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March 19

DAHYABHAI CHHAGANBHAI THAKKER

v.

STATE OF GUJARAT

[K. SUBBA RAO, K. C. DAS GUPTA AND RAGHUBAR DAYAL, JJ.]

Criminal Law—Burden of proof of guilt—General and special burdens, if in conflict—Plea of insanity—Mode of proof enumerated—Questions under s. 154 of Evidence Act—When court can permit—Indian Penal Code, 1860 (*Act* 45 *of* 1860), *ss.* 80, 84, 299—*Indian Evidence Act,* 1872 (1 *of* 1872), *ss.* 105, 137, 154.

The appellant was charged with murdering his wife. Before the Sessions Judge a defence was set up that the appellant was insane when the incident took place and was not capable of understanding the nature of his act. The Sessions Judge rejected the plea of insanity and convicted him under s. 302 of the Indian Penal Code. On appeal the High Court confirmed the conviction.

Held—(i) There is no conflict between the general burden to prove the guilt beyond reasonable doubt, which is always on the prosecution and which never shifts, and the special burden that rests on the accused to make out his defence of insanity.

(ii) The doctrine of burden of proof in the context of the plea of insanity may be stated in the following propositions: (1). The prosecution must prove beyond reasonable doubt that the accused had committed the offence with the requisite *mens rea;* and the burden of proving that always rests on the prosecution from the beginning to the end of the trial. (2) There is a rebuttable presumption that the accused was not insane, when he committed the crime, in the sense laid down by s. 84 of the Indian Penal Code: 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. (3) 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.

K. M. Nanavati v. *State of Maharashtra,* [1962] *Supp.* 1 S.C.R. 567, followed.

Ramhitram v. *State,* A.I.R. 1956 Nag. 187, disapproved.

Kamla Singh v. *State,* A.I.R. 1955 Pat. 209, approved.

H. M. Advocate v. *Fraser,* (1878)4 Couper 70, referred to.

(iii) The court can permit a person, who calls a witness, to put questions to him which might be put in cross-examination, at any stage of the examination of the witness, provided it takes care to give an opportunity to the accused to cross-examine him on the answers elicited which do not find place in the examination-in-chief.

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Section 137 of the Evidence Act, gives only the three stages in the examination of a witness, and it has no relevance to the question when a party calling a witness can be permitted to put to him questions under s. 154 of the Evidence Act: that is governed by the provisions of s. 154 of the said Act, which confers a discretionary power on the court to permit a person who calls a witness to put any questions to him which might be put in cross-examination by the adverse party.

Tahsildar Singh v. *The State of U.P.*, [1959] Supp. 2 S.C.R. 875, followed.

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 58 of 1962. Appeal by special leave from the judgment and order dated June 27, 1961 of the Gujarat High Court in Criminal Appeal No. 656/1960.

B. K. Banerjee, for the appellant.

D. R. Prem, R. H. Dhebar and *B. R. G. K. Achar*, for the respondent.

March 19, 1964. The Judgment of the Court was delivered by

Subba Rao, J.

SUBBA RAO, J.—This appeal raises the question of the defence of insanity for an offence under s. 302 of the Indian Penal Code.

The appellant was the husband of the deceased Kalavati. She was married to the appellant in the year 1958. On the night of April 9, 1959, as usual, the appellant and his wife slept in their bed-room and the doors leading to that room were bolted from inside. At about 3 or 3.30 a.m. on the next day Kalavati cried that she was being killed. The neighbours collected in front of the said room and called upon the accused to open the door. When the door was opened they found Kalavati dead with a number of wounds on her body. The accused was sent up for trial to the sessions on the charge of murder. Before the Additional Sessions Judge, Kaira, a defence was set up that the accused was insane when the incident was alleged to have taken place and was not capable of understanding the nature of his act.

The learned Additional Sessions Judge considered the entire evidence placed before him, and came to the conclusion that the accused had failed to satisfy him that when he committed the murder of his wife he was not capable to knowing the nature of the act and that what he was doing was either wrong or contrary to law. Having rejected his plea of insanity, the learned Additional Sessions Judge convicted him under s. 302 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for life. On appeal

the High Court agreed with that finding, though for different reasons, and confirmed the conviction and sentence of the accused. Hence the present appeal.

Learned counsel for the appellant contended that the High Court, having believed the evidence of the prosecution witnesses, should have held that the accused had discharged the burden placed on him of proving that at the time he killed his wife he was incapable of knowing the nature of his act or what he was doing was either wrong or contrary to law. He further contended that even if he had failed to establish that fact conclusively, the evidence adduced was such as to raise a reasonable doubt in the mind of the Judge as regards one of the ingredients of the offence, namely, criminal intention, and, therefore, the court should have acquitted him for the reason that the prosecution had not proved the case beyond reasonable doubt.

Before we address ourselves to the facts of the case and the findings arrived at by the High Court, it would be convenient to notice the relevant aspects of the law of the plea of insanity. At the outset let us consider the material provisions without reference to decided cases. The said provisions are:

INDIAN PENAL CODE

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

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

INDIAN EVIDENCE ACT

Section 105—When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code (XLV 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.

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

"*Proved*"—A fact is said to be "proved" when after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

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

Section 101—Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of fact which he asserts, must prove that those facts exist.

When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

It is a fundamental principle of criminal jurisprudence that an accused is presumed to be innocent and, therefore, the burden lies on the prosecution to prove the guilt of the accused beyond reasonable doubt. The prosecution, therefore, in a case of homicide shall prove beyond reasonable doubt that the accused caused death with the requisite intention described in s. 299 of the Indian Penal Code. This general burden never shifts and it always rests on the prosecution. But, as s. 84 of the Indian Penal Code provides that nothing is an offence if the accused at the time of doing that act, by reason of unsoundness of mind was incapable of knowing the nature of his act or what he was doing was either wrong or contrary to law. This being an exception, under s. 105 of the Evidence Act the burden of proving the existence of circumstances bringing the case within the said exception lies on the accused; and the court shall presume the absence of such circumstances. Under s. 105 of the Evidence Act, read with the definition of "shall presume" in s. 4 thereof, the court shall regard the absence of such circumstances as proved unless, after considering the matters before it, it believes that said circumstances existed or their existence was so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that they did exist. To put

it in other words, the accused will have to rebut the presumption that such circumstances did not exist, by placing material before the court sufficient to make it consider the existence of the said circumstances so probable that a prudent man would act upon them. The accused has to satisfy the standard of a "prudent man". If the material placed before the court, such as, oral and documentary evidence, presumptions, admissions or even the prosecution evidence, satisfies the test of "prudent man", the accused will have discharged his burden. The evidence so placed may not be sufficient to discharge the burden under s. 105 of the Evidence Act, but it may raise a reasonable doubt in the mind of a judge as regards one or other of the necessary ingredients of the offence itself. It may, for instance, raise a reasonable doubt in the mind of the judge whether the accused had the requisite intention laid down in s. 299 of the Indian Penal Code. If the judge has such reasonable doubt, he has to acquit the accused, for in that event the prosecution will have failed to prove conclusively the guilt of the accused. There is no conflict between the general burden, which is always on the prosecution and which never shifts, and the special burden that rests on the accused to make out his defence of insanity.

The textbooks placed before us and the decisions cited at the Bar lead to the same conclusion. In Halsbury's Laws of England, 3rd edn., Vol. 10, at p. 288, it is stated thus:

> "The onus of establishing insanity is on the accused. The burden of proof upon him is no higher than which rests upon a party to civil proceedings."

Glanville Williams in his book 'Criminal Law", The General Part, 2nd Edn., places the relevant aspect in the correct perspective thus, at p. 516:

> "As stated before, to find that the accused did not know the nature and quality of his act is, in part, only another way of finding that he was ignorant as to some fact constituting an ingredient of the crime; and if the crime is one requiring intention or recklessness he must, on the view advanced in this book, be innocent of *mens rea.* Since the persuasive burden of proof of *mens rea* is on the prosecution, on question of defence, or of disease of the mind, arises, except in so far as the prisoner is called upon for his own safety to neutralise the evidence of the prosecution. No persuasive burden of proof rests on him, and if the jury are uncertain whether the allegation of *mens rea* is made out ..... the benefit of the doubt must be given to the prisoner, for, in the words

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of Lord Reading in another context, "the Crown would then have failed to discharge the burden imposed on it by our law of satisfying the jury beyond reasonable doubt of the guilt of the prisoner."

This Court in *K. M. Nanavati* v. *State of Maharashtra*(1) had to consider the question of burden of proof in the context of a defence based on the exception embodied in s. 80 of the Indian Penal Code. In that context the law is summarized thus:

> "The alleged conflict between the general burden which lies on the prosecution and the special burden imposed on the accused under s. 105 of the Evidence Act is more imaginary than real. Indeed, there is no conflict at all. There may arise three different situations: (1) A statute may throw the burden of proof of all or some of the ingredients of an offence on the accused: (see ss. 4 and 5 of the Prevention of Corruption Act). (2) The special burden may not touch the ingredients of the offence, but only the protection given on the assumption of the proof of the said ingredients: (see ss. 77, 78, 79, 81 and 88 of the Indian Penal Code). (3) It may relate to an exception, some of the many circumstances required to attract the exception, if proved, affecting the proof of all or some of the ingredients of the offence: (see s. 80 of the Indian Penal Code). ..... In the third case, though the burden lies on the accused to bring his case within the exception the facts proved may not discharge the said burden, but may affect the proof of the ingredients of the offence."

After giving an illustration, this Court proceeded to state:

> "That evidence may not be sufficient to prove all the ingredients of s. 80 of the Indian Penal Code, but may prove that the shooting was by accident or inadvertence, *i.e.*, it was done without any intention or requisite state of mind, which is the essence of the offence, within the meaning of s. 300, Indian Penal Code, or at any rate may throw a reasonable doubt on the essential ingredients of the offence of murder.....In this view it might be said that the general burden to prove the ingredients of the offence, unless there is a specific statute to the contrary, is always on the prosecution, but the burden to prove the circumstances coming under the exceptions lies upon the accused."

(1) [1962] Supp. 1 S.C.R. 567, 597, 598.

What is said of s. 80 of the Indian Penal Code will equally apply to s. 84 thereof. A Division Bench of the Patna High Court in *Kamla Singh* v. *The State* (1) invoked the same principle when the plea of insanity was raised. A Division Bench of the Nagpur High Court in *Ramhitram* v. *State*(2) has struck a different note inasmuch as it held that the benefit of doubt which the law gives on the presumption of innocence is available only where the prosecution had not been able to connect the accused with the occurrence and that it had nothing to do with the mental state of the accused. With great respect, we cannot agree with this view. If this view were correct, the court would be helpless and would be legally bound to convict an accused even though there was genuine and reasonable doubt in its mind that the accused had not the requisite intention when he did the act for which he was charged. This view is also inconsistent with that expressed in *Nanavati's* case(3). A Scottish case, *H.M. Advocate* v. *Fraser*(4), noticed in Glanville Williams' "Criminal Law", The General Part, 2nd Edn., at p. 517, pinpoints the distinction between these two categories of burden of proof. There, a man killed his baby while he was asleep; he was dreaming that he was struggling with a wild beast. The learned author elaborates the problem thus:

> "When the Crown proved that the accused had killed his baby what may be called an evidential presumption or presumption of fact arose that the killing was murder. Had no evidence been adduced for the defence the jury could have convicted of murder, and their verdict would have been upheld on appeal. The burden of adducing evidence of the delusion therefore lay on the accused. Suppose that, when all the evidence was in, the jury did not know what to make of the matter. They might suspect the accused to be inventing a tale to cover his guilt, and yet not be reasonably certain about it. In that event the accused would be entitled to an acquittal. The prosecution must prove beyond reasonable doubt not only the *actus reus* but the *mens rea*."

The doctrine of burden of proof in the context of the plea of insanity may be stated in the following propositions: (1) The prosecution must prove beyond reasonable doubt that the accused had committed the offence with the requisite *mens rea;* and the burden of proving that always rests on the prosecution from the beginning to the end of the trial. (2) There is a rebuttable presumption that the accused was not insane, when he committed the crime, in the sense laid down by s. 84 of the

(1) A.I.R. 1955 Pat. 209. (2) A.I.R. 1956 Nag. 187.
(3) [1962] Supp. 1 S.C.R. 567. (4) (1878) 4 Couper 70.

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Indian Penal Code: 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 rests upon a party to civil proceedings. (3) 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.

Now we come to the merits of the case. Ordinarily this Court in exercise of its jurisdiction under Art. 136 of the Constitution accepts the findings of fact arrived at by the High Court. But, after having gone through the judgments of the learned Additional Sessions Judge and the High Court, we are satisfied that this is an exceptional case to depart from the said practice. The learned Additional Sessions Judge rejected the evidence of the prosecution witnesses on the ground that their version was a subsequent development designed to help the accused. The learned Judges of the High Court accepted their evidence for two different reasons. Raju, J., held that a court can permit a party calling a witness to put questions under s. 154 of the Evidence Act only in the examination-in-chief of the witness; for this conclusion, he has given the following two reasons: (1) the wording of ss. 137 and 154 of the Evidence Act indicates it, and (2) if he is permitted to put questions in the nature of cross-examination at the stage of re-examination by the adverse party, the adverse party will have no chance of cross-examining the witness with reference to the answers given to the said questions. Neither of the two reasons, in our view, is tenable. Section 137 of the Evidence Act gives only the three stages in the examination of a witness, namely, examination-in-chief, cross-examination and re-examination. This is a routine sequence in the examination of a witness. This has no relevance to the question when a party calling a witness can be permitted to put to him questions under s. 154 of the Evidence Act: that is governed by the provisions of s. 154 of the said Act, which confers a discretionary power on the court to permit a person who calls a witness to put any questions to him which might be put in cross-examination by the adverse party. Section 154 does not in terms, or by necessary implication confine the exercise of the power by the court before the examination-in-chief is concluded or to any particular stage of the examination of the witness. It is wide in scope and the discretion is entirely left to the court to exercise the power when the circumstances demand. To confine this power to the stage of examination-in-chief is to make

it ineffective in practice. A clever witness in his examination-in-chief faithfully conforms to what he stated earlier to the police or in the committing court, but in the cross-examination introduces statements in a subtle way contradicting in effect what he stated in the examination-in-chief. If his design is obvious, we do not see why the court cannot, during the course of his cross-examination, permit the person calling him as a witness to put questions to him which might be put in cross-examination by the adverse party. To confine the operation of s. 154 of the Evidence Act to a particular stage in the examination of a witness is to read words in the section which are not there. We cannot also agree with the High Court that if a party calling a witness is permitted to put such questions to the witness after he has been cross-examined by the adverse party, the adverse party will not have any opportunity to further cross-examine the witness on the answers elicited by putting such questions. In such an event the court certainly, in exercise of its discretion, will permit the adverse party to cross-examine the witness on the answers elicited by such questions. The court, therefore, can permit a person, who calls a witness, to put questions to him which might be put in the cross-examination at any stage of the examination of the witness, provided it takes care to give an opportunity to the accused to cross-examine him on the answers elicited which do not find place in the examination-in-chief. In the present case what happened was that some of the witnesses faithfully repeated what they had stated before the police in the examination-in-chief, but in the cross-examination they came out with the story of insanity of the accused. The court, at the request of the Advocate for the prosecution; permitted him to cross-examine the said witnesses. It is not suggested that the Advocate appearing for the accused asked for a further opportunity to cross-examine the witnesses and was denied of it by the court. The procedure followed by the learned Judge does not conflict with the express provisions of s. 154 of the Evidence Act. Mehta, J., accepted the evidence of the witnesses on the ground that the earlier statements made by them before the police did not contradict their evidence in the court, as the non-mention of the mental state of the accused in the earlier statements was only an omission. This reason given by the learned Judge is also not sound. This Court in *Tahsildar Singh* v. *The State of U.P.*[1] laid down the following test for ascertaining under what circumstances an alleged omission can be relied upon to contradict the positive evidence in court:

> "..... (3) though a particular statement is not expressly recorded, a statement that can be deemed to be part of that expressly recorded can be used

[1][1959] Supp. 2 S.C.R. 875, 903.

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for contradiction, not because it is an omission strictly so-called but because it is deemed to form part of the recorded statement; (4) such a fiction is permissible by construction only in the following three cases: (i) when a recital is necessarily implied from the recital or recitals found in the statement .....; (ii) a negative aspect of a positive recital in a statement .....; and (iii) when the statement before the police and that before the Court cannot stand together .....".

Broadly stated, the position in the present case is that the witnesses in their statements before the police attributed a clear intention to the accused to commit murder, but before the court they stated that the accused was insane and, therefore, he committed the murder. In the circumstances it was necessarily implied in the previous statements of the witnesses before the police that the accused was not insane at the time he committed the murder. In this view the previous statements of the witnesses before the police can be used to contradict their version in the court. The judgment of the High Court, therefore, in relying upon some of the important prosecution witnesses was vitiated by the said errors of law. We would, therefore, proceed to consider the entire evidence for ourselves.

When a plea of legal insanity is set up, 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 was doing what was either wrong or contrary to law. 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 s. 84 of the Indian Penal Code can only be established from the circumstances which preceded, attended and followed the crime.

The first question is, what is the motive for the appellant to kill his wife in the ghastly manner he did by inflicting 44 knife injuries on her body? Natverlal Atmaram, the father of the deceased Kalavati, was examined as P.W. 13. He said that about 20 days before his daughter was murdered he received a letter from the accused asking him to take away his daughter on the ground that he did not like her, that he went to Bherai with that letter, showed it to Chhaganbhai, the father of the accused, and had a talk with him about it; that Chhaganbhai took that letter from him and promised to persuade the accused not to discard his wife; that, after a week he again went to Bherai and asked the accused why he did not like the deceased and the accused replied that he did not like her as she was not working properly; and that thereafter he went back to his village and sent a message through someone that he would go

to Bherai to take his daughter on Chaitra Sudi 1. The murder took place on the night before Chaitra Sudi 1. In the cross-examination he admitted that he did not tell the police that he had given the letter to the father of the accused, but he told the Sub-Inspector that he had shown the letter to him. Chhaganlal, the father of the accused, as P.W. 7, no doubt denied that Natverlal gave him the letter written by the accused, but he admitted that Natverlal came to his village 10 or 15 days before the incident to take his daughter away. The evidence of Natverlal that he went to the village of the accused is corroborated by the evidence of P.W. 7. It is, therefore, likely that the accused wrote a letter to Natverlal to take away Kalavati and it is also likely that Natverlal gave that letter to P.W. 7 to persuade his son not to discard his wife. P.W.s 2 to 7 said in the cross-examination that the accused and his wife were on cordial terms, but, as we will indicate later in our judgment, all these witnesses turned hostile in the sessions court and made a sustained attempt to support the case of insanity. That apart, their evidence does not disclose what opportunities they had to notice the cordial relation that existed between the accused and the deceased. The learned Additional Sessions Judge rightly disbelieved their evidence. The learned Additional Sessions Judge, who had seen Natverlal in the witness-box, has accepted his evidence. We, having gone through his evidence, see no reason to differ from the opinion of the learned Additional Sessions Judge. It is also not denied that though the accused was in Ahmedabad for ten months, he did not take his wife with him. We accept the evidence of Natverlal and hold that the accused did not like his wife and, therefore, wanted his father-in-law to take her away to his home and that his father-in-law promised to do so before Chaitra Sudi 1.

The next question is, what was the previous history of the mental condition of the accused? Here again, the prosecution witnesses, P.W.s. 2 to 7, deposed for the first time in the sessions court that 4 or 5 years before the incident the accused was getting fits of insanity. But all these witnesses stated before the police that the accused had committed the murder of his wife, indicating thereby that he was sane at that time. Further, their evidence is inconsistent with the facts established in the case. During this period, it was admitted by P.W. 7, the accused was not treated by any doctor. Prior to the incident he was serving in Ahmedabad in Monogram Mills for about a year and a half. Though the father of the deceased was staying in a village only a few miles away from the village of the accused and though the betrothal was fixed 5 years before the marriage, he did not know that the accused was insane, for if he had known that such was the mental condition of the accused he would not have given his daughter in marriage to

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him. It is impossible to conceive that he would not have known that the accused was insane if he was really so, and particularly when it is the case of the accused that it was not kept secret but was well known to many people and to some of the witnesses, who came to depose for him. A month and a half prior to the incident Chhaganlal had gone to Ahmedabad for medical treatment and during that period the accused came from Ahmedabad to manage his father's shop in his absence. The fact that he was recalled from Ahmedabad was not disputed: but, while Natverlal said that the accused was recalled in order to manage Chhaganlal's shop in his absence, Chhaganlal said that he was recalled because he was getting insane. The best evidence would have been that of the relative in whose house the accused was residing in Ahmedabad. But the relative was not examined. It appears to us that the accused was serving in Ahmedabad in Monogram Mills and he was asked to come to the village of his father to attend to the latter's business a month and a half before the incident, as the father was leaving for Ahmedabad for medical treatment. Before the commencement of the trial in the sessions court on June 27, 1959, an application was filed on behalf of the accused, supported by an affidavit field by the father of the accused, praying that, as the accused had become insane, he should be sent for proper medical treatment and observation. In that affidavit it was not stated that the accused was getting fits of insanity for the last 4 or 5 years and that he had one such fit at that time. If that was a fact, one would expect the father to allege prominently the said fact in his affidavit. These facts lead to a reasonable inference that the case of the accused that he had periodical fits of insanity was an afterthought. The general statements of witnesses, P.W.s 1 to 6 that he had such fits must, therefore, necessarily be false. We, therefore, hold that the accused had no antecedent history of insanity.

Now coming to the date when the incident took place, P.W. 7, the father of the accused, said that the accused was insane for 2 or 3 days prior to the incident. His evidence further discloses that he and his wife had gone to Ahmedabad on the date of the incident and returned in the same evening. If really the accused had a fit of insanity a day or two before the incident, is it likely that both the parents would have left him and gone to Ahmedabad? To get over this incongruity P.W. 7 said that he went to Ahmedabad to see a bridegroom for his daughter and also to get medicine for the accused. But he did not say which doctor he consulted and wherefrom he purchased the medicines or whether in fact he bought any medicines at all. If the accused had a fit of insanity, is it likely that the wife would have slept with him in the same room? We must, therefore, hold that it had not been established that 2 or 3 days before the incident the accused had a fit of insanity.

Now we come to the evidence of what happened on the night of the incident. Nobody except the accused knows what happened in the bed-room. P.W.s 2 to 7 deposed that on the 10th April, 1959, corresponding to Chaitra Sudi 1, between 3 and 4 a.m. they heard shouts of the deceased Kalavati to the effect that she was being killed; that they all went to the room but found it locked from inside; that when the accused was asked to open the door, he said that he would open it only after the Mukhi (P.W. 1) was called; that after the Mukhi came there, the accused opened the door and came out of the room with a blood-stained knife in his hand; that the accused began talking irrelevantly and was speaking "why, you killed my mother?" "why, you burnt my father's house?"; that afterwards the accused sat down and threw dust and mud at the persons gathered there; and that he was also laughing without any cause. In short, all the witnesses in one voice suggested that the accused was under a hallucination that the deceased had murdered his mother and burnt his father's house and, therefore, he killed her in that state of mind without knowing what he was doing. But none of these witnesses had described the condition of the accused immediately when he came out of the room, which they did so graphically in the sessions court, at the time when they made statements before the police. In effect they stated before the police that the accused came out of the room with a blood-stained knife in his hand and admitted that he had murdered his wife; but in the witness-box they said that when the accused came out of the room he was behaving like a mad man and giving imaginary reasons for killing his wife. The statements made in the depositions are really inconsistent with the earlier statements made before the police and they are, therefore, contradictions within the meaning of s. 162 of the Code of Criminal Procedure. We cannot place any reliance on the evidence of these witnesses: it is an obvious development to help the accused.

The subsequent events leading up to the trial make it abundantly clear that the plea of insanity was a belated afterthought and a false case. After the accused came out of the room, he was taken to the *chora* and was confined in a room in the *chora*. P.W. 16, the police sub-inspector, reached Bherai at about 9.30 a.m. He interrogated the accused, recorded his statement and arrested him at about 10.30 a.m. According to him, as the accused was willing to make a confession, he was sent to the judicial magistrate. This witness described the condition of the accused when he met him thus:

> "When I went in the *Chora* he had saluted me and he was completely sane. There was absolutely no sign of insanity and he was not behaving as an insane man. He was not abusing. He had replied to

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my questions understanding them and was giving relevant replies. And therefore I had sent him to the Magistrate for confession as he wanted to confess."

There is no reason to disbelieve this evidence, particularly when this is consistent with the subsequent conduct of the accused. But P.W. 9, who attested the *panchnama*, Ex. 19, recording the condition of the accused's body and his clothes, deposed that the accused was murmuring and laughing. But no mention of his condition was described in the *panchnama*. Thereafter, the accused was sent to the Medical Officer, Mater, for examination and treatment of his injuries. The doctor examined the accused at 9.30 p.m. and gave his evidence as P.W. 11. He proved the certificate issued by him, Ex. 23. Nothing about the mental condition of the accused was noted in that certificate. Not a single question was put to this witness in the cross-examination about the mental condition of the accused. On the same day, the accused was sent to the judicial Magistrate, First Class, for making a confession. On the next day he was produced before the said Magistrate, who asked him the necessary questions and gave him the warning that his confession would be used against him at the trial. The accused was given time for reflection and was produced before the Magistrate on April 13, 1959. On that date he refused to make the confession. His conduct before the Magistrate, as recorded in Ex. 31, indicates that he was in a fit condition to appreciate the questions put to him and finally to make up his mind not to make the confession which he had earlier offered to do. During the enquiry proceedings under Ch. XVIII of the Code of Criminal Procedure, no suggestion was made on behalf of the accused that he was insane. For the first time on June 27, 1959, at the commencement of the trial in the sessions court an application was filed on behalf of the accused alleging that he was suffering from an attack of insanity. On June 29, 1959, the Sessions Judge sent the accused to the Civil Surgeon, Khaira, for observation. On receiving his report, the learned Sessions Judge, by his order dated July 13, 1959, found the accused insane and incapable of making his defence. On August 28, 1959, the court directed the accused to be sent to the Superintendent of Mental Hospital, Baroda, for keeping him under observation with a direction to send his report on or before September 18, 1959. The said Superintendent sent his report on August 27, 1960, to the effect that the accused was capable of understanding the proceedings of the court and of making his defence in the court. On enquiry the court held that the accused could understand the proceedings of the case and was capable of making his defence. At the commencement of the trial, the pleader for the accused stated that the accused could understand the proceedings. The proceedings before the

Sessions Judge only show that for a short time after the case had commenced before him the accused was insane. But that fact would not establish that the accused was having fits of insanity for 4 or 5 years before the incident and that at the time he killed his wife he had such a fit of insanity as to give him the benefit of s. 84 of the Indian Penal Code. The said entire conduct of the accused from the time he killed his wife upto the time the sessions proceedings commenced is inconsistent with the fact that he had a fit of insanity when he killed his wife.

It is said that the situation in the room supports the version that the accused did not know what he was doing. It is asked, why the accused should have given so many stabs to kill an unarmed and undefended woman? It is said that it discloses that the accused was doing the act under some hallucination. On the other hand the existence of the weapons in the room, the closing of the door from inside, his reluctance to come out of the room till the Mukhi came, even if that fact is true, would indicate that it was a premeditated murder and that he knew that if he came out of the room before the Mukhi came he might be manhandled. Many sane men give more than the necessary stabs to their victims. The number of blows given might perhaps reflect his vengeful mood or his determination to see that the victim had no escape. One does not count his strokes when he commits murder. We, therefore, do not see any indication of insanity from the materials found in the room; on the other hand they support the case of premeditated murder.

To summarize: the accused did not like his wife; even though he was employed in Ahmedabad and stayed there for about 10 months, he did not take his wife with him; he wrote a letter to his father-in-law to the effect that the accused did not like her and that he should take her away to his house; the father-in-law promised to come on Chaitra Sudhi 1; the accused obviously expected him to come on April 9, 1959 and tolerated the presence of his wife in his house till then; as his father-in-law did not come on or before April 9, 1959, the accused in anger or frustration killed his wife. It has not been established that he was insane; nor the evidence is sufficient even to throw a reasonable doubt in our mind that the act might have been committed when the accused was in a fit of insanity. We, therefore, though for different reasons, agree with the conclusion arrived at by the High Court and dismiss the appeal.

Appeal dismissed.