

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 22 OF 1999

The State of Maharashtra

...APPELLANT
(Ori. Complainant)

versus

Balu @ Balkrushna Gangadhar Chavan,
Age 35 years, Occu. Service,
R/o. Devalaligaon, in front of
Taktasil Vidyalaya, Nasik,
at present residing at Sane Guruji,
Society, Plot No. 50, Dhule.

...RESPONDENT
(Ori. Accused)

.....
Mr. P. G. Borade, A.P.P. for Appellant.
Mr. N. B. Suryawanshi, Advocate for respondent sole.

.....
**CORAM : S.S. SHINDE AND
K.K. SONAWANE, JJ.**

RESERVED ON : 16TH FEBRUARY, 2017.

PRONOUNCED ON : 31ST AUGUST, 2017.

JUDGMENT : (Per : K.K. Sonawane, J.)

1] Being dissatisfied with the impugned judgment and order of acquittal of the respondent - original accused, in Sessions Case No. 92 of 1996, under section 302, 307 of Indian Penal Code (For short, "IPC") and Section 27 of the Arms Act, recorded by the Additional Sessions Judge, Dhule, the prosecution/State, taking recourse of Section 378(1) of Code of Criminal Procedure, 1973 (For short, "Cr.P.C."), preferred the present appeal to redress its grievances.

2] The scenario of the prosecution case, in brief, is as under :-

The ill-fated victim Vasant Dhondu Jadhav was the cousin maternal uncle of respondent - original accused Balu @ Balkrishna Gangadhar Chavan r/o. Dhule, (hereinafter referred to as “accused” for brevity). The house of the victim Vasant was located in the neighbourhood of the house of accused Balu in the locality known as Sane Guruji Co-operative Housing Society, Dhule. The victim Vasant was eking livelihood by plying auto-rickshaw and also he used to assist father in his work as Bond Writer at the General Post Office, Dhule. The accused Balu was employed as a Constable, in SRPF, Group No.VI, at Dhule. According to prosecution one Shri Dattatray Samre, brother in law of accused Balu was in service in Staff Selection Commission at Nasik. He had given promise to the victim Vasant for securing the job as jail Police for him. The person Dattatray demanded Rs. 20,000/- for Government job from the victim Vasant. The unemployed victim Vasant, for better future, paid Rs. 20,000/- to said Dattatray for securing Government job, but his efforts did not evoke result. The victim Vasant did not get Government job as promised by the person Dattatray Sakhare. Therefore, the victim Vasant was insisting Dattatray - brother in law of accused Balu to refund the amount of Rs. 20,000/- paid for securing Government job. The person Dattatray failed to refund the amount to victim Vasant. Meanwhile, Pandurang Jadhav, maternal uncle of the accused, died due to heart attack and it was alleged that he died due to mental stress for refund of amount of Rs. 20,000/- repeatedly demanded by victim Vasant. These circumstances, created sore feelings in the mind of accused Balu for

victim Vasant.

3] It has been alleged that on the day of incident, the duty as Guard at Tent No.4 in the campus of SRPF located within the vicinity of village Mehendal, was assigned to accused Balu. Another two constables, namely Ajay Trimbak Rane and Raj Mahendrasing Pardeshi as well as one Head Constable Sitaram Bhalerao were also deputed for Guard duty, accompanied with accused Balu. The weapon .303" Rifle with cartridges were allocated to all the constables who were deputed for Guard duty at Tent No.4, S.R.P.F. Dhule. Rifle No 734 was allocated to the accused Balu to perform Guard duty at Tent No.4 of SRPF, Dhule.

4] According to prosecution, on the unfortunate day of incident, on 16.1.1996, constable Ajay Rane was on duty as Guard since 2.00 to 4.00 p.m. Head constable Bhalerao had gone to headquarters for making enquiry about the allocation of Guard duty. Meanwhile, at about 4.00 p.m. accused Balu accompanied with unknown person, came in auto-rickshaw in front of Tent No.4 of SRPF for his duty, which was to be commenced from 4.00 p.m. onwards. The Guard, constable Ajay Rane, handed over the custody of weapon .303" Rifles (in all 4 in numbers) and ammunition of 80 rounds of cartridges to the accused for discharging his guard duty. Thereafter, the constable Rane left the place of avocation and proceeded towards the hotel at some distance for enjoying tea. The victim Vasant and accused Balu were remained on the spot of incident in front of Tent No.4 of SRPF campus. It

has been alleged that accused opened the fire from his weapon .303” Rifle and shot dead victim Vasant. Thereafter, accused Balu returned to home in auto-rickshaw with weapon rifle in his hand. The women folk, namely, Sunita wife of victim Vasant and Sangita wife of accused Balu were aghast on seeing the accused Balu in such violent mood. They asked accused Balu about the whereabouts of victim Vasant but the accused Balu became aggressive and pointed the weapon rifle towards Sunita wife of Vasant and exhorted that he would kill her. Sangita wife of accused Balu intervened and started reprimanding accused Balu to kill her first before firing at Sunita and others. Accused Balu attempted to push aside his wife Sangita, but the female members caught hold the accused and tried to snatch away the weapon rifle from his hand. During the scuffle, accused Balu fired one round towards Sunita wife of Vasant but she dodged the same. On hearing commotion, the neighbours rushed to the spot. The accused Balu fired 2/3 rounds in the air. The SRPF constable Shri Ahirrao and others succeeded to overpower the accused and snatched away the weapon rifle as well as ammunition from his custody. They locked the accused in a room of his residence. The Constable Ahirrao immediately visited to his superior with weapon and cartridges recovered from the custody of the accused. He gave information about the incident to his superior officers of SRPF. They all rushed to the spot to take stock of situation. Thereafter, accused was taken in custody. The 15 Rounds of cartridges of .303” rifle were seized from the accused. The information about incident was given to the police. The dead body of victim Vasant was identified by the relatives. The police personnel

of SRPF Group No. 3 Shri. Pralhad Lasnapure lodged the F.I.R. of the crime and set the penal law in motion. Pursuant to the F.I.R. of Shri. Lasnapure, Police of Dhule Taluke Police Station registered Crime No. 22 of 1996 under section 302, 307 of the Indian Penal Code and swung into action. I.O. drawn the inquest panchnama on the dead body of victim Vasant and referred the corpse to the Government Hospital for autopsy. I.O. prepared panchnama of scene of occurrence, located in front of tent No.4 of SRPF Camp and seized the blood stained earth, simple earth, three empty cartridges as well as one live cartridge from the spot. I.O. recovered the weapon of crime .303" Rifle and three live rounds of cartridges under seizure panchnama. The panchnama of spot where accused Balu attempted to kill Sunita wife of victim Vasant at the point of rifle, was also drawn. I.O. recorded statement of witnesses acquainted with the facts of the case. The clothes of deceased were seized under panchnama. I.O. collected post-mortem report and other relevant documents. The medical expert opined that the victim Vasant died due to hemorrhagic shock, following fire arm injury through the head, neck and abdomen. I.O. referred the seized muddemal to the Forensic Laboratory as well as Ballistic Experts for analysis. I.O. collected C.A. report etc., and after completion of investigation, I.O. preferred the charge-sheet against the accused before the learned Magistrate Dhule.

5] Learned Magistrate on receipt of chargesheet and investigation papers, verified the charges pitted against accused Balu. It was transpired that the offences levelled against the accused were exclusively triable by

the Court of Sessions. Therefore, learned Magistrate wisely transmitted the entire case papers to the Court of Sessions for trial of the accused within the ambit of Law. The learned Additional Sessions Judge, after completion of procedural formalities, framed the charge against the accused for murder of victim Vasant and attempted to commit murder of his wife Sunita. The accused was also blamed for the offence under the Arms Act. It appears that the accused pleaded not guilty, and denied the charges. He claimed for trial.

6] In order to bring home guilt of the accused, prosecution examined in all 10 witnesses in this case. The prosecution also kept reliance on the circumstantial evidence of spot panchnama (Exh.17), panchnama of seizure of weapon rifle (Exh.18), spot panchnama of incident of attempt to kill Sunita (Exh.19), Inquest panchnama (Exh.20), panchnama of seizure of cloths of deceased (Exh.21) and C.A. reports (Exh.27 to Exh.29). The learned Additional Sessions Judge, in order to afford opportunity to the accused to explain the incriminating circumstances, recorded his statement prescribed under section 313 (1)(B) of Cr.P.C. The accused denied the incriminating circumstances brought on record against him and claimed his innocence.

7] The learned Sessions Judge after appreciating oral and circumstantial evidence adduced on record, in the light of arguments advanced on behalf of both sides arrived at the conclusion that the

prosecution succeeded to prove the circumstances that the victim Vasant met with an homicidal death and accused was the culprit responsible for the homicidal death of victim Vasant. It has been held that the accused Balu committed murder of victim Vasant punishable under section 302 of the IPC. The prosecution also established the allegations that the accused Balu attempted to commit the murder of Sunita wife of victim Sunita by opening fire from the weapon .303” rifle. Accordingly, the learned Sessions Judge held the accused guilty for offence punishable under Section 302, 307 of IPC and Section 27 of the Arms Act. However, after appreciation of attending circumstances on record, the learned Trial Court drawn the inference that accused Balu, at the time of committing alleged crime of murder of victim Vasant and attempting to commit murder of Sunita wife of victim Vasant was incapable of knowing the nature of the act and its consequences, which he has committed. At the time of alleged gruesome act, he was under the influence of mental disorder. Therefore, the learned trial Court, by extending the benefit of section 84 of IPC exonerated the accused from the charges pitted against him. According to learned trial Court, at the time of commission of offence, the accused by reason of unsoundness of mind, was incapable of knowing the nature of the act or that he is doing what is either wrong or contrary to law.

8] Being dissatisfied with the aforesaid conclusion of the learned trial Court, exonerating the accused by giving benefit of section 84 of the IPC, prosecution has preferred the present appeal and agitated the findings

of absolving the accused by giving benefit under Section 84 of IPC. These impugned findings are the subject matter of the present appeal.

9] It is evident from the aforesaid facts that the present appeal of the prosecution/State is against the judgment of acquittal of the accused, and the plea of insanity raised on behalf of accused is accepted by the learned Sessions Judge, resulting into his acquittal. It is worth to mention that the appeal against acquittal has always been differentiated from a normal appeal against conviction. It is the settled rule of law that whenever there is perversity of facts and/or law appearing in the judgment, the appellate court would be within its jurisdiction to interfere with the findings of acquittal but otherwise, such interference is not called for. We may refer to the principles enunciated by Honourable Apex Court in the case of ***Ghurey Lal vs. State of U.P. (2008) 10 SCC 450***, as follows :-

“The following principles emerge from the cases above :-

1. The appellate court may review the evidence in appeals against acquittal under Sections 378 and 386 of the Criminal Procedure Code, 1973. Its power of reviewing evidence is wide and the appellate court can re-appreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law.
2. The accused is presumed innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.
3. Due to proper weight and consideration must be given to the trial court's decision. This is especially true when a witness' credibility is at issue. It is not enough for the Hgh Court to take a different view of the evidence. There must also be substantial

and compelling reasons for holding that the trial court was wrong..”

10] Keeping in mind the aforesaid legal principles, delineated by the Honourable Apex Court while dealing with the appeal against acquittal, we proceed to deal with the corollary that follows from the aforesaid factual score is, whether having committed the charged offence of murder and attempting to commit murder punishable under Section 302 & 307 of IPC, the accused is entitled to the benefit of general exception as contemplated under Section 84 of IPC. The legal provision of Section 84 of IPC contained in Chapter IV of IPC, reads as under :-

“84. Act of a person of unsound mind :- 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 of the act, or that he is doing what is either wrong or contrary to law.”

11] it is explicit from a bare reading of aforesaid provision of Section 84 that a person who is proved to have committed an offence, would not be deemed guilty, if it is shown that at the time of committing the crime, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law. Obviously, the provisions of Section 84 of IPC is an exception to the general rule. The Honourable Apex Court in the case of ***Surendra Mishra Vs. State of Jharkhand (2011)11 SCC 495***, dealt with the case in which the accused was charged for an offence under Section 302 of IPC and Section 27 of the

Arms Act. While denying the protection of Section 84 of the IPC, their Lordships of the Apex Court observed in para.11 as follows :-

“11. In our opinion, an accused who seeks exoneration from liability of an act under Section 84 of the Penal Code is to prove legal insanity and not medical insanity. Expression “unsoundness of mind” has not been defined in the Penal Code and it has mainly been treated as equivalent to insanity. But the term “insanity” carries different meaning in different contexts and describes varying degrees of mental disorder. Every person who is suffering from mental disease is not ipso facto exempted from criminal liability. The mere fact that the accused is conceited, odd, irascible and his brain is not quite all right, or that the physical and mental ailments from which he suffered had rendered his intellect weak and affected his emotions or indulges in certain unusual acts, or had fits of insanity at short intervals or that he was subject to epileptic fits and there was abnormal behaviour or the behaviour is queer, are not sufficient to attract the application of Section 84 of the Penal Code.”

12] In view of the aforesaid exposition of law, it is crystal clear that a person alleged to be suffering from any mental disorder cannot be exempted from criminal liability *ipso facto*. The burden is on the accused to prove by cogent and dependable evidence that he is suffering from such nature of mental illness that he could not be expected to be aware of the consequences of his act. Once, it is established that the person is suffering from mental disorder or mental deficiency, which would be in the form of delusion, dementia, loss of memory and self control, at all relevant times, by appropriate oral or documentary evidence; the person concerned would be entitled to the benefit of Section 84 of IPC to get exonerated from the criminal liability. The behaviour of the accused, antecedent, attendant and subsequent to the event are the relevant factors to be considered to ascertain his mental condition at the time of occurrence of alleged incident.

13] In the instant case, the learned APP vehemently submitted that the conclusion of insanity drawn by the learned trial court is erroneous, illegal and not within the ambit of law. The learned trial Judge did not appreciate the circumstances on record in its proper perspective and committed error in absolving the accused by extending benefit of Section 84 of the IPC in his favour. The learned APP gave much more emphasis on the subsequent conduct of the accused after alleged murder of victim Vasant. According to learned APP, the accused intentionally and knowingly committed gruesome murder of victim Vasant and thereafter, he returned to home with weapon rifle with an motive to commit murder of Sunita wife of Victim Vasant. He did not fire from his rifle at his wife. But, he attempted to kill the wife of victim Vasant only. Therefore, learned APP contends that the accused was not under influence of any mental illness at the time of commission of crime, but he is liable for legal punishment for his act of committing murder of victim Vasant and attempted to kill his wife. The learned APP prayed to allow the appeal and upset the findings of insanity of accused expressed by the learned trial court.

14] Per contra, the learned counsel Shri Suryawanshi, appearing for respondent/original accused strenuously asserted that the evaluation of circumstances on record in this case by the learned trial court, is just, proper and reasonable one. There is no error or illegality in the findings expressed by the learned trial Judge. According to learned counsel, the

accused was suffering from mental disease known as “paranoid schizophrenia”. He was under the medical treatment of PW-3 Dr. Gautam Shah. He had examined the accused on 14.10.1995 and prescribed medicine/tablets for two months for his mental ailment. According to learned counsel Shri Suryawanshi, there was no motive for accused to commit such crime but at the time of occurrence of such incident, he was under the influence of chronic mental illness and he was incapable of knowing the nature of his act. According to learned counsel for accused, there is no error or perversity in the findings of the learned trial court. Therefore, it would be unjust and improper to cause any interference in it at the behest of prosecution. He prayed to dismiss the appeal.

15] It is to be noted that the learned Sessions Judge after appreciation of entire evidence adduced on behalf of prosecution, concluded that the incident of murder of victim Vasant as well as attempt to kill wife of victim Vasant, as alleged by the prosecution had occurred and the accused had fired the cartridges from his .303” rifle at the head, neck and abdomen of victim Vasant which resulted in his death. Moreover, he attempted to kill Sunita wife of Vasant by opening fire from his weapon rifle. All these being findings of facts based upon proper appreciation of evidence, as well as prosecution did not put these findings in controversy, there is no propriety to cause any interference in it by this Court.

16] Now, the crucial issue which is to be pondered over in this case is, as to whether the accused, at the time of alleged incident, was a person of unsound mind within the meaning of Section 84 of IPC. We have examined as to whether the impugned Judgment of acquittal of accused recorded by the learned Sessions Judge suffers from any legal infirmity or same is based upon erroneous appreciation of evidence. The intense scrutiny of the oral and circumstantial evidence adduced on record as well as factual scenario of the matter in hand, reflects that there is no error or perversity in the findings of insanity of the accused expressed by the learned trial Court for extending benefit of Section 84 of IPC in his favour.

17] It is not in dispute that, the accused was employed as a Constable in S.R.P.F. Dhule and at the relevant time of incident he was deputed as a Guard at Tent No.4, Group No. VI, S.R.P.F. Campus located in Mehendale Village, Dhule. It is also an admitted fact that, the weapon .303" Rifle No. 734 was allocated to the accused for discharging of his official duty as guard in the S.R.P.F. Campus.

18] In order to ascertain insanity of the accused at the relevant time of incident, the evidence of PW-3 Dr. Gautam Bansilal Shah, Psychiatrist and Lecturer at Government Medical College, Dhule, is available on record. Obviously, the evidence of PW-3 Dr. Gautam Shah, Psychiatrist appears significant to ascertain the mental illness of the accused at the relevant time. PW-3 Dr. Gautam Shah deposed that, accused Balkrishna @ Balu

Gangadhar Chavan was referred to him for medical check-up by officers of S.R.P.F. on 11-07-1995 and after clinical examination, he found that the accused Balkrishna @ Balu was the patient of chronic mental disease known as "Paranoid Schizophrenia". He provided medical treatment and also issued certificate that, accused Balu was not fit to perform his duty for the period from 11-07-1995 till 26-09-1995. According to PW-3 Dr. Gautam Shah, on 26-09-1995, he once again examined accused Balu and at that time he found him to be normal, and therefore, he allowed accused Balu to resume duty by issuing certificate of fitness. But, on 14-10-1995, accused Balu was again brought to him and after clinical examination, he prescribed some medicines/ tablets to the accused for a period of two months for his mental disease. PW-3 Dr. Gautam Shah also received an opportunity to see accused Balu on 07-11-1995, at that time he was found normal, but, he was advised to continue medical treatment as prescribed by him for a period of two months. Thereafter, PW-3 Dr. Gautam Shah had no occasion to examine the accused for his mental disease.

19] It can not be ignored that, in this case, PW-3 Dr. Gautam Shah was examined on behalf of the prosecution. Moreover, it is also essential to appreciate that, PW-3 Dr. Gautam Shah had examined the accused clinically on 07-11-1995 and at that time he was found normal. However, PW-3 Dr. Gautam Shah advised accused Balu to continue medical treatment prescribed by him for further period of two months. Thereafter, he had no occasion to see the accused. It is to be noted that, after medical check up by PW-3 Dr.

Gautam Shah on 07-11-1995, after about two months i.e. on 16-01-1996, the present incident occurred, resulting into death of victim Vasant. The circumstances impelled us to draw inference that the present incident of committing murder of victim Vasant on the part of accused, was occurred during the period when the accused was under medical treatment of Dr. Gautam Shah for his mental ailment. In the cross-examination also, PW-3 Dr. Gautam Shah conceded that as the accused Balkirshna @ Balu was under his treatment, he can say that, accused Balu was not fully recovered from the mental illness. The medical expert Dr. Gautam Shah further made it clear that the attack of mental illness of "Paranoid Schizophrenia" can come at any point of time to the patient.

20] In addition to the medical evidence of PW-3 Dr. Gautam Shah, it would essential to take into consideration the evidence of star witness of the prosecution, PW-5 Sunita wife of victim Vasant. It has been alleged on behalf of prosecution that, the accused had attempted to kill PW-5 Sunita by opening fire from his rifle at the relevant time. PW-5 Sunita in her cross-examination clearly conceded that the accused Balu was suffering from mental ailment. She has further admitted that, on the day of incident i.e. on 16-01-1996, in the morning at about 11.00 a.m., the wife of accused Balu came to her and disclosed that, her husband was not keeping good health and he was behaving in abnormal manner. She further asked PW-5 Sunita to sent message through telegraph to brother of accused Balu about his physical plight. PW-5 Sunita asked her husband victim Vasant to send a telegram to

the brother of accused Balu and convey about physical plight of the accused to him. It has brought in the evidence of PW-5 Sunita that on the day of incident at about 3.00 p.m. Sangita - wife of accused Balu informed her that bicycle of accused Balu was missing / stolen, and therefore, her husband victim Vasant accompanied with accused Balu went out of the house to trace out the missing bicycle, and thereafter, the alleged incident of murder of victim Vasant occurred. After the alleged incident accused Balu alone return to home at about 4.00 to 4.30 p.m. at auto-rickshaw with weapon rifle.

21] While examining the findings expressed by the learned trial Court, we came across with some circumstances referred in para No. 11 of the impugned Judgment, which are reproduced are as under :-

“11. 3rd J.M.F.C. Dhule, registered the case as Regular Criminal Case No. 63 of 1996. However, finding the case exclusively triable by the Court of Sessions, the learned J.M.F.C. committed the case for Sessions trial vide his order dated 21-06-1996. However, before the committal of the case, Superintendent of District Prison, Dhule, communicated to 3rd J.M.F.C. Dhule, vide his letter dated 17-06-1996 that as accused Balu was behaving abnormally like a lunatic he was sent to Civil Surgeon, Dhule, for examination. The Civil Surgeon, upon examination of the accused found that accused Balu was lunatic at that time. The Civil Surgeon also passed a certificate to that effect. Therefore, the Superintendent by forwarding the certificate from Civil Surgeon, requested the 3rd J.M.F.C. Dhule, for

passing necessary orders. The certificate issued by Civil Surgeon, Dhule, dated 16-04-1996 filed in the court, shows that the Civil Surgeon has found accused Balu as lunatic. It was however, certified that the accused Balu was in good health and was fit to travel from Dhule to N.M. Mental Hospital, Thane. From the record it appears that on 26-11-1996 the 2nd Addl. Sessions Judge, Dhule, to whom the case was transferred upon committal sent the letter to N.M.Mental Hospital, Tahne, asking for accommodation of accused Balu there at. The hospital sent a letter to the Court dated 05-12-1996 communicating thereby the accommodation is available. However, clarified that a reception order from the Magistrate is necessary for admitting the accused to the hospital. Accordingly the learned 2nd Addl. Sessions Judge, himself passed reception order on 05-12-1996 and directed that the accused be sent to N.M.Mental Hospital, Thane. Accordingly, the Superintendent of District Prison, sent the accused Balu to the N.M.Mental Hospital, at Thane. On 23-06-1996 the Court received a special report from the Institute of Mental Hospital, Thane whereby it was reported that accused Balu was not fit for trial. The said report is at Exh.6. The report is dated 10-06-1997. However, in the very same report it was reported that accused Balu was at that time capable of making his defence. But again it was reported that the said opinion was formed on the grounds viz., vacant look, no insight, irrelevant and unmanageable. Thus the report itself was contradictory. In the mean time it appears that accused was returned to District Prison, Dhule. The

case was transferred to the Court of learned Sessions Judge, Dhule. An application for releasing the accused on bail was rejected by the learned Sessions Judge, in Criminal Bail Application No. 416 of 1997 on 20-11-1997. (The photo copy of the order is attached in the record). Thereafter the case was transferred to the present court. The case came for hearing before me on 25-11-1997 for the first time. Upon going through the report Exh.6 I found that the report is not only ambiguous but is containing contradictory statement as detailed supra. Therefore, I passed the order below Exh.1 on the same day. By that order I directed Superintendent of District Jail, Dhule, for seeking clarification on the ambiguity from the Institute of Mental Hospital, Thane. The Superintendent vide his reply at Exh.9 dated 28-11-1997 communicated that the Mental Hospital, Thane had clarified that accused Balu has now become mentally sound and fit for trial vide telegraphical reply dated 8-9-1997. The Superintendent also communicated that a confirmation letter was received to him on 16-09-1997. The Superintendent also sent attested photo copies of the case papers and the telegram to this court, received him from Mental Hospital, Thane. Both the papers showed that accused Balkrushna was conscious, clear and tidy, coherent in talk and also narrated the details of the allegations against him to the psychiatrist at Thane and, therefore, it was clearly certified by the Medical Superintendent that the accused is fit for trial. Under such circumstances I fixed the case for framing of the charge on 20-12-1997. However, on 17-12-1997 the court received a

letter from District Prison, Dhule, at Exh.10 dated 16-12-1997. By that letter the Superintendent has communicated that accused Balu again started behaving like a lunatic. The Superintendent also enclosed a report from the Medical Officer of the District Jail. The report of Medical Officer is to the effect that the behaviour of the accused was abnormal and was behaving like a lunatic. As the case was fixed on 20-12-1997 again the accused was to be brought before me on that day, I directed that the letter from Superintendent be placed before me on 20-12-1997 for further orders. Accordingly, on 20-12-1997 accused Balu was produced before me by the Superintendent of District Jail. The case was already fixed for framing of charge on that day. However, taking into consideration the fact that accused in the mean time behaved abnormally, before framing of the charge I questioned accused Balu in person. During questioning him, accused told the full name, the name of his wife and also about his job coherently and correctly. Upon further questioning, the accused coherently narrated in brief the allegations made against him giving the rise to the present case. Under such circumstances I recorded my satisfaction that the accused is mentally sound, oriented below the letter at Exh.10 and directed that charge be framed against accused Balkrushna.”

22] The cumulative assessment of the aforesaid circumstances available on record categorically demonstrate that, the accused Balkirshna @ Balu was the patient of chronic mental disease known as “Paranoid

Schizophrenia”. He was under medical treatment of PW-3 Dr. Gautam Shah since prior to the alleged incident. As per the version of medical expert, he was not fully recovered from the mental ailment during the relevant period. It also reflects from the record that, on the day of incident since morning, the accused was under the influence of mental illness “Paranoid Schizophrenia”. He was behaving in abnormal manner. Message was given to his brother about the physical condition of accused Balu. Moreover, on that day, the accused lost his bicycle and he alongwith victim Vasant, both had gone out of the house in search of missing bicycle. It has also brought on record that on the day of incident i.e. on 16-01-1996 the accused Balu was taken to Hospital of the PW-3 Dr. Gautam Shah for medical check up, but, unfortunately, Dr. Gautam Shah was not found available and he had gone out of station, therefore, there was not medical treatment received to the accused to recover from mental disease on the day of incident. According to Medical Expert PW-3 Dr. Gautam Shah, the attack of “Paranoid Schizophrenia” may occur within a moment upon delusion into the mind of the patient. In these circumstances, there is no any alternative but to draw the inference that, at the time of actual occurrence of incident of assault on victim Vasant by opening fire from the weapon .303” Rifle, the accused was under the influence of attack of mental disease “Paranoid Schizophrenia”. He was not capable to know the gravity and consequences of his act. Therefore, there is no impediment to arrive at the conclusion that the accused was the person of unsound mind within the meaning of Section 84 of the IPC that he committed the crime under the influence of insanity. As

referred supra, the state of mind of accused before and after crucial period of alleged incident is relevant and in view of attending circumstances on record referred supra, we have no hesitation to conclude that at the time of incident, accused was suffering from "Paranoid Schizophrenia" and he committed the crime under the influence of attack of said mental illness, and therefore, he is entitled to the benefit of Section 84 of the IPC.

23] It is also imperative to take into consideration that, there was no strong motive for the appellant-accused to kill the victim Vasant. The prosecution made abortive attempt to bring on record the motive of crime that, victim Vasant was insisting for refund of Rs.20,000/- given to one Dattatraya - brother-in-law of the accused. The persistent demand of Rs.20,000/- to the brother-in-law of accused resulted into heart-attack of maternal uncle of the accused. These circumstances created sour feeling in the mind of accused Balu, and therefore, he committed the gruesome murder of victim Vasant on the day of incident.

24] In view of factual aspect mentioned above, we find the aforesaid motive on the part of accused Balu to kill victim Vasant, propounded on behalf of prosecution appears very weak and slender in nature. These circumstances buttress the possibility of killing victim Vasant by the accused Balu under the attack of mental illness of disease - "Paranoid Schizophrenia".

25] It is to be noted that, the alleged incident occurred in a broad day light. There was no attempt on the part of accused to hide or run away from the scene of occurrence. After the alleged incident, the accused returned to home alone in a auto-rickshaw with weapon .303” Rifle in his hand. PW-5 Sunita and other women folk noticed aggressive and violent behaviour of the accused, and therefore, they made enquiry with the accused about the whereabouts of victim Vasant. But, instead of giving reply, he pointed out weapon .303” Rifle towards the women folk and threatened to kill them. Thereafter, on hearing commotion, denizens thronged at the spot and they overpowered the accused to snatch away weapon rifle from his hand. The neighbourers locked the accused in the room of his residence. The witness PW-7 Ahirrao, passed on information about the incident to his superior of SRPF, Dhule. He was one of the Police Personnel of S.R.P.F. He produced the weapon .303” Rifle as well as ammunition recovered from the custody of accused in presence of office personnel of S.R.P.F. These circumstances fortify the fact of mental illness of accused Balu at the relevant time.

26] In the result, we are of the opinion that, the accused Balu is entitled to the benefit of Section 84 of IPC in this case. He cannot be convicted for the offence punishable under Sections 302 and 307 of the IPC as well as Section 27 of the Arms Act, for the offence of murder of victim Vasant and attempt to kill Sunita as well as possessing lethal weapon Rifle, etc., even after prosecution succeeded to bring home guilt of the accused

for the alleged crime. Therefore, we do not find any error or perversity in the impugned Judgment and Order passed by the learned Sessions Judge, Dhule. We are not inclined to interfere in the impugned Judgment and Order of acquittal of the accused recorded by the learned trial Court. In contrast, the findings in regard to benefit of Section 84 of the IPC to the accused is required to be made confirmed and absolute. Therefore, the appeal being devoid of merit deserves to be dismissed.

In sequel, the appeal stands dismissed. Respondent-accused is already enlarged on bail. His bail bonds stand cancelled.

[K.K.SONAWANE]
JUDGE

[S.S. SHINDE]
JUDGE

grt/-