



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

CRIMINAL APPEAL NO.811 OF 2019

Maroti @ Maruti Ganpati Kamble,
Age 23 years, Occu. Agri.,
R/o Saknoor, Taluka Mukhed,
District Nanded

... APPELLANT
(Orig. Accused)

VERSUS

The State of Maharashtra
Through Police Inspector,
Police Station, Mukramabad
Taluka Mukhed, District Nanded
(Copy to be served on P.P.,
High Court of Bombay,
Bench at Aurangabad)

... RESPONDENT

.....
Mrs. Renuka V. Ghule, Advocate for appellant
Mr. S.D. Ghayal, A.P.P. for respondent
.....

**CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ.**

Date of reserving judgment : 11th March, 2024

Date of pronouncing judgment : 13th March, 2024

JUDGMENT (PER R.G. AVACHAT, J.)

This appeal is directed against the judgment and order of conviction and consequential sentence passed by learned Additional Sessions Judge, Kandhar, Link Court, Mukhed in Sessions Case, No.10/2024 on 2/9/2016. Vide impugned judgment and order, the appellant was convicted for committing murder of his parents and therefore, sentenced to suffer imprisonment for life and

fine with default stipulation. He is therefore, in this appeal before US.

2. Facts, as are disclosed from the First Information Report (F.I.R. - Exh.12) are as follows :

P.W.1 Satwaji (informant) is the real brother of the appellant. They have one more brother. The informant along with his family would reside away from his parents. The appellant is the informant's younger brother. He would stay along with his parents. The appellant had been to Pune to do labour work for earning his living. About 8 days before 13/1/2014, he came back to village Saknoor and started residing with his parents.

3. On 12/1/2014, father Ganpati (deceased) had taken the appellant to village Barhali for medical treatment. The appellant, however, ran away and came back to the village. In the evening, the appellant and his parents were at their residence. The parents had planned to take the appellant to a Clinic of Dr. Deshpande at Nanded. The appellant was refusing to take treatment.

4. It is further the case of the prosecution that, by 7.30 a.m. on 13/1/2014, the informant heard some noise from the house of his parents. The informant, therefore, came out of his house and knocked on the door of the house of his parents and asked the appellant to open the same. The appellant did not open the door.

The informant, therefore, called some neighbours. All of them requested the appellant to open the door. There was no response from inside. The informant, therefore, approached the Village Police Patil. The Police Patil came. He requested the appellant to open the door. The door was pushed open. The appellant was seen laid on a wooden cot. The parents, Ganpati (deceased) and Rajyabai (deceased) were lying in a pool of blood. Both of them suffered multiple injuries. On enquiry, the appellant confessed to have killed his parents.

5. The informant therefore lodged the F.I.R. (Exh.12) at Police Station, Mukramabad. A crime vide C.R. No.03/2014 was registered for offence punishable under Section 302 of the Indian Penal Code. The mortal remains of the parents of the appellant were subjected to autopsy. Scene of offence panchanama was drawn. Statements of persons acquainted with the facts and circumstances of the case were recorded. Upon completion of the investigation, the appellant was proceeded against by filing a Charge Sheet in the Court of learned Chief Judicial Magistrate, Nanded. The case was assigned to the Court of Additional Sessions Judge, Kandhar, Link Court, Mukhed (Trial Court) for trial in accordance with law. The Trial Court framed the charge. The appellant pleaded not guilty. It appears that, his defence was of insanity.

6. To bring home the charge, the prosecution examined 6 witnesses and produced in evidence certain documents. The appellant examined 2 witnesses in his defence.

7. Learned counsel for the appellant would submit that, the appellant was not keeping well psychologically. In an attack of insanity, he committed murder of his parents. There was no motive, there are medical papers to indicate the appellant to have not been keeping well, mentally. He, therefore, urged for allowing the appeal.

8. The learned A.P.P. would submit that, the trial Court made distinction between legal insanity and medical insanity. On the day the offence was committed, the Trial Court found the appellant sane. According to learned A.P.P., the medical status report be summoned from the jail authority for appropriate orders to be passed in this appeal.

9. We have considered the submissions advanced. Perused the evidence on record.

10. Admittedly, the parents of the appellant met with homicidal death. Their post mortem reports (Exhs.24 & 25) indicate both of them died of cardio respiratory arrest due to hypovolemic shock due to multiple injuries to vital organ. Number of ante mortem injuries were noticed on the person of both the deceased.

11. The question is whether the appellant has committed the murder of his parents. We have evidence of his real brother, P.W.1 Satwaji (informant). P.W.1 Satwaji is the real brother of the appellant. They have one more brother. The informant along with his family would reside away from his parents. The appellant is the informant's younger brother. He would stay along with his parents. The appellant had been to Pune to do labour work for earning his living. About 8 days before 13/1/2014, he came back to village Saknoor and started residing with his parents.

12. On 12/1/2014, father Ganpati (deceased) had taken the appellant to village Barhali for medical treatment. The appellant, however, ran away and came back to the village. In the evening, the appellant and his parents were at their residence. The parents had planned to take the appellant to a Clinic of Dr. Deshpande at Nanded. The appellant was refusing to take treatment.

13. P.W.1 Satwaji (informant) testified that, the appellant/accused is his real brother. He was working as a labourer in Pune. He used to come at the village intermittently, On 13/1/2014, the appellant Maroti was in residence. P.W.1 Satwaji was also present in the house at about 8.00 to 9.00 p.m. Appellant Maroti was residing with the parents. P.W.1 Satwaji was residing separately from them. On that day the appellant-accused was with parents. P.W.1 Satwaji heard sound at about 1.00 in the midnight indicating

somebody knocking the door. P.W.1 Satwaji woke up due to the sound and went towards the house wherein the appellant-accused and his parents were sleeping. He knocked on the door. P.W.1 Satwaji asked the appellant-accused to open the door. However, he did not open. He called the neighbours and relatives residing nearby and informed them about the happening. Said persons also knocked the door and asked the appellant-accused to open the door, however, the appellant did not open the door. Thereafter, P.W.1 Satwaji approached the Police Patil along with 4 – 5 persons. The Police Patil also knocked the door and asked the appellant to open the door. Then they entered the house and found his parents in a pool of blood. His father had sustained injuries on his forehead, head, chest and his mother on her neck. P.W.1 Satwaji further stated that when they questioned the appellant. He confessed to have committed murder of his parents. Thereafter P.W.1 Satwaji went to the Police Station and lodged the complaint.

14. On the same lines is the evidence of other witness, namely P.W.4 Venkatrao. The appellant had assaulted his parents with a pickaxe. From the evidence on record, we have no hesitation to hold the appellant to have committed murder of his parents. The question is, whether the appellant was not in his senses and as a result thereof the murders took place. To ascertain the same, we are not required to go far. In the F.I.R. (Exh.12) itself it has been averred that the appellant would behave

like a person mentally affected. Even on the previous day of the incident i.e. on 12/1/2014, the father Ganpati (deceased) had taken the appellant to village Barhali for medical treatment. The appellant escaped from his custody and came back to the village. It has further been averred in the F.I.R. that on the following day i.e. on 13th January, it was planned to take the appellant to a Clinic of Dr. Deshpande at Nanded. The appellant was refusing to go to any hospital for treatment.

15. There are on record papers in the nature of orders passed by learned Chief Judicial Magistrate, Nanded on 16/1/2014, itself indicating the Superintendent, Mental Health Department of Guru Govindsinghji Hospital, Nanded was requested to keep the appellant under observation of a Psychiatrist and submit the report by 23/1/2014 (Exh.36). Then we have communication dated 23/1/2014 made by learned Chief Judicial Magistrate, Nanded to the Superintendent, Mental Healthcare Establishment, Yerwada, indicating the appellant was sent for treatment of his mental health.

16. There is evidence of D.W.1 Manjit, Assistant Professor in Department of Psychiatry in Dr. Shankarrao Chavan Medical College, Nanded. His evidence indicates that the appellant was kept under observation. For better appreciation, we reproduce the relevant portion of his evidence as below :-

“During the period of observation we found that he

used to keep mum when we used to ask questions about the incident, his families and about personal things, he used to spit on us, he was uncooperative during the examination, we tried to ascertain the exact nature of schizophrenia, particularly delusions and hallucinations. According to us reasons for sending to him for further treatment was based on the following circumstances i.e. his non cooperative nature, violent behaviour, absconding.”

17. The report submitted by him reads :

CERTIFICATE

I, Dr. Manjeet Santre, Assistant Professor, Dept. Of Psychiatry, having carefully examined the patient Shri Maruti Ganpati Kamble, son of Ganpati Kamble from 16/01/2014 to 23/01/2014 (date) have come to the conclusion that the said patient exhibits the following signs and symptoms :

1. Uncooperativeness, intermittent violent behaviour.
2. Dangerousness to others exhibited consciously.
3. Non verbal gestures of violence.
4. Selective mutism.
5. Do not follow the rules of hospital and social norms.
6. Disinhibited behaviour in presence of ward staff and examining doctors only.

I have formed my opinion on the basis of my own observations and from the particulars communicated to me by Associate Professor, Registrar in

Psychiatry, Nursing Staff in Ward, accompanying escorts.

That the above named person is exhibiting the features of Antisocial Personality Disorder which needs further evaluation by performing personality assessment test and psychometric test for confirmation of the diagnosis.

As the facilities for the said test are not available with this institute and in view of the dangerousness exhibited by the individual he needs observation and management under high security ward in jail premises. Such facilities are available in Regional Mental Hospital, Yerwada, Pune.

I, therefore, recommend that he be admitted in a psychiatric hospital for further evaluation and management.

18. Then, we have evidence of D.W.2 Varsha, Medical Officer, Pune. Her evidence indicates that, the appellant was of unsound mind. His medical papers were tendered in evidence vide Exh.47.

19. The aforesaid evidence regarding mental health of the appellant was before the Court within a month of commission of the crime in question. It is not known as to why still the Court committed the case to the Sessions Court for trial in accordance with law. It is also not known as to why the Trial Court did not verify whether the appellant was able to defend himself. Be that as it may. The appellant was tried and ultimately convicted.

20. In case of **Dayabhai Chhaganbhai Thakkar Vs. State**

of Gujarat (1964 (2) CRI LJ 472), the Apex Court 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.”

21. The prosecution case itself, coupled with other evidence on record, indicate the appellant was not mentally keeping well before and on the date of the incident and even thereafter. The same indicates the appellant to have committed murder of his parents by reason of unsoundness of his mind. He has thus made out a defence of insanity, under Section 84 of the Indian Penal Code and is, therefore, entitled for acquittal.

22. There is, however, another aspect of the matter. The informant and his family members have not come forward to seek his release on bail and take is care. The present medical status report of the appellant, received today itself, indicates that he is under treatment of Psychiatrist. Since he is being acquitted, he cannot be detained in a prison/ jail. We, therefore, direct the Superintendent of Jail to transfer the appellant to Mental Healthcare

Establishment to extend him necessary treatment in that regard.

23. Reference to Section 335 of the Code of Criminal Procedure would not be out of place. We, therefore, reproduce the same :

“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) (Now repealed by the Mental Health Act, 1987 (14 of 1987)).

(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 subsection (1).

24. In view of the above, we pass the following order :-

ORDER

- (i) The Criminal Appeal is allowed.
- (ii) The order of conviction and consequential sentence of the appellant for the offences punishable under Section 302 of the Indian Penal Code, passed by learned Additional Sessions Judge, Kandhar, Link Court, Mukhed in Sessions Case No.10/2014, on 2/9/2016 is hereby set aside. The appellant stands acquitted of the offences punishable under Section 302 of the Indian Penal Code. Fine amount, if paid, be refunded to the appellant.
- (iii) The Jail Superintendent is directed to send the appellant to Mental Health Establishment for necessary treatment.
- (iv) If any application is received by a Magistrate or the Trial Court for release of the appellant from Mental Health Establishment, they would pass necessary orders in terms of the provisions

of Section 335(3) of the Code of Criminal Procedure and the relevant provisions of the Mental Healthcare Act.

- (v) The Criminal Appeal stands disposed of.
- (vi) Fee of Mrs. Renuka V. Ghule, learned Advocate appointed for the appellant is quantified at Rs.10,000/- (Rupees ten thousand).

(NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)

fmp/-