Kalpana Patgiri Vs State of Assam

Court: Gauhati High Court

Date of Decision: Jan. 30, 2013

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€" Section 313
Evidence Act, 1872 â€" Section 105
Penal Code, 1860 (IPC) â€" Section 149, 295, 302, 304, 449

Citation: (2013) 3 GLD 287 : (2013) 2 GLT 672

Hon'ble Judges: P.K. Musahary, J; Iqbal Ahmed Ansari, J

Bench: Division Bench

Advocate: B.M. Choudhury, Ms. M. Bharali, Mr. D.K. Kalita and Mr. C. Phukan, for the Appellant; K.A. Mazumdar, Addl. PP, for the Respondent

Final Decision: Allowed

Judgement

P.K. Musahary, J.
The appellant was convicted u/s 302 IPC and sentenced to undergo imprisonment for life and to pay fine of Rs. 5000/-

and in default of payment of fine, to undergo imprisonment for another two months vide judgment and order dated 8.10.2010 rendered by the

learned Sessions Judge, Barpeta in Sessions Case No. 192/2007. Aggrieved by and dissatisfied with the same the appellant is before us in appeal

challenging the aforesaid order of conviction and sentence. The prosecution story is based on a written first information report lodged by PW 2

who informed the police that his wife killed their one year old girl baby on 18.5.2005 at around 12 noon by strangulation and she herself attempted

to commit suicide by hanging by means of a piece of cloth inside the house, who was discovered in an unconscious state and removed to hospital.

The FIR was lodged while she was under treatment in the hospital. In the FIR it is mentioned that she was under psychiatric treatment for last 3

years. Thus the Patacharkuchi P.S. Case No. 91 of 2005 was registered u/s 302 IPC. Investigation was taken up. The I.O., PW 13, visited the

place of occurrence, examined several witnesses including some neighbours, held inquest on the dead body, prepared the sketch map of the place

of occurrence, sent the dead body for post mortem examination and after completion of investigation, collected post mortem report. On his

transfer the charge-sheet was submitted by Shri Amit Sutradhar, S.I. of Police against the appellant u/s 302 IPC. On committal, the learned

Sessions Judge framed the charge u/s 302 IPC, read over and explained the charge to the appellant who pleaded not guilty and claimed to be

tried.

2. I have heard Mr. B.M. Choudhury, learned counsel for the convict appellant and Mr. K.A. Mazumdar, learned Addl. Public Prosecutor,

Assam.

3. The prosecution examined as many as 13 witnesses including the M.O. and the I.O. for establishing the charge, against which the defence also

examined two witnesses to prove the innocence of the appellant. The learned trial Court, on consideration of evidence and materials available on

record and also upon hearing the learned counsel for the parties, ordered the conviction and sentence as referred to above.

4. Mr. B.M. Choudhury, learned counsel for the appellant, submits that there is not only non reading and mis-reading of evidence on record but

also non-appreciation of the evidence on record, particularly the evidence that the appellant was suffering from mental disorder or mental disease

and that the offence was committed while she was suffering from such mental disorder or disease due to which she is entitled to benefit of law u/s

84 IPC. In furtherance to above argument, he submits that the appellant, even if it is found that she killed her own infant daughter, learned trial

Court should have acquitted her as she was suffering from mental illness/disorder as stated in the FIR itself which was filed by none other than the

appellant''s husband.

5. Countering the said arguments, Mr. Mazumdar, learned Additional P.P., submits that although, in the FIR there is a mention about appellant''s

mental treatment three years prior to the incident of infant killing, the defence has not taken the plea of mental disorder or illness and no evidence

was led to that effect by way of adducing documentary evidence, such as, medical certificate/document testifying her illness and treatment taken by

her to cure the mental illness. He also argued that there is no evidence on record that the accused was suffering from mental disorder or illness, just

prior to or at the time of commission of the offence. The prosecution, according to Mr. Mazumdar, has been able to prove the case against the

appellant beyond all reasonable doubt and hence no interference with the impugned judgment and order is called for.

6. PW 1 is Dr. Shamsul Alam who was attached to Barpeta Civil Hospital and conducted the post mortem examination on the dead body of

Dikshita Patgiri, female child of around 1 year. He deposed that the dead body was neither emaciated nor decomposed. Rigor mortis was present.

He found bruise on the neck on both sides of the deceased. He prepared the P.M. report, Ext. 1 and proved the same bearing his signature Ext.

1(1). For ready reference the extract of the P.M. report is quoted hereunder

An average build female baby of one year old not emaciated nor decomposed. Rigor mortis present. Her mouth and eyes were closed. She is

having bruise on the neck on both sides.

Brain found congested. Spleen, kidney - all are healthy, congested.

Abdomen:-

Wall- healthy.

Peritoneum- healthy, congested.

Stomach contains partially digested food.

Small intestine contains: Gas and liquid.

Large intestine contains: Gas and faecal matter.

Thorax:

Walls, ribs and cartilages: Healthy.

Pleurae:- Healthy, congested.

Larynx:- Healthy.

Both lungs were congested.

Heart: - On the surface of heart shows patcheal haemorrhage.

Vessels were healthy.

The Medical Officer opined that the death was due to asphyxia as a result of throttling which is ante mortem in nature and the death occurred

within 24 hours. In cross examination he stated that no nail injury was found and clarified that asphyxia might be caused due to variety of reasons.

He also clarified that there was no continuous mark on the throat of the deceased nor any finger mark over the throat.

7. PW 2, is Ratan Patgiri, husband of the appellant and the first informant of this case. He deposed that on the date of occurrence he was at

Guwahati as he was working as electrician in the PWD. He was informed over phone about the incident and was asked to come home. On

reaching home at around 5 P.M. he saw the dead body of his 1 year old baby Dikshita Patgiri and he was informed by the family members that his

wife killed the baby and after committing the crime his wife attempted to commit suicide by hanging. She was removed to hospital. On being

reported so, he filed the FIR, Ext. 2 and proved his signature thereon, marked as Ext. 2(1). On filing of the FIR, the police came to his house,

removed the dead body to Barpeta Civil Hospital where autopsy was held. Inquest was also held by police and a report was prepared. In cross

examination he stated that he has no knowledge as to how the incident took place. His wife came from hospital on the next day. He, however

stated that on 17.05.2005, just prior to the incident, he left for Guwahati and did not notice any abnormal situation.

8. PW 3, Miss Tulika Patgiri, is a child witness. She was 10 years at the time of making the deposition and was reading in Class VI. She was aged

about 7 years at the time of occurrence i.e. on 18.5.2005. Before recording her deposition the learned Sessions Judge tested her by putting some

questions. He recorded a note that the witness was examined who told her name, her father''s name, the name of the school in which she read and

the name of his headmaster. He found the child witness capable of understanding the proceeding. This child witness stated that the accused is her

aunty, being the wife of his uncle, Ratan Patgiri, PW 2. Her cousin (sister) Dikshita Patgiri was killed by the accused by throttling. Her aunty

Hemlata Patgiri and uncle Robin Patgiri saw the occurrence and the accused was undergoing treatment in the hospital. Cross examination of this

child witness was reserved till 2.2.2009. In cross examination she stated that on arrival at home from school she came to know about the

occurrence from her mother. She also stated that she did not state before the I.O. that the accused killed her cousin sister Miss Dikshita Patgiri

who was the daughter of the accused. She also stated that she did not state before the I.O. that her uncle Robin Patgiri and aunty Hemlata Patgiri

witnessed the occurrence.

9. PW4, Smti Bimala Patgiri is the sister-in-law of accused Kalpana Patgiri, being the wife of accused husband''s brother. As per her deposition

she was preparing tea in the kitchen and she sent her daughter Tulika Patgiri (PW 3) to call the accused for taking tea with them but she returned

crying and telling that the accused had roped her neck by a saree. She immediately rushed to the house of the accused and found her lying on a

bed with a saree roped on her neck. She removed the saree from her neck and poured water and oil on the head of the accused. On the alarm

raised by her, some neighbours came. On being asked the accused told that she killed the baby by throttling. At that time Anil Kakoti (PW 5) and

Deepa Patgiri (PW 11) and others were present. The accused was removed to hospital for treatment. On being cross examined, she stated that

the accused was ""suffering from certain mental disorder and she was also treated at Guwahati by the psychiatrist"". She also stated that at the time

of pouring water and oil on the head of the accused, she was completely unconscious. She, however stated that she did not mention before the

I.O. that she saw the mark of strangulation on the neck of the deceased. She also clearly stated that she did not see the occurrence herself. PW 5,

Anil Kakoti, is stated to be the elder brother of accused Kalpana''s husband. He is a reported witness having not seen the act of killing in his own

eyes. He came to the place of occurrence and saw the dead body of the deceased. He testified about shifting of the accused to hospital. He found

the deceased Dikshita lying on the bed and the accused also lying on her bed in an unconscious state roping a saree on her neck. PW 6 is a

neighbour of the informant. He confirmed that he informed the informant about the incident and his visit to the house of informant. He also testified

that he took the accused to Pathsala hospital at about 1 PM and the accused regained her sense at the hospital who confessed her guilt with

repentance in presence of PW 9, Kula and other persons. PW 7, Mahendra Patgiri, is also a neighbour of the informant. He deposed in the same

manner corroborating the evidence of PW 6. Shri Robin Patigiri, younger brother, was examined as PW 8. As per his evidence on the date of

occurrence, he went to field for work and on return at about 11.30 AM, while he was taking tea, his niece Tulika Patgiri (PW3) went to the room

of the accused for asking her to join them in the tea table but she immediately returned and informed that accused was lying on her bed by rolling

her saree on the neck. He rushed to the room of the accused and found her lying on the bed with her female baby lying dead beside her. Having

seen her daughter lying dead, he lost his sense and regained his sense at about 2 PM. Both the accused and the deceased baby were taken to

hospital. In hospital after regaining her sense, the accused confessed her guilt with repentance in presence of several persons. In cross examination,

he stated that his elder brother and the accused had been maintaining good relationship. The accused was maintaining good health and she was not

suffering from any disease. However, he could notice that the accused developed some abnormalities on some occasions after the marriage with

his informant brother. He categorically stated that he did not see the occurrence of killing of the baby. On the day of occurrence, the I.O. recorded

his statement and he denied the suggestion that he did not state before the I.O. that Dijendra, Mahendra, Kula and others took the accused to

hospital for treatment and he heard from Kula that accused had confessed her guilt before them.

10. PW 9, Shri Kuladhar Tahbildar is a neighbour of the accused. He stated that on being informed about the incident he came to the place of

occurrence and found the accused in an unconscious state. He found several persons including Bimala Patgiri (PW 4) and other neighbours pouring

water on the head of the accused. He along with some neighbours, namely, Dijen Talukdar (PW 6) and Deepali Patgiri (PW 11) came to Pathsala

PHC with the accused for her treatment. After waiting for sometime, she found the condition of the accused improving and then he returned home.

In cross examination, he stated that he ""never heard of any torture or assault committed on Kalpana by her brother-in-law Robin Patgiri and

Dhaneswar Patgiri"". He denied the suggestion that due to wrong treatment by the orthodox quack, the deceased was attacked by infection and as

a result the deceased died.

11. PW 10, Shri Ratul Patgiri deposed in the same manner corroborating the evidence of PW 9. On being cross examined, he stated that he had

no personal knowledge about the incident. He denied the suggestion that he heard from others that both Robindra Patgiri and Dhaneshwar Patgiri

brothers-in-law of accused committed physical torture on the accused."" Deepali Patigiri, PW 11 is a close relation of Robin Patgiri (PW2). She

came to know about the incident from one of his friends. When he visited the place of occurrence, Dikshita had already died and her mother, the

accused Kalpana Patgiri, was already sent to hospital for treatment. She accompanied Dijen and Sailen to the hospital where the accused was

admitted. The accused regained sense in between 2 AM to 3 PM. After regaining her sense, she inquired about Dikshita and confessed her guilt

with regret. The accused also started crying while confessing her guilt before the people. However, in cross examination he denied the suggestion

that both Robindra Patgiri (PW 8) Dhaneshwar Patgiri, brothers-in-law of the accused, committed physical torture on the accused. He denied the

suggestion that the deceased was attacked by infection due to wrong treatment by quack and died. He also denied that he ever heard that

Robindra Patgiri (PW 8) and Dhaneshwar Patgiri, brothers-in-law of the accused, taking advantage of the absence of her husband, tortured and

committed rape on her and as a result she became mentally disturbed. PW 12 Sailendra Tahbildar stated that the accused was his sister-in-law in

relation. Having come to know about the incident he along with PW 10, PW 11, PW 6 and one nephew of the accused, came together to the

hospital at Pathsala where the accused was being treated. The accused regained her sense after two hours and her statement was recorded by the

police in the said hospital. In presence of several people the accused admitted her guilt before the police. Police however, did not record her

statement. At that stage, he was declared hostile. This witness also, in cross examination, stated that he never heard that the brothers of the

husband of the accused ever attempted to commit rape on her or tortured her.

12. The last witness, PW 13, is the I.O. of the case. He stated that he conducted inquest and took other steps during investigation. He also stated

that he recorded the statements of witnesses and seized one saree which was used by the accused to commit suicide. On being cross examined, he

admitted that he did not take any step to ascertain whether the accused was a psychiatric patient or not, although, there is a mention in the FIR that

since last three years, the accused was under treatment of a psychiatrist Similarly he stated that he did not seize any cloth from the bed and during

investigation he found no saree on the bed nor did he find any cloth or bed sheets with blood stain or mark of vomiting. Further he stated that he

did not visit Pathsala PHC while the accused was under treatment. He did not take any step for recording the confessional statement of the

accused as she did not confess her guilt before him. He found the accused mentally fit. He denied the suggestion that the accused was a psychiatric

patient and inspite of knowing this, he conducted the investigation of the case. He also denied the suggestion that he undertook the investigation

illegally knowing the fact that the accused was a mentally imbalanced person.

13. During examination of the accused u/s 313 CrPC, the learned trial Court placed before the appellant all the incriminating evidence against her.

She denied the said evidence against her. She denied the charge of killing her infant daughter. On being asked whether she had anything to say

regarding this case, she stated that her husband lives at Guwahati, the members of the husband''s family used to torture her and her brothers-in-law

forcibly raped her on several occasions. Her daughter died due to stomach trouble and her brother-in-law Dharmeshwar Patigiri attempted to kill

her by tying her neck by a saree. She is innocent. The Ejahar was lodged against her by making false allegations against her as a measure of

conspiracy to drive her out. To establish the above pleas, the appellant examined two witnesses.

14. DW1, Ahit Kalita, is the elder brother of the accused. He deposed that after 1 1/2 years of the marriage, the family member of the informant,

Ratan used to quarrel with the accused off and on"". The brothers of her husband used to assault and torture her. His sister also informed him that

in the absence of her husband, her brother-in-law Robin Patgiri (PW 8) used to ""disturb her at night by pressing the door etc."" Even her husband

used to assault during her stay with him at Guwahati. His brother-in-law Shri Paresh Baishya, DW 2, visited the house of Ratan Patgiri at Guwahati

one month prior to the date of occurrence, in whose presence Ratan Patgiri, PW 2, assaulted his sister Kalpana. His brother-in-law, DW 2, then

brought his sister Kalpana and kept her in his (DW 1) house. However, before marriage of Robin Patgiri (PW 8), his sister (appellant) returned to

the matrimonial house. He also attended the marriage ceremony of Robin Patigiri. As informed by his sister, her 11 month old baby was suffering

from dysentery and the baby was given homeopathic treatment In the cross examination this witness (DW 1) stated that he did not know how the

said baby died. He also stated that no case was filed against the family members of his sister regarding allegation of torture and assault on her. He

also stated that the relatives of the husband of his sister were present at the Pathsala hospital and they spent whole night while she was in the

hospital.

15. DW 2, Shri Paresh Baishya is the brother-in-law of DW 1. He corroborated the evidence of DW 1 regarding the allegation of torture and

assault on her by the husband and his family members. In his deposition, he affirmed the fact of his visit to the house of PW 2 at Guwahati and also

the fact of having seen the commission of assault by Ratan on his wife Kalpana. But in cross examination, he stated that he ""did not see any

occurrence of assault"" torture on the accused in her in laws'' house.

16. There is, admittedly no eye witness to the incident of killing of the infant by her own mother. The prosecution mainly relied upon the medical

evidence vis-a-vis the post mortem report, Ext. 1. The Trial Judge largely put reliance on the said post mortem report and the circumstantial

evidence in convicting and sentencing the appellant.

17. First of all we would like to advert to the medical evidence which includes the evidence of medical officer, PW 1 and his post mortem report,

Ext. 1. The Medical Officer offered a definite opinion that the death of the baby was caused due to asphyxia as a result of throttling which was ante

mortem in nature. That apart, the Medical Officer found bruise on the neck of the deceased child on both sides. The presence of bruise on both

sides of the neck has created the doubt of killing the baby by way of throttling. In ordinary sense a bruise is an injury with discoloration of the skin

made by anything blunt and heavy. It also means a spot slightly injured in that manner. For a baby of one year of age bruises on both sides of the

neck is a sign of use of external force. It may be caused by the nail of the baby but it would not lead to asphyxia causing death to her. But PW 1

categorically stated in cross examination that he did not find any nail injury, nor did he find any finger mark over the throat of the deceased. PW 1

further stated that he did not find any continuous mark on the throat of the deceased. If there was finger mark or continuous mark on the throat, a

question would have arisen as on what basis, the medical officer formed his opinion that there was an act of throttling on the baby. He has not

explained it. The defence counsel put no more question to PW 1 to get the explanation or clarification. Can asphyxia be caused without throttling

the person? This question was not put to the medical officer and no answer is available in the evidence of PW 1. For a layman, ordinarily asphyxia

could be caused by manual or mechanized throttling. Nothing has been mentioned in the evidence of PW1 in regard to the manner of throttling of

the deceased. The required force for causing asphyxia resulting into death of a person may vary from person to person as per the age, built and

physical health condition. Here is a case of death of a baby of one year who, according to the opinion of the medical officer, was throttled which

caused asphyxia and death. It may not require a great force by way of manual throttling to cause asphyxia to her but there must be finger mark or

some mark of violence over the throat. The medical evidence has foiled to lead us anywhere about the cause of death, particularly causing of

asphyxia as a result of throttling. The dictionary meaning of asphyxia is stoppage of the pulse i.e. suspended animation owing to any cause

interfering with respiration. If this is the meaning of asphyxia, there may not be any necessity of throttling a person to cause death due to asphyxia.

There may be other means through which asphyxia could be caused without throttling. In a case of a suckling baby like the deceased in the present

case, asphyxia could be caused in an easier way, say by simply pressing palm on the baby''s mouth or putting fingers on both nostrils or the like.

There is no evidence of causing asphyxia to the deceased by such means but such possibility can not be ruled out. In any case, in view of the

doctor''s evidence we have to accept that the baby died due to asphyxia.

18. Now the next question is who would be responsible or in other words who has caused the death to the baby by causing asphyxia. Enough

evidence is available on record that the appellant was with her baby inside her living room. Her husband was admittedly away to Guwahati for his

service in the Govt. department who came home on being informed about the incident. It was PW 3, Tulika Patgiri, niece of the informant, who

first saw the deceased lying dead on the bed and the appellant roped with saree around her neck. There is no evidence on record that any other

person, apart from the appellant, was present inside the room. This piece of circumstantial evidence runs against the appellant and leads to a

natural inference that the appellant and none else, is responsible for the death of the baby. At the time when she was first seen by PW 3 in such a

state inside the room, as per the evidence on record, the appellant was in senseless state. Had there been any hand of some other person in the

killing of the baby, she could have raised alarm to save the baby but no evidence is found on record that she cried for help or any of the inmates of

the house of the family or neighbouring houses heard her making hue and cry for help. The incident took place at around 12 noon and it was

possible on the part of the appellant to cry for help to attract the people and save from the perpetrator. Even when the baby was lying dead she

confined herself in the room without raising any voice of alarm. There is an absence of an evidence that just before the incident the deceased baby

was in the custody of a member of the family or some other person who could be made responsible for causing the death to the baby. In absence

of such evidence, the Court, on the basis of the above circumstantial evidence, has to accept that the appellant, being the mother of the baby,

caused the death to her own daughter, unless it is proved otherwise by a cogent and reliable evidence. In view of this we come to a conclusion that

the victim was killed by her own mother, the appellant.

19. Then comes the plea of exemption from criminal liability u/s 84 IPC on ground of unsoundness of mind or psychiatric problem of the appellant.

To begin with, we refer to the FIR, Ext. 2, where a mention has been made that the appellant was under treatment for psychiatric problem for

three years. Here, informant is the husband of the appellant against whom the allegation of killing the baby and making an attempt to commit suicide

was brought. But in his evidence the informant, as PW 2, did not state that the appellant was suffering from psychiatric problem or she was under

treatment for the said disease prior to the incident of killing her daughter. PW 3, who first saw the baby lying dead on the bed inside the house with

the appellant, testified that the appellant was undergoing treatment in the hospital. Similarly, PW 4, Smti Bimala Patgiri, appellant"s younger

brother"s wife, also stated that the appellant, after her marriage, was suffering from certain mental disorder and she was under treatment at

Guwahati by the psychiatrist. Both PW 3 and 4 are from the same family to which the appellant and the informant belong. As they belong to same

family, they are supposed to know the physical and/or mental problem of the appellant. They have not led any medical evidence by examining the

attending doctor, or producing the medical advice slip, certificate or prescription of medicine etc. for the appellant to cure her ailment. In absence

of medical evidence proving the case of mental disorderness or psychiatric problem of the appellant, whether it can be accepted that the appellant

was, indeed, suffering from mental disorder or psychiatric problem. To find an answer to this question, it would be apt to refer ourselves to the

legal position settled in a catena of decisions rendered by the Apex Court. It has been held that an accused who seeks exoneration from criminal

liability of an act u/s 84 IPC has to prove legal insanity and not medical insanity.

20. As per law, medical insanity could be proved by adducing evidence and producing the medical prescription, certificate etc, but the law is not

concerned with such proof inasmuch the law is concerned with legal insanity only. To prove the legal insanity, the prosecution has to adduce

evidence of witnesses, who know about the past history of the accused that she was in the past in the fit of mental disorder or insanity. In the

present case it is found that at least three prosecution witnesses from the same family deposed before the Court to the effect that the accused had

been suffering from mental disorderness/psychiatric problem and she was under treatment. The above evidence on insanity is to be read with the

statement made in the FIR filed by the husband of the accused. Legally speaking prosecution itself proved the fact that the accused was suffering

from mental disorderness/psychiatric problem requiring the defence not to adduce further evidence on the past mental health. It can, therefore, be

said that the mental disorderness/unsoundness of mind of the accused prior to the incident stood proved.

21. A brief survey on law of insanity and proof thereof may be made on the basis of cases decided by the Apex Court. In the case of Bapu @

Gajraj Singh Vs. State of Rajasthan, it is observed that Section 84 IPC lays down the legal test of responsibility in cases of alleged unsoundness of

mind and there is no definition of unsoundness of mind in the IPC. The Courts, however, mainly treated the expression unsoundness of mind as

equivalent to insanity. The term insanity itself has no precise definition. It is a term used to describe varying degrees of mental disorder and so,

every person who is mentally diseased, is not ipso facto exempted from criminal liability. A distinction is to be made between legal insanity and

medical insanity. With this observation, the Apex Court held that the Court is concerned with legal insanity, and not with the medical insanity and

the burden of proof lies with the accused to prove his insanity by virtue of provision u/s 105 of the Evidence Act, 1972 and is not so onerous as

that cast upon the prosecution to prove that the accused committed the act with which he is charged. Quoting from various authorities, the Apex

Court observed that there are four kinds of persons who may be said to be non compos mentis (not of sound mind), i.e. (i) an idiot (ii) one made

non compos by illness, (iii) a lunatic or a mad man and (iv) one who is drunk. An idiot is one who is of non-sane memory from his birth by a

perpetual infirmity, without lucid intervals; and those are said to be idiots, who can not count twenty, or tell the days of the week, or who do not

know their fathers or mothers, or the like. A person made non compos menus by illness is excused in criminal cases from such acts as are

committed while under the influence of his disorder. A lunatic is one who is afflicted by mental disorder only at certain periods and vicissitudes,

having intervals of reason. Madness is permanent. Lunacy and madness are spoken of as acquired insanity, and idiocy as natural insanity. In

another case, Siddhapal Kamala Yadav Vs. State of Maharashtra, ; it is held that u/s 84 IPC, a person is exonerated from liability for doing an act

on the ground of unsoundness of mind if he, at the time of doing the act, is either incapable of knowing (a) the nature of the act, or (b) that what he

is doing is either wrong or contrary to law. The accused is protected not only when, on account of insanity, he is incapable of knowing the nature

of the act, but also he did not know either that the act was wrong or that it was contrary to law, although he might know the nature of the act itself.

With the above observation it was held therein:

that the standard to be applied is whether according to the ordinary standard, adopted by a reasonable man, the act was right or wrong. The mere

fact that an accused is conceited, odd irascible and his brain is not quite all right or that the physical and mental ailments from which he suffered had

rendered his intellect weak and had affected his emotions and will, or that he had committed certain unusual acts, in past or that he was liable to

recurring fits of insanity at short intervals, or that he was subject to getting epileptic fits but there was nothing abnormal in his behaviour, or that his

behaviour queer, can not be sufficient to attract the application of this Section.

22. The law regarding exemption from criminal liability in respect of an accused suffering from unsoundness of mind within the meaning of Section

84 IPC has been discussed elaborately in Surendera Mishra Vs. State of Jharkhand, . In doing so, various decisions of the Supreme Court has

been referred to highlighting the facts and circumstances of the cases. In Surendra Mishra''s case (supra) the accused, who was an owner of a

Medical Hall, all of a sudden came with a country made pistol and fired at the point blank range at the deceased and ran away from the place of

occurrence and threw the country made pistol in the well in order to conceal himself from the crime and when he was charge-sheeted, took the

plea of unsoundness of mind to avail the benefit of general exceptions provided u/s 84 IPC. The trial Court as well as the High Court in appeal,

having found the accused not suffering from mental trouble/disease, rejected his plea. In the said case, to prove his mental disorder, the accused

adduced evidence by way of producing medical prescriptions from doctors. Even then the plea of mental disorder was not accepted because of

the proved conduct of the accused that after he shot the deceased dead, the accused threatened his driver with dire consequences, ran away from

the place of occurrence and threw the country made pistol in the well in order to conceal himself from the crime. The other reason for not

accepting the plea is that the accused was running a medical shop and came to the place of occurrence and shot the deceased dead. It was

observed that if the appellant was a person of unsound mind it would not have been possible for him to run a medical shop. It was, therefore, held

that the accused has to prove legal insanity and not medical insanity and it has to be proved beyond all reasonable doubt. The fact that the accused

ran away and threw the crime weapon in the well and concealed himself from the crime, proved that the accused, though suffered from certain

mental instability, knew that whatever he had done was wrong and illegal and on a balance of preponderance of probabilities, Court can not infer

that the accused did not know the nature of his act at the time of commission of the offence.

23. The case of State of Rajasthan Vs. Shera Ram @ Vishnu Dutta, , has a little bearing with the facts and law involved in the present case. In the

said case, the accused hurled a stone on the head of a pujari who was in a temple, as a result of which he died instantaneously. The accused also

damaged the idols and other properties of the temple unprovoked in presence of villagers. The witness was charged under Sections 302, 295 and

449 IPC and he denied the same and stood the trial. At the time of recording his statement u/s 313 CrPC the accused pleaded that his mental

condition, right from the year 1992 to 1993, was not in good condition and occasionally suffered from fits of insanity and has been undergoing

treatment for the same. He stated that he was receiving treatment in the jail also and, thereby, he was entitled to defence of insanity u/s 84 IPC.

The appellant, in support of his plea of insanity, examined two witnesses but the trial Court rejected the said plea. In appeal, however, the High

Court accepted the plea of insanity and acquitted the accused. Against the said acquittal the State of Rajasthan preferred an appeal before the

Hon"ble Supreme Court. The plea of insanity was accepted taking into consideration the evidence of attending doctors and the documentary

evidence, namely prescriptions issued by the said doctors on the basis of which it was found that the accused was suffering from continuous mental

sickness. In the result, the Apex Court set aside the conviction of the accused u/s 302 IPC read with Section 149 IPC and the sentence of

imprisonment for life, and instead convicted them under 304 Part-II IPC read with Section 149 IPC and sentenced each of the accused to

undergo rigorous imprisonment for life for 5 (five) years. As regards the point of law it was held in the said case that burden of proof lies on the

prosecution and it has to prove the charge beyond reasonable doubt. So also, a presumption of innocence and the right to fair trial are twin

safeguards available to the accused under the required criminal justice system but once the prosecution has proved its case in the evidence led by

it, in conjunction with the chain of events, as are stated to have occurred, if finds irresistible to the conclusion that the accused is guilty, the Court

can interfere with the judgment of acquittal.

24. Yet in Shrikant Anandrao Bhosale Vs. State of Maharashtra, , the law of unsoundness of mind and exemption of criminal liability as provided

u/s 84 IPC has been dealt with. In that case, the accused/appellant was a police constable, he married the deceased in 1987. He killed his wife

while they were living in the police quarter along with their daughter. On the morning of 24.4.1994 there was a quarrel between the accused and

his wife. While the wife was washing clothes in the bathroom, the appellant hit her with grinding stone. The accused appellant was immediately

taken by the guard of the police quarter and to the hospital where she died. After usual investigation, the appellant was charged for offence of

murder of his wife. The accused took the plea that he was suffering from insanity at the time of alleged killing of his wife and he was entitled to

benefit of general exception contained in Section 84 IPC. The prosecution, on the other hand, contended that the appellant killed his wife not

because of insanity but on account of extreme anger which is different from insanity. The trial Court disbelieved the case of insanity convicting and

sentencing the appellant u/s 302 IPC which was affirmed by the High Court in appeal. On further appeal, the Hon"ble Supreme Court set aside the

order of conviction and sentence and set the accused at liberty. In the said case it was held, amongst other, that unsoundness of mind of the

accused before and after the incident for which he underwent treatment in the hospital is a relevant fact and the state of mind of the accused at the

time of commission of offence is to be proved so as to get the benefit of the exception; the nature of burden of proof on the accused to prove the

insanity, however, is no higher than that which rest upon a party to civil proceedings.

25. What is found undisputed in the present case is that the informant, being the husband of the accused, in his FIR stated that the appellant was

under psychiatric treatment for last three years and the same has been proved by the evidence of PW 3 and PW 4 in a corroborated manner. The

medical insanity or unsoundness of mind has not been proved by the prosecution inasmuch as the evidence of medical officer and the documentary

evidence in the form of medical certificate, prescriptions etc, were not adduced. However, the prosecution has been able to adduce the legal

evidence by way of examining the persons (family members), who knew about the past mental health of the accused. So far so good. The

appellant herself took no plea of mental unsoundness or disorderness for her defence. While she was examined u/s 313 CrPC, in reply to question

No. 21 she stated-

I have not killed my daughter. My husband lives at Guwahati and in his presence family members of my husband used to torture me. My brothers-

in-law (the brothers of my husband) forcibly raped me on several occasions. My daughter died of stomach trouble. My brother in law

Dharmeshwar Patgiri attempted to kill me by tying saree over my neck. I am innocent. Conspiracy has been hatched against me to"" drive me out

and filed the false case.

26. From the above statements u/s 313 CrPC, it appears that the appellant did not accept the allegation of her husband and other witnesses that

she, before the incident, was under psychiatric treatment She brought the serious allegation of committing rape on her by her brothers-in-law on

several occasions while her husband was living at Guwahati. She has denied the charge of killing her child rather tried to explain that her daughter

died of stomach trouble. She also alleged that her brother-in-law Dharmeswar Patgiri attempted to kill her by tying a saree over her neck and the

FIR was lodged making false allegations as a measure of conspiracy against her.

27. The appellant examined two witnesses. Both the DWs are closely related and interested witnesses. None of the DWs stated about the alleged

rape committed by the brothers-in-law on the appellant. Admittedly no FIR was lodged against the brothers-in-law or anybody regarding the

incidents of alleged rape. Regarding alleged torture as revealed from the evidence on the appellant, the defence witnesses have no personal

knowledge. Both the allegations regarding rape and torture on the appellant have not been proved and those allegations have been found

unsubstantiated and unacceptable. Regarding death of the baby due to stomach trouble, as claimed by the appellant, no cogent evidence has been

adduced to counter the medical evidence on record, according to which the baby died due to asphyxia as a result of throttling. On the face of clear

medical evidence, a mere statement of the appellant that her daughter died of stomach trouble can not be accepted. Thus, the appellant failed to

establish the counter charges/allegations against her in-laws.

28. On perusal of the records, it appears to us that the appellant, while she regained her sense in hospital, was regretful of her action and repented

for the death of her daughter. She even made herself responsible for the death of the baby before several persons, who visited her in the hospital

but she at the subsequent stage, retracted and took the above stand in her defence. The appellant by her own conduct, projected herself unworthy

of being trusted; more so when she made counter allegations against her in-laws to conceal her guilt and made abortive attempt to prove her

innocence by examining her brother and husband as defence witnesses. Unfortunately their evidence turned to be of no assistance to her and

proved to be as much unbelievable as unacceptable. With all the evidence on record, as appreciated above, the appellant is liable to be convicted

and sentenced.

29. Before coming to a final conclusion, we have to take note of certain striking features in this case, which are underlined as under-

(i) the informant, husband of the appellant, clearly stated that she was under psychiatrist treatment for three years prior to the incident,

(ii) other family members, who were examined as PW 3 and 4 tendered evidence to that effect,

(iii) there is no eye witness to the act of killing of the baby by throttling or in any other manner/means,

(iv) as per the evidence on record, the relationship between the appellant and the informant as husband and wife was always good and

(v) the appellant herself was found in a state of unconsciousness by the side of dead body of her infant baby, due to an alleged attempt to commit

suicide after killing/death of the baby.

30. There is no acceptable evidence that the appellant was subjected to mental or physical torture by the in-laws, far more to rape or sexual

harassment by her brothers-in-law.

31. Taking into consideration that the appellant was not tortured mentally or physically or subjected to sexual harassment by her brothers-in-law,

and also the fact that her relationship with her husband was always good, there could not be any reason of her being dissatisfied or being frustrated

in her life to kill her infant daughter and made an attempt to kill herself. It may happen so and it can be accepted as possible or acceptable, if she

was totally neglected by her husband or in-laws and she was forced to live or pass her days in extreme poverty and hunger rendering her unable to

look after the well being of herself and her child, making her life miserable and out of frustration she wants to finish her life and her baby. Such a

situation has not arisen in the present case. In such a fact situation, Court has to consider the other possible view which may go in favour of the

appellant What could be the other possible view in this case is that the appellant"s husband was very much sure that she was suffering from mental

problem and she was under treatment of psychiatrist for three months prior to the occurrence. Although the medical insanity could not be proved,

the prosecution has been able to prove the legal insanity inasmuch as a clear statement was made in the FIR itself and even evidence was led

supporting the case of mental disorder or psychiatric problem and treatment for the same three months prior to the occurrence. With such past

history of mental problem, there is every possibility that the appellant was visited by fit of mental disorderness/unsoundness of mind at the relevant

point of time and killed her own baby and tried to kill herself. This possibility can not be ruled out if the totality of the entire facts and circumstances

of the case and the evidence on record are taken into account. Otherwise we see no reason why a mother should kill her baby and try to kill

herself. We are, therefore, taking this view as most possible one, and inclined to accept it and give the benefit of doubt in favour of the appellant.

We come to a conclusion that the appellant committed the crime in the fit of her mental unsoundness or disorderness for which she is entitled to the

benefit as provided u/s 84 IPC. Accordingly, we set aside and quash the impugned judgment and order convicting and sentencing the appellant u/s

302 IPC. The appellant stands acquitted on benefit of doubt. The appeal stands allowed. The appellant be set at liberty forthwith if her further

detention is not required in connection with any other case. Return the LCR.