



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPEAL NO. 318 OF 2021

Pravin s/o Shrirang Yelmule,
aged about 30 years, Occ. Agriculturist,
R/o Lasanpur, Tah. - Samudrapur,
District – Wardha.

...APPELLANT

Versus

The State of Maharashtra,
through the Officer-in-Charge of
Police Station Samudrapur, Tah. - Samudrapur,
District – Wardha.

...RESPONDENT

Mr. P.H. Khobragade, Counsel for the appellant (appointed).
Mr. A.B. Badar, A.P.P. for the respondent/State.

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**CORAM : ANIL L. PANSARE AND
RAJ D. WAKODE, JJ.**

**ARGUMENTS WERE HEARD ON : 8/12/2025
JUDGMENT IS PRONOUNCED ON : 17/12/2025**

JUDGMENT (PER : ANIL L. PANSARE, J.) :

The appellant is aggrieved by judgment and order dated 13/2/2020 passed by the Additional Sessions Judge, Hinganghat, District – Wardha, in Sessions Case No. 70/2017. The Sessions Court convicted the appellant for the offence punishable under Section 302 of the Indian Penal Code, 1860 (IPC).

2] Briefly stated, the facts are that on 21/4/2015, at about 4:45 pm, at Mouza – Lasanpur, the appellant committed murder of a boy, namely, Aryan Yelmule, aged around four years, by assaulting on his head by means of an axe. The law was set into motion by PW3 – Kishor saying that his uncle, i.e., the accused, has committed the offence. He stated that on 21/4/2015, at about 4:00 pm, he was playing cricket behind bus stop with boys of the village. Prashant – brother of appellant, was also with him. At about 4:45 pm, Prashant received a phone call from someone, who informed that the appellant assaulted Aryan – son of Subhash Yelmule, who is his (PW3's) cousin. He was assaulted by means of an axe on his head. PW3 and others rushed to the village. They saw Aryan's father carrying his son on a motorcycle. PW3 saw that axe was fixed in his forehead. He went to hospital to see Aryan, who was later on removed to Sevagram Hospital, where he succumbed to the injury. PW3 then lodged report with the Police Station.

3] The Investigating Officer then carried on the investigation. PW11 – Anil registered First Information Report (FIR) and conducted preliminary investigation. PW13 –

Ranjitsingh was then handed over the investigation. He collected evidence, recorded statements under Sections 161 and 164 of the Code of Criminal Procedure, 1973 (CrPC) and filed chargesheet.

4] The appellant pleaded not guilty and claimed to be tried. The prosecution examined thirteen witnesses to bring home guilt of the appellant. The defense of the appellant is of mental illness (Schizophrenia) and, accordingly, pleaded protection under Section 84 of the IPC. He has examined four witnesses in support.

5] The learned trial Court, on the basis of evidence of doctor and cross-examination of defence witnesses, found this plea of insanity as inadmissible. The trial Court then considered all attending circumstances, and held appellant guilty of the offence. The said finding is challenged before us.

6] We have heard Mr. P.H. Khobragade, learned Counsel for the appellant, and Mr. A.B. Badar, learned A.P.P. for the respondent/State. We have gone through the impugned judgment, evidence, documents and other material placed before us. We will refer to the same to the extent necessary to

answer whether the appellant is responsible for homicidal death of Aryan and if yes, whether he is entitled for protection under Section 84 of the IPC.

7] The appellant has not disputed that Aryan suffered homicidal death and, therefore, we need not discuss evidence on this point. Suffice it to say that PW9 – Dr. Toshali, who has conducted postmortem, found antemortem injuries on the person of Aryan. The cause of death is ‘hemorrhage and shock as a result of head injury with cut fracture and destruction of skull with axe seen fixed and penetrated deep in the head’. Thus, homicidal death is obvious. Even otherwise, it is nobody’s case that Aryan suffered suicidal or accidental death.

8] On the point of involvement of appellant, the testimony of PW2 – Rajendra, PW5 – Vanita and PW6 – Ramesh, is important.

9] PW2 is an eye-witness. He had been to one Pandhari Sabale for measuring wheat, as he cultivated his land. Pandhari’s house is situated near the house of appellant and Subhash (PW4) – father of deceased. He and Pandhari were measuring wheat in the courtyard. At about 4:30 to 4:45 pm,

Aryan was playing with tyre on cement road passing from in front of house of Subhash and Pandhari. He (PW2) saw appellant assaulting Aryan by means of an axe on his head. He and Ramesh (PW6) rushed towards Aryan. The appellant ran away. Aryan was lying unconscious, and blood was oozing from his head and axe was fixed in his head. The appellant's mother and Aryan's grandmother came there. PW2 called Aryan's father (PW4) and informed him of the incident. PW4 came at the spot, tied dupatta on the head of Aryan and removed him to hospital at Samudrapur. From Samudrapur, Aryan was taken to Sevagram Hospital, Wardha, where he succumbed to the injury.

10] In cross-examination, except for suggestions, nothing material is brought on record. All the suggestions have been denied by the witness. The plea of insanity was taken to which the witness showed ignorance. He said that he does not know whether the appellant was undergoing treatment since the year 2010.

11] PW4 is father of Aryan. The appellant is his cousin uncle. He stated that daughter of police patil informed him

about the incident. He reached the spot after receiving information, crowd had gathered, he saw axe fixed in forehead of Aryan. People told him that appellant has committed the offence. He tied dupatta on Aryan's forehead and removed him to Government Hospital at Samudrapur. The Medical Officer referred him to Sevagram Hospital, Wardha, where he succumbed to the injury. His testimony also suggests motive behind crime. It appears that one day prior to the incident, i.e., on 20/4/2015, when Aryan was playing with tyre, he went to courtyard of appellant, and the tyre with which he was playing, hit the appellant. The appellant got annoyed, which fact was informed by Aryan to PW4 in the evening. Next day, the incident occurred when Aryan was again playing with tyre.

12] In his cross-examination also, except for putting suggestions, nothing material is brought on record. The suggestions are denied by this witness. He denied that appellant is mentally ill. He further denied that villagers and police patil admitted appellant in hospital. He denied that appellant is undergoing treatment. He, however, admitted that for last 3-4 months, he was having strained relations with the appellant. Further suggestion, however, that PW4 has falsely

implicated the appellant because of strained relations, is not given. The cross-examination concluded by suggestion that he is deposing false, which is denied by PW4.

13] PW5 is another villager. At the relevant time, she was proceeding by road towards house of her niece situated besides the house of PW4. She saw that PW4's son was playing with tyre. The appellant came from his house holding axe in his hand. He assaulted Aryan by throwing axe towards him. It hit Aryan on his back near shoulder. Aryan fell down. At that time, the appellant's mother came there. She caught hold of appellant's hand, but he did not pay heed to her and again assaulted Aryan by axe on his forehead. Thereafter, he fled away. PW5 raised shout. Aryan was lying on road with an axe fixed in his forehead. Blood was oozing from his head. His father came after some time and took him to hospital. This witness then identified the axe (Article – 3) and also the appellant. In fact, all the witnesses have identified the appellant as all of them were acquainted with appellant's family and PW4's family.

14] In cross-examination, again, defence of mental

illness was put up, which is denied by this witness.

15] PW6 has a thrasher machine. He and one Raju had been to the house of Pandhari Sabale for measuring wheat towards remuneration of his machine. The house of PW4 is nearby. He saw Aryan playing on the road. He heard noise and, therefore, looked in that direction. He saw that Aryan was lying on road, and an axe was fixed in his forehead. Blood was oozing from his head. He then deposed that he saw appellant assaulting Aryan. He rushed towards the place. The appellant fled away. His mother was sitting there.

16] Thus, the testimony of these four witnesses, i.e., PW2, PW4, PW5 and PW6 if collectively analyzed, the involvement of appellant in crime is writ large. PW5 has given minute details of the incident. His version is supported by PW2 and PW6. Their evidence indicates that while Aryan was playing with tyre, the appellant came out from his house with an axe in his hand, and assaulted Aryan by throwing axe, which hit his shoulder. Aryan fell down. At that time, the appellant's mother intervened. He, however, did not pay heed to his mother's intervention and went ahead. He again

assaulted the helpless minor child by assaulting on his forehead. The impact or the force used during assault was such that the axe pierced into the forehead and got fixed in the forehead.

17] The reason for assault is spelt out in the testimony of PW4, one day prior to the incident, i.e., on 20/4/2015, the tyre by which Aryan was playing, hit the appellant. He got annoyed. It appears that the appellant having seen Aryan again playing with tyre on next day came out of his house with determination of beating Aryan by axe. The end result is the poor child suffered homicidal death for a petty reason. Thus, there is overwhelming evidence of appellant's involvement.

18] In the circumstances, the evidence of other witnesses need not be gone into in detail inasmuch as the testimony of eye-witnesses is sufficient to prove appellant's nexus with the crime.

19] We will, however, briefly narrate the role of other witnesses. PW1 - Balkrushna is a panch witness to the spot, which is not disputed. PW7 – Dr. Ashwin is the doctor, who has given preliminary treatment at Rural Hospital. He found chop

wound on forehead of size 5 cm X 3 cm X 3 cm. He had seen the axe fixed in the wound. He collected blood samples of the appellant. PW8 – Ramesh Babarao Jamunkar is the one, who accompanied PW4 on motorcycle. He also acted as panch to inquest panchanama. PW9 is the doctor, who has conducted postmortem of the deceased. His testimony is relevant to decide nature of death, which we have found to be homicidal. PW10 – Swapnil is the one who carried the article to Forensic Science Laboratory (FSL). PW11 is the Police Inspector, who has registered the FIR, visited the spot, prepared spot panchanama, collected blood and soil samples at the spot, etc. He did not enquire whether the appellant was mentally ill. He arrested the appellant on 22/4/2015. PW12 – Rajesh carried seized muddemal to C.A. office. PW13 is the Police Inspector, who conducted further investigation and filed chargesheet.

20] On the point of plea of insanity, DW1 – Medina – mother of appellant deposed that the appellant was mentally ill since the year 2013, and that the villagers were aware of such status. In cross-examination, she admitted that the appellant works in fields regularly and behave normally. She admitted that her son was feeling well because of treatment. She further

admitted that in June – 2014, she had taken her son to hospital, and the doctor had reduced the doses of medicines, and a single tablet was continued. She admitted that the appellant was feeling good and started to go at work on field. She admitted that after assaulting Aryan with axe, the appellant bolted away from the spot.

21] Thus, the appellant's mother has, in a way, admitted that the appellant was responsible for the incident. So far as mental illness is concerned, her evidence indicates that the illness was not such that he was incapable of knowing the nature of act which he is doing or consequences thereof. In fact, he was feeling well and started to go to the field in the year 2014.

22] DW2 – Dr. Rameez is a Psychiatric. He deposed that he treated the appellant in March – 2014, and also prior thereto, i.e., in October – 2013. He found that appellant was a patient of Schizophrenia. He described Schizophrenia to be a chronic and serious mental disorder. He further deposed that Schizophrenia requires lifelong treatment. He stated that the patient of Schizophrenia can be dangerous to his own life as

well as life of others. He further said that such type of patient may commit suicide or beat others or even may chase other person, and such patient can sustain attack of aggressive nature despite medication. He then deposed that such type of patient can also behave with normal behaviour. He admitted that even if such type of patient is having treatment and behaves normally, it cannot be said that he is fully recovered.

23] In cross-examination, he admitted that when appellant was discharged, he was oriented to time, place and person. He further admitted that patient of Schizophrenia is stable and under treatment even then he knows what is right and what is wrong. He further admitted that he even knows consequences of the act. He admitted that during treatment, the appellant was not found dangerous to his own life and life of others. He then admitted that on 16/5/2014, the patient was referred to hospital, and it was noted that he was taking medicines regularly, and was doing better and having no fresh complaints. On 24/7/2014, he was further referred to hospital, where it was found that he was on regular medication, was better and going to work. The doctor admitted that on all the aforesaid dates, his behaviour was normal, he was giving good

responses and had good mental health. He further admitted that after April – 2014, the appellant was never an indoor patient. On the point of mental condition of the appellant on 21/4/2015, i.e., the date of incident, he said that he cannot tell about his mental condition.

24] We find above evidence to be proving two things; one is that the appellant was a patient of Schizophrenia, and the other is that his mental condition was reasonably well. His mental state was such where he could understand what is right and what is wrong. He was also in a position to know consequences of the act. He was never found dangerous to his own life or that of others. Rest of the evidence is in the nature of general information about behaviour of patients suffering from Schizophrenia.

25] Thus, the question is, whether benefit of Section 84 of the IPC could be extended to him. We will comment upon it once we deal with other two defence witnesses.

26] DW3 – Sanghmitra is a jail authority. He admitted that on 14/5/2015, i.e., subsequent to incident, the appellant was sent to Civil Hospital, Wardha, for medical treatment of

mental illness. He also admitted that a request was made to the learned Magistrate to transfer the appellant to Nagpur Central Jail for medical treatment.

27] In cross-examination, he admitted that if prisoner's behaviour is abnormal, the prison authority used to inform about it to the concerned Court. He then deposed that there is no document to show that during the period from 23/4/2015 to 19/5/2015, the mental and physical behaviour of the appellant was abnormal, and that it was intimated to the concerned Court.

28] Thus, the evidence of DW3 indicates that post incident, when the appellant was in jail, he was referred to medical treatment, however, incident of abnormal behaviour was not reported at that time.

29] DW4 – Dr. Amit is the doctor, who was attached to Regional Mental Hospital. He examined the appellant. He has stated that after treatment and regular medication, his health was stable. He admitted that such kind of disease is a severe mental illness, and long term management is required for treatment of such patient.

30] In cross-examination, he admitted that due to regular medicines, the patient was having no active symptoms of mental illness. He further admitted that patient was well oriented to time, place and person. He admitted that he would not have issued report (Exh. 12) if the patient was not stable. He admitted that the patient was stable when he examined, and hence, issued report that he was stable.

31] Thus, the evidence of DW4 will further substantiate that the appellant though was suffering from Schizophrenia had no serious impairment of understanding the consequences of the act and/or to distinguish between right or wrong acts.

32] In light of above, the judgment of the Hon'ble Supreme Court in the case of *Bapu Alias Gujraj Singh Vs. State of Rajasthan [(2007) 8 SCC 66]* will be relevant. The Supreme Court, while examining scope of Section 84 of the IPC, held thus :

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8. Under Section 84 IPC, a person is exonerated from liability for 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. The accused is protected not only when, on account of insanity, he was incapable of knowing the nature of the act, but also when he did not know either that the act

was wrong or that it was contrary to law, although he might know the nature of the act itself. 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. The onus of proving unsoundness of mind is on the accused. But where during the investigation previous history of insanity is revealed, it is the duty of an honest investigator to subject the accused to a medical examination and place that evidence before the court and if this is not done, it creates a serious infirmity in the prosecution case and the benefit of doubt has to be given to the accused. The onus, however, has to be discharged by producing evidence as to the conduct of the accused shortly prior to the offence and his conduct at the time or immediately afterwards, also by evidence of his mental condition and other relevant factors. Every person is presumed to know the natural consequences of his act. Similarly every person is also presumed to know the law. The prosecution has not to establish these facts.

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11. The section itself provides that the benefit is available only after it is proved that at the time of committing the act, the accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or that even if he did not know it, it was either wrong or contrary to law then this section must be applied. The crucial point of time for deciding whether the benefit of this section should be given or not, is the material time when the offence takes place. In coming to that conclusion, the relevant circumstances are to be taken into consideration, it would be dangerous to admit the defence of insanity upon arguments derived merely from the character of the crime. It is only unsoundness of mind which naturally impairs the cognitive faculties of the mind that can form a ground of exemption from criminal responsibility. Stephen in History of the Criminal Law of England, Vol. II, p. 166 has observed that if a person cuts off the head of a sleeping man because it would be great fun to see him looking for it when he woke up, would obviously be a

case where the perpetrator of the act would be incapable of knowing the physical effects of his act. The law recognises nothing but incapacity to realise the nature of the act and presumes that where a man's mind or his faculties of ratiocination are sufficiently dim to apprehend what he is doing, he must always be presumed to intend the consequence of the action he takes. Mere absence of motive for a crime, howsoever atrocious it may be, cannot in the absence of plea and proof of legal insanity, bring the case within this section. This Court in Sheralli Wali Mohd. v. State Of Maharashtra [(1973) 4 SCC 79] held that:

"The mere fact that no motive has been proved why the accused murdered his wife and children or the fact that he made no attempt to run away when the door was broken open, would not indicate that he was insane or that he did not have the necessary mens rea for the commission of the offence."

12. Mere abnormality of mind or partial delusion, irresistible impulse or compulsive behaviour of a psychopath affords no protection under Section 84 as the law contained in that section is still squarely based on the outdated M'Naughton rules of 19th century England. The provisions of Section 84 are in substance the same as those laid down in the answers of the Judges to the questions put to them by the House of Lords, in M'Naughton's case [(1843) 4 St Tr NS 847 (HL)]. Behaviour, antecedent, attendant and subsequent to the event, may be relevant in finding the mental condition of the accused at the time of the event, but not that remote in time. It is difficult to prove the precise state of the offender's mind at the time of the commission of the offence, but some indication thereof is often furnished by the conduct of the offender while committing it or immediately after the commission of the offence. A lucid interval of an insane person is not merely a cessation of the violent symptoms of the disorder, but a restoration of the faculties of the mind sufficiently to enable the person soundly to judge the act; but the expression does not necessarily mean complete or perfect restoration of the mental faculties to their original condition. So, if there is such a restoration, the person concerned can do the

act with such reason, memory and judgment as to make it a legal act; but merely a cessation of the violent symptoms of the disorder is not sufficient.”

33] Thus, to extend benefit under Section 84 of the IPC, the person/accused must be, at the time of doing an act, either incapable of knowing (a) the nature of the act, or (b) that he is doing what is either wrong or contrary to law. The protection is available only on account of insanity, where it is proved that he was incapable of knowing the nature of act, and also, that he was unaware that the act was wrong or that it was contrary to law, although he might know the nature of act itself. The Court further held that protection under Section 84 of the IPC is not available if the accused knew that what he was doing is wrong, even if he did not know that it was contrary to law, and also, if he knew that what he was doing is contrary to law, even though he did not know that it was wrong. The benefit is available only if it is proved that at the time of committing the act, he was suffering from such inability. Most importantly, the Supreme Court held that onus of proving unsoundness of mind is on the accused. The Court clarified that mere abnormality of mind or partial delusion, irresistible impulse or compulsive behaviour of a psychopath affords no protection under Section

84 of the IPC as the law contained in that Section is still squarely based on the outdated M'Naughton rules of 19th century England. The Court held that behaviour, antecedent, attendant and subsequent to the event, may be relevant in finding the mental condition of the accused at the time of the event, but not that remote in time.

34] Thus, the conduct of the appellant is extremely crucial. The evidence on this point is that the appellant came out with axe in his hand after seeing Aryan on road again playing with tyre. He continued assault despite attempt of his mother to prevent it. Immediately after assault, he ran away. The conduct of the appellant to run away from the spot after assault is indicative of the fact that he was aware of the consequences of the assault. The said conduct also indicates that he was aware of the nature of act, which he was committing. The said conduct coupled with doctors' evidence that he was well oriented and showed stable behaviour will disentitle him of any benefit. He cannot be, thus, exonerated in terms of Section 84 of the IPC.

35] Thus, having noted all the attending circumstances,

it appears to us that the appellant has committed homicidal death of an innocent child. The trial Court has given well reasoned finding on this point. It has considered the defence as well. The finding is in tune with the provisions of law. No interference, therefore, is called for in the impugned judgment. The appeal is dismissed.

36] Fees of the learned Counsel appointed to represent the appellant be quantified and paid as per Rules.

JUDGE

JUDGE

Sumit