REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICITON

CRIMINAL APPEAL NO. OF 2008
(Arising out of S.L.P. (Crl.) No.509 of 2008)

Siddhapal Kamala Yadav …Appellant

Versus

State of Maharashtra …Respondent

JUDGMENT

Dr. ARIJIT PASAYAT, J.

1. Leave granted.

2. Challenge in this appeal is to the judgment of a Division Bench of the Bombay High Court, Aurangabad Bench, dismissing the appeal filed by the appellant who was found guilty for the offence punishable under Section 302 of the Indian Penal Code, 1860 (in short 'IPC') by the Additional Sessions Judge, Jalgaon, in Sessions Case No.140 of 2002 and was sentenced to undergo imprisonment for life and to pay a fine with default stipulation.

3. The prosecution case unfolded through depositions of ASI Ukhadu Tadvi (PW-2), hospital nurse Smt. Suman Bhave (PW-3) and guard Bhagwat Sutar (PW-4), also complaint (Exhibit 18) that was filed by ASI Tadvi, on behalf of the State. The incident in question took place on the night between 18th and 19th July, 2002. To be precise, it took place at

about 4.00 a.m. of 19.7.2002, at Ward No.14 of Civil Hospital, Jalgaon, where the appellant and the victim Dilip Sitaram Chaudhary (hereinafter referred to as 'deceased') were lodged.

The complainant ASI Tadvi was posted on guard duty at the said prisoners' cell in the Civil Hospital. There were other four policemen also, along with him, namely, Police Constables Ibrahim, Bhagwat, Gokul and Police Naik Sattar. Victim Dilip was admitted for treatment since 14.7.2002. On 18.7.2002, the appellant was admitted for treatment with the complaint that he was murmuring to himself, like a lunatic. Both, the victim and the appellant, were lodged in Ward No.14 in a common room. ASI and 4 plicemen were the party on guard, posted at the said ward.

On the fateful night, there was no electricity supply. At about 3.30 a.m. on 19.7.2002, constable Gokul was on duty. Since it was raining, policemen occupied a location at the ground floor of the hospital. Gokul alone was in the guardroom, by the side of the prisoners ward.

At about 4.00 a.m. Police Constable Gokul, on duty, shouted, "Dada run, there is a noise of violence in the prisoners' room".

Consequently, entire guard party rushed to the Wardroom and it was opened. As ASI Tadvi entered the room, he was grabbed by the appellant. However, all policemen managed to control the appellant and again put him on the bed, where he was asked to sleep on the night with handcuff. It was noticed at that time that, the appellant had freed himself from the handcuff. It was noticed that the co-prisoner was not on the bed,

but was hanging from the cot, his leg still was locked to the bed with the fetter. Iron stand, used for hanging a saline bottle, was lying by his side. It was also noticed that Dilip, the deceased who was hanging by the side of the cot, had suffered head injury. The prisoner, who was caught by the guard and who had escaped from the handcuff, was the appellant. In the meanwhile, electricity supply was resumed by the hospital generator. Nurse Suman (PW-3) had arrived there, who summoned Resident Medical Officer (in short 'RMO'). The RMO and other doctors then carried the victim Dilip on a stretcher to the room of Casualty Medical Officer (CMO) Dr. Survade, who, after sometime, informed that the victim had expired. Intimation to that effect was sent to Zilla Peth Police Station.

A detailed complaint, narrating these events, was lodged by ASI Tadvi to the said Police Station, which was registered as First Information Report at 08.30 hours and after investigation and committal of the case, trial, which culminated into impugned judgment before the High Court, was held.

As already described hereinabove, ASI Tadvi (PW-2), so also nurse Suman (PW-3) and Police Constable Bhagwat (PW-4), are the persons, who reached the location in response to call by guard on duty, Police Constable Gokul. Other set of important witnesses is of four doctors. Dr. Surwade (PW-5), was the CMO, who had reached the location upon call by nurse Suman. Dr. Bhalchandra (PW-8) had performed autopsy. He has recorded an opinion that, the death was result of head injury sustained with multiple rib fracture, injuries suffered were sufficient in the ordinary course of nature to result into death and the saline stand could be the possible weapon for inflicting the injuries. Dr. Satish

Patil (PW-9) and Dr. Subhash Badgujar (PW-10) are the two psychiatrists, then attached to civil hospital and the appellant was under their observation, at the material time. The prosecution and the trial Court have laid heavy emphasis on their evidence, in order to counter the defence of mental illness, raised by the accused.

Rajendra (PW-1), is the panch witness to inquest panchnama (Exh.16), spot panchnama (Exh. 26) was drawn in presence of panch witness Prabhakar. Blood stained pant of the accused was also seized under panchnama (Exh. 27), in his presence. Third panch witness Vilas (PW-7) was present when arrest of the accused was effected, vide Exhibit 30 and also when clothes of the deceased were seized under Exhibit 29.

4. The trial Court, as noted above, discarded the defence of mental illness as raised by the accused and found him guilty. The accused reiterated its stand of general exception under Section 84 of the IPC before the High Court. It was submitted that at the time of occurrence by reason of unsoundness of mind the appellant was incapable to knowing the nature of the act and was, therefore, entitled to protection under Section 84 IPC. The High Court did not find any substance in the plea and dismissed the appeal.

5. Learned counsel for the appellant submitted that the nature of the acts clearly shows that the appellant was of unsoundness mind and did not know the consequence of the act and, therefore, ought to have been given protection under Section 84 IPC.

6. Learned counsel for the respondents, on the other hand, supported the judgment of the High Court.

7. Section 84 lays down the legal test of responsibility in cases of alleged unsoundness of mind. There, is no definition of "unsoundness of mind" in the IPC. Courts have, however, mainly treated this expression as equivalent to insanity. But the term "insanity" itself has no precise definition. It is a term used to describe varying degrees of mental disorder. So, every person, who is mentally diseased, is not ipso facto exempted from criminal responsibility. A distinction is to be made between legal insanity and medical insanity. A Court is concerned with legal insanity, and not with medical insanity. The burden of proof rests on an accused to prove his insanity, which arises by virtue of Section 105 of the Indian Evidence Act, 1972 (in short the 'Evidence Act') and is not so onerous as that upon the prosecution to prove that the accused committed the act with which he is charged. The burden on the accused is no higher than that resting upon a plaintiff or a defendant in a civil proceeding. (See Dahyabhai v. State of Gujarat AIR 1964 SC 1563). In dealing with cases involving a defence of insanity, distinction must be made between cases, in which insanity is more or less proved and the question is only as to the degree of irresponsibility, and cases, in which insanity is sought to be proved in respect of a person, who for all intents and purposes, appears sane. In all cases, where previous insanity is proved or admitted, certain considerations have to be borne in mind. Mayne summarises them as follows:

> "Whether there was deliberation and preparation for the act; whether it was done in a manner which showed a desire to concealment ; whether after the crime, the offender showed consciousness of guilt and made efforts to avoid detections whether, after his arrest, he offered false excuses and made false statements. All facts of this sort are material as bearing on the test, which Bramwall, submitted to a jury in such a case : 'Would the prisoner have committed the act if there had been a policeman at his elbow ? It is to be remembered that

> these tests are good for cases in which previous insanity is more or less established. These tests are not always reliable where there is, what Mayne calls, "inferential insanity".

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.

9. There are four kinds of persons who may be said to be *non compos mentis* (not of sound mind), i.e., (1) an idiot; (2) one made *non compos*

by illness (3) a lunatic or a mad man and (4.) one who is drunk. An idiot is one who is of non-sane memory from his birth, by a perpetual infirmity, without lucid intervals; and those are said to be idiots who cannot count twenty, or tell the days of the week, or who do not know their fathers or mothers, or the like, (See Archbold's Criminal Pleadings, Evidence and Practice, 35th Edn. pp.31-32; Russell on Crimes and Misdemeanors, 12th Edn. Vol., p.105; 1 Hala's Pleas of the Grown 34). A person made non compos mentis by illness is excused in criminal cases from such acts as are-committed while under the influence of his disorder, (See 1 Hale PC 30). A lunatic is one who is afflicted by mental disorder only at certain periods and vicissitudes, having intervals of reason, (See Russell, 12 Edn. Vol. 1, p. 103; Hale PC 31). Madness is permanent. Lunacy and madness are spoken of as acquired insanity, and idiocy as natural insanity.

10. Section 84 embodies the fundamental maxim of criminal law, i.e., *actus non reum facit nisi mens sit rea"* (an act does not constitute guilt unless done with a guilty intention). In order to constitute an offence, the intent and act must concur; but in the case of insane persons, no culpability is fastened on them as they have no free will (*furios is nulla voluntas est*).

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, Vo. II, page 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 recognizes 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 Sherall Walli Mohammed v. State of Maharashtra: (1972 Cr.LJ 1523 (SC)), held that the mere fact that no motive has been proved why the accused murdered his wife and child 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 necessary mens rea for the offence. 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 Naughton rules of 19th Century England. The provisions of Section 84 are in substance the same as that 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.

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 prefect 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.

12. The standard to be applied is whether according to the ordinary standard, adopted by reasonable men, the act was right or wrong. The mere fact that an accused is conceited, odd irascible and his brain is not quite all right, or that the physical and mental ailments from which he suffered had rendered his intellect weak and had affected his emotions and will, or that he had committed certain unusual acts, in the past or that he was liable to recurring fits of insanity at short intervals, or that he was subject to getting epileptic fits but there was nothing abnormal in his behaviour, or that his behaviour was queer, cannot be sufficient to attract the application of this section.

13. Section 84 of the Indian Penal Code, reads as follows:

> "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."

14. The evidence of doctors who attended the accused-appellant and the opinion expressed by them clearly goes to show that the appellant's plea relating to unsoundness of mind have no substance. Dr. Satish (PW.9) was present when the appellant was admitted to the Civil Hospital on 18.7.2000 at about 11.45 a.m. He has stated as follows:

> "I examined the patient, I did not find any obvious psychiatric illness. He was still kept under observation. Subsequently, Dr. Badgujar (PW.10) medically treated patient Sidhapal."

15. Similarly, Dr. Subhash Badgujar (PW.10) who also treated the appellant form 18.7.2002 i.e. the date of admission till 25.7.2002 the date of discharge has stated as follows:

> "The said patient Sidhpal Yadav was not mentally ill person from 18.7.2002 to 25.7.2002."

16. According to PW.10 when he examined the appellant on 18.7.2002 in the evening he was calm and quiet. He was neither angry nor was he shouting. This according to the doctor indicated that the appellant was normal. In the medical records it has been clearly stated that he was not cooperative and it was difficult to establish any rapport with him.

17. Accordingly, the trial Court and the High Court have rightly held that Section 84 IPC has no application to the facts of the present case.

18. The appeal is sans merit and is dismissed.

……J.
(DR. ARIJIT PASAYAT)

……J.
(DR. MUKUNDAKAM SHARMA)

New Delhi:
October 13, 2008