

**THE HIGH COURT OF SIKKIM : GANGTOK**

(Criminal Appeal Jurisdiction)

**DATED : 20-09-2012**

CORAM

**HON'BLE MR. JUSTICE PERMOD KOHLI, CHIEF JUSTICE**

**HON'BLE MR. JUSTICE S. P. WANGDI, JUDGE**

**Crl.A. No. 05 of 2012**

Lok Bahadur Dahal,  
S/o Shri Indra Bahadur Dahal,  
R/o Changchung Busty,  
Tashiding,  
West Sikkim.  
(at present State Jail  
at Rongyek, East Sikkim) ... **Appellant**

Versus

State of Sikkim ... **Respondent**

For Appellant : Mr. S. S. Hamal, Legal Aid Counsel  
with Mr. Tashi Wongdi Bhutia and Mr.  
Madan Sundas, Advocates.

For State : Mr. Karma Thinlay Namgyal,  
Additional Public Prosecutor with Mr.  
S. K. Chettri. Assistant Public  
Prosecutor.

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

Wangdi, J.

By this Appeal the Appellant seeks to assail the judgment dated 21-09-2011 passed by the Learned Sessions Judge, South and West Sikkim at Namchi in S. T. Case No.8 of 2007 by which he stood convicted for having committed an offence under Section 300 of the Indian Penal Code (in short "IPC") punishable under

Section 302 IPC and sentenced to undergo imprisonment for life and to pay a fine of ₹ 3,000/-.

**2(a).** The prosecution case, so far as it is material for disposal of this Appeal is that on 04-11-2006, the Officer-in-Charge, Gyalshing Police Station, P.W.17, was informed by the In-Charge, Tashiding Police Out Post, that one Indra Bahadur Dahal, P.W.1, had submitted a written FIR stating that at about 1200 noon of the same day one Sunil Darjee, P.W.7, Jag Bahadur Gurung, P.W.8 and Suk Bir Kami, P.W.9, had come to his house and informed him that his elder son, the Appellant herein, had killed his youngest son, the deceased, with a 'khukhuri' (a sharp edged weapon) at Chongrang Kongri Road, Thangchung (West Sikkim), and that since the information on verification was found to be correct he requested for legal action against the Appellant. Based upon this information, Gyalshing P.S. Case No.40(11)06 dated 04-11-2006 was registered against the Appellant under Section 302 IPC and investigation taken up.

**(b)** During the course of the investigation, it was revealed that on 04-11-2006 when old timber stored in the house of the complainant, P.W.1, the father of both the deceased and the Appellant, were being taken to the

road side to be loaded on a truck to be carried to Tashiding Bazar, where the complainant, P.W.1, had a grocery shop, a quarrel ensued between the Appellant and the deceased during which the Appellant pulled out a 'khukuri' concealed in his jacket and assaulted the deceased on the head first and thereafter on the neck repeatedly until he fell dead.

(c) The entire episode was witnessed by P.W.2, Shobha Dahal, the younger sister of the Appellant, who had travelled in the truck from Tashiding for transporting the timber, and P.W.3, Khichung Bhutia, a forest guard, who had hitched a ride with her. Investigation revealed that a strained relationship had developed between the Appellant and his younger brother, the deceased, after the partition of family property with which the Appellant was not satisfied. The deceased being the youngest brother of the Appellant used to live with his father, P.W.1, in the main house situated above the road at Thangchung while the Appellant was living separately in his own house below the road. P.W.1, Indra Bahadur Dahal, had collected considerable quantity of timber by felling trees from his personal holding which was stored in the main house.

The Appellant had claimed a share in that timber and a dispute was on regarding this between P.W.1, the deceased and the Appellant regarding which P.W.1 had also represented to the Panchayat for settlement. Since the Appellant did not appear on the date fixed by the Panchayat decision had gone in favour of P.W.1, and the deceased. In pursuance of this P.W.1, who was then living in his shop at Tashiding, had sent his daughter, P.W.2, Shobha Dahal, to get the timber to Tashiding on hired a truck of P.W.13, Purna Subba. When the Appellant got to know of the timber being carried to the truck he raised objections leading to heated arguments between him, his sister, P.W.2 and the deceased which ultimately led to the Appellant killing the deceased in the manner stated aforesaid. It was revealed during the investigation that the Appellant had come prepared to assault the deceased and had carried a 'khukuri' that was concealed in his jacket.

**3.** Having found *prima facie* case against the Appellant, charge-sheet was filed against him for offence under Section 302 IPC and accordingly sent up for trial.

**4.** The Learned Sessions Judge, South and West Sikkim upon consideration of the materials on record

framed charge under Section 302 IPC against the Appellant who pleaded not guilty and claimed to be tried.

**5.** During the course of the trial, the prosecution examined as many as 19 witnesses out of 20 listed in the charge-sheet, one, P.W.9, Suk Bir Kami, having been tendered for cross-examination.

**6.** On conclusion of the trial the Appellant was found guilty of the offence under Section 300 IPC punishable under Section 302 IPC and convicted him accordingly and sentenced him to undergo imprisonment for life and a fine of ₹ 3,000/-.

**7(a).** Before us, Mr. S. S. Hamal, Learned Legal Aid Counsel, preferred not to question the finding on the merits of the case and confined his appeal in pleading (i) legal insanity of the Appellant in the nature of 'schizophrenia' and, (ii) that since the offence had been committed by the Appellant without pre-meditation in a sudden fight in the heat of passion upon a sudden quarrel the charge ought to be reduced to one of the parts of Section 304 IPC thereby warranting reduction of the sentence.

(b) In support of his first plea of mental disorder which the Appellant was said to have been suffering from, Mr. Hamal referred to the various portions of the evidence of P.W.1, Indra Bahadur Dahal, and P.W.2, Shobha Dahal and submitted that from the evidence of these witnesses, unsoundness of mind of the Appellant is quite discernible and that the manner in which the Appellant had assaulted the deceased lends support to the medical opinion of the Court witness Dr. Netra Thapa, a Psychiatrist in the Namchi District Hospital. By relying upon the various decisions of the Hon'ble Supreme Court and of this Court, it was submitted that the plea of insanity is fully established in favour of the Appellant. The decisions referred to by the Learned Counsel are as under:-

- (i) ***Dahyabhai Chhaganbhai Thakkar vs. State of Gujarat : AIR 1964 SC 1563*** (Paragraph 7);
- (ii) ***Bapu alias Gujraj Singh vs. State of Rajasthan : (2007) 8 SCC 66*** (Paragraphs 7 to 13);
- (iii) ***Surendra Mishra vs. State of Jharkhand : (2011) 11 SCC 495;***
- (iv) ***Siddhapal Kamala Yadav vs. State of Maharashtra : AIR 2009 SC 97*** (Paragraph 8);
- (v) ***Sudhakaran vs. State of Kerala : (2010) 10 SCC 582*** (Paragraph 28);

- (vi) **State of Rajasthan vs. Shera Ram alias Vishnu Dutta : (2012) 1 SCC 602** (Paragraphs 17 to 19);
- (vii) **Shri Tshering Lepcha vs. The State of Sikkim : 2010 Sikkim Law Journal 36**;and
- (viii) **Prakash Saha vs. State of Sikkim** in **Crl.Rev.P. No.04 of 2012** (date of decision : 29-08-2012).

**(c)** On the plea for modification of offence and reduction of the sentence, the Learned Counsel, relying upon the evidence of P.W.2 and P.W.3, submitted that as the death of the deceased was unintentionally caused by the Appellant in a heat of passion without any pre-meditation. Therefore, as per him, the offence would fall either on the first or the second part of Section 304 IPC and is covered by the fourth exception to Section 300 IPC. The fact that after having killed the deceased the Appellant on his own had surrendered before the In-charge, Tashiding Police Out Post would also support this case.

**8(a).** Upon hearing the Learned Counsels and on careful appraisal of the evidence placed before us, we are afraid that the pleas raised on behalf of the Appellant do not impress us.

(b) It may be noted that Mr. Hamal fairly conceded that there indeed existed evidence of motive in as much as the relationship between the Appellant and the deceased was strained due to the partition of their family properties. In our view, this was indeed a latent reason that had come to the fore as a consequence of the removal of timber from the main house occupied by his father and the deceased. It has also come in the statement of P.W.2 recorded under Section 164 CrPC that relationship between the Appellant and the others in the family was not good. All these have been corroborated by the evidence of P.W.1, the father of both the deceased and the Appellant, in his statement under Section 164 CrPC and in his deposition in Court.

(c) In order to appreciate the events of the fateful day we may refer to the depositions of P.W.1, P.W.2 and P.W.3 that are material:-

**P.W.1, Indra Bahadur Dahal**

"..... I live at Tashiding Bazaar running a small grocery and vegetable shop. I partitioned my properties to both the sons. The accused was given landed property and a shop at Thangchung under Tashiding O.P., West Sikkim. My main house is situated above the road. The landed property and my main house above the road and a small grocessry shop at Tashiding Bazaar fell in the share of my

youngest son late Keshar Singh Chettri. My wife late Shiva Maya expired about two years ago. I live with my youngest son. About 10/12 years ago I had fell and sawn timbers of Uttis and Champ varieties from my landed properties and stored in my main house. The said timber was about 60/70 cft. The said timber was to be partitioned between my two sons and I had conveyed several meetings but the accused never appeared in the meeting. At last the Panchayat Members suggested me that the timbers were sawn by me before the partitioned of my sons and advised me to keep the same.

..... For the purpose of transport of the said timber I hired the TATA truck of one Rajen Subba of Tashiding. I also sent my daughter Shova Dahal with the labourers. One Khichung Chaprasi, resident of Tashiding of Forest Department also boarded the said Tata Truck in order to bring fodder to his cattle. The labourers carried the timbers from my main house to the road side. The said TATA truck in the meantime was taken by the driver to the river for its cleaning. The accused seeing the timbers stored on the road side to carry it to my house at Tashiding came there and picked quarrel with the deceased. At this my daughter Shova Dahal intervened. In fact the accused was informed by Khichung Chaprasi about the timbers proposed to be transported from my main house to my Tashiding residence. At this the accused was annoyed and picked quarrel with the deceased and my daughter Shova Dahal. The accused thereafter delivered several khukuri blows, cut and assaulted the deceased with a khukuri with he had secretly carried with him. As a result of the murderers attacked the victim succumbed to the injuries on the spot. ...." [emphasis supplied]

**P.W.2, Shobha Dahal**

..... I proceeded to the main house taking the said three labourers in order to carry the timbers and the maize from the main house to the roadside. At the relevant time my youngest brother (deceased) and his wife were having meal. After he had finished his meal he was helping the labourers to carry timbers to the roadside. In the meantime I started collecting maize in order to take it with me to Tashiding Bazaar. At the relevant time I was staying with my father Indra Bahadur Dahal


(PW-1) at our Tashiding House. .... I just looked down towards the road and saw the deceased having chats with the said Khichung Chaprasey. I also proceeded to the road side where the deceased was with Khichung Chaprasey. .... I heard the said Khichung Chaprasey saying to the deceased that the accused had objected to the transportation of the said timbers from the main house to our Tashiding House and that he would go following the said timber to any place where the same would be carried. I also heard Khichung Chaprasey suggesting the deceased to settle the matter before he would carry the timber. In the meantime the said Khichung Chaprasey called the accused At this the accused came to the road and started shouting at us. I told the accused as to why he was complaining about the timber. I also told him that when Panchayat meeting was held about the distribution of the said timber he did not attend the meeting and there was no reason for him to shout at us I also saw his wife coming to the place of occurrence. The accused told me as to why I was acting smart and saying so he climbed the 'dil' and came to the place where the deceased and I were present. At the relevant time the deceased was sitting on the ground and I got up due to fear. The accused went past behind me and all of a sudden he struck the deceased on his head with the khukuri that he has carried hidden with him. I did not see the accused carried khukuri with him openly. As a result of the khukuri blow sustained by the deceased he fell down from the 'dil' to the edge of the road. The accused followed him and delivered another khukuri blow on his neck. Thereafter inflicted several khukuri blows on the deceased. Seeing this I tried to prevent the accused doing so. At this the accused also chased me and I ran away to save myself. The said Khichung Chaprasey was also present at the place of occurrence at the relevant time. I also saw the accused proceeding towards Tashiding carrying the khukuri in his hand. ...." **[emphasis supplied]**

**P.W.3, Khichung Bhutia**

"..... That truck was engaged by the father of the accused for transportation of timber from his main house at Thangchung to his another house at Tashiding bazar. For the said purpose the daughter of Indra Bdr. Dahal

i.e the father of the accused and his three labourers were also proceeding in the said tata. Infact I had boarded the said tata truck to bring fodder for my cattle. .... P.W-2 Shova Dahal wanted to carry maize corn and timber stored in the main house at Thangsung and accordingly she instructed the labourers to carry timbers upto the roadside. Thereafter I went to the house of the accused which is located below the road. .... In the mean time the accused also appeared there. So I informed the accused that P.W-2 Shova Dhal was sent by P.W-1, Indra Bdr. Dahal to collect timber and maize from his main house at Thangchung to his another house situated at Tashiding bazar. As soon as the accused learn about the transportation of timber the accused got annoyed and said that he had not received his share out of the timber stocked in the main house. He further said that he would not allow the said timber to be carried in the tata truck. He also further said that he would go following the timber wherever that was transported. Sensing trouble I advised the accused to settle the matter between them so the accused came to the road. A the relevant time the deceased and P.W.-2 Shova Dahal were sitting on the 'Dil' above the road. The labourers were also carry the timber upto the road. Soon a wuarrel (sic) ensued among the accused, the deceased and P.W-2 Shova Dahal. In the meantime the accused went above the 'Dil' where the deceased and P.W-2 were sitting the accused was wearing a jacket and I did not see the accused carry Khukuri in his hand ( objected to as not stated in his 161 statement). During the midst of the quarrel between the accused and the deceased I heard a sudden sound " Chhack". I could not understand as to whether the accused had hit the deceased with the fest blow or any other object. As I can not killeven a fowl I got nervous and I fled away from the place of occurrence. ...."

[emphasis supplied]

 (d) The evidence thus reveals that the Appellant had appeared at the place of occurrence in an agitated manner and that in the quarrel that ensued between him and the deceased, he suddenly pulled out a 'khukuri'

that he had carried hidden inside his jacket. From this, it can reasonably be inferred that the Appellant had planned and come well-prepared and, the brutal manner in which the deceased was assaulted first on the head and thereafter repeatedly on the neck would not be compatible to an assault caused due to grave and sudden provocation. Therefore, the plea for modification of the charge and reduction of the sentence urged on behalf of the Appellant must be rejected and is rejected accordingly.

(e) Coming to the plea of insanity raised on behalf of the Appellant, when we consider it in the light of the decision cited by the Learned Counsel we do not find it convincing at all. One of us (Wangdi, J.) while deciding the case of **Prakash Saha (supra)** have had the occasion to consider most of the judgments referred to by Mr. Hamal and, following the ratio laid down in them, the plea of insanity raised on behalf of the Petitioner had been rejected in the facts and circumstances of that case. As in the case of **Prakash Saha (supra)** we find that in the present case also the plea of insanity set up under Section 84 IPC on behalf of the Appellant appears to have been raised at a very advanced stage of the

trial, i.e., at the stage of proceedings under Section 313 of the Code of Criminal Procedure, 1973. Notwithstanding the delay, the Leaned Trial Court, in our view, had rightly resorted to the provisions of Section 329 CrPC for being medically examined.

**(f)** We have noted the evidence of Psychiatrist Dr. Netra Thapa, the Court witness, who also later appeared as P.W.18, and, in our view, his finding would be of no assistance to the Appellant. We have found two aspects of the medical report that are quite striking, the first of which is that it does not contain specific finding of the Psychiatrist that the Appellant suffered from "paranoid schizophrenia" when he was first examined on 20-05-2011. We find that the doctor has only narrated the Appellant's complaint and had noted certain abnormalities that uncannily resemble the symptoms of "paranoid schizophrenia" leading us to reasonably infer that the entire episode of resorting to the plea of mental disorder as being concocted as a means of putting up a defence. The doctor's deposition runs as under:-



"..... I know the accused present in the dock as I have examined him with regard to his mental status. Although it was ordered that the mental status of the patient be examined both at the time of occurrence and at present, it is not possible to gauge his mental status at the time of

commission of the offence as he has been brought only recently for his examination. I examined the patient on 13.12.2010 who was brought by police personnel for examination. The chief complaint was sleep disturbance, feeling of sadness, decrease in physical activities and suicidal tendencies, hearing of unusual voices, all for the last one month. As per the accused he had the same problems about 23 years ago. On my mental status examination of the accused there was decrease in the rate, tone and volume of his speech. Mood was depressed subjectively and objectively which means, subjectively what he feels and objectively what we observe. He also had a auditory hallucination. His judgment and insight were impaired. There are three types of questions for judgment i.e personal judgment I asked him what he would do after going home, he could not give an answer. In test judgment I asked him what you will do when you find a stamped and sealed letter on the road. He stated that he would tear it off. For social judgment I did not question him because he could not answer the first and second questions logically. I concluded that his judgment and insight were impaired. The final diagnosis was major depressive disorder with psychotic features which means he is severely depressed and psychotic features means that his judgment is impaired. The treatment was given for three months. Presently he is not under treatment for his mental status as his mental status is within normal limits. He is only under treatment for hypertension. He is present capable of making his defence in any case. ....

Cross examination by the Ld. Legal aid counsels Shri Ajay Rathi for the accused.

..... It is true that the disorder which I have reflected in Exhibit-Y are the symptoms of schizophrenia. It is true that a person having schizophrenic problems can have a relapse at any time provided he is under acute stress. It is true that I have not called any of the close family members of the accused to ascertain the past history of the accused. .... I cannot ascertain the mental history of the accused about 4/5 years ago unless his history is related to me by his close relatives. It is not a fact that I am deposing falsely."

**[emphasis supplied]**

(g) Even the second deposition of Dr. Netra Thapa recorded on 05-07-2011, also appears to be of no consequence as we find that he has only stated that his report, Exhibit 20, was a brief psychiatric history of the Appellant recorded from his wife, Man Maya Dahal, i.e., P.W.6, which also reflects most uncannily the symptoms of "paranoid schizophrenia". This will be evident from the following extract of his deposition:-

"..... I had examined the patient/accused sometime since December 2010. I had never examined the accused before the said period. I did not have any occasion to examine the accused prior to December 2010 so I cannot say as to the mental status of the accused prior to the said period. As directed by the Court I examined the close family members of the accused i.e his wife, Mrs. Man Maya Dahal who informed me that during the relevant time of the incident the accused was having fearfulness, he used to hide inside the home or run into the jungle, wandering tendencies, he used to run here and there without any purpose, self laughing and self talking, there was also a decrease in personal hygiene.

I concluded that the patient/accused could have been suffering from paranoid schizophrenia.

Exhibit 20 is the brief psychiatrist history of the accused recorded by me from the wife of the accused wherein Exhibit 20(a) is my signature.  
 ....."

[emphasis supplied]

(h) Apart from the above, we also do not find any recorded history of the Appellant suffering from such disease. Even the doctor's conclusion does not appear to be categorical which is quite apparent from the expression "could have been suffering from paranoid

schizophrenia" used by him. Mr. Hamal referred to the following portions of P.W.1 and P.W.2 which as per him indicated the mental disorder of the Appellant:-

**P.W.1, Indra Bahadur Dahal**

"..... It is true that the as the accused was not satisfied in regard to the partition of property which I had given as his share of property and as he was not satisfied with his share of property he was having a problem of mental disorder. ...."

**P.W.2, Shobha Dahal**

"..... It is true I cannot say whether the accused was having mental disorder problem. ...."

(i) Quite obvious from a bare reading of the evidence of the two witnesses it is too sketchy to inspire our confidence on the case being made out on behalf of the Appellant. In fact the evidence of P.W.1 reveals the grudge that the Appellant had against his family.

(j) In the case of **Bapu (supra)** referred to in the case of **Prakash Saha (supra)** it has been held as under:-

"7. Section 84 lays down the legal test of responsibility in cases of alleged unsoundness of mind. There is no definition of "unsoundness of mind" in the IPC. The courts have, however, mainly treated this expression as equivalent to insanity. But the term "insanity" itself has no precise definition. It is a term used to describe varying degrees of mental disorder. So, every person, who is mentally diseased, is not ipso facto exempted from criminal responsibility. A distinction is to be made between legal insanity

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and medical insanity. A court is concerned with legal insanity, and not with medical insanity. The burden of proof rests on an accused to prove his insanity, which arises by virtue of Section 105 of the Evidence Act, 1872 (in short "the Evidence Act") and is not so onerous as that upon the prosecution to prove that the accused committed the act with which he is charged. The burden on the accused is no higher than that resting upon a plaintiff or a defendant in a civil proceeding. (See *Dahyabhai Chhaganbhai Thakkar v. State of Gujarat*). In dealing with cases involving a defence of insanity, distinction must be made between cases, in which insanity is more or less proved and the question is only as to the degree of irresponsibility, and cases, in which insanity is sought to be proved in respect of a person, who for all intents and purposes, appears sane. In all cases, where previous insanity is proved or admitted, certain considerations have to be borne in mind. Mayne summarises them as follows:

"Whether there was deliberation and preparation for the act; whether it was done in a manner which showed a desire to concealment; whether after the crime, the offender showed consciousness of guilt and made efforts to avoid detections, whether after his arrest, he offered false excuses and made false statements. All facts of this sort are material as bearing on the test, which Bramwall, submitted to a jury in such a case: 'Would the prisoner have committed the act if there had been a policeman at his elbow? It is to be remembered that these tests are good for cases in which previous insanity is more or less established.

These tests are not always reliable where there is, what Mayne calls, "inferential insanity".

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**8.** Under Section 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 he is doing what is either wrong or contrary to law. The 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. He is, however, not protected if he knew that what he was doing was wrong, even if he did not know that it was contrary to law, and also if he knew that what he was doing was contrary to law even though he did not know that it was wrong. The onus of proving unsoundness of mind is on the accused. But where during the investigation previous history of insanity is revealed, it is the duty of an honest investigator to subject the accused to a medical examination and place that evidence before the court and if this is not done, it creates a serious infirmity in the prosecution case and the benefit of doubt has to be given to the accused. The onus, however, has to be discharged by producing evidence as to the conduct of the accused shortly prior to the offence and his conduct at the time or immediately afterwards, also by evidence of his mental condition and other relevant factors. Every person is presumed to know the natural consequences of his act. Similarly every person is also presumed to know the law. The prosecution has not to establish these facts.

**9.** There are four kinds of persons who may be said to be *non compos mentis* (not of sound mind) i.e. (1) an idiot; (2) one made *non compos* by illness; (3) a lunatic or a mad man; and (4) 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 cannot count twenty, or tell the days of the week, or who do not know their fathers or mothers, or the like, (See *Archbold's Criminal Pleadings, Evidence and Practice*, 35th Edn., pp.31-32; *Russell on Crimes and Misdemeanors*, 12th Edn., Vol.1, p.105; 1 *Hale's Pleas of the Crown* 34). A person made *non compos mentis* by illness is excused in criminal cases from such acts as are committed while under the influence of his disorder, (See 1 *Hale PC* 30). A lunatic is one who is afflicted by mental disorder only at certain periods and vicissitudes, having intervals of reason, (See *Russell*, 12th Edn., Vol. 1, p. 103; *Hale PC* 31). Madness is permanent. Lunacy and madness are spoken of as acquired insanity, and idiocy as natural insanity.

**10.** Section 84 embodies the fundamental maxim of criminal law i.e. *actus non reum facit nisi mens sit rea* (an act does not constitute guilt unless done with a guilty intention). In order to constitute an offence, the intent and act

must concur; but in the case of insane persons, no culpability is fastened on them as they have no free will (*furios is nulla voluntas est*).

**11.** The section itself provides that the benefit is available only after it is proved that at the time of committing the act, the accused 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 doing, or that even if he did not know it, it was either wrong or contrary to law then this section must be applied. The crucial point of time for deciding whether the benefit of this section should be given or not, is the material time when the offence takes place. In coming to that conclusion, the relevant circumstances are to be taken into consideration, it would be dangerous to admit the defence of insanity upon arguments derived merely from the character of the crime. It is only unsoundness of mind which naturally impairs the cognitive faculties of the mind that can form a ground of exemption from criminal responsibility. Stephen in *History of the Criminal Law of England*, Vol. II, p. 166 has observed that if a person cuts off the head of a sleeping man because it would be great fun to see him looking for it when he woke up, would obviously be a case where the perpetrator of the act would be incapable of knowing the physical effects of his act. The law recognises nothing but incapacity to realise the nature of the act and presumes that where a man's mind or his faculties of ratiocination are sufficiently dim to apprehend what he is doing, he must always be presumed to intend the consequence of the action he takes. Mere absence of motive for a crime, howsoever atrocious it may be, cannot in the absence of plea and proof of legal insanity, bring the case within this section This Court in *Sheralli Walli Mohd. v. State of Maharashtra* held that: (SCC p.79)


"The mere fact that no motive has been proved why the accused murdered his wife and children or the fact that he made no attempt to run away when the door was broken open, would not indicate that he was insane or that he did not have the necessary mens rea for the commission of the offence."

**12.** Mere abnormality of mind or partial delusion, irresistible impulse or compulsive behaviour of a psychopath affords no protection

under Section 84 as the law contained in that section is still squarely based on the outdated *M'Naughton* rules of 19th century England. The provisions of Section 84 are in substance the same as those laid down in the answers of the Judges to the questions put to them by the House of Lords, in *M'Naughton's case*. Behaviour, antecedent, attendant and subsequent to the event, may be relevant in finding the mental condition of the accused at the time of the event, but not that remote in time. It is difficult to prove the precise state of the offender's mind at the time of the commission of the offence, but some indication thereof is often furnished by the conduct of the offender while committing it or immediately after the commission of the offence. A lucid interval of an insane person is not merely a cessation of the violent symptoms of the disorder, but a restoration of the faculties of the mind sufficiently to enable the person soundly to judge the act; but the expression does not necessarily mean complete or perfect restoration of the mental faculties to their original condition. So, if there is such a restoration, the person concerned can do the act with such reason, memory and judgment as to make it a legal act ; but merely a cessation of the violent symptoms of the disorder is not sufficient.

**13.** The standard to be applied is whether according to the ordinary standard, adopted by reasonable men, 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 the 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 was queer, cannot be sufficient to attract the application of this section."

[emphasis supplied]

  
**(k)** In the light of the above principle, even if we assume that the Appellant indeed suffered from a legal insanity as pleaded by him, there is no evidence that he

was suffering from such ailment at the time of the commission of offence. We also do not find any evidence on this at all amongst the prosecution witnesses including P.W.1, P.W.2 and P.W.6, who are related as father, younger sister and the sister-in-law respectively of the Appellant. None of the other witnesses, who admittedly are his neighbours, have also come out with any such story. In the light of this position, the evidence of Dr. Netra Thapa alone would not indicate or establish the behaviour, antecedent, attendant and subsequent to the event.

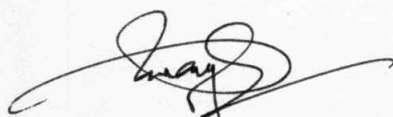
*(I)* Considering all these in the light of the fact that there exists a clear motive as admitted by the Learned Counsel for the Appellant and, the sequence of events that led to the brutal attack on the deceased by the Appellant, are certainly not compatible to an action by a person suffering from the mental disorder of the kind claimed by the Appellant. The plea is undoubtedly an afterthought ingenuously set up for the Appellant's defence. Therefore, we have no hesitation to hold that both the plea raised on behalf of the Appellant are unsustainable both in law and in facts.

**9.** In the result, the Appeal is dismissed.

**10.** No order as to costs.

**11.** Let a copy of this judgment along with the original records of the case be transmitted to the Learned Sessions Judge, South and West Sikkim at Namchi forthwith.

  
( **Permod Kohli** )  
**Chief Justice**  
20-09-2012

  
( **S. P. Wangdi** )  
**Judge**  
20-09-2012

Approved for reporting : Yes/No

Internet : Yes/No