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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 634 OF 2006**

Shri. Sandeep Prabhakar Vadnerkar	]
Age 46 years, Now in Jail	]
But released on parole till 17.7.2006	]
Residing at Flat No.7, Gangaleela	]
Apartment, Patil Lane No.3,	]
College Road, Nashik	]..Appellant

Vs.

The State of Maharashtra	]..Respondent
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Ms. Rohini Dandekar Advocate appointed for the Appellant
Smt. V.R. Bhonsale A.P.P. for the State

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**CORAM : SMT.V.K.TAHILRAMANI AND
SMT.I.K.JAIN, JJ.**

DATED : FEBRUARY 11, 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 13.9.2004 passed by the learned IInd Ad-hoc Additional Sessions Judge, Nashik in Sessions Case No. 153 of 2003. By the said judgment and order, the learned Sessions Judge convicted the appellant

under Sections 302 and 498-A of IPC. For the offence under Section 302 of IPC, the appellant has been sentenced to R.I. for life and fine of Rs.2000/- i/d R.I. for six months. For the offence under Section 498-A of IPC, the appellant has been sentenced to R.I. for two years and fine of Rs.2000/- i/d R.I. for six months.

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

(i) Deceased Kalpana was the wife of the appellant. The deceased was the sister of P.W. 1 Santosh. She was married to the appellant in the year 1991. They had two daughters Aishwarya and Akanksha. About 2 to 3 years prior to the incident, the appellant started harassing and ill-treating Kalpana. Kalpana informed this fact to her brother P.W. 1 Santosh. She informed him that the appellant used to beat him and he did not allow her to visit anybody. She also informed him that the appellant used to suspect her fidelity.

(ii) The incident occurred on the night between 11.7.2003 and 12.7.2003. That night a quarrel took place between the appellant and his wife Kalpana. Thereafter, the

appellant assaulted his wife Kalpana with a dumbbell on the head and he also caused her injuries with a blade. The appellant took his minor daughters and left them at the house of their uncle. Thereafter, the appellant telephoned police. Police came to the spot. Police found dead body of Kalpana with various injuries on her person. The appellant lodged F.I.R. wherein he has stated that he committed murder of his wife. Thereafter, investigation commenced. The appellant was arrested on 12.7.2003 itself. During investigation, the blood stained clothes on his person came to be seized. They were sent to C.A. After completion of investigation, charge sheet came to be filed.

3 Charge came to be framed against the appellant under Sections 302 and 498-A of IPC. The appellant pleaded not guilty to the said charge and claimed to be tried. The defence of the appellant was that of total denial and false implication. His further defence is that he was suffering from mental illness i.e. schizophrenia and during an attack of mental illness he committed the murder. After going through the evidence adduced in the present case, the learned 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 A.P..P for the State. After giving our anxious consideration to the facts and circumstances of the case, arguments advanced by the learned counsel for the parties, the judgment delivered by the learned Judge and the evidence on record for the below mentioned reasons, we are of the opinion that the appellant assaulted his wife with dumbbell and blade and caused her death, however, the appellant should be given benefit of Section 84 of IPC i.e. the offence might have been committed during a bout of schizophrenia and hence, he deserves to be acquitted on that count.

5 There is no eye witness to the incident and the conviction is only based on circumstantial evidence. The circumstances against the appellant are as under:

- (1) The appellant made extra judicial confession to P.W. 13 Manoj who was his next door neighbour;
- (2) There was motive for the appellant to commit the crime;
- (3) At the time of arrest of the appellant, clothes on his person were stained with blood;
- (4) Conduct of the appellant.

6 The first circumstance is 'extra judicial confession'. P.W. 13 Manoj was residing in Flat No. 8 of Gangaleela Apartment at Nashik. He has stated that the appellant was residing in flat No. 7 of Gangaleela Apartment. Sometimes there used to be noise of quarrel from the house of the appellant. On 12.7.2013 in the morning at about 9 a.m. he saw the appellant sitting in his house. Many persons had gathered there, hence, he asked the appellant what had happened. The appellant told him that in the night, a quarrel took place between him and his wife (Kalpana). He was suspecting about the character of his wife. During the night when she was sleeping in the house, he gave a blow with dumbbell on her head, then he cut her throat with blade.

7 Accepting the admissibility of the extra-judicial confession, the Supreme Court in **Sansar Chand Vs. State of Rajasthan**¹ held that :

"29. There is no absolute rule that an extra-judicial confession can never be the basis of a conviction, although ordinarily an extra-judicial confession should be corroborated by some other material. (Vide Thimma and Thimma Raju Vs. State

1 (2010) 10 SCC 604

of Mysore - (1970) 2 SCC 105, Mulk Raj Vs. State of U.P. - AIR 1959 SC 902, Sivakumar Vs. State - (2006) 1 SCC 714 (SCC paras 40 and 41), Shiva Karan Payaswami Tewari Vs. State of Maharashtra (2009) 11 SCC 262 and Mohd. Azad Vs. State of West Bengal - (2008) 15 SCC 449".

In the present case, we find the evidence of P.W. 13 Manoj to be reliable and trustworthy, hence we have no hesitation in relying on the same. Moreover, the extra judicial confession is corroborated by other material. The spot panchnama Exh. 20 which is admitted by the defence shows that a blood stained dumbbell and blood stained blades were found on the spot. The medical evidence also corroborates the extra judicial confession which we shall deal with a little later.

8 The second circumstance against the appellant is 'motive'. P.W. 2 Akanksha who was the daughter of the appellant as well as the deceased, has stated that the appellant i.e. her father used to quarrel with her mother. The cause of quarrel was that the appellant used to suspect the fidelity of her mother. Once she had seen the appellant

beating her mother with dumbbell. P.W. 9 Jyoti has also deposed about motive. P.W. 9 Jyoti was residing in Gangaleela Apartment where the appellant and the deceased were also residing. Jyoti has stated that Kalpana informed her that her husband i.e. appellant used to suspect her fidelity. Kalpana also told Jyoti that the appellant used to beat her. Kalpana had informed about this fact to Jyoti on 2 to 3 occasions. Last time, Kalpana stated about this fact to Jyoti about 1 and half month prior to the incident. Kalpana also told Jyoti that the appellant was telling her to give him divorce. Thus, the evidence of P.W. 2 Akanksha and P.W. 9 Jyoti shows that the motive for the appellant to commit the murder of his wife Kalpana was that he suspected the character of his wife Kalpana.

9 The last witness who has deposed on the point of 'motive' is P.W. 1 Santosh. He has stated that his sister was married to the appellant in the year 1991. They had two daughters. About 2 to 3 years prior to the incident, Kalpana started complaining about the conduct of her husband. Whenever Kalpana used to visit his house or he used to visit her house, Kalpana used to inform him that the appellant used

to beat her and he did not allow her to visit anyone. She further informed him that the appellant used to suspect her fidelity. Thus the prosecution has proved the motive for the appellant to commit the crime.

10 Regarding the 3rd circumstance, panchnama Exh. 24 which has been admitted by the defence under Section 294 of Cr.P.C. shows that the appellant was arrested in Gangaleela Apartment and the clothes on his person came to be seized. The said panchnama shows that blood stained shirt, banyan, underwear and full pant worn by the appellant were seized. These articles were sent to C.A. As per the C.A. Report (Exh. 54), the shirt, banyan, underwear and pant were stained with blood of "A" Group. The clothes of the deceased i.e. her kurta, petticoat, brassiere and nicker were stained with blood of Group "A". This shows that the blood group of the deceased was "A". It is pertinent to note that blood group of the appellant is "O" which is clear from the C.A. Report Exh. 55. Thus, finding of blood group "A" on the clothes of the appellant is a strong incriminating factor against the appellant.

11 The last circumstance against the appellant is 'conduct.' P.W. 2 Akanksha who was the daughter of the appellant and the deceased, has stated that her father and her mother used to sleep in the bed room and she and her sister used to sleep in the hall. On 12.7.2003 at about 7.30 a.m. her father woke her and her sister. Her father i.e. the appellant told them that they have to go to the city. P.W. 2 Akanksha told her father that they will take a wash and become fresh, however, he told them that there was no need to become fresh and they had to start immediately. Akanksha asked him where her mother was? Thereupon the appellant told her that her mother had already proceeded to the city. Akanksha requested him to allow her to go to bath-room, however, the appellant did not allow her to go to bath-room and told her to come immediately with him. Her father then brought some water in a container and told her to wash her face in the ball. At that time, Akanksha saw that the door of the bedroom was bolted from outside. The appellant then took Akanksha and her sister Aishwarya to the house of their uncle Dilip. This unnatural conduct on the part of the appellant also militates

against his innocence.

12 It is the prosecution case that the appellant assaulted his wife with a dumbbell on the head and thereafter with blade and caused her death. This is borne out by the medical evidence. P.W. 11 Dr. Patil conducted the post-mortem on the dead body of Kalpana. Contused lacerated wounds were found on the head of Kalpana and fracture of the skull was seen. According to Dr. Patil, the injuries to the head were caused by hard and blunt object like dumbbell. In the opinion of Dr. Patil, death was caused because of head injury. Besides injuries on the head, injuries were also noticed on the abdomen. According to Dr. Patil, these injuries were possible by blade (Art. 4).

13 No doubt, through the above evidence, the prosecution has established that the appellant assaulted his wife Kalpana with dumbbell and blade and caused her death, however, Ms. Dandekar the learned advocate for the appellant pointed out that the appellant was suffering from mental illness since prior to the incident. She submitted that at the time of

the incident also, during a bout of mental disturbance, the appellant murdered his wife Kalpana. She submitted that in such case, the appellant is entitled to the benefit of Exception in Section 84 of IPC. In order to support her contention that the appellant was suffering from mental insanity since long time, Ms. Dandekar has drawn our attention to the evidence of P.W. 15 Dr. Pawar who has been examined by the prosecution. She has also placed reliance on the evidence of P.W. 2 Akanskha who is the daughter of the appellant and the deceased. The evidence of P.W. 15 Dr. Pawar shows that considering the past history and treatment given to the appellant by private Doctors, the appellant was sent to him. Dr. Pawar examined the appellant and observed behaviour of the appellant from 21.1.2004 to 3.3.2004. Dr. Pawar gave an opinion that the appellant is a patient of "paranoid schizophrenia" and if the patient is not given treatment for schizophrenia, patient may have attacks of schizophrenia. He has stated that Auditory Hallucination and Delusions are the symptoms of schizophrenia. Thus, the evidence of Dr. Pawar clearly shows that the appellant was suffering from 'paranoid schizophrenia'.

14 The evidence of P.W. 2 Akanksha who is the daughter of the appellant and deceased, shows that the appellant was suffering from illness and during the period of illness, sometimes her father used to remain calm and sometimes he used to quarrel with anybody he came across like watchman, person going from the road or with family members. She has admitted that it is true that the behaviour of her father was mysterious during that period. Akanksha further stated that it is true that her father had taken treatment from a Doctor for his habit for remaining calm for some period and then quarreling with anybody for some period. Thus this shows that the appellant was suffering from a mental illness even prior to the incident for which he was taking treatment. Looking to the evidence of P.W. 2 Akanksha and P.W.15 Dr. Patil which shows that the appellant was suffering from 'paranoid schizophrenia', the only aspect to be considered is the defence of insanity of the appellant. Ms. Dandekar has reiterated that the appellant was suffering from insanity at the time of alleged murder of his wife and was thus entitled to the benefit of General Exception contained in Section 84 of IPC. She pointed out that the evidence of these two witnesses

shows that the appellant was suffering from mental illness, however, it was argued on behalf of the prosecution 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. The learned A.P.P. 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 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 provision in Chapter IV of IPC which deals with "General Exceptions". That 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 Indian 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".

16 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 one is incapable of knowing nature and consequences of the 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 benefit of Section 84 of IPC. In ***Dahyabhai Chhaganbhai Thakker Vs. State of Gujarat***², 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

² (1964) 7 SCR 361

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.

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 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 insane, when he committed the crime, in the sense laid down by Sec. 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 Vs. State of Maharashtra***³.

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

- "(1) After the incident when the appellant was in custody he was examined and it was found that he was suffering from 'paranoid Schizophrenia';
- (2) The appellant had a past history of psychiatric illness;
- (3) Prior to the incident, the appellant was taking treatment for his psychiatric illness;

³ AIR 2002 SC 3399

(4) After killing his wife, the appellant made no attempt to hide or to run away but he continued to remain at the spot".

20 In the present case, if the totality of the circumstances are seen in the light of the evidence on record, it shows that the appellant was suffering from 'paranoid schizophrenia'. Unsoundness of mind before or after the incident is a relevant factor. From the circumstances of the case an inference certainly can be reasonably drawn that the appellant was under a delusion at the relevant time and he was under an attack of schizophrenia. Having regard to the nature of the burden on the appellant, we are of the view that the appellant has proved 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 a reasonable doubt that at the time of commission of the offence, the appellant was incapable of knowing the nature and consequences of the act or that it was wrong and contrary to law by reason of unsoundness of mind and thus, he is entitled to the benefit of Section 84 of IPC. In this view of the matter, the conviction and sentence of the appellant cannot be sustained.

21 For the aforesaid reasons, we set aside the impugned judgment and order dated 13.9.2004 imposing conviction and sentence on the appellant in Sessions Case No. 153 of 2003 by the learned IInd Adhoc Additional Sessions Judge, Nashik. The appellant is acquitted of the offences charged. The appellant be set at liberty, if not required in any other case.

22 Writ of order is expedited.

23 Office to communicate this order to the appellant who is in Jail.

24 We quantify legal fees to be paid to appointed Advocate Ms. Rohini Dandekar by the High Court Legal Services Committee at Rs. 5000/-.

[SMT.I.K. JAIN, J.]

[SMT. V.K.TAHILRAMANI, J.]