

Ajay

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

CRIMINAL APPEAL NO. 1061 OF 2003

The State of Maharashtra
(Through P.S.O. Atpadi Police Station,
C.R. No. 48/2002)

Appellant
.. (Orig. Complainant)

Versus

1. Dhananjay Bhivdas Pore
Age 38, Occ. Business.

2. Shakuntala Bhivdas Pore
Age 73, Occ. Household

Both R/o Kharsundi, Tal. Atpadi,
Dist. Sangli.

Respondents
.. (Orig. Accused)

-
- Mr. S.S. Hulke, APP for the Appellant - State.
 - Ms. Rui Danawala i/by Mr. Umesh Mankapure for the Respondents.
-

**CORAM : S.S. SHINDE &
MILIND N. JADHAV, JJ.**

**RESERVED ON : DECEMBER 21, 2021.
PRONOUNCED ON : JANUARY 27, 2022.
(Through Video Conferencing)**

JUDGMENT: (PER : MILIND N. JADHAV, J.)

1. The learned ad-hoc Additional Sessions Judge, Sangli, by judgment and order dated 29.05.2003, has acquitted Respondent Nos. 1 and 2 of offences punishable under Section 302 read with Section 34 and Section 324 of the Indian Penal Code, 1860 (for short “**IPC**”). The State of Maharashtra is in appeal against the said judgment and order

acquitting Respondent Nos. 1 and 2 in Sessions Case No. 157 of 2002.

A notable feature in this case is the defence of insanity pleaded by Respondent No. 1 under the provisions of Section 84 IPC, which 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 that he is doing what is either wrong or contrary to law. The Trial Court has arrived at a conclusion that the Respondent No. 1 was suffering from paranoid schizophrenia and has succeeded in proving insanity within the meaning of Section 84 IPC at the time of commission of the act and hence deserved acquittal.

2. Respondent No. 2 is the mother of Respondent No. 1. Deceased victim Padmakar and Respondent No. 1 were carrying on their business of selling groceries and coconuts in the vicinity of the temple of Sri Siddhanath in Kharsundi Village, Taluka Atpadi. According to the Prosecution, there was a quarrel between the two in relation to the business of selling coconuts to the devotees visiting the temple and the business of the Respondent No. 1 was adversely affected.

3. On 22.07.2002, at about 4:30 PM, deceased Padmakar was sitting on his motorcycle near the house of one teacher called Kazi

Guruji, waiting for his wife Alka and nephew Shivkumar, intending to take them to their agricultural field, located at Atpadi Road. As Alka was proceeding towards the motorcycle along with Shivkumar, Respondent No. 2 met her on the way and enquired about the whereabouts of Alka's mother-in-law. Thereafter, Alka and Shivkumar both sat on the motorcycle when suddenly the Respondent No. 1 approached them from behind and jabbed a knife into the neck of Padmakar, thereby injuring him. All three – Padmakar, Alka and Shivkumar – fell down to the ground from the motorcycle. Respondent No. 1 then proceeded towards Padmakar to stab him with the knife for a second time, but Alka pushed him back and, in that process, the knife slashed Alka on her left hand, thereby injuring her. Meanwhile, Padmakar got up and started to proceed towards his house, and on seeing this, Respondent No. 1 followed him. Just as Padmakar was opening the shutter of his shop / house, Respondent No. 1 caught hold of the collar of Padmakar's shirt and pushed him to the ground. Respondent No. 1 then sat on Padmakar and stabbed him in his chest and hands.

4. Due to the commotion, several people gathered at the spot and the Respondent No. 1 got up and ran towards his house with the knife. Padmakar was brought to the Primary Health Centre, Kharsundi, in a rickshaw and thereafter taken to Rural Hospital, Vita, in a jeep

where the doctors on duty declared him dead. Bharat Rajmane filed a complaint of the incident with Vita Police Station, but, as the offence took place within the jurisdiction of Atpadi Police Station, the complaint was transferred to Atpadi Police Station. Initially, C.R. 48 of 2002 under Section 302 of the IPC was registered only against Respondent No. 1.

5. Respondent No. 1 was arrested on 23.07.2002. Respondent No. 2 was, on conducting the Panchanama, arrested on 01.08.2002 on the ground that she had signalled Respondent No. 1 to proceed towards Padmakar by nodding her head.

6. In the evening of 23.07.2002, a police sub-inspector from Atpadi Police Station, Shri Arun Dyandev Fuge, received a call that there was a quarrel at Kharsundi Village and Padmakar was injured. Shri Fuge arrived at Kharsundi Village, arrested the Respondent No. 1 and took him to Atpadi Police Station. Inquest was drawn by Shri Lakshman Borate, Assistant Police Inspector (P.W. 12) between 9.00 p.m. and 10.00 p.m.. An autopsy was conducted by Dr. Maruti Shinde (P.W. 11) between 10:30 p.m. and 11:45 p.m. Shri Anandrao Jadhav (P.W. 10) registered the crime initially at Vita Police Station, but the same was later transferred to Atpadi Police Station. The clothes on the person of deceased Padmakar were seized after post-mortem under

the Panchanama. The clothes on the person of the Respondent No. 1 and Alka were also seized under the Panchanama. Along with the clothes, items like chappals, earth stained with blood and the weapon (knife) were also seized. All the items seized were sent for Chemical Analyser Report, at Pune.

7. On 14.10.2002, a chargesheet against both the Respondents was filed in the court of Judicial Magistrate, First Class, Atpadi. As the offence was punishable under Section 302 IPC and exclusively triable by the Court of Sessions, the learned Judicial Magistrate, First Class, Atpadi, committed the case to the Court of Sessions, Sangli, on 31.10.2002 under the provisions of the Code of Criminal Procedure, 1972 (for short "**CrPC**"). Charges were framed against both Respondents on 21.01.2003. The charges were read out and explained to the Respondent Nos. 1 and 2 in vernacular language. Both Respondents denied their complicity in the offence by a total denial, stating that a false case was lodged against them. The alternative plea of the Respondents was that Respondent No. 1 was suffering from mental illness for ten years prior to the incident and was under medical treatment from psychiatrists. It was further pleaded that Respondent No. 1's father, Bhivdas Pore, was also suffering from mental illness and was treated for insanity before his death in 1997. Hence, Respondent No. 1 sought exoneration under

the provisions of Section 84 IPC by relying upon oral and documentary evidence.

8. The Prosecution, in support of its case, examined in all fourteen witnesses. The Respondent Nos. 1 and 2 examined eight witnesses in defence of their plea. The Trial Court, after recording evidence and hearing the parties, was pleased to acquit the Respondent No. 1 and 2 of all charges by the impugned judgment and order dated 29.05.2003.

9. Shri S. S. Hulke, Assistant Public Prosecutor appearing on behalf of the Appellant-State, submits that the impugned judgment and order suffers from infirmity as the conduct of the Respondent No. 1 immediately after the incident disentitles him to plead the defence of insanity. He submits that:

- i. The Respondent No. 1 was completely aware of the commission of the act and that it was committed with full knowledge of its consequences;
- ii. The Respondent No. 1 would not have denied the charges at the outset and pleaded his defence of insanity only in the alternative;
- iii. The Respondent No. 1 would not have concealed the weapon (knife) under a heap of stones;
- iv. And, most importantly, the act of the Respondent No. 1 whereby he initially injured Padmakar's neck and subsequently followed him, pinned him down to the ground, sat on his chest and then stabbed him twice

cannot be an act of insanity as concluded by the Trial Court.

10. Shri S. S. Hulke submits that the impugned judgment and order is incorrectly passed, and prays for it to be set aside on the following grounds:

- i. It records a clear finding of killing by the Respondent No. 1 but exonerates the Respondent No. 1 on the ground of legal insanity;
- ii. The oral evidence of Dr. Atmaram Gunda Patil (P.W. 8), which brought on record that the mental condition of Respondent No. 1 was normal, is not appreciated sufficiently;
- iii. The Respondent No. 1 has not discharged the burden of proving that he did not understand the nature of his act for pleading insanity;
- iv. Though substantial evidence is placed on record on behalf of the Respondent No. 1 to prove that he suffered from mental illness, none whatsoever proved that the Respondent No. 1 was suffering from insanity at the time of commission of the offence;
- v. The Respondent No.1 has miserably failed to prove legal insanity to avail the exemption under Section 84 IPC;
- vi. The Respondent No. 1 has a strong motive which cannot be disregarded as has been done by the Trial Court;
- vii. The investigating officer did not subject the Respondent No. 1 to medical examination immediately and place that evidence before the Court.

11. *PER CONTRA*, Ms. Rui Danawala, learned counsel appearing for the Respondent No. 1, submits that on perusal of the evidence placed before the Court, the Respondent No. 1 has succeeded in

proving the fact that he was suffering from legal insanity at the time of commission of the offence by raising a reasonable doubt in the mind of the Trial Court, thereby qualifying the Respondent No. 1's case as an exception under the provisions of Section 84 IPC. She submits that the evidence of the eight defence witnesses as recorded by the Trial Court clearly established the fact that the Respondent No. 1 was suffering from legal insanity and goes to prove that he was suffering from paranoid schizophrenia. She submits that:

- i. Shri Kisan Gunda Bhangе (D.W. 1), a trustee of Sri Siddhanath Mandir, having known Respondent No. 1's family for thirty years, has given evidence about both the abnormal behaviour of Respondent No. 1 as well as his father/being seized with schizophrenic tendencies and having been admitted to a mental hospital;
- ii. Shri Padmakar Patil (D.W. 2), an agriculturalist and priest, residing in Kharshundi Village, has corroborated the evidence pertaining to the Respondent No. 1 behaving abnormally at times;
- iii. Shri Anand Tukaram Mhetras (D.W. 3), brother-in-law of the Respondent No. 1, has given evidence about taking the Respondent No. 1 for psychiatric treatment to the doctors;
- iv. Shri Mehboobsaab Murtuzasaab Maniyar (D.W. 4), a ninety-year-old healing practitioner has given evidence about administering medicine to the Respondent No. 1 to enable him to control his schizophrenic tendencies;
- v. Dr. Sunita Vijay Debsikdar (D.W. 5), a consultant psychiatrist, has given evidence about treating Respondent No. 1's father and the probability of genetic transmission of his mental illness to his children;
- vi. Dr. Pravin Madhukar Kulkari (D.W. 6), consultant psychiatrist, has treated the Respondent No. 1 for his mental illness in the year 2001;

- vii. Dr. Nitin Dalaya (D.W. 7), M.D. Psychiatry, a doctor associated with Ruby Hall Clinic, Pune, has given evidence of having treated the Respondent No. 1 for his mental illnesses prior to the incident;
- viii. Dr. Sameer Vilas Gupte (D.W. 8), M.D. Psychiatry, practicing in Sangli, has also given evidence of having treated the Respondent No. 1 for his mental illnesses prior to the incident.

12. Ms. Danawala submits that during the pendency of the trial and immediately after recording the statement of Respondent No. 1 under Section 313 of the CrPC, and during the time the defence witnesses were being examined by the Trial Court, Respondent No. 1 was referred to Krupa Mayee Institute for Mental Health at Miraj, Sangli, and was treated at the said institute for paranoid schizophrenia. She submits that the facts and circumstances on record clearly suggest that the Respondent No. 1 was of unsound mind and, while killing Padmakar, had no mental capacity to understand the nature and consequences of his act. Hence, after considering the evidence, she submits that Respondent No. 1 was rightly exonerated by the Trial Court by applying the provisions of Section 84 IPC. She has supported the judgment and order dated 29.05.2003 passed by the Trial Court and prays for dismissal of the appeal.

13. We have heard the learned counsel appearing for the respective parties, considered their submissions, and perused the

evidence on record.

14. It is a well-settled position of law that reversal of acquittal is permissible on the touchstone of the principle that the appellate court should, generally, be loath in disturbing the finding of facts recorded by a trial court as the trial court has the advantage of seeing the demeanor of the witnesses, and that the appellate court should interfere with the conclusions of the trial court only when they are palpably erroneous, unreasonable, perverse and likely to result in injustice.

14.1. The Hon'ble Supreme Court in the case of *Murlidhar @ Gidda vs. State of Karnataka*,¹ while considering criminal appeals, averted to the fundamental principles to be kept in mind by an appellate court while hearing an appeal against acquittal. Paragraphs 10, 11 and 12 are relevant and read thus:

“10. Lord Russell in Sheo Swarup [Sheo Swarup v. King Emperor, (1933-34) 61 IA 398 : (1934) 40 LW 436 : AIR 1934 PC 227 (2)] , highlighted the approach of the High Court as an appellate court hearing the appeal against acquittal. Lord Russell said : (IA p. 404)“... the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit

1 2014 (5) SCC 730 : 2014 (2) SCC (Cri) 690

of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses.” The opinion of Lord Russell has been followed over the years.

11. As early as in 1952, this Court in *Surajpal Singh* [*Surajpal Singh v. State*, AIR 1952 SC 52 : 1952 Cri LJ 331] while dealing with the powers of the High Court in an appeal against acquittal under Section 417 of the Criminal Procedure Code observed : (AIR p. 54, para 7)

“7. ... the High Court has full power to review the evidence upon which the order of acquittal was founded, but it is equally well settled that the presumption of innocence of the accused is further reinforced by his acquittal by the trial court, and the findings of the trial court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for very substantial and compelling reasons.”

12. The approach of the appellate court in the appeal against acquittal has been dealt with by this Court in *Tulsiram Kanu* [*Tulsiram Kanu v. State*, AIR 1954 SC 1 : 1954 Cri LJ 225] , *Madan Mohan Singh* [*Madan Mohan Singh v. State of U.P.*, AIR 1954 SC 637 : 1954 Cri LJ 1656] , *Atley* [*Atley v. State of U.P.*, AIR 1955 SC 807 : 1955 Cri LJ 1653] , *Aher Raja Khima* [*Aher Raja Khima v. State of Saurashtra*, AIR 1956 SC 217 : 1956 Cri LJ 426] , *Balbir Singh* [*Balbir Singh v. State of Punjab*, AIR 1957 SC 216 : 1957 Cri LJ 481] , *M.G. Agarwal* [*M.G. Agarwal v. State of Maharashtra*, AIR 1963 SC 200 : (1963) 1 Cri LJ 235] , *Noor Khan* [*Noor Khan v. State of Rajasthan*, AIR 1964 SC 286 : (1964) 1 Cri LJ 167] , *Khedu Mohton* [*Khedu Mohton v. State of Bihar*, (1970) 2 SCC 450 : 1970 SCC (Cri) 479] , *Shivaji Sahabrao Bobade* [*Shivaji Sahabrao Bobade v. State of Maharashtra*, (1973) 2 SCC 793 : 1973 SCC (Cri) 1033] , *Lekha Yadav* [*Lekha Yadav v. State of Bihar*, (1973) 2 SCC 424 : 1973 SCC (Cri) 820] , *Khem Karan* [*Khem Karan v. State of U.P.*, (1974) 4 SCC 603 : 1974 SCC (Cri) 639] , *Bishan Singh* [*Bishan Singh v. State of Punjab*, (1974) 3 SCC 288 : 1973 SCC (Cri) 914] , *Umedbhai Jadavbhai* [*Umedbhai Jadavbhai v. State of Gujarat*, (1978) 1 SCC 228 : 1978 SCC (Cri) 108] , *K. Gopal Reddy* [*K. Gopal Reddy v. State of A.P.*, (1979) 1 SCC 355

: 1979 SCC (Cri) 305] , Tota Singh [Tota Singh v. State of Punjab, (1987) 2 SCC 529 : 1987 SCC (Cri) 381] , Ram Kumar [Ram Kumar v. State of Haryana, 1995 Supp (1) SCC 248 : 1995 SCC (Cri) 355] , Madan Lal [Madan Lal v. State of J&K, (1997) 7 SCC 677 : 1997 SCC (Cri) 1151] , Sambasivan [Sambasivan v. State of Kerala, (1998) 5 SCC 412 : 1998 SCC (Cri) 1320] , Bhagwan Singh [Bhagwan Singh v. State of M.P., (2002) 4 SCC 85 : 2002 SCC (Cri) 736] , Harijana Thirupala [Harijana Thirupala v. Public Prosecutor, (2002) 6 SCC 470 : 2002 SCC (Cri) 1370] , C. Antony [C. Antony v. K.G. Raghavan Nair, (2003) 1 SCC 1 : 2003 SCC (Cri) 161] , K. Gopalakrishna [State of Karnataka v. K. Gopalakrishna, (2005) 9 SCC 291 : 2005 SCC (Cri) 1237] , Sanjay Thakran [State of Goa v. Sanjay Thakran, (2007) 3 SCC 755 : (2007) 2 SCC (Cri) 162] and Chandrappa [Chandrappa v. State of Karnataka, (2007) 4 SCC 415 : (2007) 2 SCC (Cri) 325] . It is not necessary to deal with these cases individually. Suffice it to say that this Court has consistently held that in dealing with appeals against acquittal, the appellate court must bear in mind the following:

(i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court;

(ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal;

(iii) Though, the powers of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial court had an advantage of seeing the demeanour of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate court in interfering with such

conclusions is fully justified; and

(iv) Merely because the appellate court on reappreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate court in the judgment of the trial court."

14.2. Additionally, in the present case, Respondent No. 1 has been acquitted on the ground of insanity in terms of Section 84 IPC. In this context, it will be useful to refer to the decision of the Hon'ble Supreme Court in the case of *Bapu @ Gujraj Singh vs. State of Rajasthan*.² Paragraphs 8, 11 and 12 of the said decision are relevant and read thus:

"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

² 2007 (3) SCC (Cri) 509

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.

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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, p. 166 has observed that if a person cuts 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 recognises 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 Sheralli Wali Mohd. v. State of Maharashtra [(1973) 4 SCC 79 : 1973 SCC (Cri) 726 : 1972 Cri LJ 1523] held that:

“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 the 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 (HL)] . 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.”

14.3. The Hon'ble Supreme Court has further elaborated its view on the applicability of the exception under Section 84 IPC in the case

of *Devidas Loka Rathod vs. State of Maharashtra*³ Paragraphs 10, 11, 12 and 13 of the said decision are relevant and read thus:

“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 [Dahyabhai Chhaganbhai Thakkar v. State of Gujarat, (1964) 7 SCR 361 : AIR 1964 SC 1563 : (1964) 2 Cri LJ 472] : (AIR p. 1568, para 7)

“(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 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 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

³ (2018) 7 SCC 718

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 [Surendra Mishra v. State of Jharkhand, (2011) 11 SCC 495 : (2011) 3 SCC (Cri) 232] , 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 State of Rajasthan v. Shera Ram [State of Rajasthan v. Shera Ram, (2012) 1 SCC 602 : (2012) 1 SCC (Cri) 406] , as follows: (Shera Ram case [State of Rajasthan v. Shera Ram, (2012) 1 SCC 602 : (2012) 1 SCC (Cri) 406] , SCC p. 614, para 19)

“19. ... Once, 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.”

12. The crucial point of time for considering the defence plea of unsoundness of mind has to be with regard to the mental state of the accused at the time the offence was committed collated from evidence of conduct which preceded, attended and followed the crime as observed in Ratan Lal v. State of M.P. [Ratan Lal v. State of M.P., (1970) 3 SCC 533 : 1971 SCC (Cri) 139] , as follows: (SCC pp. 533-34, para 2)

“2. It is now well settled that the crucial point of time at which unsoundness of mind should be established is the time when the crime is actually committed and the burden of proving this lies on the accused. In Dahyabhai Chhaganbhai Thakkar v. State of Gujarat [Dahyabhai Chhaganbhai Thakkar v. State of Gujarat, (1964) 7 SCR 361 : AIR 1964 SC 1563 : (1964) 2 Cri LJ 472] it was laid down that ‘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 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 which rests upon a party to civil proceedings’.”

13. If from the materials 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 v. State of U.P. [Vijayee Singh v. State of U.P., (1990) 3 SCC 190 : 1990 SCC (Cri) 378]”

15. Against this backdrop, we shall now consider the sufficiency of the evidence adduced by the Prosecution and Defence and the material on record to examine whether, in the present case, a reasonable doubt is created with regard to the mental state of the Respondent No. 1 at the time of the commission of the act, on the preponderance of probabilities. We may state that insofar as prosecution witnesses are concerned, three doctors have been examined. Apart from the evidence of the three doctors, the other prosecution witnesses do not throw any light on the aspect of the medical condition of the Respondent No. 1. The evidence given by each of the three doctors examined by the Prosecution is outlined hereinunder:-

15.1. Dr. Atmaram Gunda Patil (P.W. 8), Medical Officer of Shiroda Sawantwadi, has examined Respondent No. 1 on 26.07.2002,

four days after the incident:

- i. In his deposition, Dr. Atmaram has stated that the Respondent No. 1 was mentally as well as physically fit. However, in his cross-examination, the same Dr. Atmaram states that in the case of a person suffering from schizophrenia, there can be sudden aggression by him if he has not received treatment at all or has received inadequate treatment for his condition;
- ii. He states that in the case of a person suffering from schizophrenia, the person may not take regular medical treatment and that such patients are emotionally disturbed and unable to understand the results of their own acts;
- iii. He further states that in the case of mental disease, it is necessary to examine the blood pressure of the patient and that the same was not done or mentioned in the report submitted by him in the case of the Respondent No. 1.

15.2. Dr. Tukaram Baburao Suryvanshi (P.W.9), Medical Officer, Primary Health Centre, Kharsundi, has been examined:

- i. He has deposed that the family of Respondent No. 1 was taking medical treatment from him in the routine course;

- ii. He has further deposed that on 30.07.01, he referred the Respondent No. 1 to Dr. Gaikwad, a psychiatrist attached to Mission Hospital, Miraj, as the Respondent No. 1 had accidentally consumed several tablets of Schizopin.

15.3. Dr. Maruti Shinde (P.W. 11), Medical Officer, Rural Hospital, Vita who carried out the post-mortem of the deceased Padmakar has also been examined:

- i. He states that the post-mortem was carried out between 10:30 p.m. and 11:45 p.m. and there were no internal injuries but multiple contusions and wounds on the body of the deceased. However, in his cross-examination, he accepts to have left column nos. 17, 18 and 19 of the post-mortem report blank;
- ii. He has testified in cross-examination that multiple contusions on the shoulder joint, the dorsal surface of left wrist joint, the anterior surface of right knee joint and the right tibia i.e., injury nos. 2, 5 and 6 could be possible if a person falls from a running a motorcycle. However, Dr. Shinde maintained that injury nos. 1, 3 and 4 – the incised wounds on the neck, chest and right forearm – were a result of a sharp weapon.

16. On the other hand, the defence witnesses have deposed as under:

16.1. Shri Kisan Gunda Bhangе (D.W. 1), an agriculturist from Kharsundi Village, is the trustee of Sri Siddhanath Mandir and has deposed as under :

- i. He has deposed that he knew the father of Respondent No. 1 who had passed away seven years preceding the incident and that he was mentally ill prior to his death and admitted to a mental hospital at Miraj. He states that the father of Respondent No.1 was kept in Budhgaon Village as he was harassing people in Kharsundi Village;
- ii. He states that he knew Respondent No. 1 since childhood and that the behaviour of the Respondent No. 1 while dealing with customers was abnormal, that the Respondent No. 1 used to speak irrelevantly and drive away customers from his shop by his behaviour;
- iii. He states that the Respondent No.1 once consumed medicinal tablets in a large quantity and was taken to the Primary Health Centre, Kharsundi for treatment;

- iv. He states that the Respondent No. 1 once tried to commit suicide by jumping from the top of his house.

16.2. Shri Padmakar Baba Patil (D.W. 2), an agriculturist and priest from Kharsundi Village, knew the family of the Respondent No. 1 well. He has given evidence of several instances of the abnormal behavior of the Respondent No. 1 as well as his father. He states that the Respondent No. 1 was behaving abnormally since ten years prior to the incident with intervening instances of madness.

16.3. Shri Anand Tukaram Mhetras (D.W. 3), the brother-in-law of Respondent No.1 has stated that he knew the Respondent No. 1 for the last thirty years and has deposed as under :

- i. He has testified that the father of the Respondent No. 1 was suffering from mental disease and was underwent treatment in the hospital at Miraj. He has also narrated several instances of the abnormal behavior of the father of the Respondent No. 1;
- ii. He has testified that the Respondent No. 1 was displaying abnormal behavior for eight to ten years prior to the incident by giving several instances of the same;

- iii. He states that the Respondent No. 1 was also admitted to Mission Hospital, Miraj, in the Intensive Care Unit, three years prior to the incident for treatment of his mental disease;
- iv. He states that he took the Respondent No. 1 to one Mehboobsaab Murtuzasaab Maniyar in Devraj Nagar Village, who used to provide country-made medicines for different diseases, and after examining the Respondent No. 1, the said Shri Mehboobsaab Maniyar had concluded that he was suffering from mental diseases and gave him medicine.

16.4. Shri Mehboobsaab Murtuzasaab Maniyar (D.W. 4) has deposed that he had treated the Respondent No. 1 for his mental illnesses on two occasions prior to the incident.

16.5. Dr. Sunita Vijay Debsikdar (D.W. 5), a consultant psychiatrist, has deposed as under:

- i. She has deposed that she has treated the father of Respondent No. 1 in her hospital at Miraj during the period from 31.01.1997 to 28.04.1998 for bipolar disorder (manic phase) with known hypertension. She states that the father

of the Respondent No. 1 was also previously treated by her doctor-husband, a consultant psychiatrist;

- ii. In her cross-examination, she has specifically deposed as under:

“It is true that if one of the parents is affected, chances of mental illness in the sibling goes up to 30% and if both parents are affected, chances are 60%...it is true that the term ‘manic depressive psychosis’ and ‘chronic illnesses’ are different forms.”

16.6. Dr. Pravin Madhukar Kulkarni, Medical Officer (D.W. 6) consultant attached to Wellness Hospital, Miraj has deposed as under:

- i. He has deposed that he has treated Respondent No. 1 and has produced the admission record, case history, nurses’ daily record, critical care flow sheets, and discharge summary pertaining to the Respondent No. 1 when the Respondent No. 1 was admitted to the said hospital in July 2001, after having consumed four tablets each of 100 mg of Clozapine, which is used to treat psychiatric illnesses;
- ii. He has deposed that the Respondent No. 1 is a known case of psychiatric illness and has been diagnosed to be suffering from manic depressive psychosis by Ruby Hall Clinic, Pune.

16.7. Dr. Nitin Virsing Dalaya (D.W. 7) a medical practitioner with an M. D. in (Psychiatry) from Ruby Hall Clinic, has deposed as under:

- i. He has testified that the Respondent No. 1 was undergoing treatment in Ruby Hall Clinic, Pune, between 2.9.2000 and 27.9.2001 on OPD-basis;
- ii. He states that the Respondent No. 1 was suffering from chronic paranoid schizophrenia and had disorganized speech, disorganized behaviour, delusion of persecution, auditory hallucination, irritability, self-muttering, and suicidal tendencies;
- iii. He has stated that such persons can definitely be harmful to themselves or others, and that such acts are usually a result of a disease such as the one which the Respondent No. 1 was suffering with. Due to such disease, a person does not know the consequences of his acts;
- iv. He states that there was documentary evidence in respect of the mental illness of Respondent No. 1 at least from 02.09.2001. He has referred to his own certificate dated 27.07.2002, which indicates that the Respondent No.1 was

suffering from mental disease;

- v. He states that there is no test to diagnose a mental illness especially in paranoid schizophrenia, and, in such cases, the detailed family history of the patient assumes importance;
- vi. He has also testified in cross-examination that if a person suffering from manic depressive psychosis commits any offence, he would not run away from the place of incident / place of offence. He further states that, in his opinion, the person may or may not conceal the weapon used in the offence as a person suffering from manic depressive psychosis cannot differentiate between right and wrong things. He also states that if the person commits an offence, he may chase the victim.

16.8. Dr. Sameer Vilas Gupte (D.W. 8), an M.D. in Psychiatry runs a private clinic in Sangli, and has been practicing consultant psychiatrist since 1995. He has deposed as under:

- i. He states that he has treated the Respondent No. 1 from 13.01.2001 in relation to psychiatric complaints like suspiciousness, reduced sleep, excessive eating, and sadness of mind for several days;

- ii. He states that the Respondent No. 1 was a case of manic depressive psychosis on the date of his examination and was treated at various psychiatry clinics in Sangli, Pune and Thane;
- iii. He states that when the Respondent No. 1 visited him, he had stopped taking the drugs prescribed for his medical condition. Therefore, he prescribed Schizopin and Antidep tablets to the Respondent No. 1. He states that he increased the dose of these tablets when he found that the Respondent No. 1, had, during his subsequent visit, developed suspiciousness, suicidal ideas and feelings of guilt. He placed the case papers pertaining to the Respondent No. 1 and his treatment on record which have been exhibited as Exhibit 74;
- iv. In his cross-examination, he has been fairly grilled but has given consistent and specific answers pertaining to the questions asked. For the sake of convenience, the relevant parts of the cross-examination of Dr. Gupte, that have guided the Trial Court to arrive at its decision are reproduced hereinbelow:

“6. It is true that there are various types of insanities and feigned insanity is one of the type of insanity. Insanity pretended is called feigned insanity. It is true that, even a normal man can act as feigned insane person for various reasons. It is true that one of the reason for feigned insanity for a normal man is to avoid criminal liability. I can comment on characteristic of insane person. It is true that if crime is committed by insane person, the probability of running away from the place of crime is less. It is true that generally the insane person who committed an offence would not refuse liability and would not conceal weapon use in the offence. It is not true to say that the insane person is unable to choose his enemy from a group of persons. As per my opinion it would depend upon abnormal thought process. Chronic schizophrenia and manic depressive psychosis are two different diseases. There can be violent behaviour in case of manic patient. I did not notice violence on part of patient.

7. Details of past history and family history are essential to arrive at diagnosis. I have recorded the history of mental illness in respect of the said patient in the case paper. The history was narrated by the brother of said patient. There was history of mother's mentally illness. It is not true to say that suspiciousness, reducing sleep, sadness of mind, are possible in any other disease except mental disease. I am not remembering whether the relative of the patient had shown papers in respect of his previous medical treatment. It is true that we used to enter previous medical treatment in the case paper. It was given by Dr. Yadav and Dr. Ghadge. It is true that when patient came to me he had stopped all drugs. I did not mention anything in the column in respect of history of present illness. There is also column in respect of past history in the case paper. I have mentioned in the said column that there was no other physical illness. It is true that diagnosis Manic depressive psychosis made by me in respect of said patient was provisional. I did not make any final diagnosis as patient did not turn up for follow up. The final diagnosis will depend upon the gravity of mental illness. It is true that continuous observations is required for final diagnosis. It is true that I have examined said patient only on two occasions

and I will be unable to state in respect of future condition of said patient. It is not true to say that such patients can be cured completely after regular treatment. Now I am shown the cover of file provided to the patient by me. It is in respect of my clients. There are terms and conditions mentioned on the overleaf of said cover. It is true that it is mentioned that the mental illness can be recovered. it is at (exh. 76) (This document is exhibited as referred in cross examination). It is true that my clinic is private clinic. It is not true to say that diagnosis made by me is incorrect. It is true that I did not receive witness summons for deposing in court (The witness summons was already issued to this witness but police failed to serve the summons to this witness. The name of witness was already stated by accused while recording statement u/s. 313 of Cr.P.C). It is not true to say that I am deposing falsely at the instance of relatives of said patient.” 20. The appellate court also had a duty to consider the nature of the evidence led by PW 14 and the other medical evidence available on record with regard to the appellant. Unfortunately, it appears that the appellate court also did not delve into the records in the manner required, as observed in *Rama v. State of Rajasthan* [*Rama v. State of Rajasthan*, (2002) 4 SCC 571 : 2002 SCC (Cri) 829] : (SCC p. 573, para 4)"

17. While considering the evidence on record in Criminal appeals, we may remind ourselves of the observations of the Apex Court in *Rama vs State of Rajasthan*⁴ an excerpt from Paragraph 4 of the said decision is relevant and reads thus:

“4. ... It is well settled that in a criminal appeal, a duty is enjoined upon the appellate court to reappraise the evidence itself and it cannot proceed to dispose of the appeal upon appraisal of evidence by the trial court alone especially when the appeal has been already admitted and placed for final hearing. Upholding such a procedure would amount to negation of valuable right of appeal of an accused, which cannot be permitted under law.”

4 (2002) 4 SCC 571 : 2002 SCC (Cri) 829

18. Against the backdrop of the foregoing discussion and evidence, we may briefly summarise our observations and findings as under:

- i. There is no evidence given by any of the eyewitnesses in relation to the demeanor of the Respondent No. 1 at the time of the incident or immediately thereafter;
- ii. Furthermore, the weapon used in the act by the Respondent No. 1, though concealed under a heap of stones, was handed over by the Respondent No. 1 himself to the police in the presence of Panchas;
- iii. Most importantly, immediately after the incident, no attempt was made by the Respondent No. 1 to abscond and hide himself. The Respondent No. 1 was arrested from his own house by the police after the incident;
- iv. The evidence further discloses that Dr. Atmaram Patil (P.W. 8) examined the Respondent No. 1 and, without taking any test or recording any history of the mental condition of the Respondent No. 1, opined that the mental condition of the Respondent No. 1 was normal;

- v. The evidence given by the defence witnesses and alluded to hereinabove is most critical. Shri Kisan Bhang (D.W. 1), Shri Padmakar Patil (D.W. 2) and Shri Anand Tukaram Mhetras (D.W. 3) have deposed about the mental condition, unsoundness of mind and the abnormal behavior of the Respondent No. 1 as well as his father Bhivdas Pore while they were residing in Kharsundi Village. That apart, the evidence given by Dr. Sunita Vijay Debsikdar (D.W. 5), Dr. Pravin Madhukar Kulkarni (D.W. 6), Dr. Nitin Virsing Dalaya (D.W. 7), and Dr. Sameer Vilas Gupte (D.W. 8) – all specialist doctors and consultant psychiatrists, is relevant and decisive. The four doctors have testified that it was not only the father of Respondent No. 1 who suffered from mental disease but also the Respondent No. 1 who was suffering from mental disease and was treated by them in their respective hospital / clinic. Their evidence cannot be disregarded. There is complete consistency in the evidence given by these four doctors i.e. the defence witnesses, from which, on a *prima facie* reading, it can be clearly concluded that the Respondent No. 1 was suffering from a mental illness and the same was hereditary in nature. Their testimony has also not been shaken in the cross-examination. Documents marked in evidence, such as the

relevant case papers (Exhibit 61 and 74), prescription of medicines (Exhibit 66-70; 75), discharge cards (Exhibit 62 and 65), and doctor's certificates (Exhibit 59 and 71) corroborate the evidence given by the aforesaid four doctors and prove that the Respondent No. 1 was indeed suffering from mental illness;

- vi. The evidence of the four doctors clearly discloses that the Respondent No. 1 was under treatment for mental illness at least from the year 2000 onwards; and the incident took place on 22.07.2002;
- vii. The evidence further discloses that the Respondent No. 1 was suffering from acute paranoid schizophrenia. According to Modi's Medical Jurisprudence and Toxicology (21st Edition) at page no. 461, such paranoid schizophrenia, in the vast majority of cases, starts in the fourth decade and develops insidiously. The patient gets very irritated and excited owing to painful and disagreeable disturbances of general sensation, giving rise to hallucinations which are attributed to the effects of hypnotism, electric wireless telegraphy, or atomic energies. The patient usually retains his memory and orientations and does not show signs of

insanity until the conversation is directed to a particular type of delusion from which he is suffering. When these delusions affect his behaviour, he is often a source of danger to himself and others;

viii. In so far as Respondent No. 2 is concerned, there is no evidence whatsoever brought on record to implicate her of the charges.

19. In view of the observations and findings above, and most importantly the pointed evidence given by D.W. nos. 5, 6, 7 and 8, the Respondent No. 1, in our opinion, has succeeded in proving his defence of insanity and more specifically, legal insanity at the time of committing the act. Overall, the circumstances undeniably lead to the conclusion that the Respondent No. 1 was suffering from paranoid schizophrenia (mental illness) and did not realize the nature and consequences of his act at the time of commission.

20. We are therefore of the considered opinion that the Respondent No. 1 has been able to create sufficient doubt in our minds pertaining to his mental condition at the time of the occurrence of the incident. This would allow the Respondent No. 1 to claim the exception provided for under Section 84 IPC. The case of the

Prosecution cannot be said to have been established beyond all reasonable doubt. From the materials on record and the evidence of the defence witnesses, it clearly appears to us that the Respondent No. 1 was suffering from a mental disorder / illness prior to and after the commission of the act. We concur with the findings and decision of the Trial Court. In view thereof, the case of the Prosecution-in-appeal must fail.

21. Criminal Appeal stands dismissed with no order as to costs.

[MILIND N. JADHAV, J.]

[S.S. SHINDE, J.]