2025 INSC 577

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO._____of 2025

(@ SPECIAL LEAVE PETITION (CRL.) No. 13119 of 2024)

CHUNNI BAI **...APPELLANT(S)**

VERSUS

STATE OF CHHATTISGARH **…RESPONDENT(S)**

J U D G M E N T

NONGMEIKAPAM KOTISWAR SINGH, J.

Leave granted.

2. The present appeal has been preferred against judgment and order dated 21.11.2023 passed by the Division Bench of the High Court of Chhattisgarh at Bilaspur in Criminal Appeal No. 1035 of 2016 whereby, the High Court upheld the conviction and sentence imposed upon the present appellant under Section 302 of the Indian Penal Code (hereinafter referred to as '**IPC**').

3. The case of the prosecution in brief is that on 05.06.2015 at about 9 AM in the village of Bharadkala, District Bemetara, State of Chhattisgarh, the appellant, namely Chunni Bai, assaulted her two daughters, namely Kumari Yogita Sahu, aged 5 years and Kumari Nisha Sahu, aged 3 years with an iron crowbar leading to grievous injuries thereby causing the death of both the daughters. The incident was witnessed by Sonam Sahu (PW-1), who is the sister-in-law of the appellant who also lived in the same house.

4. On the same day of occurrence, a complaint was lodged before the Saja Police Station by Laxman Prasad Mishra (PW-3), a neighbour of the appellant, on the basis of which an FIR No. 126/15 was registered under Section 302 IPC. On completion of the investigation, the appellant was put on trial.

5. According to the star witness, Sonam Sahu (PW-1), in the morning at around 9 am on the fateful date, while she was doing household chores, she heard the appellant shouting in her room that she was killing her daughters, on hearing of which she went inside the room where PW-1 saw both the children on the bed, soaked in blood, and saw the appellant hitting the younger child Nisha with an iron crowbar. PW-1 then snatched the crowbar from the appellant and rushed out to inform her uncle who stayed next door. Thereafter, she informed her brother and niece of the incident. Other relatives were also informed.

6. The testimony of the eyewitness PW-1 was corroborated by other witnesses, most of whom were relatives and who lived nearby and came to the house soon after the incident. They also saw the appellant crying and shouting that she had killed her children. The injured children were taken to the hospital but were declared dead.

7. According to the testimony of the doctor present on duty on the day of the incident, Dr. G.S. Thakur (PW-18), both the girls had died before reaching the hospital. PW-18 described the injuries found during the autopsy of the elder daughter, Yogita Sahu, as follows:

> *"... There was a crushed wound in the right temporal part of the head, which measured 10 centimeters in length and was up to the skull bone. A crushed wound is present 0.5 cm below the said wound. Its length was 2.0 centimeters and its depth was up to the skull bone. The body's right occipito-parietal bone of the head was broken and had sunk into the brain, which measured 16.0 cm in length and 8.0 cm in width. The entire body of the dead body had turned pale.*

> *4. All the injuries found on the dead body were caused by hard and blunt objects and before death. While examining the skull and spinal cord of the dead body, I found that a piece of bone was stuck in the occipital part of the brain and bleeding was present in the occipital part of the brain. A long hair-line fracture, was present in the skull of the body. Which was present from the occipital bone to the fatal bone.*
>
> *……."*

PW-18 gave his opinion about the cause of death in the following words:

> *"In my opinion, the cause of death was bleeding in the stomach and stoppage of heart and respiratory rhythm due to injury in the organic part of the brain which is a result of hitting the head with a hard and blunt object. Nature: In my opinion the nature of death was homicidal…."*

8. Similarly, with respect to the autopsy of younger daughter, Nisha Sahu, PW-18 noted the following injuries:

> *"…There was a visible injury with blood all around the left eye of the dead body. Whose measurement was 40 X 30 centimetres. The left occipital portion of the head contained a crushed injury measuring 3.0 X 30 cm. The caudal portion of the said injury contained a crushed injury measuring 30 X 2.0 cm in length with a depth up to the skull. A congested bruise of blood was present in the left scapular area. It measured 9.0 X 20 cm in length, extending from the central part to the outer part. The above mentioned wounds were inflicted with a hard and blunt object and were inflicted before death…"*

The cause of death of Nisha Sahu was opined to be due to cardiac and respiratory arrest due to bleeding in the brain and injuries to organs of the brain and the said injuries were caused by hitting the head with a hard and blunt object and it was homicidal in nature.

9. Based on the memorandum statement of the appellant *vide* Ex. P/10, the crime weapon i.e., the iron pounder was seized *vide* Ex. P/4 and the FSL report *vide* Ex. P/31 which confirmed the presence of human blood on the seized weapon.

10. To support the case of the prosecution, as many as 20 witnesses were examined. The statement of the appellant was recorded under Section 313 of the Code of Criminal Procedure, 1973 (hereinafter referred to as '**CrPC**'), wherein the appellant denied guilt and claimed that she had no knowledge of what had happened and how it happened and that she was under the influence of some invisible power. However, no defence witness was produced before the court.

11. The Court of Additional Sessions Judge, Bemetara, in Sessions Trial No. 76/2015, upon appreciation of evidence and after hearing of parties concluded that based on the postmortem reports proved by the doctor (PW-18), the deaths of both daughters were due to serious injuries on their heads. Further, it was held that the author of the crime was the appellant, supported by the eye-witness Sonam Sahu (PW-1) which was corroborated by other prosecution witnesses. The Trial Court, thereafter, vide judgment dated 29.06.2016, convicted the appellant for the offence punishable under Section 302 of IPC and sentenced the appellant to undergo imprisonment for life with fine of Rs. 1000/- and in default of payment of fine, to undergo additional rigorous imprisonment for 1 month.

12. In the appeal against the above order, the High Court in Criminal Appeal No. 1035 of 2016 vide order dated 21.11.2023, upheld the conviction of the appellant under Section 302 of the IPC. The plea taken by the appellant before the High Court was that the prosecution failed to prove the case beyond reasonable doubt and that the appellant was not in proper mental condition at the time of commission of the offence.

13. The High Court relied on the medical opinion of Dr. G.S. Thakur (PW-18) and the postmortem reports which stated that the cause of death was cardiorespiratory arrest caused by intracerebral haemorrhage and injury to vital parts of brain, as a result of the head being hit by a hard and blunt object, thereby concluding that the nature of death was homicidal. Further, the High Court took

into consideration the testimonies of the prosecution witnesses, seizure of the crime weapon and its FSL report to observe that the appellant had assaulted her daughters with an iron pounder causing grievous injuries leading to their death. Accordingly, the appeal was dismissed.

ANALYSIS BY THIS COURT

14. Since the death of the two girls was not denied and was proved on the basis of the evidence on record, the first issue that is to be addressed is whether the death was caused by the appellant. For this, we have to revisit the testimonies of the prosecution witness, more importantly, Sonam Sahu (PW-1) who is the sole eyewitness of the incident. PW-1 has specifically stated in her testimony that when she rushed towards the room upon hearing the scream of the appellant, she saw the appellant hitting her younger daughter Nisha with an iron pounder while the elder daughter, Yogita was lying in bed unconscious, soaked in blood. It is to be noted that as per PW-1's testimony, no other person was present in the house at that time other than appellant and her two daughters. This testimony of PW-1 finds corroboration from the statements of other prosecution witnesses such as Sanat Kumar (PW-16), who is the cousin brother of the appellant's husband. As per PW-16, he was informed about the incident by Sonam Sahu (PW-1) who came crying to his house, which is adjacent to the house of the appellant. When PW-16 reached the place of occurrence, he saw that the appellant was crying and saying that she had killed Nisha and Babli (Yogita) and repeated this statement upon being asked the reason behind killing them. Then, PW-16 went to the room of the appellant and saw both daughters lying unconscious on bed, soaked in blood.

15. Similarly, the contemporaneous testimonies of Rekha Sahu (PW-2), Laxman Prasad Mishra (PW-3), Ram Kumar Verma (PW-6), Manuwa (PW-9), Namdev (PW-10), Harish Kumar Sahu (PW-11) and Kaushilya Bai (PW-15) also corroborate the testimony of Sonam Sahu (PW-1) that the daughters were

bleeding, lying unconscious and that the appellant was crying and saying that she had killed her children.

16. Further, as per the testimony of the investigating officer K.M. Mishra (PW-19), the crime weapon i.e., the iron pounder was seized based on the memorandum statement of the appellant, although the witnesses to the recording of such memorandum statement i.e., Ram Kumar Verma (PW-6) and Bhuniram Sahu (PW-8) denied that any such statement had been given by the appellant in their presence. The FSL report confirmed the presence of human blood on the seized iron pounder. Therefore, considering the above evidence including the post mortem report discussed above, we are of the opinion that there is no infirmity in the finding given by the Trial Court as well as the High Court that the appellant had assaulted both of her daughters, which caused grievous injuries, thereby causing their death.

17. Once homicide is proved being committed by the appellant, the next consideration will be whether such homicide was "culpable homicide" within the meaning of Section 299 IPC. If it is found to be "culpable homicide", further consideration will be whether it is "culpable homicide not amounting to murder" which is punishable under Section 304 IPC or "murder" as defined under Section 300 IPC, punishable under Section 302 IPC, under which the appellant has been convicted and punished by the Trial Court which was upheld by the High Court.

18. The difference between "murder" and "culpable homicide not amounting to murder" has been succinctly explained by this Court in ***State of A.P. v. Rayavarapu Punnayya, (1976) 4 SCC 382*** in the following words:

> **"12.** *In the scheme of the Penal Code, "culpable homicide" is genus and "murder" its specie. All "murder" is "culpable homicide" but not vice-versa. Speaking generally, "culpable homicide" sans "special characteristics of murder", is "culpable homicide not amounting to murder". For the purpose of fixing punishment, proportionate to the gravity of this generic offence, the Code practically recognises three degrees of culpable homicide. The first is,*

what may be called, "culpable homicide of the first degree". This is the greatest form of culpable homicide, which is defined in Section 300 as "murder". The second may be termed as "culpable homicide of the second degree". This is punishable under the first part of Section 304. Then, there is "culpable homicide of the third degree". This is the lowest type of culpable homicide and the punishment provided for it is, also, the lowest among the punishments provided for the three grades. Culpable homicide of this degree is punishable under the second part of Section 304."

19. The difference was further elucidated in ***Rampal Singh v. State of U.P.,*** **(2012) 8 SCC 289** in the following words:

"18. *This Court in Vineet Kumar Chauhan v. State of U.P. [(2007) 14 SCC 660 : (2009) 1 SCC (Cri) 915] noticed that academic distinction between "murder" and "culpable homicide not amounting to murder" had vividly been brought out by this Court in State of A.P. v. Rayavarapu Punnayya* [(1976) 4 SCC 382 : 1976 SCC (Cri) 659] *where it was observed as under: (Vineet Kumar case [(2007) 14 SCC 660 : (2009) 1 SCC (Cri) 915], SCC pp. 665-66, para 16)*

"*16. … that the safest way of approach to the interpretation and application of Sections 299 and 300 IPC is to keep in focus the key words used in various clauses of the said sections. Minutely comparing each of the clauses of Sections 299 and 300 IPC and drawing support from the decisions of this Court in Virsa Singh v. State of Punjab [AIR 1958 SC 465 : 1958 Cri LJ 818] and Rajwant Singh v. State of Kerala [AIR 1966 SC 1874 : 1966 Cri LJ 1509] , speaking for the Court, R.S. Sarkaria, J. neatly brought out the points of distinction between the two offences, which have been time and again reiterated. Having done so, the Court said that wherever the court is confronted with the question whether the offence is 'murder' or 'culpable homicide not amounting to murder', on the facts of a case, it [would] be convenient for it to approach the problem in three stages. The question to be considered at the first stage would be, whether the accused has done an act by doing which he has caused the death of another. Proof of such causal connection between the act of the accused and the death, leads to the second stage for considering whether that act of the accused amounts to 'culpable homicide' as defined in Section 299. … If the answer to this question is in the negative the offence would be 'culpable homicide not amounting to murder', punishable under the First or the Second Part of Section*

> *304, depending, respectively, on whether the second or the third clause of Section 299 is applicable. If this question is found in the positive, but the case comes within any of the Exceptions enumerated in Section 300, the offence would still be 'culpable homicide not amounting to murder', punishable under the First Part of Section 304 IPC. It was, however, clarified that these were only broad guidelines to facilitate the task of the court and not cast-iron imperative*."

20. This Court in the aforesaid case of ***Rampal Singh*** (supra) further explained the difference between these two offences from the perspective of the punitive provisions of Sections 302 and 304 IPC by grading the offences in three categories as follows:

> **"21.** *Sections 302 and 304 of the Code are primarily the punitive provisions. They declare what punishment a person would be liable to be awarded, if he commits either of the offences. An analysis of these two sections must be done having regard to what is common to the offences and what is special to each one of them. The offence of culpable homicide is thus an offence which may or may not be murder. If it is murder, then it is culpable homicide amounting to murder, for which punishment is prescribed in Section 302 of the Code. Section 304 deals with cases not covered by Section 302 and it divides the offence into two distinct classes, that is, (a) those in which the death is intentionally caused; and (b) those in which the death is caused unintentionally but knowingly. In the former case the sentence of imprisonment is compulsory and the maximum sentence admissible is imprisonment for life. In the latter case, imprisonment is only optional, and the maximum sentence only extends to imprisonment for 10 years. The first clause of Section 304 includes only those cases in which offence is really "murder", but mitigated by the presence of circumstances recognised in the Exceptions to Section 300 of the Code, the second clause deals only with the cases in which the accused has no intention of injuring anyone in particular. In this regard, we may also refer to the judgment of this Court in Fatta v. Emperor [AIR 1931 Lah 63] , 1151. C. 476 (Refer: Penal Law of India by Dr Hari Singh Gour, Vol. 3, 2009.)*"

21. From the above extracts, it can be understood that one of the criteria to determine, in any given case, as to whether the act amounts to "murder" or "culpable homicide not amounting to murder" is the presence or absence of

intention of the offender. If the "intention" to cause death or to cause such bodily injury as is likely to cause death or the knowledge, which obviously has to be a conscious one, that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death and commits such act "without any excuse" for incurring the risk of causing death or such injury, comes out aloud and clear in the case, it would be most appropriate to categorise it as a case of "murder" under Section 300 IPC in which event, penal provision of Section 302 IPC would be attracted. On the other hand, if the "intention" in causing the death or to causing such bodily injury is not so clear, the case will fall under the less stringent category of "culpable homicide not amounting to murder" as punishable under Section 304 IPC.

22. In the case at hand, it can be said to have been proved beyond reasonable doubt that the appellant had caused the death of her two children and thus committed culpable homicide.

The evidence on record clearly shows that the appellant had caused the death of her children by hitting them with an iron crowbar on their heads.

The crucial question however is, whether she had the *intention* to cause death of her children or had the *intention* to cause such bodily injury which was likely to cause death or whether she had the *conscious* knowledge that it was imminently dangerous that in all probability, it would cause death, or such bodily injury as is likely to cause death and committed the act *without any excuse* for incurring the risk of causing death or such injury?

23. When a person performs an act, he is attributed with the intention to cause the natural consequences that follows from the act performed. There may be situations when the person makes the intention for performing an act known clearly by oral declaration or otherwise. However, it can be illusive when

intention is not clearly spelt out or discernible, and the same has to be gathered from the surrounding facts and circumstances and the acts of the accused.

24. In the present case, once the factum of homicide being committed by the appellant is proved beyond reasonable doubt and considering the nature of the injuries received by the minor victims at the hands of the appellants with iron crowbar on the basis of the medical and other evidence brought on record, it can be stated that the intention to commit homicide can certainly be inferred as had been done by the Trial Court and the High Court.

However, we have certain reservations about such a conclusion being drawn by the courts below in respect of proof of *"intention"* or the conscious knowledge of what she was doing in the light of the peculiar facts and circumstances obtaining in the case. In our opinion, it cannot be conclusively held in the present case that the *intention* of the appellant or *conscious* knowledge of what she was doing, a component of *mens rea*, has been established beyond reasonable doubt.

25. It is well settled that in any criminal case, the burden of proof is on the prosecution to prove the case beyond reasonable doubt in order to secure conviction of the accused, that is to say that no reasonable doubt can be said to have arisen in the judicial mind of the court after appreciating the evidence presented, and the outcome reached by the prosecution is the only possible outcome in the given facts and circumstances of the case.

This legal position is necessary for both the ingredients of "*actus reus*" and "*mens rea*", though "*mens rea*" can sometimes be inferred from the nature of "*actus reus*", and as far as "*mens rea*" is concerned, intention or guilty knowledge is certainly the most important facet.

26. The case of the appellant, as evident from the records, is the claim of innocence and denial of the charges and the appellant made a specific plea while being examined under Section 313 CrPC that at the time of occurrence, she was

under the influence of some invisible power. However, the appellant did not produce any witness in support of her claim and produced only two documents.

27. The appellant by taking the said plea is seeking to bring her case within the general exceptions as mentioned in IPC.

Some of the general exceptions which are available under the Indian Penal Code to escape criminal liability are contained in Sections 76 to 106 of IPC as well as five *"Exceptions"* mentioned in Section 300 IPC, etc.

The plea taken by the appellant of being under the influence of some invisible power can be understood to invoke Section 84 of the IPC, which reads as follows:

> *"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."*

28. Though in a criminal case the burden of proof to establish a case beyond reasonable doubt is on the prosecution, however, under Section 105 of the Indian Evidence Act, 1872 (hereinafter referred as "**Evidence Act**"), the burden of proof to prove the existence of such circumstances which would attract any of the above pleaded exceptions is on the accused.

Section 105 of the Evidence Act reads as follows:

> *"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 Exception 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."*

29. At this juncture, it may be pertinent to note that the standard of proof for the accused required by law in such cases, in invoking any exception clause is

preponderance of probability, which is also adopted in civil cases. [**See: *Satyavir Singh Rathi, Assistant Commissioner of Police v. State*, AIR 2011 SC 1748; *Munshi Ram v. Delhi Admn.*, AIR 1968 SC 702; *State of U.P. v. Mohd. Musheer Khan*, AIR 1977 SC 2226**].

This would mean that if the accused is able to raise a reasonable doubt in the mind of the court that there exists a possibility of existence of such circumstances based on preponderance of probability, that would attract the exception as mentioned under the IPC, and if the said burden of proof is discharged by the accused, he would be entitled to such benefit of exception.

30. It is also well settled that in order to discharge this burden of proof on any of the exceptions pleaded, it is not imperative for the accused to lead defence evidence. The court can also by taking into consideration the evidence available on record, which may have been presented by the prosecution, reach a conclusion that an exception is attracted in a given case, as observed by this Court in the case of ***James Martin v. State of Kerala***, **(2004) 2 SCC 203:**

> "***13****…. Under Section 105 of the Indian Evidence Act, 1872 (in short "the Evidence Act"), the burden of proof is on the accused, who sets up the plea of self-defence, and, in the absence of proof, it is not possible for the court to presume the truth of the plea of self-defence. The court shall presume the absence of such circumstances. It is for the accused to place necessary material on record either by himself adducing positive evidence or by eliciting necessary facts from the witnesses examined for the prosecution. An accused taking the plea of the right of private defence is not necessarily required to call evidence; he can establish his plea by reference to circumstances transpiring from the prosecution evidence itself. The question in such a case would be a question of assessing the true effect of the prosecution evidence, and not a question of the accused discharging any burden.*"

31. To understand what exactly the burden of proof under Section 105 of the Evidence Act is, we may refer to the landmark case of ***Dahyabhai Chhaganbhai Thakkar v. State of Gujarat,*** **AIR 1964 SC 1563,** wherein it was observed that*:*

> *"**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 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."*

32. In the light of the above legal position, we may now examine the facts and circumstances as well as the evidence on record to consider whether the appellant was in fact suffering from insanity or was not in a proper state of mind during the commission of crime for the purpose of understanding whether she had the "intention" or whether she had knowingly and consciously committed the act without any excuse.

33. The plea taken by the appellant during her examination by the Trial Court is that she came under the influence of certain invisible power when she committed the act. However, this plea does not appear to be a legally recognised exception as is the case of sudden and grave provocation, heat of passion, right

of self-defence, etc. There is a difference between medical insanity and legal insanity. What Section 84 IPC provides is legal insanity as distinguished from medical insanity. A person is said to be of unsound mind on whom criminal liability cannot be fastened if at the time of commission of the act, he is incapable of knowing the nature of the act, or that what he was doing was either wrong or contrary to law. It may also be noted that the expression "unsoundness of mind" or the word "insanity" has not been defined in the Indian Penal Code, though these have been used interchangeably. In the absence of a precise definition of these terms, insanity or unsoundness of mind has been variously understood by courts in varying degrees of mental disorder and the courts have applied this attribute to give the benefit of doubt or otherwise, depending on the facts and circumstances of the cases. However, mere odd behaviour or certain physical or mental ailments affecting the emotions or capacity to think and act properly have not been construed to be "unsound mind" within the scope of Section 84 of the IPC. All kinds of insanity as are understood are not covered under Section 84 of IPC but only such acts, when committed by a person who was incapable of knowing the nature of the act or that he was doing which is either wrong or contrary to law are concerned. As a consequence, only such mental or medical condition which affects or disturbs the faculty of the person which renders him unable to know the nature of act committed or that he was doing which he did not know that it was wrong or contrary to law can be given the benefit of insanity under Section 84 IPC, and thus escape criminal liability.

34. In the present case, it is noticed that apart from the plea taken by the appellant during her examination under Section 313 CrPC that she was under the influence of invisible power, no evidence has been brought on record by the appellant which would prove that she was of "unsound mind" within the meaning of Section 84 of IPC.

35. Nevertheless, merely because the appellant could not convey herself in a legally understandable expression or idiom of her mental condition to indicate the existence of legal insanity or prove such a condition and provide evidence, in our opinion, such a plea could not have been completely ignored by the Trial Court or by the High Court.

36. In the peculiar facts and circumstances as revealed in the present case, and also keeping in mind that the incident happened in a rural setting and the appellant not being highly educated, the possibility of confusing her unstable mental condition or temporary lapse of judgmental power bordering on temporary insanity cannot be completely ruled out which the appellant attributed as coming under the influence of invisible power, for the purpose of giving a benefit of doubt about the non-existence of “intention”.

It is not common for rustic persons to be aware of various mental disorders/illnesses such as schizophrenia, bipolar disorder, that may temporarily impair the mental condition of an individual. More often than not, these disorders are unrecognised and remain untreated as it may be difficult to identify the symptoms and they do not seek proper and timely medical intervention, resulting in such medical/mental conditions which can be misinterpreted or confused with spells or influence of invisible forces based on superstitions.

In the present case, we have also noted that no particulars have been mentioned about the nature of the "invisible influence" and as such it can be purely in the realm of speculation that this "invisible influence" may be a symptom of such mental conditions referred to above. However, in the light of the strange, bizarre and inexplicable behaviour of the appellant, there is no other plausible explanation that could be attached to her conduct in the given circumstances, other than to infer that she was under certain impaired mental

condition which the appellant described as being under the influence of invisible power.

37. As per the testimony of Sonam Sahu (PW-1), on hearing the shout of the appellant, PW-1 went to the room to check, and she found the elder daughter of the appellant soaked in blood and saw the appellant hitting the younger daughter with the iron pounder. After the incident too, the appellant kept on shouting and crying that she had killed her daughters. This evidence stands substantially corroborated by the contemporaneous testimonies of the prosecution witnesses such as Rekha Sahu (PW- 2), Lakshman Prasad Mishra (PW-3), Ram Kumar Verma (PW-6), Pradeep Sahu (PW-7), Bhuniram Sahu (PW-8), Manuwa (PW-9), Namdev (PW-10) and Harish Kumar Sahu (PW-11).

38. Further, when PW-1 left the appellant alone in the house and went to the adjacent house of her uncle to call for help, the appellant did not try to flee. In fact, as per the testimony of Sanat Kumar (PW-16), when he also reached the place of incident upon being informed by PW-1, he saw the appellant standing inside the room.

39. It is true that in cases where direct evidence is available that links the accused to the offence, absence of proof of motive or intention does not preclude conviction of the accused. Perhaps it is for this reason that in the present case, the prosecution has not adduced any evidence to prove any motive or intention behind the commission of crime. However, in cases where the plea taken by the accused is such that it raises a concern about the mental stability of the accused, the existence or lack of motive assumes great significance. This is especially true in cases involving grave offences such as murder, where a complete absence of any kind of motive which ordinarily impels a person to commit such a crime may lend credence to the plea of insanity, as in the present case, where a mother has taken the life of her own children of tender age apparently in absence of any motive.

40. It is to be noted that the prosecution witnesses, including the husband of the appellant and other close relatives, as well as the residents of the village, have all acknowledged that the appellant loved her children very dearly. Testimonies and cross examination of prosecution witnesses such as Sonam Sahu (PW-1), Lakshman Prasad Mishra (PW-3), Tulsi Sahu (PW-4), Ram Kumar Verma (PW-6), Pradeep Sahu (PW-7), Kaushilya Bai (PW-15) and Sanat Kumar (PW-16) testify to this fact.

41. As regards the relationship between the appellant and her husband, it was admitted by Sonam Sahu (PW-1) in her cross examination, that her brother loved his wife and children very much.

42. Similarly, Pradeep Sahu (PW-7), husband of the appellant, denied the suggestion that he did not want to keep his wife. He also denied that he was unhappy because the appellant had given birth to daughters. It was also stated by him that the appellant was an Anganwadi worker and a day before the incident, she had gone for her duty, which suggests that they were leading a normal domestic life.

43. None of the above witnesses has spoken ill of the appellant nor of any strained relationship of the appellant with her husband, other family members and children. In fact, PW-8, the father-in-law of the appellant though was not an eyewitness and not present at the time of the incident, refused to implicate the appellant of committing the aforesaid offence, clearly indicating the absence of any ill feeling towards his daughter in law, the appellant.

In this background, absence of motive assumes great importance, which in turn would put a question mark on the presence of "*intention*" to commit the said act.

44. Thus, the inference one can safely draw on the basis of the evidence on record is that the appellant had a cordial relationship with all the family members

including her children which clearly indicates absence of any ill feelings on the part of the appellant to provide any basis for any motive to commit the crime which will prove the presence of "*intention*" to commit the act.

45. There is yet another notable feature of the appellant's behaviour. What had been consistently testified by the witnesses is that at the time of committing the crime and soon thereafter, she was crying and bemoaning the killing of her children. She thus clearly appears to have been overwhelmed by remorse. This is indicative of absence of any premeditation to commit the offence, but rather committing it in a spur of the moment by the appellant as an impulsive act, without realising the consequences of her act.

46. Reverting to the fundamental principles of criminal law, when a crime takes place in which there are eye-witnesses and the factum of homicide is proved by medical evidence, recovery of weapon of crime etc., the *mens rea* and the intention may be inferable, which of course is based on presumption.

However, presumption of the existence of intention merely based on the act and result may not be safe in every case because the act and consequence of the questioned act may have been brought about by certain circumstances beyond the contemplation or control of the accused. Thus, when the court is called upon to ascertain the real intention or motive of the accused in committing the offence as in the present case when the accused pleaded that she was under the influence of invisible power indicating absence of intention, the court ought to have looked into all the surrounding circumstances before coming to the conclusion that the intention has been also proved beyond reasonable doubt.

47. Motive is usually the basis for causing the "intention" to commit any crime, but it is highly elusive and difficult to prove as it remains hidden in the deep recesses of the mind and is not comprehensible to others, unless disclosed by the perpetrator. Though under the law, it is absolutely not necessary that to prove an

offence, motive is also required to be established if the intention or the *mens rea* can be safely inferred from the surrounding facts. But where the motive which can provide the basis for the intention appears to be totally missing, the court has to be very circumspect in drawing the inference of the proof of the presence of *intention*.

48. For committing a serious crime like homicide, there could be various motivating factors. One may commit the crime of homicide propelled by anger or motivated by insult, humiliation or jealousy. Other motivating factors may be to exact revenge or by way of retribution or to hide certain crimes already committed. One may also commit homicide to gain undue pecuniary benefit or otherwise. One may commit such a crime out of sheer frustration and dejection with life channelising through violent acts. One may commit such crime because of superstitious beliefs.

There could be numerous factors, and it may not be possible to contemplate and mention all such situations that motivates a person to commit violent crime like homicide. While proof of motive of the crime may strengthen the prosecution's case in proving the guilt of the offender, failure to prove motive is not fatal if the offence is otherwise proved through direct and incontrovertible evidence. At the same time, absence of any motive may benefit the accused under certain circumstances, for the ingredient of intention which constitutes the *mens rea* has also to be proved.

49. In a case like the present one where the crime is committed by a mother, in her own house, members of the family could provide some clues to find out the motive for committing such a crime.

Naturally, some of the questions which would arise in such a case may be as follows:

Did she kill her own children as she was fed up with her marital life?

Was she subjected to any kind of mental or physical harassment at home which may have led to desperation to commit such a crime?

Was she unhappy with her husband or the children in any manner?

Was there any financial or any such consideration that motivated her to commit such a crime?

Did she commit the crime at the instigation of any other person?

Was it a case of propitiating some forces based on superstitious belief?

Was it a gruesome case of human sacrifice as had been judicially noticed in some rare cases?

Was she suffering from any psychological or mental disorder that could have prompted her to commit such a crime?

As noticed above, there is nothing in the evidence on record to suggest the existence of any of the above situations. On the contrary, the evidence on record portrays her as a loving mother having a cordial relation with her husband and other family members, thus leading a normal family life. There is nothing in the evidence that is suggestive of any disturbed personal and domestic life.

There can be no doubt that failure to unravel the true motivating factor for committing the crime cannot lead to the inference that the appellant is innocent in the light of the evidence which may be brought on record, yet the court should also not rush through to hold that the intention to commit the said offence has been proved in the light of the peculiar facts and circumstances obtaining in the present case.

As noted above, the appellant had taken a plea that when she committed the offence, she was under the influence of some invisible power. However, in spite of the inability of the appellant to lead any cogent evidence or explain her aforesaid claim, in our opinion, this plea cannot be totally brushed aside in the peculiar facts emanating in the present case.

50. In our view, the aforesaid plea ought to have been considered with utmost seriousness by the Trial Court as well as the High Court in the light of the facts and circumstances obtaining in the case.

If there were no motivating factors at all which impelled the appellant to commit such a gruesome crime in a domestic environment which was otherwise normal in all respects, it is totally inexplicable and incomprehensible how a mother who loves her children and who had a cordial relation with her husband could resort to such a violent act and be attributed with the *"intention to cause death"* of her beloved children, except for coming under some influence or forces beyond her control as claimed by her.

It is generally accepted in every society, especially in Indian society that one of the most sacred relationships amongst all human relationships is that of a mother and child. A mother is the life giver as well as the nurturer of a child. Since time immemorial we have not only been hearing but also observing the essence of the lines "**पूत कपूत सुने बहुतेरे, माता सुनी न कुमाता**" which means that a son can be a bad son, but a mother can never be a bad mother. Of course, it cannot be a legal dictum that mothers can never be an offender but that in the present case, in complete absence of motive, a mother assaulting her children of tender ages to death, that too when it is admitted that there was no animosity, but only love for her children, is contrary to lived human experiences.

51. What we have also noted is that the State did not make any serious endeavour to try to ascertain the motive or the intention of the appellant during the investigation, in spite of all the witnesses portraying a very normal domestic environment in the family and the appellant to be a normal person which indicated absence of any factor which prompted the appellant to commit the crime. The investigating officer appears to have been satisfied in view of the evidence of PW-1 and other witnesses, recovery of the weapon and the medical evidence, that the appellant had committed the murder and there was no necessity to investigate the motive behind the said act.

52. The Trial Court in its judgment though took note of the plea taken by the appellant that she was under the influence of invisible power when she was examined under Section 313 CrPC, did not give any importance to it and simply brushed it aside by observing that the evidence of the witnesses and other surrounding circumstances and her own admission proved that she committed the crime. The Trial Court unfortunately did not examine the said plea in all seriousness it deserved. In spite of being vested with enormous powers under the law to do complete justice, the Trial Court seems to have failed in exercising the same to reach a logical conclusion.

53. In the present case, apart from the plea taken by the appellant in her examination under Section 313 CrPC, the fact of the possibility of the appellant not being in a stable mental condition came up in the statement of Santram Sahu (PW-5) recorded under Section 161 CrPC, who is the father-in-law of the appellant. It was recorded therein that 15 days prior to the incident, the appellant was babbling nonsense, saying that she is Mata, Budi Dai etc. Further, it was also mentioned that the appellant was taken to the Psychiatrist at Government Hospital, Durg where she was given medicine and was advised to follow up. This

statement of PW-5 made under Section 161 CrPC was sought to be produced by the appellant in her defence before the Trial Court.

54. Even though the statements recorded under Section 161 of CrPC cannot be used for any purposes in a trial due to the embargo placed under Section 162 CrPC, however, the power of the Trial Court under Section 165 Evidence Act is wide enough to put questions based on the statement under Section 161 CrPC to any witness or party at any stage to secure the ends of justice. For this, we may profitably refer to the judgment of this Court in ***Raghunandan v. State of U.P.***, **(1974) 4 SCC 186,** wherein, it was observed as follows:

> **"*14.*** *It is true that the ban, imposed by Section 162, Criminal Procedure Code, against the use of a statement of a witness recorded by the police during investigation, appears sweeping and wide. But, at the same time, we find that the powers of the Court, under Section 165 of the Evidence Act, to put any question to a witness, are also couched in very wide terms authorising the Judge "in order to discover or to obtain proper proof of relevant facts" to "ask any question he pleases, in any form, at any time, of any witness, or of the parties, about any fact relevant or irrelevant". The first proviso to Section 165, Evidence Act, enacting that, despite the powers of the Court to put any question to a witness, the judgment must be based upon facts declared by the Act to be relevant, only serves to emphasize the width of the power of the Court to question a witness. The second proviso in this section preserves the privileges of witnesses to refuse to answer certain questions and prohibits only questions which would be considered improper under Sections 148 and 149 of the Evidence Act. Statements of witnesses made to the police during the investigation do not fall under any prohibited category mentioned in Section 165, Evidence Act. If Section 162 of the Criminal Procedure Code, was meant to be so wide in its sweep as the trial court thought it to be, it would make a further inroad upon the powers of the Judge to put questions under Section 165, Evidence Act. If that was the correct position, at least Section 162, Criminal Procedure Code, would have said so explicitly. Section 165 of the Evidence Act was already there when Section 162, Criminal Procedure Code was enacted.*
> ***15.*** *It is certainly quite arguable that Section 162, Criminal Procedure Code, does amount to a prohibition against the*

> *use even by the Court of statements mentioned there. Nevertheless, the purpose of the prohibition of Section 162 of the Criminal Procedure Code, being to prevent unfair use by the prosecution of statements made by witnesses to the police during the course of investigation, while the proviso is intended for the benefit of the defence, it could also be urged that, in order to secure the ends of justice, which all procedural law is meant to subserve, the prohibition, by taking into account its purpose and the mischief it was designed to prevent as well as its context, must be confined in its scope to the use by parties only to a proceeding of statements mentioned there.*
>
> ***16.*** *We are inclined to accept the argument of the appellant that the language of Section 162, Criminal Procedure Code, though wide, is not explicit or specific enough to extend the prohibition to the use of the wide and special powers of the Court to question a witness, expressly and explicitly given by Section 165 of the Indian Evidence Act in order to secure the ends of justice. We think that a narrow and restrictive construction put upon the prohibition in Section 162, Criminal Procedure Code, so as to confine the ambit of it to the use of statements by witnesses by parties only to a proceeding before the Court, would reconcile or harmonize the two provisions considered by us and also serve the ends of justice. Therefore, we hold that Section 162, Criminal Procedure Code, does not impair the special powers of the Court under Section 165, Indian Evidence Act…..*"

55. This power of the Court to invoke Section 165 of the Evidence Act to examine witnesses to subserve the cause of justice and public interest has been reiterated in ***Sidhartha Vashisht v. State (NCT of Delhi)*****, (2010) 6 SCC 1,** wherein it was observed as follows:

> **188.** *It is also important to note the active role which is to be played by a court in a criminal trial. The court must ensure that the Prosecutor is doing his duties to the utmost level of efficiency and fair play. This Court, in Zahira Habibulla H. Sheikh v. State of Gujarat [(2004) 4 SCC 158 : 2004 SCC (Cri) 999] , has noted the daunting task of a court in a criminal trial while noting the most pertinent provisions of the law. It is useful to reproduce the passage in full : (SCC pp. 188-91, paras 43-49)*
>
> *"43. The courts have to take a participatory role in a trial. They are not expected to be tape recorders to record whatever is being stated by the witnesses. Section 311 of the*

Code and Section 165 of the Evidence Act confer vast and wide powers on Presiding Officers of court to elicit all necessary materials by playing an active role in the evidence-collecting process. They have to monitor the proceedings in aid of justice in a manner that something, which is not relevant, is not unnecessarily brought into record. Even if the prosecutor is remiss in some ways, it can control the proceedings effectively so that the ultimate objective i.e. truth is arrived at. This becomes more necessary before the court has reasons to believe that the prosecuting agency or the prosecutor is not acting in the requisite manner. The court cannot afford to be wishfully or pretend to be blissfully ignorant or oblivious to such serious pitfalls or dereliction of duty on the part of the prosecuting agency. The prosecutor who does not act fairly and acts more like a counsel for the defence is a liability to the fair judicial system, and courts could not also play into the hands of such prosecuting agency showing indifference or adopting an attitude of total aloofness.

44.The power of the court under Section 165 of the Evidence Act is in a way complementary to its power under Section 311 of the Code. The section consists of two parts i.e. : (i) giving a discretion to the court to examine the witness at any stage, and (ii) the mandatory portion which compels the court to examine a witness if his evidence appears to be essential to the just decision of the court. Though the discretion given to the court is very wide, the very width requires a corresponding caution. In Mohanlal Shamji Soni v. Union of India [1991 Supp (1) SCC 271 : 1991 SCC (Cri) 595] this Court has observed, while considering the scope and ambit of Section 311, that the very usage of the words such as, 'any court', 'at any stage', or 'any enquiry or trial or other proceedings', 'any person' and 'any such person' clearly spells out that the section has expressed in the widest possible terms and do not limit the discretion of the court in any way. However, as noted above, the very width requires a corresponding caution that the discretionary powers should be invoked as the exigencies of justice require and exercised judicially with circumspection and consistently with the provisions of the Code. The second part of the section does not allow any discretion but obligates and binds the court to take necessary steps if the fresh evidence to be obtained is

> *essential to the just decision of the case, 'essential' to an active and alert mind and not to one which is bent to abandon or abdicate. Object of the section is to enable the court to arrive at the truth irrespective of the fact that the prosecution or the defence has failed to produce some evidence which is necessary for a just and proper disposal of the case. The power is exercised and the evidence is examined neither to help the prosecution nor the defence, if the court feels that there is necessity to act in terms of Section 311 but only to subserve the cause of justice and public interest. It is done with an object of getting the evidence in aid of a just decision and to uphold the truth.*

56. In the light of the above legal position, we are of the opinion that the Trial Court ought to have taken into consideration the peculiar circumstances of the case and the statement of PW-5 recorded under Section 161 CrPC to put right questions to the parties and witnesses to ascertain the motive or intention of the appellant in committing the crime.

The High Court, while exercising appellate jurisdiction also did not even make any reference to it, though took into consideration the statement made under Section 313 CrPC.

57. Under the circumstances, in our opinion, in view of the plea taken by the appellant that she was under the influence of some invisible power during commission of crime, a reasonable doubt can be said to have arisen as regards existence of *intention*, thus of *mens rea* for causing death in the present case.

In arriving at this conclusion, we have taken into consideration the following aspects:

(i) During the commission of crime, the appellant was shouting that she is killing her children;

(ii) Post the incident, the appellant, on being asked the reason behind her act, kept on crying and repeating that she has killed

her children. This is corroborated by other prosecution witnesses as well;

(iii) The appellant did not try to flee the scene of crime even after being left alone in the house by PW-1;

(iv) Complete absence of motive behind the commission of crime in background of the fact that the appellant loved her children very much, as also acknowledged by the prosecution witness;

(v) The nature of relation between the accused and the deceased i.e., of a mother and child.

(vi) Absence of any strained domestic relationships or any such motivating factor discussed above in para 49.

58. However, in spite of the above discussed circumstances and other evidence on record, in the absence of any conclusive medical evidence with regards to the mental condition of the appellant, we are of the opinion that it may not be enough to extend the benefit of exception as encapsulated in Section 84 IPC so as to acquit the appellant in the present case.

Nevertheless, in our view, the circumstances are enough to cast a shadow of doubt about the existence of the *intention* of the appellant to commit the crime in the present case. We are, thus, satisfied that in the present case *"intention of causing death"* cannot be said to have proved.

59. Under the circumstances, applying the practical tests elucidated in ***State of A.P. v. Rayavarapu Punnayya*** (supra) and ***Rampal Singh v. State of U.P.*** (supra) it can be said that the present case falls within the third category of "culpable homicide of the third degree" as the act was committed by the appellant without the *intention* of causing death, and the said culpable homicide would be covered under Part II of Section 304 IPC.

60. Accordingly, we convert the conviction of the appellant under Part II of Section 304 IPC from that of Section 302 IPC under which she was initially convicted and sentenced by the Trial Court which was upheld by the High Court.

61. It has been brought to our notice that the appellant has already undergone 9 (nine) years 10 (ten) months of custody. Part II of Section 304 IPC provides for punishment with imprisonment of either description for a term which may extend to 10 (ten) years or with fine or with both.

Upon her conviction under Part II of Section 304 IPC as above, as she has already undergone more than 9 (nine) years and 10 (ten) months of sentence, we sentence the appellant to the period already undertaken by her without any fine.

Accordingly, she shall be entitled to be released forthwith, which we direct so.

62. The appeal is, accordingly, partly allowed as above.

63. Before we part with this appeal, we would like to make certain observations which in our opinion the trial courts should keep in mind while dealing with such plea taken by an accused, especially when it relates to homicide, that the accused was under the influence of certain invisible force or where the prosecution is also totally unable to explain circumstances which motivated him or her to commit the act of homicide or where the evidence on record unambiguously show totally inexplicable but highly intriguing, strange and unusual circumstances under which the crime was committed as happened in the present case.

64. If such circumstances emerge in course of the trial which remain inexplicable and bizarre as in the present case, the court, in our opinion, even if the accused opts to remain silent, should ask such questions to the witnesses, as may be necessary to elicit the truth by invoking Section 165 of the Evidence Act, since the court has to be satisfied that the offence alleged has been proved beyond

reasonable doubt not only in respect of *actus reas* but also *mens rea*. This assumes great importance when the accused pleads existence of certain circumstances which are beyond his/her control and which may indicate unsoundness of mind even temporarily, incapacitating the accused to take a conscious and informed decision.

It is for the salutary reason that if the accused at the time of commission of crime was incapable of making conscious and informed decision or was suffering from certain mental incapacity or unsoundness of mind even if temporarily, it may put a question mark on the *"intention"* of the accused in committing such a crime, in which event, the benefit of doubt may be extended to the accused as regards proof of *intention* and *mens rea*, as it would determine the nature of conviction and sentence which may be imposed.

…….J.
(B.V. NAGARATHNA)

…….J.
(NONGMEIKAPAM KOTISWAR SINGH)

NEW DELHI;
APRIL 28, 2025.