

THE HIGH COURT OF SIKKIM : GANGTOK

(Criminal Appellate Jurisdiction)

Dated : 24th April, 2024

**DIVISION BENCH : THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE
THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE**

Crl. A. No.03 of 2021

Appellant : Pradeep Khatiwara

versus

Respondent : State of Sikkim

Appeal under Section 374(2) of the
Code of Criminal Procedure, 1973

Appearance

Mr. T. R. Barfungpa, Advocate (Legal Aid Counsel) for the Appellant.

Mr. S. K. Chettri, Additional Public Prosecutor for the State-Respondent.

J U D G M E N T

Meenakshi Madan Rai, J.

1. The Appellant was tried for the offence of murder under Section 300 of the India Penal Code, 1860 (hereinafter, the "IPC"), punishable under Section 302 of the IPC, for causing the death of one Mikmar Lepcha and one Dhan Keshi Tamang at a cardamom drying shed, situated at Sumindang, Upper Dzongu, North Sikkim, on 01-12-2019. The Court of the Learned Sessions Judge, North Sikkim, at Mangan, by the impugned Judgment, dated 26-11-2020, in Sessions Trial Case No.02 of 2020 (*State of Sikkim vs. Pradeep Khatiwara*) convicted the Appellant of the offence as charged. Vide Order on Sentence, dated 23-12-2020, the Convict was sentenced to undergo rigorous imprisonment for life. Fine of ₹ 5,000/- (Rupees five thousand) only, was imposed on him, with a default clause of imprisonment.

2. The offence came to light when Exhibit 1, the First Information Report (FIR) was lodged by the Complainant, Ranshor Limboo, (PW-3) of Chadey, North Sikkim, on 03-12-2019, before the Mangan Police Station, North Sikkim. Based on Exhibit 1, a case was registered against the Appellant who was suspected to have committed the offence and investigation was taken up by PW-14, Police Inspector (P.I.), Sher Bahadur Manger. Charge-Sheet was submitted against the Appellant under Section 300 of the IPC for committing the murder of the two victims named above. The Appellant took the plea of "not guilty" to the charge framed against him by the Learned Trial Court, for two counts of murder. The Prosecution sought to establish its case beyond a reasonable doubt by examining fourteen witnesses. The Learned Trial Court thereafter examined the Appellant under Section 313 of the Code of Criminal Procedure, 1973 (hereinafter, the "Cr.P.C."), during which he admitted to having assaulted the victims, in turns, with a wooden plank and having thrown the dead body of Mikmar Lepcha from a cliff, while Dhan Keshi Tamang was assaulted with an axe and her body tumbled down, below the cardamom drying shed. His defence was that, he was first attacked by the two victims upon which he retaliated. He sought to examine three witnesses. DW-1, his mother deposed that when the Appellant was studying in Class VIII, he accidentally knocked over a lamp and a fire broke out in their house, after which his mental status became impaired. That, he was treated by a Psychiatrist in Singtam. That, the Appellant used to be in possession of his medical documents. DW-2, the Psychiatrist, who treated the Appellant, deposed that he had prescribed medication for Psychosis to a person named Pradeep Khatiwara. DW-3 was the sister of the Appellant who claimed that

in the year 2011-12, she had taken him to a Psychiatrist as the Appellant was depressed. Thereafter, DW-2 in 2018 had prescribed medication for the Appellant and he was taken to the Psychiatrist four times. DWs 1, 2 and 3, at that stage furnished no documentary evidence to substantiate the facts regarding the mental status of the Appellant as deposed by them. The Learned Trial Court on consideration of all the evidence on record convicted the Appellant as delineated above.

3. The Prosecution narrative is that the Appellant along with the two deceased persons were employed by PW-2 at Sumindang, North Sikkim, after the Diwali of 2019, for harvesting the cardamom fruits in his field. All three resided in the cardamom drying shed of PW-2. About a week prior to the incident, the deceased Mikmar Lepcha had complained to PW-2 of having been threatened with death by the Appellant who had wielded his *bamphok* (Machete) in front of him. PW-2 had gone to the shed and settled the matter. However, on the evening of 01-12-2019 Mikmar Lepcha was assaulted with a wooden plank, while Dhan Keshi Tamang was stuck with an axe, by the Appellant, resulting in the death of both the persons.

4. In Appeal, the arguments raised by Learned Counsel for the Appellant before this Court were that the question of unsoundness of mind of the Appellant ought to have been first determined by the Learned Trial Court before proceeding with the trial. The process not having been so done, the trial is vitiated. Besides, the Appellant has clearly stated in his Section 313 of the Cr.P.C. statement that the deceased had attacked him first, where upon he retaliated and he had no motive to kill them. That, apart from the plea of insanity, the case being one of circumstantial

evidence as the Prosecution case was devoid of eye witnesses to the incident, the evidence furnished by the Prosecution was not consistent with the guilt of the Appellant to establish the chain of circumstances against him. That, one Numberi Rai was instrumental in informing the Complainant, PW-3, that of the three persons who had been working in the cardamom drying shed, only one could be seen and that he had a sharp weapon in his hand. He was not made a Prosecution witness for which an adverse inference can be drawn against the Prosecution. Exhibit 1 was lodged on 03-12-2019, on which date the arrest of the Appellant was also effected and he was remanded to Judicial Custody. About five months thereafter, on 12-05-2020, the Appellant was referred for medical treatment, from Judicial Custody, as he complained of inability to sleep, he was suspicious that people were talking about him and was also irritable. DW-4, the Senior Consultant Psychiatrist, at STNM Hospital, prescribed him medication, for Psychosis and Depression. That, DW-2, the Psychiatrist had earlier treated the Appellant on 27-11-2017 as a patient of Psychosis and had last treated him in April, 2018 as revealed in his evidence. The evidence of DW-2 finds corroboration in that of DW-3, who vouched for the fact that the Appellant was being treated for mental health problems by DW-2, who had prescribed medication to him. DW-2 had advised her (DW-3) to listen to the problems of the Appellant. Consequently, it is evident that the Appellant was a patient of Psychosis, entitling him to the benefit of Section 84 of the IPC. That, on an application filed by the Appellant under Section 391 of the Cr.P.C. before this Court, pending the Appeal, this Court on 02-08-2023 ordered that, the evidence of DW-2 be recorded by the concerned Court, for the limited purpose of

exhibiting the relevant medical documents. Pursuant thereto, DW-2 was examined on 19-10-2023 and necessary documents were exhibited. Reliance was placed on Exhibit D2/DW-2 the certificate issued by DW-2, dated 08-06-2023, wherein it was mentioned that the Appellant had been treated by DW-2 on 27-11-2017 and 18-12-2017. Exhibit D3/DW-2 the certified copy of the page of the "New Patient's Register", dated 27-11-2017, was also identified by DW-2, where the name of the Appellant appeared at sl.no.52. That, Exhibit D4/DW-2, the certified copy of the relevant page of the follow up register of the District Hospital, Singtam, dated 18-12-2017 bore the name of the Appellant at Serial No.60. That, in fact DW-4, the Senior Consultant Psychiatrist, also deposed as he had been treating the Appellant in State Central Prison, Rongyek, since May 2020. The witness identified Exhibit D1/DW-4 as the Prisoner Treatment Booklet with his signatures on it. DW-4 vouched for the fact that the Appellant is under his treatment. DW-4 also stated that on 02-02-2022 at around 1400 hours, the Appellant had tried to commit suicide, by hanging, but the timely intervention of his cell inmates prevented the event. On the order of DW-4, the jail authorities admitted the Appellant to the STNM Hospital, at Gangtok, on 02-02-2022 for counseling and treatment from where he was discharged on 11-02-2022 and returned to Judicial Custody. It was canvassed by Learned Counsel that, both DW-2 and DW-4 have deposed that Psychosis can recur and such patients require regular treatment for an extended duration. Conceding that there were no materials to show that he was unstable at the time of incident, Learned Counsel however urged that, the offence committed on 01-12-2019 was a result of the recurrence of his illness as his treatment had ceased by then. Consequently, there

can be no denial of the fact that the Appellant was suffering from mental illness preceding, attending and following the offence of murder. Learned Counsel fortified his submissions with reliance on ***Shrikant Anandrao Bhosale vs. State of Maharashtra***¹ and contended that the burden of proof that the Appellant was of unsound mind and therefore incapable of knowing the consequences of his acts is clearly established by DWs 1, 2, 3 and 4, along with the documentary evidence exhibited. That, the Learned Trial Court ignored the initial evidence to which it was privy and failed to extend the benefit of Section 84 of the IPC to the Appellant on which count reliance was placed on ***Devidas Loka Rathod vs. State of Maharashtra***². It was contended that the Prosecution has failed to lead any evidence in rebuttal, apart from its inability to establish its case beyond a reasonable doubt. The assailed Judgment being perverse and against the weight of evidence, deserves to be set aside.

5. Learned Additional Public Prosecutor for the State-Respondent while seriously repelling the arguments advanced by the Learned Counsel for the Appellant, contended that, the offence was heinous with no evidence furnished by the Appellant to prove that at the time of the incident, he was suffering from mental illness. Conceding that evidence was indeed furnished by the Appellant to establish that he was suffering from mental health issues preceding and following the incident, it was reiterated that no proof was furnished to indicate insanity attending the incident. Relying on the evidence of PW-8, Dr. O. T. Lepcha, who conducted the postmortem on the deceased victims, it was urged that several injuries were inflicted on the persons of the deceased, mercilessly,

¹ AIR 2002 SC 3399

² (2018) 7 SCC 718

revealing the *mens rea* of the Appellant. That apart, it is clear from Exhibit 13, the medical examination of the Appellant, dated 03-12-2019, that he was in sound health with no reference whatsoever to any mental infirmity. That, the plea of insanity, as correctly noted by the Learned Trial Court was not taken by the Appellant, during investigation, enquiry and trial or even during his examination under Section 313 of the Cr.P.C. It was raised at the end of the trial to wrongly obtain the benefit of Section 84 IPC. Hence, the Judgment of conviction of the Learned Trial Court warrants no interference.

6. The rival submissions were heard at length and given due consideration. All documents including the evidence furnished and the assailed Judgment have been perused by us.

7. The question for determination before this Court is; Whether the conviction of the Appellant under Section 302 IPC, by the Learned Trial Court, stands obviated by non-consideration of the plea of insanity taken by the Appellant?

(i) In this context, it is essential to peruse the provisions of Section 84 of the IPC, which is extracted hereinbelow for convenient reference;

“84. Act of a person of unsound mind.— Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.”

The provision is self explanatory.

(ii) As a corollary to Section 84 of the IPC, it is essential to consider Section 105 of the Indian Evidence Act, 1872 (hereinafter, the “Evidence Act”) which reads as follows;

“105. Burden of proving that case of accused comes within exceptions.—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.”

Illustration (a) reads as follows;

“(a) A, accused of murder, alleges that, by reason of unsoundness of mind, he did not know the nature of the act.

The burden of proof is on A.”

(iii) The Prosecution case in the first instance is required to be established beyond a reasonable doubt, thereafter the burden of proving unsoundness of mind rests with Appellant and not with the Prosecution. The burden of proof cast on the Appellant is no higher than that which rests upon a party to civil proceedings. The Supreme Court in **State of Rajasthan vs. Shera Ram alias Vishnu Dutta**³, observed that, from the principles stated in **Surendra Mishra vs. State of Jharkhand**⁴, it is clear that a person alleged to be suffering from any mental disorder cannot be exempted from criminal liability *ipso facto*. The onus would be on the accused to prove by expert evidence that he is suffering from such mental disorder or mental condition, that he could not be expected to be aware of the consequences of his act. That, once, a person is found to be suffering from mental disorder or mental deficiency, which takes within its ambit hallucinations, dementia, loss of memory and self-control at all relevant times, by way of appropriate documentary and oral evidence, the person concerned would be entitled to take resort to the general exceptions from criminal liability.

(iv) Indeed, it needs no reiteration here that legal insanity and medical insanity differ from each other. But it must be recognised that legal insanity is not an independent proposition and

³ (2012) 1 SCC 602

⁴ (2011) 11 SCC 495

necessarily flows from medical insanity. The proof of legal insanity however is when the evidence placed before the Court by the accused or the Prosecution, raises a reasonable doubt in the mind of the Court with regard to the mental health status of the accused at the time of the offence. It must be shown that the accused by reason of his unsoundness of mind was incapable of knowing the nature of the act or what he was doing was either wrong or contrary to law. This is the exception carved out by Section 84 of the IPC. The onus cast on the accused under Section 105 of the Evidence Act is, as already stated, to the extent of preponderance of probability. While differentiating medical insanity from legal insanity in ***Prakash Nayi alias Sen vs. State of Goa***⁵, the Supreme Court referred to ***Jai Singh P. Modi, A Textbook on Medical Jurisprudence and Toxicology, 26th Edition, 2018***. It was held that, a person of an unsound mind who is incapable of knowing the consequences of an act does not know that such an act is right or wrong. He may not even know that he has committed the act. When such is the position he cannot be made to suffer punishment. This act cannot be termed mental rebellion constituting a deviant behavior leading to crime against the society. He stands as a victim in need of help and therefore cannot be charged and tried for an offence. The position is that of a child not knowing either his action or the consequence of it.

(v) In ***Bapu alias Gujraj Singh vs. State of Rajasthan***⁶, it was observed that Section 84 of the IPC embodies the fundamental principle of criminal law i.e., *actus non reum facit nisi mens sit rea* (an act does not constitute guilt unless done with a guilty

⁵ (2023) 5 SCC 673

⁶ (2007) 8 SCC 66

intention). Thus, in order to constitute an offence there must be criminal intent and the act must concur.

(vi) In *Ratan Lal vs. The State of Madhya Pradesh*⁷, it was held that;

"2. It is now well-settled that the crucial point of time at which un-soundness of mind should be established is the time when the crime is actually committed and the burden of proving this lies on the accused. (See *State of M.P. v. Ahmadullah*. [(1961) 3 SCR 583 : AIR 1961 SC 998 : (1961) 2 SCJ 197 : 1961 (2) Cri LJ 43]) *In D.G. Thakker v. State of Gujarat* [(1964) 7 SCR 361 : AIR 1964 SC 1563 : (1965) 2 SCJ 531 : 1964 (2) Cri LJ 472] it was laid down 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 Penal Code, 1860, the accused may rebut it by placing before the Court all the relevant evidence — oral, documentary or circumstantial, but the burden of proof upon him is no higher than that which rests upon a party to civil proceedings". It was further observed:

"The crucial point of time for ascertaining the state of mind of the accused is the time when the offence was committed. Whether the accused was in such a state of mind as to be entitled to the benefit of Section 84 of the Penal Code, 1860 can only be established from the circumstances which preceded, attended and followed the crime.""

8. On bedrock of the said principles, we proceed to examine the evidence on record furnished by the Prosecution and the Defence.

(i) Following the incident on 01-12-2019, the next morning, the Appellant was questioned by PW-2 Dil Bahadur Limboo *alias* Tarbhotay Limboo about what had transpired in the cardamom drying shed, the previous day, to which the Appellant did not respond. According to PW-2, he overheard the Appellant admitting on interrogation to the Police, that he had committed the murder of the two people. Under cross-examination PW-2 admitted that he had heard from the Appellant's mother that the Appellant was under medication but he was unaware of the exact date when the course of the medication commenced. He also did not know the reason for the medication. The Appellant on enquiry

⁷ (1970) 3 SCC 533

by the witness had disputed the fact of mental illness but DW-1, his mother, had told PW-2 that the Appellant suffered from mental illness. Admittedly, after the incident the Appellant did not try to escape from the place of occurrence. Pausing her momentarily, we deem it necessary to observe that individuals react differently to the same situations, merely because he did not abscond does not render him insane. In ***Elavarasan vs. State represented by Inspector of Police***⁸, it was *inter alia* held that the fact that the Appellant had not escaped from the place of occurrence, was no reason by itself sufficient to declare him to be a person of unsound mind, incapable of understanding the nature of acts committed by him as experience has shown that different individuals react differently to same or similar situations. Be that as it may, PWs 1, 2 and 3 reached the same place of incident but could shed no light on the Prosecution case. PW-4 was a labourer in the nearby cardamom drying shed of another person, who stated that, after his arrest on interrogation by the Police, the Appellant confessed to the murder of the two victims. PW-5 reached the cardamom drying shed at around 00.07 p.m. and saw the dead body of the female victim. PW-6 reached the place of occurrence on the next day at around 12 noon where he saw the dead body of the female victim. That, on arrest, the Appellant revealed that he had killed the other labourer Mikmar Lepcha, whose dead body was found in the brook near the cardamom drying shed. PW-7 had also accompanied his co-villager to the place of occurrence where they saw the dead body of the female victim, below the cardamom drying shed of one Chundu Lepcha and that of Mikmar Lepcha near a brook. PW-8 who conducted the postmortem of both the victims found several

⁸ (2011) 7 SCC 110

incised lacerated and burn injuries on the body of Mikmar Lepcha, while lacerated injuries were found on the body of Dhan Keshi Tamang. PW-9, who was posted as Medical Officer, District Hospital Mangan, deposed that the previous Medical Officer at the District Hospital, Mangan had examined the Appellant at the relevant time. His cross-examination would reveal that when the Appellant was thus examined, his past medical history was not obtained from him or his guardians. PW-10 is the daughter of the female victim, who received her dead body and performed her funeral rites. PWs 11 and 12 are the neighbors of the deceased Mikmar Lepcha who received his dead body. PW-13 was the Junior Scientific Officer, Biology Division, Regional Forensic Scientific Laboratory, Saramsa, Ranipool, Sikkim, who on 14-01-2020 received 20 requisites forwarded by the Prosecution to him for forensic tests and identified the blood group of the Appellant and both victims as "AB". That, the blood stains on an axe with an iron handle also bore the same blood group. It is relevant to note at this juncture that no injuries were found on the Appellant, which thereby concludes that the blood on the axe handle was that of one of the deceased persons. PW-14, the IO in his evidence before the Learned Trial Court deposed that, the Appellant confessed to having committed the murder of his two colleagues, working with him at the cardamom drying shed, on 01-12-2019. That after having dinner, the Appellant and the deceased Mikmar Lepcha were sitting near the fire place while Dhan Keshi Tamang was cleaning the utensils. As Mikmar Lepcha declined to give the Appellant some tobacco, the Appellant took a wooden plank and hit Mikmar Lepcha, who fell on the ground near the fire place. Dhan Keshi Tamang who questioned his act, was assaulted with an axe on her

forehead as a result of which she fell to the ground and succumbed to her injuries.

(ii) The mother of the Appellant sought to be and was examined as DW-1, by the Appellant. She had no documents to support her claims that the Appellant was mentally ill as also DW-3, his sister, but they were both aware that the Appellant had been a patient of mental illness. DW-3 was categorical in her evidence that during the year 2011-12 she took the Appellant who was depressed to Dr. I. L. Sharma. Subsequently, she took him to DW-2, the Psychiatrist. On November, 2018, he was last treated by the Psychiatrist. DW-2 was the Psychiatrist at the District Hospital, Singtam, and was re-examined by the Learned Trial Court in terms of the Order of this Court dated 02-08-2023. DW-2 in his evidence identified the Appellant. He stated that from 2015-2019 he was posted as Head of the Department, Psychiatry, District Hospital, Singtam. He had diagnosed the Appellant with Psychosis on 27-11-2017 and the Appellant was under his treatment at the District Hospital, Singtam. The Appellant came to him for treatment till 18-12-2017. He identified Exhibit D2/DW-2 as the certificate issued by him dated 08-06-2023, wherein he had mentioned that the Appellant came to him for treatment on 27-11-2017 and 18-12-2017. He identified Exhibit D2/DW-2 which bore his signature Exhibit D2(a)/DW-2. According to him along with Exhibit D2/DW-2 he also provided certified copies of the medical report of the Appellant, maintained at the District Hospital, Singtam pertaining to the two dates (*supra*) when the Appellant had come to him for treatment. Exhibit D3/DW-2 was identified as the certified copy of the page pertaining to "New Patient's Register" wherein on 27-11-2017 the name of the Appellant was entered at Serial No.52.

Exhibit D4/DW-2 was identified as the certified copy of the relevant page of the follow up register. He identified his signature also on the said documents which evidence was un-decimated under cross-examination. DW-4 who treated the Appellant is the Consultant Psychiatrist, at STNM Hospital, Gangtok. According to him the Appellant had been his patient since May, 2020 and his name was entered in Exhibit D1/DW-4, the prisoners treatment book. On 02-02-2022 at around 1400 hours the Appellant attempted to commit suicide by hanging but his attempt was thwarted due to the intervention by the prison inmates. Thereafter, he was admitted to the Psychiatric ward of STNM Hospital on 02-02-2022 and discharged on 11-02-2022. According to DW-4;

- “
5. It is true that in the absence of regular treatment the symptoms of Psychosis can trigger anytime in a person suffering from Psychosis. A patient of Psychosis requires regular treatment for a long duration of time.
 6. It is true that a patient of Psychosis often have a lack of insight and during the acute phase of illness, they are unaware of the consequences of their action.
 7. During the phase of his illness, later on he started to develop depressive symptoms and that could be the cause of him trying to commit suicide in jail.”

The Learned Trial Court put some queries to the witness *viz.* ;

“Court Question

4. What is Psychosis?
 Ans: It is an acutely severe mental disorder when the patient loses contact with reality along with absolute lack of empathy and absence of insight.
5. It is true that I received information from State Central Prison, Rongyek stating that the convict had tried to commit suicide. It is also true that I was not present in the jail when the accused allegedly tried to take his life.
6.
7. It is true that I cannot say if the convict was suffering from Psychosis prior to the incident, since, I did not examine him prior to the incident/date of offence.
8. It is not a fact that the convict is not a patient of Psychosis.
9.”

9. We have considered and analyzed the evidence on record, we have also seen the medical reports furnished before this Court and the evidence recorded post the petition filed under Section 391 of the Cr.P.C. The Learned Trial Court based the conviction of the Appellant by discussing three legal principles i.e., the last seen theory, circumstantial evidence and the extra judicial confession of the Appellant before the PW-2. The Learned Trial Court framed two points for consideration and determination as follows;

"POINT NO.(i)

(i) Whether the accused committed the murder of the deceased Mikmar Lepcha and Dhan Keshi Tamang, labourers of Dhan Bahadur Limboo @ Tarbotay Limboo of Chadey, North Sikkim in the evening of 01.12.2019 at the drying shed of cardamom at Sumindang, Upper Dzongu, North Sikkim.

(ii) Whether accused was insane at the time of the commission of offence?"

(i) The Learned Trial Court while discussing issue no.1 relied on ***Sharad Birdhichand Sarda vs. State of Maharashtra***⁹, where the five principles of circumstantial evidence which have now come up known as panchsheel principles were discussed. The Learned Trial Court relied on the evidence of PW-2 who had employed the Appellant and the two deceased persons, PWs 1 and 4 the labourers of another cardamom field owner, as well as of DW's 1 and 3, who had confirmed that the Appellant was working in the cardamom field of PW-2. That, their evidence established that the Appellant was last seen with the deceased persons. That, the expert opinion of PW-13, who found the blood on the axe, sickle and jeans pants of the Appellant with blood group "AB" created a link of circumstantial evidence against the Appellant in the commission of the offence. As regards extra judicial confession the

⁹ AIR 1984 SC 1622

Learned Trial Court concluded that the Appellant had admitted to PW-2 that he had murdered the two victims, using the axe with an iron handle only corroborated by DW-1. In addition to the above, the Learned Trial Court also took into consideration the response of the Appellant in his Section 313 Cr.P.C. statement in question nos.25, 30 and 60. The Court while discussing the second point formulated, proceeded to discuss Section 84 of the IPC and the decision of the Supreme Court in **T. N. Lakshmaiah vs. State of Karnataka**¹⁰. While considering the doctrine of burden of proof in the context of the plea of insanity, in Paragraph 22 of the impugned Judgment it was recorded *inter alia* as follows;

“22. Arguments raised by defence is to be replied. In the present case, accused no where taken plea of insanity during investigation, inquiry and trial of this case or even during his examination under section 313 Cr.P.C. At the fag end of the trial, accused produced and examined DW-1 to DW-3 to prove legal insanity without supporting documentary evidence. DW1, DW-2 & DW-3 are unable to say whether accused was insane at the time of commission of offence or not. There are no other evidence to establish that accused was suffered from legal insanity at the time of commission of offence. Accordingly, accused is unable to establish the existence of circumstances as required by section 105 of the Indian Evidence Act, 1872 so as to entitle the benefit of section 84 of the IPC. Accordingly, point no(ii) is also decided against the accused.”

Consequently, the trial concluded in the conviction.

(ii) The evidence on record perused by us establishes that the Appellant attacked and caused the death of Mikmar Lepcha and Dhan Keshi Tamang.

(iii) Having carefully considered the findings of the Learned Trial Court, we are of the considered view that the Learned Trial Court erred in ignoring the evidence furnished by the Appellant regarding his medical condition.

(iv) Concededly the Learned Trial Court did not have the benefit of the documentary evidence furnished before us pursuant

¹⁰ AIR 2001 SC 3828

to the Order dated 02-08-2023, on a petition filed by the Appellant under Section 391 of the Cr.P.C. However, the Learned Trial Court did have the aid of the evidence of DW-1, DW-2 and DW-3, with DW-2 having deposed about the mental health status of the Appellant and that he suffered from Psychosis.

10. It emerges from the evidence and documents placed before us that as far back as in 2011-12 the Appellant was suffering from mental illness. He was then taken for treatment as per the evidence of DW-3 to a Psychiatrist the same year and in the year 2017 to DW-2. It is the specific statement of DW-2 and DW-4 that the disease can relapse if the patient is not continuously treated by the doctor at regular intervals of time. Post the incident, the medical history and the mental status of the Appellant came to light. Exhibit D1/DW-4, dated 26-05-2020 reveals that the Appellant was a "follow up case of Psychosis". The drugs prescribed to him were; 1. Tab. Olana 10 mg – ½ - X 1 (2 weeks) 2. Tab. Clopa MD 0.5 mg – X – X – 1 (2 weeks) from 12-05-2020. On 10-05-2022, the medical document reveals as follows;

"Date / Time	FOLLOW UP NOTE
10/05/2022	Follow up case Psychosis with comorbid depression. Better No fresh complaints Sleep – Normal No delusion. Appetite – Normal No Hallucinations <u>Adv.</u> 1. Tab. Oleanz RT 10 mg – BD x 1 month. 2. Cap. Prodep 40 mg – OD x 1 month. Sd/-"
Review within 1 month or SOS	

(i) It is thus clear that the medical history of the Appellant when tested on the anvil of the principles as put forth in **Prakash Nayi alias Sen (supra)**, indicates that the Appellant was a patient of mental illness thereby raising doubts about his mental health at the

time of the offence. The findings of the Learned Trial Court that the plea of insanity was an afterthought is perverse and against the weight of evidence furnished by the Appellant.

11. We are of the considered opinion that the Appellant has been able to create sufficient doubt in our minds that he is entitled to the benefit of the exception under Section 84 of the IPC on account of his medical history, medical documents and his medical condition at the time of the offence. He was suffering from mental illness, preceding the incident and post the incident. His behaviour immediately after the incident is evidently abnormal as revealed by the evidence of PW-2. The Appellant is thereby entitled to the benefit of doubt.

12. Consequently, the Appellant is acquitted of the offence under Section 300 of the IPC punishable under Section 302 of the IPC.

13. The Appellant be handed over to the Head of Department, Psychiatry, in the STNM Hospital by the Jail Authorities. He shall be taken into psychiatric care and hospitalized till such time the Psychiatrist deems it necessary. The relevant provisions of Section 335 of the Cr.P.C. shall be duly complied with by the Hospital Authorities.

14. Appeal allowed.

15. Fine, if any, deposited by the Appellant in terms of the impugned Order on sentence, be reimbursed to him.

16. Copy of this Judgment be forwarded to the Learned Trial Court forthwith along with its records as also to the Jail Authorities and to the Sikkim State Legal Services Authority, Gangtok, for monitoring the condition of the Appellant and

rendering assistance where required, while abiding by applicable rules.

(**Bhaskar Raj Pradhan**)
Judge
24-04-2024

(**Meenakshi Madan Rai**)
Judge
24-04-2024

Approved for reporting : **Yes**