any quarrel either with his wife or with any of his neighbours. In fact, for the last about six months before the date of occurrence, the accused used to talk very little with other people and, sometimes, the accused used to say that Goddess Kali had entered into his body. From the evidence of PW1, it also

transpires that prior to the occurrence, the accused had almost stopped taking food and, most of the times, he simply used to sleep and that the husband of PW1, who is brother of the accused, had taken the accused to the civil hospital, at Sonari, for treatment and the doctor, at Sonari, had advised that the accused should be taken to Dibrugarh for treatment; but, because of dearth of money, the accused could not be taken to Dibrugarh and he was treated locally by a Bej (i.e., sorcerer/witch-doctor).

116. What is, however, important to note is that it is the clear evidence of PW1 that the accused did not recover by the treatment of Bej; rather, he started shouting more and more. It is also worth noting that, according to the evidence of PW1, on the day of the occurrence, on reaching the house of the accused, he found that, after hacking his wife to death, the accused was shouting, "Moi Kali Gukhani, Moi Kali Gukhani" ("I am Goddess Kali, I am Goddess Kali"). The categorical evidence of PW1 is that, at the time of the occurrence, the accused was mentally sick. This assertion of PW1 went unchallenged by the prosecution. From the unchallenged evidence of PW1 that the accused was mentally sick at the time, when he had allegedly injured his wife by assaulting her, it is clear that heavy burden lies on the prosecution to prove that the accused did assault his wife and that the assault was with criminal intent or mens rea.

117. In tune with the evidence of PW1, PW2, too, has deposed that she never saw or heard the accused quarreling either with his wife or with any of his neighbours. In her cross-examination, PW2 has deposed, in tune with the deposition of PW1, that for the last about six months from the date of occurrence, the accused used to talk very little with others and, sometimes, the accused used to say that Goddess Kali had come down to his body. PW2 has also deposed that prior to the occurrence, the accused had almost stopped taking food and, most of the times, he simply slept and that the husband of PW1, who is brother of the accused, had taken the accused to hospital, at Sonari, for treatment and the doctor, at Sonari, had advised that the accused should be taken to Dibrugarh for treatment; but, because of dearth of money, the accused could not be taken to Dibrugarh and he was treated locally by a Bej (i.e., sorcerer/witch-doctor).

118. It is in the evidence of PW2 that the accused, after returning from Sonari, often, used to say, "Moi Kali Gukhani" ("I am Goddess Kali") and that the accused used to say "Kali", whenever he saw his wife.

119. What is important to note, now, in the deposition of PW2, is that, in her cross-examination, PW2 has categorically deposed that the people, who had come to see the accused, used to say that the accused had turned mad. It is also in the evidence of PW2 that when, on hearing the screams, she and her other villagers went to the house of the accused, the accused did not make any attempt to run away from his house.

120. Close on the heels of the evidence of PW1 and PW2, it is the evidence of PW3 that he had never seen any quarrel between the accused and his wife prior to the incident, that the accused had cultivation and also used to work as a daily labourer, but for about six months prior to the incident, the accused had almost stopped talking to people and also stopped working and, sometimes, the accused used to shout out by saying, "Moi Kali Gukhani, Moi Kali Gukhani" ("I am Goddess Kali, I am Goddess Kali"). It is the further evidence of PW3 that he had taken the accused to the Government hospital, at Sonari, for treatment and the doctor, after medical check-up of the accused, had prescribed medicines and advised that the accused be taken to Dibrugarh for treatment, but, because of paucity of money, the accused could not be taken to Dibrugarh and he was given village treatment by a Bej (i.e., sorcerer/witch doctor).

121. What is important to note, now, is that it is the clear evidence of PW3 that the accused did not recover by the treatment of Bej, that the people of the their village used to say that the accused had been suffering from mental problem and that, while the accused was being taken to the police station, he was shouting, "Kali", "Kali".

122. Coming to the evidence of PW4, we notice that this witness'' evidence supports the evidence given by PWs, 1, 2 and 3 inasmuch as in his cross-examination, this witness has deposed that, on hearing the screams, when he went to the place of occurrence, the accused neither attempted to run away nor did he utter even a word. PW4 has also deposed that he never heard or saw, before the incident, any quarrel between the accused and the deceased, that for about six months prior to the incident, the accused had almost stopped talking to people and whenever he was asked as to what was wrong with him, he simply said, "Krishna, Krishna". It is the further deposition of PW4 that his (PW4) elder brother, Puna (PW3), had taken the accused to Sonari for treatment and the accused was also given treatment by a Bej (i.e., sorcerer/witchdoctor). What is important to note, in the evidence of this witness, is that seeing the state of the accused, the village people used to say that the accused had gone mad.

123. Turing to the case of the defence that the accused-appellant had been suffering from insanity, at the relevant point of time, it is worth noting that even the evidence of PW6 corroborates the evidence of PWs 1, 2, 3 and 4 to a great extent inasmuch as this witness (PW6), too, has deposed, in her cross-examination, that for about six months prior to the incident, the accused had almost stopped talking to people, that he did not take food properly and that he was invariably seen sitting depressed. PW6 has also deposed that the accused used to say that someone had been threatening him and showing him dreams. PW6 has further deposed that the elder brother of the accused was getting the accused treated by a Bej (i.e., sorcerer/witchdoctor).

124. PW7, who is a neighbour of the accused-appellant, has deposed, in his cross-examination, that for about six months prior to the date of the occurrence, the accused used to talk to people very little and he did not take food properly and that he had been told that the accused was being treated by a Bej (i.e., sorcerer/witch doctor).

125. From the evidence, which we have discussed above, as regards the mental state of the accused-appellant, what clearly emerges is that the accused-appellant had been behaving, for about six months, prior to the day of the occurrence, in a manner, which indicated that he was mentally not normal and though he was taken to a doctor for his mental illness, yet in terms of the doctor''s advice, he could not be taken, due to dearth of money, to Dibrugarh and was treated by Bej, but he did not show any sign of improvement. In the face of the evidence, which has so emerged, it is difficult to hold that the accused-appellant was in his full senses at the time, when he had allegedly killed his wife.

126. Let us, now, consider the evidence of PW8, who is the Investigating Officer. We notice that there is nothing unusual in the examination-in-chief of this witness inasmuch as he has merely deposed that on the day of the occurrence, as the Investigating Officer, he went to the place of occurrence, prepared a sketch map, recorded the statements of the witnesses and seized a dao, which had been handed over to him by the informant, Puna Gogoi.

127. However, the cross-examination of the Investigating Officer (PW6) appears to us of greater importance, for, the evidence of this witness, given in his cross-examination, corroborates and substantiates the evidence given by PWs 1, 2, 3, 4 and 5 to a considerable extent inasmuch as this witness has conceded, in his cross-examination, that, during investigation, it was revealed that for some time before the day of occurrence, the accused used to sleep without doing any work, he had stopped talking to people, he (the accused) had also reduced his food intake and that, during investigation, the witnesses also told him (PW8) that the accused had been undergoing medical treatment.

128. In the light of the evidence of the prosecution witnesses, as discussed above, what clearly surfaces, if we may reiterate, is that none of the prosecution witnesses has claimed to have seen the accused-appellant assaulting his wife, Ha Gogoi. The prosecution''s case comes to rest, thus, on circumstantial evidence and there is only, as already indicated above, one incriminating circumstance appearing against the accused-appellant, the circumstance being that the accused-appellant was found standing near his injured wife with a dao in his hand. There is, however, no material, in the evidence of any of the witnesses, to show that the said dao, which was seen in the hand of the accused, bore any stain of human blood, particularly, the blood of the deceased, Ila Gogoi, or that the said dao was the weapon of offence.

129. In the light of the law as regards the plea of insanity, which we have discussed above, we may, once again, point out, that there is no witness, in the present case, who claims to have seen the accused assaulting and injuring his wife, Ila Gogoi. Though prosecution heavily relied on the dao (Mat. Ext.1), which was seized, in the present case, it has not been proved, as we have already indicated above, that the said dao was the weapon of offence. Thus, there is no direct or circumstantial evidence proving the accused responsible for causing injuries on the person of his wife resulting into her death. Apart from what we have indicated hereinbefore, the evidence on record eloquently speak that the accused was, in all probability, insane at the time of the alleged commission of the offence or, at any rate, the evidence on record gives rise to reasonable doubt that he was not sane. At any rate, therefore, the accused-appellant, in the present case, ought to have been given, at least, benefit of doubt.

130. In the result and for the reasons discussed above, this appeal succeeds. We set aside the conviction of the accused-appellant and the sentence passed against him by the judgment and order, under appeal, and we acquit him of the offence, which he stands convicted of, by according him benefit of doubt.

131. Let the accused-appellant be set at liberty, forthwith, unless he is required to be detained in connection with any other case.

132. Send back the LCR. Let both the learned amicus curiae be paid a sum of Rs. 5,000/- each for their valuable assistance rendered to the Court.