

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 279 OF 2010

Sudhir Dattatraya Sasane,
Age : 34 years, Occupation : Nil,
R/o. 'Kalamba Jail' Kolhapur,
Dist- Kolhapur.
(At present detained in Kalamba
Jail, at Kolhapur.

.. Appellant.

V/s.

State of Maharashtra.

.. Respondent.

Mr. Prosper D'Souza, advocate appointed for appellant.

Ms. P.P. Shinde, APP for State.

**CORAM : SMT. SADHANA S. JADHAV &
N.W. SAMBRE, JJ.**

DATE : JANUARY 6, 2018.

JUDGMENT :(PER SMT. SADHANA S. JADHAV, J)

1 The appellant herein is convicted for offence punishable under section 302 of the Indian Penal Code by the Sessions Court at Satara in Sessions Case No. 47 of 2006 vide Judgment and Order dated 30/10/2009. The appellant is sentenced to suffer imprisonment for life and to pay fine of Rs. 1000/- I.d. R.I. for one year. The appellant is also

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convicted for the offence punishable under section 309 of the Indian Penal Code and sentenced to suffer S.I. for the period of one year. He is also convicted for the offence punishable under section 316 of the Indian Penal Code and directed to suffer R.I. for period of 10 years and to pay fine of Rs. 500/- I.d. to suffer further R.I. for a period of one year. Being aggrieved by the same, the appellant has filed this appeal.

2 Such of the facts necessary for the decision of this appeal are as follows :

(i) The appellant herein is the resident of village Kavthe. On 6/4/2005, Sarpanch of village Kavthe lodged a report at Bhuinj Police Station informing the police that the wife and son of the present appellant were found dead in his house and that he himself had sustained injuries.

(ii) On the basis of the said report, A.D. No. 8 of 2005 was registered at Bhuinj Police Station. The police had reached the spot and had started investigation.

(iii) The appellant was found injured. Hence, he was sent for medical examination. Whereas, the bodies of his wife Sadhana and son Siddharth were sent for post mortem to Primary Health Center, Kavthe. Inquest panchanama was conducted on the dead body which are marked as Exh. 24 and 25 respectively.

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(iv) On the same day i.e. on 6/4/2005 the brother of deceased Sadhana namely Vishal Nanavare lodged a report at the police station alleging therein that his sister Sadhana was married to the appellant, 3 years prior to the incident. She was residing with her husband. That the accused was a tailor by profession.

(v) After 5 months of the marriage, the accused had suspected character of his wife Sadhana mainly on the ground that since her elder sister Shubhangi had performed a love marriage, in all probabilities Sadhana also must be having some love affair. Sadhana disclosed to her sister Shubhangi the same. She had narrated the atrocities meted out to her at the hands of her husband whenever, she visited her maternal house. Sidharth was about 1 and half years of age at the time of incident. The first informant had also disclosed that at the time of incident she was carrying pregnancy of 8 months.

(vi) The first informant has further disclosed in the report that he was aware of the fact that Sadhana was taken to Someshwar temple by her husband and was made to take oath to prove her chastity. The parents of the first informant had also facilitated space for tailoring shop of the accused at Kudal. However, he was not interested in working there. The accused had raised loan from different banks but could not pay the installments. He was therefore, frustrated and had demanded money from the informant and his parents. He had shown signs of

abnormality just 6 months prior to the incident. The accused had shut down his shop at Kudal and had started residing at Kavthe.

(vii) The first informant has further stated in his report that since Sadhana was on the verge of delivering child, she had requested her mother to stay with her. Hence, on 5/4/2005, the first informant alongwith his mother had been to the house of the accused. At that time, upon enquiry, Sadhana had disclosed that the accused had stopped suspecting her chastity and showed compassion towards her. Hence, the first informant had left the house. Even on that day, the accused had informed Sadhana and others that he would strike her only once and had also further cautioned his wife to see if she could bear the strike.

(viii) On 6/4/2005 the first informant had learnt through Kondiram Shevate about the demise of Sadhana. He alongwith his friends, parents and relatives had been to village Kavthe.

(ix) At the scene of offence he learnt that on 6/4/2005, the family of the accused had retired for sleep. In the morning the door was not opened. Santosh Sasane i.e. the brother of the appellant had then attempted to enter the house through roof and had seen that all three i.e. accused, his wife and son Siddharth were lying on the floor. It was apparent that the accused was alive. He had killed his wife Sadhana by assaulting her with iron bar, axe and spade and his child Siddharth by

strangulating with the help of saree and thereafter, had attempted to commit suicide.

(x) On the basis of the report of PW 1 Vishal Nanaware, C.R. No. 48 of 2005 was registered at Bhujj Police Station against the accused for offence punishable under section 302, 309 of the Indian Penal Code. After completion of investigation, charge-sheet was filed on 20/7/2005.

(xi) The case was committed to the Court of Sessions and registered as Sessions Case No. 47 of 2006. The prosecution examined 8 witnesses to bring home the guilt of the accused. The accused examined one defence witness.

3 P.W.1 Vishal Nanaware happens to be the complainant. He has deposed before the court in consonance with the first information report. He further contended that due to weak financial position, the accused had become short tempered and later violent. It is pertinent to note that he has specifically stated that on 5/4/2005 he had been to the house of his sister Sadhana when his sister disclosed that her husband was behaving normally with her and was not assaulting her, caution by her husband was that he would strike her once only and she should see whether she could tolerate the same. He was extremely composed and at that time had given this cool reaction.

4 He had further deposed before the court that having learnt about demise of his sister, he had been to the house of the accused and there he learnt from the brother of the accused that the accused, his wife and child were sleeping in a room in the house. In the morning, door was not opened and therefore, he was constrained to enter into the house by removing tiles on the roof and he had seen that Sadhana was having head injury, whereas Siddharth was lying dead. In all probabilities, his death was due to strangulation and the accused was also lying with injuries on his person. He has proved the contents of the FIR which is then marked as Exh. 23.

5 In the cross-examination, he has resiled from the portion marked "A" in the first information report, wherein he had disclosed that the accused used to behave abnormally and was having illusion that God entered in his person. He has admitted that he had stated so. He has denied the suggestion that the accused was suffering mental illness attacks. Witness has feigned ignorance as to whether the accused was under the treatment of Dr. Amar Patil who happens to be a Psychiatrist, practicing at Satara. He has also feigned ignorance as to whether the investigation had commenced prior to his arrival to the house of the accused after demise of his sister and nephew. As far as relevant aspects

are concerned, the defence could not make any dent in the substantive evidence elicited by the prosecution in the examination in chief.

6 P.W.2 Latif Nadaf is resident of Kudal i.e. maternal house of Sadhana. He has deposed before the court that after marriage accused had visited the house of his wife on the motor cycle. At that relevant time, the accused had enquired with P.W. 2 as to whether Sadhana had any love affair. P.W. 2 has scolded the accused and warned him as he knew Sadhana since her childhood and he had also informed the accused that in fact, he is fortunate to have Sadhana as his wife. He has reiterated that the accused was suspecting chastity of his wife. Nothing significant has been elicited in the cross-examination.

7 P.W. 3 Santosh Sasane happens to be brother of the accused. He was the first one to have noticed the dead bodies lying in the house. He has deposed before the Court that at the time of birth of Siddharth, the accused was under medical treatment of Dr. Amar Patil. He has deposed before the Court that thereafter the accused was fully cured. According to him, on 5/4/2005 at about 9.30 p.m. P.W. 3 alongwith his parents was sleeping in the courtyard of the house. On 6/4/2005 at about 7.30 a.m. his mother had knocked the door of the house but the same was not opened. P.W. 3 had been to answer nature's

call and thereafter, he knocked the door and window of the house. However, there was no response and therefore, he was constrained to climb over the house from rear side. He removed two tiles and entered into the house. To his utter dismay, Sadhana and her son Siddharth were lying dead and accused was lying in an injured condition. He opened the door. He had found the saree tied to the neck of his nephew.

8 According to him, his brother i.e. the accused was making hue and cry and he had sustained cut injuries on both the wrists. One spade, iron bar and wooden stick were lying on the spot. All the articles were stained with blood. He was in such a shock that he fell unconscious. He has candidly stated before the court that after seeing the scene of offence, it was confirmed that his brother is the author of the injuries sustained by Sadhana and that he had killed his son brutally and thereafter, attempted to commit suicide.

9 In the cross-examination, he has stated that the accused was loving his wife. The deceased was also loving her husband. After delivery of Siddharth, accused had started getting attacks of insanity. He used to suffer from sudden burst of insanity. In the fits of insanity, he used to become violent, break photo frames of deities and relatives, tear

clothes on his person. He used to beat the floor by stick. He was taken to Dr. Amar Patil who is a Psychiatrist. The family had repaid the loan by mortgaging house and landed property and they were driven to poverty. The accused used to become violent if the medicines were not administered timely. The accused had stopped taking medicine prior to 3 to 4 months prior to the incident as he was completely cured.

10 P.W.3 has categorically deposed before the court as follows:

“It is not true to say that at the time of the incident the accused was insane.”

The defence has suggested that there were frequent thefts in the locality. The same was admitted by the witness. The witness has not been shattered in the cross-examination.

11 P.W. 4 Dr. Khalil Tamboli is the medical officer who was attached to Primary Medical Health Centre at Ahire. He had performed autopsy on the dead body of Sadhana and Siddharth. He has deposed before the Court that at the time of conducting post motem, it was revealed that Sadhana was carrying pregnancy of 34 to 36 weeks. The dead male baby was weighing 3.1. kg. was extracted. The baby was fully developed. The possibility of the deceased delivering baby at any time

prior to her death, could not have been ruled out. The cause of death is "due to hemorrhagic shock due to severe cranio cerebral injury." He has proved the post mortem notes which is marked at Exh. 27. He has further disclosed that he had also conducted autopsy on the dead body of Siddharth. He found fracture of hyoid bone, fracture of laryngeal cricoid cartilages and two contusions. The post mortem notes of Siddharth are at Exh. 26. The cross-examination is insignificant.

12 P.W. 5 Dr. Suhas Mane, who was medical officer in Civil Hospital at Satara had examined Sudhir i.e. accused/appellant. He had found injuries on the person of the patient such as contused lacerated wound on both the wrists and superficial burns over right scapular region 1%. The age of the injury No. 1 and 2 were more than 6 hours. The injury No. 3 was an old injury. Injury Nos. 1 and 2 are possible due to self-infliction with the help of blade. According to the doctor, the injury Nos. 1 and 2 i.e. on the wrist were possible with the help of Article No.6 i.e. razor blade. The accused was treated as indoor patient from 6/4/2005 to 21/4/2005. P.W.5 has categorically stated as follows :

When I had examined the patient at first on 6.4.2005 at about 10.00 a.m. I did not find any symptom of insanity. The patient himself had given the history about the injuries sustained by him. When the patient was under my medical treatment and when he was the indoor patient, no sign or symptom of

insanity was noticed. The injury certificate is at Exh. 51. For want of medical treatment, the injured could have died due to injury Nos. 1 and 2.

13 In the cross-examination, he has admitted that the patient was also given psychiatric treatment of Dr. A.K. Patil and that Dr. A.K. Patil may be Dr. Amar Patil who was medical officer, Civil Hospital, Satara. He had examined the patient. It is admitted in the cross-examination that in the patient's history it has been mentioned as "known case of Psychiatric illness". The final diagnosis about the patient is "organo phosphorus poisoning anemia due to blood loss schizophrenia. It was suggested as to whether injuries are possible with the help of an axe and the doctor has admitted the same.

14 In the re-examination doctor had admitted that the opinion regarding poisoning and schizophrenia are wrong. "After verifying the case papers regarding the examination by Dr. A.K. Patil no symptom of schizophrenia is mentioned in the noting. The word schizophrenia mentioned in the final diagnosis is not in my hand writing." In the case papers at Exh. 51, it is mentioned as follows :

"known case of psychiatric illness, taking treatment under Dr. Amar Patil. Consumption of insecticide(OPP) exact time not known, no history of convulsion/breathlessness."

Upon perusal of case papers, it does not appear that he was given any psychiatric treatment while in hospital and was taking treatment as a normal patient. The injury certificate is at Exh. 51.

15 P.W. 6 Kollappa Satu Pujari is the first investigating officer. On the basis of the information received by him, he registered A.D. No. 8 of 2005. The investigation had commenced. The inquest panchanama of Sadhana is at Exh. 24. Inquest panchanama of Siddharth is at Exh. 25. There was an enquiry with the accused before he was sent to the hospital.

16 P.W. 7 Sachin Sawant was API attached to Bhuij Police Station at the relevant time. He had reduced the statement of the first informant into FIR, on the basis of which Crime No. 48 of 2005 was registered against the accused under section 302 of the Indian Penal Code. On completion of investigation, he had filed charge-sheet on 8/7/2005. He has denied the suggestion that in the course of investigation, it had transpired that the accused was mentally ill.

17 P.W. 8 Harichandra Maruti Phadtare was also attached to Bhuij Police Station. He had conducted seizure panchanama of the clothes of the accused. The seizure panchanama is at Exh. 65. It is

admitted in the cross-examination that the accused was not present while conducting panchanama and that he was informed that the same was the baniyan of the accused.

18 The accused has examined Dr. Amarsingh Patil as defence witness. D.W. 1 was a psychiatrist attached to Civil Hospital, Satara. He was also running his private OPD at Satara. He has deposed before the court that the accused was treated by him from 6/4/2005 to 21/4/2005 as the patient was referred to him by Dr. Chaugule. The patient Sudhir had disclosed to him that he had auditory hallucinations from two male persons saying that "kill your wife and son". He also had auditory hallucinations which directed him to commit suicide or else the said two unknown person would kill him and therefore, he attempted to commit suicide. The accused had past history of incomplete medical treatment from D.W. 1 for 8 to 10 months. According to the witness, the patient was found unconscious but was giving relevant answers to his question. That the patient was judgment impaired. His behaviour was abnormal. The patient had disclosed to the doctor that the incident had occurred due to a particular state of mind because of the voice he could hear. He had complained about hallucinations from 6/4/2005 to 12/4/2005. The patient was brought to his clinic by his mother on 21/4/2003. His mother had complained that the patient had auditory hallucinations since last 6

months. He was found abusive and violent. D.W.1 had diagnosed the patient with having paranoid schizophrenia. He was given shock treatment. The possibility of relapse of paranoid schizophrenia could not be ruled out.

19 The defence witness has admitted that he had not maintained the register in the prescribed form. It is also admitted that **a person who is medically insane is not necessarily a legally insane person.** What is relevant to be considered in such cases is the conduct and condition immediately prior to the commission of the act, his conduct and the condition at the time of commission of the act and his conduct and condition immediately after the commission of the act. The witness has stated that he had no occasion to assess the conduct and condition of the accused immediately before the commission of the act, at the time of commission of the act or soon thereafter. He had examined the patient lastly on 28/4/2003 and thereafter on 6/4/2005. It is also admitted that he had not enquired with the patient as to why he had killed his wife and son and therefore, there was no occasion for the accused to answer the said question. He was not administered any medicine by the witness. D.W.1 has also admitted that a person may or may not pretend himself to be insane after the commission of a crime so as to save himself.

20 Upon perusal of the evidence adduced by the prosecution, the facts that are established by the prosecution are as follows :

- (i) Both the deceased were in the custody of the accused at the relevant time i.e. in the intervening night of 5/4/2005 and 6/4/2005.
- (ii) That Sadhana and Siddharth had died homicidal death at the hands of the accused.
- (iii) After having caused death of Sadhana and Siddharth, the accused had attempted to commit suicide.
- (iv) The deceased Sadhana was carrying pregnancy of 34 to 36 weeks. There was a possibility that she could have delivered baby at any time. It was a gravid uterus of almost 36 weeks and the foetus was fully grown up.
- (v) That there was no family history of insanity of the accused.
- (vi) The accused was suspecting the chastity of his wife, had harassed her on that count and had gone to the extent of enquiring with the neighbours as to whether she had any love affair.
- (vii) Insanity was first noticed in the year 2003 when Sadhana was carrying her first pregnancy.
- (viii) That he used to quarrel with his wife on that ground.
- (ix) He was given medical treatment.
- (x) There is no history of relapse of the mental illness just

prior to the incident.

(xi) In fact, on 5/4/2005 Sadhana had disclosed to her brother i.e. first informant that she had cordial relations with her husband at the relevant time he was not quarreling with her.

(xii) That the accused had warned his wife signaling therein that he would strike at her only once and she would not be able to bear it. In the same intervening night, the mother and son had met with a tragic and unfortunate death at the hands of the accused.

21 From the facts enumerated above, it can be safely inferred that the accused was not passing through a phase of insanity or relapse of schizophrenia either prior to the incident, at the time of incident or soon after the incident. P.W. 3 brother of the accused has categorically admitted before the Court that his brother was not insane at the time of incident. The reaction given to the first informant on 5/4/2005 further establishes the fact that the accused had pre-meditated the plan of eliminating his wife Sadhana. As on today, there is nothing on record to indicate that the accused was referred to mental hospital just before framing of charge. There is no such observation to that effect. The accused has answered the charge by pleading innocence. The accused has also answered the questions under section 313 of the Code of Criminal Procedure, 1973. It is in these circumstances that it cannot be

believed that only because was judgment impaired two years prior to the incident, he was still passing through the same at the time of incident and therefore, defence of the accused as contemplated under section 84 could be available to the accused. The insanity of the accused at the time of the incident has not been proved.

22 The learned Counsel appointed for the accused has submitted that there is nothing on record to show that he has taken treatment continuously and therefore, was cured. According to the learned defence Counsel, the evidence of Dr. A.K. Patil is sufficient to prove that the accused had not taken treatment completely. He had not taken shock treatment as suggested and therefore, he is entitled to the benefit of the plea of insanity.

23 Upon considering evidence and the rival contentions, it cannot be said that by virtue of unsoundness of mind, the accused could not comprehend the nature of his act or was not judgment impaired and therefore, he had not realised the consequences of the act. The statement of the accused on 5/4/2005 in the presence of the first informant is by itself sufficient to indicate that he was contemplating to eliminate his wife.

24 The Hon'ble Apex Court in the case of **Mariappa v/s State of Tamilnadu reported in 2013(12) SCC 270** has held that in such case section 105 of Indian Evidence Act, 1872 would also be relevant. It is held that -

“Though the burden of proving an offence is always on the prosecution and never shifts, however, the existence of circumstances bringing the case within the exception under Section 84 IPC lies on the accused.”

25 In the case of **Bapu @ Gujraj Singh v/s. State of Rajasthan reported in (2007) 8 SCC 66**, the Hon'ble Apex Court has held as follows :

“Mere abnormality of mind or partial delusion, irresistible impulse or compulsive behaviour of a psychopath affords no protection under section 84 as the law contained in that section is still squarely based on the outdated M'Naughton rules of 19th century England..... Behaviour, antecedent, attendant and subsequent to the event, may be relevant in finding the mental condition of the accused at the time of the event, but not that remote in time.”

26 In view of the above discussion made hereinabove in the facts of the case, it cannot be for a moment said that the accused was legally insane at the time of the incident. Therefore, the finding recorded by the trial court needs to be upheld. The appeal is dismissed. The substantive sentence and the sentence of fine is upheld.

27 The learned Counsel appointed for the appellant has put in best efforts to espouse the cause of the appellant. His professional fees be paid as per rules.

[N.W. SAMBRE, J]

[SMT. SADHANA S. JADHAV, J.]