



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 111 OF 2021

Satish s/o Vasant Mantre,
Age 26 yrs., Occ. Labour,
R/o Someshwar Nagar,
Parli Vaijnath, Dist. Beed.

... Appellant
[Orig. Accused]

versus

1. State of Maharashtra
Through Police Station Officer,
Police Station, Parli City, Tq. Parli
Vaijnath, Dist. Beed.

2. XYZ

... Respondents

.....

Mr. Uttam L. Telgaonkar with Mr. N. U. Telgaonkar, Advocates for the
appellant.

Mr. S. M. Ganachari, APP for Respondent No.1-State.

Mr. Vivek M. Lomte, Advocate for Respondent No.2.

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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 05.01.2024

Pronounced on : 12.01.2024

JUDGMENT :

1. Convict for offence under Section 307 of the Indian Penal Code [IPC], is hereby assailing the judgment and order passed by learned Additional Sessions Judge, Ambajogai dated 15.02.2021 in Special POCSO Case No. 08/2017 which was tried for the offences punishable under Sections 307, 326, 354-A, 341, 504 of IPC, Sections 8 and 12 of

the Protection of Children from Sexual Offences Act, 2012 [POCSO Act] and Sections 3(1)/181 of the Motor Vehicles Act, 1988 on being challaned by Parali City Police Station.

2. Appellant was chargesheeted on the premise that, victim was a student. He used to tease her, follow her and therefore victim's uncle passed the information to the parents of accused, who gave him understanding. However, on 23.01.2017, when victim was going along with her friend, appellant intercepted her way, made her fall down and thereafter inflicted knife blows causing her grievous injuries. She was shifted to various hospitals and FIR was lodged on the basis of which crime bearing no. 38 of 2017 was registered which was investigated by PW8 API Kale and on completion of investigation, appellant was duly chargesheeted and tried by learned Additional Sessions Judge, who accepted the case of prosecution and convicted the appellant as spelt out in the operative part of the order which is now assailed before us on various grounds raised in the appeal memo.

SUBMISSIONS

3. Elaborating his arguments, learned counsel for the appellant would strenuously submit that apparently it is false implication as there is no convincing, cogent and reliable evidence. He would submit

that there is overwhelming evidence to show that appellant was a lunatic and in such state of mind, alleged occurrence has taken place. That, such crucial aspect has not been correctly appreciated by learned trial court. That, except interested testimony of friend, there is no other independent eye witness account. That, father of victim was in service of police department and therefore possibility of false implication cannot be ruled out. He would point out that statement of victim is not recorded promptly, nor statement of her so called friend is recorded by the IO Officer promptly in spite of availability. That, history is about being stabbed by "somebody". That, learned trial court has not considered and appreciated the answers given by the prosecution witnesses while under cross. That, even there are suspicious circumstances on the point of so called recovery of articles from the spot. Further, according to him, even spot is shown by informant who has hearsay information. Prosecution though claims that stone was handled by appellant, same is not recovered. Even prosecution could not demonstrate to whom the alleged footwear lying on the scene of occurrence belonged to. Further, according to him, none of the medical experts has given information about the case to be MLC. Doctor failed to give measurement of the injuries. Resultantly, for all above reasons, it is his submission that learned trial court ought not to have accepted the case of prosecution and

ought not to have held appellant guilty and so he seeks indulgence of this court for setting aside the impugned judgment.

Learned counsel has placed reliance on the decisions in *Lakchandra and others v. State of Uttar Pradesh* (2014) 85 ACC 131; *Sachin v. State of Maharashtra* (2019) 3 AIR Bom R (Cri) 386; *Sakariya v. State of M.P.* 1991 Cri.L.J. 1925 and *Pawan Kumar v. State and Another* 2019 SCC OnLine Del 10452.

4. Per contra, learned APP as well as learned counsel representing the victim, both opposed the case advanced by the appellant on the ground that there is direct eye witness account. There is history of teasing, stalking victim and therefore understanding being given to appellant. As regards the plea of insanity is concerned, they both seriously questioned the same by narrating the sequence of the events comprising of appellant riding vehicle, following the injured and intercepting victim and specifically targeting her. According to them, false defence of insanity has been put forth and there is no strong foundation in support of such defence. According to them, evidence of victim and her friend, who was accompanying her at the time of incident, is itself sufficient to discard the plea and rather fasten the guilt. That assault was life threatening and only because of timely

treatment, victim survived. It is thus submitted that, with such quality of evidence, learned trial court has committed no error whatsoever in holding the charges proved and in convicting the appellant and hence they too prayed to dismiss the appeal.

5. Learned counsel for the victim sought reliance on the following cases:

1. ***Kishor Jaisingh Sonwane v. State of Maharashtra*** ; 2018 (3) Mh.L.J. (Cri.) 368.
2. ***Surendra Mishra v. State of Jharkhand*** ; (2011) 11 SCC 495.
3. ***Hari Singh Gond v. State of M.P.*** ; AIR 2009 SC 31.
4. ***Vitthal s/o Abasaheb Chavan v. State of Maharashtra*** ; 2009 (1) Mh.L.J. (Cri.) 534.
5. ***Norman Cajetan Nazareth Fernandes v. State of Goa*** ; 2018 (5) Mh.L.J. (Cri) 662.
6. ***Dahyabhai Chhaganbhai Thakkar v. State of Gujarat*** ; AIR 1964 SC 1563.
7. ***State of M.P. v. Ahmadulla*** ; AIR 1961 SC 998.

6. Being first appellant court, Section 374 of the Code of Criminal Procedure empowers this court to re-examine, re-analyze and re-appreciate the entire evidence adduced by prosecution in trial court and therefore this court undertakes such exercise to ascertain whether

findings reached at by learned trial court are in consonance with the evidence or whether there is apparent error or perversity as alleged by appellant.

EVIDENCE ON BEHALF OF PROSECUTION

PW1 Informant, cousin of victim claims to have received phone call regarding victim being assaulted by someone and being admitted in the hospital of Dr. Kale and so he rushed there. On reaching there, his relative Vasant Ravanrao Gite informed him that Satish Mantre i.e. present appellant inflicted knife blow on victim. Therefore, after interacting with the doctor, he approached Parali City Police Station and lodged FIR which he identified to be at Exhibit 28.

While under cross, he is asked about his place of residence, about residence of father of victim and that of accused. Then he is questioned about morning walk undertaken by him that day; as to after how much time he reached the hospital and left the hospital. He admitted that he lodged FIR at 3.00 p.m. He denied knowing whether victim went to school and admitted that he personally did not see the incident.

PW3 Victim in her evidence at Exhibit 42 stated that in 2017 she was in 8th standard. That, three months prior to the incident, appellant approached her and tried to talk her and he also teased her, of which she passed information to her father and uncle who gave understanding to the appellant as well as his family. According to her, on 23.01.2017 when she and her

friend were proceeding on bicycle to the school, appellant intercepted her near Girwalkar Hospital at 7.30 a.m. He had come on a Luna which he parked across them. Her friend tried to move from his left side and she herself tried to move from right side. Accused came running and pushed her down. He started abusing her and whisked out a knife and assaulted on the left side of her navel, left wrist, thumb of right hand and palm of right hand and he gave two blows on left side of her chest and also on her upper lip below nose. According to her, he was shouting that he will kill her. He also lifted a stone lying nearby, but she and her friend shouted for help, people gathered and caught hold of accused. According to her, somebody with the help of school identity card informed the incident to her father on phone and took her in the vehicle to the hospital of Dr. Kale. Thereafter, she was taken to other hospital where she was treated up to 01.02.2017.

In her cross, she answered and admitted that her father was in police department and attached at Parali Police Station. She gave school timings and admitted that accused resided in Someshwar Nagar but denied knowing him. However, she admitted that she used to occasionally see him. She admitted that she did not lodge report about the incident which took place three months back. She flatly denied that as accused was lunatic, she and her father decided not to lodge complaint regarding the earlier incident. Then she is questioned about her route to school and surroundings on the way to school. She admitted that there use to be traffic on the road. Then she is questioned about discharge from

hospital. Omission is brought regarding “accused was shouting that he will kill”. She denied knowing about accused to be lunatic and undertaking any treatment. She also denied that he assaulted her under spell of lunacy. Rest is all denial.

PW4 Friend of victim deposed that on 23.01.2017 around 7.15 a.m., when she and victim were going to school on bicycle and when they reached Girwalkar Hospital, accused appellant came on a Luna from behind them and halted in front of their bicycle. She stated that she went ahead from his left side whereas victim went ahead from his right side. He pushed victim, who fell down from the bicycle and then, according to her, he took out a knife and inflicted blows on stomach, thumbs of both hands, left chest and left foot of victim. Even she stated that he lifted a stone and so she shouted and persons gathered there and caught hold of accused and her friend was taken to hospital. She stated that police recorded her statement.

While under cross, this witness answered and admitted that victim and accused reside in same lane but she denied knowing him thoroughly or having ever met him. She is unable to state at what distance accused stopped his Luna. She also denied that accused did not know riding Luna or he to be a lunatic and assault was under mental shock.

PW5 P.S.O. Khade, who was on duty on 23.01.2017 and he has noted and lodged FIR and registered crime on the basis of the same.

PW6 Dr. Wange, had occasion to examine the victim girl. According to him, she was conscious and oriented and she gave history with respiratory distress and about she being stabbed by somebody. He claims to have found multiple injuries, two of them to be major, one on left side of upper chest and other on the abdomen around umbilicus. He claimed that the wound on the chest was sutured. He identified the injury certificate issued by him to be at Exhibit 51. He gave details of the injuries, its size and opined that injuries are possible by sharp weapon. According to him, injuries at sr. nos. 1, 3, 6 and 7 were grievous in nature and were fresh and caused within 24 hours. He specifically stated that injuries at sr. nos. 1, 3, 6 and 7 were life threatening injuries and independently were sufficient and capable of causing death. He opined that knife shown to him is capable of causing injuries.

While under cross, he admitted that first aid was given by Dr. Kale. He admitted that measurement of sutured wound cannot be given and the surgeon who put up the sutures is the best person to depose to that extent. He answered that Exhibit 51 was not issued on the day of examination but after treatment. He admitted that identification marks are required to be noted but the same was not done by him. He also admitted that from the appearance of the article knife, it seems to be ordinary knife used for household purpose. He answered that he cannot state the injuries mentioned in Exhibit 51 could be caused by article knife.

PW7 Dr. Gosawi, in his evidence at Exhibit 58/C stated that he was posted at Regional Mental Hospital, Yerwada, Pune and that he was directed to remain present in the Court with documents pertaining to jail inmates. He deposed that he personally examined appellant. He also identified Exhibit 60 i.e. medical certificate dated 27.06.2017 issued by Regional Mental Hospital, Yerwada, Pune. He stated that it was issued by his signature and he identified the same. He also identified medical certificate dated 27.06.2017 issued by his senior and he identified it to be at Exhibit 62. He also identified Medical History Sheet Exhibit 63. Based on the report, he deposed that appellant was admitted on 20.06.2017. He was produced before expert committee comprising of Chief Judicial Magistrate, Superintendent of Regional Mental Hospital, Yerwada and the committee having interacted with under-trial prisoner, posed questions to understand his mental condition and gathered his general awareness and thereafter, committee unanimously opined that he was fit to face trial. He identified the certificate Exhibit 64 to that extent.

Even above medical expert, a psychiatrist was subjected to cross wherein he admitted that appellant was under his observation. He answered that information in Exhibit 63 was as per the details provided by the appellant and his brother. He admitted that questions posed at sr. nos. 10 to 14 were answered by appellant as “not known” and that in column no.4 there was a remark about “poor self care, irrelevant talk, disturbed behaviour”. He further answered that appellant

was treated from 27.06.2017 onwards when he was certified to be mentally unsound and that he was diagnosed to be suffering from Schizophrenia Chronic which is a mental decease and he admitted that it is not a continuous decease and waexs and wanes. He admitted that expert committee mostly comprises of a psychiatrist and two social workers. According to him, as per record, appellant was under treatment from 27.06.2017 to 25.09.2017. He denied that the committee was not constituted as per law. He admitted that in psychiatric cases, opinion about mental state is formed on the basis of previous mental condition and current mental state. On re-examination, he answered that he treated appellant from 27.06.2017 and thereafter having found him fit, he produced him before the committee. Again he was cross-examined by learned counsel for the accused wherein he answered that appellant was under treatment till 25.09.2017 and he denied about bringing documentary evidence.

PW8 API Kale is the Investigating Officer [IO], who narrated the steps taken by him till filing of the chargesheet.

EVIDENCE ON BEHALF OF THE ACCUSED-APPELLANT

DW1 Sandip deposed that he was working as a Medical Officer and that accused is his real elder brother. According to him, in 2004 while facing SSC examination, his brother was assaulted and thereafter he did not come home for two days. When he returned, there was change in his behaviour. He

used to keep mum, keep on staring, did not utter a word with anyone, used to suddenly start shouting and even attempted to physically assault family members and was therefore taken to Dr. Subhash Kale, a psychiatrist and treated with medication and as his condition did not improve, he was taken to Vivekanand Hospital at Latur in 2006 and thereafter treated by Dr. Pratap Panhale. He was even administered shock treatment. Dr. Panhale's treatment continued from 2006 to 2017 and every fortnightly/monthly he was required to be taken to Dr. Panhale who prescribed him medicines. However, his condition was stable only during period of medication and not thereafter. He further deposed that they used to keep him either tied or locked to avoid untoward incident.

In cross at the hands of learned APP, DW1 answered that no offence of assault on appellant was registered and no inquiries were made as to who assaulted. He admitted that appellant had passed SCC examination with good marks but he volunteered that the assault was on the last day of examination. He denied knowing whether appellant cleared 11th standard examination, but he admitted that he secured admission in collage for 11th and 12th standard course and further obtained admission in Vaidyanath College, Parali. He admitted that his brother/appellant used to do his daily chores like having food, wearing cloths normally but he denied that he participated in functions and marriages. To a question whether his brother was treated by admitting in the hospital, he answered that he was admitted for a day. To

another question he answered that Dr. Panhale has diagnosed his brother to be suffering from schizophrenia. Rest is all denial.

DW2 Dr. Pratap Panhale, also a medical practitioner, at Exhibit 99/C has elaborately deposed about he to be a specialist in psychiatric branch and practicing at Latur. The sum and substance of his evidence is that since May 2006 appellant was visiting his clinic with complaints like fixed gaze, irrelevant talk, remaining quite, raising suspicion. According to him, appellant was diagnosed to be suffering from schizophrenia disorder. In his entire examination-in-chief and cross from para 2 to 17 he has narrated various dates on which visits were paid and medicines were duly prescribed, sometimes discontinued on the basis of condition on that particular day and again re-administering the medicine and adjusting his doses on the basis of complaints. He is also cross-examined by learned APP as well as re-examined by defence and he has placed on record and identified the medical prescriptions advised by him.

ANALYSIS

7. The sum and substance of the charge and prosecution case is that appellant was interested in victim and so he followed her, teased her and therefore understanding was given to him to mend his ways but on 23.01.2017, he followed victim who was proceeding to school on bicycle and he intercepted her way, initially pushed her and

thereafter inflicted knife blows and was about to thrust/hit stone to her but was caught hold by mob. Therefore, for above charges appellant was tried and finally held guilty by learned trial court.

The fundamental grounds on which appeal is preferred are that, firstly there is no independent, cogent, reliable eye witness account. Secondly, accused to be insane and that he is entitled for protection in view of Section 84 of the IPC. Thirdly, there is no evidence that it was a case of an attempt to commit murder or to cause grievous injury.

In support of above defence, accused has adduced evidence of two witnesses at Exhibits 85/C and 99/C, who are his brother and medical practitioner i.e. psychiatrist respectively.

8. Consequently, specific defence raised in trial court as well as before this court during appeal is that appellant was a schizophrenic and therefore insane and is consequently entitled for legal protection accorded by virtue of Section 84 of IPC. Though other grounds are raised like no cogent, reliable evidence; only interested witness to be examined; and that informant has set law into motion on hearsay information, they do not assume much significance and the plea of insanity is required to be carefully and meticulously dealt with.

9. For proper comprehension, Section 84 is reproduced which is as under:

“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.”

10. Since the landmark judgment of *Dahyabhai Chhaganbhai Thakkar v. State of Gujarat* (supra), there are numerous landmark judgments viz. *Ratan Lal v. State of M.P.* (1970) 3 SCC 533 ; *Bapu @ Gujraj Singh v. state of Rajasthan* (2007) 8 SCC 66, *Hari Singh Gond* (supra) ; *Surendra Mishra* (supra) ; *Devidas Loka Rathod v. State of Maharashtra* (2018) 7 SCC 718 and very recent case of *Prakash Nayi alias Sen v. State of Goa* (2023) 5 SCC 673, and in all above cases which still holds the field, there is reference to the case of *Dhayabhai* (supra) wherein while dealing with Section 84 of IPC, and the Rule of evidence as contained in Section 4 and Section 105 of Evidence Act, the Hon’ble Apex Court held and observed as under:

“5..... It is a fundamental principle of criminal jurisprudence that an accused is presumed to be innocent and, therefore, the burden lies on the prosecution to prove the guilt of the accused beyond reasonable doubt. The prosecution, therefore, in a case of homicide shall prove beyond reasonable doubt that the

accused caused death with the requisite intention described in S. 299 of the Indian Penal Code. This general burden never shifts and it always rests on the prosecution. But, S. 84 of the Indian Penal Code provides that nothing is an offence if the accused at the time of doing that act, by reason of unsoundness of mind was incapable of knowing the nature of his act or what he was doing was either wrong or contrary to law. This being an exception, under S. 105 of the Evidence Act the burden of proving the existence of circumstances bringing the case within the said exception lies on the accused, and the court shall presume the absence of such circumstances. Under S. 105 of the Evidence Act, read with the definition of "shall presume" in S. 4 thereof, the court shall regard the absence of such circumstances as proved unless, after considering the matters before it, it believes that the said circumstances existed or their existence was so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that they did exist. To put it in other words, the accused will have to rebut the presumption that such circumstances did not exist, by placing material before the court sufficient to make it consider the existence of the said circumstances so probable that a prudent man would act upon them. The accused has to satisfy the standard of a "prudent man". If the material placed before the court, such as, oral and documentary evidence, presumptions, admissions or even the prosecution evidence, satisfies the test of "prudent man", the accused will have discharged his burden. The evidence so placed may not be sufficient to discharge the burden under S. 105 of the Evidence Act, but it may raise a reasonable doubt in the mind of a judge as regards one or other of the necessary ingredients of the offence itself. It may, for instance, raise a reasonable doubt in

the mind of the judge whether the accused had the requisite intention laid down in S. 299 of the Indian Penal Code. If the judge has such reasonable doubt, he has to acquit the accused, for in that event the prosecution will have failed to prove conclusively the guilt of the accused. There is no conflict between the general burden, which is always on the prosecution and which never shifts, and the special burden that rests on the accused to make out his defence of insanity.

6.

7. The doctrine of burden of proof in the context of the plea of insanity may be stated in the following propositions: (1) The prosecution must prove beyond reasonable doubt that the accused had committed the offence with the requisite mens rea, and the burden of proving that always rests on the prosecution from the beginning to the end of the trial. (2) There is a rebuttable presumption that the accused was not insane, when he committed the crime, in the sense laid down by S. 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.”

11. Keeping above settled legal principles in mind, we advert to the evidence in case in hand. Evidence of victim and her friend is very crucial and therefore this court critically analyzed such testimonies, and on steering through the evidence of both these witnesses it is emerging that, three months prior to the incident in question appellant had tried to talk with the victim and had also teased her. She claims to have informed her father, who in turn informed her uncle Shivshankar and understanding was given to the family of appellant. Regarding the incident, her testimony is that on 23.01.2017, when she and her friend were riding bicycle to reach school, around 7.30 a.m. when they had reached the hospital of Dr. Girwalkar, appellant came on his Luna and he parked it across them and so her friend tried to proceed from the left side while victim started to proceed from his right side. At that time victim alleged that accused came running and pushed her down. After abusing her he took out a knife and gave blows on her navel, left wrist, thumb of right hand and palm of right hand and he also gave two blows on the left side of chest as well as upper lip below the nose. Consequently, her testimony categorically shows that accused had approached her getting armed with a deadly weapon like knife. His intention and *mens rea* is thereby manifest. Victim girl has further deposed that appellant was shouting that he will kill her and saying so, he even

lifted a stone lying there but when she and her friend shouted for help, people gathered and caught hold of him and further untoward incident was averted.

While under cross victim who admitted accused to be residing in the very vicinity where she too resided, flatly denied him to be insane. On complaint being made to his relatives for earlier episode of following and teasing, the second episode under question seems to have taken place. Her evidence has remained steadfast throughout the cross.

Her friend PW4 also is found to be corroborating victim as she too stated that they were intercepted by accused who came on Luna and when they tried to leave the place from his left and right side respectively, he pushed victim and on her fall he inflicted knife blows on stomach, thumbs of both hands, left chest, left foot and even lifted a stone but on shouts, persons gathered and had caught him. The cross faced by her shows that there is no serious dispute about occurrence eye witnessed by her.

Consequently, the net result upon critical analysis of evidence of victim and her friend is that accused followed victim riding a vehicle, intercepted her way, parked the vehicle and out of the two

girls, he targeted victim whom he was interested in. Therefore, such material rules out the possibility of he to be under the spell of any lunacy. When such plea is put forth, courts are concerned with legal insanity and not mental insanity. Legal insanity means at the time of commission of an act, the person is suffering from mental illness and is also deprived of reasoning power. Section 84 of IPC comes to the rescue only when it is shown by the accused that he was of unsound mind even at the time of the act and was incapable of knowing the very nature of the act, its consequences and further was not aware that the act which he was doing is wrong or contrary to law. If such aspects are substantiated, only then it can be said that the person is entitled for protection under Section 84 of IPC.

12. The sheet anchor on behalf of appellant accused is his own brother DW1 and also DW2, a medical expert who had allegedly treated appellant.

Evidence of brother DW1 at Exhibit 85 is about some occurrence taking place with appellant in 2004 and being treated by DW2 for a period from 2006 to 2017. DW2, a psychiatrist has not carried record of treatment but has apparently deposed on the basis of medical prescriptions. He is not speaking about treatment being

extended up to 2017. Rather it is only for a period up to 03.07.2016 and cross of DW2 shows that thereafter he never visited this doctor. Para 9 and 10 of the examination-in-chief of DW2 shows that though appellant was visiting him, there were complaints of only decreased sleep but there was increase in goal directed activities. On 06.05.2012 and 15.07.2012, there were mere complaints of feeling sleepish, boredom or excessive sleep. Around 03.07.2016, he was on self medication. Psychiatrist doctor has deposed that there is no cure to such ailment but it can only be medically controlled.

Here we are concerned with legal insanity i.e. during the occurrence dated 23.01.2017 or in proximity to it, whether there is any relapse of said disorder so as to consider him to be under influence of the same. Evidence of DW1 brother is apparently of little or no use in this regard as his evidence is not specific that prior to 23.01.2017, appellant brother was under the impact or influence of said disorder. DW2 himself has admitted that such mental ailments are periodic. Therefore, taking the same into account, and the evidence of very brother DW1 that appellant was admitted in 11th and 12th standard and was undertaking education and having admitted that he was doing daily chores on his own, it cannot be said that there was legal insanity on or around 23.01.2017.

13. It would be also desirable to deal and discuss the relevant observations of the of Hon'ble Apex Court in the case of ***Bapu @ Gujraj Singh*** (supra), wherein it has been held and laid down that, “under section 84 of IPC, a person is exonerated form the liability from 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.** 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. It has been further laid down that mere abnormality of mind or partial delusion, irresistible impulse or compulsive behaviour of psychopath affords no protection under Section 84 of IPC....”

Thus, legal position as stands accepted is that the crucial point of time for ascertaining the state of mind of accused is when the offence was committed. Underscoring these essentials, here, from above discussed material, at the cost of repetition, it is stated that there is nothing on record to show that on or just before the occurrence appellant was under the spell of said mental disorder.

14. It is pertinent to note and is hereby reiterated that appellant had come on a Luna moped, i.e. himself riding it, had followed the victim while she was going to school with her friend, had intercepted her way and even parked his vehicle in front of the girls. Evidence of victim and her friend is unanimous about they trying to escape from left and right side respectively but appellant had specifically rushed towards victim and had targeted her by taking out a deadly weapon like knife which he had brought along with him. He also allegedly issued threats to kill and had inflicted several blows and even attempted to hit stone by lifting it. Therefore, such sequence if taken into consideration, it cannot be said that he was deprived of power of reasoning or to understand the implications of his deeds. Utterance by way of threat to kill, his intention and *mens rea* is explicit. Considering the attending circumstances available in the evidence of victim and her friend, in the considered opinion of this court, prosecution had discharged its primary burden of proving the charge of attempt to kill. Plea of insanity has not been proved or probabilized. Taking evidence of appellant accused into consideration, he has also not succeeded in creating reasonable doubt that at the time of incident or even in proximity to said date, he was under the spell of insanity so as to extend benefit of Section 4 of IPC which is statutorily available in such cases. While in prison, he was again

observed and examined by experts' committee, who on its due satisfaction, has certified him to be fit to face trial. This is yet another contributing factor which goes in favour of prosecution and goes against appellant.

15. This court has gone through the rulings relied by learned counsel for appellant, *ex facie* the citations are on totally different aspects and provisions of penal code. None of the citations placed on record is touching the contentious issues involved in the case in hand and therefore cannot be taken aid of and discussed.

16. No perversity is brought to the notice of this court in appreciation of evidence as well as the findings and conclusion reached at by the trial court. There being no merits in the appeal, the same deserves to be dismissed. Hence I proceed to pass the following order:

ORDER

The appeal is hereby dismissed.

[ABHAY S. WAGHWASE, J.]