

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 867 OF 2024
IN
CRIMINAL APPEAL NO. 1773 OF 2019

Pradeepkumar C. Murugan .. Applicant
Versus
The State Of Maharashtra .. Respondent

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Mr. Satyavrat Joshi a/w Mr. Yash Fadtare, for the Applicant.

Mr. S. V. Gavand, A.P.P. for the State/Respondent.

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CORAM : BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.
DATED : 27th NOVEMBER, 2024

P.C:-

1. While securing his release on bail in a pending Criminal Appeal which has raised challenge to his conviction under Section 302 of the Indian Penal Code for causing murder of his own father, Mr. Joshi representing the Applicant has pressed into service Section 84 of the Indian Penal Code ("IPC"). He has also placed reliance upon the decision of the Hon'ble Apex Court in the case of *Prakash Nayi Alias Sen V/s. State of Goa, reported in (2023) 5 SCC 673*, where their Lordships of the Hon'ble Apex Court has pronounced upon the facets of Section 84, which deals with unsoundness of mind.

Categorically holding that it is a collective responsibility of the person concerned, Court and the prosecution, to decipher proof qua insanity by treating the proceeding as non-adversarial, keeping friendly relations with the accused and regarding him as one having disability and as a victim in need of help, the Hon'ble Apex Court has directed that the focus should be upon facilitating a person of unsound mind to stand trial.

2. While facing the charge under Section 302 of the IPC, the accused examined two witnesses in his defence, DW-1 Dr. Sandip Mahamuni, a Psychiatrist attached to Yerawada Central Jail and who was entrusted with the duty to have mental assessment and treatment of jail inmates who complained of sleep disturbance, depressed mood, aggressiveness, fearfulness, suicidal and homicidal gestures.

Since, DW-1 categorically deposed that the prisoner was brought to Jail in 2016 and he was being treated for his depressed mood, suicidal ideas, sleep disturbance and occasionally aggressive behavior.

While deposing before the Court, DW-1 has categorically stated that now the patient has recovered and he is on maintenance treatment.

In cross-examination, he admitted that he had no personal knowledge as to what was the mental state of the patient prior to 06.03.2017, when he was first examined by him.

Clearly, he has not thrown any light upon the

mental state of the accused when he committed the offence.

3. In addition, the accused has also examined his sister Dnyanmani Selvakumar (DW-2), who has referred to his disorderly behaviour as early as in the year 2010 and according to her, he was taken to SKS Hospital, where he received treatment as indoor patient for one week and she had also produced the documents about treatment offered to him. According to her, even after his discharge, the episode of his disorderly behaviour was repeated in 2011 and he received treatment at the hand of Dr. Raja Ram Mohan. Reference is also made to his behaviour in the year 2014, which was found to be unruly and PW-2 specifically deposed about his marital life, which ultimately resulted into filing of divorce proceedings by his wife.

She is cross-examined extensively by the prosecution in regards to the documents which she had produced about his medical treatment.

4. In order to ascertain whether an accused facing the charge of committing an offence is entitled for availing the benefit of Section 84, which contemplate that 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.

The plea of insanity as contemplated under Section 84 of the Act, necessarily require a proof, as the insanity may be of varying degree and may involve different stages of

mental disorder and not that every mentally diseased person ipso-facto can be termed to be insane or to be of unsound mind.

5. In light of the observations of the Hon'ble Apex Court in ***Prakash Nayi***, where the Court has specifically highlighted that a plea of such nature i.e. of being unsound mind is taken, the burden of proof undisputedly lies on the person who takes the plea as, once the prosecution had proved beyond reasonable doubt that the accused had committed the offence with requisite mens rea.

By referring to the decision in case of ***Dayabhai Chhaganbhai Thakkar V/s. State of Gujarat, reported in AIR 1964 SC 1563***, which has held that there is a rebuttable presumption that the accused was not insane, when he committed the crime, in a sense laid down by Section 84 of the IPC; the accused may rebut it by placing before the Court all the relevant evidence-oral, documentary or circumstantial, but categorically holding that the burden of proof upon him is no higher than which rest upon the party to Civil Proceeding, in ***Prakash Nayi***, the emphasis is laid on the Court assisting such a person, to decipher the proof qua insanity by not adopting non-adversarial approach.

6. The learned Judge has brushed aside the evidence brought on record through the defence witnesses in the wake of the excessive cross-examination and the admissions which have surfaced on record.

Prima-facie we find that except the deposition of DW-2, the sister of the accused, the Doctor who has treated

him is not examined as a witness and the trial Judge may be justified in rejecting the said defence. However, at this stage the question that arises for consideration is about the safety of the people with whom the accused would be cohabiting upon being released on bail.

7. Mr. Joshi has placed before us a report of his mental assessment in form of 'Mental Health Status Report' dated 24.08.2022 from the Yerawada Central Prison, where a reference is made to his past psychiatric treatment in the year 2011 and also a fact that he is under psychiatric treatment since 02.07.2015 in the prison. His violent behaviour, sleepless nights and restlessness has been referred to be some of the symptoms. The report also state that he was admitted in psychiatric ward of prison hospital multiple times for psychological disturbance and was given treatment for depression and somatization disorder from time to time as he exhibited psychotic symptoms like muttering to self and aggressive behaviour. He received treatment with antipsychotic and sedative medicines and the report also states that after medication he had shown improvement but he was irregular in taking medicines.

8. This report being of August 2022 and since more than two years have lapsed, we would like to have the current report on his mental health, since even assuming for a moment that through the defence witnesses he has established his case of he being of unsound mind, as he was frequently under the attacks as deposed by the DW-2, we will have to ensure that his release on bail do not prove to be detrimental to his own

interest as well as the interest of the persons including his sister or the members of her family or those residing with the members of her family.

We therefore direct the Petitioner to be examined by the medical experts in the Yerawada Central Prison on the mental health parameters and the report of assessment to be placed before us on or before 11.12.2024.

Re-notify to 12.12.2024.

(MANJUSHA DESHPANDE, J.)

(BHARATI DANGRE, J.)