

GAHC010058712025



2026:GAU-AS:4705

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CrI.A./112/2025

AJIT HAZARIKA
S/O LATE KRISHNA HAZARIKA
R/O - TATIPATHAR
JOYPUR
PS - JOYPUR
DIST - DIBRUGARH
ASSAM

VERSUS

THE STATE OF ASSAM
REP BY PP ASSAM

2:HIRA HAZARIKA
S/O LATE KRISHNA HAZARIKA
R/O - TATIPATHAR
JOYPUR
PS - JOYPUR
DIST - DIBRUGARH
ASSAM
PIN - 786614

Advocate for : MR MANASH JYOTI BHARALI
Advocate for : MR. U S BORA (R-2) appearing for THE STATE OF ASSAM

Linked Case : I.A.(CrI.)/326/2025

AJIT HAZARIKA
S/O LATE KRISHNA HAZARIKA
R/O - TATIPATHAR, JOYPUR
PS - JOYPUR
DIST - DIBRUGARH, ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY PP, ASSAM

2:HIRA HAZARIKA
S/O LATE KRISHNA HAZARIKA
R/O - TATIPATHAR
JOYPUR
PS - JOYPUR
DIST - DIBRUGARH
ASSAM
PIN - 78661

Advocate for the Petitioner : MR MANASH JYOTI BHARALI, MR P J
DUTTA,MR H MAZUMDER,MR B P BORAH

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA
HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI

ORDER

Date : 01.04.2026

(M. Zothankhuma, J)

Heard Mr. B. P. Borah, learned counsel appearing for the appellant. Also heard Mr. R. R. Kaushik, learned Additional Public Prosecutor appearing for the State respondent and Mr. U. S. Bora, learned counsel appearing for the respondent No. 2 (informant).

2. This appeal has put to challenge the impugned judgment and order dated 20.12.2024 passed by the learned Additional Sessions Judge, Dibrugarh in Sessions Case No. 265/2022, by which the appellant has been convicted under Section 302 of the IPC for having killed his mother, by hitting her head with a dao, for no apparent reason.

3. The main thrust of the challenge to the impugned conviction of the appellant under Section 302 of the IPC is that the appellant was suffering from schizophrenia and taking medical treatment for the same, at the time the incident occurred. Further, even on the date of his arrest, which was on the day he killed his mother, the appellant was taken to the psychiatric department, AMCH, Dibrugarh for treatment, wherein he stayed there from 14.03.2022 to 25.04.2022.

4. The learned counsel for the appellant submits that the evidence of the informant, who is the brother of the appellant and the PW-2, who is the sister-in-law of the appellant, is to the effect that the appellant was undergoing medical treatment for his mental illness at the time the appellant killed his mother. He submits that various medical certificates had been given to the counsel for the appellant while the trial was being held before the learned trial Court. However, the same was not produced by the counsel for the appellant before the learned trial Court, which would have attracted the provision of Section 84 of the IPC, which states as follows:

*“**84. Act of a person of unsound mind.**—Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.”*

5. He thus submits that the case may be remanded to the learned trial Court, to enable the appellant to lead evidence, to prove that he was not medically sane while killing his mother with a dao.

6. Mr. R. R. Kaushik, learned Additional Public Prosecutor appearing

for the State respondent, submits that no plea was taken by the appellant in the trial Court, that he was of unsound mind and thus incapable of knowing the nature of his act. He also submits that during cross-examination, the Investigating Officer (PW-7) did not produce the appellant in the court on the day he was apprehended, as the appellant had already been admitted into AMCH, Dibrugarh, for his treatment for addiction. Further, the learned trial Court in paragraph 33 of the impugned judgment, had observed that the appellant had been treated for addiction only during the time he was admitted into AMCH, Dibrugarh. He thus submits that the above observations made by the learned trial Court in the impugned judgment and the evidence of Investigating Officer (PW-7) does not indicate that the appellant was under any mental incapacity at the time of the incident. He accordingly submits that the appeal should be dismissed.

7. Mr. U. S. Bora, learned counsel appearing for the respondent No. 2 (informant) submits that the appellant was mentally unfit at the time of commission of offence and was under treatment.

8. We have heard the learned counsels appearing for the parties.

9. There is no dispute with regard to the fact that the appellant had killed his mother, by hitting her head with a dao, for no apparent reason. It is also stated by the informant and PW-2 in their testimony before the learned trial Court that the appellant was undergoing treatment for his medical illness at the relevant point of time.

10. The above being said, we are unable to understand the basis for the learned trial Court to have stated in paragraph 33 of the impugned judgment, that the appellant had been treated for addiction in AMCH,

Dibrugarh. There is nothing in the evidence of the prosecution witnesses, except the evidence of PW-7, to the effect that the appellant was being treated for addiction in AMCH, Dibrugarh. The evidence of PW-7 that the appellant was being treated for addiction is not based on any medical document or evidence. On the other hand, it prima facie appears that the appellant was suffering from some medical illness, keeping in view the fact that he had killed his mother for no apparent reason, coupled with the evidence of the witnesses. In the case of ***Prakash Nayi Alias Sen Vs. State of Goa***, reported in ***(2023) 5 SCC 673***, the Hon'ble Supreme Court has held that a mere medical insanity cannot be said to mean unsoundness of mind attracting Section 84 of the IPC. There must be inability of a person in knowing the nature of the act or to understand it, to be either wrong or contrary to the law. An act does not constitute guilt unless done with a guilty intention. There has to be an element of *mens rea*. A person of unsound mind, who is incapable of knowing the consequence 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 the position, he cannot be made to suffer punishment. He stands as victim in need of help, and therefore, cannot be tried and charged for an offence.

11. The Supreme Court in the above case of ***Prakash Nayi (supra)*** further held that the burden of proof lies on the accused to prove to the satisfaction of the Court that one is insane while doing the act prohibited by law. Such a burden gets discharged based on a prima facie case and reasonable materials produced on his behalf. The extent of probabilities is one of preponderance and a person of unsound mind is not expected to prove his insanity beyond a reasonable doubt. Further, it is the collective responsibility of the person concerned, the Court and the prosecution to

decipher the proof qua insanity by not treating it as adversarial. Once there are adequate materials available before the Court, the presumption is discharged.

12. In the case of *Dahyabhai Chhaganbhai Thakkar Vs. State of Gujarat*, reported in *AIR 1964 SC 1563*, the Supreme Court held that if the materials placed before the Court, such as, any/or documentary evidence, presumptions, admissions, or even the prosecution evidence, satisfy the test of a prudent man, the accused would have discharged his burden. The evidence so placed may not be sufficient to discharge the burden under Section 105 of the Evidence Act, but it may raise reasonable doubt in the mind of a judge as regards one or other of the necessary ingredients of the offence itself. It may, for instance, raise a reasonable doubt in the mind of the judge, whether the accused had the requisite intention. If the judge has such reasonable doubt, he has to acquit the accused, for in that event the prosecution will have failed to prove conclusively the guilt of the accused.

13. In the present case, we have a doubt as to whether the appellant was of sound mind and had the intention to kill his mother, keeping in view the evidence of the prosecution witnesses No. 1 and 2 and the fact that he had been put into AMCH, Dibrugarh, immediately on the day he was apprehended, which was the same day he had killed his mother. We are thus of the view that as the liberty of an individual is involved, especially one who has a case history of mental illness apparently undergoing treatment, the matter should be remanded back to the learned trial Court, to give opportunity to the appellant to lead defence witnesses with regard to his claim that he was of unsound mind in terms of Section 84 of the IPC, at the time the offence was committed.

14. Accordingly, the matter is remanded back to the learned trial Court, who shall allow the appellant to lead defence witnesses, with regard to whether the appellant was incapable of knowing the nature of his act and that he was of unsound mind at the time of killing his mother. Consequently, the impugned judgment and order dated 20.12.2024 passed by the learned Additional Sessions Judge, Dibrugarh in Sessions Case No. 265/2022, is hereby set aside.

15. With regard to the prayer for bail, the learned counsel for the respondent No. 2 submits that he does not have any objection to the grant of bail to the applicant.

16. In view of the fact that the Interlocutory Application under Section 430(1) of BNSS, 2023 has been submitted by the brother and sister of the appellant and keeping in view the fact that the appellant was on bail during the trial before the learned trial Court, we allow the prayer for bail.

17. Accordingly, the appellant is allowed to go on bail on furnishing a bail bond of Rs. 25,000/-, with one surety of like amount, to the satisfaction of the learned trial Court. However, the brother and sister of the appellant should immediately take the appellant for psychiatric treatment in AMCH, Dibrugarh, Psychiatric Department and looking after of the appellant shall be the responsibility of the brother/sister of the appellant, who have/has filed the bail petition.

18. With the above observations and directions, the instant criminal appeal along with the connected interlocutory application stands disposed of.

19. Send back the TCR.

JUDGE

JUDGE

Comparing Assistant