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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Reserved on: 15th March, 2023
Decided on: 26th June, 2023

\+ **CRL.A. 161/2011**

MADHU BALA ..... Appellant
Represented by: Ms.Anu Narula, Advocate.

versus

STATE ..... Respondent
Represented by: Mr.Prithu Garg, APP for the State with Inspector Vivek, P.S.Dabri.
Mr.Tushar Sannu, Standing Counsel with Ms.Varnalee Mishra and Ms.Shivangi Singh, Advocates for IHBAS.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA
HON'BLE MS. JUSTICE POONAM A. BAMBA

MUKTA GUPTA, J.

1. Present appeal brings forth saga of a woman who for absence of solitude and support ended up not only in jail but for years in the IHBAS. Madhu Bala who was arrested on 22nd September, 2005 in FIR No. 677/2005 and while in judicial custody during trial, the appellant complained of psychiatric problems and thus, the appellant was on follow up at Institute of Human Behaviour and Allied Sciences (IHBAS) since 22nd May, 2009. By then, 20 prosecution witnesses had been examined and some of them were even recalled under Section 311 of Code of Criminal Procedure, 1973 (Cr.P.C) and re-examined on an application filed by the

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learned amicus curiae. During the trial, an application was received from the Jail Superintendent informing that appellant Madhu Bala was diagnosed to be suffering from Schizophrenia and was undergoing treatment as an outdoor patient at IHBAS. According to the report, during her treatment, she became violent and had to be rushed to IHBAS in emergency on 7th September 2009, where she was admitted as an in-patient. The learned Trial Court thus directed the appellant Madhu Bala to be admitted at IHBAS as an in-patient till further orders and postponed the recording of the evidence. Thereafter, the learned Trial Court sought for a report from the Medical Board of IHBAS as to whether Madhu Bala was fit to stand trial. Vide order dated 3rd February 2010 the learned Trial Court noted that the report of the Medical Board indicated that the appellant was fit to stand trial and thus, the learned Trial Court proceeded with the recording of the evidence of the remaining witnesses. Finally, the prosecution evidence was closed on 30th June, 2010 after examining 40 prosecution witnesses. Statement of the appellant was recorded under Section 313 Cr.P.C. on 6th July 2010 and she opted not to lead defence evidence. After final arguments, the impugned judgment was pronounced on 21st August, 2010 convicting the appellant for offences punishable under Sections 302 and 326 IPC.

2. When the appeal came up before this Court, this Court suspended sentence of the appellant vide order dated 11th May, 2011, however as the appellant could not avail the benefit of suspension of sentence, for the reason the brother and sisters of the appellant were not willing to stand

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surety for her, the appeal was listed for final hearing on 24th May, 2012. However, on the next date it was informed to this Court that the appellant required medical attention at IHBAS. Consequently, under the monitoring of this Court Madhu Bala was kept in and out of IHBAS when this Court passed the detailed order on 18th September, 2014 as noted hereinafter. Since the Half Way Homes or Long Way Homes were not operationalized by that time, the appellant was in IHBAS and thereafter shifted to the Short Stay Home/ Long Stay Home at IHBAS and since then is in IHBAS.

3. A perusal of the medical record of the appellant would show that the appellant was again admitted to IHBAS on 1st September, 2012 and discharged on 23rd March, 2013 whereafter, she was again admitted to the Central Jail from where, she was a follow up case of Psychiatry OPD at IHBAS. The appellant was again admitted on 7th November 2014 at IHBAS and was discharged on 24th February, 2015. For a proper rehabilitation of the appellant, this Court on 18th September, 2014 passed the following order:-

> *"1. Instant appeal brings out a human issue concerning Madhu Bala.*
> *2. Accused for having murdered her husband and step daughter, Madhu Bala is in custody since September 22, 2005. Vide decision dated August 21,2010 she has been held guilty. Vide order on sentence dated August 31,2010 she has been sentenced to undergo imprisonment for life.*
> *3. Though, as per its priority position the appeal has matured for hearing but for the reasons which we would be noting hereinafter we are not inclined at this stage to hear arguments in the appeal.*

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4. Issue concerning grant of bail to Madhu Bala has been troubling this Court for the reason no family member is prepared to stand surety for her and take her home.

5. The record of the evidence before the learned Trial Judge would evidence that Madhu Bala became a victim of circumstances and the adverse condition in which women in India find themselves and especially those who belong to the weaker socio-economic strata of the society.

6. Married at a young age to a widower having four children Madhu Bala had to face the stress and turbulence of her matrimonial life.

7. Jail record would evidence that Madhu Bala has developed severe schizophrenic behaviour. Under orders passed by this Court she was referred to IHBAS. The report from IHBAS guides us that so critical washer condition that at one stage the doctors thought it fit to subject her to Modified Electro Convulsion Therapy.

8. We had required the presence of Ms.Sreerupa Mitra Chaudhury from Sudinalaya to help this Court find a break into the impasse.

9. Pursuant to the order dated September 15, 2014 Ms.Sreerupa Mitra Chaudhury has since visited Central Jail Tihar and had a meeting with Madhu Bala. She does not paint a dismal picture of Madhu Bala and is confident that if given social and family support, Madhu Bala can be rehabilitated in society.

10. Madhu Bala speaks fondly of her one brother and six sisters. Thejail mulakat record would show that the brother and three sisters are regularly visiting Madhu Bala.

11. The way forward suggested to us by Ms.Sreerupa Mitra Chaudhury is to facilitate meetings by the representatives of Sudinalaya with Madhu Bala in the next four weeks so that a concrete proposal could be placed before this Court for further consideration.

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> *12. It would be futile for us to hear arguments in the appeal at this stage for the reason Madhu Bala's mental condition is such that she is not in a position to give any instructions to her lawyer. It would be useless to admit her to bail even on a personal bond because when she steps out of Tihar Jail she has no place to go.*
> *13. Under the circumstances we direct that the appeal be listed for directions on November 03, 2014.*
> *14. In the interregnum we issue a direction to the Superintendent Central Jail Tihar to permit Ms.Sreerupa Mitra Chaudhury and her team members comprising Ms.Deepika Rishi, Ms.Saaman Naqvi and Mr.Tarun Monga to meet Madhu Bala in the jail at a place where the atmosphere is informal.*
> *15. It could be anywhere in the precincts of Women Jail No.6.*
> *16. We clarify. The venue of the meeting would not be the mulakat area.*
> *17. Renotify for November 03, 2014..''*

4. Pursuant to the report submitted, the appellant was directed to be admitted to IHBAS for two weeks for comprehensive psychiatric check up and preparation of a detailed medical status report with regard to her behaviour, nature, intensity and progression of disease vide order dated 3rd November, 2014. The appellant was thus admitted to IHBAS on 7th November, 2014 from where, she was discharged on 24th February 2015, when vide order dated 18th February 2015, this Court directed that the appellant be shifted to Sudinalaya, a home for mentally distressed persons in coordination with IHBAS. Subsequently, since the appellant required medical rehabilitation at IHBAS, the appellant was readmitted to IHBAS on 25th November, 2015 and finally, she was shifted to Half Way stay home at

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IHBAS campus i.e. Saksham on 3rd March, 2017 on improvement of her condition. Since then, the appellant is lodged at Saksham, the Half Way home at IHBAS.

5. Thus, one of the issues that continuously engaged this Court was whether this Court can hear the appeal unless the Medical Board finds the appellant fit to understand the proceedings.

6. Section 465 of the old Code of Criminal Procedure, 1898 (old Cr.P.C.) was a provision in respect of appeal by an appellant who is of unsound mind, which read as under:

> *465. Procedure in case of person committed before Court of Session or High Court being lunatic :- (1) If any person committed for trial before a Court of Session or a High Court appears to the Court at his trial to be of unsound mind and consequently incapable, of making his defence, the jury, or the Court, shall, in the first instance, try the fact of such unsoundness and incapacity, and, if the Jury or the Court, as the case may be, is satisfied of the fact, the Judge shall record a finding to that effect, and shall postpone further proceedings in the case and the jury, if any, shall be discharged.*
> *(2) The trial of the fact of the unsoundness of mind and incapacity of the accused shall be deemed to be part of his trial before the Court.*

7. Dealing with Section 465 of the old Cr.P.C., Hon'ble Supreme Court in the decision reported as (1969) 3 SCC 176 *Vivian Rodrick v. State of W.B.* held that hearing the reference and appeal of an appellant who is of unsound mind will amount to denying an opportunity to the appellant to contest his appeal resulting in miscarriage of justice and it would have been

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appropriate for the appellate Court to postpone the hearing of appeal till the appellant was unfit. It was observed:

> *21. ... ...*
> *... ... To adopt the procedure indicated in Section 465, it is necessary that the person committed for trial before a Court of Session or a High Court must appear to the Court to be of unsound mind and incapable of making his defence. The emphasis is: (1) that the person must appear to the Court to be of unsound mind; and (2) in consequence of such unsound mind he must be incapable of making his defence. There must be something in the demeanour of the accused who is brought up for trial which would raise a doubt in the mind of the Court that he is of unsound mind and consequently incapable of making his defence. If such a doubt had been raised in the mind of the Court, it was obligatory on the Court, or the jury, in the first instance, to try the fact of such unsoundness of mind and incapacity of the accused. If the jury, or the Court, as the case may be, is satisfied of the said fact, the Judge shall record a finding to that effect and shall postpone further proceedings in the case. Without attempting to be exhaustive, we may indicate that a doubt may arise in the mind of the Court because of the manner in which an accused behaves or answers questions.*
> *... ... ...*
> *26. We are of the view that it is not necessary for us, in this case, to express any opinion on the applicability, or otherwise, of the provisions of Section 465 CrPC, to appeals. For, on the facts of this case, we are inclined to accept the alternative contention of Mr Rana that in the face of the medical evidence and in view of the fact that the appellant was contesting his conviction for murder and the sentence of death imposed upon him, it would have been proper if the Division Bench which heard his appeal had postponed the hearing of the appeal till such time as the appellant was declared fit to contest his appeal. We have already set out the various medical reports as*

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well as the dates on which the appeal was heard in the High Court. It was unfortunate that in the face of the medical report of June 15, 1967 the High Court passed an order on July 19, 1967 fixing the hearing of the appeal for August 2, 1967. On May 11, 1967 the medical report was that the appellant was still of unsound mind and the report of June 15, 1967 showed that he was still of unsound mind and that his mental condition had become worse than before. It was in the face of this report that the High Court fixed the hearing of the appeal for August 2, 1967. The report of June 15, 1967 clearly establishes that the appellant's mental condition was worse than before and that he was of unsound mind, leading to the inference that, in consequence, the appellant must be considered incapable of contesting his appeal.

... ...

28. Whatever may be the legal position regarding the applicability of Section 465 CrPC, to appeals, we are not inclined to agree with the proposition enunciated by the learned Judges that there is no bar to "hearing and disposing of an appeal, even if the accused appellant is of unsound mind or even insane at the time when the appeal is taken up for hearing". It must. be remembered that in this case the appellate Bench had passed an order on January 11, 1965 that the Criminal Appeal No. 5 of 1964 would be heard under Section 411-A (a), (b) and (c), CrPC. That means that the appellant was entitled to challenge his conviction not only on any ground of appeal which involves, a matter of law only, but also to challenge his conviction on any ground which involves a matter of fact. Under those circumstances, it is clear that the appellant's appeal before the High Court involves also the determination of questions of fact and instructions which the appellant might give to his lawyer as to the hearing of the appeal, might well prove to be vital; but by reason of his unsoundness of mind and the consequent inability on his part to instruct his lawyer in the conduct of his appeal, it must be held

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that no effective opportunity in the matter of hearing the appeal had been provided to the appellant. When the medical report was that the mental condition of the appellant was worse and that he was of unsound mind and it was in the face of that report that the appeal was directed to be taken up for hearing, it is difficult to hold that a proper and reasonable opportunity had been provided to the appellant with respect to his appeal, because it is impossible for the appellant to make himself heard either in person or through a lawyer when he is of unsound mind,

29. In our opinion, when the report is that an accused appellant is of unsound mind, it is reasonable to infer that he is incapable of making his defence. The Court, in the circumstances, is bound to afford him the same protection to which he would have been entitled had he been of unsound mind at the time of the trial".

8. The existing Code of Criminal Procedure of 1973 under Chapter-XXV provides for "provisions as to accused persons of unsound mind", however, neither this chapter nor chapter-XXIX relating to appeals prescribes any provision akin to above-mentioned Section 465 of the old Cr.P.C. The Division Bench of Hon'ble Kerala High Court in the decision reported as 1984 KLT 311 *Krishnan v. State of Kerala* was also posed with a similar situation wherein the appellant was insane and the issue that arose was whether the appeal can be heard or is required to be adjourned, to be taken up, for hearing after the appellant ceases to be insane. Following the decision of the Hon'ble Supreme Court in *Vivian Rodrick (supra)*, it was held:

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"*2. S. 328 of the Code of Criminal Procedure 1973 insists that the court trying a case in which the accused is a person of unsound mind and hence incapable of making his defence, should postpone further proceedings in the case. But no such specific provision is there in Chapter XXIX of the Code which governs appeals. Then the question is that simply because there is no provision can an appeal filed by an accused be heard and disposed of, if at the time of hearing he is insane, even if there is a counsel to argue his appeal. A counsel has to take instructions from his client.*

3. This is not possible when his client is insane. Not only questions of law but questions of fact also will have to be dealt with by the counsel in his arguments to substantiate the case of the appellant. The accused being insane, the counsel will be deprived of the opportunity of being instructed by them. The net result will be that the accused appellants will not get an effective opportunity of being heard if the court hears and disposes of the appeals when they continue to be insane. This is nothing but a denial of natural justice which cannot be done. So, the court has no other go but to postpone the appeals to be heard after the appellants cease to be insane.

4. In coming to the above conclusion we find support in certain authorities referred to at the time of hearing which we will presently refer to. In Sundaram v. State (AIR. 1960 Cal. 395) it has been held:

> *"Where in a death reference and appeal it is found that by reason of unsoundness of mind, the accused is incapable of giving any instructions as to the appeal and the reference to his lawyer, the High Court has inherent power, ex debito Justitiae, to postpone the bearing of the appeal and the reference until such time as the accused should be found to be of sound mind again and thus capable of making his defence." (para. 7)*"

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9. We are in complete agreement with the above noted decision in *Krishnan*. Even if there is no provision akin to Section 465 of old Cr.P.C. in the Code of Criminal Procedure, 1973, the basic principles of natural justice warrant that the appeal should be heard only when the appellant is capable of defending, for which necessary instructions are required to be given to the counsel. Therefore the appeal could be heard only if the Schizophrenia of the appellant was in remission and the appellant was fit to defend herself.

10. In view of the legal position noted above that the appeal could be heard only after the appellant was fit to understand the proceedings and give necessary instructions to the learned counsel, this Court directed the Medical Board to be constituted by IHBAS on 7th July 2022 to ascertain the present medical status of the appellant's mental health, pursuant to which a complete detailed history was submitted to this Court. As per the report of IHBAS it was opined that pursuant to the evaluation of the appellant on 20th February 2023, the Paranoid Schizophrenia of the appellant is in remission and thus, she is fit to defend herself. Hence, this Court proceeded to hear the appeal on merits after granting an opportunity to the learned counsel for the appellant to visit the appellant at the Half way home at IHBAS and interact with her.

11. The appellant challenges her conviction for murder of her husband Ramesh by inflicting three knife injuries and for causing grievous hurt to Varsha (daughter of Ramesh from Ramesh's first wedding) vide the impugned judgment dated 21st August 2010. The appellant also challenges

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the order on sentence dated 31st August, 2010 whereby the appellant was directed to undergo imprisonment for life along with fine of ₹5,000/- and in default whereof simple imprisonment for two months for offence punishable under Section 302 of the Indian Penal Code, 1860 (IPC); and also rigorous imprisonment for a period of ten years along with fine of ₹2,000/- in default whereof simple imprisonment for one month for offence punishable under Section 326 IPC. It may be noted that though Varsha later died due to Septicemia after a month of the incident and after she was discharged from the hospital, the learned Trial Court convicted the appellant for offence punishable under Section 326 IPC as in the circumstances of the case, possibility of some intervening cause such as lack of proper care etc. leading to death of Varsha could not be ruled out.

12. Brief facts of the prosecution case are that on 22nd September, 2005, at about 1.00 PM, information was given to the police that outside H.No.B-173, Madhu Vihar, one lady had murdered her husband by stabbing him with knife and that the dead body was lying on the road. ASI Raj Kumar (PW-23) who was on PCR duty reached the spot and found male dead body lying on the road and one girl Varsha about 18-19 years in an injured condition, who was taken to the DDU Hospital in the PCR van. The information regarding the incident was recorded vide DD No.16A as also DD No.17A. DD No.16A (Ex.PW-31/A) was marked to ASI Vijay Kumar (PW-31), who on reaching the spot found that a dead body was lying on the road in front of B-173 with the head towards West side and feet towards

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East side. In the meantime, SI R.K. Meena (PW-9) to whom DD No.17A was marked also reached the spot. Thereafter, SHO Inspector Gurmeet Singh (PW-8) reached the spot and called the crime team. The dead body was identified to be of one Ramesh. On going inside the house, blood was found spilt on the floor of the house and the appellant was also found present inside the house, from where she was arrested vide arrest memo Ex.PW-8/M and her disclosure statement (Ex.PW-8/G) was also recorded. SI R.K. Meena went to the DDU Hospital where the injured Varsha was admitted but was not in a position to give any statement and accordingly, he came back to the spot and prepared the *rukka* (ExPW-9/B) on which FIR No.677/2005 dated 22nd September, 2005 under Section 302/307 IPC at PS Dabri (SW) (Ex.PW-8/A) was got registered. The dead body of Ramesh was sent to hospital for post-mortem.

13. Dr.Vipul (PW-7) at DDU Hospital prepared the MLC (Ex.PW-7/A) of the deceased Ramesh and found the following injuries:

> "*1. Deep penetrating wound over left side of chest anteriorly over lower one third area of size approximately 5 cm x 3 cm. However, the dept of the injury could not be assessed. The injury was deeply communicating in pleural cavity i.e. the cavity of the lung of left side.*
> *2. Cleaned incised would (CIW) over left elbow (lateral aspect) or size approximately 4.5 x 2.5 x 1.5.*
> *3. Cleaned incised would (CIW) over left arm of approximately 1.5 x 05. X 0.5."*

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14. Dr.L.C. Gupta, (PW-12) conducted the post-mortem examination on 23rd September, 2009 on the dead body of the deceased Ramesh and vide his report (Ex.PW-12/A) opined:

> "*1. There was a wedge shaped punctured stab incised wound of size 8 cm x 4 cm into chest cavity, placed obliquely and vertically and left side mid chest in fifth, sixth and seventh intercostal space at mid clavicular line. On dissection, underneath fifth and sixth rib, pericardium, left ventrical found cut sharply having same characteristics to the wound and left side chest was full with blood and there was haemi pericardium was also present along with wedge shaped cut mark on the frontal aspecto of mid part of left lung.*
> *2. Two wedge sized incised wounds present at the lateral aspect of left arm in upper and lower 1/3 of the arm at its dorsolateral aspect with a linear abrasion in continuation to each other. Its tailing was downward and medially with dried-up blood collection in the vicinity. The upper one was of size 2 cm x 1 cm into muscle deep and the lower one was of size 5 cm x 2 cm into muscle deep. Margin of all the three wounds mentioned above were well defined, cleaned cut and regular.*
>
> *Cause of Death: Cause of death was shock resulting from massive internal hemorrhage which was directly resultant to injury no.1 (as mentioned at column no.7 (a) in the post-mortem report) which was sufficient to cause death in ordinary course of nature. All injuries were ante mortem in nature and fresh prior to death in duration. Mode of death was homicide. Time since death was about 24 hours prior to conduction of post mortem."*

15. MLC of Varsha (Ex.PW-17/A) was prepared by Dr.Rishi (PW-17) and it was opined:

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"*1. CIW over left thigh approximately 6 c.m. x 0.5 x 0.5 Cms.*
2. CIW over right eyebrow of size 5x1x05 c.ms.
3. Penetrating injury approximately 5 c.m.x 1 c.m. x ? depth over left inguinal region (part of abdomen)
4. Bowel protruding out of the wound no.3.
5. CIW over left middle finger of size 2x0.5x0.5 cms.
6. CIW over right middle finger of size 2x0.5x0.5 cms.
7. CIW left shoulder of size 2x0.5x0.5 cms."

16. On account of the injuries on Varsha, exploratory laparotomy surgery was conducted on her, after which she was discharged on 30th September, 2005. However, on 19th October, 2005 when Varsha was at the house of her *mama* Ram Kumar (PW-16), she suddenly started panting and thereafter, died. The information was given to the PCR which was recorded vide DD No.36 (Ex.PW-18/A) and Varsha was taken to AIIMS. Dead body of Varsha was sent for post-mortem examination on the next day i.e. 20th October, 2005. Dr.Raghvendra Kumar (PW-11) conducted the post-mortem examination and vide his report (Ex.PW-11/A) opined:

"1. *A healed spindle wound mark of size 1x.5 cm was present over anterior abdominal wall, 23.5 cm from left nipple, .2 cm left to the midline and it was lying obliquely.*
2. A healed incised laparotomy wound mark of size 18 x .3 cm was present over lower abdomen, upper end is 20 cm from right and left nipple, lower end 13 cm from both anterior iliac spine.
3. One incised healed wound mark of size 9 x .3 cm was present over anterior surface of left thigh, upper end is 16 cm from anterior iliac spine (left).
4. A healed incised wound of size 2.5 x .3 cm was present over proximal phalanax of middle finger of left side on dorsal surface.

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5. A healed incised wound of size 3 x.3 cm was present over lateral surface of right middle finger.
6. A healed incised wound of size 3 x.2 cm was present over right side of forehead and right upper eyebrow in continuation. It is 6.5 cm from midline and 8.5 cm from right tragus.
7. One healed incised wound of size 1.5 x .2 cm spindle shaped was present over 9 cm from left shoulder, 9 cm from midline on left side over posterolateral surface of neck.
8. One healed incised wound of size 2 x .3 cm lying obliquely over right iliac fossa, 7.5 cm from right anterior superior iliac spine, 5 cm from midline. On dissection, sutured wounds are present over anterior and posterior surface of urinary bladder and anterior surface of uterus.
Cause of death was septicemia as consequence of ante mortem stab injuries which were sufficient to cause death in ordinary course of nature."

17. Upon completion of investigation, charge-sheet was filed by Insp. Asha Ram (PW-4) and the appellant was charged for offence punishable under Section 302 IPC for murder of Ramesh and Varsha. To prove its case, the prosecution examined 40 witnesses. The appellant led no defence evidence.

18. Learned counsel for the appellant contends that the case of the prosecution is not based on the evidence of any eye witness. The prime witness of the prosecution i.e. Sonia (PW-1), the daughter of the deceased Ramesh and sister of the deceased Varsha was not an eye witness as admittedly, she was in school and her evidence is thus hearsay. There are material improvements in the so-called statement attributed to Varsha. Further, the date of incident was 22nd September, 2005 whereas Varsha died

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nearly after one month i.e. on 19th October, 2005. However, no effort was made to get her statement recorded before the SDM or Metropolitan Magistrate. The prosecution has not been able to prove any pre-meditation, for the reason, the witness who was produced to depose that knife was purchased from him, has not identified the knife but the sketch of the knife. Thus, the learned Trial Court rightly rejected the evidence of the recovery of knife and the sale of knife to the appellant. There are material improvements in the testimony of Sonia. It was further contended that Sonia (PW-1) had animosity against the appellant, being an interested witness her statement is unworthy of being relied upon; and the learned Trial Court erred in relying upon the testimony of PW-1. There are glaring inconsistencies and contradictions in the testimonies of the witnesses which go to the root of the matter and it was contended that because of such inconsistencies and lacunae in the version of the prosecution, the prosecution has failed to stand on its own legs.

19. It was further contended by learned counsel for the appellant that from the testimony of PW-2 and PW-37, it is apparent that the appellant was sitting on the door of the house and the knife was lying inside the house. Therefore, it becomes evident that there was no attempt by the appellant to either leave the house or run away and there was no attempt by the appellant to clean/wash or dispose of the knife, and therefore, the conduct of the appellant signifies either her innocence or her being not of a sane mind. It was further pointed out that the opinion of IHBAS wherein the appellant

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was declared "fit to stand trial" was bald and was not based on any relevant material like Florida Rules. It was also the case of the appellant that the appellant suffered from mental disorder because of which hearing of the appeal must be postponed and in this regard reliance was placed on the decision reported as 1984 KLT 311 *Krishnan vs. State of Kerala* and AIR 1960 Cal. 395 *Sundaram vs. State*.

20. On the other hand, learned APP appearing on behalf of the State submitted that the impugned judgment of the learned Trial Court being based on the proper appreciation of facts and evidence be upheld and consequently, the present appeal be dismissed. To buttress his submission, learned APP relied upon the following circumstances:

i. That the dying declaration of the deceased was recorded by Insp. Gurmeet Singh (PW-8) on 30th September, 2005 i.e. after 8 days of the date of incident as the deceased was 'unfit for statement' on the day of incident. The deceased had categorically stated that the appellant had returned from her work at around 11.30 AM and that she herself went to the kitchen to cook when the appellant entered the kitchen and attacked on her head and when she tried to escape the kitchen, the appellant attacked her ferociously with the knife and in an attempt to save her, her father/Ramesh intervened who was also attacked by the appellant with the same knife.

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ii. That evidence of Rambhool Sharma (PW-3) is admissible as *res gestae* evidence as on the day of incident, at about 1 PM, the deceased Varsha reached his shop drenched in blood and told him "*uncle mere papa ko mummy ne maar diahai, aap 100 no. par phone kar do".*

iii. Rambhool Sharma (PW-3) made a PCR call from telephone no.55546268 which was recorded vide DD No.16A (Ex.PW-13/A) wherein it was recorded that two persons were stabbed using a knife. Another PCR call of the same incident was made by Diwan Singh (PW-10) from his mobile no.9350521367 which was recorded vide Ex.PW-9/A wherein it was recorded that one lady had murdered her husband and the dead body was lying on the road. ASI Rajkumar (PW-23) who received both the PCR calls reached the spot and found a dead body of a male lying on the road outside house no.B-173, Madhu Vihar and Varsha was found in an injured condition and was taken to the hospital alongwith Sonia who was her younger sister.

iv. Soon after the incident, deceased/Varsha had stated that her mother/appellant had caused injuries to her and her father with a knife to Sonia (PW-1) and Rohtash Kumar (PW-2) at the spot and two ASI Rajkumar (PW-23) and HC Azad Singh (PW-37) on the way to hospital.

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v. The appellant was arrested from the spot vide arrest memo Ex.PW-8/M and pursuant to her disclosure statement Ex.PW-8/G, the appellant got recovered the knife used by her from room no.2 which was seized vide memo Ex.PW-8/H.

vi. The appellant also led the police to the utensils shop of Roshan Lal (PW-6) from where the appellant had purchased the knife and PW-6 in his examination categorically stated that he was able to identify the knife as the same was purchased by the appellant in the early hours on the same day.

vii. As per the post mortem report of deceased Ramesh (Ex.PW-12/A), the cause of death was opined to be shock resulting from massive internal hemorrhage which was directly the result of injury no.1. As per the post mortem report of deceased Varsha (Ex.PW-11/A), the cause of death was opined as septicemia because of antemortem stab injuries. Even as per the subsequent opinion of Dr. LC Gupta (Ex.PW-12/B) and Dr. Raghvender Kumar, the injury suffered by Ramesh and Varsha respectively were possible with the weapon of offence i.e. knife.

viii. As per the FSL report (Ex.PW-5/A) and Serological report (Ex.PW-5/B), human blood was detected on the knife (Ex.A4) and on the clothes of the appellant. There was no reaction to the blood found on the

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clothes of the appellant tallied with the blood of the deceased Varsha.

21. Learned APP for the State further submitted that the defence taken by the appellant of "grave and sudden provocation" which is an exception under Section 300 IPC must not only be grave but sudden as well. The appellant must be held to have lost control over her senses and committed the crime in the heat of passion or extreme anger. It was submitted that there was no "sudden provocation" in the instant case and furthermore, as per the version of deceased Varsha, no quarrel had taken place between the appellant and the deceased Ramesh on the day of incident. The fact that the appellant had purchased a knife from the shop of PW-6 in the early hours of the day of incident is suggestive of the fact that the appellant had meticulously planned the murder. Learned APP further countered the appellant's defence of "insanity/unsoundness of mind" and submitted that although the appellant was diagnosed with "paranoid schizophrenia" during the course of trial, however, the same does not prove that the appellant was suffering from the said mental condition at the time of commission of offence. Neither any evidence nor any suggestion was put to any of the witnesses to this effect. Furthermore, in terms of Section 105 of the Indian Evidence Act, 1872, the burden to prove such circumstance was on the appellant and in this regard, reliance was placed on the decisions reported as AIR 1964 SC 1563 *Dahyabhai Chhaganbhai Thakkar vs. State of Gujarat* and (2023) 3 SCC 372 *Prem Singh vs. State (NCT of Delhi)* and the plea of

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"insanity/unsoundness of mind" being taken by the appellant for the first time at the stage of appeal is itself baseless and without any merit. Learned APP further placed reliance on the decision in (2010) 12 SCC 224 *Mukeshbhai Gopalbhai Barot vs. State of Gujarat*, (2013) 12 SCC 137 *Sri Bhagwan vs. State of UP*, (1998) 2 SCC 45 *Najjam Faraghi vs. State of WB* and (2019) 11 SCC 500 *Pradeep Bisoi vs. State of Odisha* to submit that the statement of deceased Varsha recorded by the police under Section 161 Cr.P.C. would be a dying declaration in terms of Section 32 of the Evidence Act and does not affect its evidentiary value.

22. Having perusing learned counsels for the parties at length and on perusing the record, the following evidence emerges.

23. Sonia (PW-1) stated that the behavior of the appellant towards her and her sister Varsha and Rahul was very bad. She stated that on 22nd September, 2005, at about 12.00-12.30 PM, one neighbourer reached her school and informed her about the quarrel at her house, on which she reached her house and saw a crowd gathered outside her house. She saw her father/deceased lying outside her house and on entering the house she noticed blood in huge quantity. On asking the police about her sister Varsha, she was informed that Varsha was present in the PCR van on which she also boarded the PCR. Varsha stated to the police "*uncle aaj to ghar me aisi koi baat bhi nahi hui thee, pata nahi meri mummy ney mujhe ya mere papa ko chaku kyun mare*". In her cross-examination, she stated that she remained at the hospital where Varsha was admitted till 6.00 PM and after

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Varsha's operation, Varsha's statement was recorded by the police. She also stated that her father was unable to find a job after which, he started ironing the clothes. She also stated that there was no difficulty in maintaining the household expenditure and that the appellant started house cleaning work.

24. Rohtash Kumar (PW-2) was the elder brother of the deceased Ramesh. He deposed that Ramesh had four kids from his first wife i.e. Varsha, Sonia, Rohan and Rahul. He stated that on 22nd September, 2005 at about 1.30 PM, he was at his shop when he received a telephone call regarding quarrel at the house of his brother/deceased and within five-seven minutes he reached the house of his brother, where he found Varsha in an injured condition and his brother/deceased Ramesh lying on the road in front of the house. On asking Varsha, she told him that her mother had caused injuries to her and her father/deceased Ramesh. Sonia also reached there and accompanied Varsha to the hospital. He also asked the appellant as to what had happened, on which the appellant replied "*maine usko maar diya*". He also stated that there were frequent quarrels between his brother/deceased and the appellant. He identified the body of the deceased (Ex.PW-2/A) and also received the dead body for cremation (Ex.PW-2/B).

25. Rambhool Sharma (PW-3) deposed that he was running an STD booth since 2004 and on 22nd September, 2005 at about 1.00 PM, deceased Varsha reached his shop drenched with blood and told him "*uncle mere*

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papa ko mammi ney maar diya hey aap 100 number par phone kar do". Thereafter, he immediately made a call at number 100.

26. Diwan Singh (PW-10) stated that he had a *purchune* shop and on 22nd September, 2005 at about 1.00-1.15 PM he heard some noise and on coming out he found that a crowd had gathered in front of B-173, Madhu Vihar and one person was lying in the gali in an injured condition. He made a call to the police on number 100.

27. Roshan Lal (PW-6) deposed that he was running utensils shop and on 22nd September, 2005, police along with the appellant came to his shop and showed him sketch of the knife (Ex.PW-6/A), which was identified by him as being purchased from his shop for 40 rupees. He further stated that the appellant had purchased the knife from him at about 10.00-11.00 AM and because of which he could identify the knife from its sketch. In his cross-examination he stated that he was running a very small shop because of which he did not maintain any account book or ledger and did not issue any receipt for purchase of any article from his shop. He further admitted that someone had apprised him as to what statement was to be given by him in the Court.

28. ASI Raj Kumar (PW-23) deposed that on the day of incident he was posted with PCR and about 12.55 PM he received a call about a quarrel at Madhu Vihar, and at about 1.00 PM another call was received regarding an incident of knife stabbing which took place at Madhu Vihar. On these calls, he along with the staff reached B-173, Madhu Vihar where he saw a male

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dead body lying on the road in front of B-173 and one girl Varsha aged about 18-19 years was also found in injured condition. Meanwhile, one girl Sonia who was the younger sister of Varsha also reached there from her school and he had taken Varsha along with Sonia in PCR van to DDU Hospital. On the way to the hospital, Varsha said that her mother had attacked her with knife and had also caused death of her father by assaulting him with knife. On a leading question put to him, he stated that the date of the incident was 22nd September, 2005. In his cross-examination, he stated that Varsha was got admitted in the hospital at about 1.30 PM and at that time she was able to speak properly.

29. ASI Vijay Kumar (PW-31) deposed that on 22nd September, 2005 at about 1.00 PM he received DD No.16A (Ex.PW-31/A) on which he along with Ct. Surender went to A-1/192, Madhu Vihar where he got to know that the incident took place at B-173, Madhu Vihar. On reaching B-173, Madhu Vihar, he found dead body lying on the road in front of B-173. In the meantime, SI R.K. Meena along with Ct. Raj Kumar came at the spot, after which, SI R.K. Meena left him and Ct. Surender for custody of the spot and went to DDU Hospital along with Ct. Raj Kumar. During that time, SHO Insp. Gurmeet Singh came to the spot. At about 2.15 PM he received another call vide DD No.18A (Ex.PW-31/B) regarding admission of injured Varsha at DDU Hospital on which he went to DDU Hospital where Varsha was found admitted but she was unfit for statement.

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30. SI R.K. Meena (PW-9) deposed that on 22nd September, 2005 at about 1.20 PM DD No.17A (Ex.PW-9/A) regarding murder of a person by his wife was marked to him. He along with Ct. Raj Kumar reached B-173, Madhu Vihar and found dead body lying on a road in an open space in a pool of blood with injury marks on his chest (left side) and on his right arm. It was found that the name of the deceased was Ramesh. He went to the house of Ramesh where also blood was found spilt on the floor and a line of blood between the area where the dead body was found and the place of incident. He came to know that daughter of the deceased, Varsha was taken to the hospital by the PCR and thereafter, he went to the DDU Hospital where he came to know that Varsha was in operation theater, in a critical condition and was not in a position to make her statement. Thereafter he came back to the spot and prepared the *rukka* (Ex.PW-9/B) on which FIR was got registered.

31. Insp. Gurmeet Singh (PW-8) deposed that on 22nd September, 2005, he reached the spot where he found SI Ram Karan Meena and other officials present at the spot i.e. B-173, Madhu Vihar. The dead body was identified as of Ramesh. He went inside the said house and found blood lying on the floor in the house. He prepared the site plan (Ex.PW-8/B). Thereafter, he lifted blood from the spot (Ex.PW-8/C), earth control (Ex.PW-8/D), bloodstained earth control (Ex.PW-8/E) and blood from inside the house (Ex.PW-8/F). The dead body of Ramesh was sent to the hospital for post-mortem examination and the disclosure statement of the appellant (Ex.PW-

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8/G) was recorded. Thereafter, the appellant took them inside Room No.2 and got the knife recovered lying on the floor which was seized vide seizure memo (Ex.PW-8/H). Bloodstained clothes of the appellant were also seized (Ex.PW-8/J). ASI Vijay produced a *pullanda* containing clothes of Varsha which were seized vide seizure memo (Ex.PW-8/K). Personal search of the accused was taken by L/Ct. Manji and thereafter, the appellant was arrested vide arrest memo (Ex.PW-8/M). The appellant led the police team to Shop No.D-29, Solanki Market, Madhu Vihar where shopkeeper Roshan Lal met him and informed that the appellant had purchased a knife from his shop at about 11.00 AM. On careful examination of visible body of the appellant, blood was noticed on the index finger of her left hand, on which the appellant was sent for medical examination to the DDU Hospital (MLC of the appellant is Ex.PW-40/A). On 23rd September, 2005 dead body of Ramesh was identified by Rohtash (Ex.PW-2/A) and the dead body was handed over to Rohtash (Ex.PW-2/B). On 30th September, 2005 he recorded the statement of Varsha under Section 161 Cr.P.C. (Ex.PW-8/M).

32. Dr.Ashish Arora (PW-40) identified the MLC of the appellant (Ex.PW-40/A) prepared by Dr.Jokhoo Ram. As per the said MLC dated 22nd September, 2005, the appellant was found conscious and oriented and on examination, one clean incised wound over left index finger of 2x0.5x0.5 cm was found.

33. In her statement under Section 313 Cr.P.C. the appellant admitted that she was sitting at the gate of House No.B-173 where SI R.K. Meena found

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her. She denied having given any disclosure statement and stated that she had shown the knife lying in the room to the police. She also stated that she had sustained injury on her finger from a rack and that the blood from her finger had come on her shirt and skirt. She stated that she was innocent and has been falsely implicated in the present case. She also stated that at the time of incident, she was working as a maid servant in house of one person working in Ministry of External Affairs and on the day of incident she returned to her house at about 1.30 PM when she saw deceased Ramesh lying on the road and Varsha sitting outside the gate. She stated that it may be possible that her husband committed suicide on account of extreme poverty and also the fact that he had lost his job.

34. As regards the alleged offence being committed by the appellant is concerned, though the appellant in her statement under Section 313 Cr.P.C. has denied the same, however from the testimony of Rambhool Sharma (PW-3) it is evident that at about 1.00 PM on 22nd September, 2005 Varsha reached to his shop, drenched with blood and told him "*uncle mere papa ko mammi ney maar diya hey app 100 number par phone kar do*". He made the PCR call and the other call was made by Diwan Singh. Further, *rukka* & the FIR was recorded on this PCR call because Varsha who was taken to the hospital was declared unfit for statement. Subsequently, when Varsha was found fit for statement, her statement was recorded on 30th September, 2005 under Section 161 Cr.P.C. by the investigating officer vide Ex.PW-8/M. Challenge has been laid by learned counsel for the appellant to the

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statement of Varsha which is being treated as a dying declaration on the ground that the said statement has neither been recorded before the SDM or the learned Metropolitan Magistrate. Further, no statement of any Doctor has also been recorded to prove that Varsha was fit for making the statement when the so-called statement was recorded by the Police Officer.

35. There is no denial to the fact that neither any medical document nor the certificate of the Doctor or the discharge summary of Varsha has been placed on record to show that she was fit to make statement when the same was recorded. Only her MLC has been exhibited vide Ex.PW-17/A which notes the injuries as noted above. However, from the evidence of Dr. Raja (PW-20) it is evident that after the exploratory laparotomy surgery was conducted, Varsha was discharged on 30th September, 2005. There is no cross-examination on this point of Dr. Raja, rather in the cross-examination he clarified that when he attended Varsha for the first time she was not in a position to make any statement. Further, the only question put to the investigating officer who recorded the statement of Varsha under Section 161 Cr.P.C. was that he did not call any SDM or Magistrate before recording the statement, to which he stated that since Varsha's statement was recorded under Section161 Cr.p.C., he did not call any SDM, Doctor or Senior Gazetted Officer to witness the recording of statement of Varsha. It is thus evident since Varsha was discharged on 30th September, 2005, she was in a fit state to make the statement and hence her statement was recorded by Insp. Gurmeet Singh, SHO and investigating officer of the PS.

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Further, since this witness recorded statement of Varsha under Section 161 Cr.P.C., the same was not got signed by the witness who unfortunately later passed away on 19th October, 2005, suddenly at her uncle's place. The explanation of the investigating officer in recoding the statement under Section 161 Cr.P.C. being plausible, and this statement of Varsha explaining the circumstances of the incident which ultimately led to her death can be safely treated as a dying declaration.

36. Further, besides the statement of Varsha dated 30th September, 2005 being reduced into writing under Section 161 Cr.P.C. by Insp. Gurmeet Singh, deposition of Sonia, the sister is also relevant who reached home from the school on receiving the information. When she reached the house she saw crowd outside and her father was lying outside the house. When she entered the house, she noted blood in huge quantity. On asking about her sister, she was found present in the PCR so Sonia sat in the PCR along with his sister when Varsha told the Police Officer "*uncle aaj to ghar me aisi koi baat bhi nahi hui thee, pata nahi meri mummy ney mujhe ya mere papa ko chaku kyun mare*". This statement of Varsha made to the Police officials of PCR in the presence of her sister Sonia is also required to be treated as an oral dying declaration. Further this oral dying declaration of Varsha is also proved by ASI Raj Kumar (PW-23).

37. In the statement of Varsha who is an injured witness recorded vide Ex.PW-8/M, she stated that she was studying in class 10th and around 4 – 5 years ago her father performed the second marriage with Madhu Bala, her

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step-mother Madhu Bala who started troubling her immediately did not give her food. She used to quarrel with her father on petty issues and would always ask money. She further stated that Madhu Bala would never speak to her and her father used to say her that he got married to her to look after the children. Further, Madhu Bala used to beat her younger brother. On 22nd September, 2005 her father had gone for work and she also went to do the work at Kothi and her younger brothers and sister went to school to study. Her paternal uncle came at 10 – 10.30 AM since he got pain in the tooth and was going to the Doctor, on which she told that her father had not come, so he left. Thereafter, her paternal uncle Rohtash came at 12.35 PM. At that time she was at home. That at around 12.35 PM her father came home and she gave water to her father to drink. Madhu Bala used to come back daily at 1.00 PM from work but on that day she came around 11.30. When she entered the kitchen to make food for her father, her father was sitting in the first room whereas Madhu Bala was sitting in the third room. Suddenly, Madhu Bala came and climbed the ladder on which Varsha thought that Mahhu Bala was taking out something. In the meantime, Madhu Bala hit something on her head due to which she felt dizzy and when she tried to get out of the gate of kitchen, Madhu Bala gave her knife blows. On her screaming, her father came to save her. Madhu Bala then inflicted knife injuries to her father stating that it has been now too long and she would not leave the father and daughter alive on that date. Her father ran out of the house to save himself but fell down after crossing the gate on the

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road. She ran after her father and then to the shop in the neighbourhood where there is STD booth and asked them to make a PCR call. After some time PCR van came followed by her uncle Rohtash and sister Sonia and she was taken to the DDU hospital. From the *res-gestae* evidence of Rambhool Sharma where Varsha immediately went on being inflicted injuries and stated about the incident, there is sufficient corroboration to the dying declaration.

38. The learned Trial Court has convicted the appellant for offence punishable under Section 326 IPC for the injuries caused to Varsha, however for the infliction of injury to Ramesh, the husband who died instantaneously, the appellant has been convicted for offence punishable under Section 302 IPC. This Court finds no ground to interfere as regards the conviction under Section 326 IPC is concerned for the reason the learned Trial Court held that the prosecution has not been able to prove that after Varsha was discharged from the hospital there was no laxity in treatment, as the death was due to septicemia and Varsha was discharged after all her treatment. Undoubtedly, necessary medical documents in this regard have not been placed on record and hence the appellant has been rightly convicted for offence punishable under Section 326 IPC in regard to the injuries inflicted on Varsha, as Varsha had to undergo laparotomy surgery. In any case there is no State leave to appeal to modify the conviction of appellant Madhu Bala from 326 IPC to 302 IPC as regards injuries to Varsha are concerned.

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39. As regards the offence of 302 IPC on the basis of injuries inflicted to Ramesh are concerned, it may be noted that on the same day after Madhu Bala was arrested her MLC was conducted and as per the MLC Madhu Bala had a clean incised wound over her left index finger 2 x 0.5 x 0.5 cm. Even though the injury was opined to be simple, however from the detailed statement of Varsha it is not forthcoming as to how Madhu Bala received the injury concerned. There is yet another aspect to the matter. As noted above, Rohtash Kumar stated that 5 – 6 years prior to the alleged offence which took place on 22nd September, 2005 his brother got married to Madhu and this was the second marriage of his brother who had four children from his first wife, namely, Varsha, Sonia, Rohan and Rahul. According to Rohtash Kumar, Ramesh the deceased was his younger brother and their used to be frequent quarrels between the deceased brother and the appellant. Further, as recorded in the statement of Sonia that Varsha told the Police "*uncle aaj to ghar me aisi koi baat bhi nahi hui thee, pata nahi meri mummy ney mujhe ya mere papa ko chaku kyun mare*", however the said issue may have been too innocuous for Varsha but not for Madhu Bala and that is why Varsha stated as "*koi baat nahi hui*".

40. Learned counsel for the appellant has strenuously argued that since the offence, if any, was conducted in grave and sudden provocation, as already held by the learned Trial Court that the offence was not pre-meditated, as the purchase of the knife on that date has not been proved, the offence being on the spur of the moment on a sudden fight and grave

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provocation, at best an offence punishable under Section 304 Part I IPC is made out and the appellant's sentence is required to be consequently reduced.

41. As noted above, Varsha found that appellant was taking something from above her head in the kitchen and when something hit her head, after which Varsha went towards the gate of the kitchen when appellant inflicted stab wounds on her. From the statement of Varsha, it is evident that whatever the dispute was, the same arose between Varsha and Madhu Bala. Further even though Varsha claims that something hit her head when appellant was taking out something from above her head, but there is no knife injury to Varsha on the head. Thus it appears when something hit Varsha on the head and Varsha was going out of kitchen could be shouting/ screaming or complaining when appellant picked up the knife (a knife used in kitchens to cut meat etc.) and inflicted her the injuries. Further, Madhu Bala was inflicting injuries to Varsha when the deceased Ramesh intervened. Ramesh received one stab injury on the left side of chest which resulted into the fatal injury as it penetrated to the pleural cavity on the left side and besides the same there were two clean incised wounds on the left arm and left elbow which clearly were injuries while seeking to protect himself or Varsha. All the three injuries were on the left side of Ramesh and it could be possible that though Ramesh was able to ward off two injuries from his left arm and elbow, the third he could not which landed on the left side of his chest.

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42. Exception 1 to Section 300 IPC provides when culpable homicide is not murder, Section 300 IPC reads as under:

> *"300. Murder.—Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or—*
>
> *(Secondly) —If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or—*
>
> *(Thirdly) —If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or—*
>
> *(Fourthly) —If the person committing the act knows 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 as aforesaid.*
>
> *Exception 1.—When culpable homicide is not murder.—Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident. The above exception is subject to the following provisos:—*
>
> *(First) —That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.*
>
> *(Secondly) —That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.*
>
> *(Thirdly) —That the provocation is not given by anything done in the lawful exercise of the right of private defence.*

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Explanation.—Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact."

43. Thus, whilst a person deprived of the power of self-control by grave and sudden provocation, causes death of the person who gave the provocation or causes the death of any other person by mistake or accident, the same amounts to culpable homicide not amounting to murder, provided that the provocation is not sought or voluntarily provoked or provocation is not given by anything done in obedience to the law, or by a public servant or by anything done in the lawful exercise of private defense. As noted above, in the present case the quarrel started as something hit on the head of Varsha, whereafter though it is claimed that appellant gave knife blows to Varsha but there is one incised wound on the finger of the appellant which has not been explained by the prosecution or as stated by appellant that she got injury from the rack due to which quarrel took place. It is in the context that there used to be frequent quarrels that prompted Varsha to say that no material issue took place on that date.

44. Further, in a case where there are frequent quarrels between the parties as deposed to by the prosecution witnesses themselves, particularly, Rohtash Kumar the brother of the deceased, at times even a small provocation may be so sudden and grave to ignite the passion which appears to be case in the present case. Dealing with the distinction between sudden and sustained provocation, Hon'ble Supreme Court in the decision reported

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as 2022 SCC online SC 955 *Dauvaram Nirmalkar Vs. State of Chattisgarh* held:

> *"8. However, in our opinion, this case will fall under Exception 1 to Section 300 of the IPC. Bhagwati Prasad Nirmalkar (PW-3), the younger brother of the appellant and the deceased, had deposed that the deceased used to frequently drink alcohol, barely interacted with the family, and used to debate and quarrel with the appellant. Nakul Ram Sahu (PW-4), the neighbour of the appellant, had similarly testified that the deceased was addicted to alcohol and his wife had left him. Dashrath Nirmalkar's addiction to alcohol, and that he was extremely abusive and ill-tempered is the common narration by Geeta Bai (PW-8), wife of Bhagwati Prasad Nirmalkar (PW-3), and Kumari Shanti Nirmalkar (PW-9), and Kumari Madhu Nirmalkar (PW-10), nieces of the appellant and Dashrath Nirmalkar. The prosecution does not dispute this position and in fact, has relied upon these facts to show motive.*
>
> *9. Exception 1 differs from Exception 4 of Section 300 of the IPC. Exception 1 applies when due to grave and sudden provocation, the offender, deprived of the power of self-control, causes the death of the person who gave the provocation. Exception 1 also applies when the offender, on account of loss of self-control due to grave and sudden provocation, causes the death of any other person by mistake or accident. Exception 4 applies when an offence is committed without premeditation, in a sudden fight in the heat of passion upon a sudden quarrel and the offender commits culpable homicide without having taken undue advantage of acting in a cruel and unusual manner. The Explanation to Exception 4 states that in such cases it is immaterial which party gives the provocation or commits the first assault.*

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10. Interpreting Exception 1 to the Section 300 in K.M. Nanavati v. State of Maharashtra, this Court has held that the conditions which have to be satisfied for the exception to be invoked are (a) the deceased must have given provocation to the accused; (b) the provocation must be grave; (c) the provocation must be sudden; (d) the offender, by the reason of the said provocation, should have been deprived of his power of self-control; (e) the offender should have killed the deceased during the continuance of the deprivation of power of self-control; and (f) the offender must have caused the death of the person who gave the provocation or the death of any other person by mistake or accident. For determining whether or not the provocation had temporarily deprived the offender from the power of self-control, the test to be applied is that of a reasonable man and not that of an unusually excitable and pugnacious individual. Further, it must be considered whether there was sufficient interval and time to allow the passion to cool. K.M. Nanavati (supra) succinctly observes:

> *"84. Is there any standard of a reasonable man for the application of the doctrine of "grave and sudden" provocation? No abstract standard of reasonableness can be laid down. What a reasonable man will do in certain circumstances depends upon the customs, manners, way of life, traditional values etc.; in short, the cultural, social and emotional background of the society to which an accused belongs. In our vast country there are social groups ranging from the lowest to the highest state of civilization. It is neither possible nor desirable to lay down any standard with precision : it is for the court to decide in each case, having regard to the relevant circumstances. It is not necessary in this case to ascertain whether a reasonable man placed in the position of the accused would have lost his self-control momentarily or even temporarily when his wife confessed to him of her*

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illicit intimacy with another, for we are satisfied on the evidence that the accused regained his self-control and killed Ahuja deliberately.

85. The Indian law, relevant to the present enquiry, may be stated thus : (1) The test of "grave and sudden" provocation is whether a reasonable man, belonging to the same class of society as the accused, placed in the situation in which the accused was placed would be so provoked as to lose his self-control. (2) In India, words and gestures may also, under certain circumstances, cause grave and sudden provocation to an accused so as to bring his act within the First Exception to Section 300 of the Penal Code, 1860. (3) The mental background created by the previous act of the victim may be taken into consideration in ascertaining whether the subsequent act caused grave and sudden provocation for committing the offence. (4) The fatal blow should be clearly traced to the influence of passion arising from that provocation and not after the passion had cooled down by lapse of time, or otherwise giving room and scope for premeditation and calculation."

11. K.M. Nanavati (supra), has held that the mental background created by the previous act(s) of the deceased may be taken into consideration in ascertaining whether the subsequent act caused sudden and grave provocation for committing the offence. There can be sustained and continuous provocations over a period of time, albeit in such cases Exception 1 to Section 300 of the IPC applies when preceding the offence, there was a last act, word or gesture in the series of incidents comprising of that conduct, amounting to sudden provocation sufficient for reactive loss of self-control. K.M. Nanavati (supra) quotes the definition of 'provocation' given by Goddard, C.J.; in R. v. Duffy,[11] as:

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> *"…some act or series of acts, done by the dead man to the accused which would cause in any reasonable person, and actually causes in the accused, a sudden and temporary loss of self-control, rendering the accused so subject to passion as to make him or her for the moment not master of his own mind…[I]ndeed, circumstances which induce a desire for revenge are inconsistent with provocation, since the conscious formulation of a desire for revenge means that the person had the time to think, to reflect, and that would negative a sudden temporary loss of self-control which is of the essence of provocation…".*

12. The question of loss of self-control by grave and sudden provocation is a question of fact. Act of provocation and loss of self-control, must be actual and reasonable. The law attaches great importance to two things when defence of provocation is taken under Exception 1 to Section 300 of the IPC. First, whether there was an intervening period for the passion to cool and for the accused to regain dominance and control over his mind. Secondly, the mode of resentment should bear some relationship to the sort of provocation that has been given. The retaliation should be proportionate to the provocation. The first part lays emphasis on whether the accused acting as a reasonable man had time to reflect and cool down. The offender is presumed to possess the general power of self-control of an ordinary or reasonable man, belonging to the same class of society as the accused, placed in the same situation in which the accused is placed, to temporarily lose the power of self-control. The second part emphasises that the offender's reaction to the provocation is to be judged on the basis of whether the provocation was sufficient to bring about a loss of self-control in the fact situation. Here again, the court would have to apply the test of a reasonable person in the circumstances. While examining these questions, we should not be short-sighted, and

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must take into account the whole of the events, including the events on the day of the fatality, as these are relevant for deciding whether the accused was acting under the cumulative and continuing stress of provocation. Gravity of provocation turns upon the whole of the victim's abusive behaviour towards the accused. Gravity does not hinge upon a single or last act of provocation deemed sufficient by itself to trigger the punitive action. Last provocation has to be considered in light of the previous provocative acts or words, serious enough to cause the accused to lose his self-control. The cumulative or sustained provocation test would be satisfied when the accused's retaliation was immediately preceded and precipitated by some sort of provocative conduct, which would satisfy the requirement of sudden or immediate provocation.

13. Thus, the gravity of the provocation can be assessed by taking into account the history of the abuse and need not be confined to the gravity of the final provocative act in the form of acts, words or gestures. The final wrongdoing, triggering off the accused's reaction, should be identified to show that there was temporary loss of self-control and the accused had acted without planning and premeditation. This has been aptly summarised by Ashworth in the following words:

> *"[T]he significance of the deceased's final act should be considered by reference to the previous relations between the parties, taking into account any previous incidents which add colour to the final act. This is not to argue that the basic distinction between sudden provoked killings and revenge killings should be blurred, for the lapse of time between the deceased's final act and the accused's retaliation should continue to tell against him. The point is that the significance of the deceased's final act and its effect upon the accused - and indeed the relation of the retaliation to that act - can be neither*

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understood nor evaluated without reference to previous dealings between the parties."

14. Exception 1 to Section 300 recognises that when a reasonable person is tormented continuously, he may, at one point of time, erupt and reach a break point whereby losing self-control, going astray and committing the offence. However, sustained provocation principle does not do away with the requirement of immediate or the final provocative act, words or gesture, which should be verifiable. Further, this defence would not be available if there is evidence of reflection or planning as they mirror exercise of calculation and premeditation.

15. Following the view expressed in K.M. Nanavati (supra), this Court in Budhi Singh v. State of Himachal Pradesh observed that in the test for application of Exception 1 to Section 300 of the IPC, the primary obligation of the court is to examine the circumstances from the point of view of a person of reasonable prudence, if there was such grave and sudden provocation, as to reasonably conclude that a person placed in such circumstances can temporarily lose self-control and commit the offence in the proximity to the time of provocation. A significant observation in Budhi Singh (supra) is that the provocation may be an act or series of acts done by the deceased to the accused resulting in inflicting of the injury. The idea behind this exception is to exclude the acts of violence which are premeditated, and not to deny consideration of circumstances such as prior animosity between the deceased and the accused, arising as a result of incidents in the past and subsequently resulting in sudden and grave provocation. In support of the aforesaid proposition and to convert the conviction from Section 302 to Section 304 Part I of the IPC in Budhi Singh (supra), the Court also relied upon Rampal Singh v. State of Uttar Pradesh.

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> *16. For clarity, it must be stated that the prosecution must prove the guilt of the accused, that is, it must establish all ingredients of the offence with which the accused is charged, but this burden should not be mixed with the burden on the accused of proving that the case falls within an exception. However, to discharge this burden the accused may rely upon the case of the prosecution and the evidence adduced by the prosecution in the court. It is in this context we would refer to the case of the prosecution, which is that the deceased was addicted to alcohol and used to constantly torment, abuse and threaten the appellant. On the night of the occurrence, the deceased had consumed alcohol and had told the appellant to leave the house and if not, he would kill the appellant. There was sudden loss of self-control on account of a 'slow burn' reaction followed by the final and immediate provocation. There was temporary loss of self-control as the appellant had tried to kill himself by holding live electrical wires. Therefore, we hold that the acts of provocation on the basis of which the appellant caused the death of his brother, Dashrath Nirmalkar, were both sudden and grave and that there was loss of self-control.*
>
> *17. Applying the provocation exception, we would convert the conviction of the appellant from Section 302 to Part I of Section 304 of the IPC."*

45. Undoubtedly, in the present case there was injury to the appellant as well though simple but by a sharp weapon and thus, the sudden loss of control due to the sustained provocation of constant quarrels admitted by the prosecution is not ruled out and the appellant is thus entitled to the benefit of Exception 1 to Section 300 IPC.

46. There is yet another aspect of the matter. This Court has gone through the medical record of the appellant as has been placed before this

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Court. A detailed report dated 31st May, 2011 was received by this Court wherein previous prescriptions of the appellant were also filed. An OPD slip of IHBAS dated 22nd May, 2009 notes that the appellant is an old case of 'psychosis' and had been taking tablet treatment (T/T) from from Lady Harding Medical College since 1996. That she was in jail since four years and maintained herself well till two months back on T/T (Olanzapane Resperidone, THP) and now for the last two months complaining of quarrelsome behavior etc. She is suspicious towards inmates and has delusions of persecution. The appellant at that stage was also found to be under delusion and hearing of voices. This fact that the appellant was under treatment since 1996 is also borne out from the other medical records placed on record of this Court. It is thus evident that at the time of the alleged offence even though the appellant was not suffering from Schizophrenia but had some kind of mental illness which is also fortified from the fact that after the incident, the Police officers saw her sitting outside quietly without any reaction. Considering this material condition of the appellant, the possibility of loss of self control on the slightest provocation is not ruled out.

47. Hon'ble Supreme Court in the decision reported as (2013) 8 SCC 83 *Veer Pal Singh vs. Secretary, Ministry of Defence*, elaborated upon the meaning, symptoms and varieties of schizophrenia and noted:

> "*12. In Merriam Webster Dictionary "schizophrenia" has been described as a psychotic disorder characterised by loss of contact with the environment, by noticeable deterioration in the*

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level of functioning in everyday life, and by disintegration of personality expressed as disorder of feeling, thought (as in delusions), perception (as in hallucinations), and behaviour — called also dementia praecox; schizophrenia is a chronic, severe, and disabling brain disorder that has affected people throughout history.

13. The National Institute of Mental Health, USA has described "schizophrenia" in the following words:

"Schizophrenia is a chronic, severe, and disabling brain disorder that has affected people throughout history. People with the disorder may hear voices other people don't hear. They may believe other people are reading their minds, controlling their thoughts, or plotting to harm them. This can terrify people with the illness and make them withdrawn or extremely agitated. People with schizophrenia may not make sense when they talk. They may sit for hours without moving or talking. Sometimes people with schizophrenia seem perfectly fine until they talk about what they are really thinking. Families and society are affected by schizophrenia too. Many people with schizophrenia have difficulty holding a job or caring for themselves, so they rely on others for help. Treatment helps relieve many symptoms of schizophrenia, but most people who have the disorder cope with symptoms throughout their lives. However, many people with schizophrenia can lead rewarding and meaningful lives in their communities."

14. Some of the symptoms of schizophrenia are:

14.1. Positive symptoms: Positive symptoms are psychotic behaviour not seen in healthy people. People with positive symptoms often "lose touch" with reality. These symptoms can come and go. Sometimes they are severe and at other times hardly noticeable, depending on whether the individual is receiving treatment. They include the following:

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Hallucinations.—"Voices" are the most common type of hallucination in schizophrenia. Hallucinations include seeing people or objects that are not there, smelling odours that no one else detects, and feeling things like invisible fingers touching their bodies when no one is near.

Delusions.—The person believes delusions even after other people prove that the beliefs are not true or logical. They may also believe that people on television are directing special messages to them, or that radio stations are broadcasting their thoughts aloud to others. Sometimes they believe they are someone else, such as a famous historical figure. They may have paranoid delusions and believe that others are trying to harm them.

Thought disorders.—are unusual or dysfunctional ways of thinking. One form of thought disorder is called "disorganised thinking". This is when a person has trouble organising his or her thoughts or connecting them logically, a person with a thought disorder might make up meaningless words, or "neologisms".

Movement disorders.—may appear as agitated body movements. A person with a movement disorder may repeat certain motions over and over. In the other extreme, a person may become catatonic. Catatonia is a state in which a person does not move and does not respond to others. Catatonia is rare today, but it was more common when treatment for schizophrenia was not available.

14.2. Negative symptoms: Negative symptoms are associated with disruptions to normal emotions and behaviours. These symptoms are harder to recognise as part of the disorder and can be mistaken for depression or other conditions. These symptoms include the following:

(i) "Flat effect" (a person's face does not move or he or she talks in a dull or monotonous voice).

(ii) Lack of pleasure in everyday life.

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(iii) Lack of ability to begin and sustain planned activities.

(iv) Speaking little, even when forced to interact.

15. In Modi's Medical Jurisprudence and Toxicology (24th Edn., 2011) the following varieties of schizophrenia have been noticed:

Simple Schizophrenia.—The illness begins in early adolescence. There is a gradual loss of interest in the outside world, from which the person withdraws. There is an all round impairment of mental faculties and he emotionally becomes flat and apathetic. He loses interest in his best friends who are few in number and gives up his hobbies. He has conflicts about sex, particularly masturbation. He loses all ambition and drifts along in life, swelling the rank of chronically unemployed. Complete disintegration of personality does not occur, but when it does, it occurs after a number of years.

Hebephrenia.—Hebephrenia occurs at an earlier age than either the katatonic or the paranoid variety. Disordered thinking is the outstanding characteristic of this kind of schizophrenia. There is great incoherence of thought, periods of wild excitement occur and there are illusions and hallucinations. Delusions which are bizarre in nature, are frequently present. Often, there is impulsive and senseless conduct as though in response to their hallucination or delusions. Ultimately the whole personality may completely disintegrate.

Katatonia.—Katatonia is the condition in which the period of excitement alternates with that of katatonic stupor. The patient is in a state of wild excitement, is destructive, violent and abusive. He may impulsively assault anyone without the slightest provocation. Homicidal or suicidal attempts may be made. Auditory hallucinations frequently occur, which may be responsible for their violent behaviour. Sometimes, they destroy themselves because they hear God's voice commanding

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them to destroy themselves. This phase may last from a few hours to a few days or weeks, followed by stage of stupor.

The katatonic stupor begins with a lack of interest, lack of concentration and general apathy. He is negative, refuses to take food or medicines and to carry out his daily routine activities like brushing his teeth, taking bath or change his clothes…. The activities are so very limited that he may confine himself in one place and assume one posture however uncomfortable, for hours together without getting fatigued. His face is expressionless and his gaze vacant…. They may understand clearly everything that is going on around them, and sometime without warning and without any apparent cause, they suddenly attack any person standing nearby.

Paranoid Schizophrenia, paranoia and paraphrenia.—Paranoia is now regarded as a mild form of paranoid schizophrenia. The main characteristic of this illness is a well-elaborated delusional system in a personality that is otherwise well preserved. The delusions are of a persecutory type. The true nature of the illness may go unrecognised for a long time because the personality is well preserved, and some of these paranoiacs may pass off as social reformers or founders of queer pseudo-religious sects. The classical picture is rare and generally takes a chronic course.

Paranoid schizophrenia, in the vast majority of cases, starts in the fourth decade and develops insidiously. Suspiciousness is the characteristic symptom of the early stage. Ideas of reference occur, which gradually develop into delusions of persecution. Auditory hallucinations follow which in the beginning, start as sounds or noises in the ears, but become fixed and definite, to lead the patient to believe that he is persecuted by some unknown person or some superhuman agency. He believes that his food is being poisoned, some noxious gases are blown into his room and people are plotting against him to ruin him. Disturbances of general sensation give

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rise to hallucinations, which are attributed to the effects of hypnotism, electricity, wireless telegraphy or atomic agencies. The patient gets very irritated and excited owing to these painful and disagreeable hallucinations and delusions.

Since so many people are against him and are interested in his ruin, he comes to believe that he must be a very important man. The nature of delusions thus, may change from persecutory to grandiose type. He entertains delusions of grandeur, power and wealth, and generally conducts himself in a haughty and overbearing manner. The patient usually retains his money and orientation and does not show signs of insanity, until the conversation is directed to the particular type of delusion from which he is suffering. When delusions affect his behaviour, he is often a source of danger to himself and others.

The name paraphrenia has been given to those suffering from paranoid psychosis who, in spite of various hallucinations and more or less systemised delusions, retain their personality in a relatively intact state. Generally, paraphrenia begins later in life than the other paranoid psychosis.

Schizo-affective psychosis.—Schizo-affective psychosis is an atypical type of schizophrenia, in which there are moods or affect disturbances unlike other varieties of schizophrenia, where there is blunting or flattening of affect. Attacks of elation or depression, unmotivated rage, anxiety and panic occur in this form of schizophrenic illness.

Pseudo-neurotic schizophrenia.—Schizophrenia may start with overwhelmingly neurotic symptoms, which are so prominent that in the early stages, it may be diagnosed as neurosis. When schizophrenia begins in an obsessional personality, it may for a long time remain disguised as an apparently obsessional illness.

16. F.C. Redlich and Daniel X. Freedman in their book titled The Theory and Practice of Psychiatry (1966 Edn.) observed:

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"Some schizophrenic reactions, which we call psychoses, may be relatively mild and transient; others may not interfere too seriously with many aspects of everyday living…. (p. 252)

Are the characteristic remissions and relapses expressions of endogenous processes, or are they responses to psychosocial variables, or both? Some patients recover, apparently completely, when such recovery occurs without treatment we speak of spontaneous remission. The term need not imply an independent endogenous process; it is just as likely that the spontaneous remission is a response to non-deliberate but nonetheless favourable psychosocial stimuli other than specific therapeutic activity…. (p. 465)"

48. Similarly, in the decision reported as (2006) 3 SCC 778*Vinita Saxena v. Pankaj Pandit*, Hon'ble Supreme Court again noted:

"*28. … A research on the disease*

"Schizophrenia is one of the most damaging of all mental disorders. It causes its victims to lose touch with reality. They often begin to hear, see or feel things that aren't really there (hallucinations) or become convinced of things that simply aren't true (delusions). In the paranoid form of this disorder, they develop delusions of persecution or personal grandeur. The first signs of paranoid schizophrenia usually surface between the ages of 15 and 34. There is no cure, but the disorder can be controlled with medications. Severe attacks may require hospitalisation.

The appellant has filed Annexures L, M, N, O, P and Q which are extracts about the aforesaid disease. The extracts are sum and substance of the disease and on a careful reading it would be well established that the evidence and documents on record clearly make out a case in favour of the appellant and hence the appellant was entitled to the relief prayed. In the memorandum and grounds of appeal, some salient features of

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the disease have also been specified. Some of the relevant parts of the extracts from various medical publications are reproduced hereinbelow:

What is the disease and what one should know?

A psychotic lacks insight, has the whole of his personality distorted by illness, and constructs a false environment out of his subjective experiences.

It is customary to define 'delusion' more or less in the following way. A delusion is a false unshakeable belief, which is out of keeping with the patient's social and cultural background. German psychiatrists tend to stress the morbid origin of the delusion, and quite rightly so. A delusion is the product of internal morbid processes and this is what makes it unamenable to external influences.

Apophanous experiences which occur in acute schizophrenia and form the basis of delusions of persecution, but these delusions are also the result of auditory hallucinations, bodily hallucinations and experiences of passivity. Delusions of persecution can take many forms. In delusions of reference, the patient feels that people are talking about him, slandering him or spying on him. It may be difficult to be certain if the patient has delusions of self-reference or if he has self-reference hallucinosis. Ideas of delusions or reference are not confined to schizophrenia, but can occur in depressive illness and psychogenic reactions.

Causes

The causes of schizophrenia are still under debate. A chemical imbalance in the brain seems to play a role, but the reason for the imbalance remains unclear. One is a bit more likely to become schizophrenic if he has a family member with the illness. Stress does not cause schizophrenia, but can make the symptoms worse.

Risks

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Without medication and therapy, most paranoid schizophrenics are unable to function in the real world. If they fall victim to severe hallucinations and delusions, they can be a danger to themselves and those around them.

What is schizophrenia?

Schizophrenia is a chronic, disabling mental illness characterised by:

Psychotic symptoms

Disordered thinking

Emotional blunting

How does schizophrenia develop?

Schizophrenia generally develops in late adolescence or early adulthood, most often:

In the late teens or early twenties in men

In the twenties to early thirties in women

What are the symptoms of schizophrenia?

Although schizophrenia is chronic, symptoms may improve at times (periods of remission) and worsen at other times (acute episodes, or period of relapse).

Initial symptoms appear gradually and can include:

Feeling tense

Difficulty in concentrating

Difficulty in sleeping

Social withdrawal

What are psychotic symptoms?

Psychotic symptoms include:

Hallucinations: hearing voices or seeing things.

Delusions: bizarre beliefs with no basis in reality (for example, delusions of persecution or delusions of grandeur).

These symptoms occur during acute or psychotic phases of the illness, but may improve during periods of remission.

A patient may experience:

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A single psychotic episode during the course of the illness
Multiple psychotic episodes over a lifetime
Continuous psychotic episodes

During a psychotic episode, the patient is not completely out of touch with reality. Nevertheless, he/she has difficulty distinguishing distorted perceptions of reality (hallucinations, delusions) from reality, contributing to feelings of fear, anxiety, and confusion.

The disorder can prove dangerous for some—especially when symptoms of paranoia combine with the delusional symptoms of schizophrenia. In fact, doctors say paranoid schizophrenics are notorious for discontinuing the treatments which help control their symptoms.

The Indian Drug Review has specified the drug Trifluoperidol as a sedative and tranquiliser. With regard to administration it has been suggested that it is given to a patient suffering from schizophrenia. Incidentally this drug was being administered on medical advice to the respondent."

49. From the detailed discussion on 'Schizophrenia' in the above noted decisions it is evident that 'Psychosis' also called as 'Psychotic disorder' is a form of 'Schizophrenia' though milder and from the medical history of the appellant, it is evident that she was on treatment through tablets for psychosis since 1996, i.e. thirteen years prior to the offences allegedly committed by the appellant. Since the appellant was suffering from Psychosis at the time of alleged offence, even the slightest provocation was sufficient for her to have lost self-control. Thus even though the mental illness of the appellant was not such that she can take the defense of insanity

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but certainly it was such bringing the offence under Exception 1 to Section 300 IPC.

50. Learned Counsel appearing for the appellant contended that opinion given by IHBAS that appellant was fit to stand trial before the learned Trial Court was not based on the principles as in Florida Rules of Criminal Procedure, 2008. The Florida Rules as canvassed by the learned counsel for the appellant governs all the criminal proceedings in the courts in the state of Florida. Although the said Florida Rules are not applicable in India, but a perusal of the relevant rules for the purpose of this case reveal that the said Rules, in essence, merely prescribe principles of natural justice so as to ensure fair trial for the accused suffering from some mental disability. As per the said Florida Rules, when the Court *has reasonable ground to believe* that the accused *is not mentally competent to proceed*, the Court shall itself set a hearing for examining the mental condition and then may order the accused to be examined by experts, who shall submit its report, upon which the Court will come to its own conclusion that the appellant is competent to stand Trial, to appreciate the charge(s) and penalties that may be imposed, to understand the legal process and to prove its defence.

51. The essence of these Rules can also be found embedded under Section 329 of the Code of Criminal Procedure, 1973, wherein if the Trial Court finds an accused to be of *unsound mind and incapable of making his defence*, the Trial Court is duty bound to try the fact of such unsoundness at the first instance and only after considering the medical evidence produced

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before the Court, shall the Court make its decision whether to postpone the proceedings of the case or not. Accordingly, what is required is that the Trial Court must satisfy itself that the appellant was competent to stand trial, and if the accused was found incompetent, the Court shall not have proceed till the pendency of such incompetency.

52. In the present matter, pending trial, the learned Trial Court had issued notice to IHBAS on 11th December, 2009, requisitioning the Report of Medical Board of the appellant so as to ascertain appellant's fitness to stand trial. Accordingly, medical report from IHBAS dated 15th January, 2010 opined:

> "*Patient was examined by the Medical Board at IHBAS on 13.01.2010. She is diagnosed as a case of Paranoid Schizophrenia in partial remission on treatment. Based on the current assessment of the patient is fit to stand trial. She requires regular follow up and treatment.*"

53. Thereafter, in pursuance of the said report, learned Trial proceeded with the trial when the appellant duly appeared before the Court. Even pending the appeal, this Court deemed it fit to call for a medical report of the appellant from IHBAS vide its order dated 19th July, 2022. Accordingly, medical report dated 8th August, 2022 was submitted before this Court wherein it was opined:

> "*Patient Madhu Bala was examined by the Standing Medical Board at IHBAS on 03.08.2022. The Medical Board opined that –*

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> *1. Patient is diagnosed as a case of Paranoid Schizophrenia, maintaining well on treatment with hypertension with Right Eye Cataract due for surgery.*
> *2. Patient is currently in the Half Way Home/Long Stay Home "Saksham" on IHBAS campus.*"

54. From the perusal of the Trial Court record, it is evident that due to the presence of the appellant before the Court during trial the learned Trial Court was able to form an opinion about the general condition of Madhu Bala. Further, from the statement of the appellant recorded under Section 313 of the Cr.P.C. immediately after recording of the prosecution evidence, it is evident that the appellant has given intelligent answers to the questions/incriminating circumstances put to her at the time of recording her statement. Coupled with the medical report from the Board of Doctors from IHBAS, it is evident that the trial qua appellant proceeded only when she was fit to stand trial. Similarly, the appeal was also kept pending initially and heard only after the opinion of Medical Board qua the fitness of appellant was received. Hence, there is no denial of fair trial or a fair opportunity to defend to the appellant.

55. To ascertain the period of judicial custody undergone by the appellant, this Court had called for the nominal roll of the appellant from the Superintendent Tihar Jail. As per the nominal roll of the appellant, the appellant had been in judicial custody during trial and also the period thereafter i.e. since the date of her arrest on 23rd September, 2005 till 27th November, 2015. The Jail authorities, however, did not consider the period

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from 28th November, 2015 onwards i.e. the time spent by the appellant at IHBAS both in the hospital and thereafter at the Half Way Home/Long Stay Home "Saksham" for treatment as judicial custody. In terms of order dated 7th December, 2022, this Court observed that the appellant had not been released on suspension of sentence and therefore, while being admitted in IHBAS, the appellant continued to be in custody of the Court and accordingly, the total period undergone by the appellant as on that date was 18 years, 7 months and 4 days (including remissions).

56. While preparing with the nominal roll, the Jail authorities are required to take into consideration that once the sentence of the prisoner is not suspended by complying with the necessary conditions imposed, the prisoner continues to be in judicial custody whether lodged in a hospital or Short Stay Home, because the person holding the said custody holds it on behalf of the Court i.e. *custodia legis*. Thus, even while being admitted at the Short Stay Home, the appellant is in judicial custody till now and the period of stay at Short Stay Home will be counted towards the custody period.

57. In view of the discussion aforesaid, the conviction of the appellant is modified from one under Section 302 to 304(1) IPC as regards death of Ramesh is concerned. The conviction of the appellant for offence punishable under Section 326 IPC qua the injuries to Varsha is maintained. The appellant was awarded sentence of imprisonment for 10 years for

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offence punishable under Section 326 IPC and the said sentence is maintained, which the appellant has already undergone.

58. Further, sentence for offence punishable under Section 304 Part 1 IPC is modified to sentence of imprisonment for a period of 12 years. From the nominal roll of the appellant, the appellant has undergone 18 years. Hence, it is held that the appellant has already undergone the sentence awarded to her for offence punishable under Section 304(1) IPC.

59. The next moot question that arises is whether the State is absolved of its duty to maintain and take care of Madhu Bala on her completion of sentence and thereby release from judicial custody. The answer is in the negative.

60. A coordinate Bench of this Court in the decision reported as (2005) SCC Online Del 310 *Charanjit Singh & Ors. Vs. State & Ors*. while dealing with a similar situation wherein the petitioner continued to be in detention for almost 20 years as an undertrial prisoner because of being mentally unstable, thus incapable of defending himself, the trial did not proceed, considering the facts of the case not only quashed the FIR qua him but also highlighted the responsibility of the State to continue to look after the petitioner therein, even though he was no more an undertrial prisoner. This Court observed:

> *"8. The admitted position which thus emerges is that Charanjit Singh has already suffered imprisonment for about 20 years. Even if he had been convicted of the offence under Seetion 302 IPC for which he is charged, his sentence would have come up for first remission 5 to 6 years ago. It has also*

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come on record that long years he has spent in jail without adequate treatment has given rise to and/or worsened mental and physical condition. He is incapable of understanding nature of criminal proceedings against him and, therefore, incapable of standing trial and it can be safely concluded from the various medical reports that this condition may last till his last breath. He is not a person who can harm anybody. His further detention in judicial custody may not be proper. Releasing him on bail would also be a mere paper formality as no family member or any other person has come forward to stand surety for him or to seek his custody. Therefore, in such a situation, more so keeping in view the period already spent in the judicial custody and no chances for facing criminal trial in view of his mental condition, it is a fit case where charge sheet be quashed. We are of the opinion that keeping the proceedings in suspended animation for rest of his life treating him as undertrial prisoner, in the given case, would be negation of Article 21 of the Constitution of India which guarantees not only right to life but right to live with dignity. Is it proper that such a person even after spending almost 20 years in judicial custody and incapable of standing trial should be treated as undertrial with charge against him under Section 302 IPC for rest of his life? Our answer would be in the negative as such state of affairs denies him his right to defend himself and claim honourable acquittal which is also a possibility in any criminal trial.

12. We may mention at this stage that quashing of this FIR and criminal proceedings against Charanjit Singh was not a difficult decision to take in view of obvious factual background narrated above. Even learned counsel for the State did not have any serious objection. However, more difficult question which was bothering us was this; what would happen to Charanjit Singh once he is freed and he is no more an undertrial prisoner? While in judicial custody it is the duty and obligation

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of the State to take care of undertrial prisoners. This duty includes giving the undertrial prisoner proper medical treatment if he/she is suffering from any ailment. It is because of this reason the State had been discharging this duty in the present case by providing medical treatment and/or bearing the necessary expenditure. Once Charanjit Singh ceases to be an undertrial prisoner and there is no criminal case pending against him, State could wash it hands off. We did not want this consequence of quashing of FIR as his 'freedom' to the undertrial prisoner would have denied him the medical treatment and put him in a worst position than what he has today. We feel relieved to find positive response given by the Government of NCT of Delhi to the problem and the approach suggested by it as contained in affidavit dated 26th February, 2005 of Mr. Peter Bara, Deputy Secretary in the Home Department, Government of NCT of Delhi wherein it is, inter alia, stated that the Government is agreeable to take care of Charanjit Singh' medical needs even if criminal proceedings are quashed and would not be pending. With this, we feel relieved. We are confident that insofar as treatment of Mr. Charanjit Singh is concerned, due care and attention would be given in future. It was also our concern, and that of NHRC, that such cases should not recur.

13. With this anxiety, we requested learned counsel appearing for NHRC to suggest the solution. We note it with satisfaction that NHRC has undertaken necessary exercise by preparing the guidelines to deal with cases of those who are mentally ill and in jail. In these guidelines which were placed before us, issue is highlighted by referring to two judgments of the Supreme Court and comments of Mulla Committee. It is pointed out by that:

> *"1. In Rama Murthy v. State of Karnataka, (1997) 2 SCC 642, the Hon'ble Supreme Court commented inter alia on the pathetic living conditions in jail, on*

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overcrowding, delays in trail, torture and ill-treatment, and neglect of health and hygiene. The Hon'ble Court took judicial notice of All India Committee on Jail Reforms [1980-83] (headed by Justice A.N. Mulla) observing:

"We direct the authorities concerned to take appropriate decision on the suggestions within a period of six months from today. It may be pointed out that there is really a grievance about allowing the recommendations to remain in cold storage."

2. *The Mulla Committee has commented on the large number of mentally ill persons in jails, the majority of whom are convicts and undertrials. In addition, mentally ill people not facing any criminal charges have been incarcerated in some places. The Committee has also detailed the abysmal living conditions in prison and utterly inadequate medical facilities.*
3. *The National Human Rights Commission notes with concern that an increasing number of initially sane undertrials and convicts are becoming mentally ill after being sent to jail.*
4. *The Hon'ble Supreme Court in Veena Sethi v. State of Bihar, (1982) 2 SCC 583, that*

"We would like to take this opportunity to impressing upon the State Government that in a large State like the State of Bihar, there must be an adequate number of institutions for looking after the mentally sick and the practice of sending lunatics or persons of unsound mind to the jail for safe custody is not at all a healthy or desirable practice because jail is hardly a place for treating those who are mentally sick."

14. The NHRC, in this conspectus, has made the following recommendations:

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1) *Psychological or psychiatric counselling should be provided to prisoners as required in order to prevent mental illness and/or to ensure early detection. Collaborations of this purpose should be made with local psychiatric and medical institutions as well as with NGOs.*
2) *Central and District jails should have facilities for preliminary treatment of mental disorder. Sub-jails should take inmates with mental illness to visiting psychiatric facilities. All jails should be formally affiliated to a mental hospital.*
3) *Every central and district prison should have the services of a qualified psychiatrist who should be assisted by a psychologist and a psychiatric social worker.*
4) *Not a single mentally ill person who is not accused with committing a crime should be kept in or sent to prison. Such people should be taken for observation to the nearest psychiatric centre, or if that is not available to the Primary Health Centre.*
5) *If an undertrial or a convict undergoing sentence becomes mentally ill while in prison, the State has an affirmative responsibility to the undertrial or convict. The State must provide adequate medical support. As such an appropriate facilities should be provided in State-assisted hospitals for undertrials that become mentally ill in prison. The person should be placed under the observation of a psychiatrist who will diagnose treat and manage the person. In case such places are not available, the State must pay for the same medical care in a private hospital. In either case care must be provided until recovery of the undertrial/convict.*

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6) *When a convict has been admitted to a hospital for psychiatric care, upon completion of the period of his prison sentence, his status in all records of the prison and hospital should be recorded as that of a free person and he should continue to receive treatment as a free person.*

7) *Mentally ill undertrials should be sent to the nearest prison having the services of a psychiatric and attached to a hospital, they should be hospitalized as necessary. Each such undertrial should be attended to by a psychiatrist who will send a periodic report to the Judge/Magistrate through the Superintendent of the prison regarding the condition of the individual and his fitness to stand trial. When the undertrial recovers from mental illness, the psychiatrist shall certify him as 'fit to stand trial'.*

8) *All those in jail with mental illness and under observation of a psychiatrist should be kept in one barrack.*

9) *If a mentally ill person, after standing trial following recovery from the mental illness is declared guilty of the crime, he should undergo term in the prison. Such prisoners, after recovery should not be kept in the prison hospital but should remain in the association barracks with the normal inmates. The prison psychiatrist will, however, continue to periodically examine him for reviewing his treatment and suggesting him other activities.*

10) *The State has a responsibility for the mental and physical health of those it imprisons. While some of the recommendations below may appear to be of a general nature, they would help prevent people becoming mentally ill after entering jail. Each jail*

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and detention centre, therefore, should ensure that it provides the following:

(i) An open environment, lawns, kitchen gardens and flower gardens. Daily programmes for prisoners should include physical and mental activities that reduce stress and depression including organised sport and meditation.

(ii) A humane staff that is not unduly harsh;

(a) Officers of the institution shall not, in their relations with the prisoners use force except in self-defence or in cases of attempted escape, or active or passive physical resistance to an order based on law or regulations. Officers who have recourse to force must use no more than is strictly necessary and must report the incident immediately to the director of the institution.

(b) Prison officers shall be given special physical training to enable them to restrain aggressive prisoners.

(c) Except in special circumstances, staff performing duties which being them into direct contact with prisoners should not be armed. Furthermore, staff should in no circumstances be provided with arms unless they have been trained in their use.

(iii) Effective grievance redressal mechanisms.

(a) Every prisoner on admission shall be provided with written information about the regulation governing the treatment of prisoners of his category, the disciplinary requirements of the institution, the authorized methods of seeking information and making complaints, and all such other matters as are necessary to enable him to

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understand both his rights and his obligations and to adapt himself to the life of the institution.

(b) If a prisoner is illiterate, the aforesaid information shall be conveyed to him orally.

(c) Every prisoner shall have the opportunity each weekday of making requests or complaints to the director of the institution or the officer authorized to represent him.

(d) Every prisoner shall be allowed to make a request or complaint, without censorship as to substance but in proper form, to the central prison administration, the judicial authority or other proper authorities through approved channels.

(e) Unless it is evidently frivolous or groundless, every request or complaint shall be promptly dealt with and replied to without undue delay.

(iv) Encouragement to receive visitors and maintain correspondence, interview facilities; access to the more important items of the news by any means authorized by the administration; access for foreign nationals to their diplomatic representatives.

(v) Overseeing bodies including members from civil society to ensure the absence of corruption and abuse of power in jails.

11) Regarding those undertrials whose trial has been suspended for even a single day due to mental illness, report should be sent to the relevant District and Sessions Judge as well as the Magistrate on a quarterly basis i.e. every three months. A proforma for details to be provided is attached herewith as Annexure A.

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12) *As soon as it comes to the notice of the trial court that an undertrial is mentally unsound and cannot understand the nature of proceedings against him, the trial court must follow the procedure under Chapter 25 CrPC and ensure strict compliance of Mental Health Act, 1987, relating to progress report of undertrial. In this regard the trial court must ask for periodic report of the progress of the undertrial as detailed by the proforma.*

13) *The Delhi Judicial Academy could include short-term capsule course to sensitize judicial officers likely to deal with mental health cases and to orient such officers to the Mental Health Act, 1987. These short-term courses could be institutionalized and provide to each batch of judicial officer.*

14) *When the trial of a mentally ill person is suspended for a period longer than 50% of the possible sentence (subject to a maximum of three years) the matter should be reported to the Registrar of the High Court of Delhi to be put up to the Hon'ble Chief Justice for information and appropriate action. A copy of this report should be sent to the NHRC. Such reports should be made on a six-monthly basis, by filling the proforma at Annexure A.*

15) *The State Government must strengthen legal aid services; they should extend beyond representation before magistrate when the case is taken up. Given the record of mentally ill persons not being produced for years before the court, preventive legal aid is required to check the abuse of the law and dumping the mentally ill in prisons. Rejection by the family means that no one would be approached to provide help to the jailed person. Legal aid, in the*

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person of duty counsel at police stations, can help enforce procedures and screen out the vagrant mentally ill from the criminal justice process even at the point of entry. Duty counsel in courts can ensure that no mentally ill persons is unrepresented.

16) *The state must assume responsibility also for those persons who have been discharged from prison and hospital and no longer require full time care for mental illness, but are unable to take care of themselves.*

According to Help age India, the Department of Social Welfare, Government of the National Capital Territory of Delhi plans to establish some additional old age homes. Ideally, some of these would be earmarked for older persons, who have been subjected to social injustice eg. those like Mr. Charanjeet Singh who have suffered unnecessary incarceration. The Government's running of such establishments has left much to desired due to bureaucratic management, an attachment to rules and procedures rather than sensitive provision of support; the state of existing old age homes run by the government in Delhi makes this clear.

17) *Those in the above category of persons should not be sent to Homes that treat them as sub-human, but rather provided with humane, community-based alternatives where full time care is required. Semi-independent, protected community houses would need to be established where such people could be rehabilitated and gainfully employed in some income generating activities with the objective of helping them lead as normal a life within society.*

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> *A number of government schemes already exist to provide community-based rehabilitation and should be implemented. However, appropriate medical care must be provided with periodic visits by qualified psychiatrists. Such homes should be run by grass root NGOs and overseen and financed by the Government.*
>
> *18) at the same time there should be a shift in focus from institutionalizing vulnerable people (such as the old and mentally ill) if it is possible for the person to be taken care of at home, institutional support of families should be provided in order to make the rehabilitation more successful."*

61. We may note that despite directions of this Court in *Charanjit Singh (supra)* in the year 2005 to the State to create Short Stay/ Long Stay homes for people suffering from mental illness who do not need hospitalization, no such homes were set up. Thus, this Court sought report from the Medical Superintendent IHBAS regarding the status of Half Way Homes for permanently lodging schizophrenia patients vide the order dated 6th August, 2014. Finally, the Half Way Homes became operational in March 2017 when Madhu Bala was shifted from the hospital at IHBAS to the Short Stay Home at IHBAS. Needless to note that from the medical record of the appellant it was evident that though initially she was in and out of IHBAS and on regular treatment, however after her stay at the Short Stay Home Saksham at IHBAS there is incremental improvement in the mental health of the appellant due to which this Court was able to receive the report that at the moment the paranoid schizophrenia of the appellant was in remission

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and the learned counsel for the appellant was also able to interact with her. It is hoped and expected that in terms of the directions of this Court in Charanjit Singh (supra) the State will ensure sufficient number of Short Stay Homes and Long Stay Homes for people with mental illness who do not require regular hospitalization and who have no homes to go back to live in a safe, congenial and pleasant environment.

62. It is the bounden duty of the State to take care of the life of all its citizen. Since the appellant is not in a position to take care of herself even though the schizophrenia is in remission at the moment nor does any of her family members inclined to look after her, it is the duty of the State to take adequate care of Madhu Bala and such other patients, for which purpose the Short/ Long Stay Homes have been set up.

63. Consequently, the appellant will continue to stay in the Long Stay Home at IHBAS and expenses of all necessary treatment and stay of the appellant will be borne by the State.

64. Appeal is accordingly disposed off.

65. Copy of the judgment be uploaded on the website of this Court and be also sent to Superintendent Tihar Jail for updation of records, intimation to the appellant and necessary compliance.

66. Copy of this judgment be also sent to Principal Secretary (Home) GNCTD, Principal Secretary (Health) GNCTD, Director General (Prisons) and Medical Superintendent, IHBAS for necessary compliance.

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(MUKTA GUPTA)
JUDGE

(POONAM A. BAMBA)
JUDGE

JUNE 26, 2023
'vn/ga'