PRADIP MOHANTY, J & B.K.PATEL, J.

JCRLA NO.61 OF 2002 (Decided on 29.07.2011)

JAYAKRUSHNA SENAPATI …….. Appellant.

.Vrs.

STATE OF ORISSA ……Respondent.

PENAL CODE, 1860 (ACT NO.45 OF 1860) – S.84.

For Appellant - Mr. Prajit Ku. Pradhan
On behalf of P.K.Mohanty-2.
For Respondent - Mr. Anupam Rath,
Additional Standing Counsel

B.K. PATEL, J. For having committed murder of his wife deceased Debaki and daughter deceased Pratima, by the judgment and order dated 12.12.2002 passed by learned Additional Sessions Judge (I), Dhenkanal in Sessions Trial No.309 of 2001 the appellant stands convicted and sentenced to undergo rigorous imprisonment for life under Section 302 of the Indian Penal Code (for short 'the I.P.C.').

2. Prosecution case, in brief, is as follows:

Occurrence took place in the house of the appellant and deceased persons on 11.3.2001 at about 4.30 A.M. Appellant was residing with the deceased persons as well as his son informant P.W.1 and daughter P.W.2. Deceased persons were not happy with the appellant as he did not do any work and used to take liquor regularly. Prior to the occurrence appellant had threatened to kill the deceased persons on several occasions. In the evening of 10.3.2001, appellant called his deceased wife to stay with him in the Attu (flat ceiling below the roof) of their house. Early in the following morning when deceased Debaki wanted to go out to attend call of nature, appellant asked her to call the deceased Pratima to the Attu. Accordingly, Pratima went to the Attu. Appellant killed both the deceased persons by assaulting them with axe M.O.I. Hearing hullah, deceased Debaki's brother P.W.3 and other co-villagers reached the spot. Appellant pelted stones at them and prevented them from approaching the Attu.

On the basis of P.W.1's oral narration of the occurrence, P.W.8, the S.I. of police of Bhapur Outpost under Sadar P.S., Dhenkanal prepared First Information Report Ext.1, sent it for registration to the police station and took up investigation. P.W.8 visited the spot and examined the witnesses. He held inquest over the dead body of the deceased in presence of P.Ws.3 and 4. The appellant was arrested. Seizure of axe M.O.I and other articles were also effected in presence of witnesses including P.Ws.3 and 4. P.W.6, Assistant Surgeon, District Hospital, Dhenkanal conducted post mortem examination over the dead bodies of the deceased persons and submitted post-mortem

examination reports Exts.9 and 10. P.W.8 also got the seized axe M.O.I examined by P.W.6 and the appellant medically examined by P.W.7, Medical Officer, Government Hospital, Bhapur. On completion of investigation, charge-sheet was submitted against the appellant.

3. Appellant pleaded denial to the charge of murder. In course of cross-examination of the prosecution witnesses, defence took the plea of insanity of the appellant during the period of occurrence.

4. In order to substantiate the charge, prosecution examined eight witnesses. All the P.Ws. except P.W.5 have already been introduced in course of narration of the prosecution case. P.W.5, a constable attached to Bhapur Outpost assisted the investigating officer. Prosecution also relied upon documents marked Exts.1 to 13 and material exhibits M.Os.I to V.

No evidence, oral or documentary, was adduced by the defence.

5. Placing reliance mainly on the evidence of P.Ws.1 and 2 stated to have been corroborated by the evidence of P.W.3 as well as medical evidence and other incriminating circumstances, learned trial court held the prosecution to have established the charge against the appellant. It also held that materials on record do not support the defence plea of insanity.

6. Mr. Prajit Ku. Pradhan, learned counsel for the appellant, strenuously argued that the learned trial court has utterly failed to appreciate the circumstances indicating appellant's insanity at the time of occurrence. It was contended that learned court below ought to have held that the appellant is entitled to avail the benefit of the general exception under Section 84 of the I.P.C. It was urged that so far as the standard of proof is concerned, it is not required to be proved beyond reasonable doubt, the standard of proof required to be discharged by prosecution in criminal trial. Also accused is not required to adduce evidence in support of the plea of insanity. Probability factors available from the evidence adduced by the prosecution supporting the plea of insanity are sufficient to discharge the defence of the burden to avail the benefit under Section 84 of the I.P.C. It was argued that prosecution evidence is altogether silent regarding the motive on the part of the appellant to commit murder of his wife and daughter. There is no material on record to indicate that appellant made any preparation to commit the offence, or made any attempt to conceal or escape after the occurrence. Such conduct is not expected from a person unless he is of unsound mind. Therefore, it was contended, materials on record establish that the appellant committed the offence in a spell of insanity at the time of occurrence.

In order to substantiate the contentions, Mr. Pradhan, learned counsel for the appellant relied upon the decisions of the Hon'ble Supreme Court in **Shrikant Anandrao Bhosale –vrs.- State of Maharashtra** : 2002 CRI. L. J. 4356 and **State of Kerala –vrs.- Anilachandran @ Madhu and Ors.** : (2009) 43 OCR (SC) 382 as well as decision of this Court in **Budu Hontal –vrs.- State of Orissa** : 2002 (I) OLR 516.

7. Mr. Anupam Rath, learned Additional Standing Counsel, in reply, supported and defended the impugned judgment. Referring to evidence it was submitted that except putting suggestion to the prosecution witnesses that appellant was of unsound mind, appellant did not make any attempt to discharge the burden of proof that his case comes within the exception under Section 84 of the I.P.C. Such suggestion was denied by P.Ws.1 and 3. Though suggestion was made on behalf of the defence that the appellant was treated in the hospital at Cuttack for insanity, no attempt was made to lead evidence on that score. It was also argued that it is in the evidence that deceased persons were not happy with the appellant as he used to take liquor regularly. Appellant had threatened to kill the deceased persons. He was ready with an axe in the Attu. When appellant's wife desired to leave the Attu in order to attend call of nature, appellant ensured presence of his deceased daughter. Appellant also resisted his apprehension by pelting stones at the villagers. Therefore, there is no basis to sustain the contention that materials on record probabalise the plea of insanity. Placing reliance on the decision of this Court in **Sudarsan Dehury –vrs.- State of Orissa** : (2011) 48 OCR 309 it was further argued that absence of proof of motive on the part of the accused to kill his wife and child by itself does not indicate that appellant was insane or that he did not have the necessary *mens rea* to commit the offence.

8. Having scrutinized the evidence on record upon reference to rival contentions, it is found that finding of the learned trial court to the effect that appellant committed murder of his wife and daughter is neither assailed nor assailable. P.W.6 detected multiple cut injuries on the dead bodies. Internally there were fractures on right mandible and left neck of humorus of deceased Debaki. Trachea and external carotid artery of both the deceased were cut. Deceased were found to have died due to respiratory failure with shock and haemorrhage. It was categorically opined by P.W.7 that M.O.I, the axe, seized in course of investigation, could cause injuries on the deceased persons.

9. P.Ws.1 and 2 are respectively son and daughter of the appellant and deceased Debaki. Both of them testified that prior to the occurrence appellant had threatened to kill the deceased persons. It is in the evidence of P.W.1 that appellant threatened to kill the deceased persons on many occasions. During the period of occurrence, appellant used to stay in the Attu. In the night of occurrence appellant did not allow his wife to leave the Attu. In the early morning deceased Debaki wanted to come down from the Attu in order to attend call of nature. But the appellant directed her to call the deceased Pratima. Appellant told that deceased Pratima would stay with him and then deceased Debaki would leave in order to attend call of nature. Being called by deceased Debaki, deceased Pratima went to the Attu. Appellant assaulted both the deceased persons by means of an axe. Deceased persons raised shout for some time and thereafter they did not raise any shout. P.W.1 said that appellant threatened to kill another person. P.W.1 came out of the house and raised hullah. Hearing his hullah, P.W.3 and other villagers came. When they wanted to catch hold the appellant, the appellant pelted stones at them. Villagers also pelted stones at the appellant which caused injuries on him. P.W.1 testified to have reported regarding the occurrence before P.W.8 at Bhapur Outpost soon after the occurrence. Evidence of P.W.1 with regard to the occurrence gets square corroboration from F.I.R. Ext.1 as well as evidence of P.W.2. Post occurrence witness P.W.3 also supports the evidence of the eye witnesses.

10. Thus, in the present case prosecution has adduced cogent and unimpeachable evidence in support of charge of murder against the appellant. Finding of the learned trial Judge to that effect is based mainly on ocular evidence of P.Ws.1 and 2 who are respectively son and daughter of the deceased Debaki and the appellant. In **State of Kerala –vrs.- Anilachandran @ Madhu and Ors.** (supra) relied upon by the learned counsel for the appellant it has been pointed out that merely because the accused was not able to prove his defence, it cannot be presumed that prosecution case is proved against him. Prosecution having established the charge of murder against the appellant in the present case beyond reasonable doubt on the basis of evidence on record, the decision is of no assistance to the appellant.

11. Both P.Ws.1 and 2 testified that prior to the occurrence the appellant used to threaten to kill the deceased persons. P.W.3 deposed in course of his cross-examination that deceased Debaki as well as the children were not happy with the appellant as he was taking liquor regularly. Thus, it is in the evidence that relationship between the appellant on the one hand and his family members on the other was strained. Therefore, it is futile to urge that prosecution has altogether failed to establish the motive on the part of appellant to commit murder of the deceased persons.

12. Moreover, failure to prove motive on the part of the accused in committing murder of his wife and child by itself would not indicate that accused had no *mens rea* for commission of the offence. In **Sheralli Wali Mohammed –v- State of Maharashtra**: AIR 1972 SC 2443; Hon'ble Supreme Court held:

> "In order to see whether the accused was insane at the time of the commission of the offence, the state of his mind before and after the commission of the offence is relevant. The law presumes every person of the age of discretion to be sane unless the contrary is proved. It would be most dangerous to admit the defence of insanity upon arguments derived merely from the character of the crime. The mere fact that no motive has been proved why the accused murdered his wife and child or, the fact that he made no attempt to run away when the door was broken open, would not indicate that he was insane or, that he did not have the necessary *mens rea* for the commission of the offence."

In this connection, decision of this Court in **Sudarsan Dehury –v- State of Orissa (**supra**)** may also be referred to.

13. In order to be entitled to benefit under section 84 of the I.P.C.totality of the given circumstances must indicate that accused was under delusion at the time of commission of the offence. Question whether accused has proved existence of circumstances bringing his case within the purview of section 84 has to be examined from the totality of the circumstances. The unsoundness of mind as a result whereof one is incapable of knowing consequences is a state of mind of a person which, ordinarily can be inferred from the circumstances. As has been held by the Hon'ble Supreme Court in **Shrikant**

Anandrao Bhosale –vrs.- State of Maharashtra (supra**),** relied upon on behalf of appellant, that if an act is committed out of extreme anger and not as a result of unsoundness of mind, accused would not be entitled to the benefit of exception as contained in Section 84 of the I.P.C. Undisputedly, accused is not required to establish plea of unsoundness beyond reasonable doubt. Burden of proof upon him is no higher than that rests upon a party to civil proceedings. Probability factors in support of plea of insanity can be gathered from the prosecution evidence also. In **Shrikant Anandrao Bhosale –vrs.- State of Maharashtra** (supra**)** it has also been pointed out that the facts that the accused did not make any attept to run away or that he committed crime in day light and did not try to hide it or that motive to kill his wife was very weak would not itself indicate insanity. It would not only be the aforesaid facts but it would be the totality of the circumstances seen in the light of the evidence on record, should prove that the accused was suffering from paranoid schizophrenia. The unsoundness of mind before and after incident would be a relevant fact.

14. In the present case, there is nothing on record to indicate that appellant suffered from delusion due to unsoundness of mind at the time of occurrence. Since the previous evening he was prepared with axe M.O.I in the Attu and he compelled his deceased wife to stay with him. In the morning he told his deceased wife that he would not allow her to go to attend call of nature unless she called their deceased daughter to the Attu. After commission of offence appellant pelted stones at the villagers in order to prevent them from apprehending him. Conduct of the appellant at the time of occurrence coupled with the fact that he used to threaten the deceased wife of murder militates against any inference, much less reasonable, in support of appellant's plea of insanity. In spite of blunt denial by P.Ws. 1 and 2 to the defence suggestion that appellant was insane, and positive statement of P.W. 2 in her cross-examination that no symptom of mental unsoundness was found on the appellant, no defence evidence has been adduced. Therefore, there appears no infirmity in the impugned judgment rejecting the plea of insanity. There is no merit in the appeal.

15. In the result, appeal is dismissed. The impugned judgment and order are confirmed.

Appeal dismissed.