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

CRIMINAL APPEAL NO. 731 OF 2013

Mohammed Rafiq Shahabuddin Shaikh)
Aged about 41 years, residing at)
Chandresh Mahal, A-wing/301)
Nayanagar Mira Road East)
(present in judicial custody at Kolhapur)
Central Jail)Appellant
(Original Accused)

V/s

The State of Maharashtra)
at the instance of Mira Road)
Police Station) Respondent. -

Mr. Shekhar A Ingawale for the Appellant.

Mrs. M.M. Deshmukh APP for the Respondent-State.

**CORAM: B. R. GAVAI &
SARANG V. KOTWAL, JJ.**

DATE: 29th JUNE, 2018

ORAL JUDGMENT: (Per B.R. Gavai, J.)

1] Being aggrieved by the judgment and order passed by the learned Ad-hoc Additional Sessions Judge-2 Thane, thereby convicting the Appellant for the offence punishable under Section 302 of the

Indian Penal Code, sentencing him to undergo life imprisonment and to pay fine of Rs 5000/- and in default thereof to further undergo rigorous imprisonment for six months, Appellant has approached this Court.

2] The prosecution case, in brief, is thus :

3] Accused was residing in Flat No.301, Kango Estate, Evergreen, 'A' Wing, Pooja Nagar, Naya Nagar, Mira Road (East). The first informant Aayub Shaikh was also residing in the same building. Deceased Devendra Thapa @ Chavan was working as watchman of the Society and on 8/11/2007 the first informant had gone to the house of his brother at Chandresh Mahal building, which is situated in the same complex of Kango Esate, Evergreen. One woman named Husna told the first informant that, the accused was inflicting blows of knife on the person of watchman Devendra Thapa. He therefore rushed to the place of incident, which was in front of the gate of the Society. He had seen that, the accused was inflicting blows of knife on the person of the watchman Devendra Thapa. Accused informed

him that, he had asked the watchman to irrigate plants at his home and since the watchman did not obey his orders, he had assaulted him with knife. The first informant immediately sent message to the police chowki. Police immediately came on the spot. Deceased Devendra Thapa was shifted to the hospital. Initially C.R. No.471/2007 came to be registered for the offence punishable under Section 307 of the Indian Penal Code. After the death of the deceased, the same was converted for the offence punishable under Section 302 of the Indian Penal Code.

4] At the conclusion of the investigation, charge-sheet came to be filed in the Court of learned JMFC. Since the case was exclusively triable by the learned Sessions Judge, it came to be committed to the learned Sessions Judge. Accused pleaded not guilty and claimed to be tried. At the conclusion of the trial, learned Trial Judge passed the order of conviction and sentence, as aforesaid. Being aggrieved thereby, the present appeal.

5] Heard Mr. Ingawale, the learned Counsel for the Appellant and

Mrs. Deshmukh, learned APP for the State.

6] The learned Counsel for the Appellant does not dispute that, the present Appellant has committed the crime. The learned Counsel however submits that the Accused is entitled to the benefit under Section 84 of the Indian Penal Code, which has been erroneously negated by the learned Trial Judge.

7] Since the Appellant does not dispute the fact regarding crime committed by him, it will not be necessary to examine the evidence of eye witnesses. We will only examine the question as to whether the accused is entitled to benefit under Section 84 of the Indian Penal Code or not.

8] It will be relevant to refer to the following observations of the Hon'ble Apex Court in the case of *Shrikant Anandrao Bhosale vs. State of Maharashtra*¹ :

“10. What is paranoid schizophrenia, when it starts,

¹ (2002) 7 SCC 748

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 give 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 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.)”

“11. 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.”

“13. The burden to prove that the appellant was of unsound mind and as a result thereof he was incapable of knowing the consequences of his acts is on the defence. Section 84 IPC is one of the provisions in Chapter IV 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 of the act, or that he is doing what is either wrong or contrary to law. The burden of proving the existence of circumstances bringing the case within the purview of Section 84 lies upon the accused under Section 105 of the Indian Evidence Act. Under the said section, the court shall presume the absence of such circumstances. Illustration (a) to Section 105 is as follows :

“(a) A, accused of murder, alleges that, by reason of unsoundness of mind, he did not know the nature of the act.

The burden of proof is on A.”

9] It will also be relevant to refer to the following observations of the Hon'ble Apex Court in the aforesaid case.

“20. Mr. Arun Pednekar relies upon Sheralli Wali Mohammed v. State of Maharashtra [(1973) 4 SCC 79 : 1973 SCC (Cri) 726] to contend that the mere fact that the appellant did not make any attempt to run away or that he committed the crime in daylight and did not try to hide it or that the motive to kill his wife was very weak, would not indicate that at the time of commission of the act the appellant was suffering from unsoundness of mind or he did not have requisite mens rea for the commission of the offence. It is correct that these facts itself would not indicate insanity. In the present case, however, it is not only the aforesaid facts but it is the totality of the

circumstances seen in the light of the evidence on record to prove that the appellant was suffering from paranoid schizophrenia. The unsoundness of mind before and after the incident is a relevant fact. From the circumstances of the case clearly an inference can be reasonably drawn that the appellant was under a delusion at the relevant time. He was under an attack of the ailment. The anger theory on which reliance has been placed is not ruled out under schizophrenia attack. 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 the benefit of Section 84 IPC. We are unable to hold that the crime was committed as a result of an extreme fit of anger. 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 by reason of 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 not higher than that rests upon a party to civil proceedings which, in other words, means preponderance of probabilities. This Court held that: (SCR pp. 367-68)

“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 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.”

10] As held by Their Lordships of the Hon'ble Apex Court in the aforesaid case, the circumstance of unsoundness of mind before and after the incident is a relevant fact to draw the inference that the Appellant was under ailment at the relevant time, when he committed the crime.

11] In the present case, it will also be a relevant fact that, even on earlier occasion, the Appellant was tried for the offence punishable under Section 302 of the Indian Penal Code for having committed

murder of one Manjit Magan Kavetia. In the said case also, a benefit of doubt under Section 84 of the Indian Penal Code was claimed by the Appellant. The learned Trial Judge vide judgment and order dated 19th September, 2001 held that, though the prosecution has proved that it is the present Appellant who had committed the crime, the Appellant was entitled to benefit of Section 84 of the Indian Penal Code and as such, acquitted the accused. The said judgment is exhibited as Exhibit 54 in the record of the present proceedings.

12] Not only that, the Appellant had also examined Dr. Sandeep Divekar. It will be relevant to refer to his examination-in-chief, which reads thus :

“Examination in chief by Adv. Sayyed for accused.

1] Accused was taking treatment with me at mental hospital thane, as indoor patient from 17/04/2008 to 19/07/2008. He was brought by police vide court order. He was unco-operative and violent. He was diagnosed as Pyramid Schizophrenia. The progress of this disease is of three types.

1] Continuous (That means the symptom is continuous)

2] Episodic (That means sometimes increases and decreases)

3] Progressive (that means increases day by day.)

It takes some time to identify the stage of disease. Recovery of the patient depends upon the chronicity of the illness. (How old it is?). This patients was also having the previous history of mental illness. He was admitted in the hospital on 14/05/2001 to 15/09/2001. Again the diagnosis was same, he recovered and discharged from hospital. During examination of patient he may be normal or may not be. There is no fix interval for revival of same symptoms.”

13] It could thus be seen that immediately after occurrence of the incident, the Appellant was admitted in the hospital for treatment of Paranoid Schizophrenia. It could thus be seen that the burden which is on the accused to show that, he was suffering from schizophrenia prior to occurrence of the incident and also after the aforesaid incident, has been discharged by him. He has led sufficient evidence in that regard. As such, in view of the law laid down by the Hon'ble Apex Court, a reasonable inference could be drawn that, at the relevant time of commission of crime, the Appellant was incapable of knowing the nature of the act by reason of unsoundness of his mind and thus is entitled to benefit of Section 84 of the Indian Penal Cod.

14] Though this specific plea was raised before the learned Trial Judge, the learned Trial Judge has rejected the same by observing

thus:-

“17] Ld. Counsel for the accused relying upon the evidence of defence witness has contended that the accused had lost the power of knowing the nature of the act committed by him at the time of incident and therefore, he is entitled to take defence under sec., 84 of IPC. However, I have already observed that during the course of trial and even in the statement under sec. 313 of Cr.P.C. no such defence has been taken by the accused. It can be accepted that at the time of incident, accused was not knowing the nature of the act committed by him due to unsoundness of mind. But during the course of trial as well as while recording statement of the accused, he was in sound condition and had given the sound answers to the question put to him. Therefore, at the time of recording the statement at least, he was knowing the charges levelled against him and at that time, at least he could say that he had lost the power of knowing the nature of the act committed by him, when this incident took place on 08/11/2007. But his defence is of total denial”

We find that the reasoning given by the learned Trial Judge to reject the claim raised by the Appellant under Section 84 of the Indian Penal Code, is totally erroneous. We may gainfully refer to the observations of the Hon'ble Apex Court in recent judgment in the case of *Devidas Loka Rathod vs. State of Maharashtra* in Criminal Appeal No.814 of 2017, when Their Lordships have observed thus :

“13. If from the material placed on record, a reasonable doubt is created in the mind of the Court with regard to the mental condition of the accused at the time of occurrence, he shall be entitled to the benefit of the reasonable doubt and consequent acquittal, as observed in *Vijayee Singh vs. State of U.P.*, (1990) 3 SCC 190.”

It could thus be seen that, even if a reasonable doubt is created in the mind of the Court with regard to mental condition of the accused at the time of occurrence, a benefit has to be given to the accused. As such, we find that the view taken by the learned Trial Judge is not correct.

15] We are therefore of the considered view that, in the present case, Appellant/Accused is entitled to the benefit of Section 84 of the Indian Penal Code and thus he will have to be acquitted.

16] In the result, we pass the following order :-

ORDER

(i) The Appeal is allowed.

(ii) The Judgment and Order of conviction of the Appellant is quashed and set aside.

(iii) The Appellant is acquitted of the charges charged with.

(iv) The Appellant is directed to be set at liberty forthwith, if not required in any other case.

(SARANG V. KOTWAL, J.)

(B. R. GAVAI, J.)