

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 434 of 2014**

Pintu @ Popat Shivaji Kamble	..	Appellant
Vs.		
The State of Maharashtra Through Kagal Police Station	..	Respondent

....

Ms. Ameeta Kuttikrishnan Advocate appointed for the
Appellant
Mr. Sagar Agarkar A.P.P. for the State

....

**CORAM : SMT.V.K.TAHILRAMANI ACTING C.J.
AND P.N.DESHMUKH, J.
DATED : MAY 07, 2018
SPECIAL VACATION BENCH**

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

1 This appeal is preferred by the appellant-original accused against the judgment and order dated 4.4.2013 passed by the learned Sessions Judge, Kolhapur in Sessions Case No. 32 of 2012. By the said judgment and order, the learned Sessions Judge convicted the appellant under Section 302 of IPC and sentenced him to life imprisonment and fine of Rs. 5000/- i/d R.I. for 4 months.

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

(1) The appellant was married to Trishala. They had two children i.e. daughter Vaishali who was 9 years of age and son Hemant who was 3 years of age at the time of the incident. They were residing at Rajiv Gandhi Vasahat Kagal, Dist. Kolhapur. PW 1 Sarita was the mother of Trishala. The parents of Trishala were residing about 6 kms. away from the house of the appellant and Trishala. The appellant was the son of paternal aunt of the deceased. The house of the appellant consisted of two rooms.

(2) On the day of the incident, PW 3 Sonabai the mother of the appellant was sleeping in the inner room i.e. kitchen and the appellant, his wife Trishala and their son Hemant were sleeping in the front room. At the time of the incident, the daughter of the appellant and Trishala was residing with her maternal grand mother PW 1 Sarita. At about 3 a.m. Sonabai the mother of the appellant heard noise, hence, she woke up. She came to the front room. She saw that Trishala was lying in a pool of blood and there was an axe embedded in the forehead of Trishala. The appellant was sitting near Trishala.

Thereafter some people gathered at the spot. In the meanwhile, police came and took Trishala to the hospital, where she expired. PW 3 Sonabai lodged F.I.R. Thereafter investigation commenced. After completion of investigation, charge sheet came to be filed.

3 Charge came to be framed against the appellant under Section 302 of IPC. The appellant pleaded not guilty to the said charge and claimed to be tried. The defence of the appellant is that of total denial and false implication. 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 APP 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 Trishala with an

axe on the forehead which led to her death.

5 The conviction is mainly based on the evidence of PW 3 Sonabai. The evidence of Sonabai shows that she is the mother of the appellant. Trishala was the wife of the appellant. They had two children. Trishala was the daughter of Sonabai's brother. The house of the appellant consisted of two rooms. She has stated that on the day of the incident, she was sleeping in the inner room i.e. kitchen and the appellant, his wife Trishala and their son Hemant were sleeping in the front room. At the time of the incident, the daughter of the appellant and Trishala was residing with her maternal grandmother PW 1 Sarita. At about 3 a.m. Sonabai the mother of the appellant heard noise, hence, she woke up. She came to the front room. She saw that Trishala was lying in a pool of blood and there was an axe embedded in the forehead of Trishala. The appellant was sitting near Trishala. Thereafter some people gathered at the spot. In the meanwhile, police came and took Trishala to the hospital, where she expired. PW 3 Sonabai lodged F.I.R.

6 Thus, the evidence of PW 3 Sonabai shows that only the appellant, his wife deceased Trishala and their minor son Hemant who was 3 years of age were residing in the house. Sonabai was sleeping in the inner room and in the outer room, only the appellant, his wife Trishala and their minor son Hemant were sleeping. On hearing the noise, Sonabai saw that Trishala was injured and there was an axe embedded in her forehead. Thus, there was no other person who could have assaulted Trishala except the appellant. As stated earlier, the only person residing in the room where the incident occurred were the appellant, his wife Trishala and their minor son Hemant aged 3 years. In such case, Section 106 of the Evidence Act, would come into play. The evidence on record shows that the appellant and the deceased were in the room at the time of the incident. In such case, the accused has to explain how the deceased sustained injuries and died. In this connection, we may refer to Section 106 of the Evidence Act. Section 106 of the Evidence Act provides that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. In several recent decisions, the Supreme Court has held that the principle which underlies

Section 106 of the Evidence Act can be applied in cases where certain facts are especially within the knowledge of a person. In the case of ***State of Rajasthan Vs. Kashi Ram***¹ the Supreme Court has observed that if the accused fails to offer an explanation on the basis of facts within his special knowledge, he fails to discharge the burden cast upon him by Section 106 of the Evidence Act. In a case resting on circumstantial evidence if the accused fails to offer a reasonable explanation in discharge of the burden placed on him, that itself provides an additional link in the chain of circumstances proved against him. Section 106 does not shift the burden of proof in a criminal trial, which is always upon the prosecution. It lays down the rule that when the accused does not throw any light upon facts which are specially within his knowledge and which could not support any theory or hypothesis compatible with his innocence, the Court can consider his failure to adduce any explanation as an additional link which completes the chain. Thus, the sequence of events does not show any possibility of any other person assaulting Trishala and causing her death. The evidence on record leaves no manner of doubt that it was

1 (2006)12 SCC 254 : AIR 2007 SC 144

the appellant alone who had assaulted Trishala with an axe which led to her death.

7 Exhibit 10(C) is the panchnama regarding the seizure of clothes of the appellant. These clothes were blood stained. This panchnama has been admitted under Section 294 of Cr.P.C. These clothes were on the person of the appellant at the time of the incident. These clothes were sent to C.A. The C.A. Report shows that these clothes were stained with blood of "A" group. The blood sample of the deceased was also sent to the C.A. and the C.A. Report shows that her blood group was "A". Thus, finding of blood of the very same group i.e. blood of "A" group on the clothes of the deceased is a very strong incriminating circumstance against the appellant. It is pertinent to note that the appellant has not given any explanation for the finding of blood of "A" group on his clothes.

8 Ms. Kuttikrishnan, the learned advocate for the appellant submitted that no doubt, the evidence on record shows that the appellant assaulted his wife with an axe which led to her death, however, she submitted that this act was

done by the appellant during a bout of insanity. 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 a long time, she has drawn our attention to the evidence of PW 4 Khandu who was the brother of the deceased, which shows that two years prior to the incident, the appellant was taking medical treatment at Ratnagiri in a mental hospital. Khandu has admitted that at the time of the incident, the appellant was not taking any medicines in relation to mental illness. On the other hand, the evidence of PW 3 Sonabai who is the mother of the appellant, shows that the deceased was not allowing the appellant to take tablets due to which, he was annoyed. Sonabai has further stated that since two years prior to the incident the appellant was ill and he was taking treatment in the hospital at Ratnagiri since two years prior to the incident. She has stated that he was admitted there for one month and the deceased was not allowing him to take medicines. On behalf of the appellant, DW 1 Dr. Shirsat has been examined. He was working as a Deputy Supdt. In Regional Mental Hospital at Ratnagiri. He has stated that the

patient by name Popat Kamble was admitted in Regional Mental Hospital Ratnagiri on 26.8.2010. He has identified the appellant as being the very same person who was admitted in the hospital on 26.8.2010. Dr. Shirsat has further stated that Popat Kamble was admitted in the hospital on account of complaint that he attempted to commit suicide. He used to smile to himself, he used to cry or dance and the patient had also tried to harm himself and others. On examining the patient, he found that he was suffering from delusion of persecution and somatic hallucination. He found depressive cogitation. He noted perplex affect of the patient and the patient was diagnosed as patient of schizophrenia. During the time that the patient was admitted in the hospital, special watch was kept on him and he was administered neurotics. On 28.9.2010 the patient was discharged from hospital with medication. Thereafter, from time to time, the patient was brought to the hospital. On 24.8.2011, the patient was last brought to the hospital. He was given medicines of 30 days but thereafter no medicines were given to the patient. Dr. Shirsat stated that if medicines are not taken, the patient would suffer from relapse. Learned A.P.P. submitted that at

the time of the incident, there is nothing to show that the patient was suffering from a bout of insanity. However, as stated earlier, the evidence of brother of the deceased as well as DW 1 Dr. Shirsat shows that the appellant was suffering from mental illness prior to the incident. In fact, the appellant had also tried to commit suicide. The appellant had in fact, been admitted in the mental hospital on 26.8.2010 and he was discharged from the hospital on 28.9.2010 and thereafter, he was constantly under treatment and being given medicines till 24.9.2011. However, thereafter, no medicines were issued to him and Dr. Shirsat has stated that if medicines are not continued, the patient would suffer from a relapse.

9 Looking to the evidence of PW 4 Khandu who is the brother of the deceased and the evidence of DW 1 Dr. Shirsat which shows that the appellant was suffering from mental illness since a long time prior to the incident, the only aspect to be considered is the defence of insanity raised by the learned counsel for the appellant. This defence has not been found favour with the trial Court.

10 The burden to prove that the accused was of unsound

mind and as a result thereof, he was incapable of knowing nature and consequences of his acts is on the accused. Section 84 of IPC is the one of the provisions 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 of IPC lies upon the accused under Section 105 of the 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.”

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 nature and 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.

11 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 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 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

² AIR 1964 SC 1563 = 1964(2) Cr.L.J. 472 = (1964) 7 SCR 361

preponderance of probabilities.

12 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 Section 84 of the IPC; 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, 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.

13 The circumstances that stand proved in this case in relation to the defence of the appellant of lunacy are that:

- (i) the appellant had a history of psychiatric illness,
- (ii) he was admitted in the Government Mental Hospital,
- (iii) his mental illness was to such an extent that he was admitted in hospital.
- (iii) After killing his wife, he made no attempt to hide or run away but he sat there at the spot.

14 In fact PW 1 Sarita has stated that when she went to the house of her daughter after receiving information that the appellant had assaulted her daughter, she found the appellant sitting near her daughter. PW 2 Rohidas has also stated that he received information that the appellant had assaulted his wife with an axe. Therefore, he went to the house of the

³ 2002 Cri.L.J. 536 : AIR 2002 SC 3399

appellant. When he went to the house, he saw that the appellant was sitting next to the body of his wife. PW 4 Khandu who is the brother of the deceased has also stated that after he received information that the appellant had assaulted his sister, he went to the house of the appellant. When he entered in the house, he saw his sister lying on the ground in an injured condition and the appellant was sitting near the body of his sister. Thus, it is seen that the appellant made no attempts at all, to run away.

15 In the present case, however, it is not only the aforesaid facts but it is the totality of the circumstances which have to be taken into account which prove that the appellant was suffering from schizophrenia. The unsoundness of mind even before the incident is a relevant fact. From the circumstances of the case, an inference certainly can be reasonably drawn that the appellant was under a delusion at the relevant time. He was under an attack of the mental ailment. Having regard to the nature of burden on the appellant, we are of the view that the appellant has proved the existence of circumstances as required by Section 105 of the

Evidence Act so as to get benefit of Section 84 of IPC. There is a reasonable doubt that at the time of commission of the crime, the appellant was incapable of knowing the nature of the act or that it was wrong or contrary to law by reason of unsoundness of mind and, thus, he is entitled to the benefit of Section 84 IPC. Hence, the conviction and sentence of the appellant cannot be sustained.

16 For the aforesaid reasons, we set aside the impugned judgment and order in Sessions Case No. 32 of 2012 whereby the appellant came to be convicted and sentence under Section 302 of IPC and allow the appeal. The appellant is acquitted of the offence punishable under Section 302 of IPC. The appellant shall be set at liberty, if not required in any other case.

17 Appeal allowed.

P.N.DESHMUKH, J.

ACTING CHIEF JUSTICE