

Dond

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.365 OF 2009

Mr. Raju Babu Patel
Age:25, Occupation-Nil
Residing at Shashtri Chowk,
Nadi Ves Area, Miraj,
Tal-Miraj, Dist.-Sangli.

..Appellant
(Original Accused)

Vs.

The State of Maharashtra

..Respondent

Mr. Sachin Chandan, appointed Advocate for Appellant.
Ms. R.M. Gadhvi, APP for Respondent-State.

**CORAM: SMT. V.K. TAHILRAMANI, Acting C.J. &
A.S. GADKARI, J.**

22nd September, 2015

ORAL JUDGMENT [PER SMT. V.K. TAHILRAMANI, Acting C.J.]:-

The appellant original accused has preferred this appeal against the judgment and order dated 21st February 2009 passed by the Additional Sessions Judge, Sangli in Sessions Case No.108 of 1997. By the said judgment and order, the learned Sessions Judge convicted the appellant under Section 302 of IPC and sentenced him to suffer life imprisonment and to pay fine of

Rs.500/-.

2 The prosecution case can briefly be stated as under:

Deceased in the present case is Babu Patel. Babu Patel had four sons i.e. PW-1 Salim, PW-4 Mohammad, Bashu and the appellant. The appellant was residing alongwith his father Babu Patel (deceased) in the field. PW-1 Salim was residing in the village alongwith his brother PW-4 Mohammad and Bashu and his mother. On 5.5.1997 in the evening deceased Babu Patel came to the house in the village and took food to give to the appellant in the field. On 6.5.1997, at about 7.00 a.m. PW-1 Salim went to the field. He saw the appellant standing in the field with an axe in his hand. Salim saw the dead body of his father Babu Patel lying nearby. The head of his father was decapitated. Salim then went to Miraj Police Station and lodged the complaint. Thereafter the appellant came to be arrested. Thereafter investigation commenced. The dead body was sent for postmortem. In the opinion of doctor the probable cause of death was decapitation. After completion of investigation, chargesheet came to be filed against the appellant.

3 Charge was framed against the appellant under Section 302 of IPC. The appellant pleaded not guilty to the said charge and claimed to be tried. His defence is that of total denial and false implication. An alternate defence has been raised i.e. the appellant was mentally unsound at the time of incident and hence he is covered by Section 84 of IPC. After going through the evidence in this case, the learned Sessions Judge convicted and sentenced the appellant as stated in para-1 above and hence this appeal.

4 We have heard the learned appointed Counsel for the appellant and the learned APP for the State. We have carefully considered their submissions, facts and circumstances of the case, judgment passed by the learned Sessions Judge and the record pertaining to this case. After carefully considering the matter, for the below mentioned reasons, we are of the opinion that the appellant caused death of his father Babu Patel by assaulting him with an axe.

5 There is no eye-witness to the incident and the case is based on circumstantial evidence. As far as the circumstantial

evidence is concerned, the prosecution is relying on the evidence of PW-1 Salim, PW-3 Shivappa and PW-4 Mohammad. PW-1 Salim was the brother of the appellant and the son of deceased. He has stated that the appellant was his younger brother. The appellant was residing with his father Babu Patel in the field, whereas PW-1 Salim, his brother PW-4 Mohammad his other brother Bashu and their mother were residing in the village itself. Salim has stated that on 5.5.1997 in the evening his father Babu Patel came to the house in the village and took food for the appellant in the field. On the next day i.e. 6.5.1997 at about 7.00 a.m. when Salim went to the field, he saw the appellant standing armed with an axe and the dead body of his father lying nearby. The head was cut off. Salim then went to Miraj Police Station and lodged the F.I.R.

6 PW-4 Mohammad was elder brother of the appellant and son of deceased. He has stated that on 6.5.1997 he was at home. His brother PW-1 Salim and Bashu had gone to the field. After one and half hour they returned back and they told that the appellant had killed their father. Hence, he went to the Police Station along with his brother Salim. Thereafter he

went with PSI Takavale (PW-7- Investigating Officer) to the land. Police saw the dead body of his father lying at the spot. They saw the appellant sitting at the spot armed with an axe. PSI Takavale asked the appellant to throw the axe and the appellant then threw the axe. The appellant was taken into custody by the police.

7 The evidence PW-3 Shivappa who is the panch-witness shows that on 6.5.1997 he was called by the police. Panchanama shows that he was called to the field in the Vaddi village in District-Sangli. Shivappa has stated that he saw the shirt and pant of the appellant were blood stained. The axe which was nearby was also blood stained. All these articles came to be seized vide panchanama Exhibit-15. Thus, the cumulative evidence of PW-1 Salim, PW-3 Shivappa and PW-4 Mohammad shows that Babu Patel was found lying dead and the appellant was seen at the spot holding an axe in his hand. The clothes of the appellant and the axe were blood stained.

8 It is the prosecution case that the appellant cut head of his father with an axe. This is supported by the medical

evidence. The postmortem notes Exhibit 17 show that the head of Babu Patel was cut off and the probable cause of death was decapitation.

9 The evidence on record shows that the appellant committed murder of his father Babu Patel by assaulting him with an axe. However, the learned Counsel for the appellant Mr. Chandan submitted that even assuming that the appellant caused the death of his father by assaulting him with an axe, Section 84 would apply to the facts of the present case. He submitted that the appellant was not mentally sound at the time he committed the offence and hence he should be given the benefit of Section 84 of IPC. Mr. Chandan pointed that the witnesses have stated that the appellant was not of sound mind even prior to the incident. He further pointed out that the record shows that the appellant was admitted in the mental hospital at Pune upto 15.2.1999 and he was declared mentally improved on 21.6.2008. Mr. Chandan further submitted that the appellant had no motive to commit the murder of his father because the evidence of PW-4 Mohammad who is brother of the appellant shows that the appellant and his father were residing happily.

10 In order to show that the appellant was not of sound mind even prior to the incident, Mr. Chandan has placed reliance on the evidence of PW-1 Salim who is the complainant in the present case. Salim was the son of the deceased. Salim has stated that since childhood the appellant is mentally disturbed. Thereafter Mr. Chandan placed reliance on the evidence of PW-4 Mohammad who is the son of the deceased. PW-4 has stated that he was assaulted by the appellant. Thereafter his father i.e. deceased Babu Patel told Mohammad that as the appellant was younger brother of Mohammad, Mohammad should forgive him and henceforth he (Babu Patel) would live with the appellant in the field. Thereafter the appellant and his father Babu Patel started residing in the field. The evidence of PW-1 Salim shows that rest of the family was residing in the village. Mohammad has stated that since childhood the appellant used to rush towards any person and if any person made enquiry with him, the appellant used to assault that person with whatever weapon he found. Mohammad has clearly stated that the appellant was behaving like a crazy person all the time and nobody was confident about his normalcy.

11 Mr. Chandan has drawn our attention to the conduct of the appellant which according to him shows that the appellant was not mentally sound at the time of offence. He drew our attention to the evidence of PW-1 Salim who has stated that when he went to the spot he saw the appellant standing with an axe in his hand and the dead body of his father Babu Patel was lying nearby. Mr. Chandan then drew our attention to the evidence of PW-4 Mohammad who has stated that on 6.5.1997 PW-1 Salim had gone to the land. After about one and half hour Salim returned back at that time Salim was weeping and he told that the appellant had cut the head of their father. Then he along with Salim went to the police station. Thereafter he along with PSI Takavale (PW-7- Investigating Officer) went to the land where they saw the dead body of his father. At that time the appellant was found sitting at the spot in a bullock-cart with an axe in his hand. PSI Takavale asked the appellant to throw the axe. Thereafter the appellant threw the axe. This conduct of the appellant of sitting at the spot with an axe in his hand for such a long time and making no attempt to run away, according to Mr. Chandan showed that the appellant was not aware of the nature and consequences of his act and/or that it was wrong or

contrary to law.

12 As stated earlier, the evidence of PW-1 Salim shows that the appellant was mentally disturbed since childhood. The evidence of PW-4 Mohammad who is the son of deceased also shows that the appellant all the while was behaving like a crazy person and the appellant was not normal. It is further seen from the record that the appellant was admitted in the mental hospital on 15.2.1999 and from time to time the Superintendent Mental Hospital at Pune informed the Trial Court that the appellant was of unsound mind and he is unfit for trial and the appellant continued to be under treatment. On 20.12.2007 a letter was issued by the Trial Court to the Superintendent of the Regional Mental Hospital, Yerwada Pune making enquiry whether the appellant is in hospital since 15.2.1999 and whether the appellant was now fit to stand trial. Thereafter by letter dated 22.7.2008 the Superintendent Regional Mental Hospital, Yerwada Pune informed the Trial Court that the appellant was mentally improved and when he was put before the Committee on 21.6.2008, the Committee held that the appellant was fit to stand trial. The said Committee consisted of District Judge Pune,

Superintendent Yerwada Central Jail Pune, Deputy Superintendent Regional Mental Hospital Pune and Psychiatrist. They all opined that the appellant was fit to stand trial. However, they also opined that the appellant was subnormal and he is dumb.

13 Thus it is seen that from 15.2.1999 till June 2008 the appellant was admitted in the Mental Hospital and he was under treatment. The learned APP has produced before us the communication from Kolhapur Central Prison, Kalamba, Kolhapur dated 22.9.2015 which is marked as Exhibit 'X' collectively. This communication is addressed by the Superintendent, Kolhapur Central Prison, Kalamba, Kolhapur. To this communication, a report of the Medical Officer of the Kolhapur Central Prison is annexed. The report is dated 22.9.2015. The report shows that since admission the appellant is undergoing treatment with anti-psychotic drugs for mental retardation. The report further states that the appellant is suffering from mental problem. This shows that even as of today the appellant is not fully recovered.

14 The burden to prove that an accused was of unsound

mind and as a result thereof he was incapable of knowing the nature and consequences of his act is on the accused. Section 84 of IPC is one of the provisions in Chapter IV of IPC which deals with "General Exceptions". This Section 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 and consequences of the act or that he is doing what is either wrong or contrary to law. The burden of proving the existence of circumstances within the purview of Section 84 lies upon the accused.

15 The question whether the appellant has proved the existence of circumstances bringing the case within the purview of Section 84 will have to be examined from the totality of the circumstances. The unsoundness of mind as a result whereof the person is incapable of knowing the nature and consequences of his act is a state of mind of a person which ordinarily can be inferred from the circumstances.

16 At this stage it is necessary to notice the nature of the burden that is required to be discharged by the accused to get

the benefit of Section 84 of IPC. In ***Dahyabhai Chhaganbhai Thakkar Vs. State of Gujrat reported in AIR 1964 SC 1563 = (1964) 7 SCR 361***, the Supreme Court has held that even if the accused was not able to establish conclusively that he was insane at the time he committed the offence, but the evidence placed before the Court raises a reasonable doubt in the mind of the Court as regards one or more of 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. The burden of proof on the accused to prove insanity is no higher than that which rests upon a party to civil proceedings which in other words means preponderance of probability. Similar view was taken by the Supreme Court in the case of Shrikant Anandrao Bhosale Vs. State of Maharashtra reported in AIR 2002 SC 3399.

17 The circumstances that stand proved in this case in relation to the defence of the appellant of lunacy are as under:

- (I) the appellant had a history of mental disturbance;
- (ii) the appellant was admitted in the Government mental hospital for more than eight years

(iii) even as of today the appellant is under treatment for his mental illness;

(iv) there was no motive for the appellant to kill Babu Patel. In fact PW-4 Mohammad, son of deceased has stated that the appellant and Babu Patel were residing together happily.

(v) after killing Babu Patel the appellant made no attempt to hide or run away, but sat on the spot with the axe in his hand.

18 After seeing the dead body of Babu Patel and the appellant standing at the spot with an axe in his hand, PW-1 Salim went to the police station and lodged FIR. Salim then came back to the spot with police till that time the appellant continued sitting at the spot with an axe in his hand. No attempt was made by the appellant to run away or hide.

19 In the present case, looking to the totality of circumstances seen in the light of the record which shows that the appellant was suffering from mental disturbance and was of unsound mind before and after the incident, is a relevant fact. From the facts and circumstances of this case as seen from the record, an inference can certainly be drawn that the appellant

was under a bout of mental disturbance when he assaulted Babu Patel.

20 Having regard to the nature of burden on the appellant, we are of the view that the appellant has proved the existence of circumstances as required by Section 105 of the Evidence Act so as to get the benefit of Section 84 of IPC. There is reasonable doubt that at the time of commission of crime the appellant was incapable of knowing the nature and consequences of the act and/or that the act was wrong and contrary to law by reason of unsoundness of mind and thus the appellant is entitled to get benefit of Section 84 of IPC. In this view of the matter, the conviction and sentence of the appellant cannot be sustained.

21 Before parting with this judgment, we wish to place our appreciation for the able assistance rendered by Shri Sachin Chandan, learned Advocate appointed for the appellant. We quantify his fees at Rs.5000/- to be paid by the High Court Legal Services Committee.

22 For the aforesaid reasons, we set aside the impugned judgment and order whereby the appellant came to be convicted and sentenced under Section 302 of IPC. The appellant is acquitted of the offence punishable under Section 302 of IPC. The appellant shall be set at liberty, if not required in any other case.

23 The appeal is allowed in the above terms.

(A.S. GADKARI, J.)

(ACTING CHIEF JUSTICE)

CERTIFICATE

**Certified to be true and correct copy of the original
signed Judgment.**