

Dond

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.113 OF 2007

SHRI DEEPAK BAPURAO YEDAGE

Age: 26 years,
Occupation: Agriculturist,
R/o Yedagewadi, Taluka: Sangola,
District: Solapur
(At present Yerwada Central Jail.)

..Appellant
(Orig.Accused)

Vs.

THE STATE OF MAHARASHTRA

At the instance of Sangola Police Station,
Sangola, Dist: Solapur.

..Respondent

Shri Ajit Kenjale a/w Mr. Rajesh Dharap and Mr. Saurabh
Kandpile for Appellant.
Mr. H.J. Dedhia, APP for Respondent-State.

**CORAM: SMT. V.K. TAHILRAMANI &
A.S. GADKARI, JJ.**

Date: 7th September 2015.

Oral Judgment (Per Smt. V.K. Tahilramani, J.):

1 The appellant original accused has preferred this appeal against the judgment and order dated 30th November 2006 passed by the learned Sessions Judge, Pandharpur in S.C. No.18 of 2005. By the said judgment and order, the learned

Sessions Judge convicted and sentenced the appellant under Section 302 of the Indian Penal Code for causing death of Indubai. The appellant was also convicted under Sections 324 and 452 of IPC for entering into the house of PW-7 Pradeep and PW-8 Suman and causing them injuries with Sura. For the offence punishable under Section 302 of IPC the appellant was sentenced to undergo imprisonment for life and to pay fine of Rs.1000/-, in default to undergo R.I. for 3 months. For the offence punishable under Section 324 of IPC, the appellant was sentenced to undergo R.I. For 3 months and to pay fine of Rs.500/-, in default to undergo S.I. for 3 months. For the offence punishable under Section 452 of IPC, the appellant was sentenced to undergo R.I for 6 months and to pay fine of Rs.500/-, in default to undergo S.I. for 3 months. The learned Sessions Judge directed that all sentences of imprisonment shall run concurrently.

2 The prosecution case can briefly be stated as under:

(i) Deceased in the present case is Indubai. She was the mother of PW-1 Anil and mother-in-law of PW-5 Anjana. The appellant was distantly related to the family of Indubai. The land

of Indubai and the appellant was situated adjacent to each other. The appellant was residing along with his father Bapurao, his wife, his elder brother Chandu and wife of Chandu. There was a common well between the family of Indubai and Bapurao. There was quarrel on account of well water between Indubai and the appellant. PW-7 Pradeep Kolekar was also residing at Yelagewasti. The land of the father of the appellant was situated adjacent to the land of Pradeep. The cattle of Pradeep had entered into the field of the appellant. On account of this, exchange of words took place between Pradeep and the appellant. PW-8 Suman Kolekar was the mother of Pradeep. She was residing with Pradeep at Yelagewasti.

(ii) It is the prosecution case that on 24.11.2004 at about 9.00 a.m. Anjana and her mother-in-law deceased Indubai were taking their cattle for grazing. At that time the appellant came in front of Indubai. He started assaulting Indubai with a knife. He assaulted Indubai on the neck and chest. PW-5 Anjana intervened. Thereupon the appellant also assaulted her on the hand and chest with a knife. Meanwhile Indubai fell down on the ground. Thereafter Anjana also fell down. The appellant assaulted Indubai on her stomach, chest and back with a knife.

The appellant then ran away towards the house of Mahadeo Kolekar. PW-7 Pradeep was the son of Mahadeo Kolekar. He was residing at Yelagewadi. At about 9.15 a.m. PW-7 Pradeep was in his house. His mother PW-8 Suman was cooking food. At that time the appellant came running into the house of Pradeep with knife in his hand. The appellant then assaulted Pradeep with the knife on his stomach. PW-8 Suman intervened. Thereupon the appellant also assaulted Suman on her chest and on the hands. The appellant then ran away from the spot. While Pradeep and Suman were going to the hospital, on the way they saw Indubai lying on the ground with injuries on her person. They saw that Anjana was also lying in injured state near Indubai. Meanwhile, PW-1 Anil who was the son of Indubai was informed by his cousin brother that his mother Indubai was assaulted by the appellant with a knife. Anil was also informed that his sister-in-law Anjana was also assaulted by the appellant. On receiving the said information, PW-1 Anil went to his wadi on a motorcycle. He saw his mother Indubai and sister-in-law Anjana were lying in the field in injured condition. Anil then went to Sangola Police Station and lodged FIR (Exhibit-5). Thereafter investigation commenced. The appellant was arrested. After

completion of investigation, chargesheet came to be filed.

3 Charge came to be framed against the appellant under Section 302 of the Indian Penal Code for causing murder of Indubai. Charge was also framed under Section 307 for assaulting PW-5 Anjana, PW-7 Pradeep and PW-8 Suman with a knife. Charge was also framed under Section 452 of IPC as the appellant had entered into the house of the witnesses in order to commit offence. After going through the evidence adduced in this case, the learned Sessions Judge convicted and sentenced the appellant as stated in para-1 above. Hence, this appeal.

4 We have heard the learned 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 evidence in this case. After carefully considering the matter, for the below mentioned reasons, we are of the opinion that the appellant assaulted Indubai with knife and caused her death and in the course of the said incident caused injuries to Anjana with knife. We are also of the opinion that the applicant entered into

the house of PW-7 Pradeep and PW-8 Suman and caused them injuries with knife.

5 The incident has occurred in two parts. In the first part of the incident, the appellant had assaulted Indubai and PW-5 Anjana. In the second part of the incident, the appellant has assaulted PW-7 Pradeep and PW-8 Suman after entering into their house. As far as the first part of the incident is concerned, PW-5 Anjana has deposed about it. Anjana has stated that she was residing with her husband, brother-in-law and in-laws at Yelgewadi. Deceased Indubai was her mother-in-law. The father of the appellant was the distant father-in-law of Anjana. The appellant was residing with his wife, his father, his brother Chandu and wife of Chandu near the house of Anjana. The land of the appellant and Indubai was situated adjacent to each other. There was a common well between the family of Indubai and family of the appellant. Anjana has stated that on the day of incident, at about 9. a.m. she and her mother-in-law Indubai were taking their cattle for grazing. At that time the appellant came in front of her mother-in-law Indubai. The appellant started assaulting Indubai with a knife. Anjana intervened.

Thereupon the appellant also assaulted her on the hand and chest with a knife. Indubai and Anjana fell down. The appellant then assaulted Indubai on the stomach, chest and back with knife. The appellant then ran away. Indubai died on the spot. Many persons gathered on the spot. Then PW-7 Pradeep and his mother PW-8 Suman came on the spot on their way to the hospital. They told Anjana that they were assaulted by the appellant with knife. Both Pradeep and Suman had injuries on their person. Anjana also went to the hospital. Anil i.e. brother-in-law of Anjana lodged FIR.

6 The second part of the incident has been deposed by PW-7 Pradeep and PW-8 Suman. Both of them are injured witnesses. Pradeep has stated that he knew the appellant. The land of the father of the appellant was adjacent to his land. There was exchange of words between the appellant and him on account of trespass of his cattle in the field of the appellant. He has stated that on the day of incident at about 9.15 a.m. he was taking meal in his kitchen. His mother Suman ((PW-8) was cooking food. At that time the appellant came running into his house with a knife in his hand. On seeing the appellant, Pradeep

got up. The appellant assaulted Pradeep on his stomach. At that time Suman (PW-8) mother of Pradeep intervened. The appellant then assaulted Suman on her chest and hand. The appellant then ran away from the spot. While going to the hospital, he (Pradeep) saw Indubai and Anjana lying in injured condition in the field. He came to know that the appellant had assaulted Indubai and Anjana and thereafter the appellant had come to his house. Pradeep has stated that he and his mother Suman were admitted in the hospital.

7 PW-8 Suman is also an eye-witness to the second part of the incident. Suman has stated that the land of Bapurao Yelage i.e. father of the appellant was adjacent to her land. There was quarrel between the appellant and her son Pradeep on account of trespass of their cattle in the field of the appellant due to which the appellant had a grudge against Pradeep. Suman has stated that the incident took place at about 9.15 a.m. At that time she was cooking in the kitchen. Pradeep was taking meal in front of her. Her other son and husband were working in the field. At that time the appellant came running into their house with a knife in his hand. Pradeep stood up on

seeing the appellant. The appellant then assaulted her son Pradeep on the stomach. Suman intervened. Thereupon the appellant also assaulted Suman with knife on her hand and stomach due to which she sustained bleeding injuries. Her son Pradeep also sustained bleeding injuries. They then proceeded towards hospital. While they were going to the hospital on the way they saw Indubai and Anjana lying in injured condition. They came to know that the appellant had assaulted Indubai and Anjana. Suman has stated that she was admitted in the hospital.

8 It is the prosecution case that the appellant assaulted Indubai with a knife and caused her death. Eight incised wounds were found on the body of Indubai. According to PW-12 Dr. Bansode who conducted postmortem on the dead body of Indubai, the cause of death of Indubai was acute cardio respiratory failure and due to hemorrhagic shock due to injury to heart and kidney. Dr. Bansode has opined that all the injuries noticed on the dead body of Indubai was possible by a knife, Article-5.

9 PW-12 Dr. Bansode also examined PW-7 Pradeep. On

examination he found Pradeep has sustained incised wounds on right thigh and right palm. PW-12 Dr. Bansode also examined Suman. He found incised wounds on the pectoral region and right palm. PW-5 Anjana was also examined by Dr. Bansode. On examination, incised wounds were found on her right mammary region and CLW was found on the left palm. Thus, the medical evidence is also totally consistent with the prosecution case.

10 No doubt through the evidence of PW-5 Anjana, the prosecution has established that the appellant assaulted her as well as her mother-in-law Indubai with a knife which caused the death of Indubai. Through the evidence of PW-7 Pradeep and PW-8 Suman the prosecution has proved that the appellant assaulted PW-7 Pradeep and PW-8 Suman with a knife due to which injuries were sustained by Pradeep and Suman. However, the learned Counsel for the appellant submitted that the appellant was suffering from mental illness and at the time of incident the appellant during a bout of mental disturbance had murdered Indubai and caused injuries to PW-5 Anjana, PW-7 Pradeep and PW-8 Suman. He submitted that in such case the appellant is entitled to the benefit of Exception in Section 84 of

IPC. In order to support his contention that the appellant was suffering from mental insanity, he has drawn our attention to the evidence of Investigating Officer PW-14 API Shelke., DW-1 Dr. Wadegaonkar, DW-2 Dr. Lokhande and DW-3 Sakhubai who is the mother of the appellant.

11 Learned Counsel for the appellant drew our attention to the evidence of PW-14 API Shelke who is the Investigating Officer in the present case. API Shelke has stated that on 3.12.2004 the letter was received from the Civil Hospital in respect of the appellant for referring the appellant to Yerwada for treatment as the appellant was examined by a psychiatrist. As per letter which was received on 3.12.2004, the appellant was admitted in Yerwada mental hospital. The appellant was arrested on 24.11.2004 i.e. on the day of incident itself. PCR of the appellant was from 24.11.2004 to 29.11.2004. On 28.11.2004 the appellant inflicted injuries on his person. Hence, the appellant was taken to the Civil Hospital at Solapur for treatment. The appellant had inflicted injuries with iron wire on his private part. This is supported by the evidence of DW-2 Dr. Lokhande who has stated that on 28.11.2004 the appellant was

brought by the police to the hospital at Sangola at about 4.45 p.m. with history of self-inflicted injuries on his private part. On examination, DW-2 Dr. Lokhande found injuries i.e. C.L.W. vertical on left side of scrotum 5 x 2 cm caused by sharp weapon. Single testis was protruding from the wound. Right side testis was not found in place. Police brought that testis with them. The patient was semi conscious and was in shock. Dr. Lokhande stated that he referred the patient to Civil Hospital Solapur.

12 Not only the evidence of PW-14 API Shelke shows that prior to 3.12.2004 the appellant was examined by the Psychiatrist and a letter was issued to the Investigating Agency which was received by them on 3.12.2004 but pursuant to the said letter the appellant was admitted in Yerwada Mental Hospital. The evidence of DW-1 Dr. Wadegaonkar shows that on 26.7.2004 the appellant had come to him for taking treatment. At that time Dr. Wadegaonkar found that the appellant had came with complaint of irrelevant talking, reduced sleep, irratic appetite, laughing and crying spell, irritability, suspiciousness and feeling of fear since last 4-5 days. On examination Dr.

Wadegaonkar found that the appellant was showing restlessness, fearful mood and the appellant was speaking irrelevantly and he had persecutory idea. Dr. Wadegaonkar further found that the memory and intelligence of the appellant was impaired. Dr. Wadegaonkar diagnosed the appellant as suffering from "Bipolar Affective Disorder". The appellant was admitted on 26.7.2004 and was in the hospital till 4.8.2004. He was treated with drugs and electro convulsive therapy. The appellant was discharged as improvement was found in his condition. The appellant was then called for follow up on 9.8.2004, but appellant came on 16.8.2004. Dr. Wadegaonkar gave medicines for 10 days. When appellant came on 25.8.2004, he was given 10 days medicines. Thereafter the appellant came on 14.9.2004 and he was given medicines for one month. Thereafter the appellant came on 18.10.2004. The appellant was off medicines for four days. Dr. Wadegaonkar found that the appellant was suffering from persecutory idea on 18.10.2004. Thereafter the appellant came on 18.11.2004. On that day Dr. Wadegaonkar found that the appellant was feeling sad that is he was depressed and having excessive worry about the future. Dr. Wadegaonkar then gave one month's medicine to

the appellant. Thereafter the appellant did not come to Dr.Wadegaonkar. Thus it is seen that on 18.11.2004 the appellant was under depression as well as having excessive worry about the future which shows that the appellant was not in a proper mental state of mind even on 18.11.2004 which is further seen from the fact that on 18.11.2004 Dr. Wadegaonkar gave one month's medicine to the appellant. Thus, on the day of incident i.e. 24.11.2004 the appellant was under medication for his mental illness. Dr. Wadegaonkar has stated that the patient did not know the effects of things done by him. This shows that the appellant was not capable of knowing the nature and consequences of his act or that it was wrong and contrary to law.

13 The evidence of DW-3 Sakhubai, who is the mother of the appellant further supports the defence of the appellant that the appellant was suffering from mental illness. DW-3 Sakhubai has stated that the appellant was a lunatic since 2 years and 5 months before the incident. The appellant was taking treatment for his mental illness at Miraj. The appellant was admitted there for 10 days. The evidence of DW-1 Dr. Wadegaonkar shows that

he was the doctor from Miraj from whom the appellant was taking treatment. Sakhubai has stated that on the day of the incident, at the time of sun rise, the appellant was tearing his clothes. Sakhubai snatched the clothes from the hands of the appellant and abused him. Then Sakhubai went to cook food. Thereafter the appellant came there with two stones in his hand and struck her on her back. Sakhubai then assaulted the appellant with stick. Thereafter the appellant left the house.

14 Looking to the evidence of DW-1, DW-2, DW-3 and PW-14 API Shelke which shows that the appellant was suffering from mental illness, only aspect to be considered is the defence of insanity raised by the appellant. However, the learned APP urged that the appellant failed to prove that the appellant was of unsound mind at the time of commission of offence. He submitted that the fact that the appellant was suffering from mental illness before or after the commission of the offence is of no consequence but it has to be proved that the appellant was suffering from mental illness at the time of the incident. He further submitted that the appellant has failed to prove that at the relevant time he was suffering from mental illness.

15 The burden to prove that an accused is of unsound mind and as a result thereof he is 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. Burden of proving the existence of circumstances within the purview of Section 84 lies upon the accused under Section 105 of the Indian Evidence Act. Under the said Section the Court shall presume the absence of such circumstance. Illustration (a) to Section 105 is as follows:

"A, accused of murder, alleges that, by reason of unsoundness of mind, he did not know the nature of the act.

The burden of proof is on A."

16 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 accused 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.

17 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 (2) Cri. L.J. 472***, the Supreme Court has held that even if the accused was not able to establish conclusively that he was not of sound mind 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 ingredients of the offence, including mens rea of the accused then 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.

18 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 appellant 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 under Section 84 of the Indian Penal Code. The accused may rebut this presumption by placing before the court all the relevant evidence-oral, documentary or circumstantial, but the burden of proof upon the accused is no higher than that which rests upon a party to civil proceedings. 3) Even if the accused is not able to establish conclusively that he was not of sound mind 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. Similar

view was taken by the Supreme Court in the case of Shrikant Anandrao Bhosale Vs. State of Maharashtra reported in 2002 Cri. L.J. 4536.

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

- (I) since at least 4 months prior to the incident the appellant had a history of psychiatric illness;
- (ii) soon after the incident the appellant was admitted in the Government mental hospital for his mental illness;
- (iii) his mental illness was to such an extent that he was given electric shocks in addition to other treatment.

20 In the present case, however, the above mentioned factors are not the only factors but it is totality of the circumstances seen in the light of the evidence on record which proves that the appellant was suffering from unsoundness of mind. The appellant used to speak irrelevant things. He also had fear in his mind and idea that he was being persecuted. His memory and intelligence was impaired. He was also suffering from depression and excessive worry about the future. The

evidence of DW-1 shows that prior to the incident the appellant had been given medicines for one month in relation to his unsoundness of mind. The unsoundness of mind before and after the incident is a relevant fact. From the circumstances of this case an inference can certainly be drawn that the appellant was under a delusion at the relevant time and thus at the time of the incident he was under an attack of mental illness.

21 Having regard to the nature of burden on the appellant we are of the view that the appellant has proved existence of circumstances as required by Section 105 of the Indian 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 the benefit of Section 84 of IPC. In this view of the matter, the conviction and sentence of the appellant cannot be sustained.

22 For the aforesaid reasons, we set aside the impugned

judgment and order dated 30th November 2006 passed by the learned Sessions Judge, Pandharpur in S.C. No.18 of 2005 and allow the appeal. The appellant is acquitted of the offences punishable under Section 302 as well as Sections 324 and 452 of IPC. The appellant shall be set at liberty, if not required in any other case.

(A.S. GADKARI, J.)

(SMT. V.K. TAHILRAMANI, J.)

CERTIFICATE

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