



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

CRIMINAL APPEAL NO.345 OF 2019

Pradip s/o. Babasaheb Rashinkar,
Age : 29 years, Occ. Labourer,
r/o. Naigaon, Tq. Shrirampur,
Dist. Ahmednagar

..Appellant

Vs.

The State of Maharashtra,
Through Police Inspector,
Shrirampur Taluka Police Station,
Tq. Shrirampur, Dist. Ahmednagar

..Respondent

Mr.Yogesh R. Shinde, Advocate h/f. Mr.R.R.Karpe, Advocate for appellant

Ms.U.S.Bhosale, APP for respondent

**CORAM : R.G.AVACHAT AND
NEERAJ P. DHOTE, JJ.
DATE : JANUARY 18, 2024**

JUDGMENT (PER R.G.AVACHAT) :-

The appellant has been convicted for the offence of murder, punishable under Section 302 of Indian Penal Code, vide judgment and order dated 14.03.2019, passed by learned Addl. Sessions Judge, Shrirampur, Dist. Ahmednagar, in Sessions Case No.35 of 2016, and therefore, sentenced to suffer imprisonment for life and to pay a fine of Rs.5,000/-, in default, to suffer simple imprisonment for six months.

2. The facts giving rise to this appeal are as follows:-

The appellant had married Varsha (deceased) about 7 years before the incident. The couple was blessed with two children. Both appellant and deceased along with their children would reside separately from the appellant's father and his other family members. The appellant assaulted the deceased on her neck with an axe by 08.00 p.m. on 16.06.2016 in his house. He fled leaving behind the axe at the scene of the offence. He, first, met with his uncle - Arun (PW 3) and related him to have killed Varsha. PW 3 - Arun, therefore, rushed to the house of the appellant to find deceased - Varsha lying in the pool of blood. The other relations had already gathered. The relations of the deceased from her parental side were informed. Her brother (PW 2 - Santosh) along with his mother came to the house of the appellant. PW 3 - Arun lodged the FIR. The crime, vide C.R. No.I-49 of 2016, was registered and investigated as well. The scene of offence panchnama (Exh.36) was drawn. Inquest (Exh.16) was conducted. Mortal remains of the deceased were subjected to autopsy. The appellant was arrested. Statements of the persons acquainted with the facts and circumstances of the case were recorded. On completion of the investigation, charge sheet was laid before the court of Judicial Magistrate, First Class,

Shrirampur. Learned Judicial Magistrate, First Class committed the case to the court of learned Addl. Sessions Judge, Shrirampur, for trial in accordance with law (trial court).

3. The trial court framed Charge (Exh.9). The appellant pleaded not guilty. His defence appears to be of not having been keeping psychologically well. As such, the defence under Section 84 of Indian Penal Code was sought to be made out. The prosecution examined thirteen witnesses and produced in evidence certain documents. The appellant's father testified on oath as defence witness besides the medical practitioner (DW 2) to make out the case of the appellant to have not been sane, while the alleged crime took place.

4. On appreciation of the evidence in the case, the trial court convicted the appellant and consequently, sentenced, as stated above.

5. Learned counsel for the appellant would submit that the case is based on circumstantial evidence. There is nothing to indicate that the appellant was at home, while the offence was committed. Learned counsel then took us through the cross-

examination of certain witnesses and the defence evidence, to make out a defence of insanity. He, ultimately, urged for allowing the appeal.

6. Learned APP would, on the other hand, submit that admittedly, the appellant was residing along with his wife and two minor children. No other person was residing with them. The deceased died at the matrimonial home. It is, therefore, for the appellant to explain the circumstances, in which she died. The only inference that the appellant was author of the crime, could be drawn. The appellant made extra-judicial confession to none other than his real uncle. As regards the defence of insanity in question, learned APP would submit that the trial court found the appellant being sane. The evidence of DW 2 (psychiatrist) has rightly been discarded. She, therefore, urged for dismissal of the appeal.

7. Considered the submissions advanced. The post mortem report (Exh.47) indicates that the deceased died due to chop-wounds over her neck. PW 11 – Sanjay opined that it was a homicidal death. The fact that the deceased met with such a death is undisputed. The question is, whether the appellant is author of the homicidal death of his wife.

8. It is in the evidence of PW 3 – Arun that the appellant along with his wife – Varsha (deceased) would reside together along with their two children. DW 1 – Babasaheb, father of the appellant, testified on the same lines. The appellant, in the examination under Section 313 of the Code of Criminal Procedure, admitted the fact of having been residing with his wife and two children. PW 1 – Vitthal is a witness to the inquest panchnama (Exh.16). The scene of offence panchnama (Exh.36) indicates that it was a room admeasuring 10 ft. x 12 ft. Blood was spread on the floor. An axe stained with blood was also found on the spot. It was the house of appellant. As such, the fact that the deceased met with homicidal death at her matrimonial home shared by her husband and their two children, goes a long way to infer that it was the appellant and none other, to have killed his wife. The same inference is required to be drawn since the appellant did not offer any explanation as to where he was on the fateful night.

9. The Apex Court in case of **Trimukh Maroti Kirkan Vs. State of Maharashtra, (2006) 10 SCC 681** in paragraph 22 observed thus :-

22. Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading

evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime.”

10. The question is, whether the act of the appellant committing murder of his wife, was a result of his unsoundness of mind. PW 2 - Santosh, brother of deceased, testified that his sister (deceased) had a happy married life. Whenever he visited her house, she made no complaint against the appellant. According to him, in those days, the appellant was not keeping well. He (appellant) was mentally not sound. The appellant was taking treatment of Dr.Unde, Psychiatrist.

11. PW 3 - Arun (informant) also admitted in his cross-examination, that at the relevant time, the appellant was a psychopath. He was in the know that the appellant was taking treatment of Dr.Unde. PW 4 - Gorakh's testimony reinforces the evidence of PW 2 - Santosh and PW 3 - Arun, as regards the appellant's state of mind and that he was taking treatment therefor of Dr.Unde. PW 5 - Nandkishor also stated in his examination-in-

chief that the appellant was of unsound mind. He was confronted with his statement under Section 164 of the Code of Criminal Procedure, wherein, he stated the appellant to have been taking treatment of Dr.Unde.

12. DW 1 – Babasaheb, father of the appellant, testified that since 2015, the appellant was not keeping well, psychologically. The appellant was taking treatment of Psychiatrist, Dr.Unde. It is further in his evidence that the appellant was not taking medicines on time.

13. DW 2 – Dr.Sunil Unde's testimony indicates that he was M.D. in psychiatrist. He knew the appellant. According to him, the appellant was suffering from paranoid schizophrenia. He stated as under :-

“.....when patient symptomatic that time he experiences unrealistic things. They are called as delusions. In such type of patients, there are different types of delusions. Like delusion of percussion. Percussion means somebody is planning to harm him or is against him. Delusion of self reference means people around are talking about. Such patients to get auditory hallucinatio. In such hallucination they might be commenting, commanding or commentary. In such patients they are irritable, their sleep is disturbed, their activity is increased. They do not have touch of reality. When patient is symptomatic then they are not in sound state of mind or they do not have capacity to understand the things. I have examined the patient on 31.12.2015 at that time he was off medication, so his symptomatic

increased. I have prescribed anti psychiatric medicines for 15 days. I have called him for follow up on 15.01.2016, but he came on 16th February, 2016. Thereafter I again seen him at last time on 28th May, 2016 that time also he was not taking medicines and his symptoms were increased. So I have prescribed medicines for one month and called for follow up on 28th June, 2016. The papers now shown to me issued by me. Those are at Exh.71 to 73 respectively.”

DW 2 - Dr.Sunil produced in evidence the medical papers of the appellant.

We have also scrutinised all the case papers to find that not less than four times, learned counsel appearing for the appellant before the trial court, had moved applications requesting to extend the appellant requisite treatment for his mental illness. The trial court had allowed those applications. What kind of treatment was extended to the appellant is, however, not forthcoming.

14. The appellant has been lodged in the Central Prison, Yerwada, Pune. He was produced online. On inquiry with the Jailer, it was informed that the appellant is being extended treatment for his mental ill-health.

15. Based on all these facts, we find that the appellant had not been keeping sound mental state since 2015 and even, till date. The deceased and the appellant were leading happy married life. The prosecution has not brought on record any motive. We have,

therefore, every reason to observe the appellant to have killed his wife as a result he being not sane.

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

.....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.

17. We, thus, find the appellant to have made out the defence of insanity under Section 84 of Indian Penal Code and he is, therefore, entitled for acquittal.

18. Chapter XXV of Cr.P.C. speaks of provisions of accused persons of unsound mind. Section 335 falling under said Chapter reads thus:-

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).

19. Since the appellant is still under treatment for his mental ill-health and his father has not yet made any application for his custody, the jail authorities needs to be directed to extend medical treatment to the appellant in Government Mental Health Establishment.

20. In the result, the appeal succeeds. Hence, the following order:-

- (i) The appeal is allowed.
- (ii) The judgment and order dated 14.03.2019, passed by learned Addl. Sessions Judge, Shrirampur, Dist, Ahmednagar, in Sessions Case No.35 of 2016, convicting and sentencing the appellant for the offence punishable under Section 302 of Indian Penal Code, is set aside.
- (iii) The appellant is acquitted of the offence punishable under Section 302 of Indian Penal Code.
- (iv) Fine amount paid by the appellant, if any, be refunded to him.
- (v) Since the appellant is still under treatment for his mental ill-health and his father has not yet made any application for his custody, we direct the Superintendent, Central Prison, Yerwada, Pune, wherein the appellant has been lodged, to keep the appellant in Government Mental Health Establishment, for necessary medical treatment.

- (vi) The father of the appellant or any of his close relations may make an application under Section 335(3) of the Code of Criminal Procedure, either to the trial court or to this court. Needless to mention, if such an application is made, the same would be decided in terms of Section 335 of the Cr.P.C. and the relevant provisions of the Mental Healthcare Act, 2017.
- (vii) Learned Registrar (Judicial) of this Court to communicate this order to the Superintendent, Central Prison, Yerwada, Pune, forthwith.

[NEERAJ P. DHOTE, J.]

[R.G. AVACHAT, J.]

KBP