

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1038 OF 2011

Sachin Rajaram Shinde, Age : 30 years, Occ: Agriculturist, R/o. Chaudharwadi, Tq. Koregaon, Dist. Satara. (At present lodged in Yerwada jail)	}	...Appellant (Orig. Accused No. 1)
Versus		
State of Maharashtra. (At the instance of Wathar Police Station in connection of C.R. No. 43/2009)	}	...Respondent

Mr. Dhananjay D. Rananavare for the Appellant.
Mr. Arfan Sait, APP for the Respondent – State.

CORAM : PRASANNA B. VARALE &
SURENDRA P. TAVADE, JJ.

DATED : MARCH 18, 2021

JUDGMENT (PER PRASANNA B. VARALE, J)

1. The present Appeal is filed at the instance of present Appellant – Accused Sachin Rajaram Shinde (Original Accused No. 1) challenging the judgment and order passed by the learned Additional Sessions Judge, Satara, dated 30th June, 2011, in Sessions Case No. 31/2010, whereby present Appellant was convicted for the offences punishable under Sections 302, 201, 504, 506 and 498-A of the Indian

Penal Code (for short “IPC”).

2. The case of prosecution, in brief, can be summarized as under:

Marriage between Appellant / Accused No. 1 – Sachin Shinde and Rupali (hereinafter referred to as ‘Deceased’) was solemnized in the year 2003. Deceased was the daughter of Bharat Gaikwad (PW – 5 - first informant) resident of Chopadaj, Tq. Baramati, Dist. Pune, whereas family of accused consisting of father – Rajaram Shinde and mother Sau. Yamunabai Rajaram Shinde (original accused nos. 2 and 3) was the resident of village Chaudharwadi. It is the case of prosecution that for the initial period of three years of the matrimonial life of deceased was peaceful and was receiving proper treatment at the hands of accused and her in-laws. In the period of three years, the couple was blessed with two children i.e. one son and daughter.

The peaceful matrimonial life of deceased came to be end after 3 years when the accused no. 1 started demanding Rs. 50,000/- through deceased from her parents on the demand of purchase of vehicle and construction of new house and this demand was supported by the other accused persons. As the parents of deceased were unable to fulfill

the demands due to their weak financial condition deceased was subjected to ill-treatment and harassment at the hands of accused persons. Parents of deceased made an attempt to gave an understanding to the accused persons but it failed. In this process an intervention through sarpanch of village namely, Dattatray Shinde also sought for. In spite of intervention of sarpanch, accused persons were raising demand again and again. It is further the case of prosecution that mother of deceased Sindhubai visited the house of accused on 02.09.2009 and expressed their inability to fulfill the demand due to weak financial condition to deceased and deceased in turn told Sindhubai that the accused no. 1 is bent-upon on his demand and if the demand is not fulfilled he would take drastic step i.e. he would commit her murder and deceased further told Sindhubai that after her death care of her children shall be taken. As per the case of prosecution the fateful incident took place in the intervening night of 03.09.2009 and 04.09.2009.

3. In the late hours i.e. nearly about 01.00 am accused no. 1 gave sickle blow on the neck of deceased. The blow resulted in an instantaneous death of deceased. The accused then though of showing the death of deceased as an accidental one and set deceased on fire by

pouring kerosene on her person. A neighbour Santosh Shinde who had heard the shouts from the house of accused immediately rushed to the house of sarpanch Dattatraya Shinde and gave him an information. Dattatraya Shinde on suspecting the foul play gave an information to police station Wathar as well as to the parents of deceased by mobile phone. On receiving information parents of deceased as well Shri. Rajendra Bokade, API rushed to the spot.

4. Father of deceased Bharat Gaikwad lodged complaint to Wathar police station alleging that his daughter was subjected to cruelty and as he was unable to fulfill the demand of money the accused persons committed murder of her daughter. On the complaint lodged by Bharat Gaikwad Crime No. 43/2009 came to be registered against the accused persons for commission of offence under Section 302, 498-A, 201, 504 and 506 read with Section 34 of IPC. Mr. Bokade who took over the investigation on registration of the crime proceeded for taking necessary steps in the investigation and accordingly on visiting to the spot, spot panchnama was drawn in presence of the panchas. Inquest panchnama was also drawn. Dead body of deceased was forwarded for conducting autopsy to Civil Hospital, Satara. Medical officers attached to Civil

Hospital namely, Dr. Suvarna Chaudhari and Dr. S.R. Sonavale performed autopsy and issued postmortem notes. The cause of death opined in the postmortem report was due to hemorrhage due to injury to the great vessels of neck. I.O. Mr. Bokade in the process of investigation recorded the statement of witnesses and as a part of investigation had forwarded the material collected in the investigation for chemical analysis.

5. On completion of the investigation charge-sheet came to be filed in the Court of learned Magistrate, Koregaon. As the offences involved in the matter required trial to be conducted by learned Sessions Court as such, the case was committed to the Court of Sessions for trial. Charge was framed against the accused persons. Accused persons pleaded not guilty and claimed trial. Defence of accused nos. 2 and 3 was of total denial whereas the accused no. 1 in addition to denial took defence of his unsoundness of mind and lunacy. In support of his theory accused no. 1 also examined three defence witnesses. It may not be out of place to state here that accused no. 1 expressed his inability to engage a private counsel as such, legal assistance was provided to accused no. 1 and Advocate Kokil who was appointed by legal aid committee represented the

appellant accused in the Trial. Learned Trial Court on appreciation of evidence framed as many as 7 points for consideration and recorded the findings against the accused no. 1 i.e. appellant only whereas the other accused nos. 2 and 3 were acquitted. Hence, being aggrieved by the judgment and order of the learned Trial Court present appeal is filed.

6. Learned Counsel, Mr. Rananavare appearing for the Appellant vehemently submitted that the learned Trial Court failed to appreciate the evidence in proper perspective. It is the submission of learned Counsel for Appellant that the case of prosecution rest on circumstantial evidence and there is no direct evidence. It is also submitted by the learned Counsel for Appellant that the learned Trial Court committed an error in arriving at a conclusion that the death of deceased was homicidal one when there is a material on record to show that deceased received burn injuries as such, it was also an attempt of learned Counsel to submit before this Court that death of deceased could have been an accidental death. Learned Counsel for Appellant then vehemently submitted that though there was a strong material placed on record to show that the accused was suffering from mental illness and this aspect ought to have been considered by the learned Trial Court. Learned

Counsel for the Appellant in support of his submissions placed heavy reliance on the following judgments in the case of Shrikant Anandrao Bhosale Vs. State of Maharashtra¹, Dahyabhai Chhaganbhai Thakkar Vs. State of Gujarat² and Suryakant J. Gawade Vs. State³. Learned Counsel appearing for the Appellant then prayed for allowing the appeal by setting aside the judgment and order of conviction and sentence awarded to the appellant.

7. *Per contra*, learned APP vehemently submitted that no error is committed by learned Trial Court in appreciation of evidence. Learned APP submitted that not only the father and mother of deceased stated about the ill-treatment and harassment suffered by deceased as well as the injuries found on the person of deceased when they immediately visited to the spot but also the other independent witnesses namely, sarpanch Dattatraya Shinde and Santosh Shinde also supports the case of prosecution. Learned APP then submitted that learned Trial Court on appreciation of the medical evidence as well as version of witnesses arrived at just conclusion that deceased died homicidal death and

1 2002 DGLS (SC) 832

2 1964 AIR 1563

3 2020 DGLS (Bom.) 36

evidence brought on record by the prosecution clearly rules out any probability of accidental death being suffered by the deceased. On the contrary, evidence brought on record by the prosecution establishes its case that the appellant committed brutal murder of deceased by giving a sickle blow on her neck and then set deceased on fire only with an intention to show that the deceased died by accidental death. Learned APP then submitted that the defence of appellant is also an afterthought theory. Learned APP submitted that when the statement of appellant under Section 313 of the Code of Criminal Procedure was recorded the appellant stated nothing about the so called mental illness suffered by him. Learned APP also submitted that on one hand the appellant took a defence of total denial whereas on the other hand the appellant took a defence of his mental illness and thereby the appellant in a way admitted the case of prosecution of the homicidal death of deceased. In support of his submissions, learned APP relied on the judgment of the Hon'ble the Apex Court in the case of Surendra Mishra Vs. State of Jharkhand⁴. Thus, learned APP prayed that appeal may be dismissed.

8. With the assistance of learned Counsel appearing for the

4 (2011) 11 SCC 495

respective parties, we have gone through the evidence and material placed on record.

9. In so far as the case of prosecution relating to homicidal death of deceased is concerned, it would be necessary to refer to the medical evidence.

10. Dr. Suvarna Ramdash Chaudhari (PW 7) was the medical officer attached to Civil Hospital, Satara at the relevant time. Dr. Suvarna deposed before the Court that on 04.09.2009 she was working as medical officer and dead body of deceased was brought for the postmortem. She further stated that an autopsy was conducted on the dead body by herself along with her colleague other medical officer Dr. Sonavale. Dr. Suvarna further deposed that she found the following injuries on the dead body:

- (I) (1) Burn injury on head, neck and face of two percent.*
- (2) There was burn injuries on anterior chest of 10%.*
- (3) There was burn injuries on the right upper arm of 2%.*
- (4) There was thin red line visible between burnt and normal skin.*
- (II) Incise wound present over the left side of anterior aspect of the neck, its shape was spindle like. Margins were clear and it was measuring 6cmx3x4xcm. It was located above thyroid level with tailing of wound medically, margin of wound was*

2 cm away from middle line. Because of said injuries there were following cuts.

- A. Skin*
- B. Super facial fascia*
- C. Strlomastoid strlothyroid*
- D. Cartaroid artery*
- E. Internal jugular vein.*
- F. Vagus nerve.*

11. It would be important to note that deceased suffered an incised wound over the left side of anterior aspect of the neck measuring 6cmx3cmx4cm. Report also show that cervical vertebra was seen at the lowest depth of the wound and considering the nature of injury an opinion about cause of death was recorded as hemorrhage due to injury of great vessel on neck. It is also deposed by Dr. Suvarna that the age of injury is within 12 to 24 hours. The article sickle was shown to Dr. Suvarna and she deposed that the injury found on the dead body was possible by said article. Though, the witness was subjected to the cross-examination, this witness stood firm. On the contrary, suggestions were given to this witness that the injury found on the dead body was not possible by weapon sickle, is flatly denied.

12. Factum of finding weapon sickle with blood stains on the spot is supported by the version of prosecution witnesses i.e. Dattatraya

Shinde (PW 2) and Balkrishna Shinde (PW 3). Both these witnesses stated before the Court that they rushed to the house of accused in the midnight hours of 04.09.2009 and found that dead body of deceased was lying having burn injuries as well as stab injury on the neck. Sickles were lying below the onions with blood stains and the said weapon was seized by the police.

The above referred evidence supports the case of prosecution of the homicidal death of deceased. Though the defence made an attempt to submit before the trial Court that death of deceased could be an accidental death by burn injuries, we are unable to accept theory of defence in view of the aforesaid evidence.

In view of the above referred facts, we find no error in the conclusion drawn by the learned Trial Court about the death of deceased being homicidal one reflected in paragraphs 11 and 12 of the judgment. It may not be necessary for us to reproduce those observations.

13. In so far as the case of prosecution against the accused causing an ill-treatment and harassment to deceased for non fulfillment of the demand is concerned, the prosecution rightly relied mainly on the evidence of Bharat Genba Gaikwad (PW 5) father of deceased, Sindhu

Bharat Gaikwad (PW 6) mother of deceased.

14. Bharat Genba Gaikwad (PW 5) in his examination-in-chief deposed that accused no. 1 was demanding Rs. 50,000/- from him for purchase of vehicle or for purchase of room. He was also making similar demand to deceased. He further deposed that as the money was not paid to accused no. 1 he was beating and harassing deceased. He further deposed that he, his brother Sanjay and his friend Marane had been to Chaudharwadi for three times and tried to convince the accused no. 1 that his economical condition is weak to fulfill his demands and stated to accused no. 1 not to harass and beat deceased. He further deposed that on 04.09.2009 his brother Sharad received message on phone of sarpanch of village Chaudharwadi that deceased committed suicide. Therefore, he along with his brother and neighbours went to Chaudharwadi through tempo. He further deposed that he saw that there was stab injury on the neck of the dead body made by sharp weapon. There were blood stains on the bed. He saw kerosene was poured on her face and there were burns on her chest. He came to know that accused no. 1 committed murder of deceased and tried to burn her. Thereafter he gave complaint to Wathar police station.

In the cross-examination this witness stated that marriage of deceased was settled with the help of Shivaji Shinde. He had visited the house of accused before the marriage of deceased was settled. He had collected information of house and landed property of the accused no. 1 before the marriage was settled. He further stated that during the period of three years after the marriage the relations between accused no. 1 and deceased were cordial and there were no complaints.

15. Sindhu Bharat Gaikwad (PW 6) in her examination-in-chief deposed that deceased was married to accused no. 1. Accused no. 1 gave good treatment to deceased for the period of three years after her marriage. Thereafter he started harassing deceased in connection with demand of Rs. 50,000/- for purchase of vehicle and room. She further deposed that she had been to the house of accused two days prior to the incident. She told deceased that they are having cycle shop and they are not in a position to give Rs. 50,000/- to accused no. 1 and tried to convince him.

In the cross-examination this witness stated that her husband had visited the house of accused before marriage of deceased was settled. She further stated that it is true that after taking information of the

landed and house property and members of the family of the accused no.1 marriage of deceased was settled.

16. On perusal of the evidence of these witnesses, we are of the opinion that no error is committed by the learned Trial Court in recording the finding in favour of the prosecution.

17. Now coming to the defence raised by the appellant of his unsoundness of mind / mental illness is concerned, firstly it is reflected in the cross-examination of Shivaji Shinde (PW 1).

Shivaji Shinde (PW 1) in the cross-examination stated that the appellant is his nephew and he suffered attack of lunacy from time to time and in such attack he used to assault his parents. He further stated that the accused was taking treatment in Krupamai Mental Hospital at Miraj and he was taking medicine. Now this version of this witness is vague. There is no specific period mentioned by this witness in which year or period the appellant was under treatment at Krupamai Hospital at Miraj.

18. Appellant in support of his theory of unsoundness of mind / mental illness examined the following witness namely, Maruti Walhekar

(DW 1), Dr. Pushpa Ghorpade (DW 2) and Dr. Rajshri Devatta Deshpande (DW 3).

19. Maruti Walhekar (DW 1) was working as Jail Superintendent from 2006 to 2010 at Satara in his examination-in-chief in clear words stated that after his admission in the Jail on 10.09.2009 and in his tenure the behaviour of the appellant was like normal and ordinary person. On 24.10.2009 the appellant was advised to send to Mental Hospital, Yerwada for treatment. Accordingly, a report was submitted to learned JMFC and in turn learned JMFC, Koregaon granted permission for referring appellant to Mental Hospital, Yerwada.

In the cross-examination this witness reiterates that when the appellant was brought in jail he was a normal person and it is also stated by this witness before the Court that as a routine course the prisoners are subjected to medical examination by the Civil Surgeon who are known as visiting medical officers.

20. Another witness examined as a defence witness is Dr. Pushpa Ghorpade (DW 2). It is stated by her that on 03.11.2009 appellant was admitted in the Mental Hospital, Yerwada. He was kept under

observation for 15 days i.e. from 03.11.2009 to 18.11.2009. She further stated that on 11.11.2009 the superintendent of Mental Hospital, Yerwada forwarded letter to JMFC, Koregaon with a request for extension of 10 days for the observations of the appellant. On 17.11.2009 the appellant was examined by this witness and she observed that his behaviour was inappropriate. He was muttering continuously and laughing to self. He was abusive and irritable and was threatening to the staff members. It is further stated that the appellant was under treatment for sometime and then he was discharged with a certificate that he was fit for trial. It would be important to note that this witness further stated that after discharge he was manageable and required to take regular treatment.

In the cross-examination this witness stated that on 12.12.2009 she examined the appellant and found that appellant is able to understand of his reason for arrest. Accordingly she took the notes in her handwriting. She also stated that on 15.12.2009 again she personally examined the appellant and was found that he was able to understand the reason of his arrest and was fit for trial. It is again important to note that the witness in the cross-examination further stated that she again tell

what was a condition of patient before he was admitted in the hospital. She further stated that patient may be in good mental condition before he was admitted in our hospital.

21. Last witness examined by defence is, Dr. Rajshri Deshpande (DW 3). In examination-in-chief this witness deposed that she knows the patient Sachin Shinde and he was admitted in Sahyog Hospital as her patient from 01.05.2006 to 05.05.2006. She gave him treatment in the form of medicine and injection and also electro conclusive therapy. He was diagnosed with psychosis bipolar affective disorder in manic episode. She further deposed that such patient have no insight of his illness. He gets delusion, hallucinations. He gets aggressive if resisted.

In the cross-examination this witness stated that she does not know the condition of the patient from September, 2006 till today.

22. On going through the evidence of above-referred witnesses as well as documents placed on record, we find that there is no medical evidence to show that prior to the incident the appellant was under treatment for his mental illness. The material placed on record by way of the defence witnesses and the documents only show that after the

incident took place when the appellant was in jail after the incident he suffered an issue about his mental illness and was provided the treatment. The evidence also show that the treatment provided to the appellant helped him and he was discharged from the hospital only when the doctors found him fit for trial. The learned Trial Court dealt with this aspect in detail. A reference is also made to all the documents placed on record as well as the evidence brought before the Court by the evidence along with documents. A reference is also made to the judgments relied on by the learned Counsel representing the appellant and learned APP in paragraph 23 and 24 of the judgment.

23. On considering this evidence, learned Trial Court observed in paragraph 24 which reads thus:

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Therefore on considering this evidence on record it is not possible to infer that the accused No. 1 assaulted his wife Rupali when he was suffering from unsoundness of mind. His act of causing burns on the dead body to show that it was suicidal death sufficiently show that he

was fully aware of his act of assault on the deceased Rupali was wrong and contrary to law and therefore he is not entitled to benefit of Sec. 84 of I.P.C. The prosecution with the help of strong circumstantial and medical evidence has proved beyond reasonable doubt that the accused No. 1 had committed murder of deceased Rupali by inflicting blow of sickle on her neck and tried to cause burns on her head, face and chest to show that her death was suicidal and thereby caused to disappear the evidence of murder, but at the same time the accused No. 1 failed to show that he committed act of assault when he was suffering from unsoundness of mind. Therefore the point No. 4 has to be answered in the negative.

For the ready reference, we may quote point No. 4 framed for consideration :

- 4. Whether it is proved by the accused No. 1 that: Not proved while causing stab injury to Rupali by reason of unsoundness of mind was incapable of knowing the nature of his act or that he was doing what was either wrong or contrary to Law ?*

24. We are of the opinion that the learned Trial Court committed no error in recording negative finding for point no. 4. Though learned Counsel for the appellant placed heavy reliance on the

judgment above-referred, in view of the facts and material brought by the prosecution before the Trial Court, in our opinion judgments relied on by the learned Counsel for the Appellants are applicable to the present case.

25. It can be said that the act of the accused muttering, laughing, abusing or irritating etc. was a momentary act and it was not continuous act as tried to be suggested by the learned Counsel appearing for the Appellant. It may not be out of place to refer to Section 84 of the IPC which read thus:

84. Act of a person of unsound mind. - *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.*

26. The Hon'ble the Apex Court in the matter of Siddhapal Kamala Yadav⁵ (supra) observed thus:

7. Section 84 lays down the legal test of responsibility in cases of alleged unsoundness of mind. There, is no definition of "unsoundness of mind" in the IPC. Courts have, however, mainly treated this expression as equivalent to insanity. But the term "insanity" itself has no precise

⁵ 2009 CRI.L.J. 372

definition. It is a term used to describe varying degrees of mental disorder. So, every person, who is mentally diseased, is not ipso facto exempted from criminal responsibility. A distinction is to be made between legal insanity and medical insanity. A Court is concerned with legal insanity, and not with medical insanity. The burden of proof rests on an accused to prove his insanity, which arises by virtue of [Section 105](#) of the Indian Evidence Act, 1972 (in short the '[Evidence Act](#)') and is not so onerous as that upon the prosecution to prove that the accused committed the act with which he is charged. The burden on the accused is no higher than that resting upon a plaintiff or a defendant in a civil proceeding. ([See Dahyabhai v. State of Gujarat](#) AIR 1964 SC 1563). In dealing with cases involving a defence of insanity, distinction must be made between cases, in which insanity is more or less proved and the question is only as to the degree of irresponsibility, and cases, in which insanity is sought to be proved in respect of a person, who for all intents and purposes, appears sane. In all cases, where previous insanity is proved or admitted, certain considerations have to be borne in mind. Mayne summarises them as follows:

"Whether there was deliberation and preparation for the act; whether it was done in a manner which showed a desire to concealment; whether after the crime, the offender showed consciousness of guilt and made efforts to avoid detections whether, after his arrest, he offered false excuses and made false statements. All facts of this sort are material as bearing on the test, which Bramwall, submitted to a jury in such a case : 'Would the prisoner have committed the act if there had been a policeman at his elbow ? It is to be remembered that these tests are good for cases in

which previous insanity is more or less established. These tests are not always reliable where there is, what Mayne calls, "inferential insanity".

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) what 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.

9. *There are four kinds of persons who may be said to be non compos mentis (not of sound mind), i.e., (1) an idiot; (2) one made non compos by illness (3) a lunatic or a mad man and (4.) one who is drunk. An idiot is one who is of non-sane memory from his birth, by a perpetual infirmity, without lucid intervals; and those are said to be idiots who cannot count twenty, or tell the days of the week, or who do not know their fathers or mothers, or the like, (See Archbold's Criminal Pleadings, Evidence and Practice, 35th Edn. pp.31-32; Russell on Crimes and Misdemeanors, 12th Edn. Vol., p.105; 1 Hale's Pleas of the Crown 34). A person made non compos mentis by illness is excused in criminal cases from such acts as are committed while under the influence of his disorder, (See 1 Hale PC 30). A lunatic is one who is afflicted by mental disorder only at certain periods and vicissitudes, having intervals of reason, (See Russell, 12 Edn. Vol. 1, p. 103; Hale PC 31). Madness is permanent. Lunacy and madness are spoken of as acquired insanity, and idiocy as natural insanity.*

10. *Section 84 embodies the fundamental maxim of criminal law, i.e., "actus non reum facit nisi mens sit rea" (an act does not constitute guilt unless done with a guilty intention). In order to constitute an offence, the intent and act must concur; but in the case of insane persons, no culpability is fastened on them as they have no free will (furios is nulla voluntas est).*

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.

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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 Naughton rules of 19th Century England.(Emphasis supplied)

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27. Thus, these observations of the Hon'ble the Apex court would make it clear the to grant benefit under Section 84 to an accused the prerequisite is the act of the accused at the time of the incident.

28. In view of our above-referred considerations, we are of the opinion that the learned Trial Court committed no error in holding the appellant guilty of offence charges against him and further convicting

him and awarding him the sentence for the offence. Appeal, thus, being merit-less deserves to be dismissed. Accordingly, Criminal Appeal is dismissed.

(SURENDRA P. TAVADE, J.)

(PRASANNA B. VARALE, J.)