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

CRIMINAL APPEAL NO. 173 OF 2001

Santosh s/o Shridharrao Bhatambrekar
Age 32 years, Occ. Contractorship,
R/o Indira Nagar,
District Latur

... **APPELLANT**

VERSUS

The State of Maharashtra
(Copy served through A.P.P.,
High Court of Bombay,
Bench at Aurangabad

... **RESPONDENT**

Shri N.S. Ghanekar, Advocate for appellant
Shri S.J. Salgare, A.P.P. for respondent/ State

**CORAM : T.V. NALAWADE &
SUNIL K. KOTWAL, JJ.**

Date of reserving judgment : 2nd August, 2017.

Date of pronouncing judgment : 6th September, 2017.

JUDGMENT : (PER SUNIL K. KOTWAL, J.)

1. The appellant/ accused has directed this appeal against the judgment and order dated 14/3/2001, passed by Additional Sessions Judge, Latur in Sessions Case No.140/1999.

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By the said judgment and order, learned Sessions Judge, convicted the appellant for the offence under Section 302 of the Indian Penal Code. For the offence punishable under Section 302 of the Indian Penal Code, he was sentenced to suffer life imprisonment and to pay fine of Rs.2000/-. Accused was acquitted of the offence punishable under Section 498-A of the I.P.C. Against the order of acquittal, no appeal is preferred by the State.

2. Prosecution case, briefly stated, relates to the death of a woman in her house at the hands of her own husband, claiming the plea of insanity under Section 84 of the Indian Penal Code (in short, the I.P.C.). After marriage of accused with the deceased Surekha on 11/12/1998, she used to reside at Latur with the accused who was a diploma holder in Civil Engineering, along with his unmarried sisters namely Vanita Bhatambrekar and Anita Bhatambrekar. Deceased Surekha was M.B.B.S. Degree holder Doctor and she used to work as Medical Officer at Pangri, Taluka Barshi, District Solapur, and used to commute daily from Pangri to Latur. Whenever Surekha had visited to her parental house at Shivajinagar Uplai Road, Taluka Barshi, she used to inform her parents that accused was demanding amount of Rs.1 Lakh for his contract business and on

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that count she was subjected to mental harassment. On 19/6/1999, at night, Surekha and accused slept together in their bedroom and on next day morning i.e. on 20/6/1999, Surekha was found dead. Initially, she was taken to private hospitals by accused No.1 and his sister and at last, to Civil Hospital, Latur. Medical Officer, Civil Hospital, Latur declared Surekha dead. Inquest panchanama (Exh.38) was drawn and when her dead body was referred to post mortem examination to Dr. Kalpana Barmade (P.W.2), by submitting post mortem notes (Exh.29), she opined that Surekha died due to asphyxia due to throttling. On the same day, Shri Balkrishna Digambar Deshpande (P.W.1), who is father of the deceased, lodged F.I.R. (Exh.15) against the accused. Crime No.93/1999 was registered under Sections 302 and 498-A of the Indian Penal Code against the accused. During the course of investigation, spot panchanama (Exh.34) was drawn by P.S.I. Shankar Mali (P.W.8) and blood stained pillow cover, lungi, shawl and one bed sheet came to be seized from the bed room of the accused. After completion of investigation, charge sheet was submitted in the Court of Judicial Magistrate, First Class, Latur against the accused for the offence punishable under Sections 302, 498-A of the Indian Penal Code.

3. Offence punishable under Section 302 of the I.P.C.

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being exclusively triable by Court of Sessions, this case was committed to Sessions Court, Latur.

4. Charge (Exh.1) was framed against the accused for the offence punishable under Sections 302, 498-A of the I.P.C. Accused pleaded not guilty and claimed trial.

5. Accused raised the defence of insanity under Section 84 of the I.P.C.

6. Prosecution examined total 8 prosecution witnesses. Even defence has examined 4 defence witnesses. After considering the oral and documentary evidence placed on record by both the parties, the learned trial Court pleased to convict the accused only under Section 302 of the I.P.C. He was acquitted of the offence punishable under Section 498-A of the I.P.C. Therefore this appeal arises.

7. Heard Shri N.S. Ghanekar, Advocate for the appellant and Shri S.J. Salgare, A.P.P. for the State. The one and only contention projected by learned counsel for the appellant/accused is that, at the time of alleged incident, the accused was suffering from 'paranoid schizophrenia' and hence, is entitled to

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the benefit of exception under Section 84 of the I.P.C.

8. Before considering the above issue, we have to first examine whether prosecution has established that accused caused homicidal death of the deceased. In fact, during the course of arguments, learned Advocate for the appellant has fairly conceded that, homicidal death of the deceased at the hands of accused is not disputed. Otherwise also, by examining Vanita Bhatambrekar (P.W.7), who is sister of the accused, prosecution has proved that on 19/6/1999, at night hours, accused, deceased Surekha, Vanita Bhatambrekar, her sister Anita Bhatambrekar had dinned together at their house at Latur. After watching the T.V. programme for some time, accused and Surekha went to their bedroom which was adjacent to the TV room. Sisters of the accused watched the TV up to 12.00 to 12.30 a.m. and thereafter they slept in the TV room itself. In the morning, Vanita (P.W.7) woke up at about 4.30 to 5.00 a.m. and she saw that accused and Anita were talking with each other in the passage of house. Accused told Vanita (P.W.7) that Surekha had become unconscious. Thereafter, by autorickshaw accused and his sisters took Surekha initially to private hospitals and at last, to Civil Hospital, Latur, where she was declared "dead". Police Station, Latur was informed and, therefore, A.S.I.

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Patil rushed to the Civil Hospital, Latur and prepared inquest panchanama (Exh.38). The dead body was referred for post mortem examination. Dr. Kalpana (P.W.2) performed autopsy examination of the dead body on 20/6/1999 in between 2.30 p.m. to 4.30 p.m. From the testimony of Dr. Kalpana (P.W.2), it emerges that, she found: (1) abrasion with contusion on right side of the neck, 3 cm. below mandibular margin, lateral to the thyroid cartilage of size 1 x 0.5 cm.; (2) subcutaneous haemorrhage underneath above injury, lateral to thyroid cartilage. She also noticed bleeding through the oral cavity. On internal examination, Dr. Kalpana (P.W.2) found that, all neck veins engorged with cyanotic blood, trachea, larynx mucosa were congested and there was submucosal haemorrhage in the larynx. The brain was congested and the veins were engorged. Dr. Kalpana (P.W.2) opined that the cause of death of deceased Surekha was asphyxia due to throttling.

9. Dr. Kalpana was subjected to lengthy cross-examination. In her cross-examination, the defence has brought on record that, in case of throttling by hand, the marks of finger violence are visible on both sides of the neck and there would be finger marks of assault on the right and left side of neck of the victim. However, this admission does not affect the

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version of Dr. Kalpana (P.W.2) for the simple reason that, in examination-in-chief itself, medical officer has pointed out external injuries and corresponding internal injuries on the neck of deceased. It has been tried to bring on record that, in case of throttling, if force is applied, there would be fracture of hyoid bones. In the case at hand, no fracture of hyoid bone is noticed. However, fracture of hyoid bone is not condition precedent for causing death by throttling. These are all probabilities in case of throttling with force. It is not must that in every case of throttling such signs must appear. On the other hand, while in the case at hand, accused and deceased slept together in bedroom and when in the next day morning deceased was found dead due to throttling and when no explanation is coming forth from accused, under Section 106 of the Evidence Act, only one conclusion can be drawn that accused caused homicidal death of deceased by throttling. Therefore, otherwise also, prosecution has established beyond reasonable doubt that, in between 19/6/1999 and 20/6/1999 at night hours, accused caused homicidal death of deceased by throttling her. The above circumstances are also sufficient to hold that the homicidal death of Surekha was caused by accused with intention to kill the deceased. Though evidence placed on record by prosecution regarding motive behind the murder of deceased is weak, in

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view of above discussed clinching circumstantial evidence available on record, the lack of proof and motive does not affect the result of the prosecution case.

10. The one and only contention projected by learned counsel for the appellant/ accused is that, at the time of incident, the accused was suffering from paranoid schizophrenia and hence, he is entitled to the benefit of exception under Section 84 of the I.P.C. Shri Ghanekar, Advocate for the appellant has placed reliance on the evidence of defence witnesses. Dr. Laxmikant Shende (D.W.1), Dr. Satish Maniyar (D.W.2), Dr. Ivan Nefto (D.W.3) and Dr. Liyakat Mujawar (D.W.4).

11. Since the appellant has raised the plea of insanity, seeking protection under Section 84 of the I.P.C., it is useful to refer the same :

"Section 84 I.P.C.: 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."

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12. The above Section makes it clear that a person, who at the time of doing the act, by reason of unsoundness of mind, commits anything, he is permitted to claim the above exception. In other words, insanity or unsoundness of mind are the stages when a person is incapable of knowing the nature of the act or unable to understand what is wrong or right and must relate to the period in which the offence has been committed.

13. It is also useful to refer Section 105 of the Evidence Act, which reads as under :

"105. Burden of proving that case of accused comes within exceptions:- When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code (45 of 1860), or within any special exception or provision contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances."

14. The burden of proving an offence is always on prosecution and never shifts, however, the existence of circumstances, bringing the case within exception under Section

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84 lies on the accused. Shri Ghanekar, Advocate for the appellant/ accused heavily relied on the decision of Apex Court in **Shrikant Anandrao Bhosale Vs. State of Maharashtra, [(2002) 7 SCC 748]**, where Apex Court considered the similar issue.

15. Learned A.P.P. for the State has placed reliance on **“Dahyabhai Chhaganbhai Thakkar Vs. State of Gujarat”** reported in **[(1964) 7 SCR 361]**. In that case, 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 reasonable doubt in the mind of Court as regards one or more 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 rest upon party to civil proceedings which, in other words, means preponderance of probabilities.

16. The doctrine of burden in the context of the plea of insanity may be stated in the following propositions :

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- (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 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 rests upon a party to civil proceedings.
- (3) 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 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.

17. In **Mariappanan Vs. State of Tamil Nadu** reported in [**2013 CRI.L.J. 334 (S.C.)**] Apex Court ruled that, benefit of plea of insanity under Section 84 of I.P.C. is available only if incapacity of person to understand nature of act exists at the time of commission of offence. Similar view was also expressed by this Court in **Ravindra Govind Gawas Vs. The State of Maharashtra** reported in [**2014 ALL MR (Cri) 299**] and **Tikaram Krishnalal Pandey Vs. The State of Maharashtra** reported in [**2014 ALL MR (Cri) 2326**], relied on by learned Advocate for the appellant.

18. Taking into consideration the above discussed principles of law, now we proceed to examine the evidence placed on record by both parties to ascertain whether accused can rebut the presumption available against him that he was not insane at the time of commission of offence or whether benefit of Section 84 of the I.P.C. can be extended in favour of accused person considering his state of mind at the time of commission of offence.

A reference made from Modi's Medical Jurisprudence and Toxicology, 22nd Edition, are relevant, which read thus :

19. "What is paranoid schizophrenia, when it starts, what are its characteristics and dangers flowing from this ailment? Paranoid schizophrenia, in the vast majority of cases, starts in the fourth decade and develops insidiously. Suspiciousness is the characteristic symptom of the early stage. Ideas of reference occur, which gradually develop into delusions of persecution. Auditory hallucinations follow, which in the beginning, start as sounds or noises in the ears, but afterwards change into abuses or insults. Delusions are at first indefinite, but gradually they become fixed and definite, to lead the patient to believe that he is persecuted by some unknown person or some superhuman agency. He believes that his food is being poisoned, some noxious gases are blown into his room and people are plotting against him to ruin him. Disturbances of general sensation given rise to hallucinations, which are attributed to the effects of hypnotism, electricity, wireless telegraphy or atomic agencies. The patient gets very irritated and excited owing to these painful and disagreeable hallucinations and delusions. Since so many people are against him and are interested in his ruin, he comes to believe that he must be a very important man. The nature of delusions thus may change from persecutory to the grandiose type. He

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entertains delusions of grandeur, power and wealth, and generally conducts himself in a haughty and overbearing manner. The patient usually retains his memory and orientation and does not show signs of insanity, until the conversation is directed to the particular type of delusion from which he is suffering. When delusions affect his behaviour, he is often a source of danger to himself and to others. (*Modi's Medical Jurisprudence and Toxicology, 22nd Edn.*)

Further, according to Modi, the cause of schizophrenia is still not known but heredity plays a part. The irritation and excitement are effects of illness. On delusion affecting the behaviour of a patient, he is a source of danger to himself and to others."

20. Though defence has heavily relied on evidence of Dr. Laxman Shende (D.W.1). After going through his evidence, it emerges that, the appellant was under his observation for the period from 26/6/1999 to 9/7/1999 at Civil Hospital, Latur. According to this Medical Officer, during that period, appellant was suffering from major depression with psychiatric features. However, from his cross-examination, it also emerges that, mere mental depression does not amount to abnormality and if an

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illegal act is committed by sane person, there is possibility of his affecting the mental balance. He has also admitted that, because of commission of such illegal act, the person may become guilty conscious and such person may talk low tone because of guilty mind. From the evidence of this witness, it emerges that, the appellant was examined by this Medical Officer on 29/9/1999 and that time also, the symptoms found at the time of admission of the patient in Civil Ward were noticed. However, the condition of appellant after six days from the date of occurrence is not sufficient to hold that, at the time of commission of the offence the appellant was under the fit of paranoid schizophrenia. Similarly, the evidence of Dr. Satish Maniyar (D.W.2) is of no help to the prosecution to bring the case within ambit of Section 84 of the Evidence Act, because this Medical Officer, who is not Psychiatrist, had only examined and observed the behaviour of appellant in the month of September 1998 i.e. much prior to the occurrence of the incident. This Medical Officer also opined regarding psychiatric depression of the appellant and it cannot be equated with paranoid schizophrenia. Similarly, the evidence of Dr. Ivan Nefto (D.W.3) relates with condition of the appellant in Mental Hospital, Yerwada on 3/7/1999 to 27/11/1999 when the accused was discharged. His diagnosis was also restricted with the ailment of

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appellant as major depression with psychiatric features. In his cross-examination, he has also made it clear that, he cannot tell about the mental condition of appellant prior to 31/7/1999. Even evidence of Dr. Liyakat Mujawar (D.W.4) is of no help to the defence to prove the mental condition of appellant at the relevant time of commission of the offence because he has also admitted in his cross-examination that he cannot tell about the mental condition of appellant at the time of commission of alleged crime. Thus, after careful examination of the evidence of all defence witnesses who are expert in medical science, it becomes clear that their evidence is not related with the mental condition of the appellant/ accused at the relevant time of the commission of the offence. Even these Medical Officers have not expressed any opinion regarding mental condition of the accused either preceding the commission of offence or immediately after commission of the offence. Therefore, evidence placed on record by defence is of no help to hold that at the time of commission of the offence, the accused was incapable of understanding anything about his act due to the attack of paranoid schizophrenia.

21. Even the first remand report of the accused before Judicial Magistrate, First Class, Latur does not show that his

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behaviour was abnormal immediately after his arrest when he was produced before the Court. On the other hand, when on 21/6/1999, after arrest of the accused, he was produced before Chief Judicial Magistrate, Latur, he had properly answered the questions put up by Chief Judicial Magistrate, Latur regarding any ill-treatment to him. On that date, police custody of the accused was granted till 25/6/1999. On 21/6/1999 itself accused engaged an Advocate and on 25/6/1999, father of the accused filed application (Exh.9) before Chief Judicial Magistrate, Latur, requesting him to refer the accused to medical expert i.e. Psychiatrist for proper medication. Considering that request, the accused was referred to Civil Hospital, Latur. The certificate issued by Vivekanand Hospital, Latur, annexed with application of father of the accused shows that, in the past, in between 9.9.1998 to 10.9.1998, accused was treated only for ailment of 'depression' and not for paranoid schizophrenia. In the order passed by Chief Judicial Magistrate, Latur on subsequent remand report dated 25/6/1999, the learned Magistrate nowhere mentioned any violent behaviour or abnormal behaviour of the accused. This material on record is sufficient to hold that, even after arrest of the accused on the date of incident, his behaviour was normal.

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22. Regarding medical history of accused and his conduct on 19/6/1999 at night hours, the evidence of Vanita Bhatambrekar (P.W.7), who is sister of accused, is most important. From her evidence, it emerges that, on 19/6/1999, at night hours, accused, deceased and other family members including Vanita Bhatambrekar (P.W.7) had their dinners at their residence and all of them watched T.V. programme for some time. Thereafter, accused and deceased went to their bedroom. It means that, before going to bedroom, the overall conduct of the accused was absolutely normal. From the evidence of Vanita Bhatambrekar (P.W.7), it further emerges that, on 20/6/1999 at about 4.30 to 5.00 a.m., when she woke up, she saw that, accused and her sister Anita were talking together in the passage. That time, accused told Vanita Bhatambrekar (P.W.7) that Surekha had become unconscious and was not talking. Thereafter, accused himself brought autorickshaw and along with his sisters, took the deceased initially to private hospitals and at last, to Civil Hospital, Latur where the deceased was declared as dead. This series of events, which occurred immediately after the death of deceased, clearly indicates that, even after the commission of the offence, accused was absolutely normal. Vanita Bhatambrekar (P.W.7) nowhere deposed in her evidence that in the past at any time accused became violent or he

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attacked any family member. Thus, from the testimony of Vanita Bhatambrekar (P.W.7), it can be gathered that, as per medical history of the accused, though he was treated for mental depression at Vivekanand Hospital, Latur and though once he tried to commit suicide, he never became violent. No signs of paranoid schizophrenia were visible prior to the occurrence of the incident, as reflected from the testimony of Vanita Bhatambrekar (P.W.7) and even from the testimony of Dr. S.R. Maniyar (D.W.2), who treated the accused on 9/9/1998 at Vivekanand Hospital, Latur, after his attempt to commit suicide. For the depression resulting into attempt to commit suicide, there might be various reasons such as failure in business of contractorship etc. Therefore, only because accused was under depression and he attempted to commit suicide, inference cannot be drawn that he was the patient of paranoid schizophrenia. Thus, the past medical history of the accused does not show that he was the diagnosed patient of paranoid schizophrenia or at any time he became violent or he was dangerous for his family members.

23. As observed above, even after commission of the offence, the conduct of the accused was absolutely normal. He cannot take benefit of the factor that he did not try to run away.

In view of law laid settled by Apex Court in **Elavarasan Vs. State** reported in **(AIR 2011 SC 2816)**, conduct of accused of not fleeing from spot would not in itself show that person concerned was insane at the time of commission of offence.

24. Therefore, considering past medical history of accused, his conduct preceding the occurrence of the incident and conduct post-occurrence of the incident, we are fully satisfied that at the relevant time of the commission of the offence, accused was not under the attack of paranoid schizophrenia or any other mental ailment. It is well settled by Apex Court in *Mariappan Vs. State of Tamil Nadu* (cited supra) that the crucial point of time, at which unsoundness of the mind could be established, is the time when the crime is actually committed and the burden of proving this lies on the accused/appellant. However, in the case at hand, defence miserably failed to prove that at the time of commission of offence, by the reason of unsoundness of mind, accused was incapable of knowing the nature of the act or unable to understand what is wrong or right. Even the appellant could not bring on record such slightest possibility. Therefore, appellant failed to bring this case within fourcorners of Section 84 of the Indian Penal Code to claim acquittal.

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25. In the result, we have come to the conclusion that prosecution has proved beyond reasonable doubt that, on the date and time of the incident, accused caused homicidal death of deceased Surekha with requisite intention and thereby committed offence punishable under Section 302 of the Indian Penal Code. The conviction recorded by trial Court and the sentence imposed by the trial Court is absolutely correct and needs no interference. This Criminal Appeal being devoid of merits, deserves to be dismissed. Hence the following order :

ORDER

- (i) Criminal Appeal No.173/2001 stands dismissed.
- (ii) Accused/ appellant shall surrender to his bail bonds before the trial Court immediately to undergo the sentence.

(SUNIL K. KOTWAL)
JUDGE

(T.V. NALAWADE)
JUDGE

fmp/