

S. Sunil Sandeep Vs State of Karnataka

Court: Karnataka High Court

Date of Decision: March 29, 1993

Acts Referred: Arms Act, 1959 " Section 25 (1) (a), 27
Penal Code, 1860 (IPC) " Section 392, 397, 84

Citation: (1994) 1 ALT(Cri) 303 : (1993) CriLJ 2554 : (1993) ILR (Kar) 1331 : (1993) 2 KarLJ 54 : (1993) 3
RCR(Criminal) 433

Hon'ble Judges: R. Ramakrishna, J

Bench: Single Bench

Advocate: Sri C.H. Hanumantharaya, Sri C.G. Sunder and Sri C.M. Kempegowda, for the Appellant; Sri Y.R.
Jagadeesh, HCGP, for the Respondent

Judgement

1. The Appellant was convicted for the Offences punishable under Ss. 448, 342, 392 read with S. 397 of the Indian Penal Code and Ss. 25(1)(a)

and 27 of the Indian Arms Act, 1959, in SC No. 9 of 1982, by the learned VII Addl. Sessions Judge, Bangalore, vide judgment dated 22-2-

1989, and he was sentenced to undergo R.I. for 6 months for the offence punishable under S. 448, IPC : R.I. for 6 months for the offence

punishable under S. 342, IPC : a minimum sentence of 7 years R.I. for the offence punishable under S. 392 read with S. 397, IPC and a

substantial sentence of R.I. for 3 months for the offence under the Indian Arms Act. The sentences were ordered to be run concurrently. However,

he was acquitted of the offences punishable under S. 307 and Section 186 of the Indian Penal Code.

2. In this Appeal, the appellant has mainly pleaded the legal insanity at the time of the commission of these offences and therefore, benefit of S. 84

of the Indian Penal Code is to be extended and he shall be ordered to be acquitted of all the charges levelled against him.

3. This case presents quite peculiar facts and circumstances of its own which are quite different from the facts of any other case and therefore, the

facts, as presented in the prosecution case, are adverted briefly.

4. The Appellant Sunil Sandeep was born on 15-9-1961 and his age was 19 years and nine months at the time of this offence. His academic

career shows that his schooling was done at St. Joseph's Indian High School, Bangalore. He did his Two Years PUC Course in Science at the

Railway Junior College, Hyderabad. During 1979, he joined B.E., Degree Course in Electrical Engineering at the University Visveswaraya College

of Engineering, Bangalore. He did two semesters and left for U.S.A. during the beginning of 1980 to continue his Engineering Course. One of his

uncle was staying at Dallas City. He could not join the Engineering Course in U.S.A. because of the time lapse and was working as a Manager in a

Store. He left his uncle's house in the middle of 1980 and stayed along in an apartment. He has undergone training in Social security scheme for

about one year where he has learnt the handling of Fire Arms and other lethal weapons. According to him, he lost the importance of social values

which he had learnt in India and succumbed to the temptations of ghastly habits and developed a false prestige. The crime thrillers and other evils

of the American Society had their own impact and influence on his mind. When he returned to India on 6-6-1981, he was totally a different person

suffering from the sense of grandeur.

5. The social background of the appellant is that he is the grandson of late Kengal Hanumanthaiah, a well known political figure and statesman of

Indian politics. He was brought up in the company of his grandfather and his father was also highly placed officer in Indian Oil Corporation. The

facts further show that he has lost touch with his parents and his country and he came to know the death of his grandfather during the middle of

1981, i.e., nearly three months after his death. On 6-6-1981, he landed at Palam Airport, New Delhi. When his baggage was subjected for search

by the Customs Authorities, it appears that he was carrying some Revolvers in his baggage. Then he took out one revolver and fired in the air.

When the Customs Official started running halter-skelter, he escaped leaving his baggage there only and reached Hyderabad on 12-6-1981. At

that time, his father was stationed at Hyderabad. After reaching Hyderabad, he came to know that his father was at Delhi at that time. At

Hyderabad, he finds a brand new Fiat Car parked in the parking place of Secunderabad Club, bearing Registration No. AAY 3440 owned by

P.W. 1 Dr. Ismail Fernz. The appellant managed to steal the said Car and reached Bangalore on the night hours of 15-6-1981. On the way he

managed to get 30 litres of petrol at the gun point in a petrol bunk situated in the outskirts of Bangalore and instead of going to his house which is

situated at Sadhashivanagar, by the side of Bellary Road, through which, the appellant should enter Bangalore City, he went to a lodge and stayed

there during that night.

6. On 15-6-1981, at about 11-05 a.m., he enters into Canara Bank at Rajamahal Vilas Extension, Bangalore, holding a revolver in his hand and

by waving the said revolver, he shouts at the Bank staff "hands-up", "hands-up". Then he bolted the door from inside and moved towards the

cashier of the Bank and told him "Cash Nikalo" "100's 100's." Since it was a closing hour, there was only one customer present in the Bank. He

was wearing light coloured jerkin and covered his face upto his nose with a black cloth and was wearing dark cooling glasses. He directed the

cashier to put all the currency notes on a tray and carried that tray moving backwards towards the main door pointing the revolver to all the staff

present there and after opening the door, he goes out and bolted the door from outside and fired a shot in the air. Then he walked towards his

green colour fiat car along with the tray and drove away the Car towards Vyalikaval police station.

7. Due to the shout made by the bank staff "Kalla Kalla", the people outside were also alerted. P.W. 2 K. B. Shetty, P.W. 3 M. R.

Subramanyam, P.W. 4 M. T. Srinivasa, P.W. 14 R. V. Rangan and P.W. 16 N. Seshadri the staff-members who were present in the Bank gave

evidence with regard to this incident corroborating with each other. This is the first phase of the incident.

8. The second phase of the incident is, that the appellant drives his car after getting cash from the said bank, goes towards Tumkur in National

Highway and after reaching about 19 kms. at the out-skirts of Nelamangala town, he parked his car by the side of the National Highway at a

distance of 100 to 150 ft. P.W. 5 M. B. Atchappa, the then P.S.I. of Sadashivanagar Police Station was present at about 11 a.m. in the police

station. At that time, P.W. 17 Mohan, a private building contractor, to go to that bank, parks his scooter outside the Bank and witnessed a mask

person coming outside the bank holding cash and after putting the cash inside the car, he drives away the green fiat car which had no number

plates. Then he heard the shouting of staff members of the Bank and having learnt the incident, he immediately went to the police station and

informed P.W. 5. P.W. 5 who was in the midst of an investigation of a case, leaves the police station after one Kishore Mangaram was ready to

spare his car to follow the car of the appellant. Then P.W. 5 takes his police personnel and proceeded towards Yeshwanthpur armed with

revolver and guns. At Yeshwanthpur Circle, he learnt through a Traffic Sub-Inspector about the passing of the Car towards Nelamangala and then,

he goes towards Nelamangala and finds this car being parked by the road side in an open Place. Then, he along with his staff, goes towards that

car by walking, which was unnoticed by the appellant and when P.W. 5 shouts not to move, then he hears gun shots from inside the car, due to

which, the glass of the appellant's car got damaged. Then P.W. 5 and other also shot at the car; both P.W. 5 and Appellant exhausted all the

cartridges in their revolvers. When P.W. 5 was in the process of re-loading, the appellant started his car and moved towards the main road. There

he hit a culvert and at that time, a police constable fired one round of bullets towards the car. In spite of this, the Car moved towards Nelamangala

and P.W. 5 started further chasing the car. After covering about 2 furlongs, the appellant parked the car near MES Residential Quarters and

started running holding a brief-case in his left hand and his revolver in his right hand. Then P.W. 5 and his staff stopped their car and chased the

appellant. The appellant, while running, started throwing some currency notes on his way and ultimately, he was apprehended near Travellers

Bungalow. Then he was taken into the custody of P.W. 5 and shifted him to Nelamangala police station which was quite near to the place where

he was apprehended. Thereafter, the appellant was interrogated and he has given his name and address. The revolver and the brief case which

contained a cash of Rs. 42,062/- were seized and his personal search was also made and he had a passport, some clothes and a newspaper. A

small amount of money was also found in his bag.

9. P.W. 18, the then P.S.I. of Rajajinagar Sub-Division, took up further investigation in this case and recorded the statements of all the important

witnesses. During his investigation, he learnt that the Palam Airport P.S.I. has registered a case against the appellant for an offence punishable

under S. 307 of the Indian Penal Code and the said authorities have seized one. 9 mm Pistol and 99 cartridges. He further learnt about registration

of a case against him in Yeshwanthpur police station in respect of the petrol drawn at gun point in a petrol bunk by the appellant. He also learnt

that Saifabad Police of Secunderabad have registered a case in Crime No. 224/81 under S. 379 of the Indian Penal Code in respect of the theft of

the car bearing Regn. No. AAY 3440. After subjecting the revolver for ballistic expert and after obtaining order from the Deputy Commissioner to

prosecute the appellant under the Indian Arms Act, he submitted a charge sheet on 9-11-1981.

10. The records of the trial Court disclose that, initially, charges were framed on 23-11-1982. Later, Charge No. 2 was deleted by the succeeding

Judge and a fresh charge No. 2 was framed on 1-12-1988. The prosecution has commenced the evidence on 17-6-1988 and completed on 17-

12-1988. The appellant was examined under S. 313 of the Code of Criminal Procedure.

11. The defence of the appellant is that, when he returned from America on 6-6-1981, he was suffering from delusion and therefore, he does not

know how he behaved and what he did. He filed a statement under S. 233 sub-cl.(2) of the Code of Criminal Procedure and produced documents

consisting of Conduct Certificates, Sport Certificates and Marks Card. He has examined five witnesses supporting his defence. D.W. 1 G.

Parameshwarappa was the then Professor and Head of the Department of the Electrical Engineering in the U.V.C.E., Bangalore and later the Dean

of the faculty of Engineering and presently working as Principal, Siddaganga College of Engineering, Tumkur. D.W. 4 K. Lingaiah was the

Principal and also the Professor of Mechanical Engineering in UVCE, Bangalore; D.W. 5 Dr. B. C. Chandregowda Prof. and Head of the

Department of Forensic Medicine, Bangalore Medical College, Bangalore; D.W. 2 Somoji Rao and D.W. 3 Anjanappa are the persons who were

present when the appellant had encounter with the police near Nelamangala.

12. During the pendency of this Sessions Case, the appellant has continued his studies by joining UVCE, Bangalore and completed his Engineering

Graduation in 1985-86 and started a Printing Press of his own and at present, he is running a garage and allied industries employing nearly 30

persons.

13. Sri. C. H. Hanumantharaya, learned Advocate for the appellant has not contested the first and second phase of incident occurred in this case

and his main thrust of the case is that, the appellant was suffering from psychopathic disorder and developed delusion and grandeur and therefore,

benefit of S. 83 of the Indian Penal Code is to be extended and he shall be acquitted.

14. Section 84 of the Indian Penal Code reads as follows :-

84. Act of a person of unsound mind :- Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of

mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.

The policy of the law is to control not only the sane, but, so far as is possible, also the insane. This exemption is allowed only where the insane

person "is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law." This provision of law is in

substance the same as that laid down in the answers of the Judges to the questions put to them by the House of Lords in M "Naughten"s case

(1843) 4 St Tr (NS) 847 : If a man suffers under a partial delusion only and is sane in other respects, he must be dealt with as if the facts with

respect to which the delusion existed were real. Under this Section, an accused is protected not only when, on account of insanity, he was

incapable of knowing the nature of the act, but also when he did not know either that the act was wrong or that it was contrary to law, although he

might know the nature of the act itself.

15. The following principles to be borne in mind in applying this Section :

(a) every type of insanity is not legal insanity; the cognitive faculty must be so destroyed as to render one incapable of knowing the nature of his

act or that what he is doing is wrong or contrary to law;

(b) the Court shall presume the absence of such insanity;

(c) the burden of proof of legal insanity is on the accused, though it is not as heavy as on the prosecution;

(d) the Court must consider whether the accused suffered from legal insanity at the time when the offence was committed;

(e) in reaching such a conclusion, the circumstances which preceded, attended or followed the crime are relevant considerations; and

(f) the prosecution in discharging its burden in the face of the plea of legal insanity has merely to prove the basic fact and rely upon the normal

presumption of law that everyone knows the law and the natural consequences of his act.

16. We have settled law on this point, in some of the decisions of our various High Courts and the Hon"ble Supreme Court of India. In *Sheralli*

Wali Mohammed Vs. The State of Maharashtra, the proof that is necessary to the plea of the insanity was dealt with by the Supreme Court. In this

case, the observation made in *Dahyabhai Chhaganbhai Thakker Vs. State of Gujarat*, was considered : Subba Rao J., as he then was, speaking

for the Court, said :

(1) The prosecution must prove beyond reasonable doubt that the accused had committed the offence with the requisite mens rea and the burden

of proving that always rests on the prosecution from the beginning to the end of the trial. (2) There is a rebuttable presumption that the accused

was not insane, when he committed the crime, in the sense laid down by S. 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.

17. Having regard to the factum of proof that is required to uphold the plea of insanity and the proof stated above being absent, Their Lordships

have refused to accept the plea of insanity raised by the appellant.

18. In *Ratan Lal Vs. The State of Madhya Pradesh*, the burden of proof to the plea of unsoundness of mind was the issue and placing reliance of

D. C. Thakkar's case, cited supra, it was further approved that the crucial point of time, at which, unsoundness of mind has to be proved is the

time when the Crime is actually committed. The burden of proving these things can be discharged by the accused from the circumstances, which

preceded, attended and followed the crime. It is by the test laid down, S. 84 has to be distinguished from the medical test with the criminality of the

act determined. The Courts must concern itself with the state of the mind of the accused at the time of his act. Legal insanity is not a medical

insanity. It is only the legal and not the medical aspect of the question that the Court is concerned with. It is needless to say, whenever a plea of

insanity it raised, is for the accused to establish it, so as to bring his case within the exemption provided by S. 84 of the Indian Penal Code. If he

does not establish this, the plea of insanity must fail.

19. We have a plethora of case laws where S. 84 was invoked in cases where the extreme act of brutality are subject matter of the facts, under

which, the question of insanity were pleaded and the Courts were considered as to what extent, the question of insanity can be accepted. In most

of the cases, the accused found to be suffering from unsoundness of mind, which fact has been evidenced by their behaviour prior to the

commission of the offence and also their behaviour following the offence. The evidence of the experts in the field who have treated them were also

taken into consideration by the Courts to prove the question of insanity.

20. The facts remaining as it is, the question is as to what extent the appellant has placed materials to prove his insanity as a defence to exonerate

himself from Criminal liability under S. 84 of the Act in respect of the commission of this offence ?

21. At the time of committing the offence in the Bank, the appellant was found to be very cool and he has also made efforts to conceal his identity

by covering a cloth on his face upto the level of his eyes and he commands the cashier and others to put the money in a tray without showing any

emotions and then walks slowly to his car and after closing the door of the Bank from outside, he fires his revolver once and then by jumping inside

the car, he drives the car recklessly towards Nelamangala. His conduct at the time of commission of this offence was spoken to by P.W. 2 K. B.

Shetty, P.W. 3 M. R. Subramanyam, P.W. 4 M. T. Srinivasa, P.W. 14 R. V. Rangan and P.W. 16 N. Seshadri.

22. The second phase of the incident shows that, he drives the car towards Nelamangala and stops at a considerable distance from the road side

and was found relaxing himself inside the car. P.W. 18 M. P. Badas who was holding the additional charge of the then CPI of Malleswaram Sub-

Division, has stated in his evidence that the appellant was in the police custody from 15-6-1981 to 21-6-1981 and during that period, he was quite

sober and behaving like a gentleman. He assisted the investigation during that period. He further says that, when he saw the appellant at the

Nelamangala police station, he found that he was quite sober and behaving like a gentleman. He further says that, even during interrogation at

Malleswaram police station, the appellant was found to be quite sober, submissive, gentle and he further says that, in the course of investigation, it

came to his notice that the appellant had come from United States a few days earlier to this incident. He also came to know the background of the

appellant before this incident.

23-24. The evidence of the investigating Officer shows that during the stay of the appellant in the police custody, the authorities have not made any

effort to know his mental faculty by referring to any Medical authority for such an un-usual behaviour the appellant exhibited during the course of

the dacoity and subsequent to the same. It is one of the factor that in a case of this nature, it is absolutely necessary for a shrewd Investigator to

obtain particulars regarding the mental faculty of a person who commits an act of dacoity when he is a novice in such adventures. Therefore, it is

also necessary to take into consideration the evidence placed by the defence in proof of the insanity.

25. D.W. 1 is one G. Parameshwarappa, who was a Professor and Head of the Department of the Electrical Engineering in the UVCE, Bangalore

and was also Dean of faculty of Engineering. He identified the appellant as his student and he also identified a Certificate dated 18-6-1980 issued

by him in favour of the appellant. He has stated that the appellant was very good in his studies. His character and conduct throughout his stay in the

College was good. The fact is also mentioned in the Certificate Ex. D. 6. He also issued another Certificate Ex. D. 7 indicating that the conduct

and character of the appellant was extremely exemplary. He was also an active sportsman which is evidenced by the Certificate Ex. D. 8. It is

further elicited from this witness that the elder brother of the appellant was also his student, who was also a Rank student and is now staying in

United States.

26. D.W. 4 - K. Lingaiah is another Principal and Professor of Mechanical Engineering, UVCE, who also recognised the appellant and according

to him, he also issued Certificate of Character as per Ex. D. 9 and he has also stated about the appellant prosecuting his studies after this offence

and he has passed his Final Year B.E., Examinations subsequently. Through this witness, the Certificates Ex. D-9 to Ex. D. 11 are got marked.

26A. D.W. 2 Somaji Rao and D.W. 3 Anjanappa were examined to show the behaviour of the appellant when he was present in his car at the

outskirts of Nelamangala. They have stated as to how the appellant behaved when there was shoot-out between the police and himself and the

cool and the steady the manner the appellant exhibited at that time.

27. We have good account of the Appellant's behaviour except the period falling from 6-6-1981 to 15-6-1991. He has hailed from quite a

respectable family. His activities both inside and outside the college were excellent. He has been neglected by his parents during a short period of

his stay at America. After this offence, his re-union with his parents brought far reaching changes. He again joins the college and completes his

B.E., Degree as a normal student. There is no evidence of any behaviour changes than as a normal boy after the offence. Though the charge was

framed on 23-11-1982, the case ends up by a Judgment on 22-2-1989. No doubt it is quite a long period for the witnesses to remember the true

account of this occurrence. The intrinsic value of events becomes stale due to long lapse of time. The appellant pleads specific plea of insanity vide

his statement under S. 233(2) of the Code of Criminal Procedure dated 12-10-1988. The tenor of cross-examination made to the witnesses lends

supports to the plea raised by the appellant.

28. D.W. 5 Dr. B. C. Chandre Gowda, Professor and Head of the Department of Forensic Medicine who also studied Forensic Psychiatry, was

examined to give his opinion after putting questions connected to the behaviour pattern of the appellant, the environment conditions he was put in,

the deteriorating family relationship occurred during this short period and its impact on the appellant.

29. According to this witness, the appellant has developed psychopathic condition with certain fixed ideas known as obsession and he was not in a

position to understand the acts committed by him and its natural consequences. According to this witness, after the appellant joined his parents and

an atmosphere was created conducive to normalcy, he continued his studies and the psychopathic tendency had receded and he became a normal

individual.

30. His further defence is that, he was suffering from, and under the influence of mental illness called Delusion and grandiose. Therefore, he was not

able to account himself for these misdeeds.

31. In Dorland's Pocket Medical Dictionary, Twenty-third Edition, the meaning of the word "grandiose" at page 305 is given as follows :

grandiose" (grain"di os) in psychiatry, pertaining to exaggerated belief or claims of one's importance or identity, often manifested by delusions of

great wealth, power, or fame.

32. In Concise Medical Dictionary, originally published in Great Britain by Oxford University Press, 1983, Indian Edition, the meaning of the word

delusion"" is given as follows :

delusion"" an irrationally held belief that cannot be altered by rational argument. In mental illness it is often a false belief that the individual is

persecuted by others, is very powerful, is controlled by others, or is a victim of physical disease (see paranoia). It may be a symptom of

schizophrenia, manic-depressive psychosis, or an organic psychosis.

33. In Modi's Medical Jurisprudence and Toxicology, Twenty-first Edition, under Chapter XXIII, at page No. 449, Sl. No. 11, defines the term

Delusion"" as :

Delusion : A false or erroneous belief, in the face of contrary evidence, is held with conviction and is un-modifiable by appeals to reason or logic

that would be acceptable to persons of the same religious or cultural background.

Delusions may be of grandeur of exaltation, of suspicion, of depression, of reference, of jealousy, and of infidelity. Delusion of grandeur and

delusion of persecution are often together in the same person. For instance, a man who imagines himself to be very rich may also imagine that his

enemies are conspiring to ruin him financially.

Delusions are very important from the medico-legal point of view, as they often affect the conduct and action of the sufferer, and may lead him to

commit suicide, murder or some other crime. The judge and the lawyer attach great importance to the presence of delusions as the sign of insanity.

Hence it is essential for a medical man to carefully make a note of any delusions he has been able to elicit during the examination.

34. William G. H. Cook, LL.D. (London) in his book Insanity and Mental Deficiency, in relation to Legal Responsibility, 1921, defined the

Medical definition of insanity as :

According to an eminent specialist in mental diseases (a), insanity is disorder of brain producing disorder of mind; in other words, it is a disorder

of the supreme nerve centers of the brain the special organs of mind producing derangement of thought, feeling and action, together or separately,

of such degree or kind as to incapacitate the individual for the relations of life (i.e., the social relations of life).

35. According to the learned Author, the Modern Legal definition is that :

A lunatic is a person of unsound mind, (not being an idiot or an imbecile) who has either

(i) been found to be a person of unsound mind by judicial inquisition, or (ii) been medically certified to be of unsound mind, and who is either

incapable of managing his own affairs or is dangerous to himself or to others.

36. G.F.W. Evens in his book Insanity in India (1908) defines ""Delusion"" under Chapter XXVIII at page 195, as follows :

A delusion is an untrue belief of the falseness of which a patient cannot be convinced by argument or by experience.

As a delusion is always in reference to the self, for that reason it is never a matter of indifference to its possessor, and frequently influences his

emotional condition. Though some may appear to arise from a false interpretation of an actual occurrence, it is obvious that they do so from an

insane interpretation and inference from the same, and for this reason cannot be overcome by an appeal to experience, so that they may be said to

be due essentially to an impaired "functioning of judgment and reason," "Defendor, p. 37. Yet it must be owned that marked mental weakness, such

as congenital imbecility, never is accompanied with delusions.

37. Almost all the case laws on the subject disclose that the accused in those cases have committed cold-blooded, Ruthless and most heinous

Crimes in respect of their kith and kin. Brutality of the offences are reached such a point that one will naturally shudder to think as to how a human

being will transform to such a brutal character. In many of the cases, it is one of deep human and, in a sense tragic interest. Where a normal

person, in full possession of his reasoning faculties and full control of his will, does an act which the community has declared to be an offence, there

is little to shock the conscience if he is punished for his transgression. The community, not unnaturally, resents that any of its members should do an

act which it has forbidden in public interest and criminal justice, which is but that resentment of the community universalised, is not basically

founded on unreason. In its application, however, it may cause cruel injustice if it fails to discriminate between offenders according to their

subjective character. An individual, charged with an offence, may be a person whose reasoning and cognitive faculties have been thrown into

complete disorder by insanity. Or he may be a mental defective or degenerate, suffering helplessly from either sub normality of intelligence or

constitutional propensities to vice, congenitally and almost ineradicably implanted in the mind. Or he may be a person subject to uncontrollable

impulses which render him totally incapable of resisting himself, when they are roused. To proceed against such persons solely on the basis of the

objective character of the offence committed would be utterly irrational, but be it said to the credit of criminal justice, as we know it, that it does

not do so in all cases and is not wholly insensible of the infirmities of the human mind. To a certain degree, it tries to extend to the alleged offender

the fairness of the Law by taking into account his mental conditions at the time of the commission of the offence; and by taking into account his

mental condition at the time of the trial, it tries to extend to him the Law's mercy.

The rigidity of the M. Naghten rules has been breaking down under the pressure of discoveries made by science. As the well known criminologist,

Professor Ferri, has aptly said, although man has always known penal justice in some form or other, it was only in comparatively recent times that

penal justice began to know man. But it must be admitted that since Lombroso called attention to the personality of the offender, research as to the

make-up of a criminal's mind has never flagged. It is true that Lombroso's theory of stigmata or anatomical defect, causing and being speaking mental

deformity, is no longer in favour, but the direction he gave to juristic thought on crime has led to a recognition that the criminal man is often a

defective man, either unable from deficiencies of the mind to co-ordinate its different functions in the way necessary for normal behaviour or

suffering from a diseased will against which he is powerless to contend and therefore not reasonably treated if judged by the standards applicable

to normal men.

(Foreword remarks by P. Chakravarti J., Chief Justice, West Bengal, in the Book "Insanity and Criminal Law" by B. K. Bhattacharya).

38. In his introductory remark, Sri B. K. Bhattacharya, the learned Author of Insanity and Criminal Law, 1964 Edition, remarks that :

Insanity in order to attain the stage of irresponsibility must satisfy the test prescribed in the Macnaughton Rules on which the Indian Law is

substantially based. These century old rules, however, were framed at a time when very little was known of psychiatry. They fall short of the

standard of present day knowledge.

A person who through cognitive or intellectual faculties comprehends the distinction between the right and wrong of a given conduct must,

according to it, be held criminally responsible. Insanity, however affects not merely the intellect but also the whole personality of the man, including

the will and the emotions. The capacity of knowing right from wrong may be completely intact even though he is not otherwise demonstrably of

diseased mind.

Under the rules knowledge of right and wrong in regard to the particular crime charged is the only test of responsibility. There is no scope in these

for irresistible impulse. Mere knowledge that the act which he was committing was wrong or illegal should not be sufficient in all cases to invoke

responsibility if the person lacked the power of conscious volition to resist the impulse to commit it. There may be a case in which the accused

knew the "nature and quality of the act" and yet was driven to commit the act by an irresistible impulse, by reason not only of disease of the mind

but also of mental defect or deficiency.

The test of irresistible impulse has not found much favour mainly on the ground that such a defence to crime is difficult to prove and is highly

dangerous to society, because it is not very difficult to feign insanity, and will open the door wide for the escape of criminals.

The main objection to the extension of the Macnaughton Rules is that it is difficult to distinguish clearly pathological crime from non-pathological in

the present stage of development of psychiatry and that any relaxation may afford cover to wrongdoers. It is indeed difficult to formulate a hard

and fast rule for fixing criminal responsibility at a time when psychiatry has not attained the status of a full grown science. But the door should be

kept open for a appropriate relaxation and extension of the rules so that criminal trials may be rationalised, if not humanised, though the task will

not be an easy one and some of the difficulties may be baffling. Conservatism appear it may indeed be difficult to translate the extension of

knowledge in the psychiatric field into adequate legal formulae. Nor should it be forgotten that the "right and wrong" formula has not stood in the

way of taking in evidence the entire mental condition of the accused.

The law's insistence on judging a lunatic always by the ordinary standard of the average man leads to irrational results. The position of the defence

counsel in a case where the insanity plea arises is difficult and anomalous. If it is not fair to throw on a lunatic the burden of proving that he was

made when the act was committed or when the trial is being held, it is no less so to his counsel. The predicament of the latter from more than one

standpoint is insuperable. In a genuine case of insanity he cannot expect much information from his client, far less direct instruction. To make a

proper defence certain amount of information and reasonable instructions from the accused are needed to begin to prepare a defence, specially as

to accident or provocation or any other exceptional or extenuating circumstance. Proper cross-examination is not possible without instructions.

Professional etiquette demands that without instructions counsel should not take up a certain line of defence for which facts are essential. In the

recent case of Podola (1960) 1 QB 325, however, hysterical amnesia, even if genuine, preventing him from remembering events during the

material period, was rejected as a plea in bar.

39. The appellant was a bright young boy who evinced great interest in his studies and extracurricular activities. The Professors under whom he has

studied, have given a very good account of him. His interest in education made him to discontinue his studies. Some misfortune befallen on him at

America. Therefore, he works in a Store for his livelihood. His parents who have visited America have completely ignored him by avoiding to see

him. His grand father's death was also not communicated to him and he comes to know at a very later period. His care-free life made him to learn

a life which neglects moral aspects which he had accustomed in the Indian type of life. Suddenly, he makes up his mind to visit India. The events

that occurred from 6-6-1981 to 15-6-1981 exhibits an extraordinary character which a normal man of appellant status could not do.

40. His behaviour and changed life after these events also quite remarkable. He continues his studies, unmindful of the pendency of a very serious

charge of offence and quite successful in completing his B.E., Course. After that, he takes up Private Enterprises and achieved a mark in that

direction. As held in Dahyabhai Chhaganbhai Thakkar's case that 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.

41. In view of the various circumstances discussed above, the appellant is entitled to have the benefit of Section 84 of the Indian Penal Code.

In the result, this appeal is allowed. The Order of conviction and sentence passed by the learned VII Addl. Sessions Judge, Bangalore, in S.C.

No. 9 of 1982 on 22-2-1989 is hereby set aside.

The appellant is acquitted and his bail bonds shall stand cancelled.

42. Appeal allowed.