

(1994) 03 BOM CK 0080

In the Bombay High Court

Case No : Criminal Appeal No. 360 of 1992 with Suo Motu Petition No. 16 of 1992

Namdeo Satyagonda Patil

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 17-03-1994

Acts Referred:

Evidence Act, 1872 — Section 105, 106
Penal Code, 1860 (IPC) — Section 302, 309, 84

Citation : (1994) 4 BomCR 64 : (1994) CriLJ 3493

Hon'ble Judges : Vishnu Sahai, J;H.H. Kantharia, J

Bench : Division Bench

Advocate : A.Y. Sakhare, for the Appellant; Mrs. V.K. Tahilramani, for the Respondent

Judgement

Sahai, J.—Since both these matters arise from the same set of facts, we propose disposing them of by a common judgment :-

2. The appellant Namdeo Patil was convicted under S. 302 of Indian Penal Code, on four counts :-

- (a) for committing murder of his wife Mahadevi;
- (b) for committing murder of his daughter Km. Jayshree.
- (c) for committing murder of his another daughter Km. Gita, and
- (d) for committing murder of his son Master Ranjit.

And on each of the four counts, he was awarded a separate sentence of R.I. for life and to pay fine of Rs. 100/- in default of payment of fine, to further undergo R.I. for 7 days. He was also convicted under S. 309 of Indian Penal Code and was sentenced to undergo 6 months R.I. The substantive sentences were ordered to run concurrently. The aforesaid convictions and sentences were imposed on the appellant by Shri N. T. Giri, IInd Additional Sessions Judge, Kolhapur vide order

dated 6th June, 1992, in Sessions Case No. 121 of 1991. Feeling aggrieved by the aforesaid order, the appellant preferred criminal appeal No. 360 of 1992 in this Hon"ble Court. This Court, suo motu issued notice to the appellant as to why his sentence should not be enhanced to death and the suo motu petition is numbered as No. 16 of 1992.

3. Prosecution case in brief as contained in the FIR lodged by PW 2 Bhimgonda Shatgonda Patil on 4th December, 1990 at 9.30 p.m. at Police Station Gadhinglaj runs as under :-

4. Informant Bhimgonda Patil the Police Patil (PW 2) is Sarpanch of village Chandankud. He alleges in the FIR that today on 4th December, 1990 at 5.30 p.m. when he was present in his house, one Changunda Shatgonda Patil of village Chandankud came and informed him that his brother Namdeo Patil had committed murder of his wife and children, and the corpses are lying in a pool of blood and the accused himself tried to commit suicide by inflicting knife injuries in his stomach region. On that information, the informant, Sarpanch and some other persons went to the house of the accused (appellant) and found that at that time, it was open. The informant says that inside the house, dead bodies of Mahadevi (wife of appellant) Jayshree and Gita (daughters of appellant) and Ranjit (son of appellant) were lying in a pool of blood. Informant also found that appellant was lying in a injured condition having injury on his stomach region. He also alleges that blood stained knife was lying there. Immediately, Changunda took the appellant to Halkarni dispensary for treatment.

5. In the FIR, it is alleged that since last 13 to 14 years, appellant was working as a teacher and in the current year, he was transferred from Terni to Chandankud. There is also allegation in the FIR that since 1977, appellant was mentally unfit and presently, was undergoing treatment at Miraj. In the concluding lines of the FIR, there is a inference by the informant in words "as he was mostly disturbed, he committed murder of his wife and children and injured himself". The Investigating Officer PW 18 Annasaheb Yashwantrao Patil at the time of lodging of FIR was present at the police station and on the basis of the FIR, he lodged a case in his own handwriting against the appellant. After registering the case, Investigating Officer went to village Chandankud and having reached the place of incident, he performed the inquest of the corpses and next morning, he prepared the site plan. Investigating Officer found one blood stained knife in the first room of the house of appellant and took it in his possession. He also found one blood stained sickle in the rear portion of the house of appellant and took it in his possession. He also took blood stained and plain earth in his possession. The Investigating Officer recorded statement of the material witnesses. He also recorded supplementary statement of the informant. On 6-12-1990, he sent the seized sickle to the Medical Officer for opinion. On 11-12-1990, he recorded statement of Dr. Vijay Debsikdar (PW 16) of Miraj. On 19-12-1990, he arrested the appellant. On 26-12-1990, Investigating Officer obtained sample of the blood of the appellant. On 29-1-1991, he received

certificate about the injury of the appellant. Blood was also sent to the Chemical Analyst at Pune, on 5-2-1991. On 22-2-1991, PW 18 handed over the investigation to PSI Pawar (not examined). On 28-3-1991, Mr. Pawar filed charge-sheet against the appellant.

6. Autopsies on the dead bodies of four deceased persons were conducted by Dr. Vijay Kumar Narsappa Mundhe (PW 6) on 5-12-1990. On the person of Mahadevi (wife of appellant) the doctor found following injuries :-

(1) Encircle incised wound 1 cm away from midline of left side above 2" from supra sternal notch 3" gap present between two ends. It is about 12" x 2" x 1".

(2) Incised wound over right shoulder 2" x 2" x 1 1/2" lateral end of clavicle is pushed out measuring about 1".

(3) Incised wound just above the eye brow 1" x 1/2" bone deep left.

(4) Incised wound over middle of left arm on under side on palma aspect 6" x 2" bone deep. Compound fracture of radius and ulna.

In the opinion of doctor, these injuries were sufficient to cause death. They were encircled and capable of being caused by Article No. 5 (sickle).

7. On the person of Jayshree, the doctor found following injuries :-

(1) Incised wound over left temporal mandible joint 1 1/2 anterior to left ear. It is about 1" x 1/4" skin deep.

(2) Incised wound across chin extending from left angle of mouth directly towards right end of injury is 2" below the right angle of mouth (2" medial to angle of right mandible).

(3) Incised wound over thyroid cartilage trachea and oesophagus is cut 4" x 1" bone deep cartilage deep 4.

(4) Incised wound over nape of neck 5" x 2" bone deep, horizontally pressed, verticle vertibra 4 and 5th cut.

(5) Incised wound over just below the injury No. 4. It is placed on the superior border of right scapula. It is about 3 1/2" x 1/2" bone deep.

According to the doctor, these injuries were capable of causing death of deceased and could be caused by article No. 5 (sickle).

8. On the person of Ranjit, the doctor found following external injuries :-

(1) Incised encircle wound over anterior aspect of neck cutting C6 and C7 vertibra. Leaving only 2 1/2" skin at left side of the neck. It is about 6 1/2 and 2" bone deep. It is just below the chin on neck, tracheal wings are cut (upper).

According to the doctor, these injuries were sufficient to cause the death of deceased and were possible by a sickle.

(9) On the person of Gita, following external injuries were found :-

(1) Incised wound from right ear to right eye-brow upper base of nose left lower eye-lid, 1" right to temporal mandible of joint. Half of right ear is cut. It is about 7" x 1" bone deep.

(2) Incised wound about 7" x 3" from right ear towards aupweioe voeswe of scapula.

(3) Incised wound about on neck at C2 vertibra about 1 1/2" x 1/2" and bone deep. Dislocation and cut of C1, C2 and C3 vertibra.

In the opinion of the doctor, these injuries were sufficient to cause death of deceased and were possibly by a sickle. It is significant to point out at this stage that cross-examination of this witnesses was declined by the learned counsel for the appellant.

10. It may be mentioned that prior to the performance of the autopsies on the dead bodies of deceased persons, the appellant was examined on the date of the incident itself by Dr. Anil Rajaram Athawe (PW 17) Medical Officer, Primary Health Centre, Halkarni. The doctor found a solitary injury (incised wound) on the person of the appellant. Since condition of the appellant was serious, the doctor referred him to Belgaum Hospital where he was examined same day by Dr. Aruna Yeleshrao Katti (PW 15). The doctor found following injuries on his person :-

(1) Stab injury over the abdomen with evisceration of intestines and momentum.

PW 15 in deposition in the court has stated that when she asked the appellant about the cause of injury, he replied that it was self-inflicted. PW 15 also found that aforesaid injuries of the accused were possible by article No. 1 (knife).

11. It may be mentioned that case of the prosecution is that four deceased persons were done to death by a sickle and the appellant attempted to commit suicide by assaulting himself with a knife.

12. The J.M.F.C., Gadhinglaj committed the case to the Court of Session under S. 302, IPC. Charges under sections 302 and 309, IPC were framed against the appellant. Charges were read over and explained to the appellant in Marathi (language which he understood) and to those charges, he pleaded not guilty and wanted to be tried.

13. The defence of the appellant was that he did not know as to how the incident took place. He also gave a written statement in which he stated that he had a attack of lunacy and therefore, he was admitted to a hospital. He further stated that a few days prior to the incident he had such trouble and therefore, he went to his father-in-law's house along with his wife and children and asked them to stay there. He did not know as to how he was injured, or how his wife, two daughters and son were killed. He further says that only subsequently, he came to know that the murders of his children and wife had been committed. In the instant case, as many as 18 witnesses were examined by the prosecution. These

witnesses can be divided into three categories :-

- (1) Witnesses of various circumstances against appellant;
- (2) Witnesses who performed autopsies and medically examined the injuries of the appellant and also gave evidence regarding mental condition of the appellant; and
- (3) Witness who had investigated the case (PW 18 Appasaheb Yashwantrao Patil).

14. At the very outset, we may state in our judgment that in the instant case, there is no eye-witness account. The case rests purely on circumstantial evidence.

15. The circumstances which have been relied upon by the learned Trial Judge and on which we propose to rely upon are :-

- (1) Appellant was found in an injured condition in his house and dead bodies of his wife, 2 daughters, and one son were also lying there;
- (2) In the house of appellant, two weapons namely sickle and knife having blood stains and blood stained earth were found.
- (3) Case of the prosecution that deceased persons were assaulted by a sickle and the appellant tried to commit suicide by a knife is corroborated by the medical evidence; and
- (4) The report of the Chemical Analyst is that there was human blood on the aforesaid articles, and group of the blood also fits in with the prosecution case.

16. We may also add that in case these four circumstances are found to be proved, there is also the circumstance, contemplated by S. 106 of the Evidence Act, that circumstance being that it can be reasonably inferred that whatever happened was in the special knowledge of the appellant and he was under an obligation to explain as to how four deaths took place in his house and as to how he was injured there.

17. We have heard Mr. Sakhare, learned counsel for the appellant at considerable length. We have also heard Mrs. Tahilramani, learned Additional Public Prosecutor for State at some length. We have carefully gone through the entire material on record including depositions of witnesses.

18. Learned counsel for the appellant on merits has made two-fold submissions : Firstly inasmuch as there is no eye-witness of the present incident and it rests only on circumstantial evidence, prosecution has neither proved various links in the chain of circumstances, nor has it established that cumulative chain of circumstances only and wholly leads to the inference of guilt of the appellant and is absolutely inconsistent with his innocence and incapable of being explained on any other reasonable hypothesis. In the alternative, the learned counsel for the appellant has urged that at any rate, the appellant was mentally unsound and consequently, in view of the provisions contained in S. 84, IPC, he has committed no offence in the eye of law. The learned counsel further submitted that onus on

the appellant to discharge the plea of insanity provided under S. 105 of Evidence Act has been discharged. Last submission of the learned counsel for appellant was that the instant is not a case for awarding death sentence and consequently, notice for enhancing the sentence issued to the appellant be discharged.

19. The learned Additional Public Prosecutor on the other hand, contended that prosecution has proved beyond reasonable doubt the various links forming part of the chain of circumstantial evidence and that collectively that chain, irresistibly leads to the inference of the guilt of the appellant and is wholly inconsistent with his innocence. According to the learned Additional Public Prosecutor, the prosecution has discharged initial burden resting on it of proving its case beyond reasonable doubt. In reply to the contention of the learned counsel for appellant, that in the alternative, benefit of general exception contained in S. 84, IPC (plea of legal insanity) be given to the appellant, learned Additional Public Prosecutor submitted that appellant has failed to prove legal insanity and discharge the burden provided by S. 105 of the Evidence Act. Last submission was that looking to the circumstances of the instant case, it is a case in which sentence of the appellant, should be enhanced to one of death by this Hon"ble Court.

20. As is well settled, the burden of proving its case beyond reasonable doubt rests with the prosecution. We would first like to take up circumstantial evidence adduced by the prosecution, against appellant, circumstances have been noted in the earlier part of our judgment. The prosecution is relying upon four circumstances which have been mentioned by us on pages 10 and 11 of our judgment. Now, we propose to examine each of those four circumstances and the evidence led by the prosecution to prove them. First two circumstances are :-

(1) Appellant was found in an injured condition in his house and dead bodies of his wife, two daughters, and one son were also lying there.

(2) In the house of appellant, two weapons, sickle and knife having blood stains and blood stained earth were found.

There is the evidence of PW 2 Bhimgonda Shatgonda Patil, PW 3 Kum. Manjula Maruti Patil, and PW 4 Gangaram Paragonda Patil, to the effect when they reached house of appellant, they found him lying in an injured condition. Blood was oozing out from his injuries. Two of these witnesses also stated that on the floor, word "Atmahatya" was written. We may also mention that some other witnesses namely PW 8 Shevanta Maruti Patil, PW 9 Sidgonda Shatgonda Patil and PW 11 Changonda Patil were examined by the prosecution to prove the aforesaid circumstances but, as they were brother-in-law, elder brother and step-brother of the appellant, respectively, they became hostile. Even if the testimony of these witnesses is excluded, there remains testimony of PWs 2, 3 and 4 and no infirmity could be pointed out by the learned counsel for appellant on the strength of which, we can disbelieve their testimony. The testimony of these witnesses that appellant was found injured is corroborated by the evidence of two doctors namely PW 15 Dr. Aruna Yeleshrao Katti and Dr. Anil Rajaram Athawe

(PW 17). Consequently, in our opinion, the circumstances that appellant was found in an injured condition in his house, stands proved by cogent, reliable, and unimpeachable evidence.

21. Now, we propose to deal with the circumstances that in the house in which appellant was lying injured the corpses of his wife, his two daughters and son were also lying there, a sickle and a knife having blood stains were also found in the same house. This circumstance is proved by the evidence of PW 2 Bhimgonda Shatgonda Patil (complainant) and Gangaram Paragonda Patil (PW 4). We may mention that both these witnesses stated that appellant was lying in the first room of his house and one knife was lying near him and "Atmahatya" was written on the floor. Appellant was injured on his stomach. In the second room, corpses of his wife, his daughter Gita and son were lying on the ground. In the third room, corpse of his daughter Jayshree was found and a sickle was lying near the body. We may mention that PW 4 is wholly independent witness and the only infirmity which learned counsel for appellant could point out in testimony of PW 2 is that he was a Police Patil. In our opinion, that infirmity would not result in the mechanical rejection of his evidence but, would only make us evaluate his testimony, with caution. In our opinion both PWs 2 and 4 are truthful witnesses. In addition to the testimony of these witnesses, there was testimony of PW 8 Shevanta Maruti Patil, PW 9 Sidgonda Shatgonda Patil, and PW 11 Changonda Shatgonda Patil but, as they were brother-in-law, elder brother and step-brother, respectively, of the appellant, they became hostile. Therefore, we are excluding their testimony. In addition, there is testimony of PW 18 Mr. Annasaheb Yeshwantrao Patil, Police Inspector who went to the place of incident, and from the place of the incident, recovered blood stained knife in the first room of the appellant, blood stained sickle from the rear room of the appellant and blood stained earth. In our opinion, testimony of PW 18 inspire confidence and the learned counsel could not point out any infirmity in his testimony which could persuade us to hold to the contrary and to treat him as an unreliable witness. In view of the above, we hold that prosecution has been able to prove first two circumstances.

22. Third circumstance on which prosecution relies is that the prosecution case is corroborated by medical evidence, the deceased persons were assaulted by a sickle and appellant tried to commit suicide by a knife. PW 6 is doctor Vijaykumar Narsappa Munde, who conducted autopsies on all the four dead bodies and he candidly opined that injuries of all the four deceased persons could be caused by article No. 5 (sickle). Incidentally, we find that there has been no cross-examination of the doctor from the side of the appellant. In order words, defence submitted to this medical evidence. We have carefully perused the injuries of the four deceased persons and we are in agreement with the doctor's opinion that these injuries could be caused by a sickle, as alleged by the prosecution. As pointed out earlier, PW 15 doctor Aruna 3 Katti was of the definite opinion that injuries of the appellant were possible by a knife. We have ourselves perused the injuries of the appellant and considering their dimensions and their depth, we are

in agreement with the aforesaid opinion of the doctor that these injuries could be caused by a knife. In view of the reasons stated above, we find force in the submission of the learned Additional Public Prosecutor that medical evidence corroborates use of sickle regarding assault on the four deceased persons and use of knife by the appellant upon himself in trying to commit suicide.

23. Fourth circumstance in our opinion namely report of the Chemical Analyst that there was human blood on the aforesaid articles and group of the blood also fits in with the prosecution case, is a weighty circumstance. Chemical Analyst reports are Exh. 47, 47A and 34. Blood group of appellant was found as "B" and blood group of deceased Mahadevi was found as "O". Chemical Analyst report shows that blood found on the sari, petticoat and bangles (belonging to wife of appellant) was of "OB" group and the sickle and knife were also having blood of "OB" group. This could only have happened if the appellant assaulted his wife with a sickle and in that process, came in close contact with her. In all probability, it appears to us that this must have happened. Learned counsel for appellant tried to make capital out of evidence as to how "O" group of blood was found on the knife with which appellant tried to commit suicide. Probability of the wife of appellant touching knife cannot be ruled out.

24. These four circumstances unmistakably complete the entire chain of circumstantial evidence against appellant and this entire chain can only be consistent with the guilt of the appellant wholly inconsistent with his innocence and incapable of being explained on any other reasonable hypothesis.

25. In addition to these circumstances, we find there is also one other circumstance and that is the circumstance contemplated by S. 106 of Evidence Act. If four murders took place, in the house of appellant, if the appellant tried to commit suicide in his house, then S. 106 of the Evidence Act makes it obligatory for the appellant to explain as to how all this happened. These facts were in the special knowledge of the appellant. In the instant case, appellant has failed to discharge this burden. Failure of the appellant to give any explanation is also a circumstance which goes against him. Hence, we have no hesitation in holding that on the strength of the circumstantial evidence, adduced by the prosecution it has established the guilt of the appellant, beyond reasonable doubt. The prosecution case that appellant committed murder of his wife, his two daughters and one son and then tried to commit suicide stands duly proved.

26. The learned counsel for appellant placed reliance on two Supreme Court decisions :-

(1) Gambhir Vs. State of Maharashtra, , and

(2) Shankarlal Gyarsilal Dixit Vs. State of Maharashtra, .

With the help of these decisions, he wanted to place before us the law regarding the circumstantial evidence. In the case reported in Gambhir Vs. State of Maharashtra, their Lordships of the Supreme Court held that when a case rests

upon circumstantial evidence, such evidence must satisfy three tests namely;

(a) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established,

(b) those circumstances should be of definite tendency unerringly pointing towards guilt of the accused,

(c) the circumstances, taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else. The circumstantial evidence in order to sustain conviction must be complete and incapable to explanation on any other hypothesis than that of the guilt of the accused. The circumstantial evidence should not only be consistent with the guilt of the accused but, should be inconsistent with his innocence.

In the case reported in Shankarlal Gyarsilal Dixit Vs. State of Maharashtra, , it has been held that (at p. 330 of Cri LJ) :-

"in a case of circumstantial evidence the circumstances on which the prosecution relies must be consistent with the sole hypothesis of the guilt of the accused."

While evaluating the circumstantial evidence, we have borne in mind the tests laid down in the aforesaid two cases. In our opinion even after applying the tests, laid down in the aforesaid two cases, the circumstantial evidence is sufficient to warrant a finding of guilt against the appellant.

27. Coming to the alternative submission of the learned counsel of the appellant, namely from the evidence on record, appellant's plea of insanity stands established in the instant case, we would first like to refer to Section 84, IPC. Section 84, IPC reads thus :-

"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 what he is doing is either wrong or contrary to law."

A perusal of the aforesaid section shows that in order to get the benefit of plea of insanity, two things have to be established :- First at the time of incident, appellant was of unsound mind and secondly gravity of the insanity was such that he was incapable of understanding the nature and consequences of the act or what he was doing was either wrong or contrary to law.

28. Learned counsel for the appellant vehemently submitted that appellant had discharged burden u/s 105 of the Evidence Act and consequently, he should be acquitted. Learned counsel placed reliance on following evidence in order to show that appellant committed this offence in a fit of insanity. Learned counsel referred to the recitals in the FIR. The relevant recitals in the FIR according to the learned counsel are :-

"Since 1977, he was mentally unfit and at present he was undergoing treatment

at Miraj. As he was mostly disturbed, he committed murder of his wife and children and injured himself."

Second piece of evidence on which learned counsel placed reliance is the statement of informant PW 2 Bhimgonda Shatgonda Patil. The informant stated in para 4 of his aforesaid statement "People used to say that accused has gone mad. Accused was admitted to Miraj Mental Hospital for treatment. One Sidgonda Shatgonda Patil is the brother of the accused. It is correct that accused had beaten his brother in a fit of madness and that his brother was admitted in the hospital for four or five days. During the time when the incident took place, the accused was taking the treatment at Miraj Mental Hospital. It is true that sometimes the accused used to behave in a good manner and sometimes he used to behave in an abnormal manner. Sometimes, the accused used to be afraid from any person."

29. Third piece of evidence on which learned counsel reliance is statement of P.W. 3 Kum. Manjula Maruti Patil, contained in para 4 - "On that day the accused was merely sitting on the chair in a frightened mood."

30. Fourth piece of evidence relied was statement of P.W. 4 Gangaram Paragonda Patil, contained in paras 4 and 5. In para 4, it is stated "it is true that for 3 times the accused was admitted to Miraj Mental Hospital. At the relevant time, a treatment from Miraj Hospital was being taken by the accused. When the accused used to have an attack of the used to give troubles to his family members". In para 5 he states "When I saw the accused in his house, after the incident and when there was a talk in between us, I was sure that he committed the act due to an attack of lunacy. At other time when there was no attack of lunacy, accused used to behave in good manner with his family members."

31. Last piece of evidence on which learned counsel places reliance was statement of P.W. 11 Changonda Shatgonda Patil. In para 6, he stated "it is true that the accused used to have attacks of lunacy occasionally. It is true that I had admitted the accused on four times in one Kripamayee Hospital at Miraj for the same reasons. It is true that treatment was going on when he was in his village. It is correct to suggest that when there used to be attack of lunacy, the accused used to assault upon the members of his house, and at that time we used to tie his hands and legs. It is true that on one occasion, the accused had beat my brother Sidgonda by a stick and that Sidgonda was admitted in the hospital."

32. Learned Additional Public Prosecutor on the other hand placed reliance on four circumstances to show that benefit of Section 84, IPC could not be given to the appellant. First circumstance according to the Additional Public Prosecutor is that the best evidence of insanity would have been of the medical expert namely P.W. 16 Dr. Vijaykumar Bajendra Debsikdar, Assistant Director, Kripamayee Institute for Mental Health Care at Miraj. Aforesaid doctor proved that appellant had been admitted thrice and discharged from the aforesaid hospital. The dates of admission and discharge are as follows :-

- (1) 16th February, 1977 and 22nd February, 1977 respectively.
- (2) 10th December, 1988 and 23rd December, 1988 respectively.
- (3) 3rd March, 1990 and 15th March, 1990 respectively.

Had the ocular testimony namely that at the time of the incident, appellant was being treated at Miraj Hospital for insanity, been true, then what was the difficulty for the counsel of appellant to establish it by having the records of the aforesaid hospital summoned and proved. In the absence of production and proof of hospital records, we hold that the appellant has failed to prove that at the time of incident, he was under treatment at Miraj Hospital. He has failed to prove that in between 15-3-1990 and 4-12-1990 (incident took place on 4-12-1990) he was being treated at Mental Hospital at MiraJ.

33. There is another reason as to why we have placed no reliance on the plea of insanity. P.W. 13 namely Nagappa Balappa Gurawangol, was a teacher in the same school in which appellant was teacher. This witness has stated "accused was teaching the students properly". We are not prepared to believe that had appellant been of unsound mind, he would have continued teaching in the school. Third reason as to why we place no reliance on plea of insanity is the P.W. 12 Laxman Bhimgonda Khot, brother-in-law of the appellant has in para 1 of his statement, stated that "On one "Friday prior to the incident, accused along with wife and children had been to our house The health of the accused was OK." In para 2 he stated that "the accused was treating his wife and children properly." He did not know if the appellant used to go mad occasionally. Learned counsel for appellant pointed out that the averments in the statement of P.W. 12 Laxman Bhimgonda Khot that health of appellant was OK is an improvement as this witness had not brought this fact to the notice of the Investigating Officer. Even if we exclude this, there remains statement of the witness that appellant was treating his wife and children properly and three days ago appellant had come to his house and left them there. Last circumstance which also weighs with us in holding that appellant was not insane at the time of incident is that after committing murder of his wife and three children, he tried to commit suicide. We agree with the learned Trial Judge that this conduct amply shows that the appellant was sane. In our opinion, the portions of statements of witnesses on the basis of which the learned counsel for appellant tried to prove the plea of appellant's insanity, are not sufficient to establish legal insanity. From none of the statements, it becomes clear that at the time of incident, appellant was of unsound mind and was incapable of understanding either the nature and consequences of his act or what he was doing was either wrong or contrary to law.

34. In support of the plea of appellant's insanity, learned counsel placed reliance on a decision of Supreme Court reported in Ratan Lal Vs. The State of Madhya Pradesh, . Facts of that case were clearly distinguishable from the facts of the present case.

35. The circumstances on the basis of which the apex court reached a conclusion that appellant was insane, at the time of incident, are set out in paras 6, 8 and 9 of the judgment. The insane condition of the appellant was described by his son-in-law D.W. 1 in paragraph 6 in the following words :-

"The accused was not feeling well for 2/3 years. He was in such a condition that if he is sitting will remain sitting. If he is to go then he will go and if he wishes to fall in the river then he will fall. Such was the condition of his mind that he used to set fire to his own clothes and house. He further stated that on the day of the incident the appellant did not allow anybody to enter his house and had put a lock on the house and his children took their food outside and the accused did not talk to anybody. He further stated that prior to this incident the accused was being taken to Bhopal after tying him for the treatment of his mind. He was also taken to Bhavera but the accused did not improve."

In para 8, the apex court observed that evidence of the prosecution witnesses disclosed that appellant remained in the khaliyan throughout the period that the grass was burning till the chowkidar took him to thana and did not utter a word and did not try to runaway. In Para 9 mentioned that appellant's khaliyan adjoined the khaliyan which was set on fire by him and if the appellant had been sane, he would not have taken the risk of having his own khaliyan burnt which was most likely.

36. Learned counsel for the appellant has also placed reliance on a decision reported in 1985 Cri LJ 449 Nivrutti Shinde v. State of Maharashtra. In the aforesaid decision, one of us (Kantharia, J.) was a party. In it, very lucidly facts on the basis of which, benefit of Section 84, IPC was given to the appellant, have been set out and, the law on legal insanity has been expounded. In that case, the accused suffered from an obsession of being killed at the hands of his two month old son. There was evidence that accused used to eat turmeric powder. There was also evidence that he killed two months old son with such brutality that he reduced him almost to pulp. He had a feeling that his son was a devil and he told the police patil that he had killed a devil.

37. We have set out in detail the circumstances in the abovementioned cases and also the circumstances, from which, the learned counsel for the appellant wants us to infer a plea of insanity in the instant case. The circumstances in favour of insanity found in the aforesaid two decisions or the like of them have not been found by us in the instant case. Consequently, we feel that the appellant has failed to discharge the burden contained in Section 105 of the Evidence Act to establish plea of his insanity.

38. It is true that appellant has failed to prove legal insanity but, after a careful reading of the material on record, we are of the opinion that it was on account of some mental imbalance or some acute disturbing factor which provoked the appellant to commit the crime. A reading of the evidence of P.W. 12 shows that three days prior to the incident, the appellant had left his wife and children at his

house. In his written statement, filed in trial court, the appellant has also stated that on Friday (3 days prior to the incident) he took his wife and children to her wife's parents place and told her to stay there and, he would take her back when his health recovered. He also said that he came back to his house on Sunday. In the same afternoon, his wife also came back. It appears to us that the appellant got enraged when his wife also came back and an altercation of serious dimensions ensued between the two resulting in the appellant killing her as well as his three children. What exactly preceded the four murders is anybody's guess. The Hon''ble Supreme Court in the decision reported in Devendra Singh and Navin Dutt and Others Vs. State of U.P., , has observed that where all the true facts of the incident leading to the commission of murder have not been fully brought to light by the prosecution, the sentence of death should not be awarded.

39. In view of the aforesaid reasons. We find merit in the last submission of learned counsel for appellant and we do not think that the instant is one of those cases in which we should enhance the sentence of the appellant to death.

40. In the result, Criminal Appeal No. 360 of 1992, preferred by the appellant fails on merits and is dismissed. His conviction and sentence is confirmed. Appellant is in jail and shall remain there to serve out the sentence awarded to him. The suo motu Petition No. 16 of 1992, arising out of notice for enhancement of sentence, of the appellant, issued by a Division Bench of this Hon''ble Court, is dismissed and the notice issued is discharged.

41. Before parting with the judgment, we would like to express our gratitude to the learned counsel for appellant Shri A. Y. Sakhare and learned Additional Public Prosecutor, Mrs. V. K. Tahilramani for the enormous assistance which they have rendered us in the instant case.

42. Ordered accordingly.