



2025:CGHC:37461-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 1229 of 2024

Mahesh Kumar Verma S/o Late Pannalal Verma Aged About 25 Years R/o Village Chandana, Police Chowki Karelibadi, P.S. Magarlod, District-Dhamtari, Chhattisgarh.

Appellant

versus

State Of Chhattisgarh Through P.S. Magarlod, District- Dhamtari, Chhattisgarh.

Respondent(s)

(Cause-title taken from Case Information System)

For Appellant	: Mr. Abhishek Sinha, Senior Advocate along with Ms. Aditi Singhvi and Mr. Shasvut Yechuri, Advocates
For Respondent(s)	: Mr. Shashank Thakur, Dy. Adv. Gen.

Hon'ble Shri Ramesh Sinha, Chief Justice

Hon'ble Shri Bibhu Datta Guru, Judge

Judgment on Board

Per Bibhu Datta Guru, J

31/07/2025

Heard.

1. This criminal appeal preferred under Section 374(2) of the Cr.P.C is against impugned judgment of conviction and order of sentence dated 15/02/2024 passed in Sessions Case No. 37/2021 by the learned Sessions

Judge, Dhamtari, District Dhamtari (C.G.), whereby the appellant has been convicted under Sections 302 (twice) and 323 of the IPC and sentenced to undergo Life imprisonment with fine of Rs. 100/- (two counts), in default of payment to further undergo rigorous imprisonment for 3 months and SI for 1 month, respectively.

2. Brief facts of the case are that Complainant Smt. Rekha Verma (PW2), mother of the appellant/accused, lodged a report on 14.4.2021 at Police Chowki Kareli Badi stating that on 13.4.2021 at about 9:00 PM, when she and her family had dinner and went to sleep her son i.e. the appellant was sleeping in his room and since he is not mentally stable, his room was locked from outside. At around 11 PM the appellant called her and stated that he wants to drink water, however out of fear, she did not open the door and called her husband i.e. deceased Pannalal Verma. Who subsequently opened the door, after which the appellant came out. When the complainant questioned him as to why is he creating ruckus then he stated that "*I am Hanuman ji, Bajrang Bali, Durga*" and then pushed the complainant. Thereafter the appellant started fighting with his father and grand mother (both Deceased) on which, the complainant went to call her neighbours but when she came back the door of the house was closed from inside. Upon opening the door it was found that Pannalal Verma (henceforth D1) and Triveni Verma (henceforth D2) (husband & mother in law of complainant, respectively) both were lying dead in pool of blood.
3. Based on the above report, Dehati Nalashi (Ex.P/3) was registered and a

crime No. 104/2021 under Section 302 & 323 of the IPC was registered. The First Information Report (Ex.P32) has been registered. After completing the formalities of the investigation, a charge-sheet was submitted before the concerned Court under Section 302 & 323 of the IPC. The charges were read over to him, which he denied and claimed to be tried.

4. In order to prove its case, the prosecution had examined as many as 15 witnesses. Statement of the appellant under Section 313 Cr.P.C was recorded, wherein he has pleaded his innocence and false implication in the matter.
5. The learned trial Court, after due appreciation of evidence convicted and sentenced the appellant as mentioned in paragraph one of this judgment. Hence this appeal.
6. (a) Mr. Abhishek Sinha, learned Senior Advocate for the appellant submits that the learned trial Court while passing the impugned judgment has failed to appreciate that the prosecution has not proved its case beyond reasonable doubts. In fact, the appellant was suffering from insanity at the time of incident, as such, non-examination of mental state of the appellant at the time of incidence by the prosecution creates a serious infirmity in the prosecution case and the benefit of doubt has to be given to the appellant. He would submit that as per the statement of PW14 Daksh Kumar Sahu, at the time of recording the Merg Intimation, it was informed that the appellant is a person of unsound mind, however, the Investigating Officer, Santosh Sahu (PW15), still did not investigate

into the fact of mental illness of the appellant.

(b) Learned senior counsel would also submit that the evidence of Bhupendra Kumar Verma (PW-1), Rekha Bai (PW-2), Bisahat Ram (PW-3), Lalit Verma (PW-4), Darendra Sahu (PW-5), Narendra Sagurvanshi (PW-11, Pramila Sahu (PW-12) clearly mention that the appellant had received head injuries after falling from terrace during COVID-19 pandemic period and was undergoing Psychiatric treatment at Raipur. PW-1 Bhupendra Kumar Verma (cousin of accused) and PW-2, Rekha Bai, who is the mother of the appellant, have very specifically stated that the appellant was undergoing treatment at Raipur under Dr. Prakash Narayan Shukla. As such, the conviction of the appellant, without ascertaining his mental state at the time of incidence, clearly violates the settled principal of law laid down by the Hon'ble Supreme Court in the matter of *Bapu @ Gujraj Singh v. State of Rajasthan, (2007) 8 SCC 66 & Dashrath Patra v. State of Chhattisgarh (CRA No. 821/2025, Judgment delivered on 08/05/2025).*

(c) Learned counsel would submit that the provision of Chapter 25 of the Code of Criminal Procedure, 1973 deal with the procedure for making inquiry as to whether the accused is or not incapacitated by the unsoundness of mind from making his defence. However, the Trial court only relying on the medical report obtained during the inquiry under Section 328 of the Cr.P.C has reached to the conclusion that the appellant was not insane at the time of incidence.

(d) According to the learned senior counsel the appellant-accused was

a person of unsound mind within the ambit of Section 84 of the Indian Penal Code, 1860 at the time of the incident. The fact of lunacy of a person which prevented him from knowing the nature of his act must be considered from his past, present and future conduct.

7. On the other hand, Mr. Shashank Thakur, learned Dy. Advocate General appearing for the State supported the impugned judgment and would submit that after careful examination of the medical records of the appellant-accused and other material placed on record rightly came to the conclusion that the case of the appellant-accused did not fall within the exception created by Section 84 of IPC. He would categorically submit that during the examination of accused under Section 313 CrPC except false implication nothing has been stated particularly with regard to his unsoundness of mind on the date of incident.
8. We have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.
9. PW11- Sharda Thakur is a Medical Officer, who conducted the postmortem of the deceased persons. According to this witness, while conducting the postmortem of D2, she found as under:-

***External examination-** The body was brought in dead state, rigidity was present in hands and legs, both eyes were closed, mouth was also closed, there was a depressed fracture in maxillary and frontal bone on right side. There was a deep cut in*

the middle part of left eye measuring 1.5x0.5x1.0 cm. There was bleeding from mouth and nose.

Internal examination- Lung, liver, spleen, kidney, heart and brain were mildly congested. Stomach pouch- was pale and contained digested food. Small intestine was pale and contained digested food. Large intestine was pale and contained faecal matter. There was mild congestion in heart. Both chambers of heart were empty.

Opinion- The deceased Triveni died of shock as a result of cardiac and respiratory failure due to severe head injury and excessive bleeding. The nature of death was homicidal.

Further, while conducting postmortem of D1, it has been found as under:-

External examination- The body was brought in a dead state. There was stiffness in both hands and legs, both eyes were closed, mouth was closed, there was a deep cut in the middle part of the parietal region on the left side, the size of which was 5.0x1.5x1.0 cm. There was a blood clot like mass in left shoulder joint measuring 2.0x1.0 cm. Whole body was pale. There was bleeding from nose and mouth.

Internal examination- Lung, liver, spleen, kidney, heart and brain were mildly congested. Stomach sac- was pale and contained digested food. Small intestine was pale and contained digested food. Large intestine was pale and contained faecal matter. There

was mild congestion in heart. Both chambers of heart were empty.

Opinion- *The death of the deceased Pannalal was due to shock as a result of cardiac and respiratory failure due to severe head injury and excessive blood loss. The nature of death was homicidal.*

10. Admittedly, the appellant is son of D1 and grandson of D2 and the Complainant is his mother. It is not in dispute that the appellant had committed the murder of the deceased person, as such, the death of the deceased persons found to be homicidal in nature. Although, this Court, after going through the evidence of Dr. Sharda Thakur (PW11) affirms the finding that the death was homicidal in nature.
11. Plea of insanity as provided under Section 84 of the IPC has been taken by the appellant herein before the trial Court, which is apparent from perusal of the impugned judgment, however, it has been negated by learned trial Court and proceeded to convict that the appellant under the aforementioned sections.
12. The only question put forth before this Court for consideration is whether the appellant was insane/unsoundness of mind at the time of incidence, if yes in affirmative, then the conviction of the appellant is justified or not ? and whether the appellant, at the time of the incident, was of unsound mind and thereby entitled to benefit under Section 22 of the Bhartiya Nyaya Sanhita, 2023 (equivalent to Section 84 IPC) ?
13. Section 22 Bhartiya Nyaya Sanhita (BNS), 2023 reads as under:-

“22. 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”

Issue of Insanity:

14. In the instant case, the first piece of evidence is Merg Intimation (Ex.P 4 & 5), which has been lodged by the Complainant/mother of the appellant. In the said merg intimation, it has been alleged that her younger son (appellant) during the period of lock-down owing to outbreak of COVID-19 pandemic situation, had fallen from the roof and had sustained injury over his head and because of such injury, his mental stage was not good for last one year and his treatment has been going on at mental hospital, Raipur. He was a mental patient. It was deposed that on 13/04/2021, at about 09:00 pm, after having meal, they went for sleeping. The appellant was sleeping inside the room and door was locked from outside, since his mental state was not good. At about 11:00 pm, the appellant called her and asked for drinking water and said her to open the door, but due to fear she did not open the door immediately and called D1. Subsequently, D1 opened the door. When the complainant asked him as to why is he creating ruckus then he stated that "*I am Hanumanji, Bajrang Bali, Durga*" and then pushed her. The appellant, thereafter, started to quarrel with D1 & D2 and then she rushed to the

neighbor to call them. When she returned, the door was locked from inside and they went inside and saw that D1 & D2 were lying dead in the pool of blood. It was alleged in the Merg Intimation that the appellant, who was suffering from mental health, had committed murder of the deceased persons.

15. PW1- Bhupendra Kumar Verma, who is cousin of the appellant, in his deposition has categorically stated that on the date of incident, the Complainant had come to his house at about 12:00 and told that the appellant are quarreling with them and subsequently, both went to her house. The door was locked from outside and inside. There was a hole on the door and while peeping from the hole of door, the Complainant saw that D1 was lying on the floor. Subsequently, they woke up the nearby neighbor and subsequently, when the police came, the doors were opened where they saw that D1 & D2 lying dead in a pool of blood.
16. PW2- Complainant- Rekha Bai is mother of the appellant and wife of D1 and daughter-in-law of D2. She stated that there were four members in their family. On the date of incident itself, after getting treatment of the appellant, D1 had brought back him to the house. Suddenly, in the night, the appellant was chanting that "*I am Hanumanji, Bajrang Bali, Durga*" and he snatched her clothes too. The appellant started to quarrel, then she ran outside the house and closed the door from outside. When, she along with neighbor returned to the house, the doors were closed from inside, and from a hole of door, they saw that D1 was lying on the floor in the pool of blood.

In cross-examination, this witness has admitted that prior to 1-2 years of the incident, the appellant had fallen from the roof and had sustained injury over his head. She admitted that due to the said injury, the mental state of the appellant was not good and the treatment was going on at Raipur hospital. She categorically stated that the appellant had been taking medicine for about 1½ years from Dr. Prakash Narayan Sukhala.

17. PW3- Bishat Ram Verma, has stated similarly like PW1 that on the date of incident, the Complainant (PW2) came and narrated the above incident, to which, they went to the house of her and saw that D1 & D2 were lying in the pool of blood. This witness, though has been declared hostile, but in cross-examination, this witness has categorically admitted the fact of appellant sustaining injury after falling from the roof during the period of lock owing to outbreak of Covid-19 pandemic. Likewise, PW4- Lalita Verma who is cousin of the appellant, has stated that at about 12:38, she came to know that the appellant had committed the murder of the deceased persons. She has also been declared hostile by the prosecution.
18. PW15- Santosh Sahu (Investigating Officer) in his cross examination admitted that during the investigation, he did not seize any document related to the psychiatric treatment of accused from his family members. Even, he did not obtain any investigation report from Dr. Prakash Narayan Shukla to establish the fact whether the accused was mentally stable on the date of the incident or not.

19. On going through the statements of witnesses, it is revealed that the complainant (PW2) has categorically stated in both her Merg intimation (Ex.P4/P5) and Court testimony that the appellant had sustained head injuries after falling from a roof during the COVID-19 lock down and was under psychiatric treatment at Raipur under Dr. Prakash Narayan Shukla for over 1½ years. Further, PW1, PW3, and other witnesses fully corroborate the fact of ongoing psychiatric illness and treatment of the appellant. Even on the date of incident also, the appellant was brought back to house after getting treatment from doctor and he was kept locked in a room. It is also admitted by the IO (PW15) that no efforts were made by him to verify or collect medical records or certificates from the treating doctor/hospital, nor was any medical board constituted to assess the appellant's mental status at the time of the incident. The appellant was kept locked in a room due to fear of violent or unpredictable behavior, indicating recognizable signs of mental disorder within the household.
20. The Hon'ble Supreme Court in *Bapu v. State of Rajasthan, (2007) 8 SCC 66* held as under:-

“8. Under Section 84 IPC, a person exonerated from liability for doing an act on the ground of unsoundness of mind if he, at the time of doing the act, is either incapable of knowing (a) the nature of the act, or (b) that he is doing what is either wrong or contrary to law. The accused is protected not only when, on account of insanity, he was incapable of knowing the nature of the act, but also when he did

not know either that the act was wrong or that it was contrary to law, although he might know the nature of the act itself. He is, however, not protected if he knew that what he was doing was wrong, even if he did not know that it was contrary to law, and also if he knew that what he was doing was contrary to law even though he did not know that it was wrong. The onus of proving unsoundness of mind is on the accused. But where during the investigation previous history of insanity is revealed, it is the duty of an honest investigator to subject the accused to a medical examination and place that evidence before the Court and if this is not done, it creates a the serious infirmity in the prosecution case and the benefit of doubt has to be given to the accused. The onus, however, has to be discharged by producing evidence as to the conduct of the accused shortly prior to the offence and his conduct at the time or immediately afterwards, also by evidence of his mental condition and other relevant factors. Every person is presumed to know the natural consequences of his act. Similarly every person is also presumed to know the law. The prosecution has not to establish these facts.

21. In the case of ***Dahyabhai Chhaganbhai Thakkar v. State of Gujarat***, ***AIR 1964 SCC 1563*** , the Court held at para 7 as under:-

“7. 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 Section 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 rests upon or 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 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."

22. In the matter of ***Rupesh Manager (Thapa) v. State of Sikkim, (2023) 9 SCC 739***, the Court reiterated that standard of proof to prove the defence under Section 84 of the IPC is only a reasonable doubt. It is also well settled that a distinction has to be made between the legal insanity and medical insanity and it is not at all necessary to prove medical insanity. Another Bench of three Hon'ble Judges of the Supreme Court Court in the case of ***Surendra Mishra vs. State of Jharkhand, (2011) 11 SCC 495*** in paragraphs 11 to 13 held thus:

"11. In our opinion, an accused who seeks exoneration from liability of an act under Section 84 of the Indian Penal Code is to prove legal insanity and not medical insanity. Expression "unsoundness of mind" has not been defined in the Indian Penal Code and it has mainly been treated as equivalent to insanity. But the term insanity carries different meaning in different contexts and describes varying degrees of mental disorder. Every person who is suffering from mental disease is not ipso facto exempted from criminal liability. The mere fact that the accused is conceited, odd, irascible and his brain is not quite all right, or that the physical and

mental ailments from which he suffered had rendered his intellect weak and affected his emotions or indulges in certain unusual acts, or had fits of insanity at short intervals or that he was subject to there was abnormal epileptic fits and there was abnormal behaviour or the behaviour is queer are not sufficient to attract the application of Section 84 of the Indian Penal Code.

12. The next question which needs consideration is as to on whom the onus lies to prove unsoundness of mind.

13. In law, the presumption is that every person is sane to the extent that he knows the natural consequences of his act. The burden of proof in the face of Section 105 of the Evidence Act is on the accused. Though the burden is on the accused but he is not required to prove the same beyond reasonable doubt, but merely satisfy the preponderance of probabilities. The onus has to be discharged by producing evidence as to the conduct of the accused prior to the offence, his conduct at the time or immediately after the offence with reference to his medical condition by production of medical evidence and other relevant factors. Even if

the accused establishes unsoundness of mind, Section 84 of the Indian Penal Code will not come to its rescue, in case it is found that the accused knew that what he was doing was wrong or that it was contrary to law. In order to ascertain that, it is to take into consideration the imperative circumstances and the behaviour preceding, attending and following the crime. Behaviour of an accused pertaining to a desire for concealment of the weapon of offence and conduct to avoid detection of crime go a long way to ascertain as to whether, he knew the consequences of the act done by him."

23. Similarly, in ***Dashrath Patra v. State of Chhattisgarh***, **CRA No. 821/2025 (decided on 08/05/2025)**, the Supreme Court held at para 10, 11 & 12 as under:-

"10. We are surprised to note that after the evidence was recorded, the prosecution did not move the Trial Court seeking permission to medically examine the appellant. The law lays down that no act done by a lunatic is an offence. The reason is that a lunatic is not in a position to defend himself. Right to defend a charge for an offence is a fundamental right guaranteed under an offence

Article 21 of the Constitution of India.

11. The medical examination of the appellant made during the pendency of the appeal is meaningless.

The reason is that it was made more than 5 years after the incident.

12. Looking to the depositions of the witnesses which we have quoted above, we are of the view that this is a case of more than a reasonable doubt about the insanity or unsoundness of mind of the appellant. Hence, the benefit of doubt must go to the accused. In these circumstances, the impugned judgment cannot be sustained and the same are set aside.”

24. In a recent judgment of this Court in ***Prakash Nayi Alias Sen vs. State of Goa, (2023) 5 SCC 673*** after reiterating the above principles it is held that the procedure prescribed in Chapter XXV of the Code of Criminal Procedure, 1973 clearly indicates that there cannot be an acquittal on the ground of unsoundness of mind unless the act is actually done. The whole idea is to facilitate a person of unsound mind to stand trial, not only because of his reasoning capacity, but also to treat him as the one who is having a disability. The role of the court is to find the remedial measures and do complete justice. This Court held in para 17 thus:

“17. Having noted the scope and ambit of Chapter XXV CrPC, including the provisions incorporated by way of amendments in the year 2009, one has to take into account the fact that the court has a larger role to play while considering the case under Section 84 IPC. If a friendly approach is required to be followed during the trial, when adequate powers have been conferred upon the court to even discharge an accused on the ground of a n unsound mind, the same reasoning will have to be applied with much force when it comes to Section 84 IPC.”

25. In the case in hand, despite Merg Intimation clearly referring to the appellant as a mental patient, no certificate from the treating psychiatrist was obtained. The trial court merely relied on a report from the inquiry under Section 328 CrPC (which assesses competency to stand trial), not the mental status at the time of the act which is the legally relevant consideration under Section 22 BNS. The burden of proof of legal insanity is not as high as that in the regular criminal trial; it is sufficient to raise reasonable doubt, and once *prima facie* materials support the plea, the burden shifts to the prosecution to rebut the same.
26. Furthermore, it is important to note that there was no known or proven motive for the appellant to kill his own father (D1) and grandmother (D2). The prosecution has not suggested any prior enmity, dispute, or provocation. On the contrary, the appellant was under the care of his

family, and they were actively showing their keen interest and affection in his psychiatric treatment, which is evident from the statement of PW2- Smt. Rekha Verma (Complainant) that on the date of incident itself, after getting treatment of accused, his father (D1) had brought back him to the house and locked him in a room. The sudden, unprovoked and brutal nature of the attack on close family members, coupled with the statements made by the appellant like "*I am Hanumanji, Bajrang Bali, Durga,*" and his erratic behavior, align with classic signs of a psychotic episode typically found in cases of mental disorder involving delusions or hallucinations. Thus, the provisions of 22 of the BNS (Section 84 IPC) will come to the rescue of the appellant, as he was not knowing that what he was doing was wrong or the same is contrary to law. In order to ascertain the same, the imperative circumstances and the behavior preceding, attending and following the crime are the main consideration. Hence, the conviction of the appellant under Sections 302 of the IPC is not sustainable.

27. The absence of motive, especially in cases involving close kin, further supports the inference that the act was not driven by rational intent, but rather by a disturbed mental condition. This factor has been consistently recognized by courts as relevant while evaluating pleas of legal insanity.
28. The above proposition has been reiterated in **Devidas Loka Rathod vs. State of Maharashtra and Ratan Lal vs. The State of Madhya Pradesh (2018) 7 SCC 718**. In **Surendra Mishra (Supra)** and **Bapu (Supra)**, and the Apex Court has held that an accused who seeks

exoneration from liability of an act under Section 84 of IPC has to prove legal insanity and not medical insanity. Since the term insanity or unsoundness of mind has not been defined in the Penal Code, it carries different meaning in different contexts and describes varying degrees of mental disorder. A distinction is to be made between legal insanity and medical insanity. The court is concerned with legal insanity and not with medical insanity.

29. Therefore, in the present case, this Court finds that the consistent testimony of family members and witnesses regarding the appellant's mental condition; the absence of any motive to kill his own father and grandmother; the failure of the prosecution to disprove the plea of insanity or to investigate it properly; and the behavior exhibited by the appellant during the incident, together create a strong presumption of legal insanity, warranting the protection of Section 22 of BNS, 2023.
30. Applying the aforesaid principles to the facts of this case, we are of the view that this is a case of more than a reasonable doubt about the insanity or unsoundness of mind of the appellant and as such the benefit of doubt must go to the accused. Even the prosecution has also failed to prove the guilt of accused/appellant beyond the reasonable doubt and the case of the prosecution itself has negated the theory by their own evidence on record. Hence the conviction under Section 302 & 323 of IPC deserve to be set aside.
31. For the foregoing reasons, criminal appeal filed on behalf of appellant- **Mahesh Kumar Verma** is allowed and his conviction and sentence

under Sections 302 and 323 of the IPC are hereby set aside. The accused/appellant is acquitted of the said charges levelled against him. He is in jail. He shall be set at liberty forthwith if no longer required in any other criminal case.

32. Keeping in view the provisions of Section 437-A of the CrPC, the accused-appellant is directed to forthwith furnish a personal bond in terms of Form No.45 prescribed in the Code of Criminal Procedure of sum of Rs.25,000/- with two reliable sureties in the like amount before the Court concerned which shall be effective for a period of six months along with an undertaking that in the event of filing of Special Leave Petition against the instant judgment or for grant of leave, the aforesaid appellant on receipt of notice thereof shall appear before the Hon'ble Supreme Court.
33. Let a certified copy of this judgment along with the original record be transmitted forthwith to the trial Court for information and necessary action.
34. Before parting with the judgment, we deem it appropriate to place on record our sincere appreciation for Mr. Abhishek Sinha, learned Senior counsel, who appeared as *amicus curiae* in this matter. We record our gratitude for his professional service and commendable contribution to the cause of justice.

Sd/-

(Bibhu Datta Guru)
Judge

Sd/-

(Ramesh Sinha)
Chief Justice

HEAD NOTE

The provisions of 22 of the BNS (Section 84 IPC) will come to rescue of an accused, when he/she was not knowing that what he/she was doing, is wrong or the same is contrary to law. In order to ascertain the same, the imperative circumstances and the behavior preceding, attending and following the crime are the main consideration.