(1978) 06 MP CK 0002

Madhya Pradesh High Court (Gwalior Bench)

Case No: Criminal Appeal No. 168 of 1977

Sarbanlal Bheeka		APPELLANT
	Vs	
State of Madhya Pradesh		RESPONDENT

Date of Decision: June 28, 1978

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 229, 342
- Evidence Act, 1872 - Section 105, 27
- Penal Code, 1860 (IPC) - Section 302, 76, 79, 84

Hon'ble Judges: H.G. Mishra, J; A.R. Naokar, J

Bench: Division Bench

Advocate: V.K. Saxena, for the Appellant; R.B. Tiwari, Panel Lawyer for State, for the Respondent

Final Decision: Dismissed

Judgement

H.G. Mishra, J.

This is an appeal by the accused appellant against the judgment passed by the Sessions Judge, Shivpuri, convicting him u/s 302 of the Indian Penal Code and sentencing him with imprisonment for life.

2. The prosecution story is as follows:

(a) Hariram, the deceased, was the real brother of the accused-appellant and both of them were the residents of village Piproda, P. S. Tendua in Tahsil Kolaras, District Shivpuri. It is alleged that Hariram had gone on 26-3-77 to the jungle near the village Piproda but did not return. Efforts to search him out were being made till 4-4-77, when a search party, consisting of Kilola (P. W. 7), Patel of the village Piproda, along with other persons accompanied by the accused, found skeleton of the deceased Hariram and his clothes lying in a deserted place in the jungle. Sarbanlal, the accused, along with Chowkidar of the village went to the Police Station Tendua where the accused himself lodged F. I. R. vide Ex. P. 15-C on 4-4-77 at 1000 A. M.

which is to the effect that Hariram could not be traced for eight days past but that day he has been able to locate between the hillocks of village Kherona and Piproda, dhoti and shirt belonging to his brother with stains of blood; there are spots of blood on ground also. The accused, therefore, expressed apprehension to the effect that his brother has been eaten away by wild animals. Thereupon Head Constable Shyam Bihari Singh (P. W. 3) was deputed to go on the spot and he found bones and clothes on the spot. He observed that there are marks of cutting by axe near the collar of the shirt of the deceased. He sent a ''Dehati Nalishi'' dated 5-4-1977 vide Ex. P. 3 on the basis of which an offence u/s 302 Indian Penal Code was registered.

(b) Shyam Bihari Singh, Head Constable took into possession the clothes, namely, Dhoti (Art. A), Shirt (Art. B), Baniyan (Art. C), Pancha (Art. D) and a pair of shoes (Art E) vide seizure memo Ex. P. 4 dated 5-4-1977 at 5.00 P. M. Thereafter at 5.45 P. M. bones of various parts of the body of the deceased as detailed therein were seized vide seizure memos Ex. P-5 and P-6. Blood stained earth and ordinary earth were also seized vide seizure memos Ex. P-7 and P-8 respectively. The spot map prepared vide Ex. P-9 shows that at point No. 1 blood spots were noted; at point Nos. 2 and 3 shoes of the deceased were found lying; at point No. 4 blood-soiled dhoti of the deceased was found, and the turban of the deceased was also found there; at point No. 5 blood soiled shirt and baniyan, and a chain (Mala) of the deceased were found; at point No. 6, marks of having cut the body of the deceased were observed and blood spots in the branches of a tree standing there were also noted; at point No. 7 Pancha of the deceased in torn condition and some bones of the deceased were found; at point No. 8 two pieces of bones of the deceased were found.

(c) The accused-appellant was arrested on 9-4-1977 vide arrest memo Ex. P. 14. He gave information to the police about the factum of having hidden axe, weapon of the offence, in middle of Sukha-Nala of village Piproda and got it discovered, at his instance about 6 inches deep in the Nala by removing with his own hand the earth under which the axe was lying hidden (vide ex. P-13). There were blood stains on the axe (Art. H) which fact was also noted therein. The accused also gave information to the police about the axe of the deceased which is Art. 1 and also got it discovered.

(d) Dhoti, Shirt, Baniyan, Pancha belonging to the deceased and axe with handle, (Art. H) which was recovered at the instance of the accused on 9-4-77 were sent for chemical examination to Chemical Examiner, Government of M. P. Sagar, who, vide his report Ex. P17 dated 21-4-1977 confirmed the presence of blood on the aforesaid articles. The clothes of the deceased were also sent for medical examination to Dr. Murarilal Arora (P. W.-2) who vide his report (Ex. P-2) has opined that there are cut marks of cutting on the clothes of the deceased which could be caused by axe produced before him. The Serological report Ex. P-18 dated 27-6-1977 confirmed that there were human blood stains on the aforesaid articles.

(e) The accused appellant was produced on 15-4-77 before Shri R. N. Saxena, Magistrate First Class, Kolaras for recording his confession. Since the accused was in

police custody w. e. f. 9-4-1977 he was directed by the Magistrate to be sent to Jail custody and was ordered to be produced on 19-4-1977 after affording him time for reflection in the matter. On 19-4-1977, the accused was again produced before R. N. Saxena (P. W. 1) for recording of confession. After taking due precautions and usual explanation, informing the accused to the effect that he is not bound to make a confession and that even if he does so the confession made by him may be used as evidence against him, his confession (Ex. P-1) was recorded, wherein he has admitted killing of Hariram, his brother. The bones of the deceased were sent for examination to Dr. Premchand Ranwal (P. W. 5) who vide his report dated 28-4-1977 (Ex. P-11) opined that the bones were human bones belonging to a male individual of age above 20 years. The bones stated to be of left and right inferior extremeries, height of the individual being approximately 166 cms. or 5'' and 5".

(f) The identification test proceeding (Ex. P-10) was conducted on 3-6-1977 by Mahesh Chand Jaiswal (P. W. 4), Naib Tahsildar and Executive Magistrate, Kolaras. Art. H (axe) was correctly identified by Kilola (P. W. 7) besides Jagni and Balkishan belonging to Hariram, the deceased.

2. After completion of the investigation, the accused was charge-sheeted in the Court of the Magistrate First Class, Kolaras, who committed the accused for trial to the Court of Session, Shivpuri. The accused was charged for having committed the murder of Hariram at 8 A. M. on 26-3-77 to 4-4-77 or thereabout, by intentionally causing the death of Hariram and thereby for having committed an offence u/s 302 Indian Penal Code. The accused pleaded guilty, but was tried. Shri Kailash Narain Puranik was appointed as defence counsel. During the trial it was proved by Head Constable Shyam Behari Singh (P. W. 3) that nine case diaries, including that of the present case, were stolen away and that they were burnt by Constable Khadag Singh. Therefore, carbon copies of Ex. P-2, Ex. P-3, Ex. P-4, Ex. P. 5, Ex. P-6, Ex. P. 7, Ex. P-8, Ex. P-9, Ex. P-12, Ex. P-13, Ex. P-14, were produced and duly proved Rest of the documents are in original. u/s 342 Criminal Procedure Code in his statement the accused admitted all the facts including his confession recorded by the Magistrate, but stated that at the time of the incident he had lost control of his brain. His actual words in answer to question No. 21 are as under:

MERA DIMAG FAIL HOGAYA THA. MAINE BHAI KO KULHARI SE MARA.

The learned Sessions Judge has convicted the accused for having committed an offence u/s 302 of the Indian Penal Code and has sentenced him to undergo imprisonment for life.

3. Aggrieved by this conviction and sentence the present appeal has been filed by the accused-appellant.

4. Shri V.K. Saxena, Advocate appearing as amicus curiae for the accused-appellant contended that--

(i) In view of section 229 of the Code of Criminal Procedure, 1973 the learned Sessions Judge could not base conviction on his plea of guilty after having tried him.

(ii) Failure to send axe (Art. I) also for chemical and seriological examination, reports regarding axe (Art. H) are of value in the case.

(iii) That the alleged judicial confession (Ex. P-1) is not a confession at all, as words "Mara Hai" occurring therein mean "gave beating" and not "has killed."

(iv) Statement of the appellant u/s 342, Criminal Procedure Code cannot be splitted and answer given to Q. No. 21 had also to be considered together with earlier part of the statement. If so considered, he is entitled to benefit of section 84, Indian Penal Code.

5. Shri R. B. Tiwari, Panel Lawyer for the State argued in support of the judgment under appeal.

6. After having heard the learned counsel for both sides, we are of the opinion that this appeal deserves to be dismissed.

7. Before dealing with the first contention raised by the learned counsel for the appellant, it will be useful to reproduce the provisions of section 229 of the Code of Criminal Procedure, 1973 (hereinafter referred to as ''New Code''), which are as under:

229. Conviction on plea of guilty.--If the accused pleads guilty, the Judge shall record the plea and may, in his discretion, convict him thereon.

This section corresponds to section 271(2) of the Code of Criminal Procedure, 1898 (hereinafter referred to as the ''Old Code'') which is reproduced hereunder:

271. Commencement of trial.--(1) When the Court is ready to commence the trial, the accused shall appear or be brought before it, and the charge shall be read out in court and explained to him and he shall be asked whether he is guilty of the offence charged, or claims to be tried.

Plea of guilty.--(2) If the accused pleads guilty, the plea shall be recorded and he may be convicted thereon.

In the present case the plea of guilty was recorded by the learned trial Judge. The law on the point is that the plea of guilty may be accepted by the Court and the accused may be convicted thereon, but the Court is not bound to accept the plea of guilty in all cases. In cases where the natural consequence of accepting the plea of guilty would be a sentence of death, it is not in accordance with the usual practice to accept the plea of guilty. Murder is a mixed question of law and fact and unless the Court is satisfied that the accused knew exactly what was implied by the plea of his guilty, the plea should not be accepted but the accused should be tried specially where the accused is ignorant. It appears, therefore, that in the present case, the

learned Sessions Judge, decided to try the accused, but having decided so and having tried the accused, in para 8 of his judgment, he based his judgment while convicting the accused on his plea of guilty also. This raises a question whether it was open to the learned Sessions Judge to have based his judgment on the plea of guilty of the accused having once opted not to convict him on its basis. This question has been answered by a Special Bench of the Bombay High Court in a case reported in Abdul Kadar Allaraskhia v. Emperor A I R 1947 Bom. 345. The relevant observations are as under:

The Court ought not, after it has decided not to act upon the accused''s plea of guilty, to allow it to be proved that the accused pleaded guilty, e. g. by examining a person who was present in Court at the time the plea was made, and if the plea cannot thus be introduced into the evidence, a fortiori the Clerk of the Crown or Crown counsel cannot be allowed to refer to it.

Although that is a case under the Old Code, still in view of the fact that the law pertaining to conviction on the basis of plea of guilty continues to be the same under the New Code, the ratio of Abdul Kader''s case (supra) still holds good and we are in respectful agreement with the same. In this view of the matter it was not open to the learned Sessions Judge to base his judgment on the plea of guilty as has been done by him in para. 8 of his judgment. Thus the first contention raised by Mr. Saxena is correct but that does not improve the matter in view of the evidence led by the prosecution including the recovery of weapon of offence Axe (Art. H) at the instance of the accused, his judicial confession, his admission of the entire case of the prosecution in his statement u/s 342, Criminal Procedure Code and his failure to substantiate the plea of so-called unsoundness of mind making it incapable for him to know the nature of the act. Thus the first contention deserves to be upheld.

8. As to the second contention, it has to be stated that the case of the prosecution is that the weapon of offence was Axe (Art. H) which belonged to the accused. It is not the case of the prosecution that Axe (Art. I), belonging to the deceased, was employed in committing the offence. Therefore, it was not necessary to send Axe (Art. I) belonging to the deceased for chemical and/or serological examination though it may have been proper to do so. The Axe (Art. H) was discovered on disclosure made by the accused as contained in Ex. P-13 and that too at his instance, buried 6 inches deep in the earth in Sukha-Nala near village Piproda. This recovery of the weapon of attack is relevant u/s 27 of the Indian Evidence Act. The Axe (Art. H) was blood stained when recovered and seized vide recovery memo Ex. P-13. It was duly sent for chemical examination and vide report Ex. P-17 it has been confirmed that there were stains of human blood on it. Thus the recovery of blood stained axe (Art. H) can only be incriminating circumstance against the accused and not the recovery of the axe (Art. 1) belonging to the deceased. Thus the omission to send axe belonging to the deceased for chemical and/or seriologial examination, does not adversely affect the strength of the prosecution case.

9. This brings us to the third contention raised by the Jearned counsel for the appellant as to the interpretation of the word ''Mara'' occurring in the judicial confession Ex. P-l. The contention on the point overlooks the distinction between the word ''mara'' and the word ''Marpeat''. The accusation against the accused is of having committed the murder of his own brother Hariram. Therefore, the words ''mara hai'' occurring in the confession can be regarded in the present context only to mean ''has killed'' and cannot be taken to mean ''gave beating''. By admitting killing, the appellant has thereby admitted in terms the offence i. e. murder. A confession can be in any one of the two forms (a) it must either admit in terms the offence or (b) at any rate substantially all the facts which constitute the offence. (Palvinder Kaur v. The State of Punjab A I R 1952 S C 554) relied on. Therefore the interpretation of the word ''Mara'' as suggested by the learned counsel for the appellant cannot be accepted. It constitutes clear confession of the offence.

10. Now taking up the last contention advanced by the learned counsel for the accused-appellant, namely that the Court cannot split the statement made by the accused u/s 342, Criminal Procedure Code and accept a portion and reject the rest. The statement has either to be accepted as a whole or should not have been relied at all. It was, therefore, argued that the statement of the accused appellant as contained in para 21 cannot be rejected and if considered as whole, it has to be held that the accused had lost his cognitive faculties and is entitled to the benefit of General Exception enacted by section 84, Indian Penal Code. Reliance was placed in (i) Vijendrajit Ayodhya Prasad Goel Vs. State of Bombay, (ii) Yusufalli Esmail Nagree Vs. The State of Maharashtra, and (iii) State of Gujarat and Another Vs. Acharya D. Pandey and Others, etc.,

11. Before proceeding to examine the applicability of the ratio of the aforesaid cases, it appears to be necessary to examine the nature of the statement of the accused u/s 342, Criminal Procedure Code. The statement of the accused u/s 342, Criminal Procedure Code consists of two parts:

(i) in the first part consisting of answers 1 to 18 the accused has admitted all the facts and circumstances including the factum of making his confession of his guilt before the Judicial Magistrate vide Ex. P-1, and

(ii) the second part consists of his plea as contained in answer to Question No. 21 which can be taken to be a plea of unsoundness of mind at the time of commission of the offence. Both of these parts are separable.

12. In the present case, the conviction of the accused is not based merely on his statement recorded u/s 342, Criminal Procedure Code which cannot be regarded as evidence. In the present case the prosecution evidence on record consists of the recovery of weapon of offence axe (Art. P.) which was discovered stained with blood at his instance lying hidden 6 inches deep in Sukha-nala near village Piproda and which was found to be blood stained by the Chemical examiner vide his report Ex. P.

12 and by the Serologist vide his report Ex. P-13. Then there is also the judicial confession (Ex. P-1) given by the accused and recorded by the Judicial Magistrate First Class. It was recorded after giving four days time to the accused for reflection. It is a voluntary confession. It has been proved by R. N. Saxena, Judicial Magistrate, First Class (P. W. 1). The clothes of the deceased were examined by Dr. Murarilal (P. W. 2) who has deposed that the collar of the shirt of the deceased had cut on its back side also which could be produced by an axe. Dr. Prem Chand Renual, has proved the bones sent for his examination were bones of male person vide his report Ex. P-11. The discovery of Art. H of accused himself and axe Art. I of the deceased have been proved by Bhanwarlal (P. W. 6) as well as the Investigating Officer Ram Kripal Mishra (P. W. 8). The learned Sessions Judge was justified in referring the admission of all these facts contained in statement of the accused u/s 342, Criminal Procedure Code in answer to paras 1 to 18. Thus the case of Vijendrajit Ayodhya Prasad Goel Vs. State of Bombay, does not help the appellant at all. It rather goes against him.

13. So far as the case reported in Yusufalli Esmail Nagree Vs. The State of Maharashtra, goes, what it lays is:

Court cannot accept the inculpatory part and reject the exculpatory part of the answers given by the accused u/s 342, Criminal Procedure Code.

The ratio of the aforesaid case has no applicability to the present case as no part of the statement of the accused is of exculpatory character.

In para 5 of the case reported in State of Gujarat and Another Vs. Acharya D. Pandey and Others, etc., it has been stated that:

In his statement the accused (No. 1) pleaded that he was not guilty and if his statement is taken as a whole, it does not show that he was guilty of any offence.

In the present case, the accused has in his statement u/s 342, Criminal Procedure Code admitted authorship of the crime i.e. murder of his brother Hariram. But has pleaded general exception purporting to be of ''unsoundness of mind'' at the time of commission of the impugned act. His plea cannot be construed to be of denial of guilt. Therefore, the ratio of the case of Acharya Shri Devendra Prasadji Pande and others (supra) cannot be pressed into service.

In Karnail Singh and another v. State of Punjab A I R 1954 S C 204 it has been held that:

With reference to the statement of the accused u/s 342, Criminal Procedure Code, it is true that if it is sought to be used as an admission it must be read as a whole, but where it consists of distinct and separate matters, there is no reason why an admission contained in one matter should not be relied on without reference to the statements relating to other matters.

The ratio of this case applies to the present case as the statement of the accused appellant in the present case consists of distinct and separate matters. After having given statement of confessional character u/s 342, Criminal Procedure Code the appellant takes plea of general exception enacted by section 84, Indian Penal Code. Therefore, on failure of the appellant to make out a case falling u/s 84, Indian Penal Code, the use of other part of statement of the accused u/s 342, Criminal Procedure Code by the learned Sessions Judge has to be held legally permissible. This is the ratio that emerges from paras. 18, 19 and 20 of the case of State of Himachal Pradesh v. Wazir Chand and others (1978) 1 S C 130 which is as under:

18. In the absence of any witness to the occurrence and the deceased died giving only that part of the occurrence which implicates the accused, we are left with the statements of the accused 1 made by him u/s 342, Criminal Procedure Code about the origin of the occurrence. This would raise the question as to what value should be attached to the statement made by the accused u/s 342, Criminal Procedure Code, 1898. It is obligatory on the Court to question the accused on the circumstances appearing against him in evidence so as to enable him to explain the same. Sub-section (3) provides that the answers given by the accused may be taken into consideration in such inquiry or trial, etc. in order to give an opportunity to the accused to explain the circumstances appearing against him in evidence, the Court u/s 342, Criminal Procedure Code was required at the close of the trial to question the accused on such circumstances. The Court had to guard against cross-examination of the accused. The accused was to be questioned with regard to the circumstances appearing against him in evidence and not the inference that flows from the circumstances. The answers given by the accused have to be taken into consideration.

19. There was at one point of time some controversy whether the statement of the accused can be accepted in part and rejected in part. This situation arose where a part of the statement was inculpatory and a part of the statement was exculpatory. In Narain Singh Vs. State of Punjab, it was held that it is not open to the Court to dissect the statement and to pick out a part of the statement which may be incriminative, and then to examine whether the explanation furnished by the accused for his conduct is supported by the evidence on the record. If the accused admits to have done an act which would but for the explanation furnished by him be an offence, the admission cannot be used against him divorced from the explanation. The question again figured before this Court in Nishi Kant Jha Vs. The State of Bihar, wherein the Court held that the Court may rely on a portion of the statement of the accused and find him guilty in consideration of the other evidence against him led by the prosecution. In Nishi Kant Jha''s case there was no eye-witness to the commission of the crime and the evidence was all circumstantial and the statement of the accused that he was present at the scene of crime was a vital circumstance which taken in conjunction with other circumstances led the Court to come to the conclusion that he was guilty of the crime imputed to him. The

ratio of the aforementioned cases was again examined in Sampat Singh Vs. The State of Rajasthan, On the facts of the case, after accepting a part of the statement of the accused it was held that he caused injuries in exercise of the right of self-defence but he exceeded the same. It was observed that it is permissible for the Court to rely on a portion of the statement of the accused and find him guilty in consideration of the other evidence against him led by the prosecution.

20. Where the commencement or genesis of the occurrence is not available because there was no witness to the occurrence available, the only direct version of the commencement of the occurrence would be found in the statement of the accused, if he chooses to give out his version of the occurrence. His statement has to be considered in the light of the evidence adduced by the prosecution and weighing his statement with the probabilities of the case either in his favour or against him.

14. This brings us to the question as to what is the nature of the plea of the accused as contained in answer to question No. 21. He has stated that he has lost control over his mind at the time of commission of the murder. Even taken at its face value, this plea cannot be taken to be a plea falling within the ambit of section 84 of the Indian Penal Code. u/s 84 Indian Penal Code it is not insanity of every description that will be a defence to a criminal charge. From medical point of view there are many states of mind which may amount to insanity; but this section draws a distinction between a medical insanity and legal insanity of unsoundness of mind which may amount to insanity from the medical point of view need not necessarily be legal insanity for the purposes of this section, so as to confer immunity to insane person from criminal liability for the alleged act done by him while he is in that state of mind. To satisfy the requirements of this section, it must be proved that at the time of committing the act the accused person was labouring under such a defect of reason from disease of the mind as not to know the nature and quality of the act he was so doing or not to know what was he doing was either wrong or contrary to law.

15. The principle enacted by this section is based on the opinion delivered by 15 Judges in England in 1843 in proceedings arising out of famous trial of R. V. M'' Naghten. The Chief points in the answers of the Judges in M'' Naghten case are as follows:

(1) Where the accused suffers from a partial delusion, i. e. a delusion in respect of particular subject or person but otherwise is sane and under such partial delusion he does an act which he knows to be forbidden by law, he must be held to be guilty.

(2) Where the accused suffers from a partial delusion as to existing facts and acts in consequence, he is in the same situation as if the facts to which the delusion relates were real. In other words, if under those supposed facts he would be justified in acting as he did, he will be exempted from criminal liability if otherwise, he will not be exempted (See in this connection sections 76 and 79 and the Commentary thereon).

(3) Every person is presumed to be sane till the contrary is proved.

(4) In order to entitle an insane person to exemption from punishment, it must be proved that he did not know the nature or quality of the act, or that he did not know that the act was wrong.

It is thus clear that section 84 Indian Penal Code embodies in substance the principles, laid down by Judges in M''Naghten''s case (supra). The unsoundness of mind referred to in this section is a disease of brain and not merely a disorder of the sense. The unsoundness is inherent and organic affliction. In Mayne''s Criminal Law, 3rd Edn. (1904) page 415, para 188 principles on the point have been stated thus:

Insane delusions, as distinguished from arising from a disordered state of the senses spring from a deceased state of the brain. The delusion is the outward and visible sign of the disease; but the disease itself must have exceeded the delusion, and continues silently to vitiate the mind sapping warping the intelligence and perverting the emotions. The disease may break out at any moment in a fresh direction, and with new symptoms. A man who imagines himself a tea pot, may apparently be the victim of a perfectly harmless fancy. But it is obvious that such a notion cannot continue, unless his powers of observation comparison and inference are completely undermined.

This appears to be the classic exposition of the principles governing the situation.

16. In order that this section applies not only the accused must have been labouring under unsoundness of mind of the above type at the time of the act but it was necessary that such unsoundness of mind must have led at the time of the commission of the act. An incapacity of knowing either (a) the nature of his act, or (b) that what he was doing was either wrong or contrary to law. In either case, incapacity must have existed at the time of his doing the act charged as an affence. This is what has been held by their Lordships of the Supreme Court in Ratan Lal Vs. The State of Madhya Pradesh,

17. Now applying these principles to the aforesaid plea taken by the accused appellant, it appears that the accused had lost control over his will or emotion and in that state of mind he committed the offence of murder. As such, it is clear that he was conscious of the act he was committing and also was capable of knowing the nature thereof. Such a plea, even if assumed to have been established, cannot afford any immunity from the act done by the accused in that state of mind. In the present case after making a judicial confession and after admission, of all the facts and circumstances alleged by the prosecution against the accused, in his statement u/s 342 Criminal Procedure Code the burden of proving that his act came within one of the general exceptions of the Penal Code was on the accused-appellant by virtue of section 105 of the Indian Evidence Act. In such a situation, the court shall presume the absence of such circumstances. Section 105 of the Evidence Act runs as under:

105. When a person is accused of any offence, the burden of Burden of proving proving the existence of circumstances bringing that case of accused the case within any of the general exceptions in comes within the Indian Penal Code, or within any special exceptions 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.

Illustration (a) to the section 105 runs as under:

A, accused of murder, alleges that, by reason of unsoundness of mind, he did not know the nature of the Act.

The burden of proof is on A.

The aforesaid illustration makes the legislative intent abundantly clear. Accordingly, it will be presumed that the accused is a sane person. The appellant has failed to rebut this presumption by proving that by reason of unsoundness of mind he did not know the nature of the act. As held in Kannakunnummal Ammed Koya Vs. State of Kerala,

Fear complex, excitement or irresistible impulse with loss of self control even if proved in a case affords no defence in a crime under Indian law and is therefore, irrelevant except for mitigation of offence from murder to culpable homicide in certain circumstances.

Accordingly, plea regarding loss of control of mind at the time of commission of crime does not afford a valid defence to the appellant.

18. The further argument advanced by the learned counsel for the appellant was that the very fact that the accused made a clean breast of the matter and admitted the various allegations of the prosecution goes to show that he was of unsoundness of mind. Moreover, no motive has been proved for committing such a serious crime like murder. Therefore, it should be concluded that the accused was not a sane person. In 1973 Supreme Court Cases (Cr.) 925 it has been held that:

Mere fact that the accused made clean breast of the matter and admitted various allegations of the prosecution would not go to show that be is of unsoundness of mind. Further the fact that the accused caused the death of the deceased over a trifling matter would also not help to come to the conclusion that the accused was not a sane person.

19. Absence of proof of an adequate motive for a serious crime like murder, in the present case, is not by itself a proof of insanity on the part of the accused in the sense of section 84 I. P. C. in the sense that the accused at the time of committing the alleged offence was incapable of knowing the nature of the act or that it was wrong or contrary to law. We are fortified in this view by the case reported in AIR 1949 66 (Nagpur) which is as under:

An accused who has been proved to have killed the deceased, is not entitled to any benefit of doubt as to his insanity because the burden is on him to prove strictly that he committed the act, in a moment of insanity. The exemption of insanity must be clearly made out before it is allowed. It is not every kind of idle and frantic humour of a man, or something unaccountable in his actions, which will show him to be such a madman as is to be exempted from punishment; but where a man is totally deprived of the understanding and memory, and does not know what he is doing, any more than an infant or a wild beast he will properly be exempted from the punishment of the law.

20. In view of the aforesaid discussion, none of the contentions advanced for the accused appellant survive. We are satisfied that the finding of the guilty recorded against him by the learned Sessions Judge is proper and is not open to any legal and just objection. The conviction of and sentence awarded to the appellant deserve to be maintained.

21. Accordingly the appeal is dismissed. The conviction and sentence of the accused-appellant are hereby confirmed. The disposal of the property will be as directed by the learned Sessions Judge in para 12 of his judgment after the period of appeal or according to the decision of the appeal, if any.

22. Before parting with the judgment we want to give thanks for the valuable assistance rendered by Shri V. K. Saxena, Advocate, who appeared as amicus curiae in the case and argued the matter with great industry and ability.