

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

CRIMINAL APPEAL NO.1357 OF 2012

Sagar Dwarkanath Patil

..Appellant

Vs

The State of Maharashtra
(Through Inspector of Police, Mira Road
Police Station)

..Respondent

Mr. Sachin Deokar I/b Mr. Abhijeet Kandarkar for Appellant.
Ms. S.V. Sonawane, APPfor Respondent/State.

**CORAM : S.S. SHINDE AND
 A.S.GADKARI, J.J.**

Reserved On: 24th October 2018.

Pronounced On: 4th December 2018.

Judgment (Per Shri A.S. Gadkari, J.):-

1] The appellant is convicted under section 302 of the Indian Penal Code and is sentenced to suffer imprisonment for life by the learned Extra Joint Ad-Hoc Additional Sessions Judge, Thane in Sessions Case No. 257 of 2009 by its Judgment and Order dated 30th April 2012. The said Judgment and Order is impugned in the present appal.

2] Heard Mr. Deokar, the learned counsel appearing for the appellant and Ms. Sonawane, the learned APP for State. Perused the entire record.

3] The name of the deceased is Smt. Parvatibai Govind Pisekar, aged about 82 years on the date of incident. The date and time of the alleged incident is 11.2.2009 between 10.30 a.m to 11.00 a.m. The said offence took place at Room No.101, First floor, Ganesh Krupa Building, Goddeo Gaon, Indira Garden, Bhayander (East), District-Thane. The appellant is the grand-son (daughter's son) of deceased Smt. Parvatibai.

4] It is the prosecution case that, Smt. Parvatibai (deceased) was having landed property situated at Goddeo Gaon, Bhayander and she had sold the said land. The deceased had received a sum of Rs.10.00 lakhs and Rs.50.00 lakhs was balance to be received by her. The deceased Parvatibai had decided to keep the said amount in her own name in the bank and was refusing to distribute the said amount to her children and therefore on 11.2.2009 between 10.30 a.m to 11.00 a.m. the appellant committed murder of Smt. Parvatibai with a knife at the aforestated place. That at about 11.00 a.m when the first informant namely Smt. Vasanti Pisekar (PW No.1) was talking with her sister-in-law on telephone, the appellant hurriedly left the house of the first informant (PW No.1) with his bag and baggage and went away. Smt. Vasanti Pisekar (PW No.1) noticed the appellant in frightened condition. She thereafter saw her mother-in-law

(Smt. Parvatibai) in pool of blood in the house. She immediately gave call to the neighbours. The police were also informed and they reached at the scene of offence and registered a crime bearing CR No.I-105 of 2009 under section 302 of the Indian Penal Code on 11.2.2009 at about 11.30 a.m with the Mira Road Police Station, Thane (Rural).

After leaving the place of deceased Smt Parvatibai, the appellant went to Alibag and surrendered himself before the Police Inspector, Shri Vishnu More then attached to Local Crime Branch of Raigad, Alibag and confessed about his commission of offence. The bag which was being carried by the appellant was seized by the police at Alibag by effecting a panchanama on 11.2.2009, wherein apart from the other articles/cloths of the appellant i.e. one shirt and pant with blood stains were found. A knife admesuring 12.9 inches including its handle of 5.9 inches was also found in the pocket of the said pant. A discharge card issued by the District Hospital of Alibag, District Raigad for the period from 22.2.2008 and 24.3.2008 was also found in the said bag. The police at Alibag effected a detailed panhanama (Exh.46) on 11.2.2009 in that behalf. The Alibag Police also intimated the surrender of appellant to Mira Road Police Station. Subsequently the appellant came to be arrested by Mira

Road Police in the present crime. After completion of investigation, the police submitted chargesheet in the Court of Judicial Magistrate First Class-1st Court, Thane.

5] As the offence punishable under section 302 of Cr. P.C. is exclusively triable by the Court of Sessions, the learned Magistrate committed the case to the Court of Sessions as contemplated under section 209 of Cr. P.C. After committal, the learned Trial Court framed charge below Exh.16. The said charge was read over and explained to the appellant in vernacular language to which he denied and claimed to be tried. The defence of the appellant is of total denial and false implication in the present case. The prosecution in support of its case, examined in all 13 witnesses. The appellant examined one witness in his defence. The Trial Court after recording evidence and hearing the parties was pleased to convict the appellant under section 302 of Indian Penal Code by the impugned Judgment and Order dated 30th April 2012.

6] Mr. Deokar, the learned counsel appearing for the appellant submitted that, the statement of the mother of the appellant namely Smt. Ulka D. Patil has been recorded by the Trial Court on 1.10.2011 which is Exh.10 on record. He submitted that, the mother of the appellant has stated

that, the appellant was mentally affected since last two years and she was treating him. That the mother of the appellant could not afford the expenditure of the said treatment and therefore he was not being treated at the hands of experts in the field. He submitted that, the seizure panchanama dated 11.2.2009 indicates that the discharge card issued by the District Hospital, Alibag, District Raigad indicates that the appellant was treated between period from 22.3.2008 to 24.3.2008 for his mental illness at the said hospital. That the witnesses in the present case have also admitted that the appellant was suffering from mental illness for a pretty long period. That Dr. Sandeep Divekar (DW No.1) had also admitted the said fact in his testimony. That the Investigating Officer Shri Vikas Padale (PW No.12) in his cross-examination has admitted that, he had got checked the appellant through a Psychiatrist after his arrest. He therefore submitted that the appellant has committed the said crime when he was mentally unsound and therefore the benefit of Section 84 of the Indian Penal Code be given to him. That it was the duty of the Investigating Officer to subject the appellant to medical examination immediately and place that evidence before the Court and if that is not done, it creates serious doubt and therefore the benefit of Section 84 of the Indian Penal Code may be given

to the appellant. In support of his contention, he relied on the following decisions:-

- (i) Devidas Loka Rathod Vs. State of Maharashtra reported in AIR 2018 SC 3093.
- (ii) Sarjerao Rambhau Machale Vs. State of Maharashtra Judgment dated 29.7.2015 passed in Criminal Appeal No.621 of 1993.

He therefore prayed that, the benefit of Section 84 of the Indian Penal Code may be given to the appellant by allowing the present appeal.

Per contra, the learned APP vehemently opposed the appeal and submitted that, the conduct of the appellant after the commission of offence i.e. he hurriedly left the place by changing his cloths denotes that, he was having sound mind at the time of commission of offence. That the defence witness examined by the appellant in his cross-examination has stated that the appellant might be in sound state of mind at the time of commission of offence. She further submitted that, after commission of crime the appellant by changing various State transport buses went to Alibag which denotes that, the appellant was in enough conscious state of mind at the time commission of the said act. She therefore prayed that the present appeal may be dismissed.

7] At this stage a useful reference can be made to the decision of

the Honourable Supreme Court in the case of *Bapu alias Gujraj Singh Vs. State of Rajasthan [(2007) 3 SCC Cri. 509]* and particular paragraph nos.8,11 and 12 which reads as under

“8. Under Section 84 IPC, a person is exonerated from liability for doing an act on the ground of unsoundness of mind if he, at the time of doing the act, is either incapable of knowing (a) the nature of the act, or (b) that he is doing what is either wrong or contrary to law. The accused is protected not only when, on account of insanity, he was incapable of knowing the nature of the act, but also when he did not know either that the act was wrong or that it was contrary to law, although he might know the nature of the act itself. He is, however, not protected if he knew that what he was doing was wrong, even if he did not know that it was contrary to law, and also if he knew that what he was doing was contrary to law even though he did not know that it was wrong. The onus of proving unsoundness of mind is on the accused. But where during the investigation previous history of insanity is revealed, it is the duty of an honest investigator to subject the accused to a medical examination and place that evidence before the Court and if this is not done, it creates a serious infirmity in the prosecution case and the benefit of doubt has to be given to the accused. The onus, however, has to be discharged by producing evidence as to the conduct of the accused shortly prior to the offence and his conduct at the time or immediately afterwards, also by evidence of his mental condition and other relevant factors. Every person is presumed to know the natural consequences of his act. Similarly every person is also presumed to know the law. The prosecution has not to establish these facts.”

“11. The section itself provides that the benefit is available only after it is proved that at the time of committing the act, the accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or that even if he did not know it, it was either wrong or contrary to law then this section must be applied. The crucial point of time for deciding whether the benefit of this section should be given or not, is the material time when the offence takes place. In coming to that conclusion, the relevant circumstances are to be taken into consideration, it would be dangerous to admit the defence of insanity upon arguments derived merely from the character of the crime. It is only unsoundness of mind which naturally impairs the cognitive faculties of the mind that can form a ground of exemption from criminal responsibility. Stephen in *History of the Criminal Law of England*, Vol. II, page 166 has observed that if a persons cut off the head of a sleeping man because it would be great fun to see him looking for it when he woke up, would obviously be a case where the perpetrator of the act would be incapable of knowing the physical effects of his act. The law recognizes nothing but incapacity to realise the nature of the act and presumes that where a man's mind or his faculties of ratiocination are sufficiently dim to apprehend what he is doing, he must always be presumed to intend the consequence of the action he takes. Mere absence of motive for a crime, howsoever atrocious it may be, cannot in the absence of plea and proof of legal insanity, bring the case within this section. This Court in *Sherall Walli Mohammed v. State of Maharashtra*: (1972 Cr.LJ 1523 (SC)), held that: (SCC p.79)

“The mere fact that no motive has been proved why the accused murdered his wife and children or the fact that he made no attempt to run away when the door was broken open, would not indicate that he was insane or that he did not have necessary mens rea for the commission of the offence.””

“12. 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. The provisions of Section 84 are in substance the same as those laid down in the answers of the Judges to the questions put to them by the House of Lords, in M' Naughton's case. (1843) 4 St. Tr. (NS) 847. 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. It is difficult to prove the precise state of the offender's mind at the time of the commission of the offence, but some indication thereof is often furnished by the conduct of the offender while committing it or immediately after the commission of the offence. A lucid interval of an insane person is not merely a cessation of the violent symptoms of the disorder, but a restoration of the faculties of the mind sufficiently to enable the person soundly to judge the act; but the expression does not necessarily mean complete or perfect restoration of the mental faculties to their original condition. So, if there is such a restoration, the person concerned can do the act with such reason, memory and judgment as to make it a legal act; but merely a cessation of the violent symptoms of the disorder is not sufficient.”

8] The aforementioned similar view is further elaborated by the Supreme Court in the case of *Devidas Loka Rathod Vs. State of Maharashtra (supra)*. In para Nos.10 and 11 of the said decision the Supreme Court has held as under:-

“10] The law undoubtedly presumes that every person committing an offence is sane and liable for his acts, though in specified circumstances it may be rebuttable. The doctrine of burden of proof in the context of the plea of insanity was stated as follows in *Dahyabhai Chhaganbhai Thakkar V. State of Gujarat*, (1964) 7 SCR 361: (AIR 1964 SC 1563).

(1) The prosecution must prove beyond reasonable doubt that the accused had committed the offence with the requisite mensrea, and the burden of proving that always rests on the prosecution from the beginning to the end of trial.

(2) There is a rebuttable presumption that the accused was not insane, when he committed 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.”

11] Section 84 of the IPC carves out an exception, that an act will not be an offence, if done by a person, who at the time of doing the same, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or what he is doing is either wrong or contrary to law. But this onus on the accused, under Section 105 of the Evidence Act is not as stringent as on the prosecution to be established beyond all reasonable doubts. The accused has only to establish his defence on a preponderance of probability, as observed in *Surendra Mishra V State of Jharkhand*, (2011) 11 SCC 495 : (AIR 2011 SC 627), after which the onus shall shift on the prosecution to establish the inapplicability of the exception. But, it is not every and any plea of unsoundness of mind that will suffice. The standard of

test to be applied shall be of legal insanity and not medical insanity, as observed in Stat of Rajasthan Vs. Shera Ram, (2012) 1 SCC 602 : (AIR 2012 SC 1, para 21), as follows:

“19Once, a person is found to be suffering from mental disorder or mental deficiency, which takes within its ambit hallucinations, dementia, loss of memory and self control, at all relevant times by way of appropriate documentary and oral evidence, the person concerned would be entitled to seek resort to the general exceptions from criminal liability”

It is thus clear from the aforesaid decision that, the accused has only to establish his defence on a preponderance of probability.

9] In view of the aforestated settled principles of law by the Honourable Apex Court, now we shall consider the sufficiency of the material available on record and the defence evidence of the appellant, to examine if reasonable doubt is created with regard to the mental state of the appellant at the time of commission of assault on preponderance of probability coupled with complete lack of consideration of evidence of Shri Vikas Padale (PW No.12), the

Investigating Officer by the said Court.

10] The record reveals that, the statement of Smt. Ulka D. Patil, mother of the appellant had been recorded by the Trial Court on 1.1.2011 below Exh.10 which is at page 42 of the Paper Book i.e. much prior to framing of charge below Exh.16 on 1.4.2012. In her statement, the mother of the appellant has stated that, the appellant was mentally affected since last two years and she was treating him for the same. That her financial condition was not sound and therefore she could not afford the expenditure for treatment of her son. She has further stated that, she was ready to send her son for medical treatment, however, she could not afford the expenses for the treatment of the same.

It is to be noted here that, though the statement of the mother of the appellant was recorded by the Trial Court on 1.1.2011, the record discloses that she has not been examined, either by the prosecution or by the defence.

The record further indicates that, Shri Kamlakar Mhatre (PW No.3), brother of deceased in his cross-examination, has admitted that, the appellant had abnormal behaviour prior to death of his sister. Mr. Manohar Pisekar (**PW** No.8), son of deceased, in his cross-

examination, has admitted that, Ms. Sarika was sister of appellant and daughter of his sister Smt. Ulka Patil and she was also suffering from mental disease and she died in that sickness. He has further admitted that Sagar i.e. appellant was also suffering from the same disease. He has further admitted that, it is not correct to say that the appellant was treated for the same.

Mr. Vikas Padale (PW No.12) in his cross-examination, though denied the suggestion that the appellant is a psychic patient and the said fact was intimated to him by the father of the appellant, has admitted that, he had got Sagar i.e. appellant checked through the psychiatrist.

11] The appellant has examined the defence witness No.1 Dr. Sandeep Divekar who has deposed that, the appellant was suffering from paranoid schizophrenia and was in need of institutional care. That the appellant was being treated by him when he was in the judicial custody. He has further deposed that, the said symptoms are not temporary in nature.

12] Shri Vishnu More (PW No.11), Police Inspector then attached to Local Crime Branch, Alibag, Raigad before whom the

appellant surrendered on 11.2.2009 has proved the panchanama dated 11.2.2009 (Exh.46) pertaining to seizure of various articles from the appellant. In the said panchanama at Serial No.11, there is a mention about discharge card issued by the District Hospital, Alibag, Ragad, in the name of appellant. It indicates that, the appellant was taking treatment in the said hospital from 22.3.2008 to 24.3.2008.

13] During the course of hearing of the present appeal, a report pertaining to the mental condition of the appellant was called for by this Court from the Medical Officer of the concerned Jail wherein the appellant is detained. The Medical Officer of the Kolhapur Central Prison, Kalamba, Kolhapur has submitted his report dated 13.10.2018. In the said report, it is stated that the condition of the appellant is stable with medication (anti-psychotic drugs). That the case of the appellant is known case of “ paranoid schizophrenia” and he is on regular treatment. In paragraph No.7 of the said report it has been stated as under:

“7. Clinincal Findings: Patient is stable with medication (anti-psychotic drugs). Patient had irritability, suspiciousness, reference idea, hearing persecutory voices, discussing with himself about him, sleeplessness etc. hence was diagnosed as paranoid schizophrenia.”

In his concluding remarks, the Medical Officer has recorded that, the appellant is known case of psychiatric disorder 'paranoid schizophrenia' since last six years and is on regular treatment from experts from Government CPR Hospital, Kolhapur.

14] After carefully and minutely scrutinizing the entire evidence available on record, the remarks of the Medical Officer of the concerned Jail, the admission given by the Investigating Officer (PW No.12) and the statement of mother of the appellant (Exh.10) on record, it clearly appears to us that the appellant was suffering from mental disorder prior to and after the commission of the crime. In the present case, though the Investigating Officer has got the appellant examined through a psychiatrist he has failed to produce on record the result of the same and therefore it creates serious infirmity in the prosecution case and the benefit of doubt has to be given to the appellant. In view of ratio laid down by the Honourable Supreme Court in the case of Bapu alias Gujraj Singh Vs. State of Rajasthan (supra), it creates serious infirmity in the prosecution case and the benefit of doubt has to be given to the appellant.

15] The appellant is accordingly acquitted from the charge framed against him.

The Judgment and Order dated dated 30th April 2012. passed in Sessions Case No. 257 of 2009 is quashed and set aside.

Muddemal property be destroyed after the appeal period is over.

(A.S.GADKARI, J.)

(S.S. SHINDE, J.)