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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.67 OF 2019

The State of Maharashtra	... Applicant
Vs.	
Rajendra Sopal Roy	... Respondent

Ms. P.P. Shinde, APP for the Applicant - State.

CORAM : A.S.OKA AND
A.S. GADKARI, JJ.

DATE : 27th FEBRUARY 2019.

P.C. :

1 Heard the learned APP for the State. The respondent – accused was tried for the offence punishable under section 302 of the Indian Penal Code. The learned Additional Sessions Judge, Pune by the impugned judgment and order granted benefit to the respondent – accused of the provisions of section 84 of the Indian Penal Code which lays down 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 is incapable of knowing that what he is doing is either wrong or contrary to law.

2 The submission of the learned APP is that the burden was on the accused to bring home the case in one of the exceptions laid down in IPC and the said burden is not discharged as none of the ingredients of section 84 have been established.

3 The allegation against the respondent is of committing murder of Macchindranath Maharaj in a temple. The deceased was a Sadhu who along with one Balakdas used to reside in the temple in which the offence was allegedly committed. PW-1 – Baiju was examined both as a prosecution and as a defence witness who came to the temple on receiving information from Balakdas that one boy had come to the temple who was assaulting the deceased and was ransacking the temple. He rushed to the temple and found the deceased lying in pool of blood. According to his version, the respondent – accused entered the temple and started ransacking the temple, when the deceased objected, the respondent assaulted him.

4 PW-1 deposed that the respondent took trident and started ransacking and breaking the articles in the temple by use of the said instrument. He stated that though he tried to prevent the respondent – accused from doing the same, he was not in a mood to listen. His evidence shows that about 2 to 4 persons were required to apprehend him and in fact, he had to be tied with rope and belt. The other evidence which is brought on record is in the form of a certificate/report at Exh.72. The same is given by Dr. Smita Panse, Assistant Professor of Department of Psychiatry, B.J. Government Medical College and Sassoon General Hospital, Pune. The said report at Exh.72, as noted by the learned trial Judge, is admitted by the prosecution. The said report specifically records that the respondent – accused has been on anti-psychotic treatment. Exh.72 records that in the year 2016, the respondent was in remission and

was on regular psychiatric treatment. She also noted that he further needs psychiatric management. Thus, the certificate at Exh.72 proves that within 5 days of his arrest the respondent was put on anti-psychotic treatment for unspecified psychosis. Even the report at Exh.60/1 which is mental health report which is again admitted by the prosecution mentioned that the respondent – accused was under treatment from 22nd May 2014 for behaviour disturbance but later on he improved. As far as the defence under section 84 of Indian Penal Code is concerned, the law has been laid down by the Apex Court in the case of *Dahyabhai Chhaganbhai Thakker vs. State Of Gujarat*¹. Paragraph 7 of the said decision reads thus :-

- “7. 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.”

1 AIR 1964 SC 1563

5 Following the said decision, there is a rebuttable presumption that the accused was not insane when he committed crime. It is possible for the accused to rebut the same by placing relevant evidence, oral, documentary or circumstantial. The burden on him to make out a case under section 84 is not as strong as initial burden of proof on the prosecution which rests on the prosecution in every criminal trial. All that accused has to show on the basis of oral or documentary or circumstantial evidence that the preponderance of probability is in his favour. In the present case, the conduct of the accused as can be seen from the evidence of the prosecution witnesses and the certificates at Exh.72 and 60/1 clearly show that the defence under section 84 of IPC was established by the respondent by preponderance of probability. In any event, such finding recorded by the trial Court is certainly based and supported by the evidence on record. After the defence under section 84 was brought home by the accused by preponderance of probabilities, the prosecution did not discharge general burden on it by examining the concerned doctors who had treated the respondent – accused in jail right from 22nd May 2014.

6 Therefore, the view taken by the learned Sessions Judge that the respondent is entitled to benefit of section 84 of IPC is a possible view. Hence, no case is made out for grant of leave. Application is rejected.

(A.S. GADKARI, J.)

(A.S.OKA, J.)