REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICITION

CRIMINAL APPEAL NO.1250 OF 2006

Elavarasan …Appellant

Versus

State Rep. by Inspector of Police …Respondent

**J U D G M E N T**

**T.S. THAKUR, J.**

1. This appeal by special leave arises out of a judgment and order passed by the High Court of Madras whereby Criminal Appeal No.1215 of 2003 has been dismissed and the conviction of the appellant and sentence awarded to him for offences punishable under Sections 302, 307 and 342 of the I.P.C. upheld.

2. Briefly stated the prosecution case is that the appellant was residing in a house situate at Yadwal Street,

Poovam Koticherri, Distt. Karaikal, Tamil Nadu. Apart from his wife Smt. Dhanalakshmi, PW2 and his daughter Abirami, aged about 1½ years, his mother Smt. Valli, PW3 also lived with him. On the fateful night intervening 11-12 of December, 2000 at about 1 p.m. the appellant is alleged to have started a quarrel with his wife accusing her of having brought misfortune to him ever since she got married to him. The immediate provocation for making that accusation was his inability to sell the property owned by his mother, as the Revenue entries relating the same stood in the name of Kannan, the paternal uncle of the appellant, who it appears was not agreeable to the sale of the property. The quarrel between the husband and the wife took an ugly turn when the appellant made a murderous assault on his wife, Dhanalakshmi causing several injuries to her including those on her head, left hand, right cheek and other parts of the body. Intervention of PW3, Vali who is none other than the mother of the appellant also did not stop the appellant from assaulting his wife. In the process injuries were caused even to the mother. Due to the ruckus caused by the quarrel and the assault on the two women, Abirami who was sleeping in the adjacent room woke up and started crying. The appellant at that stage is alleged to have gone

inside the room and hit the deceased resulting in her death.

3. The prosecution case further is that the appellant did not allow the injured to go out of the house and bolted the doors from inside. In the morning at about 7 a.m. Shri R. Parvathi, PW5 is said to have gone to the house of R. Natarajan, PW1 - a resident of the same street in the village and told him about the quarrel at the house of the appellant the previous night. Both of them then came to the spot and found a pool of blood near the outer door of the house of the appellant. Since the door was bolted from inside, PW1 called the appellant by his name, who responded to the call and said that he had cut his mother and wife and wanted to commit suicide for which he demanded some poison from them. A large number of villagers in the meantime gathered on the spot but the appellant refused to open the door. The Police was informed about the incident on telephone and soon arrived at the spot to knock at the doors of the appellant’s house asking him to open the same. The appellant refused to do so and threatened that he would murder anyone who ventured to enter the house. Since the appellant remained adamant in this resolve, the Police with the help of PWs 1, 8 and others forced the door open and

found the appellant inside the house armed with an Aruval, and his mother and wife lying inside the house with serious cut injuries and blood all over the place. In the adjacent room they found Abirami in an injured condition. Not knowing whether she was dead or alive, she was picked up and rushed to the hospital alongwith the other two injured, where the doctor pronounced the child brought dead. On completion of the investigation, the police filed a charge-sheet against the appellant for offences punishable under Sections 342, 307 (2 counts) and 302 IPC. He was committed to the sessions at Karaikal where the appellant pleaded not guilty and claimed a trial.

4. Before the Trial Court the prosecution examined as many as 21 witnesses in support of its case while the accused-appellant who set up unsoundness of mind in defence did not lead any evidence except making a request for medical examination which request was allowed and Dr. R. Chandrasekaran and Dr. P. Srinivasan who examined the appellant summoned as court witnesses to depose about their observations and conclusions as regards the mental health of the appellant.

5. The Trial court eventually rejected the plea of insanity and found the appellant guilty of the charges framed against him and sentenced him to undergo imprisonment for life for the murder of his child baby Abirami and to undergo 1 year rigorous imprisonment for the offence punishable under Section 342 IPC and 10 years rigorous imprisonment together with a fine of Rs.1,000/- for each of the offences punishable under Section 307 (2 counts). The sentences were ordered to run concurrently.

6. Aggrieved by the judgment and order of the Trial Court the appellant filed an appeal before the High Court of Madras, who dismissed the same and affirmed the findings recorded by the Trial Court as already noticed by us. The High Court held that the appellant had been caught red handed with the weapon of offence inside the house in the presence of PWs 1, 7, 8 and others. Besides, there was no reason why his wife PW2, who was an injured eye-witness to the entire incident, should have falsely implicated the appellant. The High Court also took the view that since PW3, the mother of the appellant who had also been injured in the incident had turned hostile and stated that she had sustained the injuries accidently because of a fall, the appellant’s conviction for the attempted murder of his

mother punishable under Section 307 was liable to be set aside. The fact that PW3 had turned hostile did not, opined the High Court, make any dent in the prosecution case in so far as the same related to the murder of the innocent child and an attempt made by the appellant on the life of his wife Dhanalakshmi. The plea of insanity was rejected by the High Court on the ground that there was no material to show that the appellant was insane at the time of the commission of the offences. The present appeal assails the correctness of the above judgment and order as already noticed by us.

7. Appearing for the appellant, Mr. Mani, learned counsel urged a solitary point in support of the appeal. He submitted that the material on record sufficiently proved the plea of insanity set up by the appellant at the trial. Reliance in support was placed by the learned counsel upon the deposition of Dr. P. Srinivasan, CW1, according to whom the appellant was a person of unsound mind. He also drew our attention to the deposition of other witnesses to argue that the appellant had been treated by a Psychiatrist and had been taking medicines for his illness. Reliance in particular was placed by the learned counsel upon the contents of Ex.P.3 the observation Mahazar which refers to

certain writings on the walls of the appellant's house suggesting that the appellant was mentally unsound even at the time of commission of crime. From the graffiti, it was according to Mr. Mani evident that the appellant suffered from insanity before and at the time of the incident. Mr. Mani further argued that murderous assault on his wife, his mother and child without any ostensible reason was itself suggestive of the appellant being an insane person. The appellant's conduct after the event was also, argued Mr. Mani, suggestive of his being of unsound mind, which aspects the courts below had failed to appreciate in the process denying to the appellant the benefit of Section 84 of the Indian Penal Code, legitimately due to him.

8. On behalf of the respondent Mr. Venkataramani, learned senior counsel contended that the trial court as also the High Court had correctly found the plea of insanity set up by the appellant as not proved and held the appellant guilty of the offences with which he stood charged. Mr. Ventakaramani argued that there was no credible evidence to establish legal insanity at the time of the commission of the offence so as to entitle the appellant to the benefit of Section 84 of IPC. The fact that the appellant did not run away from the place of occurrence or that he had

attacked his wife and child without any reason did not establish that the appellant was of unsound mind, hence unable to understand the nature of the act or that what he was doing was either wrong or contrary to law. Reliance was placed by Mr. Venkatarmani upon the deposition of CW2 Dr. R. Chandrasekaran in support of his submission that the appellant was not an insane person at the time of the incident or at the time he was tried for the offences committed by him.

9. There was before the courts below and even before us no challenge to the factual narrative given by the prosecution and the witnesses examined on its behalf. That the appellant lived with his mother, wife and minor child in the house owned by him was not disputed. That he assaulted his wife, who was in family way and caused several injuries to her and to his mother who intervened to save the former is also not in dispute. That injuries were caused even to Abirami who succumbed to the same was also not challenged before us by Mr. Mani. The appellant’s mother PW3, no doubt turned hostile at the trial and tried to attribute the injuries sustained by her to a fall in the house, but the deposition of PW2, the wife of the appellant completely supported the prosecution case and the sequence

of events leading to the heartless killing of the innocent child Abirami, who was sleeping in the adjacent room and whose only fault was that she woke up hearing the shrieks and wails of the mother and started crying. That the appellant was arrested from the house from where the injured witnesses PW2 and PW3 and Abirami were removed in an injured condition, was also not disputed. Even independent of the line of arguments adopted by the learned counsel, we are satisfied that there is no reason whatsoever to disbelieve the deposition of Dhanalakshmi, PW2 who unlike Abirami not only suffered the murderous assault but survived to tell the tale in all its details that leave no room for any doubt in our mind about her version being completely reliable. That Shri R. Natarajan, PW1 and Shri J. Ashokan, PW8 also support and corroborate the version of PW2, Dhanalakshmi, only goes to show that it was the appellant and the appellant alone who attacked not only his wife but his daughter of tender age resulting in the death of the later. Superadded to the above is the depositions of PW19, Dr. Ramamurthy, who conducted the post-mortem of the dead body of Abirami and who proved the post-mortem report marked as Ex.P.25 enumerating the injuries found on the body of the unfortunate child. The doctor opined that death was due to coma as a result of

head injuries within 24 to 36 hours prior to post-mortem and that the blunt side of a weapon like M.O.27 could have caused the injuries found on the dead body.

10. Similarly, the deposition of PW16, Dr. Anni Pula Juilet who was posted as Assistant Surgeon in the Government Hospital at Karaikal proved the injury report marked Ex.P19 that listed the injuries sustained by Dhanalakshmi, PW2, as under:

(1) Injury of 3 cms. x 3 cms. Right side of leg.
(2) Injury of 3 cms. x 3 cms. Lt. side of elbow.
(3) Injury on left side of forearm of 7 cms. x 7 cm. Suspected fracture on it. Forearm.
(4) Injury Lt. side of hand 3 cms. x 3 cms.
(5) Injury Lt. Side of hand 3 cms. x 3 cms.
(6) Injury on the palm.
(7) Injury all the fingers.
(8) Injury chest 4 cms. x 4 cms.
(9) 24 weeks foetus.
(10) Injury face angle from Lt. Side measuring 7 cms. x 7 cms.
(11) Injury scale back side of 8 cms. x 8 cms.
(12) Deep cut on the scale 10 cms. x 12 cms. Deep cut extending to the back 3 cms. x 3 cms.
(13) Abrasion frontal side of scalp.
(14) Injury Rt. Side of the hand. Lacerated injury Rt. Index finger extending bone.
(15) Deep cut injury on the scalp 6 cms. x 6 cms.

11. Injuries found on the person of PW3, the mother of the appellant were described in Ex.P20 proved by the same witness, as under:

(1) Cut injury Lt. Side of forearm hand.
(2) Cut injury Rt. Side of hand near the Wrist 7 cms. x 6 cms.
(3) Deep cut injury on the forehead 5 cms. x 5 cms. Lt. Side above ridge bone.
(4) Deep cut injury Lt. Side of forearm 7 cms. x 7 cmx. near wrist.
(5) Deep cut injury on the Lt. Side of forearm 5 cms. x 5 cms.
(6) Deep cut injury on the scalp exposing the bones about 16 cms. x 16 cms.

12. PW15, Dr. Shriramulu, was the Assistant Surgeon in the General Hospital at Karaikal who found 15 injuries on the person of PW2, stated that PW2 remained admitted to the hospital from 12th December, 2000 till 28th January, 2001. According to him the appellant's mother PW3 had also suffered six injuries and her little and index fingers in the right hand had been amputated in the course of treatment on 8th January, 2001.

13. In the light of the above evidence and in the absence of any challenge to the veracity of the witnesses produced by the prosecution we have no manner of doubt in our mind that the appellant alone was responsible for the assault on his wife PW2, Dhanlakshmi and baby Abrami who lost her life as a result of the injuries sustained by her in the said incident. Left at that there can be no escape from the

conclusion that the appellant was guilty of committing culpable homicide of his daughter Abirami aged about 1½ year and an attempt to commit the murder of his wife Dhanlakshmi, even if the assault on the mother of the appellant is taken as doubtful on account of the injured turning hostile at the trial and attempting to attribute the injuries sustained by her to a fall.

14. The question, however, is whether the appellant was entitled to the benefit of Section 84 of Indian Penal Code which provides that nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act or who is incapable of knowing that what he is doing, is either wrong or contrary to law. Before adverting to the evidence on record as regards the plea of insanity set up by the appellant, we consider it necessary to refer to two aspects that bear relevance to cases where a plea of insanity is raised in defence by a person accused of a crime. The first aspect concerns the burden of proving the existence of circumstances that would bring the case within the purview of Section 84 of the I.P.C. It is trite that the burden of proving the commission of an offence is always on the prosecution and that the same never shifts.

Equally well settled is the proposition that if intention is an essential ingredient of the offence alleged against the accused the prosecution must establish that ingredient also. There is no gainsaying that intention or the state of mind of a person is ordinarily inferred from the circumstances of the case. This implies that, if a person deliberately assaults another and causes an injury to him then depending upon the weapon used and the part of the body on which it is struck, it would be reasonable to assume that the accused had the intention to cause the kind of injury which he inflicted. Having said that, Section 84 can be invoked by the accused for nullifying the effect of the evidence adduced by the prosecution. He can do so by proving that he was incapable of knowing the nature of the act or of knowing that what he was doing was either wrong or contrary to law. But what is important is that the burden of bringing his/her case under Section 84 of the IPC lies squarely upon the person claiming the benefit of that provision. Section 105 of the Evidence Act is in this regard relevant and may be extracted:

> “105. Burden of proving that case of accused comes within exceptions.-When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code, (45 of 1860) or within

> any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances."

15. A careful reading of the above would show that not only is the burden to prove an exception cast upon the accused but the Court shall presume the absence of circumstances which may bring his case within any of the general exceptions in the Indian Penal Code or within any special exception or provision contained in any part of the said Code or in law defining the offence. The following passage from the decision of this Court in **Dahyabhai Chhaganbhai Thakkar** v. **State of Gujarat,** (1964) 7 SCR 361 may serve as a timely reminder of the principles governing burden of proof in cases where the accused pleads an exception:

> "The doctrine of burden of proof in the context of the plea of insanity may be stated in the following propositions:
>
> (*1*) The prosecution must prove beyond reasonable doubt that the accused had committed the offence with the requisite mens rea, and the burden of proving that always rests on the prosecution from the beginning to the end of the trial. (*2*) There is a rebuttable presumption that the accused was not insane, when he committed the crime, in the sense laid down by Section 84 of the Indian Penal Code:

> the accused may rebut it by placing before the court all the relevant evidence oral, documentary or circumstantial, but the burden of proof upon him is no higher than that rests upon a party to civil proceedings. (*3*) Even if the accused was not able to establish conclusively that he was insane at the time he committed the offence, the evidence placed before the court by the accused or by the prosecution may raise a reasonable doubt in the mind of the court as regards one or more of the ingredients of the offence, including mens rea of the accused and in that case the court would be entitled to acquit the accused on the ground that the general burden of proof resting on the prosecution was not discharged."

16. The second aspect which we need to mention is that the standard of proof which the accused has to satisfy for the discharge of the burden cast upon him under Section 105 (supra) is not the same as is expected of the prosecution. A long line of decisions of this Court have authoritatively settled the legal proposition on the subject. Reference in this connection to the decision of this Court in **State of U.P.** v. **Ram Swarup and Anr.,** (1974) 4 SCC 764 should suffice where this court observed:

> "The burden which rests on the accused to prove the exception is not of the same rigour as the burden of the prosecution to prove the charge beyond a reasonable doubt. It is enough for the accused to show, as in a civil case, that the preponderance of probabilities is in his favour."

17. To the same effect is the decision of this Court in **Bhikari** v. **State of Uttar Pradesh** (AIR 1966 SC 1).

18. Let us now consider the material on record in the light of the above propositions to determine whether the appellant had discharged the burden of bringing his case under Section 84 of the IPC. The appellant has led no evidence in defence to support the plea of legal insanity. That may be a significant aspect but by no means conclusive, for it is open to an accused to rely upon the material brought on record by the prosecution to claim the benefit of the exception. Evidence in defence may be a surplusage in cases where the defence can make out a case for the acquittal of the accused based on the evidence adduced by the prosecution.

19. What falls for consideration in the light of the above is whether the present is one such case where the plea of insanity - is proved or even probablised by the evidence led by the prosecution and the court witnesses examined at the Trial. Depositions of two prosecution witnesses viz. PW2, Dhanalakshmi and PW3, Valli immediately assume

significance to which we may at this stage refer. PW2, Dhanalakshmi has, apart from narrating the sequence of events leading to the incident, stated that her husband is a government servant getting a monthly salary of Rs.4000/- which he would hand over to the witness to meet the household expenses. She further stated that the couple had a peaceful married life for five years but there was a dispute between the appellant and his maternal uncle by name Kannan in regard to the property a part of which the appellant had already sold and the remainder he wanted to sell. The appellant had according to the witness started the quarrel around 12 p.m. but assaulted her an hour later. The witness further stated that for sleeplessness, the appellant used to take some medicine but she did not recall the name of the Clinic from where he was taking the treatment. According to the witness, the Psychiatrist who was treating the appellant had diagnosed his medical condition to be the effect of excessive drinking and advised that if the appellant took the medicines regularly he would get cured.

20. That brings us to the deposition of PW3, Smt. Valli, the mother of the appellant. This witness has in cross-examination stated that the appellant was working as a

Watchman at PWD bungalow and that she used to deliver his lunch at the appellant’s office. She also referred to the dispute between the appellant and his paternal uncle regarding family properties in which connection he had filed a complaint to the police station. On the date of the incident, the family had their dinner at around 9 p.m. and gone to bed. But the couple started quarreling around 1 p.m. leading to an assault on PW2, Dhanalakshmi. The witness stated that the appellant was undergoing treatment with a Psychiatrist in a clinic situated at Perumal Kovi street and that the doctor had diagnosed the appellant to be a case of mental disorder because of which he could get angry very often.

21. From the deposition of the above two witnesses who happen to be the close family members of the appellant it is not possible to infer that the appellant was of unsound mind at the time of the incident or at any time before that. The fact that the appellant was working as a government servant and was posted as a Watchman with no history of any complaint as to his mental health from anyone supervising his duties, is significant. Equally important is the fact that his spouse Smt. Dhanalakshim who was living with him under the same roof also did not

suggest any ailment afflicting the appellant except sleeplessness which was diagnosed by the doctor to be the effect of excessive drinking. The deposition of PW3, Valli that her son was getting treatment for mental disorder is also much too vague and deficient for this Court to record a finding of unsoundness of mind especially when the witness had turned hostile at the trial despite multiple injuries sustained by her which she tried to attribute to a fall inside her house. The statement of the witness that her son was getting treatment for some mental disorder cannot in the circumstances be accepted on its face value, to rest an order of acquittal in favour of the appellant on the basis thereof. It is obvious that the mother has switched sides to save her son from the consequences flowing from his criminal act.

22. That leaves us with the deposition of two medical experts who examined the appellant under the orders of the Court during the course of the trial. Dr. B. Srinivasan, Specialist in Psychiatry, in his deposition stated that the appellant was admitted to the government hospital, Karaikal on 29th July, 2002 pursuant to an order passed by the Trial Court directing his medical examination so as to evaluate his mental condition and ability to converse. The witness

further stated that the appellant was kept under observation on and from the afternoon of 29th July 2000 till 6th August, 2002 during which time he found him to be conscious, ambulant dressed adequately and able to converse with the examiner. The doctor has described the condition of the appellant during this period in the following words:

> "He has restlessness, suspicious looking around at time inappropriate smile has complaints of some innervoice telling to him (abusive in nature at times), has fear and worries about others opinion about him, wants to be left alone, says he needs a few pegs of alcohol to sleep peacefully at night. He has confusion at times about the whisper within him, feels some pulling connection between his chest and brain, that prevents him from taking freely with people and with the examiner. I am of the opinion that the above individual is of unsound mind. The possible medical dispenses being psychosis: (The differential diagnosis considered in this case are
>
> 1. Paranoid Psychosis (Schizophrenia)
> 2. Substance induced Psychosis (Alcohol induced)
> 3. Organic Psychosis /organic mental disorder
>
> (Head injury sequelae & personality changes)

> I, therefore, request this Hon'ble Court be kindly arrange for a second opinion by another consultant Psychiatrist in this case and also Psychological assessment by a clinical psychologist."
>
> (Emphasis supplied)

23. The appellant was, in the light of the recommendations made by Dr. B. Srinivasan referred to JIPMAR hospital at Pondicherry, where he remained under the observation of Dr. R. Chandrashekhar, CW2 who happened to be Professor and Head of the Department of Psychiatry in that Hospital. In his deposition before the Court Dr. Chandrashekhar has stated that the appellant was admitted on 30th September, 2002 but escaped from the hospital on 1st October, 2002 in which connection the doctor made a report marked Ex.P1. After examining the relevant record the witness deposed that the appellant did not have any Psychataxia symptoms. In the detailed report proved by the witness and marked Ex.P2 the medical condition of the appellant is described as under:

> "He was well groomed. Rapport was established. No abnormal motoric behavior was present. He was cooperative. His mood appeared

> euthymic and speech was normal. There was no evidence of formal thought disorder or disorder of possession or thought content. No perceptual disorder was evident. Attention was arousable and concentration well sustained. He was oriented to time, place, person. The immediate recall, recent and remote memory was intact. Abstraction was at functional level. Judgement was preserved. Insight was present."

24. In the final report the doctor has drawn the following pen picture about the appellant's mental health and psycho-diagnostic evaluation.

> PSYCHO-DIAGOSTIC EVALUATION:
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> Patient's perception, memory and intelligence were slightly impaired (Memory Quotient was 70 and performance quotient was 72). Mixed psychotic picture with predominantly affective disturbances was seen. He requires further support and guidance in occupational area.
>
> The examination is suggestive of a life time diagnosis of Psychosis (not otherwise specified) and currently in remission. Patient was on treatment with vitamins and chlorpromazine 100 mg. per day during his stay in the ward. The course in the hospital was uneventful except for the fact that he absconded from the ward on 1.10.2002. I am of the opinion that the above individual does not currently suffer from any mental symptom, which can interfere with the capability of making his defense.
>
> Sd/- XXX
> (DR. R. CHANDRASHKARAN)
> H/D of Psychiatry

Dt. 5th October, 2002. JIPMER,
Pondicherry-6. "

25. What is important is that the depositions of the two doctors examined as court witnesses during the trial deal with the mental health condition of the appellant at the time of the examination by the doctors and not the commission of the offence which is the relevant point of time for claiming the benefit of Section 84 I.P.C. The medical opinion available on record simply deals with the question whether the appellant is suffering from any disease, mental or otherwise that could prevent him from making his defence at the trial. It is true that while determining whether the accused is entitled to the benefit of Section 84 I.P.C. the Court has to consider the circumstances that proceeded, attended or followed the crime but it is equally true that such circumstances must be established by credible evidence. No such evidence has been led in this case. On the contrary expert evidence comprising the deposition and certificates of Dr. Chandrashekhar of JIPMER unequivocally establish that the appellant did not suffer from any medical symptoms that could interfere with his capability of making his defence. There is no evidence suggesting any mental derangement of

the appellant at the time of the commission of the crime for neither the wife nor even his mother have in so many words suggested any unsoundness of mind leave alone a mental debility that would prevent him from understanding the nature and consequences of his actions. The doctor, who is alleged to have treated him for insomnia, has also not been examined nor has anyone familiar with the state of his mental health stepped into the witness box to support the plea of insanity. There is no gainsaying that insanity is a medical condition that cannot for long be concealed from friends and relatives of the person concerned. Non-production of anyone who noticed any irrational or eccentric behaviour on the part of the appellant in that view is noteworthy. Suffice it to say that the plea of insanity taken by the appellant was neither substantiated nor probablised.

26. Mr. Mani, as a last ditch attempt relied upon certain observations made in Mahazar Ex.P3 in support of the argument that the appellant was indeed insane at the time of commission of the offences. He submitted that the Mahazar referred to certain writings on the inner walls of the appellant’s house which suggested that the appellant was insane. A similar argument was advanced even before

the Courts below and was rejected for reasons which we find to be fairly sound and acceptable especially when evidence on record establishes that the appellant was an alcoholic, who could scribble any message or request on the walls of his house while under the influence of alcohol. The Courts below were, therefore, justified in holding that the plea of insanity had not been proved and the burden of proof cast upon the appellant under Section 105 of the Evidence Act remained undischarged. The High Court has also correctly held that the mere fact that the appellant had assaulted his wife, mother and child was not ipso facto suggestive of his being an insane person.

27. So, also the fact that he had not escaped from the place of occurrence was no reason by itself to declare him to be a person of unsound mind incapable of understanding the nature of the acts committed by him. Experience has shown that different individuals react differently to same or similar situations. Some may escape from the scene of occurrence, others may not while some may even walk to the police station to surrender and report about what they have done. Such post event conduct may be relevant to determine the culpability of the offender in the light of other evidence on record, but the conduct of not fleeing from the

spot would not in itself show that the person concerned was insane at the time of the commission of the offence.

28. That brings us to the nature of offence committed by the appellant and the quantum of sentence that would meet the ends of justice. The courts below have found the appellant guilty of murder of baby Abirami and awarded a life sentence to the appellant apart from 10 years rigorous imprisonment for the offence of attempt to murder Dhanalakshmi and imprisonment of one year under Section 342 of the I.P.C. In the circumstances of the case we see no reason to alter the conviction or sentence under Section 342 of the I.P.C. We also see no reason to interfere with the conviction of the appellant under Section 307 of the I.P.C. except that instead of 10 years rigorous imprisonment of 7 years, should in our view suffice. The conviction of the appellant under Section 302 of the I.P.C. is not, however, justified. We say so for reasons more than one. In the first place there was no pre-meditation in the assault upon the deceased. The evidence on record shows that the family had gone to bed after dinner around 9 p.m. The quarrel between the appellant husband and Dhanalakshmi his wife started around 12 midnight and escalated into an assault on the later around one a.m. That

the quarrel was sudden and without any premeditation, is evident from the deposition of the two injured witnesses.

29. Secondly, because in the assault following the quarrel, the appellant used a sharp edged cutting weapon against his wife and mother. Incised wounds sustained by the said two ladies bear testimony to this part of the prosecution case. The deceased Abirami was at this stage of the occurrence, in another room wholly unconnected to the incident.

30. Thirdly, because the appellant had because of the sudden fight with his wife assaulted her in the heat of passion and injured his mother who intervened to save her. The noise and wails of the injured woke up the deceased sleeping in the adjacent room who started crying thereby attracting the appellant’s attention towards her.

31. Fourthly, because the assault on the deceased caused only two injuries with a resultant fracture. The injuries were described by the doctor as under:

> “1. Lacerated injury measuring 2 x 0.5 cm. x 0.5 cm. Seen on middle of (R) Eyebrow. Lesion covered with blood clots.

> 2. Contusion – faint reddish blue in colour seen on (L) side of face and temporal region of head. 8 cm. x 8 cm. inside. Lesions are antemortem in nature. Faint suggilations fixed on back of trunk."

32. Fifthly, because the appellant did not evidently use the sharp edged weapon for causing injuries to the deceased as he had done in the case of Dhanalakshmi and Valli, PWs 2 and 3 respectively. In the circumstances we are inclined to hold that there was no intention on the part of the appellant to cause the death of the deceased, though looking to the nature of the injuries suffered by the deceased, the appellant must be presumed to have the knowledge that the same were likely to cause death. The fact remains that the appellant committed culpable homicide without premeditation in a sudden fight and in the heat of passion. The fact that the appellant did not use the sharp edged weapon with which he was armed also shows that he did not act in a cruel or unusual manner nor did he take an undue advantage. It is evident from the deposition of Dhanalakshmi, that she did not see the appellant assaulting the deceased. It is, therefore, just possible that a hard blow given to the deceased by his bare hand itself threw the child down from the bed causing the injuries that proved fatal.

33. In the result, we allow this appeal in part, and in modification of the judgments and orders under appeal convict the appellant under section 304 Part-II and sentence him to undergo rigorous imprisonment for a period of ten years. The reduced sentence of seven years rigorous imprisonment awarded to the appellant for the offence of attempt to murder and one year rigorous imprisonment for the offence punishable under Section 342 I.P.C. shall all run concurrently with the sentence awarded under Section 304-Part II. The sentence awarded in default of payment of fine shall stand affirmed. The appellant shall be entitled to the benefit of Section 428 of the Criminal Procedure Code.

……..……J.
**(V.S. SIRPURKAR)**

……..……J.
**(T.S. THAKUR)**

New Delhi
July 5, 2011