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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.582 OF 2006**

Anand Kedareshwar Bhavsar	]	
age: 31 years,	]	
residing at 5, Nilgiri Society,	]	... <u>Appellant</u>
Near Datta Mandir Bus Stop,	]	Ori. accused
Nasik Road, Nasik	]	

V/s.

The State of Maharashtra	]	
Through : Sarkarwada Police Station	]	 Respondent
District: Nashik		

Mr. N. M. Gavankar a/w Mr. Manas Gavankar, Advocates, for Appellant.

Dr. F. R. Shaikh, A.P.P., for the Respondent-State.

**CORAM : SMT. V. K. TAHILRAMANI &
DR. SHALINI PHANSALKAR-JOSHI, JJ.**

DATE : 16th JUNE, 2015.

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

1. The appellant has preferred this appeal against the judgment and order dated 5th May, 2006, passed by the learned III Ad Hoc Additional Sessions Judge, Nashik, in Sessions Case No.148 of 2005. By the said judgment and order, the learned Sessions Judge convicted the appellant under Section 302 of the

Indian penal Code and sentenced him to suffer imprisonment for life and to pay fine of Rs.2,000/- in default rigorous imprisonment for three months.

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

The deceased in the present case is Dr. Amal Mokashi. Dr. Mokashi, had his Clinic at Shanranpur road, Nashik. Dr. Mokashi was a Homeopathy Doctor. The appellant, was a patient of Dr. Mokashi. Two years prior to the incident Dr. Mokashi referred the appellant to P.W.4 Dr. Nagapurkar, who was a Psychiatric, as the appellant was suffering from paranoid schizophrenia. The appellant was taking treatment from Dr. Nagapurkar and he used to visit Dr. Nagapurkar's hospital at least once in a month. About 8 months prior to the incident, the appellant had a quarrel with Dr. Mokashi. On the same day, the appellant alongwith his father came to the clinic of P.W.4 Dr. Nagapurkar and informed him that the appellant had quarrelled with Dr. Mokashi by mistake.

3. The incident occurred on 17.2.2003. At about 9.30 a.m. Dr. Mokashi was walking towards his clinic. At that time, the appellant came and stabbed Dr. Mokashi. Thereafter the appellant ran away. This was witnessed by P.W.5 Roshan Joseph. P.W.3 Atmaram Abhor was a friend of Dr. Mokashi. At about 10.00 a.m. P.W.3 Atmaram heard noise near the entrance of his house, saying "*uncle save me*". P.W.3 Atmaram opened the door and he saw Dr. Mokashi standing at the gate. Dr. Mokashi had kept his one hand in the armpit and blood was oozing from his armpit. P.W.5 Joseph also came there and he then took Dr. Mokashi to the hospital. On the way P.W.5 Joseph asked Dr. Mokashi, who has stabbed him, thereupon Dr. Mokashi stated that patient Anand Bhavsar has stabbed him. Dr. Mokashi was admitted in the hospital. He was operated upon. However, he expired at about 12.30 p.m. P.W.3 Atmaram lodged F.I.R. Thereafter investigation commenced.

4. Charge came to be framed against the appellant under Section 302 of the Indian Penal Code. The appellant pleaded not guilty to the said charge and claimed to be tried.

The defence of the appellant as revealed from the cross examination of witnesses appears to be that the appellant was not of sound mind at the time of incident. After going through the evidence adduced in this case, the learned Sessions Judge, convicted and sentenced the appellant as stated in paragraph no.1 above, hence this appeal.

5. We have heard Mr. N. M. Gavankar, learned counsel for the appellant and learned Additional Public Prosecutor, for the State. We have carefully considered their submissions, the judgment and order, 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 Dr. Mokashi with knife which caused his death.

6. The conviction is mainly based on the evidence of P.W.5 Joseph, who is an eye witness to the incident. This witness has stated that he knew deceased Dr. Mokashi. Dr. Mokashi used to park his car in front of his apartment while going to his clinic.

On the day of incident at about 9.30 a.m. P.W.5 Joseph was in his apartment in the front room. He saw Dr. Mokashi, parking his car and walking towards his clinic. P.W.5 Joseph heard a big sound. He saw one person wearing helmet was attacking Dr. Mokashi. That person was stabbing Dr. Mokashi. Thereafter person stabbing Dr. Mokashi ran away. Meanwhile P.W.5 Joseph stopped an auto rickshaw and took Dr. Mokashi to the hospital. On the way P.W.5 Joseph asked Dr. Mokashi, who has stabbed him, thereupon Dr. Mokashi stated that patient Anand Bhavsar had stabbed him.

7. Nothing has been elicited in the cross examination of P.W.5 Joseph to disbelieve his evidence. His evidence clearly shows that a dying declaration was made by Dr. Mokashi to him that the appellant had stabbed him. As the appellant was wearing helmet, at the time of incident, P.W.5 Joseph could not properly notice features of the appellant. However, Joseph has stated that the appellant was wearing a helmet. This helmet came to be seized from the house of cousin brother of the appellant. P.W.13 Anilkumar Jagatap has deposed about this. Not

only P.W.13 Jagatap has deposed about it, but the panchanama whereby helmet came to be seized has been admitted in evidence by the defence. This panchanama is at Exh.17. P.W.5, Joseph has identified the helmet which was seized under panchanama vide Exh.17; as the same helmet worn by the appellant at the time of the incident. This is one more connecting link between the appellant and the incident. Moreover, as stated earlier, the evidence of P.W. 5 Joseph clearly shows that dying declaration was made by the deceased to him that the appellant had stabbed him.

8. It is the prosecution case that the appellant stabbed Dr. Mokashi with knife. This knife was found on the spot which came to be seized. P.W.9 Dr. Shivaji Lahade, conducted postmortem on the dead body of Dr. Mokashi. On external examination, Dr. Lahade found following injuries:-

“1. Incised wound on left upper arm anterior axilla fold size 20 x 4.4 cm x 4.00 cm. Axillary astral vein and nerve was cut and ligament biceps and muscles were injured.

2. Incised wound between 10th and 11th rib oblique in direction placed posterior having size 7 x 3 cm peritoneal deep.
3. Incised wound sub coastal having size 27 cm x 6 cm x peritoneal deep. Right kidney was absent.
4. Liver abrasion with contusion on inferior surface having size 4 x 2 cm and 3 x 4 cm.
5. Right sub clavian catheter was in position.
6. Both right and left femoral vein, catheterisation done having size 6 x 2 x cm."

According to Dr.Lahade, all injuries were caused by sharp and cutting object and were antemortem in nature. On internal examination P.W.9 Dr. Lahade noticed tears of large Colon at hepatic falter and it was sutured. It was of size 3x2x ½cm. This injury was corresponding to injury No.3. The cause of death according to P.W.9 Dr. Lahade is haemorrhagic shock due to multiple stab injuries. Thus, it is seen that the medical evidence is totally consistent with the prosecution case.

9. Learned counsel for the appellant submitted that the appellant was suffering from mental illness since much prior to the time of the incident and at the time of incident during a bout of mental disturbance, the appellant caused death of Dr. Mokashi. He submitted that in such case, the appellant is entitled to the benefit of exception under Section 84 of the IPC. In support of his contention that the appellant was suffering from mental disorder since long time, he has placed reliance on the evidence of P.W.1 Dr. Date as well as on the evidence of P.W.4 Dr. Nagapurkar, who is a Psychiatrist.

10. No doubt through the evidence of P.W.5 Joseph and other evidence on record, prosecution has established that the appellant assaulted Dr. Mokashi with knife. However, evidence of P. W. 1 Dr. Date, who is a Psychiatrist shows that the appellant was suffering from paranoid schizophrenia since long time and even much prior to the incident. P.W.1 Dr. Date has stated that he came to know that the appellant was under treatment of a Psychiatrist since 1993. He further stated that he was working at the Regional Mental Hospital, Thane. On 20.1.2005, the

appellant was sent to the Regional Mental Hospital, Thane as per orders of Judicial Magistrate First Class, III Court, Nashik. The appellant was under his treatment till 18.6.2005. The appellant was suffering from paranoid schizophrenia. P.W. 1 Dr. Date has stated that from the papers received from Civil Hospital, he came to know that the appellant was under treatment of a Psychiatrist since 1993. According to Dr. Date, persons suffering from schizophrenia are prone to commit offences against human body like homicide or suicide. In cases of schizophrenia, the patient may have a period of remission and exacerbation. According to Dr. Date, schizophrenia has recurrent and persistent manifestation. P.W. 1 Dr. Date has stated that the appellant was suffering from delusion and patient suffering from delusion may commit crime. From the papers P.W.1 Dr. Date came to know that electric shocks were given to the appellant since long time. According to P.W.1 Dr. Date schizophrenia is a very serious disease and complete recovery from schizophrenia is not possible.

11. The evidence of P.W.1 Dr. Date, clearly shows that the

appellant was suffering from serious psychiatric disturbance which can lead to suicide or homicide. The evidence of Dr. Date shows that psychiatric disorder was to such an extent that electric shocks had to be given to the appellant. The evidence of P.W. 4 Dr. Nagapurkar, who is a Psychiatrist, shows that Dr. Mokashi had referred the appellant to him two years prior to the incident. The appellant was regularly taking treatment from Dr. Nagapurkar and the appellant used to visit Dr. Nagapurkar at least once in a month. P.W.4 Dr. Nagapurkar has clearly stated that the appellant was suffering from paranoid schizophrenia. The symptoms of schizophrenia are suspicion, auditory, hallucination, paranoid delusions etc. P.W. 4 Dr. Nagapurkar has stated that person suffering from schizophrenia has no idea of the consequences of the act done by him.

12. Learned counsel for the appellant has placed reliance on the evidence of P.W.1 Dr. Date and P.W.4 Dr. Nagapurkar, to support his contention that the appellant was suffering from mental illness and during a bout of mental illness, the appellant caused the death of Dr. Mokashi. In addition reliance is placed

by Mr. Gavankar, on the evidence of P.W.5 Joseph. Joseph had made an enquiry with Dr. Mokashi about who had stabbed him. Thereupon, Dr. Mokashi had named the appellant and also stated "*Yedyane marle*" which means mad person assaulted him. This shows that even Dr. Mokashi thought that the appellant was of unsound mind.

13. However, the learned A.P.P. submitted that the appellant failed to prove that he was suffering from unsoundness of mind at the time of commission of the offence. He submitted that the fact that the appellant was suffering from mental illness before or after commission of the offence, are of no consequence, but it has to be proved that the appellant was suffering from mental illness at the time of the incident. He reiterated that the appellant has failed to prove that at the relevant time he was suffering from mental illness.

14. The burden to prove that the accused was of unsound mind and as a result thereof he was unable to know the nature and consequences of his acts, is on the accused. Section [84](#) of I.P.C. is one of the provisions in Chapter IV of I.P.C. which deals with general exceptions. The 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 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 circumstance.

Illustration (a) to Section 105 is as under:

Illustration:

(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 a person is incapable of knowing the nature and consequences of his act is a state of mind of a person that ordinarily can be inferred from the circumstances.

15. 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 the Indian Penal Code. In **Dahyabhai Chhaganbhai Thakker v. State of Gujarat (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 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.

16. 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 accused 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 sane, 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. (3) 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 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 v/s. State of Maharashtra** reported in : **AIR 2002 SC 3399**, and by this Court in **Sanjay Madhukar Satam -vs- The State of Maharashtra**, reported in **2014 ALL MR (Cri) 276**.

17. The circumstances that stand proved in this case in relation to the defence of the appellant of mental illness are that:

“(i) the appellant had a history of psychiatric illness since much prior to the incident. (ii) Even in the jail, the appellant was given treatment for his mental illness. (iii) his mental illness was to such an extent that he was given electric shocks i.e. electro convulsive therapy, in addition to other treatment”.

18. The unsoundness of mind before and after the incident is a relative fact. It has to be seen in the totality of the circumstances in the light of the evidence on record which shows that the appellant was suffering from severe psychiatric disturbance since a long time.

From the circumstances of the case, an inference can be reasonably drawn that the appellant was suffering from a bout of insanity at the relevant time. Having regard to the nature of burden of proof on the appellant, we are of the view that the appellant has proved the existence of circumstances as required under Section 105 of the Evidence Act so as to get benefit of Section 84 of I.P.C. There is a reasonable doubt that at the time of commission of the crime, by reason of unsoundness of mind the appellant was incapable of knowing the nature and consequences of the act or that it was wrong or contrary to law and thus he is entitled to the benefit of Section 84 of I.P.C. Hence, the conviction and sentence of the appellant cannot be sustained.

19. 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 I.P.C. and allow the appeal. Hence, we pass the following order:-

ORDER

(I) Appeal is allowed.

(II) The appellant is acquitted of the offence punishable under Section [302](#) of I.P.C.

(III) The appellant shall be set at liberty, if not required in any other case.

[DR.SHALINI PHANSALKAR-JOSHI, J.] [SMT. V.K.TAHILRAMANI, J.]