

TABLE OF CONTENTS

A. LIST OF ABBREVIATIONS	3
B. INDEX OF AUTHORITIES.....	4-5
C. STATEMENT OF JURISDICTION.....	6
D. STATEMENTS OF FACTS.....	7-8
E. ISSUES RAISED.....	9
1. WHETHER SUFFICIENT GROUND OF LEGAL INSANITY EXIST SO AS TO EXONERATE THE ACCUSED FROM LIABILITY OF MURDER?	
2. WHETHER THE BURDEN OF PROOF OF LEGAL INSANITY ON THE PART OF DEFENCE IS AT PER WITH THE BURDEN OF PROOF ON PART THE PROSECUTION?	
3. WHETHER ON THE BASIS OF DYING DECLARATION THE ACCUSED CAN BE CONVICTED?	
4. WHETHER THE EVIDENCE ARE SUFFICIENT TO PROVE GUILT OF THE RESPONDENT BEYOND REASONABLE DOUBT.	
F. SUMMARY OF ARGUMENTS.....	10
G. ARGUMENTS ADVANCED.....	11-19
H. PRAYER.....	20

.....
MEMORIAL ON BEHALF OF THE RESPONDENT

List of abbreviation

Sec	Section
para	Paragraph
Hon'ble	Honourable
AIR	All India Report
SCC	Supreme Court Case
V.	Versus
i.e.	That is
IPC	Indian Panel Code
Cr.PC	Criminal Procedure Code
IEA	Indian Evidence Act
u/s	Under Section
HC	High Court
SC	Supreme Court
Ors.	Others
Bom	Bombay
Gau	Gauhati
Kar	Karnataka

.....
MEMORIAL ON BEHALF OF THE RESPONDENT

INDEX OF AUTHORITIES

CASES

No.	Case Brief	Citation	Para	Pg no
1.	Ashok Kumar Srivastava vs State of UP	1992 2SCC 86.	17	15
2.	Bapu @ Gajraj Singh v. State of Rajasthan	2007 8 SCC 66	3	11
3.	Dahyabhai Chhaganbhai Thakkar	(1964) 7 SCR 361	15	14
4.	Dalip Singh v. State of Punjab	(1954) SCR 14	26	16
5.	Gurpreet Singh v. State of Haryana	(2002) 8 SCC 18	33	18
6.	Jatin talukdar v. State of Assam	2008 SCC OnLine Gau 502	9	13
7.	Laxmi v. Om Prakash	(2001) 6 SCC 118	28	17
8.	Narain vs State	(1953) Cri LJ 1998(SC)	13	14
9.	Prakash Nayi v.State of Goa	2023 5 SCC 673	5	13
10.	Ravi Kumar vs State of Tamilnadu,	AIR 2006 SC 1448	23	16
11.	Vikas vs State of Maharashtra	AIR 2008 SC (Suppl.) 1356	21	16
12.	Zakir Hussain v. State of Assam and anr	(2022) SCC Online Gau982	7	12

.....
MEMORIAL ON BEHALF OF THE RESPONDENT

STATUTES

1.	Bharatiya Nyaya Sanhita
2.	Bharatiya Sakshya Adhinyam,
3.	Bharatiya Nagarik Suraksha Sanhita.

WEB RESOURCES

1.	www.judis.nic.in (SUPREME COURT OF INDIA OFFICIAL)
2.	www.scconline.com (SCC ONLINE)

.....

MEMORIAL ON BEHALF OF THE RESPONDENT

STATEMENT OF JURISDICTION

The Appellant has approached the Hon'ble Supreme Court of Oralia under the Article 136 of the Constitution of Oralia. The Respondent most humbly and respectfully submits to the jurisdiction of the Honourable Supreme Court of Oralia.

.....
MEMORIAL ON BEHALF OF THE RESPONDENT

STATEMENT OF FACTS

BACKGROUND OF THE CASE

On dated 25th February,2022, Rober the appellant and Ruby the Respondent got married according to their religious rituals. Robert was later diagnosed with bipolar mood disorder because of which he becomes violent in petty issues. On 3rd September 2024, the Appellant Robert was charged for murder under section 103 of BNS,Alleged to have occurred on 5th July 2024 at Yodha, Yaza. The Session Court in its Judgement dated 3rd November 2024 convicted him under section 103 of BNS and sentenced him to 10 years rigorous imprisonment. Being aggrieved by the said judgement Robert preferred an appeal before the High Court of Yaza on 20th December 2024 vide Criminal Appeal No. 875/2024. Considering the evidence adduced by the doctor treating Robert for Bipolar Mood Disorder found that Robert at the time of committing the crime was suffering from both legal and medical insanity and hence the honourable High Court acquitted Robert from the charge of Murder by judgement dated 25th January 2025.

INCIDENT DETAILS

On July 5th 2024, neighbours heard a fight at Robert's house. Gabriel (PW3) a neighbour found Ruby lying on the floor covered in blood with various injuries on her body. At that time Gabriel saw Robert hiding a 7-inch Iron axe in the garden. In dying declaration Ruby stated that when she resisted Robert strike her from behind with hard object.

INVESTIGATION AND ARREST

The complaint of Gabriel was registered as Yodha P.S case no. 733/2024.Registered u/s 103 of BNS. Robert was then arrested. On 5th July, 2024, On regaining consciousness Ruby's statement was recorded by the police of Yodha police station. In her statement she told the police that on 5th July around 10 am Robert arrived home and began a violent altercation with her and when she resisted, he strike her from behind with hard object. After that on 8th July she died due to the injury in her head.That on the basis of Gabriel's statement and the dying declaration of Ruby. Robert was prosecuted u/s 103 of BNS for murdering Ruby by the Session Court.

Trial Court proceedings

The testimonies of Investigating officer,John, SHO of Yodha Police Station ,Dr. Andrew, who treated Ruby, neighbour Gabriel corroborated in the Court. As for the defence Dr Daniel was

treating accused stated that Bipolar Mood Disorder was a sufficient to enable a person to do any violent act under its influence. David brother of Robert stated before the Court that at times Robert was violent and hostile even for trivial reasons .No other defence evidence led by him. Trial Court held that Robert was found guilty of committing murder and sentenced him to 10 years rigorous imprisonment.

The Appeal

Being aggrieved by the said judgement Robert preferred an appeal before the High Court of Yaza on 20th December 2024 vide Criminal Appeal No. 875/2024. Considering the evidence adduced by the doctor treating Robert for Bipolar Mood Disorder found that Robert at the time of committing the crime was suffering from both legal and medical insanity and hence the High Court acquitted Robert from the charge of Murder by judgement dated 25th January 2025.

Being aggrieved by the decision of High Court, State of Yaza preferred an appeal before the Supreme Court of Oralia against the order of acquittal by the High Court of Yaza on 24th of February 2025.

.....
MEMORIAL ON BEHALF OF THE RESPONDENT

ISSUES RAISED

- 1. WHETHER SUFFICIENT GROUND OF LEGAL INSANITY EXIST SO AS TO EXONERATE THE ACCUSED FROM LIABILITY OF MURDER?**
- 2. WHETHER THE BURDEN OF PROOF OF LEGAL INSANITY ON THE PART OF DEFENCE IS AT PER WITH THE BURDEN OF PROOF ON PART THE PROSECUTION?**
- 3. WHETHER ON THE BASIS OF DYING DECLARATION THE ACCUSED CAN BE CONVICTED?**
- 4. WHETHER THE EVIDENCE ARE SUFFICIENT TO PROVE THE GUILT OF RESPONDENT BEYOND REASONABLE DOUBT?**

.....
MEMORIAL ON BEHALF OF THE RESPONDENT

SUMMARY OF ARGUMENTS

[1] WHETHER SUFFICIENT GROUND OF LEGAL INSANITY EXIST SO AS TO EXONERATE THE ACCUSED FROM LIABILITY OF MURDER.

It is most humbly submitted that there exists sufficient ground of legal insanity in order to exonerate the accused Robert from liability of murder. The contention is submitted by the way of two arguments: The absence of mens rea or guilty intention while committing the crime and pleading under the ground of insanity as per section 22 of BNS.

[2] WHETHER THE BURDEN OF PROOF OF LEGAL INSANITY ON THE PART OF DEFENCE IS AT PAR WITH THE BURDEN OF PROOF ON PART OF THE PROSECUTION.

It is humbly submitted that the burden of proof on part of the defence is at par with the burden of proof on the part of the prosecution. The material fact and the evidence on record points at only one thing that the respondent is under the influence of unsoundness of mind at the time of commission of the act. The standard of proof in criminal case should establish the guilt of accused is beyond reasonable doubt. The respondent has proved the presence of legal insanity and absence of mens rea at the time of commission of the act.

[3] WHETHER ON THE BASIS OF DYING DECLARATION THE ACCUSED CAN BE CONVICTED?

It is humbly submitted before the honourable Court that there were no sign of caution to be seen towards the issuance of a medical certificate from doctor or hospital to show the exact condition or nature of death of deceased was due to the attack made by the respondent. Therefore, it creates doubt in the mind of court and it shows clear negligence for not following the steps of law. Hence the appellant should not be held guilty.

[4] WHETHER THE EVIDENCE ARE SUFFICIENT TO PROVE THE GUILT OF THE RESPONDENT BEYOND REASONABLE DOUBT?

It is submitted that the witnesses were not able to prove the chain of events as there were no direct evidence pointing towards the accused which proves he is guilty for committing the crime and the conviction is made on the basis of circumstantial evidence which is creating snap in the chain of events and it ultimately proves that appellant is not guilty.

ARGUMENTS ADVANCED/ASSAILING GROUNDS

ISSUE-I

1. Whether sufficient ground of legal insanity exists so as to exonerate the accused from Liability of murder.

It is humbly submitted before the honourable Court that there exist sufficient grounds of legal insanity in order to exonerate the accused/respondent Robert from the liability of murder by virtue of section 22 of BNS.

1. Section 22 of the BNS, says about the action of a person of unsound mind, Noting is an offence which is done by a person who at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.
2. Hence, in order to be benefited under section 22 of BNS , two basic elements must be proved –

The person was unsoundness of mind at the time of commission of the Act. He was incapable of knowing the nature of the act and if he knew the nature of the act ,he didn't know the act was either wrong or contrary to law .

3. **It is contended that the respondent at the time of committing the crime was not In his right state of mind. As stated by the DW(1) Dr. Daniel who was treating the respondent for bipolar Disorder that the respondent was suffering from bipolar mood Disorder and the disorder was sufficient to enable a person to do any violent act Under its influence. Also. The DW(2) David brother of the appellant Stated before the court that Robert was violent and hostile at times, even for trivial reasons which clearly satisfies the ingredients of section 22 of BNS.**
4. **Section 22 of BNS embodies the fundamental maxim of criminal law i.e. actus non reum Facit nisi mens sit rea (an act does not constitute guilt unless done with a guilty Intention). In order to constitute an offence, the intent and act must concur; but in the Case of insane persons, no culpability is fastened on them as they have no free will (furios is nulla voluntas est)¹**

¹ Bapu @ Gajraj Singh v. State of Rajasthan 2007 8 SCC 66

5. The supreme court has long held that the fundamental principle of criminal law That there has to be an element of mens rea in forming guilt with intention. A person Of an unsound mind, who is incapable of knowing the consequences of an act, does not Know that such an act is right or wrong. He may not even know that he has committed That act. When such is in the position, he cannot be made suffer punishment. This act Cannot be termed as a mental rebellion constituting a deviant behaviour leading to a Crime against. He stands as a victim in need of help, and therefore, cannot be changed And tried for an offence. His position is that of a child not knowing either of his actions.²
6. **Moreover the counsel would like to highlight one of the important study on Bipolar mood disorder which states in the Cambridge Handbook of Forensic Psychology where it was observed that bipolar mood disorder, previously known as manic depression is characterized by mood swings that can range from extreme happiness to extreme sadness over a period of days or months. It also states that delusions stemming from these disorders can lead the individuals to extreme and serious violence into such an extent even it may cause multiple homicide of family members.**
7. **In the case of Zakir Hussain v. State of Assam and anr³; Accused was suffering from psychiatric disorder akin to bipolar disorder even at time of incident as seen from medical evidence and confessional statement of accused. This denuded accused of his liability of thinking and judgment accused acquitted from charge under section 302of IPC on ground of insanity**

Absence of Mens rea-For convicting a person for criminal act Mens Rea has to be present but in the instant matter the respondent was suffering from mental illness because of which he might do Something which he does not want to do. The bipolar disorder causes the person to Have extreme mood swings which gets out of control sometimes. So, the presence of Mens rea is irrelevant here.

8. The fact that supports absence of Mens rea in the instant matter implies –
 1. If the respondent had sufficient mens rea to kill his wife then he could have committed the act secretly and particularly at night so that he could easily hide his act.

² Prakash Nayi v.State of Goa 2023 5 SCC 673

³ (2002) SCC Online Gau982

Instead, the respondent committed his act at 11Am during day time and also kept the door of his house open because of which his neighbour PW 3 Gabriel could easily get into the house and become a prime witness in his case, which clearly shows his absence of mens rea and at the same time presence of unsoundness of mind which proves the act of the respondent nothing but the effect of his condition i.e Bipolar Mood Disorder.

2. The fact that, he didn't tried to escape or abscond from the crime scene itself proves his innocence because a ordinary prudent person having sufficient mens rea on his part would have tried to flee from the spot in order to save himself from Criminal Justice Administration.

9. In the case of Jatin talukdar v. State of Assam⁴ it has been stated that the Appellant was mentally imbalanced was treated under mental hospital and the Absence of mens rea have been seen which proves it's a case of beyond reasonable Doubt that the appellant have committed offence with requisite mens rea,thus Conviction and sentence u/s 302 IPC set aside.

10. Hence ,the intention and knowledge of the respondent was absent in the case in hand as due to his mental illness he was not in a position to understand the consequences of his act therefore the respondent should not be convicted under section 103 of BNS because it doesn't not fulfil the elements of section 101 of BNS which is essential to constitute the offence of murder.

ISSUE NO-II

2. Whether the burden of proof of legal insanity on the part of Defence is at per with the burden of proof on part of Prosecution.

It is humbly submitted that the Burden of proof in cases in which a plea of insanity has been taken by the accused the onus of proving the unsoundness of mind at the time of commission of offence lies on the accused. There is no conflict between the general burden which is always on the prosecution, which never shifts and the special burden which rests on the accused to make out defence of insanity.

11. That according to Section 108 of the BSA ,When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within

⁴ 2008 SCC OnLine Gau 502

any of the general exceptions in the IPC or within any special exception or proviso contained in any other part of same code, or in any law defining the offence, is upon him, and the court shall presume the absence of such circumstances.

12. It is to be submitted that in the present matter the burden of proof on part of the defence is at par with the burden of proof on the prosecution. The material facts and the evidences on record points at only one thing that the respondent is under the influence of unsoundness of mind or legally insane at the time of commission of the crime. The respondent has proved the presence of legal insanity at the time of commission of the act beyond reasonable doubt.

13. In the case of Narain vs State⁵, it was held that the relevant circumstances like behaviour of the accused before the commission of the offence and his behaviour after commission of offence should be taken into consideration in order to prove unsoundness of the person at the time of commission of the act.

14. In the instant matter the fact that proof of unsoundness of the respondent before commission of the offence implies-

Prior conduct of offence –

- medical history
- No prior plans
- No accomplices
- No secrecy

Subsequent conduct-

- did not abscond
- Conduct after arrest.

Moreover, for convicting an accused u/s 103 of BNS, the ingredients of murder provided under section 101 of BNS must fulfill –

- 1. Intention of causing death**
- 2. Intention to cause bodily injury likely to result in death.**

⁵ (1953) Cri LJ 1998(SC)

3. Intention to cause bodily injury sufficient to cause death.

The intention and knowledge of the respondent was absent in the case in hand as due to his mental illness he was not in a position to understand the consequences of his act.

The counsel would like to refer the case of Vadla Chandraiah vs State of Arunachal Pradesh where SC has convicted the accused under section 105 of BNS because the act was not intentional and no premeditation to cause death of the deceased.

15. In the case of Dahyabhai Chhaganbhai Thakkar⁶ (Supra it was held that). 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. Hence in the present case, the Prosecution's testimony of witnesses are unreliable. The Prosecution has failed to provide conclusive evidence to establish the Men rea on the part of the respondent to commit such act beyond reasonable doubt and therefore the respondent is entitled to the benefit of doubt.

17. The counsel would like to refer the case of Ashok Kumar Srivastava vs State of UP⁷, the Supreme court of India held that the Prosecution must prove its case beyond benefit of doubt.

18. It is humbly submitted before the honourable Court that the golden rule of Criminal Jurisprudence states that nine guilty may escape but one innocent should not suffer but in the instant case, the respondent Robert despite being innocent and without having any mens rea on his side has been charged under section 103 of BNS by the trial court which is not sustainable in the eyes of law.

⁶ (1964) 7 SCR 361

⁷ 1992 2SCC 86.

ISSUE NO-III

3. WHETHER ON THE BASIS OF DYING DECLARATION THE ACCUSED CAN BE CONVICTED?

It is most humbly submitted that on the basis of dying declaration the accused cannot be convicted. This contention can be backed by the following arguments.

19. A dying declaration is a statement made by a person who is dead. It is dealt with under clause (1) of section 26 of BSA.
20. It relates to the cause of death of the declarant. The reason behind this can be followed by the Latin maxim "Nemo Meriturus Presumuntur Mentiri" which means that 'man will not meet his maker with lying in his mouth'.
21. The counsel would like to highlight the case of *Vikas vs State of Maharashtra*⁸, the Supreme Court held, that where a dying declaration is recorded by a competent Magistrate, it would stand on a much higher footing. A competent Magistrate has no axe to grind against the person named in the dying declaration of the victim and in the absence of circumstances showing anything to the contrary, he should not be disbelieved by the court.
- 22. It is humbly contended before this hon'ble court that on 6th July 2024 Ruby regained her consciousness and her statement was recorded by John PW 1, SHO of Yodha Police Station. In this case the magistrate has not recorded the dying Declaration Ruby died 3 days later i.e. 8th July 2024. A magistrate could and should have been called to a further dying declaration.**
23. Care and caution must be exercised in considering the weight to be given to these species of evidence, i.e. dying declaration, on account of the existence of many circumstances which may affect their truth. Once the court is satisfied that the declaration was true and voluntary, it undoubtedly can base its conviction on dying declaration without any further corroboration.⁹
- 24. But in the instant matter the appellant Ruby's statement cannot be termed as true and complete because despite being very well acquainted with the medical history of Robert she chose to conceal the very important cause of her injury, i.e. she was**

⁸ AIR 2008 SC (Suppl.) 1356

⁹ Ravi Kumar vs State of Tamilnadu, AIR 2006 SC 1448

attacked by a person having depressive illness itself proves the Statement to be infirm and cannot be relied upon.

25. However, the dying declaration itself have been treated as FIR and the case has Been registered on dying declaration. Another police officer has investigated the F.I.R. It will have to be seen whether a dying declaration recorded by a police officer and Endorsed by doctor can be accepted in the absence of any other dying declaration Recorded by any Magistrate can be a sole basis to uphold a conviction made there upon By the trial court.
26. The Hon'ble court held that a dying declaration made to a police officer is Admissible in evidence, however the practice of dying declaration being recorded by The investigating officer has been discouraged & the supreme court has urged the Investigating officers to avail the services of a magistrate for recording dying Declaration if it was possible to do so and the only exception is when deceased was in Such a precarious condition that there was no alternative left except the statement Being recorded by the investigation officer or the police officer.¹⁰
27. The practice of investigating officer recording a dying declaration is not ought to Be encouraged. Dying declaration of an injured person should be taken recourse to And the one recorded by the police officer may be relied upon if there was no time or Facility available to the prosecution for adopting better method.
28. There is no rule caution to be seen as to the issuance of a medical certificate From doctor Andrew (PW2) or from the government hospital where the deceased died to show that the death of the deceased happened due to the fatal injury caused by the respondent ¹¹.
29. That the Hon'ble court should consider the very fact on relying upon the Evidences which is creating doubt in the mind of court regarding the trust which had Been laid out by dishonest declaration of the respondent's conviction. Therefore, relying Upon groundless and deficient piece of evidence for the factor of conviction of the Accused should not be held guilty.

¹⁰ Dalip Singh v. State of Punjab, (1979) 4 SCC 332

¹¹ Laxmi v. Om Prakash (2001) 6 SCC 118

ISSUE NO-IV

4. WHETHER THE EVIDENCE ARE SUFFICIENT TO PROVE THE GUILT OF THE RESPONDENT BEYOND REASONABLE DOUBT?

30. The statements of witnesses don't prove the chain of events which took place at the Day of the incident this contention is backed by the following arguments:

31. It is submitted that on the day of the incident, the (PW3) who was a neighbour Of Robert saw Ruby being unconscious and lying on the floor and Robert trying to Hide axe in the garden. The (PW3) only saw the fact of Robert trying to hide the axe In the garden but he didn't saw the incident of Robert attacking Ruby with an axe. Therefore (PW3) is doubtful and creating doubt in the mind of court and could not be Considered as an admissible eyewitness. In this case there is no direct evidence but There are circumstantial evidence which definitely doesn't proves that appellant is Guilty.

32. If there is circumstantial evidence there are some conditions which need to be Fulfilled or five golden principles, which constitute the Panchsheel of the proof of a Case based on circumstantial evidence, reiterated.¹²

33. While the circumstantial evidence along and by itself is enough to form the basis Of conviction, the circumstances from which the conclusion of guilt is drawn should be Proved and thus circumstances must be conclusive in nature. The established Circumstances should also be complete and there should not be any missing link in the Chain of evidence. However, there is a snap in the chain and the conclusion may not Steadfastly or reach the accused, the latter is entitled to a benefit of doubt.¹³

34. While dealing with conviction based on circumstantial evidence, circumstances From which conclusion of guilt is to be drawn should in first instance be fully established and all the facts so established should also be consistent with only one hypothesis i.e. The guilt of accused – onus lies on prosecution to prove that chain of event is complete and not leave any doubt in the mind of court – conviction can be based solely on Circumstantial evidence but it should be tested on touchstone of law relating to Circumstantial evidence as laid down by Supreme Court.

¹² Supreme Court Yearly Digest 2023, Vol-2 , pg-2233

¹³ Gurpreet Singh v. State of Haryana (2002) 8 SCC 18

35.However, in this case all the circumstances which have emerged are not Complete and there is a major gap left in the chain of evidence.

36.Also, according to Dr.Andrew PW2, who treated the diseased deposed before the court that the cause of death was due to the attack of the axe and the injury on the head proved to be fatal. However, he didn't present any written evidence regarding it which is a major loop hole. There were also no autopsy or post-mortem Report to prove that the death of the respondent took place due to the attack of the Axe, thus in the said case there is a clear negligence for not following steps as per law but rather it has been seen a lot of rush to convict the appellant at all costs. In the Case of Guljar Hussain v. State of UP,13 it was held that medical evidence deficient as Doctor who examined the deceased could not state about the dimensions of the injury At the trial in absence of his medico-legal register and the doctor who conducted post-mortem having not been produced at the trial the post-mortem report could not be Legally proved, in the circumstance court has to examine whether the accused respondent intended to cause death of the deceased.

.....
MEMORIAL ON BEHALF OF THE RESPONDENT

PRAYER

Wherefore, in the lights of the facts stated, arguments advanced and authorities cited, it is most humbly prayed and implored before the Hon'ble Supreme court that it may be graciously pleased to:

It is therefore prayed that your lordship Admit this respondent petition and to upheld the Judgement Order vide Criminal Appeal no. 875/2024 dated 25th January 2025 passed by the honourable High Court and admit the ground of legal insanity and dismiss the Appeal.

And/or

Also, pass and order that Hon'ble court may deem fit in the favor of THE RESPONDENT to meet the ends of equity, justice and good conscience.

For this act of kindness, the petitioner shall duty bound forever pray.

All of which is most humbly prayed and respectfully submitted

Place:

S/d

Date:

COUNSEL for the respondent

.....
MEMORIAL ON BEHALF OF THE RESPONDENT

