

(2018) 08 RAJ CK 0183
In the Rajasthan High Court
Case No : Criminal Appeal No.44 of 1987

Kumari Chandra, Sati Lajnani @APPELLANT@Hash State of Rajasthan & Ors

Date of Decision : 01-08-2018

Acts Referred:

Code of Criminal Procedure, 1973 — Section 313, 374, 437A
Indian Penal Code, 1860 — Section 84, 302, 307, 364, 367, 374
Indian Evidence Act, 1872 — Section 105

Citation : (2018) 08 RAJ CK 0183

Hon'ble Judges : Mohammad Rafiq, J;Goverdhan Bardhar, J

Bench : Division Bench

Advocate : V.R. Bajwa, Amar Kumar, R.S. Raghav

Final Decision : Allowed

Judgement

Mohammad Rafiq:

This criminal appeal under Section 374 of the Code of Criminal Procedure has been filed by accused-appellant Kumari Chandra @ Sati Lajnani

assailing the judgment and order dated 12.01.1987 of the Additional Sessions Judge No.1, Ajmer in Sessions Case No.43/1985 (18/83), whereby the

trial court convicted her for offence under Sections 302, 307 and 374 of the Indian Penal Code and sentenced for offence under Section 302 IPC to

undergo life imprisonment with fine of Rs.100/- and in default of payment of fine, she was to further undergo one month's rigorous imprisonment;

for offence under Section 307 IPC to undergo four years rigorous imprisonment with fine of Rs.400/and in default of payment of fine, she was to

further undergo four months rigorous imprisonment; for offence under Section 364 IPC to undergo four years rigorous imprisonment with fine of

Rs.400/and in default of payment of fine, she was to further undergo four months rigorous imprisonment.

Briefly stated facts of the appeal are that one Chilumal S/o Gangaram lodged a report on 11.08.1981 (Exhibit P-18) at Police Station Nasirabad City,

stating that at about 12:00 noon when he was sitting at his clothe-shop situated in Mukeri Mohallah, an unknown person came to him and told that a

Sindhi woman has run away from the well situated at Bhojraj-ki-nasia after pushing two boys and one girl into that well and that out of those three

children one boy and one girl have been dragged out of the well alive by the local people and one boy has still drowned in the well as he could not be

traced. Thereupon, the informant immediately went to the well situated at Nasia where he found huge gathering of people. The informant also found

there one Udhavdas S/o Kanhaiyalal, aged about 8-9 years, sitting on a stone bench, shivering. About the girl Deoki, the informant came to know that

she was taken to the Hospital at Nasirabad. On enquiry, Udhavdas told that he along-with Deoki and Omprakash left the house to attend D.A.V.

School and they found Sati â??bhuaâ?? (aunt) in the school. She took all the three pretending to cause them to show temple and instructed them to

follow her so as to show them the well of Nasia also. Thereupon, she took all the three at the well and then pushed them into the well. The people

were still searching Omprakash into the water of the well, but he has not been found as yet. Udhavdas has also been taken to the hospital. Sati @

Chandra Lajnani has pushed them into the well with the intention to kill them. On enquiry, it was transpired that the incident has taken place today in

the morning at around 11:30 AM. The complainant submitted the report with prayer to take action.

On receipt of the aforesaid report, the police registered F.I.R. No.51/81 for offence under Sections 307 and 367 of the IPC and commenced

investigation. On completion of investigation, the police filed charge-sheet in the Court of Magistrate concerned for offence under Sections 364, 307

and 302 IPC against the accusedappellant. On 19.11.1982, the Magistrate, on being found the case triable by the Court of Sessions, committed it to the

Court of Sessions wherefrom it was made over to the Court of Additional Sessions Judge No.1, Ajmer, for trial. The accused-appellant denied the

charges and claimed trial. The prosecution, in order to substantiate its case, examined as many as 28 witnesses and exhibited 29 documents. The

defence examined 6 witnesses and exhibited 12 documents. The appellant in her statement under Section 313 of the Cr.P.C. alleged her false

implication in the matter. She stated that she was now married on 05.02.1983 and is having a daughter out of that wedlock. Learned trial court, vide

impugned judgment and order convicted and sentenced the accused-appellant in the manner indicated above.

Mr. V.R. Bajwa, learned counsel for the accused-appellant, argued that the trial court has committed an error in holding that the accused-appellant

kidnapped the minors, namely, Omprakash, Deoki and Udhavdas, with the intention to kill them on 11.08.1981. The finding of the trial court that

Omprakash was murdered by the appellant by pushing him into the well of Jain temple known as Bhojraj-Jain-ki-Nasia is contrary to the material on

record. Other finding that the accused-appellant attempted to commit murder of Deoki and Udhavdas by pushing them into the well is also without any

substance. The prosecution case is highly improbable and contrary to the normal course of human conduct. The prosecution evidence is full of

material contradictions. The trial court has erred in relying on the testimony of Udhavdas (PW26) and Deoki (PW-27), as both the witnesses were

minors of tender age. It is highly unsafe to record conviction for such serious offence of murder on testimony of child witnesses. The children can be

made to believe what actually not happened and can be tutored to the line set up by the prosecution. The trial court has not administered oath to Deoki

(PW-27) owing to her tender age and as such her testimony should not have been relied by the trial court. The trial court has further erred in relying

on the testimony of Kamla (PW-1), Gladish Rose (PW-2), Girja Bai (PW-7) and Sailiraj (PW-8). Kamla (PW-1) was declared hostile. Statements of

Gladish Rose (PW-2), Girja Bai (PW-7) and Sailiraj (PW-8) are full of material contradictions. In fact, Madan Lal Garg (PW-3), Shrilal (PW-4),

Jairamdas (PW-9), Kishni (PW-15), Kumari Chandra (PW-16), Chunnilal (PW-23) and Govindram (PW-25) did not support the case of the

prosecution and were declared hostile. This proves that a false case was fabricated against the accusedappellant.

Learned counsel for the accused-appellant further submitted that the prosecution has failed to prove any motive of the accused-appellant. There was

no reason for the accused-appellant to commit murder of innocent children. It is also submitted that at the time of incident, the accused-appellant was

suffering from mental disease known as premenstrual stress syndrome. She used to become aggressive few days prior to menstrual. During the said

period the accused-appellant was suffering from aforesaid mental disease and if it is found that she committed the alleged offence then she ought to

have been given benefit of Section 84 of the I.P.C., which provides that 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 what he is doing is either wrong or contrary to law. The trial

court has erred in not relying on the defence evidence which fully proved about the mental ailment of the accused-appellant, which also finds support

from prosecution evidence. In fact, the accused-appellant was subjected to beating by group of persons near the well and she also sustained three

simple injuries. Her injury report is Exhibit P-8.

Learned counsel referred to statement of Dr. Mahesh Chandra Agarwal (PW-6) who, in his cross-examination, has admitted that few women do not

remain normal during premenstrual stage during few days prior to menstrual and become quite aggressive. In that situation, they may become violent

and also sometimes commit suicide. He admitted that he went to the house of the accused-appellant for treatment of her psycho-neurotic disease.

Learned counsel also referred to the statement of Dr. Shri Gopal Kabra (DW-2), who has also given the statement similar to Dr. Mahesh Chandra

Agarwal (PW-6) that few days prior to menstruation, a woman gets irritated and during that period, may also become aggressive and may develop

suicidal tendency and she in that stage could have pushed the children into the well. Dr. G.B. Advani (DW-4), who was the Professor and Head of

the Department of Psychiatry of S.P. Medical College, Bikaner, has also given similar opinion. He has stated that premenstrual syndrome is a

condition seen in female before the onset of menstruation. It is reported in 70 to 90 percent of the cases, but more so it is evident in about 60 percent

cases. Out of 60 percent, the symptoms are of mild nature in about 40 percent cases and rest are severe to moderate. It is characterized by two types

of symptoms, bodily and psychological. In bodily symptoms, the symptoms are headache, tension in the breast, abdominal swelling, edema, loss of

appetite, migration and sometimes epilepsy. During this stage, a woman can become irritable and can be violent, in which state they may cause injuries

to herself and others. The accused-appellant was having such problem has also been proved by several defence witnesses, namely, her teacher

Shenlata (DW-3), her neighbour Kanhaiyalal (DW-1), her sister-inlaw Asha Devi (DW-5) and her sister Ganga Devi (DW-6).

Learned counsel, in support of his arguments has produced certain articles, namely, (1) "premenstrual syndrome (PMS) the malady and the

law" authored by Dr. Harinder Singh, Additional Professor, Pharmacology, (2) "premenstrual stress syndrome as a defense in criminal

cases" published in "Duke Law Journal", William S. Hein & Co., INC., 1285 Main Street Buffalo, New York 14209. Reliance is also placed

on the article "Menstruation and Crime" authored by Katharina Dalton, M.R.C.S., L.R.C.P., General Practitioner, Edmonton : Honorary Clinical

Assistant, Department of Psychological Medicine, University College Hospital, London. Learned counsel in support of his arguments has relied on the

judgments of the Supreme Court in Bhikari Vs. State of U.P. - AIR 1966 SC 1, Sudhakaran Vs. State of Kerala" (2010) 10 SCC 582, Shrikant

Anandrao Bhosale Vs. State of Maharashtra" (2002) 7 SCC 748, Elavarasan Vs. State represented by Inspector of Police" (2011) 7 SCC 110,

Bapu alias Gujraj Singh Vs. State of Rajasthan" (2007) 8 SCC 66, State of Rajasthan Vs. Shera Ram alias Vishnu Dutta" (2012) 1 SCC 602,

Devendra Kumar Vs. State of Rajasthan" 2008 (1) Cr.L.R. (Raj.) 137, Ruliram and Another Vs. State of Haryana" (2002) 7 SCC 691 and

Jaikumar Vs. State of Haryana" (2009) 15 SCC 282.

Per contra, Mr. R.S. Raghav, learned Public Prosecutor, opposed the appeal and submitted that the deceased and two injured were seen alive

immediately before the incident in the company of the accused-appellant by Kamla (PW-1), who disclosed her physiognomy by saying that a woman

of wheatish colour. Three children were seen along-with the accused-appellant. This witness has identified her in the court. Even in her arrestmemo

(Exhibit P-26) similar physiognomy has been mentioned. Deceased Omprakash has died due to drowning, which is a fact proved in the postmortem

report (Exhibit P-7) by Dr. Mahesh Chandra Agarwal (PW-6). Injury report of injured Deoki (Exhibit P5) shows that she sustained three injuries and

all were abrasions. Injury report of another injured Udhavdas, Exhibit P-6, shows that he sustained two abrasions. The fact that accused-appellant

sustained injuries owing to beating by group of persons, who had assembled there, also indicates that the accused-appellant was immediately caught

there.

Reference is made to the statements of Jeevat Ram (PW-17), father of deceased Omprakash, Rajkumari (PW-18), the mother of injured Udhavdas

and injured Deoki, Kamla (PW-19), mother of the deceased, Kanhaiyalal (PW-20) father of two injured children) and Lahori (PW-21), grandfather of

deceased Omprakash and two injured Udhavdas and Deoki. Jeevat Ram (PW-17), Kamla (PW-19) and Kanhaiyalal (PW-20) were the neighbours of

the accusedappellant in the same colony. According to what these witnesses stated the appellant was not maintaining sound character and that she

used to often come back at home late in the night and these people used to object of her conduct. Accused-appellant Kumari Chandra therefore

obviously had taken annoyance for the act of the parents of three children and deliberately caused their drowning. It is argued that had people not

seen the children being drown in the well and if eye witnesses did not reach, life of two children could not have been saved. It is argued that there was

no specific plea of insanity set up by the defence inasmuch as there was no evidence on record of insanity. Menstrual is a natural cycle with every

women. It can in no way affect her mental condition. If at all the accused-appellant had taken the treatment of the doctor, nothing restrained her to

produce on record the prescriptions of the doctors and the medical bills. The appeal be therefore dismissed.

We have given our thoughtful consideration to the rival submissions and minutely scanned the material available on record.

Although it is a fact that the accused-appellant had pushed the children of tender age into the well, one of whom died and two survived with minor

injuries but whether the accused-appellant at the time of incident was labouring under a defect of reason and was suffering from any psychological

disorder or unsoundness of mind, is the question that arises for consideration of this court. The testimony of the eye-witnesses, namely, Udhavdas

(PW-26) and Deoki (PW-27), despite their tender age, has to be accepted to the extent that the accused-appellant pushed them into the well, which

led to death of Omprakash @ Gauri but other two children survived. The prosecution has alleged that the accusedappellant did so deliberately as she

was annoyed with the father of deceased Omprakash as also father of injured Udhavdas and Deoki, who were real brothers. Deceased Omprakash

was first cousin of the two injured children. The prosecution has sought to adduce the evidence as to why the accused-appellant would do so. We

may, in this connection, refer to the statements of Jeewat Ram (PW-17), Kamla (PW-19) and Kanhaiyalal (PW-20). Jeewat Ram (PW-17), father of

the deceased, has stated that he otherwise had good relations with the accused but there was some dispute also. He used to object to the accused of

her habit of frequently coming home late in the night. Whenever she would return back home late in the night, he used to reprimand her for this and

complained to her father also for her late coming. Owing to this dispute, they were not on talking terms. But when confronted with the police

statement (Exhibit D-6), he failed to explain why he did not mention all this therein.

Kamla (PW-19), mother of deceased Omprakash, has also similarly stated that although they did not have any enmity with the accused or her family

but since she was a woman of bad character, her husband used to complain about this to the father of the accused-appellant. Even this witness was

confronted with her police statement (Exhibit D-8) as to why she did not mention of this therein, she failed to give any satisfactory explanation.

Kanhaiyalal (PW-20), uncle of the deceased, has also stated that his brother Jeewatram used to complain to Tolaram, father of the accused-appellant,

about the conduct of his daughter that she usually came home late in the night.Â This witness was also confronted with the police statement (Exhibit

D-9) why he did not say in the police statement that his brother used to complain to the father of the appellant about her coming home late in the night.

In answer thereto, this witness in cross-examination has stated that he did not remember whether he narrated this to the police that Jeevat Ram,

father of the deceased, had made a complaint to Tolaram, father of the accused-appellant, against the appellant that she used to return back home late

in the night.

As against the case set up by the prosecution to indicate the motive on the part of the accused-appellant, the defence of the accused-appellant is that

she at the relevant time was suffering from an unusual mental ailment known as premenstrual stress syndrome (PMS) in which she would become

violent and would have no control over her emotions. Core of the defence is that even this condition qualifies for the defence of insanity with

reference to Section 84 of the IPC. The accused-appellant herself during examination under Section 313 of the Cr.P.C. set up a specific defence that

she did not have any enmity with the children. She used to often take them for walking and never caused any harm to them. She further stated that

before marriage whenever she approached the period of menstruation she used to become almost mad. She had taken initial treatment from Dr.

Mahesh Chandra Agarwal for this disease. This fact was known to her family members and neighbours as also most of her teachers and classmates.

She had menstruation on 13.08.1981 when she was in detention at Police Station Nasirabad. Her marriage was solemnized on 05.02.1983 and that she

now had a daughter out of this marriage. Here, it may be noted that the incident in the present case had taken place on 11.08.1981 and although there

is no evidence has been adduced to substantiate this fact but the accused-appellant in her examination has taken a specific defence that she had

menstruation on 13.08.1981 when she was detained in Police Station Nasirabad.

Kanhaiyalal (PW-20), neighbour of the accused-appellant, has stated that the accused-appellant used to get fits and in that state she could push

anybody who came near her. Her parents used to take her to â??peer baba Nijamuddinâ?? for treatment by black magic. In that state the accused

would not be in senses and become uncontrollable. He has further stated that on the date of incident the accused-appellant was sitting at the shop in

Mukeri Mohalla, she was frothing from her mouth and was looking mad. Group of persons had assembled there and were saying that she has got fits

of madness. Snehlata Jat (DW-3) was a teacher in the school where the accused-appellant studied. Even she stated that while in school, the accused-

appellant used to get fits and at such time she would tear her clothes and would start behaving abnormally with other girls. Whenever she would face

such fits, a teacher and a peon would take her to the house.

Smt. Asha Devi (DW-5) happens to be wife of the brother of the accused-appellant. She has stated that behaviour of the accused-appellant would

become abnormal 3-4 days prior to menstruation and at such time, she used to become violent with the people around her, and would even throw the

utensils etc. The family got her treated from Dr. Mahesh Chandra Agarwal (PW-6) and Dr. G.B. Advani (DW-4). The medicines were given to her,

which somewhat improved her condition. Thereafter, on their advice, her

marriage was performed. After she gave birth to a child, she became absolutely fine. At times she suffered fits in the school, from where she was brought by the teacher or the peon of the school. Similar statement has been given by Ganga Devi (DW6), the real sister of the appellant.

In this regard, Dr. Mahesh Chandra Agarwal (PW-6) has stated that he has read in medical jurisprudence that few females do not remain normal in the days preceding to menstrual and may even become aggressive and violent. Sometimes they may even commit suicide. This is a kind of ailment.

This witness has even stated that he had gone to the house of the accused-appellant two-three times for her treatment of psycho-neurotic disease, in which accused would become aggressive and violent to the extent of reaching the stage of madness. This condition of the accused was involuntary and not deliberate. Dr. Mahesh Chandra Agarwal (PW-6), in his cross-examination, has stated that he is not the specialist of the diseases relating to the menstrual system of women. At the time when the injury report (Exhibit P-8) was prepared, the accused was in normal mental condition and was not aggressive.

Dr. Shri Gopal Kabra (DW-2) has stated that very few women suffer from premenstrual syndrome, which has two kinds of symptoms - bodily and mental. While in bodily symptoms, there may be swelling in the breasts, depression, swelling of stomach, swelling on the hands and feet, headache etc., but in mental symptoms there may be irritation, depression, abnormal behaviour, tendency of suicide, tendency of violence, tendency of causing beating to children etc. These mental and bodily conditions are beyond the control of such woman. This witness further stated that he was making such statement on the basis of medical literature, which he has brought in the court but not much literature is available about this condition. Such symptoms can start to appear fifteen days before the menstruation and may end on completion of the period of menstruation. In the menstrual cycle, generally such symptoms may persist for as many as 13 days.

Dr. G.B. Advani (DW-4), the Professor and Head of the Department of Psychiatry, S.P. Medical College, Bikaner, has given quite comprehensive opinion about this ailment. He has stated that he has treated the accused for premenstrual syndrome 3-4 years ago for a period of about six months.

He has also stated that the symptoms of P.M.S. in the accused were very severe

when she visited his house. She was quite aggressive. He had to give her tranquilizer. It was not necessary to hospitalize every patient who came to his residence in aggressive state. He further stated that he had seen many violent cases in P.M.S., but he did not come across any case of P.M.S. where the patient had killed anyone. Five percent of cases were of definitely psychotic and capable of any type of crime. Most of the cases brought to them were of psychotic nature because mild symptoms do not come to them. In view of the nature of opinion expressed by him, it is deemed apposite to reproduce relevant part of his statement, which reads as under:-

â??Premenstrual syndrome is a condition seen in female before the onset of menstruation. It is reported in 70 to 90 percent of the cases, but more so

it is evident in about 60 percent cases, out of this 60 per cent, the symptoms are of mild nature in about 40 per cent cases, rest are severe to moderate.

It is characterized by two types of symptoms bodily symptoms and psychological symptoms. In bodily symptoms, the symptoms are head-ache, tension

in the breast, abdominal swelling, edema, loss of appetite, migraine and sometime epilepsy. In psychological symptoms, there are two types of

manifestations, either the patient has depression and lethargy, or changes in the personality and emotional outbursts. In this state, they are irritable and

can be violent. The violence can be of any nature usually they inflict injuries to self and even to others. These symptoms are usually seen about 10 to

12 days before the onset of the menses and subside after the starting of the menses. They start from 10 to 12 days before the onset of menses and

gradually go on increasing till the onset of the periods. This condition is usually more common in nulliparous (woman was not borne any children)

Catherine Dolton is an International Authority on P.M.S. Lancet, Journal of American Medical Association, Practitioners are Journals of authority all

over the world. P.M.S. is a definite medical entity and is dealt in every book of gynaecology and psychiatry. These symptoms can be of such an

intensity to border on the Psychotic state means insanity. It is mentioned in the Text of Gynecology 1982 Edn. Page 825-Authors are Harvard John

and Georgeanna Seegar Johns.â??

Considering the unusual nature of the defence of insanity, we have looked into various papers prepared by experts on the subject to find if defence of

insanity can be claimed by a female suffering from P.M.S.

In the report titled 'Premenstrual Stress Syndrome as a Defense in Criminal Cases' by Marc P. Press published in the Duke Law Journal

(Vol.1983:176), the premenstrual syndrome has been described as under:-

'Premenstrual stress syndrome (PMS syndrome) is a disorder afflicting many women.' The symptoms of PMS syndrome include excessive thirst

and appetite, bloating, headaches, anxiety, depression, irritability, and general lethargy.² Diagnosis depends on the timing of the symptoms rather than

on their type, number, or severity; ³ not all patients experience all possible symptoms. The symptoms develop and increase in intensity from seven to

fourteen days prior to the onset of menses and disappear rapidly thereafter.⁴ PMS syndrome can range in severity from mild to incapacitating, in both

a physical and psychological sense.⁵ Recently, in England, female defendants in separate criminal actions successfully pleaded diminished

responsibility or mitigating circumstances by establishing that they suffered from PMS syndrome.⁶ It has been reported that France also recognizes

PMS syndrome as a form of legal insanity.⁷ The use of PMS syndrome as the basis for a diminished capacity defense in England, and increased

research and awareness of the syndrome in the medical community, has sparked debate in the United States legal community concerning the

admissibility of evidence to prove PMS syndrome.⁸ In an effort to resolve this debate, this note first discusses the context in which a defendant in a

criminal action might seek to use expert testimony to establish that she suffered from PMS syndrome. ⁹ Second, the note discusses the two

evidentiary standards used by courts to evaluate a proffer of expert testimony on novel scientific evidence.¹⁰ Finally, the two standards are applied to

evaluate the admissibility of expert testimony proffered to establish that the defendant suffers from PMS syndrome.'

The research paper prepared by Katharina Dalton on 'Menstruation and Crime' available online recorded the following findings:-

'The analysis shows that there is a highly significant relationship between menstruation and crime. This could mean that the hormonal changes

cause women to commit crime during menstruation and the premenstrual and/or that women are more liable to be detected in their criminal acts during

this time. The adverse effect of menstruation was greatest among sufferers of

premenstrual tension, with its concomitant symptoms of lethargy, slower reaction time, and mental dullness; and these factors would lead to easier detection during certain days of the menstrual cycle, especially among habitual law-breakers-for example, prostitutes and shoplifters. Premenstrual tension is also accompanied by irritability, lethargy, depression, and water retention, and these symptoms alone may be responsible for certain crimes-for example, irritability and loss of temper may lead to violence and assault, lethargy may lead to child neglect, and depression to suicide (still a crime at the time of investigation). If water retention is present in an alcoholic, then alcohol retention tends to occur, increasing the liability for the woman to become drunk and disorderly.â??

Dr. Harinder Singh with three others conducted a study on 96 females suffering from premenstrual syndrome and submitted a report under the

heading â??Premenstrual Syndrome (PMS) the Malady and the Lawâ?? recording following conclusion:â??From the present study, it has been

shown that there is appearance of marked behavioral changes like depression, aggression, irritability, mood swings etc. during PMS. These behavioral

changes affect some females to such an extent that they act uncharacteristically and commit minor to major crimes which can turn into unlawful

behaviors. If the criminal behavior is associated with hormonal changes of female reproductive cycle, their findings could be admissible in criminal

trials of female offenders. Even psychological symptoms associated with menstruation might form a plea of insanity for some female offenders.â??

Prof. (Dr.) Patricia Easteal, Senior Criminologist, Australian Institute of Criminology, Canberra, in her paper on the subject â??Premenstrual Syndrome

(PMS) in the Courtroomâ??, which was abstracted from Easteal 1991 (Women and the Law), made following observations:-

â??The most recent overseas case widely publicised in the press was heard in the United States during 1991. It may be reflective of the perspective

contained in the 1990 supplement to Crimes of Violence: Homicide and Assault, by the noted American lawyer, F. Lee Bailey. He devotes a chapter

to PMS, noting that it 'is a fruitful area for the diligent attorney to pursue . . . Those who suffer symptoms severe enough to impair their emotional or

mental functions are a small proportion of the women who suffer from PMS. Do not try to raise the defense unless you can back it up with solid

medical evidence' (Bailey & Fishman 1990, p. 728). This guide to lawyers in the United States goes on to specifically advise about expert witnesses

and their preparation, jury consideration, testimony by the defendant and PMS sentencing.â??

Mr. Christopher Boorse of Department of Philosophy, University of Delaware, Newark, USA, delivered a lecture on the subject â??Premenstrual

Syndrome and Criminal Responsibilityâ??, available online, the abstract of which reads under:-

â??In 1980-81, two British women escaped murder convictions by arguing that their legal responsibility was diminished by premenstrual syndrome

(PMS). In a fit of rage Sandie Craddock, an East London barmaid with 45 prior convictions, stabbed a fellow barmaid three times through the heart (

Regina v. Craddock, 1981, 1 C.L. 49; see also Apodaca & Fink, 1984; Carney & Williams, 1983). Christine English, after a quarrel with her lover,

crushed him to death against a utility pole with her car (Regina v. English, an unreported decision of the Norwich Crown Court on November 10,

1981; see also Apodaca & Fink, 1984, p. 54; Carney & Williams, 1983, p. 261). With the aid of testimony by Dr. Katharina Dalton, the worldâ??s

most prominent advocate for PMS victims, each woman was convicted only of manslaughter due to PMS-diminished responsibility. Most remarkably,

neither woman was punished for her killing: Craddock received probation; English, a 12-month conditional discharge with a driving ban. About a year

after her conviction, Craddock (now Smith) was rearrested for an equivocal attempt to murder a policeman; convicted on three new charges, Smith

again argued PMS to mitigate her sentence and again received probation. These judgments were approved on appeal. According to magazine stories

and Dalton (see her chapter, this volume), Craddock and English are only two of the many British and Canadian defendants to reduce their criminal

responsibility by pleading PMS.â??

Relevant extract of the essay titled â??Exploring Premenstrual Syndrome in Criminal Lawâ?? published on 23.03.2015 in UK Essays, a trading name

of All Answers Ltd., would be worth quoting:-

â??PMS means what?

PMS stands for Premenstrual Syndrome and the debate over using this ailment as an acceptable defense has been the topic of many argumentative

discussions between professionals. WebMD (2010) defines PMS as 'the physical and psychological symptoms that occur in the week before a

women's menstrual period'. There are over 150 common symptoms of PMS that most women experience and they categorized into three parts:

Physical, Emotional, and Behavioral. Some of PMS symptoms include leg and stomach cramping, abdominal bloating, pack pain, Acne, breast swelling,

anxiety, dizzy spells, anger, crying, Libido changes, accident prone, social isolation, hysteria, headaches, depression, mood swings, fatigue, insomnia,

and many others (Easteal, 1991). For most women these symptoms appear for a short period of time, usually a week before the menstrual period and

they disappear during or right before the cycle begins.

Late Luteal Phase Dysphoric Disorder

The American Psychiatric Association (APA) began indentifying mental disorders of individuals and recording the data to one day create a manual

that would assist medical professionals on how to classify certain syndromes by their symptoms. Late Luteal Phase Dysphoric Disorder (LLPDD)

was developed to the DSM III-R to provide a systematic set of criteria for establishing a premenstrual mood disorder (Gallant, et. al., 1992). Some of

the symptoms that women have to have include being sad, tearful, angry, anxiety, fatigue, insomnia, change in appetite, difficult concentrating as well

as many other physical maladies. LLPDD was created so that professionals would be able to distinguish it from Premenstrual Syndrome (PMS) and

diagnose criteria that included psychological disturbances that seriously interfered with work, ordinary social activities, relationships, and arise during

the luteal phase of the menstrual cycle, ending within a few days of the onset of menstruation (Downs, 2002). Premenstrual Dsyphoric Disorder

(PMDD) became the new name for LLPDD and the new studies aimed to determine the prevalence of PMDD using all four DSMIV research

diagnostic criteria (Gehlert, et., al., 2009). For the full diagnostic criteria of LLPDD, see Appendix A.

PMS Based Defenses

There have been cases as early as the late 1800's where a case of Premenstrual Syndrome (PMS) have been used in court. The cases used PMS as

an opener for the suspect to eventually plead temporary insanity. Insanity has many variations of its' clinical interpretation, however, this manuscript

will utilize the WebMD (2010) definition, which states insanity as 'the lack of understanding or having the mental capacity to enter into a rational state of normal responsibility'. In the United States (US) two fundamental requirements are common to test for when determining insanity. The two fundamental elements are: (1) the defendant must suffer from a mental disease or defect, and (2) a casual relationship must exist between the disease or defect and the criminal offense (Downs, 2002).

Although the law has not much developed in India as to the Premenstrual Stress Syndrome being set up as the defense of insanity, yet the accused

has a right to plead and probabalize such defence to show that she was suffering from premenstrual stress syndrome when the crime was

committed and because of her such condition, the offence that she committed was an involuntary act on her part, inasmuch owing to this fact, she was

labouring under the defect of reason or was suffering from psychological disorder or unsoundness of mind. She can, within the scope of Section 84 of

the Indian Penal Code, set up such a plea and substantiate the same by evidence. In the present case, not one but three doctors, who treated her on

different occasions, have deposed in favour of such plea of insanity set up by the defence.

While prosecution has to prove its case beyond reasonable doubt, the accused has to merely probabalize his or her defence by preponderance of

probabilities. The analysis of evidence in the light of the law and literature on the subject referred to above clearly demonstrates that the accused-

appellant has been able to probabalize the defense by standard of preponderance of probabilities.

The law as to the criminal liability of a person of unsound mind owes its genesis to an English judgment in *R v. M'Naughten* (1843) 10 Cl &

F 200 (T.A.C.), which has now come to be known as M'Naughten Rule, according to which where on a criminal charge, it appears that, at the

time of the act or omission giving rise to the offence alleged, the defendant was labouring under a defect of reason owing to a disease of the mind so

as not to know the nature and quality of his act, or, if he knew this, so as not to know that what he was doing was wrong, he is not regarded in law as

responsible for his act. This is a question of fact to be decided on a given case on the basis of evidence adduced before the court. Unsoundness of

mindâ?? has often been used as a synonym for other terms such as insanity, lunacy, madness or mental derangement or disordered state of mind

owing to which an individual loses the power of regulating his action and conduct according to rules of the society to which he belongs. There is no

other possible test available to judge the condition of his mind at the particular point of time. Behaviour of the accused, antecedent, attendant and

subsequent to the event, may be relevant in finding the mental condition of the accused at the time of the incident, but not of the remote past in time. It

is not every mental derangement that exempts an accused person from criminal responsibility for his acts, but it must be such which impairs the

cognitive faculties of understanding the nature of his act on the victim or in relation to himself, that is, his own responsibility for it. Even if the accused

is not able to establish conclusively that he was insane at the time of committing offence, the defence pleaded 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 event the court would be entitled to acquit the accused on the ground that the prosecution has failed to discharge its burden of

proving the offence beyond reasonable doubt.

The Supreme Court in *Dahyabhai v. State of Gujarat* â?" AIR 1964 SC 1563 in regard to plea of insanity made following observations:-

â??(5). xxxxxxÂ Â Â Â xxxxxxxxxxxxÂ Â Â Â xxxxxxxx xxxxxx xxxxxxxxxxxxÂ Â Â Â xxxxxxxx

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 Section 299 of the Indian Penal Code. This general burden never shifts and it always

rests on the prosecution. But, as Section 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 Section 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 Section 105 of the Evidence Act, read with the definition of "shall presume" in Section 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 Section 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 Section 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. xxxxxxxx xxxxxxxx xxxxxxxx xxxxxxxx xxxxxxxx xxxxxxxx

(9) 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 Section 84 of the Indian Penal Code can only be established from the circumstances which preceded, attended and followed the crime.â??

It is trite that while the burden of proof for the prosecution to establish the guilt of accused is beyond reasonable doubt, the accused has to merely probabilize his defense by preponderance of probabilities. The Supreme Court in *Bhikari Vs. State of U.P.*, supra, has held that where plea of insanity is invoked by the accused it is for him to establish that fact. In *Sudhakaran Vs. State of Kerala*, supra, the Supreme Court held that for the act of a person of unsound mind the crucial point of time for ascertaining existence of circumstances bringing case within purview of Section 84 of the IPC is the time when the offence is committed. The Supreme Court in *Shrikant Anandrao Bhosale Vs. State of Maharashtra*, supra, interpreting Section 105 Illustration (a) of the Indian Evidence Act, 1872 held that nature of burden of proof on the accused to prove insanity is no higher than that which rests upon a party in civil proceedings. Similarly in *Elavarasan Vs. State represented by Inspector of Police*, supra, the Supreme Court held that burden of bringing his/her case under Section 84 of the IPC lies upon person claiming benefit thereof. However, standard of proof which accused has to satisfy for discharge of burden under Section 105 is not same as is expected of prosecution. It is enough for accused to establish his defence on preponderance of probabilities, as in a civil case. In *State of Rajasthan Vs. Shera Ram alias Vishnu Dutta*, supra, the Supreme Court held that the symptoms of unsoundness of mind and post-epileptic insanity are temporary loss of memory and violent behaviour. The medical evidence accepted that patient after epileptic attack is not able to recognize even person known to him and can commit any violent act. The Supreme Court further held that post-epileptic insanity is a progressing disease.

Law is thus well settled that the burden which lays on the accused-appellant was not higher than that which rests upon a party in a civil suit.

According to the position emerging from the evidence in the light of such settled law, the appellant has been able to probabilize her defence that at the time of incident she was suffering from unsoundness of mind and was labouring under a defect of reason triggered by premenstrual stress syndrome.

Even if the material placed before the court is held to be not sufficient to discharge the burden under Section 105 of the Evidence Act, it still raises a reasonable doubt as to the existence of mens rea on the part of the accused-appellant, thus making out a case for extending benefit of doubt to her.

In the result, this appeal deserves to succeed and is hereby allowed. The impugned judgment and order is set aside. The accused-appellant is acquitted of the charges levelled against her. Her sentence was suspended by this court during pendency of the appeal and thus she is out on bail. She needs not surrender.

Keeping, however, in view the provisions of Section 437-A of the Code of Criminal Procedure, appellant Kumari Chandra @ Sati Lajnani is directed to forthwith furnish a personal bond in the sum of Rs.20,000/- each, and a surety bond in the like amount, before the Deputy Registrar (Judicial) of this Court, which shall be effective for a period of six months, undertaking that in the event of filing of Special Leave Petition against this judgment or on grant of leave, the appellant, on receipt of notice thereof, shall appear before the Supreme Court.