

IN THE HIGH COURT OF ORISSA, CUTTACK

CRLA No.419 of 2010

An appeal under section 374 Cr.P.C. from the judgment and order dated 03.07.2010 passed by the Adhoc Additional Sessions Judge (F.T.C.-II), Balasore in Sessions Trial No.102/206 of 2009/2007.

Gitanjali Pradhan Appellant

-Versus-

State of Odisha Respondent

For Appellant:

Miss Bini Mishra
Advocate

For Respondent:

Mr. Sonak Mishra
Addl. Standing Counsel

P R E S E N T:

THE HONOURABLE MR. JUSTICE S.K. SAHOO

AND

THE HONOURABLE MR. JUSTICE S.K. MISHRA

Date of Hearing and Judgment: 25.01.2024

By the Bench: The appellant Gitanjali Pradhan faced trial in the Court of learned Adhoc Additional Sessions Judge (F.T.C.-II), Balasore in Sessions Trial No.102/206 of 2009/2007 for commission of offence punishable under section 302 of the

Indian Penal Code (hereinafter the 'I.P.C.') on the accusation that on 05.04.2007 at about 7.00 a.m. in village Putina under Bhograi police station in the district of Balasore, she committed murder of one Puja Pradhan (hereinafter 'the deceased'), who was a baby girl of twenty five days.

The learned trial Court, vide impugned judgment and order dated 03.07.2010, found the appellant guilty of the offence charged and sentenced her to undergo rigorous imprisonment for life and to pay a fine of Rs.2,000/- (rupees two thousand), in default, to suffer rigorous imprisonment for six months.

Prosecution Case:

2. The prosecution case, as per the first information report (hereinafter 'F.I.R.') (Ext.5) lodged by Sankar Padhan (P.W.3) scribed by Umakanta Pradhan (P.W.9) before the Officer in-charge of Kamarda police station on 05.04.2007, in short, is that on that day at about 8.00 a.m. in the morning hours, he returned home from the field and came to know from his sister-in-law Swarnalata Pradhan (P.W.5) that she had been to wash utensils to a nearby pond after letting her deceased baby girl to sleep in the cradle on the verandah of her house and after returning, she found that the deceased baby was missing from the cradle. Another sister-in-law of the informant, namely, Arati

Pradhan (P.W.6) also searched for the baby and the dead body of the baby was found inside the room of the appellant from a mouse hole having her throat cut. When P.W.6 confronted the appellant, in the presence of Jyotsnarani Giri and Kabita Pradhan, she admitted to have cut the throat of the deceased by means of a sickle.

On the basis of such report, the Officer in-charge (P.W.11) of Kamarda police station registered Kamarda P.S. Case No.30 dated 05.04.2007 under section 302 of the I.P.C. against the appellant. P.W.11 himself took up investigation of the case. During the course of his investigation, he examined the informant and sent message to the Superintendent of Police, Balasore for deputation of Scientific Officer to visit the spot. P.W.11 reached at the spot and during his spot visit, he found the dead body of the deceased lying on the verandah of the house of the appellant with cut injury on the neck. He held inquest over the dead body in presence of the witnesses and prepared the inquest report (Ext.1) and sent the dead body for post mortem examination. During his spot visit, he found blood stain marks on the floor of the house of the appellant so also on the mouse hole and further found a sickle stained with blood was lying on the floor of the house of the appellant. He prepared the

spot visit report vide Ext.10 so also the spot map vide Ext.11. The scientific team arrived at the spot on the same day and collected the incriminating materials, prepared a report and the photograph of the scene of crime was taken. The blood stained earth, sample earth collected from the floor of the house so also from the mouse hole, the sickle stained with blood, blood stained clothes, blood stained saree of the appellant were seized by the I.O. (P.W.11) on being produced by the Scientific Officer under Ext.2. The appellant was arrested on 05.04.2007 and forwarded to Court on the same day. The cradle was seized as per seizure list Ext.4 and it was given in the zima of the father of the deceased. The nail clippings and the blood sample of the appellant were collected by the Medical Officer, District Jail, Balasore, which were seized on 06.04.2007 as per seizure list Ext.13 by the Investigating Officer. He received the post mortem report (Ext.7), sent the weapon of offence i.e. sickle to the Medical Officer for his opinion and made a query about the possibility of the injury sustained by the deceased through such sickle and received the query report. He sent the seized exhibits to R.F.S.L., Balasore through J.M.F.C., Jaleswar and the C.E. report vide Ext.15 was also received. On 22.07.2007, P.W.11 handed over the charge of investigation to S.I. of Police

Trilochan Sethi, who on completion of investigation, submitted charge sheet against the appellant under sections 302 and 201 of the I.P.C.

Framing of Charges:

3. After submission of charge sheet, the case was committed to the Court of Session after complying due committal procedure. The learned trial Court framed charge against the appellant as aforesaid. Since the appellant refuted the charge, pleaded not guilty and claimed to be tried, the sessions trial procedure was resorted to prosecute her and establish her guilt.

Prosecution Witnesses & Exhibits:

4. During the course of trial, in order to prove its case, the prosecution has examined as many as eleven witnesses.

P.W.1 Tapan Kumar Pradhan is the uncle of the deceased. He stated that on the date of occurrence, when he returned from his agricultural land, he saw the deceased lying dead sustaining cut injury on her neck and the persons present there disclosed that the appellant had cut the neck of the deceased. He is a witness to the inquest over the dead body of the deceased and proved the inquest report marked as Ext.1. He is also a witness to the seizure of blood stained earth, sickle stained with blood, saree of the appellant etc. as per seizure list

Ext.2, one dibiri (chimini) and one cradle as per seizure lists vide Ext.3 and Ext.4 respectively.

P.W.2 Srikanta Dutta is a co-villager of the informant. He stated that on getting information, he came to the spot and saw the deceased lying dead sustaining cut injury on her throat and came to know that the appellant had cut the throat of the deceased and the appellant also admitted that fact before him.

P.W.3 Sankar Pradhan is the uncle of the deceased and also the informant in the case. He stated about the appellant admitting to have cut the throat of the baby on query.

P.W.4 Banka Behari Mohapatra is a co-villager of the informant and a witness to the inquest over the dead body of the deceased, but he did not support the prosecution case and was declared hostile.

P.W.5 Swarnalata Pradhan is the mother of the deceased baby girl. She stated that on the date of incident, not finding her deceased daughter in the cradle, she enquired about her whereabouts from the appellant, who denied having any knowledge about it. She further disclosed the fact before P.W.6 and when P.W.6 enquired from the appellant, she confessed to have killed the deceased. She further stated that the appellant

disclosed the reason behind the commission of the said crime to be a quarrel between her and P.W.5.

P.W.6 Arati Pradhan is the aunt of the deceased before whom the appellant admitted to have cut the throat of the deceased and in her presence, the appellant brought the dead body from inside a mouse hole in her bed room.

P.W.7 Kanhu Charan Pradhan is the father of the deceased. He stated that he got information that his daughter was murdered by the appellant and came home from the temple and saw the deceased was lying in the front of the house of the appellant and on return, he learnt from P.W.3 and others that the appellant cut the throat of the deceased by sickle. He is also a witness to the inquest (Ext.1).

P.W.8 Arun Kumar Swain was working as Scientific Officer, D.F.S.L., Balasore, who collected the incriminating materials from the spot and he prepared and proved his report vide Ext.6.

P.W.9 Umakanta Pradhan is the nephew of the appellant who stated that upon repeated queries, the appellant admitted to have committed the murder of the deceased baby by cutting her throat by means of sickle and put the dead body inside a rat hole. He further stated that the appellant

subsequently went inside her bedroom and in his presence, she brought out the dead body of the deceased. He also stated to have seen a cut injury on the throat of the deceased. He is the scribe of the F.I.R (Ext.5).

P.W.10 Dr. Bijay Ketan Das was the Pediatric Specialist attached to Jaleswarpur C.H.C., Balasore, who conducted the post mortem examination over the dead body of the deceased and he proved his report vide Ext.7. He also proved the query report vide Ext.8 which was prepared after examining the sickle produced by the I.O.

P.W.11 Bhaktahari Das was the Officer in-charge of Kamarda police station and also the Investigating Officer of the case. He stated that on 22.07.2007, he handed over the charge of investigation to S.I. of Police Trilochan Sethi, who on completion of investigation submitted charge sheet against the appellant.

The prosecution exhibited fifteen documents. Ext.1 is the inquest report, Exts.2, 3, 4 and 13 are the seizure lists, Ext.5 is the F.I.R., Ext.6 is the report prepared by P.W.8, Ext.7 is the post mortem report, Ext.8 is the query report, Ext.9 is the dead body challan, Ext.10 is the spot visit reporting in crime detail

form, Ext.11 is the spot map, Ext.12 is the zimanama, Ext.14 is the copy of forwarding report and Ext.15 is the C.E. Report.

The prosecution also proved three material objects. M.O.I is the sickle, M.O.II is the seized saree and M.O.III is the seized piece of cloth.

Defence Plea:

5. The defence plea of the appellant is one of denial. To dislodge the prosecution case, two witnesses were examined on behalf of the defence.

D.W.1 Prasant Kumar Das was working as the Superintendent of District Jail, Balasore, who produced the medical file of the appellant marked as Ext.A.

D.W.2 Dr. Umaprasad Biswal was working as Psychiatrist at Circle Jail, Baripada, who was giving psychiatric treatment to the appellant while she was lodged in the District Jail, Balasore. He stated that on 25.06.07, he examined the appellant and diagnosed that she was suffering from schizo-depression. He further stated that after detection of such condition, he started her treatment and gradually, she improved. However, on 27.08.07, she again expressed desire to commit suicide but subsequent to the treatment, her condition improved.

On 10.11.08, she was found completely free from psychiatric symptoms. He also opined that the symptoms that were found in the appellant could have been present earlier to the examination.

Findings of the Trial Court:

6. The learned trial Court, after analysing the oral as well as documentary evidence on record, came to hold that the evidence of P.W.5 and P.W.6 regarding extra judicial confession made by the appellant is reliable and trustworthy which unmistakably show the appellant to be the perpetrator of the crime. It was further observed that from the evidence of P.W.5 and P.W.6, it is proved that the dead body of the deceased was recovered at the instance of the appellant from the place of concealment i.e. inside the mouse hole filled with loose soil in her bed room which was not visible to others. The learned trial Court further held that the incriminating articles were sent for chemical examination and as per the chemical examination report (Ext.15), human blood was detected in all the articles and specifically human blood of Group 'B' was detected in the blood stained earth collected from the mouse hole and on the printed saree of the appellant. The learned trial Court summarized the

circumstances which have been established by the prosecution to fasten the guilt of the appellant as follows:-

- (i) Immediately before the missing of the deceased from the swing bed placed on the verandah of their house, the appellant was seen there;
- (ii) The appellant made extra judicial confession before P.Ws.5 and 6 who are related to her as sisters-in-law admitting to have committed murder of the deceased by cutting her throat with a sickle;
- (iii) Recovery of the dead body of the deceased from the place of concealment i.e. from inside a rat hole in the bed room of the appellant at her instance;
- (iv) Recovery of weapon of offence i.e. blood stained sickle from inside the bed room of the appellant;
- (v) Seizure of blood stain earth from the floor of the bed room of the appellant and seizure of the blood stained wearing saree of the appellant;
- (vi) Human blood was detected on the blood stained earth collected from the floor of the bed room and from the weapon of offence (sickle) and on the wearing saree of the appellant. Further the blood stained earth seized from the

rat hole from where the dead body of the deceased was recovered and the blood stained wearing saree of the appellant were detected to be of same blood group of 'B';

(vii) The deceased met with a homicidal death and her dead body was detected with cutting of her neck in the bed room of the appellant.

The learned trial Court further held that in view of the admission of guilt by the appellant as per the evidence of P.W.5 that she cut the throat of the deceased as P.W.5 had quarreled with her, it can be said that motive of the appellant behind the commission of the crime has been proved. The learned trial Court further held that the appellant in her statement under section 313 of Cr.P.C. has taken a plea of complete denial and the contention raised by the learned defence counsel that the appellant is entitled to the benefit of section 84 of the I.P.C. was turned down with observation that from the acts and conducts of the appellant, it was palpable that at the point of time of commission of the offence, she was not suffering from any mental illness and she was in complete sense of understanding of her acts and accordingly, the appellant was found guilty under section 302 of the I.P.C.

Contentions of the Parties:

7. Ms. Bini Mishra, learned counsel appearing for the appellant contended that the case is based on circumstantial evidence. However, so far as the extra judicial confession, which is deposed to by P.W.5, P.W.6 and P.W.9 so also admission of her guilt by the appellant before P.W.2 and P.W.3 cannot be acted upon as there is evidence on record that a huge number of persons gathered at the scene of occurrence and the appellant was tied and therefore, it cannot be said that such admission/confession was a voluntary one. The learned counsel further argued that the recovery of the dead body at the instance of the appellant from inside a mouse hole in the bedroom of the appellant is not acceptable as the I.O. (P.W.11) has stated that the dead body was lying on the verandah of the house of the appellant and there is no evidence as to who removed the dead body from the mouse hole to the verandah. According to her, seizure of the blood stained earth and sickle from the bedroom of the appellant so also seizure of blood stained saree of the appellant as has been deposed to by the witnesses cannot itself be sufficient to find the appellant guilty of the offence charged. It is further argued that the learned trial Court has not properly considered the evidence on record and

turned town the benefit of section 84 of the I.P.C. According to the learned counsel for the appellant, P.W.9 has specifically stated that prior to the incident, the appellant was suffering from mental illness and taking medicines and the evidence of the doctor (D.W.2), who was working as a Psychiatric in Circle Jail, Baripada and the medical file (Ext.A) of the appellant produced from Balasore Jail indicates that she was of unsound mind and she was diagnosed with schizo-depression and medicines were prescribed to her. Learned counsel further argued that the manner in which without any kind of pressure from anybody, the appellant showed the place of concealment of the dead body to others also indicates that she did not try to keep anything secret and that shows her unsoundness of mind at the time of incident and therefore, it is a fit case where benefit of doubt should be extended in favour of the appellant, who is in custody since 05.04.2007 and in the meantime, sixteen years and nine months have already passed.

Mr. Sonak Mishra, learned Additional Standing Counsel appearing for the State of Odisha, on the other hand, supported the impugned judgment and argued that the evidence on record indicates that when P.W.6 accompanied the appellant alone inside the room, she not only showed the place of

concealment but also removed the cauldron from the mouse hole, brought out the dead body and it was found that the neck of the child was cut and when an enquiry was made, she made the extra judicial confession and admitted to have cut the neck of the child by means of a sickle. It is further argued that the appellant was not tied at that point of time nor any threat was given to her. She was tied afterwards and therefore, it cannot be said that the extra judicial confession was not voluntary. It is further argued that the circumstances appearing on record against the appellant are very clinching and the learned trial Court has rightly come to the conclusion that the circumstances taken together form a complete chain and it points unerringly towards the guilt of the appellant. Placing reliance in the case of **Bapu @ Gujraj Singh -Vrs.- State of Rajasthan reported in (2007) 8 Supreme Court Cases 66**, it is argued that mere abnormality of mind or partial delusion, irresistible impulse or compulsive behaviour of a psychopath affords no protection under section 84 of the I.P.C. When no plea of legal insanity was taken in the accused statement and the appellant has the onus of proving the same in view of section 105 of the Evidence Act and her conduct prior to the occurrence, at the time of occurrence and after the occurrence are very relevant factors, in

the case in hand, it appears that the appellant was behaving very normally and maintaining all secrecy, she committed the crime when no one was there nearby to mark her and also put the dead body inside the mouse hole and keeping the same covered with earth and a cauldron and then moving like a normal person keeping her child in the lap shows that she was not suffering from unsoundness of mind at the relevant time. The learned counsel further contended that it cannot be said that at the time of committing the act, the appellant was labouring under any defect of reason from disease of mind so as not to know the nature and quality of the act which she was doing or that what she was doing, was either wrong or contrary to law and therefore, the appeal should be dismissed.

Whether the deceased met with a homicidal death?:

8. Adverting to the contentions raised by the learned counsel for the respective parties, let us assess the evidence on record to see as to how far the prosecution has established that the deceased met with a homicidal death.

Apart from the inquest report marked as Ext.1 and the ocular evidence that the throat of the deceased was cut deeply, Dr. Bijay Ketan Das (P.W.10), who conducted post mortem examination over the dead body of the deceased on

05.04.2007, noticed one lacerated wound surrounding almost whole neck extending through cervical vertebra upto the posterior part of the skin of the neck, only lag of skin about 2" posteriorly. He opined that the cause of death was due to the injury to the vital organ like oesophagus, trachea and great vessels followed by haemorrhagic shock. He further opined that the time of death was within six to twelve hours of his examination and he proved the post mortem report marked as Ext.7. The Investigating Officer (P.W.11) produced one sickle, which was seized from the spot, before the doctor (P.W.10) for examination and opinion and after examining the sickle, P.W.10 gave his report indicating that the injury noticed on the dead body of the deceased was possible by the sickle and the said query report has been marked as Ext.8. Nothing has been elicited in the cross-examination of the doctor to assail the above findings and in fact, neither before the trial Court nor before this Court, any challenge was made disputing the homicidal death of the deceased. In view of the available materials on record, particularly the inquest report (Ext.1), the ocular evidence, the evidence of the doctor (P.W.10) and the findings of post mortem report (Ext.7), we are of the view that the learned trial Court is

quite justified in arriving at the conclusion that the deceased met with a homicidal death.

Appellant's presence in the vicinity at the time of occurrence:

9. The appellant's presence in the vicinity at the time of occurrence is deposed to by P.W.5, who has stated that the appellant asked her for tobacco and she gave her tobacco and when she was inside her house, the appellant went to her house after taking tobacco from her.

Whether extra judicial confession of the appellant can be acted upon?:

10. Three witnesses who have stated about the extra judicial confession are P.W.5, P.W.6 and P.W.9.

Law is well settled that extra judicial confession is a weak piece of evidence and the prosecution has to prove that it was a voluntary one and there was no element of any kind of inducement or threat to the accused for making such confession. Recently, while reiterating the above position of law, the Hon'ble Supreme Court in the case of **Prabhatbhai Aatbhai Dabhi -Vrs.- State of Gujarat reported in (2023) SCC OnLine SC 1469** held that when prosecution relies upon the evidence of

extra judicial confession, normally, the Court will expect that the evidence of the persons before whom extra judicial confession is allegedly made, must be of sterling quality.

P.W.5 has stated that when she found her daughter was missing from the cradle, it was about 7.30 a.m. to 8.00 a.m. and at that point of time, the appellant was sitting on her verandah adjacent to her house (P.W.5's house) and she enquired the whereabouts of the deceased from the appellant but the appellant denied to have any knowledge and then she (P.W.5) called her 'Bada Jaa' Arati Pradhan (P.W.6), who searched for the child. P.W.6 suspected the appellant and on query, the appellant went inside her house and showed the dead body of the child kept inside a mouse hole with a slit throat. She further stated that when P.W.6 enquired from the appellant to know about the cause of incident, the appellant disclosed that she cut the throat of the baby as P.W.5 was quarrelling with her. It has been elicited in the cross-examination of P.W.5 that the appellant was having two daughters and one son and when P.W.6 went inside the house of the appellant to search for the deceased, she did not accompany her. In the cross-examination, P.W.5 further stated that when the appellant admitted to have cut the throat of the deceased, she was present along with other

persons about more than fifty. She stated that she could not state as to whether the appellant was in a tied condition when she made the extra judicial confession.

P.W.6 has stated that when she was informed by P.W.5 about the missing of the deceased baby from the cradle, she searched for the baby and enquired from the appellant and then the appellant went inside her bed room and she followed and inside the room, the appellant showed a place where a cauldron was kept and underneath that there was some loose earth and the appellant in her own hand removed those loose earth and brought out the dead body of the deceased and it was found that the neck of the child was cut and when she enquired, the appellant admitted to have cut the neck by means of a sickle. She further stated that the appellant was about to go away from the room, but the persons present outside, detained her. In the cross-examination, she has stated that four to five times, she loudly asked the appellant about the daughter of P.W.5.

Learned counsel for the appellant argued that it appears from the evidence that the confessional statement by the appellant was not a voluntary one. We are not inclined to accept such submission inasmuch as there is no evidence of any

compulsion, inducement or threat given to the appellant at that point of time. P.W.6, in her cross-examination, has stated that she accompanied the appellant alone inside the house where the confession was made. It has been confronted to her and proved through the I.O. (P.W.11) that she had not stated that the appellant was trying to go away from the spot. She further stated that the persons present there tied the appellant and when the appellant admitted to have cut the throat of the deceased, other persons outside the room had seen her admitting the guilt. Therefore, there is nothing to disbelieve the evidence of P.W.6 so far as the extra judicial confession part is concerned.

P.W.9 Umakanta Pradhan has stated that when the search was made for tracing out the missing baby from the cradle and the appellant was confronted, first she was reluctant to give any reply and on being repeatedly asked, she confessed to have murdered the deceased by cutting her throat by means of a sickle and put the dead body of the deceased inside the mouse hole in her bed room and then the appellant went to her bed room and in their presence, brought out the dead body of the deceased from inside the mouse hole and it was found that the deceased had sustained cut injury on her throat. In the

cross-examination, he has stated that when the dead body was brought out by the appellant, ten to twelve persons were present and some outsiders apart from the family members were also present. The evidence of P.W.9 that prior to entering into her room, the appellant made extra judicial confession is not getting corroboration from the evidence of P.W.6 inasmuch as P.W.6 has stated that after the appellant entered into her bed room, showed the mouse hole, removed the cauldron and the loose earth, brought out the dead body and then she made the confession to her. Therefore, it is difficult to believe the evidence of P.W.9 in that respect.

Apart from the extra judicial confession of the appellant as deposed to by P.Ws.5, 6 and 9, it appears that P.Ws.2 and 3 have stated that the appellant admitted her guilt. P.W.2 has stated that the appellant admitted her guilt before others including him. In the cross-examination, P.W.2 has stated that when he reached at the spot, he found a gathering of one hundred persons there. P.W.3 has stated that when he reached the spot, he saw a gathering of one hundred persons and the appellant admitted her guilt in presence of the mob and after confession, the appellant was tied. An admission is only a piece of evidence and the weight to be attached to it depends upon the

circumstances under which it has been made. The admission must be definite, clear and specific. Before accepting such evidence, it must be established by cogent evidence what were the exact words used by the accused. A confession or admission is evidence against its maker, if its admissibility is not excluded by some provision of law. Law is clear that a confession cannot be used against an accused unless the Court is satisfied that it was voluntary. At that stage, the question whether it is true or false does not arise. If the facts and circumstances surrounding the making of a confession appear to cast a doubt on the voluntariness of the confession, the Court may refuse to act upon the confession. What the appellants stated before the mob in presence of P.W.2 and P.W.3 are not on record. The surrounding circumstances under which such admission of guilt was made by the appellant before the mob, even if we do not place any reliance on such admission, but the same cannot be a factor to discard the evidence of P.W.6 before whom alone the appellant on her own had made extra judicial confession inside her bed room after detection of the dead body. Therefore, we are of the view that the learned trial Court has rightly placed reliance on the evidence adduced by the prosecution relating to extra judicial confession inasmuch as the appellant was tied much

after she made the confessional statement before P.W.6 and there is no material on record that the confessional statement was the result of inducement, threat or promise. Therefore, there is no reason for us to discard the extra judicial confession made by the appellant before P.W.6.

Recovery of the dead body from inside the bed room of the appellant at her instance:

11. The recovery of the dead body from the place of concealment i.e. from inside the mouse hole in the bed room of the appellant at her instance is another factor which goes against the appellant and the same has been deposed to by P.W.5 and P.W.6. P.W.6 has stated that the appellant entered inside her bedroom and she followed her and the appellant showed a place inside her house where a cauldron was kept and beneath the cauldron, some loose earth was found and the appellant in her own hand removed the loose earth and brought out the dead body of the deceased and it was found that the neck of the deceased was cut. P.W.5 has also corroborated the evidence of P.W.6. Nothing has been brought out in the cross-examination to disbelieve such evidence. P.W.6 has stated that till the arrival of police, the dead body was in the house of the appellant, whereas P.W.11, the I.O. has stated that during his spot visit, he found

the dead body was lying on the verandah of the house of the appellant with cut injury of the whole neck except the skin portion of the back and he held inquest over the dead body and prepared inquest report (Ext.1). Thus, even if there is discrepancy as to when the dead body was removed from inside the bedroom of the appellant to the verandah of her house, but there is sufficient evidence that the dead body was recovered from inside the mouse hole in the bed room of the appellant at the instance of the appellant.

Seizure of blood stained sickle, blood stained wearing saree, blood stained earth from inside the bed room of the appellant and the C.E. Report findings:

12. P.W.5 has stated that she saw blood stained mark inside the bed room of the appellant, blood stained mark on the wearing saree of the appellant and one sickle stained with blood was also seen there.

P.W.8, the Scientific Officer has stated that during his spot visit, he found blood stained marks on the floor of the bed room of the appellant, blood stained marks inside the rat hole in the bed room of the appellant, one blood stained sickle lying on the floor of the appellant, a piece of blood stained cloth and printed saree lying on the floor of the bed room of the appellant

and he collected the physical clue and handed over the same to the I.O. for chemical examination and prepared his report vide Ext.6. In the cross-examination, he has stated to have put his signature on the sealed packet after duly packing the exhibits collected from the spot.

P.W.11, the I.O. has stated that during his spot visit, he found blood stained marks here and there on the floor of the house of the appellant so also in the rat hole and he also found sickle stained with blood lying on the floor of the appellant and blood stained clothes were lying on the floor of the house of the appellant. He stated about the visit of the scientific team to the spot and collection of incriminating materials from the spot by such team and its production before him which he seized as per seizure list Ext.2.

The sickle was seized by the I.O. (P.W.11) and it was sent to the doctor (P.W.10), who examined the same and opined that the injury on the throat of the deceased was possible by such sickle. Moreover, the sickle was sent for chemical examination and the C.E. Report (Ext.15) indicated that human blood was detected on it. The C.E. Report (Ext.15) further indicates that the blood stained earth was found to be containing human blood and was of group 'B' and the printed saree of the

appellant was also containing human blood of group 'B'. Thus, the prosecution has also proved these circumstances against the appellant.

13. In view of the foregoing discussions, the prosecution has established that the deceased baby girl was missing from the cradle where she was placed by her mother (P.W.5) and the appellant was nearby, that the appellant made extra judicial confession before P.W.6 to have committed the murder of the deceased and that the dead body of the deceased was recovered from inside the mouse hole in the bed room of the appellant at her instance. The weapon of offence i.e. sickle stained with human blood was found from the bed room of the appellant. Blood stained mark was also noticed on the floor of the bedroom of the appellant and there were blood stains on the saree of the appellant which were found to be human blood of group 'B'. In the factual scenario, we are of the view that the circumstances which have been proved by the prosecution form a complete chain which unerringly points towards the guilt of the appellant.

Whether the appellant is entitled to get the benefit under section 84 of the I.P.C.?:

14. Now, the question that crops up for consideration is whether the appellant is entitled to get the benefit under section

84 of the I.P.C.? Under section 105 of the Indian Evidence Act, 1872, the burden of proving the existence of circumstances bringing the case within any of the exceptions specified in the Indian Penal Code like unsoundness of mind lies upon the accused.

Where the exception under section 84 of the I.P.C. is claimed, the Court has to consider whether, at the time of commission of the offence, the accused, by reason of unsoundness of mind, was incapable of knowing the nature of the act or that he is doing what is either wrong or contrary to law. Entire conduct of the accused, from the time of the commission of the offence upto the time, the sessions proceedings commenced, is relevant for the purpose of ascertaining as to whether plea raised was genuine, bonafide or an after-thought one.

It is pertinent to note that in her examination under section 313 of the Cr.P.C., the appellant has not taken any plea of insanity. However, she has examined two defence witnesses, who are the Superintendent, District Jail, Balasore as D.W.1 and Psychiatrist of Circle Jail, Baripada as D.W.2 and proved her medical file marked as Ext.A to get such benefit under section 84 of the I.P.C.

In the case of **Dahyabhai Chhaganbhai Thakkar -Vrs.- State of Gujarat reported in A.I.R. 1966 S.C. 1**, it is held that there is a rebuttable presumption that the accused was not insane, when he committed the crime, in the sense laid down by section 84 of the I.P.C., the accused may rebut it by placing before the Court all the relevant evidence i.e. oral, documentary or circumstantial, but the burden of proof upon him is no higher than that rests upon a party to civil proceedings. Even if the accused was not able to establish conclusively that he was insane at the time he committed the offence, the evidence placed before the Court by the accused or by the prosecution may raise a reasonable doubt in the mind of the Court as regards one or more of the ingredients of the offence, including mens rea of the accused and in that case, the Court would be entitled to acquit the accused on the ground that the general burden of proof resting on the prosecution was not discharged.

Thus, even in the absence of specific plea regarding unsoundness of mind taken in the accused statement, it does not debar the Court from considering the availability of the benefit of the same in favour of the accused if the materials are available on record in that respect. It is not every and any plea of unsoundness of mind that would suffice. The standard of test to

be applied shall be of 'legal insanity' and not 'medical insanity'. Whether there were deliberation and preparation for the act, whether it was done in a manner which showed a desire for concealment, whether after the crime, the offender showed consciousness of guilt and made efforts to avoid detection and whether after his arrest, he offered false excuses or made false statements, the conduct of the offender before and after upto the time of trial is admissible as presumptive evidence of his mental condition when the act was committed. The absence of motive for a crime, when corroborated by independent evidence of the accused's previous insanity, is not without weight. Section 84 of the I.P.C. does not confer immunity from criminal liability in every case of insanity of the accused. Along with the insanity, there must be proof of the fact that at the time of commission of the act, the accused was labouring under such a defect of reason, from disease of the mind that he was incapable of knowing the nature of the act or what he was doing was either wrong or contrary to law. The mere fact that on earlier occasions, the accused had suffered from mental derangement will not be sufficient to bring his case within the exemption of section 84 of the I.P.C. To put it differently, it must be shown that the mental faculties of the accused were, as a result of

unsoundness of mind, so completely deranged as to render him incapable of knowing the nature of his act or that what he was doing was either morally wrong or contrary to law. To arrive at such a conclusion, it is therefore necessary to ascertain the behaviour, antecedent, attendant and subsequent conduct of the accused that may be relevant in determining the mental condition of the accused at the time of 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 can be ascertained by assessing the conduct of the offender while committing it or immediately after the commission of the offence. These behaviours are not conclusive, but they certainly provide an insight to the mind of the offender. Mere absence of motive for a crime no matter however atrocious cannot in the absence of proof of legal insanity bring the case within the ambit of section 84 of the I.P.C. In medical science, there are many kinds of insanity, but in law, insanity is of two kinds i.e. one which would exempt the person from criminal responsibility and the other which would not. Every type of insanity recognized in medical science is not legal insanity. There can be no legal insanity unless the cognitive faculty of mind is destroyed as a result of unsoundness of mind

to such an extent as to render the offender incapable of knowing the nature of the act or that what he was doing was contrary to law.

In the case in hand, it appears that when the offence was committed, nobody was there near the place of occurrence and the deceased was sleeping in the cradle and her mother (P.W.5) had gone to the pond to wash utensils. The possibility of committing the crime by the appellant in a secret manner is not completely ruled out. The further steps taken by the appellant in keeping the body in a concealed manner inside the mouse hole of her bed room is also another relevant factor, which is to be taken into account while considering the aspect of legal insanity. Though P.W.6 has stated that the appellant was trying to escape after making the confession, but the same cannot be accepted as it was not stated in her previous statement recorded by the Investigating Officer and no other witness has also stated in that respect. P.W.9 has stated that one year prior to the incident, the appellant was suffering from mental illness and was taking medicine. The motive behind commission of the crime as stated by P.W.5 was the quarrel of the appellant with her as the appellant stated in her confessional statement before P.W.6 is not acceptable as P.W.6 has not stated so. The appellant asked

for tobacco to P.W.5 at the time of occurrence and the latter provided the same to her which rules out ill feeling between the two. No other witness has stated about any kind of ill feeling between the appellant and P.W.5. Therefore, it cannot be said that there was any specific motive on the part of the appellant to commit the crime. It cannot be lost sight of the fact that the appellant was having two daughters and one son as stated by P.W.5. When the appellant was forwarded to Court, she was examined by the Jail Medical Officer and it was found that she was not taking meal, behaving abnormally and not keeping her clothes. The Medical Officer contacted the psychiatric doctor of the Jail, who has been examined as D.W.2 and he has stated that on receiving such telephone call, he advised to treat the appellant by giving ante-psychotic medicine till his visit. He further stated that when he visited Balasore Jail and examined the appellant, he diagnosed that it was a case of schizo-depression and he gave her treatment for which she gradually improved. He further stated that the symptoms he found on the date of examination of the appellant were likely to be present prior to his examination and the duration may vary from one week, one month to one year and the appellant was suffering from schizo-depression, a condition in which features of both

schizophrenia and depression are found and when he examined, she was under hallucination and paranoid delusions and as per the above symptoms, she was partially but grossly impaired in respect of her judgment and perception. He further stated that if the treatment is discontinued, then there would be chance of recurrence of her earlier symptom. In the cross-examination, he has stated that when he examined the appellant, she was crying, she was sleepless and she was refusing to take food and insisting to go home. The medical file of the appellant has been marked as Ext.A in which the medicines which were prescribed from time to time have been mentioned.

In the case of **Shrikant Anandrao Bhosale -Vrs.- State of Maharashtra reported in (2002) 7 Supreme Court Cases 748**, it was held as follows:

“10....Paranoid schizophrenia, in the vast majority of cases, starts in the fourth decade and develops insidiously...The patient usually retains his memory and orientation and does not show signs of insanity, until the conversation is directed to the particular type of delusion from which he is suffering. When delusions affect his behaviour, he is often a source of danger to himself and to others. (Modi's Medical Jurisprudence and Toxicology, 22nd Edn.)”

Paranoid schizophrenia is a mental disease which can recur and when a person is under paranoid delusion, he is not fully aware of his activities and its consequences. In the case in hand, D.W.2 has recorded a finding that the appellant was having symptoms of paranoid delusions and he has also stated that the symptoms were also likely to be present in the appellant even one year before his examination. In such a scenario, it appeals to the judicial mind of this Court that the appellant's reeling under the adverse effect of the schizo depressive disorder, schizophrenia, hallucination and paranoid delusion at the time of occurrence cannot be ruled out completely. It is also no more *res integra* that an accused is required to prove her insanity only on the touchstone of preponderance of probability and not beyond all reasonable doubts. **[Ref:- Prakash Nayi -Vrs.- State of Goa : (2023) 5 Supreme Court Cases 673].**

Conclusion:

15. In view of the foregoing discussions, even though specific defence plea regarding unsoundness of mind has not been taken by the appellant in her accused statement, but in view of the evidence of P.W.9, the evidence of the two defence witnesses i.e. D.W.1 and D.W.2 coupled with the medical file of the appellant (Ext.A) and absence of any specific motive on the

part of the appellant to commit the crime and the manner in which she silently pointed out the place where the dead body was concealed to P.W.6 without any kind of pressure on her and the fact that after the crime, the appellant showed no consciousness of guilt or made efforts to avoid detection, we are of the humble view that the appellant is entitled to get the benefit of section 84 of the I.P.C.

Accordingly, the Criminal Appeal is allowed. The conviction of the appellant under section 302 of the I.P.C. is hereby set aside.

We are apprised that the appellant is presently lodged in the District Jail, Balasore. Taking into account the peculiarity of this case, we direct that she shall be treated at Fakir Mohan Medical College & Hospital, Balasore or any other premier medical institute of the State or outside the State, if there is any active symptoms of her unsoundness of mind and for other therapies, the psychiatrist appointed in the Jail shall be consulted and the appellant shall be kept under his treatment until she is certified to be mentally fit by the doctor. It is open to any of the family members and close relatives of the appellant to move the learned trial Court for getting her out of custody. If

such a motion is made, the same shall be considered keeping the welfare of the appellant in view.

Before parting with the case, we would like to put on record our appreciation to Ms. Bini Mishra, learned counsel for the appellant for rendering her valuable assistance towards arriving at the decision above mentioned. This Court also appreciates Mr. Sonak Mishra, learned Additional Standing Counsel for ably and meticulously presenting the case on behalf of the State.

The trial Court records with a copy of this judgment be sent down to the concerned Court forthwith for information.



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S.K. Sahoo, J.

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S.K. Mishra, J.

Orissa High Court, Cuttack
The 25th January 2024/RKMishra