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IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NO. 528 OF 2012**

Tulshiram Narayan Pardhi	]
R/o Galoshi, Taluka Dist.	]
Presently lodged at Nashik Road	]
Central Prison	]..Appellant
	[Ori. Accused]

Vs.

The State of Maharashtra	]
(Harshul Police Station	]
vide C.R.No. 06/09 Nashik)	]..Respondent
	[Ori.Complainant]

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Ms. Apeksha Vora Advocate appointed for Appellant
 Dr. F.R. Shaikh A.P.P. for the State

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**CORAM : SMT.V.K.TAHILRAMANI AND
 SHRI.B.P.COLABAWALLA, JJ.**

DATED : MARCH 24 & 25, 2015

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

1 This appeal is preferred by the appellant-original accused against the judgment and order dated 13.9.2011 passed by the learned Extra Joint Ad-hoc Additional Sessions Judge, Nashik in Sessions Case No. 22 of 2009. By the said judgment and order, the learned Sessions Judge convicted the

appellant under Section 302 of IPC for causing death of his mother Kashabai, his sister-in-law Sulabai and his uncle Budha. The appellant has also been convicted for the offence under section 324 of IPC for causing injuries to P.W. 1 Kacharu with a 'Kudal' (pick-axe). For the offence under Section 302 of IPC, the appellant has been sentenced to R.I. for life and to pay a fine of Rs. 5000/- in default R.I. for one year. For the offence under Section 324 of IPC, the appellant has been sentenced to R.I. for one year and fine of Rs.1000/- in default R.I. for three months. Both the sentences were directed to run concurrently.

2 The prosecution case, briefly stated, is as under:

Appellant Tulshiram was residing in village Galoshi in Taluka Nashik. Kashabai mother of the appellant, Sulabai sister-in-law of the appellant and Budha uncle of the appellant were also residing in the same village. P.W. 1 Kacharu, P.W. 2 Mangalu and P.W. 3 Vishnu were residing near the house of the appellant.

The incident occurred on 28.1.2009. At 2.30 p.m. P.W. 1 Kacharu was sitting below a tree behind the house of the appellant. Budha was also sitting with Kacharu and they were chitchatting. At that time, Kashabai i.e. mother of the

appellant came running towards them. Kashabai told them to see what the appellant was doing. Hence, Kacharu and Budha went to the front of the house of the appellant. At that time, they saw a 'Kudal' (pick-axe) in the hands of the appellant. The appellant rushed towards Kacharu and Budha. Hence, they tried to run away. At that time, the appellant slapped his mother. The appellant assaulted Kacharu on his back with 'Kudal'. He also assaulted on the head of Budha. Thereafter, Kacharu and Budha ran away. After 10 to 15 minutes, Kacharu went back to the house of the appellant. At that time, he saw that Kashabai and Sulabai were lying dead in front of their house. Both Kashabai and Sulabai had injuries on their head and blood was oozing from the said injuries. Due to assault by the appellant, Budha had received injuries on the head. Budha was taken to the civil hospital at Nashik where he expired on 30.1.2009. In the meanwhile, Kacharu went to the police station to inform about the incident. The police referred him to the Government hospital at Harshul for treatment. The F.I.R. of Kacharu was recorded which is at Exh. 14. Thereafter investigation commenced. The spot panchnama was drawn. Kudal (pick-axe) was found at the spot which came to be seized. The appellant was arrested. The dead bodies of

Kashabai and Sulabai were sent for post-mortem. After the death of Budha, his body was also sent for post-mortem. After completion of investigation, the charge sheet came to be filed against the appellant.

3 Charge came to be framed against the appellant under sections 302, 307, 323, 324 and 506 of IPC. The appellant-accused pleaded not guilty to the said charge and claimed to be tried. The defence of the appellant is that of total denial and false implication. Further defence raised on behalf of the appellant is that the appellant was suffering from insanity at the time of incident and he caused death of the three persons Kashabai, Sulabai and Budha and injuries to Kacharu during a bout of insanity. 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 Advocate for the Appellant and the learned A.P.P. for the State. After giving our anxious consideration to the facts and circumstances of the case, arguments advanced by the learned Advocates for the

parties, the judgment delivered by the learned Sessions Judge and the evidence on record, for the reasons stated below, we are of the opinion that the appellant assaulted Kashabai, Sulabai and Budha and caused their death and in the course of the said incident, he also assaulted Kacharu with 'Kudal' and caused injuries to him. However, after carefully considering the matter and for the reasons stated herein below, we are of the opinion that this appeal deserves to be allowed.

5 There is no eye witness regarding the assault on Kashabai and Sulabai. To show that the appellant committed the murder of Kashabai, Sulabai and Budha, prosecution has relied on the evidence of P.W. 1 Kacharu. P.W. 1 Kacharu stated that he knew the appellant as the appellant was staying in his neighbour-hood. He also knew Kashabai, Sulabai and Budha because they were also residing in his neighbour-hood. Kacharu has stated that on the day of the incident at about 2.30 p.m. he was sitting under a tree behind the house of the appellant. Budha (deceased) was also sitting with him and they were both chitchatting. At that time, Kashabai i.e. mother of the appellant came running towards them. Kashabai told them to see what the appellant was doing. Hence, Kacharu

and Budha went to the front of the house of the appellant. At that time, they saw a 'Kudal' (pick-axe) in the hands of the appellant. The appellant rushed towards Kacharu and Budha, hence, they tried to run away. At that time, the appellant slapped his mother. The appellant assaulted Kacharu on his back with 'Kudal'. He also assaulted Budha on the head with 'Kudal'. Thereafter, Kacharu and Budha ran away. After 10 to 15 minutes, Kacharu went back to the house of the appellant. At that time, he saw that Kashabai and Sulabai were lying dead in front of their house. Both Kashabai and Sulabai had injuries on their head and blood was oozing from the said injuries. Budha had received injury on the head and the injury was bleeding. Budha was taken to the civil hospital at Nashik. In the meanwhile, Kacharu went to the police station to inform them about the incident. The police referred him to the Government hospital at Harshul for treatment. The F.I.R. of Kacharu was recorded which is at Exh. 14. The evidence of Kacharu shows that the appellant assaulted Budha on the head with 'Kudal' and the appellant also assaulted Kacharu on the back with a 'Kudal'. Kacharu has not witnessed the actual assault on Kashabai and Sulabai. However, his evidence leaves no manner of doubt that it was the appellant alone who

assaulted Kashabai and Sulabai. Nothing has been brought on record to show that anyone else had the motive to kill Kashabai and Sulabai. Moreover, the medical evidence shows that the injuries sustained by Kashabai and Sulabai were possible with Kudal and at the time of the incident the appellant was armed with a Kudal. The conduct of Kashabai i.e. she came running towards Kacharu and Budha and told them to see what the appellant was doing shows that she apprehended danger from the appellant. All these facts show that it was the appellant who assaulted Kashabai and Sulabai and no one else. The time gap is so miniscule between the appellant assaulting Kacharu and Budha with a Kudal and Kashabai and Sulabai being found dead with injuries on their person which are consistent with assault by Kudal that it rules out the possibility of anyone else causing the death of Kashabai and Sulabai.

6 Reliance is also placed by the prosecution to some extent on the evidence of P.W. 3 Vishnu who was residing near the house of the appellant. Vishnu has stated that at about 2.30 p.m. he was in his house. He heard shouts, hence, he came out of the house and went in front of the house of the appellant. At that time, he saw Kashabai, Sulabai and Budha

lying in injured condition and blood was oozing from their injuries. At that time, he saw the appellant holding a 'Kudal' in his hand. Thereafter injured Budha was taken to the hospital.

7 It is the prosecution case that the appellant assaulted Kashabai, Sulabai and Budha with a 'Kudal' and caused their death. This is borne out by the medical evidence. P.W. 4 Dr. Sonawane conducted post-mortem on Kashabai and Sulabai. On external examination of Kashabai, he noticed the following injuries:

- "(1) Injury to right index finger;
- (2) Deep C.L.W. on right temporal region. 4 inches deep and 2 cm x 4 cms. in size.
Excess amount of blood was lost.
- (3) Fracture of right temporal bone because of deep wound in head 4 inches deep, 2 cm. x 4 cm."

In the opinion of Dr. Sonawane, the cause of death of Kashabai was due to an assault by sharp and heavy weight metallic object which led to severe bleeding. According to Dr. Sonawane, the injuries sustained by Kashabai are collectively sufficient in the ordinary course of nature to cause the death of Kashabai.

8 On external examination of Sulabai, Dr. Sonawane noticed the following injuries:

"(1) Deep C.L.W. on right temporal region 4 inches deep and 2 cms. x 4 cms. in size. Heavy blood loss.
(2) Fracture of right temporal bone because of deep wound in head, 4 inches deep x 2 cms. x 4 cms. in size."

According to Dr. Sonawane, the cause of death of Sulabai is assault by sharp and heavy weight metallic object and the cause of death was vigorous bleeding from brain and old age. According to Dr. Sonawane, the injuries mentioned by him in post-mortem report could be possible by Art. No.1 Kudal.

9 P.W. 11 Dr. Patil conducted the post mortem on the dead body of Budha. On examination, he noticed the following injuries:

" (1) Lacerated wound on scalp in sagital plain (middle of the head) 6 x 2 cms. bone deep with fracture of skull.
(2) Sutured surgical wound on right parietal region.
Hematoma under scalp, fracture vault of the skull with irregular fracture edges, subdural and intra

cerebral haematoma and oedematous brain matter."

According to Dr. Patil, the cause of death of the Budha was due to head injury. In the opinion of Dr. Patil, both the injuries mentioned above were sufficient in the ordinary course of nature to cause death. According to Dr. Patil, the injuries sustained by Budha collectively could be possible by Art. No. 1 Kudal.

10 It is the case of the prosecution that the appellant also assaulted P.W. 1 Kacharu with a 'Kudal'. This is borne out by the medical evidence. P.W. 10 Dr. Bangar examined Kacharu. He has stated that Kacharu came to the hospital with history of assault. On examination, he noticed one contusion on the back and it was a simple injury. He has stated that the injury could be caused by Art. 1 Kudal if a person is assaulted from the backside of Kudal.

11 Thus, the evidence on record points out to the fact that the appellant assaulted Kashabai, Sulabai and Budha with Kudal which caused their death and during the course of the very same incident, he also assaulted Kacharu with Kudal and

caused injuries to him.

12 Ms. Vora, the learned counsel for the appellant submitted that the appellant was suffering from mental illness and at the time of the incident, during a bout of mental disturbance, the appellant caused the death of Kashabai, Sulabai and Budha. She submitted that in such case, the appellant is entitled to the benefit of Section 84 of the Indian Penal Code. In order to support her contention that the appellant was suffering from mental illness since a long time, she has drawn our attention to the evidence of P.W. 4 Dr. Sonawane and P.W. 13 Dr. Diwekar. In addition, she has placed reliance on Exh. 35 and Exh. 21.

13 The evidence of P.W. 4 Dr. Sonawane shows that on the date of the incident i.e. on 28.1.2009 he also examined appellant Tulshiram after he was brought by the police. He also issued certificate Exh. 21. In the said certificate it is mentioned that the appellant was suffering from psychiatric disorder. It was also mentioned in said certificate that the appellant needs treatment of Psychiatrist and therefore, the appellant should be referred to the civil hospital.

14 P.W. 13 Diwekar is a Doctor who was attached to the mental hospital Thane as a Psychiatrist. He has stated that pursuant to order dated 18.1.2011 passed by the Sessions Judge, Nashik, appellant Tulshiram was brought to the mental hospital Thane on 28.1.2011 for treatment. Dr. Diwekar has stated that he examined appellant Tulshiram and found that the appellant had symptoms of "paranoid schizophrenia" a type of psychosis. Dr. Diwekar has further stated that the appellant was treated for "paranoid schizophrenia" from 28.1.2011 to 6.4.2011. Dr. Diwekar has stated that even prior to 28.1.2011, the appellant was referred to the mental hospital Thane on two occasions.

15 As stated earlier, Ms. Vora also relied upon Exh. 35 to support her contention that the appellant was suffering from insanity at the time of commission of the offence. In the present case, P.W. 1 Kacharu was injured during the incident. When he went to the police station, he was referred to the Rural hospital for examination. P.W. 10 Dr. Bangar examined Kacharu. In relation to examination of Kacharu, the Doctor has issued medical certificate Exh. 35. In the said medical

certificate, the history given is "history of assault by a psychotic person on back". Ms. Vora submitted that this shows that even according to P.W. 1 Kacharu, on the day of the incident, the appellant was suffering from mental illness, otherwise, there was no reason for P.W. 1 Kacharu to give history that he was assaulted by a psychotic person. Thus, the evidence of P.W. 4 Dr. Sonawane, P.W. 13 Dr. Diwekar and Exhs. 35 and 21 shows that the appellant was suffering from mental illness. The evidence of P.W. 4 Dr. Sonawane and Exh. 35 shows that on the day of the incident also, the appellant was suffering from mental illness.

16 Looking to the evidence of P.W. 4 Dr. Sonawane, P.W. 13 Dr. Diwekar Exh.21 and Exh. 35 which show that the appellant was suffering from mental illness, the only aspect to be considered is the defence of insanity raised by the appellant. This defence has not found favour with the trial Court. Ms. Vora, the learned counsel for the appellant has vehemently argued that the appellant was suffering from insanity at the time of the incident and was thus entitled to the benefit of General Exceptions contained in Section 84 of IPC. She pointed out that the evidence of P.W. 4 Dr. Sonawane and

the other proved medical evidence shows that the appellant was suffering from mental illness even on the date of the incident. In addition, she pointed out that the evidence of P.W. 13 Dr. Diwekar shows that the appellant was treated as an indoor patient in the Thane Mental Hospital from 28.1.2011 till 6.4.2011. She submitted that the fact that the appellant was indoor patient in Thane Mental Hospital for more than two months, shows that his mental illness was serious in nature. Ms. Vora further pointed out that the evidence of Dr. Diwekar also shows that even prior to 28.1.2011 the appellant was referred to the mental hospital on two occasions.

17 The burden to prove that the accused was of unsound mind and as a result thereof, he was incapable of knowing the nature and consequences of his acts is on the accused. Section 84 of IPC is one of the provisions in Chapter IV of IPC which deals with the "General Exceptions". Section 84 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 bringing

the case within the purview of Section 84 lies upon the accused under Section 105 of the Evidence Act. Under the said Section, the Court shall presume the absence of such circumstances.

Illustration (a) to Section 105 is as follows:

"(a) 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."

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

18 At this stage, it is necessary to notice the nature of the burden that is required to be discharged by the accused to get benefit of Section 84 of IPC. In ***Dahyabhai Chhaganbhai Thakker Vs. State of Gujarat*** reported in ***(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, the evidence placed before the Court may raise a reasonable doubt in the mind of the Court as regards one or more of the ingredients of the offence, including absence of *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 probabilities.

19 The doctrine of burden of proof in the context of the plea of insanity may be stated in the following propositions :

- (a) The prosecution must prove beyond reasonable doubt that the accused has 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;
- (b) 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 which rests upon a party to civil proceedings;

(c) Even if the accused is 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 the absence of 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 ***AIR 2002 SC 3399*** and in the unreported decision dated 9.6.2011 of this Court, Bench at Nagpur in the case of **Laxman Gonduji Nirmal Vs. The State of Maharashtra in Criminal Appeal No. 499 of 2010 (Coram: Smt. V.K.**

Tahilramani and M.L. Tahaliyani, JJ.).

20 The circumstances that stand proved in this case in relation to the defence raised by the appellant of insanity are as under:

- i. P.W. 1 Kacharu has stated to the doctor that on the date of the incident the appellant was suffering from mental insanity which is seen from Exh. 35;
- ii. The medical certificate Exh. 21 issued by P.W. 4 Dr. Sonawane shows that on the date of the incident the appellant was in need of treatment from a Psychiatrist;
- iii. he was admitted in the Government Mental Hospital for more than two months i.e. from 28.1.2011 to 6.4.2011. Even prior to 28.1.2011 he was taken to the mental hospital on two occasions;
- iv. there was no motive for the appellant to kill his mother Kashabai, his sister in law Sulabai and his uncle Budha;
- v. after causing the death of these three persons, he made no attempt to run away;

21 In the present case, the motive has not been brought on record by the prosecution to commit the murder of

Kashabai, Sulabai and Budha. None of the prosecution witnesses have stated that there were strained relations between the appellant and the deceased. There is no history of property dispute or any other dispute between the appellant and the deceased. However, mere fact that the appellant did not run away or he had no motive to kill, would not indicate that at the time of the commission of the act, the appellant was suffering from unsoundness of mind or he did not have requisite mens rea for the commission of the offence. It is correct that these facts by itself would not indicate insanity. In the present case, however, it is not only the aforesaid facts but it is the totality of the circumstances seen in the light of the evidence on record which proves that the appellant was suffering from "paranoid schizophrenia" at the time of the incident. The unsoundness of mind before and after the incident is also a relevant fact. From the circumstances of the case an inference can certainly be reasonably drawn that the appellant was under an attack of mental illness at the time of the incident. Having regard to the nature of the burden on the appellant, we are of the opinion 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.

Moreover, looking to the fact that P.W. 4 Dr. Sonawane has stated that when he examined the appellant on the day of the incident, he found him suffering from psychiatric disorder and the fact that Exh. 35 which is a medical certificate dated 28.1.2009 which shows that the appellant was suffering from psychotic disorder at the time of the incident, from all these facts, it does appear that at the time of the commission of the crime the appellant was suffering from a bout of mental insanity and was thus incapable of knowing the nature and consequences of his act or that it was wrong and contrary to law. In such case, the conviction and the sentence of the appellant cannot be sustained.

22 For the aforesaid reasons, we set aside the impugned judgment and order of conviction and sentence passed in Sessions Case No. 22 of 2009 whereby the appellant Tulshiram Narayan Pardhi came to be convicted and sentenced under Sections 302 and 324 of IPC by the learned Additional Sessions Judge, Nashik and allow the appeal. The appellant is acquitted of the offences punishable under Sections 302 and 324 of IPC. The appellant shall be set at liberty if not, required in any other case.

23 Writ of order is expedited.

24 Office to communicate this order to the jail authorities
and to appellant who is in jail.

25 Before we part with this judgment, we would like to
place on record our appreciation for the able assistance
rendered by Ms. Apeksha Vora the learned counsel appointed
for the Appellant. We quantify legal fees to be paid to her by
the High Court Legal Services Committee at Rs. 5,000/-.

[SHRI.B.P.COLABAWALLA, J.] [SMT.V.K.TAHILRAMANI, J.]