



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.134 OF 2019

Vinod s/o. Ganesh Khillare,
Age:27 years, Occ. Agri.,
r/o. Dongartala, Tq. Jintur,
Dist. Parbhani

..Appellant

Vs.

The State of Maharashtra

..Respondent

Mr.V.Maney, Advocate for appellant
Mr.S.V.Hange, APP for respondent

**CORAM : R.G.AVACHAT AND
NEERAJ P. DHOTE, JJ.
DATE : AUGUST 26, 2024**

JUDGMENT (Per R.G.Avachat, J.) :-

The challenge in this appeal is to the judgment and order of conviction and consequential sentence passed by learned Sessions Judge, Parbhani, on 08.01.2019, in Sessions Case No.85 of 2017. Vide the impugned judgment and order, the appellant was convicted for the offence punishable under Section 302 of Indian Penal Code and therefore, sentenced to suffer imprisonment for life and to pay a fine of Rs.10,000/- (Rupees Ten Thousand), with default stipulation.

2. The facts, giving rise to the present appeal, are as follows:-

The First Information Report (FIR)(Exh.19) was lodged by PW 1 - Vanita (widow of deceased Bhagwan) on 27.01.2017. According to her, the appellant was her cousin brother-in-law. The incident took place on 27.01.2017, at about 08.30 a.m. She was in her agricultural field, while her husband - Bhagwan (deceased) had gone to the farm house of the appellant. The farm house was at about 500 ft. to 1000 ft. away from her agricultural field. She heard shouts of her husband. She, therefore, rushed towards the same. She saw the appellant assaulted her husband with the handle of plough (*Rumne*) on his head. After having seen her, the appellant ran away.

3. Based on the FIR (Exh.19), a crime, vide C.R. No.38 of 2017 was registered. PW 5 - Sk. Usman did investigation of the crime. During investigation, the crime-scene panchnama (Exh.23) was drawn. Inquest and autopsy were conducted on the person of the deceased. Certain articles were seized from the crime-scene. All the articles were carried to the F.S.L. for analysis and report. Upon completion of the investigation, the charge sheet was filed against the appellant.

4. The trial court framed Charge (Exh.09). The appellant pleaded not guilty. His defence before the trial Court, initially, was false implication. The defence of insanity was also raised. To bring home the charge, the prosecution examined five witnesses and adduced in evidence certain documents. On appreciation of the same, the trial court convicted the appellant and consequentially sentenced, as stated above. The trial court specifically negated the defence of insanity on the ground that the appellant failed to make out a case that he committed murder of the appellant as a result of his insanity or by reason of his unsoundness of mind.

5. Learned counsel for the appellant would submit that number of medical papers were placed on record. The Court of Judicial Magistrate, First Class, had, therefore, referred the appellant for his medical examination. The medical papers post examination of the appellant indicate that he was not sane. The medical report pertains to the period of two years immediately before the crime took place. The appellant had neither intention nor any motive to assault the deceased and commit his murder. According to learned counsel, the trial court erred in relying on the medical papers, indicating the appellant to have not been keeping well a few days before the incident took place. The trial court ought to have

believed the appellant to have continued with same mental state of mind and given him benefit of Section 84 of the Indian Penal Code.

6. Learned APP would, on the other hand, submit that there is eye witness account of the widow of the deceased (PW 1), who seen the appellant to have assaulted her husband. He was candid enough to admit the medical report indicating the appellant to have not been keeping psychologically well a few days before the incident. Learned APP, therefore, left it to the Court to decide the appeal on appreciation of the evidence in that regard.

7. Considered the submissions advanced. Perused the evidence on record. Let us turn thereto and appreciate the same.

8. PW 4 – Dr. Dipali conducted post mortem examination on the mortal remains of Bhagwan by 05.15 p.m. on 27.01.2017. She noticed seven injuries on the person of the deceased. The post-mortem examination report (Exh.40) indicates that the deceased died of “head injury”. The cause of death is not disputed before us.

9. PW 1 – Vanita is widow of the deceased. It is in her evidence that on the fateful day, i.e. 27.01.2017, she was in her

agricultural field. It was 08.30 a.m. Her husband (deceased Bhagwan) had gone to the farm house of the appellant. The farm house of the appellant was at a distance of not more than 1000 ft. from her field. Her evidence further indicates that since there were no crops in both the fields, happenings in the field of the appellant were visible from her field. Her evidence further indicates that on having heard shouts of her husband, she rushed towards the scene of offence. She saw that the appellant assaulted her husband with the handle of plough on his head. During her cross-examination, her case was denied. She was further suggested that the appellant was not keeping well, mentally. She denied. It was also suggested to her that the appellant had assaulted his mother with a sickle just 4-5 days before the incident. She also denied the same. It was further suggested to her that the appellant was taking treatment for his mental illness for two years next before the incident. Same too was denied by her.

10. PW 2 – Suresh is witness to the crime-scene panchnama (Exh.23) PW 3 – Anand is Police Constable, who carried the seized articles to the F.S.L. In the facts and circumstances of the case, we do not propose to refer to their evidence in extenso.

11. There is nothing to disbelieve the evidence of PW 1 – Vanita. She is eye-witness to the incident. She lodged the FIR (Exh.19) within hours of the incident. The FIR corroborates her evidence before the court. As such, the fact that the appellant assaulted PW 1's husband - Bhagwan with the handle of plough and as a result of the injury suffered thereby, he succumbed, is a fact duly established.

12. The question is, whether the appellant has made out his defence of insanity. Section 84 of the Indian Penal Code reads 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.

Section 105 of the Evidence Act reads thus:-

105. Burden of proving that case of accused comes within exceptions.-

When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code (45 of 1860), or within any special exception or proviso contained in any other part of the

same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.

13. The appellant/accused can make out his defence based on preponderance of probabilities. PW 5 – Sk. Usman, Investigating Officer, admitted in his cross-examination that from the record submitted by the relatives of the appellant, it was revealed to him that the appellant was under treatment in “Rathod Manas (Mental) Hospital” in September, 2014. He went on to admit that on 31.01.2017, he submitted a report before the Magistrate and accordingly, the Magistrate had referred the appellant for treatment at Yerwada. He further admitted that the Regional Mental Hospital, Yerwada, had issued discharge card (Exh.48), which disclosed that the appellant was suffering from psychosis. There is on record the discharge card (Exh.48). It indicates that the appellant was admitted to the Regional Mental Establishment on 01.02.2017 and was discharged on 16.05.2017. He was diagnosed with “Psychosis”. There are other papers on record to indicate that the appellant was admitted to the Government Orthopedic Hospital, Parbhani, on 28.01.2017 and discharged on 31.01.2017. It is at Exh.62. Same suggests that the appellant was admitted to the said hospital on the following day of the incident. The Civil Hospital, Parbhani, gave

report (Exh.63). The mental status examination recorded by the Civil Surgeon reads thus:-

Mental Status Examination:

He was conscious, grossly oriented in time, place and person, he had poor hygiene and injury marks on his body. He was communicative but he had poor active attention and his passive attention was increased. He did not initiate eye contact and was looking downwards or at other side during the whole interview. He conveyed his mood as euthymic but his affect was restricted and irritable. His speech was occasionally derailed and he had ideas of persecution and paranoia. He had auditory hallucinations of persons of commanding type. He had concretization of his concepts and had poor social judgment.

From above findings I have come to the provisional conclusion that the patient Mr.Vinod Ganesh khillare is suffering from PSYCHOSIS. As he may need detailed psychometric analysis and psychological testings to reach a final diagnosis he may need referral to higher center, like mental hospital Yerwada for better institutional care and management. At present condition the patient is not able to stand the trial of court.

Travel Status: Cannot travel alone. Needs at least two strong men as escorts.

There is on record the order dated 31.01.2017, passed by learned Judicial Magistrate, First Class, Jintur, directing the appellant to be referred to the Mental Hospital, at Yerwada.

14. The aforesaid record indicates that on the next day of the incident, the appellant was referred for his mental medical check up. He was found to be Psychosis. He was, therefore, referred to the Regional Mental Establishment. Similar findings were received from the said establishment. As such, the evidence indicates that the appellant was of unsoundness of mind on the next day of the incident itself. There was on record the report dated 23.09.2017, indicating that the appellant was taking treatment for his mental illness, even before the incident took place.

15. The Apex Court in the case of **Dahyabhai Chhaganbhai Thakkar Vs. State of Gujarat, AIR 1964 SC 1563** held:-

When a plea of legal insanity is set up, the Court has to consider whether at the time of commission of the offence the accused, by reason of unsoundness of mind, was incapable of knowing the nature of the act or that he was doing what was either wrong or contrary to law. The crucial point of time for ascertaining the state of mind of the accused is the time when the offence was committed. Whether the accused was in such a state of mind as to be entitled to the benefit of S.84 of the Penal Code can only be established from the circumstances which preceded, attended and followed the crime.

It is further held:-

.....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.

16. From the evidence on record, we reached to the conclusion that the appellant committed act of killing of Bhagwan, as a result of his unsoundness of mind. We also find that he was incapable of knowing the nature of the act or that he was doing what was either wrong or contrary to law. Based on the evidence on record, the trial court ought to have given benefit of Section 84 of the Indian Penal Code, more so, when there was no enmity or any

motive for the appellant to kill Bhagwan. Since the same has been denied by the trial court, interference with the impugned order of conviction and consequential sentence is warranted.

17. Chapter XXV of the Code of Criminal Procedure speaks of the provisions of accused person of unsound mind. Section 335 of Cr.P.C. speaks of a person acquitted on the ground of insanity, to be detained in safe custody. For better appreciation, we reproduce the provisions of Section 335 of Chapter XXV of Cr.P.C., as below:-

335. Person acquitted on such ground to be detained in safe custody:

(1) Whenever the finding states that the accused person committed the act alleged, the magistrate or Court before whom or which the trial has been held shall, if such act would, but for the incapacity found have constituted an offence,—

(a) order such person to be detained in safe custody in such place and manner as the Magistrate or Court thinks fit; or

(b) order such person to be delivered to any relative or friend of such person.

(2) No order for the detention of the accused in a lunatic asylum shall be made under clause (a) of sub-section (1) otherwise than in accordance with such rules as the State Government may have made under the Indian Lunacy Act, 1912 (4 of 1912).

(3) No order for the delivery of the accused to a relative or friend shall be made under clause (b) of sub-section (1) except upon the application of such relative or friend and on his giving security to the satisfaction of the Magistrate or Court that the person delivered shall-

(a) be properly taken care of and prevented from doing injury to himself or to any other person;

(b) be produced for the inspection of such officer, and at such times and places, as the State Government may direct.

(4) The Magistrate or Court shall report to the State Government the action taken under sub-section (1).

18. In the result, the appeal succeeds in terms of the following order:-

(i) The appeal is allowed.

(ii) The impugned judgment and order passed by learned Sessions Judge, Parbhani, on 08.01.2019, in Sessions Case No.85 of 2017, convicting the appellant for the offence punishable under Section 302 of Indian Penal Code and sentencing him to suffer imprisonment for life and to pay a fine of Rs.10,000/- with default stipulation, is set aside. The appellant stands acquitted of the said offence.

(iii) Fine amount paid by the appellant, if any, be refunded to him.

(iv) The appellant shall be kept in the Mental Health Establishment, Yerwada. If any application for custody of the appellant is made by his relative or friend, the same shall be dealt with in terms of Section 335(3) of the Code of Criminal Procedure and the other provisions in that regard of the Mental Healthcare Act, 2017.

[NEERAJ P. DHOTE, J.]

[R.G. AVACHAT, J.]

KBP