Sudhakaran vs State Of Kerala on 26 October, 2010

Equivalent citations: AIR 2011 SUPREME COURT 265, 2010 (10) SCC 582, 2010 AIR SCW 6688, AIR 2011 SC (CRIMINAL) 217, (2011) 97 ALLINDCAS 164 (SC), 2010 (11) SCALE 332, 2011 (1) SCC(CRI) 49, 2011 (1) KCCR 6 SN, 2011 (1) KER LJ 3 NOC, (2010) 4 CRIMES 302, (2011) 2 CALLT 2, (2011) 2 MARRILJ 516, (2011) 1 RECCRIR 180, (2011) 2 ALLCRILR 61, (2010) 11 SCALE 332, (2011) 1 KER LJ 3, (2011) 48 OCR 146, (2011) 1 RECCRIR 37, (2010) 4 CURCRIR 308, (2010) 3 UC 1847, (2010) 4 DLT(CRL) 314, (2011) 1 CHANDCRIC 106, (2011) 1 ALLCRILR 404

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Bench: Surinder Singh Nijjar, B.Sudershan Reddy

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 389 OF 2007

Sudhakaran ... Appellant

VERSUS

State of Kerala ...Respondent

JUDGMENT

SURINDER SINGH NIJJAR, J.

1. The present appeal is directed against the judgment and final order in Criminal Appeal No. 1092 of 2003 dated 21.10.2005 whereby the High Court of Kerala at Ernakulum dismissed the criminal appeal filed by the appellant and thereby affirmed his conviction under Section 302 IPC as held by the trial court vide judgment dated 30.11.2002.

2. Shorn of unnecessary details, the facts essential for adjudication of the present appeal are:

> The appellant herein was convicted and sentenced to rigorous imprisonment for life under Section 302 IPC for murdering his wife on 3.11.2000 at about 7.30 p.m. He had killed his wife by assaulting her with a chopper on her neck in the bedroom of his

house. There is no direct evidence of the murder. However, the factum of death of the appellant's wife by the injuries noticed in post mortem report (Exb.P5) is not disputed. The appellant had taken the defence of insanity based on Section 84 IPC. He had examined four witnesses in support of his defence. Now, the appellant had claimed the defence of insanity at the time of murder; no such plea was taken at the time of the trial. Aggrieved by the judgment of the trial court, the appellant had approached the High Court in Criminal Appeal No.1092 of 2003. The aforesaid appeal was dismissed by the Division Bench of the Kerala High Court by the judgment dated 21.10.2005. It is this judgment which is impugned before us in the present appeal.

3. We may now notice the prosecution version as it emerges through the evidence of PW1 and PW5. It was alleged that on 3.11.2000 at about 7.30 p.m. The appellant with the intention of killing his wife, namely, Ajitha @ Poonamma had struck her on her neck with a chopper when she was in the bedroom of his house which is named `Kallumkuzhi', bearing No.289 situated in ward No. IX of Kanjikuzhy panchayat. After committing the murder, the appellant came out of the house and met PW1 and PW5 who were sitting in front of their house. PW1 is the son of PW5. At the time when the appellant approached them he was carrying his child in one arm. He asked PW5 as to whether he could hold the child. When PW5 stepped towards the appellant to take the child, he saw that the appellant was carrying a chopper in the other hand. Immediately PW1 and his father rushed into their house and closed the door. At that time the appellant was seen roaming around their house. He was trying to lay down the child in a lean-to attached to their house. At that stage, PW1 had pointed the beam of a torch on to the appellant, through the window. He saw, in the torch light, that the shirt of the appellant was blood stained and he was also carrying a blood stained chopper. PW1 then came out of his house and went to the nearby house of PW2 and narrated the entire incident to him. Thereafter PW1 and PW2 together went to the adjacent house of PW3. When they came back together, they saw that appellant had left the house of PW1. At that stage they were told by PW5 that the appellant had come after killing his wife. According to PW5, the appellant had confessed to the crime. Thereafter all the people in the nearby houses got together and went to the house of the appellant where they found that his wife Ajitha was lying on a cot in her bedroom with blood splattered all over her. They also found that there was no movement in the body of Ajitha. It is further the case of the prosecution that when all the neighbours had gathered in the house of the appellant he had confessed to all of them that he had killed his wife.

4. The FIR was registered on the basis of the statement Exb.P1 made by PW1 wherein he narrated the incident as stated above. This witness PW1 has also identified M.O.1 knife which he had seen in the hand of the appellant on the evening of 3.11.2000. PW2 also gave a similar statement. He further stated that the appellant had come to him and asked him to look after the child as he was going to the police station. He is alleged to have stated to PW2 that -

"I have child in my hand. Kindly hold him. I am going to the police station."

5. PW2 further stated that the appellant had put the knife on the ground in the verandah on being asked by one of the neighbours. While putting the knife down the appellant said "till today she had

been cheating upon me." After putting the knife down the appellant went to the house of PW3. He is stated to have entrusted the child to PW3. Thereafter the appellant had gone to a place named Aippara City. PW4 is another neighbour who stated that the appellant had come to the house of PW1 with his 8 months old child in one hand and the knife in the other hand. He came to know about the incident when PW1 and PW2 came to his house and narrated the story. Thereafter he saw the appellant in the residential compound of Poonamakkal Thomas. He also deposed that on the request of his father and Narayan, appellant had put the knife on the floor. PW5 also corroborated the statement given by PW1 to PW4. PW6 is another witness who came to know about the incident while he was in the Aippara City. According to him, he came to know about the murder of the wife of appellant at about 8 o'clock on 3.11.2000. According to PW11, Sub-Inspector of Police Kanjikuzhi police, the appellant was produced early in the morning by PW2, 3 and 4. He was arrested by PW12, C.I. of Police.

6. The trial court notices that the prosecution has relied on the oral evidences given by PW1 to PW12. The prosecution had also produced the blood stained chopper which had been recovered from the appellant. After examining the dead body of the deceased, inquest report was prepared by PW11 in the presence of the witnesses. The chopper had been seized by him as per Ext.P2 Mahaska. Ext.P3 is the Mahaska prepared by him for seizure of the shirt and dhoti worn by the appellant. These materials were produced before the court as Ext.P7 and P8. The articles recovered from the body of the deceased were produced as M.O.3 to 10 and 10(a). These included night gown, and other under garments, gold ornaments worn by the deceased at the time of the murder. All the recovered articles were sent for Forensic Examination. The Forensic Report was relied upon by the prosecution at the trial. Ext.P10 is the Forensic Science Report. This report revealed that all the items examined, contained human blood belonging to group A.

7. Taking note of the evidence adduced by the prosecution, the trial court noticed that Ext.P5 post mortem certificate revealed nine injuries on the body of the deceased. These injuries may be tabulated as under :-

> 1. Incised wound, 14x4x6 cm horizontal, on the middle of back of neck, 6 cm below occipital protuberance. The muscles of the back of neck found but and vertebral column was found cut and separated between 2nd and 3rd cervical vertebra.

Spinal cord underneath and vertebral arteries were found several.

2. Incised wound 9x2x2cm oblique, on right side of back of head upper inner end at the level of occipital protuberance and lower outer and just above right ear.

3. Incised wound 5x1x1cm oblique on right side of neck, upper outer end just below right ear and lower inner end 1cm, below right angle of mandible.

4. Incised wound, 2x1cm oblique on pine of right ear involving its entire thickness.

5. Incised wound 5x1x2 cm oblique on the back of chest over right shoulder blade.

6. Incised wound 2x1x0.5 cm oblique on the outer aspect of left shoulder.

7. Incised wound 3x1x0.5 cm oblique on the out aspect of left shoulder 2 cm below injury No.6.

8. Incised wound 5.5x1 cm. oblique on the back of left little finger, 3 cm above its trip with distal potion connected by skin only.

9. Incised wound, 5x4x1cm on the left palmate the root of thumb."

8. PW9, the doctor who conducted the post mortem opined that the injuries noted by him could be caused by an attack with a chopper such as M.O.1. The doctor also opined that there were wounds on palm and fingers of the deceased. This would indicate that she was defending herself, therefore, she was attacked while she was awake and not when she was asleep. The injuries noted by the doctor in Ext.P5 also indicate that the appellant had caused the death of his wife by attacking her with chopper M.O.1.

The trial court upon consideration of the entire evidence observed that the entire sequence of events led to the only conclusion that the appellant had killed his wife by striking her on her neck with a chopper. The trial court specifically held that it did not find any missing link fatal to the prosecution case.

9. The trial court thereafter considered the defence pleaded by the appellant under Section 84 IPC. Upon examination of the entire medical evidence, the trial court concluded that there is no material to indicate that at the time of the commission of the offence or immediately before the occurrence of the incident, the appellant was suffering from any mental illness. Although he had taken some treatment in the year 1985 for mental illness but he had fully recovered from that. Subsequently, long after that he had married the deceased. Even though they were living a disturbed married life, a child was born out of the wedlock. The child was 8 months old at the time when the crime was committed. The trial court also noticed that, although the appellant was irregular, he used to take on casual jobs for his sustenance. The trial court concluded that even after taking note of the evidence produced by the defence, the conclusion was that the appellant was capable of understanding the nature of the act and the consequences thereof.

10. The High Court, in appeal, re-examined the entire issue and concluded that the evidence given by PW1 to PW5 is unimpeachable. Therefore, the conclusions reached by the trial court were duly affirmed by the Division Bench of the High Court. The defence under Section 84 was held to be not proved.

11. We have heard the learned counsel for the parties.

12. Learned counsel for the appellant submitted that the entire story is unbelievable. The appellant was living with his wife in a thickly populated locality. The houses of the neighbours are in a close proximity. The defence of the appellant has been illegally discarded by the trial court as well as by the High Court. The appellant had produced expert witnesses. In support of the medical history of

his mental illness, DW2 and DW4 had produced the record relied upon by them which shows that the appellant had been treated for paranoid schizophrenia, 11 days after the alleged murder. Even during the trial, the appellant had to be taken to the mental hospital on 15.11.2000.

13. According to the learned counsel, both the courts below have failed to appreciate the exact nature of the disease "paranoid schizophrenia". Such patients experience an extremely rapid change of emotion within a matter of seconds and minutes, they may be angry, depresses, perplexed, ecstatic and anxious. Therefore, it is not possible to say that at the time of the murder the appellant was in his senses.

14. We are unable to accept the submissions made by the learned counsel for the appellant. So far as the actual physical murder is concerned, all the circumstances adverted to above, chillingly point towards the guilt of the appellant. PW1 and PW5 have clearly stated how the appellant had approached them with a chopper soaked in blood in one hand and his 8 months old son in other arm. The blood stained chopper remained in the possession of the appellant till he was asked to put the same on the ground. PW1 actually saw the blood stained chopper in the hand of the appellant when he pointed the torchlight on the appellant through the window. After entrusting the child to PW3, the appellant went away. The dead body of his wife was discovered by the neighbours which was soaked in blood. According to the PW3 there was so much blood on the body that she seemed to have taken a bath in a pool of blood. The ocular evidence has been corroborated by medical evidence. The doctor, PW9, who conducted the post mortem, has clearly stated that the injuries which were found on the body of the deceased could have been caused with a weapon which was seized from the appellant.

15. Therefore, in our opinion, both the courts below have correctly concluded that the circumstances lead to the only conclusion that the appellant has committed the murder of his wife.

16. As far as, the defence under Section 84 is concerned, we also see no reason to differ with the opinion expressed by the trial court as also the High Court. The evidence given by DW1, Assistant Surgeon of Idduki District Hospital has been rightly discarded by the High Court. It is true that DW1 had stated on the basis of the out patient register that the appellant had come for consultation. However, no records were produced as to what treatment had been given to him. Even the out patient ticket was not produced. Ultimately, this doctor admitted that he cannot say that the appellant had come there for psychiatric treatment. He did not even remember the medicine which had been given to the appellant. Similarly, the evidence of Superintendent of Jail DW2 also only indicates that the appellant had been sent to Medical Health Centre. Even the evidence of the Health Centre was incomplete and wholly unreliable. The entire medical evidence produced was not sufficient to show that at the time of the commission of the murder the appellant was medically insane and incapable of understanding the nature of the consequences of the act performed by him.

17. The defence of insanity has been well known in the English Legal System for many centuries. In the earlier times, it was usually advanced as a justification for seeking pardon. Over a period of time, it was used as a complete defence to criminal liability in offences involving mens rea. It is also accepted that insanity in medical terms is distinguishable from legal insanity. In most cases, in

India, the defence of insanity seems to be pleaded where the offender is said to be suffering from the disease of Schizophrenia. The plea taken in the present case was also that the appellant was suffering from "paranoid schizophrenia". The term has been defined in Modi's Medical Jurisprudence and Toxicology1 as follows:

> "Paranoia is now regarded as a mild form of paranoid schizophrenia. It occurs more in males than in females. The main characteristic of this illness is a well-elaborated delusional system in a personality that is otherwise well preserved. The delusions are of persecutory type. The true nature of this illness may go unrecognized for a long time because the personality is well preserved, and some of these paranoiacs may pass off as a social reformers or founders of queer pseudo- religious sects. The classical picture is rare and generally takes a chronic course.
>
> Paranoid Schizophrenia, in the vast majority of case, starts in the fourth decade and develops insidiously. Suspiciousness is the characteristic symptom of the early stage. Ideas of reference occur, which gradually develop into delusions of persecution. Auditory hallucinations follow which in the beginning, start as sound or noises in the ears, but later change into abuses or insults. Delusions are at first indefinite, but gradually they become fixed and definite, to lead the patient to believe that he is persecuted by some unknown person or [23rd Ed. Page 1077] some superhuman agency. He believes that his food is being poisoned, some noxious gases are blown into his room and people are plotting against him to ruin him. Disturbances of general sensation give rise to hallucinations which are attributed to the effects of hypnotism, electricity, wireless telegraphy or atomic agencies. The patient gets very irritated and excited owing to these painful and disagreeable hallucinations and delusions. "

The medical profession would undoubtedly treat the appellant herein as a mentally sick person. However, for the purposes of claiming the benefit of the defence of insanity in law, the appellant would have to prove that his cognitive faculties were so impaired, at the time when the crime was committed, as not to know the nature of the act. Section 84 of the Indian Penal Code recognizes the defence of insanity. It is defined as under:-

> "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."

A bare perusal of the aforesaid section would show that in order to succeed, the appellant would have to prove that by reason of unsoundness of mind, he was incapable of knowing the nature of the act committed by him. In the alternate case, he would have to prove that he was incapable of knowing that he was doing what is either wrong or contrary to law. The aforesaid section clearly gives statutory recognition to the defence of insanity as developed by the Common Law of England in a decision of the House of Lords rendered in the case of R. Vs. Daniel Mc Naughten2. In that case, the House of Lords formulated the famous Mc Naughten Rules on the basis of the five questions,

which had been referred to them with regard to the defence of insanity. The reference came to be made in a case where Mc Naughten was charged with the murder by shooting of Edward Drummond, who was the Pvt. Secretary of the then Prime Minister of England Sir Robert Peel. The accused Mc Naughten produced medical evidence to prove that, he was not, at the time of committing the act, in a sound state of mind. He claimed that he was suffering from an [1843 RR 59: 8ER 718(HL)] insane delusion that the Prime Minister was the only reason for all his problems. He had also claimed that as a result of the insane delusion, he mistook Drummond for the Prime Minister and committed his murder by shooting him. The plea of insanity was accepted and Mc Naughten was found not guilty, on the ground of insanity. The aforesaid verdict became the subject of debate in the House of Lords. Therefore, it was determined to take the opinion of all the judges on the law governing such cases. Five questions were subsequently put to the Law Lords. The questions as well as the answers delivered by Lord Chief Justice Tindal were as under:-

> "Q.1 What is the law respecting alleged crimes committed by persons afflicted with insane delusion in respect of one or more particular subjects or persons: as, for instance, where at the time of the commission of the alleged crime the accused knew he was acting contrary to law, but did the act complained of with a view, under the influence of insane delusion, of redressing a revenging some supposed grievance or injury, or of producing some public benefit?
>
> Answer "Assuming that your lordships' inquiries are confined to those persons who labour under such partial delusions only, and are not in other respects insane, we are of opinion, that, notwithstanding the party did the act complained of with a view, under the influence of insane delusion, of redressing or revenging some supposed grievance or injury, or of producing some public benefit, he is nevertheless punishable, according to the nature of the crime committed, if he knew, at the time of committing such crime, that he was acting contrary to law, by which expression we understand your lordships to mean the law of the land.
>
> Q.2. What are the proper questions to be submitted to the jury when a person alleged to be afflicted with insane delusion respecting one or more particular subjects or persons, is charged with the commission of a crime (murder, for example), and insanity is set up as a defence?
>
> Q.3. In what terms ought the question to be left to the jury as to the prisoner's state of mind at the time when the act was committed?
>
> Answers - to the second and third questions That the jury ought to be told in all cases that every man is presumed to be sane, and to possess a sufficient degree of reason to be responsible for his crimes, until the contrary be proved to their satisfaction; and that, to establish a defence on the ground of insanity, it must be clearly proved that, at the time of the committing of the act, the party 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 if he did know it, that he did not know he was doing what was

wrong. The mode of putting the latter part of the question to the jury on these occasions has generally been, whether the accused, at the time of doing the act, knew the difference between right and wrong, which mode, though rarely, if ever, leading to any mistake with the jury, is not, as we conceive, so accurate when put generally, and in the abstract, as when put as to the party's knowledge of right and wrong in respect to the very act with which he is charged. If the question were to be put as to the knowledge of the accused, solely and exclusively with reference to the law of the land, it might tend to confound the jury, by inducing them to believe that an actual knowledge of the law of the land was essential in order to lead to a conviction, whereas the law is administered upon the principle that every one must be taken conclusively to know it without proof that he does know it. If the accused was conscious that the act was one which he ought not to do, and if that act was at the same time contrary to the law of the land, he is punishable; and the usual course, therefore, has been to leave the question to the jury, whether the party accused had a sufficient degree of reason to know that he was doing an act that was wrong: and this course, we think, is correct, accompanied with such observations and explanations as the circumstances of each particular case may require.

Q.4. If a person under an insane delusion as to the existing facts commits and offence in consequence thereof, is he thereby excused?

Answer The answer must, of course, depend on the nature of the delusion, but making the same assumption as we did before, that he labours under such partial delusion only, and is not in other respects insane, we think he must be considered in the same situation as to responsibility as if the facts with respect to which the delusion exists were real. For example, if, under the influence of his delusion, he supposes another man to be in the act of attempting to take away his life, and he kills that man, as he supposes in self- defence, he would be exempted from punishment. If his delusion was that the deceased had inflicted a serious injury to his character and fortune, and he killed him in revenge for such supposed injury, he would be liable to punishment.

Q.5. Can a medical man, conversant with the disease of insanity, who never saw the prisoner previously to the trial, but who was present during the whole trial, and the examination of all the witnesses, be asked his opinion as to the state of the prisoner's mind at the time of the commission of the alleged crime, or his opinion whether the prisoner was conscious, at the time of doing the act, that he was acting contrary to law, or whether he was labouring under any and what delusion at the time?

Answer We think the medical man, under the circumstances supposed, cannot in strictness be asked his opinion in the terms above stated, because each of those questions involves the determination of the truth of the facts deposed to, which it is for the jury to decide; and the questions are not mere questions upon a matter of science, in which case such evidence is admissible. But where the facts are admitted

> or not disputed, and the question becomes substantially one of science only, it may be convenient to allow the question to be put in that general form, though the same cannot be insisted on as a matter of right." 3 A comparison of answers to question no. 2 and 3 and the provision contained in Section 84 of the IPC would clearly indicate that the Section is modeled on the aforesaid answers.

18. This Court has on several occasions examined the standard of proof that is required to be discharged by the appellant to get the benefit of Section 84 IPC. We may make a reference here to the observation made in Dahyabhai Chhaganbhai Thakkar Vs. State of [Archbold 2010 Ed. Pg. No. 1880-1881] Gujarat4. The relevant aspects of the law and the material provisions relating to the plea of insanity were noticed and considered as follows:-

" Indian Penal Code

299. Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

84. 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.

Indian Evidence Act

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

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

[AIR 1964 SC 1563] Proved.--A fact is said to be `proved' when after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

Disproved.--A fact is said to be disproved when, after considering the matters before it, the Court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist.

101. Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of fact which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person."

It is a fundamental principle of criminal jurisprudence that an accused is presumed to be innocent and, therefore, the burden lies on the prosecution to prove the guilt of the accused beyond reasonable doubt. The prosecution, therefore, in a case of homicide shall prove beyond reasonable doubt that the accused caused death with the requisite intention described in Section 299 of the Indian Penal Code. This general burden never shifts and it always rests on the prosecution. But, as Section 84 of the Indian Penal Code provides that nothing is an offence if the accused at the time of doing that act, by reason of unsoundness of mind was incapable of knowing the nature of his act or what he was doing was either wrong or contrary to law. This being an exception, under Section 105 of the Evidence Act the burden of proving the existence of circumstances bringing the case within the said exception lies on the accused; and the court shall presume the absence of such circumstances. Under Section 105 of the Evidence Act, read with the definition of "shall presume" in Section 4 thereof, the court shall regard the absence of such circumstances as proved unless, after considering the matters before it, it believes that said circumstances existed or their existence was so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that they did exist. To put it in other words, the accused will have to rebut the presumption that such circumstances did not exist, by placing material before the court sufficient to make it consider the existence of the said circumstances so probable that a prudent man would act upon them. The accused has to satisfy the standard of a "prudent man". If the material placed before the court such, as, oral and documentary evidence, presumptions, admissions or even the prosecution evidence, satisfies the test of "prudent man", the accused will have discharged his burden. The evidence so placed may not be sufficient to discharge the burden under Section 105 of the Evidence Act, but it may raise a reasonable doubt in the mind of a judge as regards one or other of the necessary ingredients of the offence itself. It may, for instance, raise a reasonable doubt in the mind of the judge whether the accused had the requisite intention laid down in Section 299 of the Indian Penal Code. If the judge has such reasonable doubt, he has to acquit the accused, for in that event the prosecution will have failed to prove conclusively the guilt of the accused. There is no conflict between the general burden, which is always on the prosecution and which never shifts, and the special burden that rests on the accused to make out his defence of insanity."

Thereafter, upon further consideration, this Court defined the doctrine of burden of proof in the context of the plea of insanity in the following propositions:-

> "(1) The prosecution must prove beyond reasonable doubt that the appellant 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 appellant was not insane, when he committed the crime, in the sense laid down by Section 84 of the Indian Penal Code: the appellant 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 appellant 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

> appellant 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 appellant and in that case the court would be entitled to acquit the appellant on the ground that the general burden of proof resting on the prosecution was not discharged."

19. It is also a settled proposition of law that the crucial point of time for ascertaining the existence of circumstances bringing the case within the purview of Section 84 is the time when the offence is committed. We may notice here the observations made by this Court in the case of Ratan Lal Vs. State of Madhya Pradesh5. In Paragraph 2 of the aforesaid judgment, it is held as follows:-

> "It is now well-settled that the crucial point of time at which unsoundness of mind should be established is the time when the crime is actually committed and the burden of proving this lies on the appellant."

[1970 (3) SCC 533]

20. The High Court on examination of the evidence before it, came to the conclusion that the appellant had failed to prove that he was suffering from such mental illness that would enable him to take benefit of Section 84 IPC.

21. The High Court took into consideration the totality of the circumstances and came to the conclusion that there was no evidence indicating that appellant was suffering from mental illness at the crucial time. The only evidence placed on record shows that the appellant had been treated in a Psychiatric Hospital for 13 days in the year 1985 even at that time the doctor had diagnosed the disease as psychotic disorder. The record did not indicate that the patient was suffering from such mental disability which incapacitated him to know the nature of the act that he had committed. The High Court further observed that there was no evidence to indicate that the appellant suffered from mental illness post 1985. The High Court, in our opinion, rightly concluded that the appellant was capable of knowing the nature of the act and the consequences thereof on the date of the alleged incident. Whilst he had brutally and callously committed the murder of his wife, he did not cause any hurt or discomfort to the child. Rather he made up his mind to insure that the child be put into proper care and custody after the murder. The conduct of the appellant before and after the incident was sufficient to negate any notion that he was mentally insane, so as not to be possessed of the necessary mens rea, for committing the murder of his wife.

22. In such view of the matter, we see no reason to interfere with the concurrent findings recorded by the courts below. The appeal is dismissed.

.....J. [B.SUDERSHAN REDDY] .....J. [SURINDER SINGH NIJJAR] NEW DELHI;

OCTOBER 26, 2010.