
(2004) 07 GUJ CK 0068
In the Gujarat High Court
Case No : Criminal Appeal No. 423 of 1996

Amrish Mahendra Trivedi

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 29-07-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 100, 101, 102, 103, 104

Citation : (2005) 25 GLH 553 : (2005) 2 GLR 1604

Hon'ble Judges : K.R. Vyas, J; Akshay H. Mehta, J

Bench : Division Bench

Advocate : Shilpa J. Unwalla, for the Appellant; Harsha Devani, APP, for the Respondent

Final Decision : Allowed

Judgement

Kshitij R. Vyas, J.—The appellant(original accused), in this appeal, has challenged the judgment and order dated 6.5.1996 passed by learned Addl. Sessions Judge, Godhra in Sessions Case No.186 of 1993 convicting him for offence punishable u/s 302 of the IPC and sentencing him to suffer R.I. for life and to pay a fine of Rs. 1000/-, in default, to undergo further R.I. for one month.

2. The appellant was charged with committing offence of murder of his wife Jigisha by throttling her neck and gagging her mouth with pillow in Kamla Guest House, Halol in the morning hours of 17.7.1993. It is the case of the prosecution that on 16.7.1993, the appellant had gone to Kamla Guest House with his wife and daughter aged three years by paying advance charges of Rs. 60/-. Jyotiben, PW 1, the owner of Guest House made entries in the register of the Guest House. She had also informed that she was residing adjacent to the Guest House and in the event of non availability of staff in the office of the Guest House, the key of the room to be handed over to her in case the appellant was leaving the Guest House. According to PW 1, she saw the appellant with his wife and daughter lastly at about 8.30 a.m. when the appellant had come to her house and taken

the key from her which was handed over to her in the evening.

3. On the next day at about 9.30 a.m., she was informed by the maid servant Baijiben that the water from room no.8, which was occupied by the appellant, was coming out from the tap. PW 1 went to the office of the Guest House and found key of room no. 8 lying below the table. On reaching the room, PW 1 and the maid servant saw that the bathroom was open and the tap was on. The dead body of the wife of the appellant with clothes on was lying there. The blood was oozing out from the mouth as well as nose. The blood stain marks were there on the cheek and the neck and pillow with blood stains was lying on the cot. PW 1 thereafter informed PW 9 Mahmadbhai Ismailbhai about the incident who in turn informed the Halol Police Station. PSI Rajesh Pathak, PW 6 reached the Guest House and recorded the complaint of PW 1 Jyotiben and registered offence at CR No. I 205/93 against the appellant punishable u/s 302 of the IPC and started investigation.

4. The appellant, in the meantime, to avoid his arrest, moved at some places including Indore City with his minor daughter and after spending three days in that condition, ultimately on 21.7.1993, went to Mahipatram Ashram, Ahmedabad where he made extra judicial confession before PW 4 Rameshchandra Parmar, the District Social Welfare Officer of the Ashram that he had committed murder of his wife Jigisha. Before making the said confession, the appellant took assurance from the PW 4 that his minor daughter should be admitted in the Orphanage of the Ashram. PW 4 conveyed message regarding involvement of the appellant in the commission of offence to the Police Control Room, Ahmedabad and thereafter the appellant was arrested. At the end of investigation, on the basis of the material on record against the appellant, chargesheet was filed before the learned Judicial Magistrate, First Class, who in turn committed the case to the Sessions Court at Godhra.

5. The charge Ex. 40 was framed against the appellant who pleaded not guilty to the charge and claimed to be tried. Further statement of the appellant u/s 313 of the Code of Criminal Procedure was recorded. From the record of the case, it clearly appears that in the course of trial, the appellant has taken two defences. During recording of the evidence of prosecution witnesses, it has been tried to suggest to them that the appellant was behaving like insane person. Further defence witnesses have also been examined to establish that the appellant was patient of Schizophrenia. Thus, even while not disputing the act of killing, recourse to defence u/s 84 of the IPC has been taken. Whereas in further statement recorded u/s 313 of the Code of Criminal Procedure, the appellant has stated that on the night of the incident, he had very strong urge to have sexual intercourse with the deceased, but she was non cooperative. Hence, with a view to prevent her from getting off the bed, he put pressure with his hand and performed the act with great intensity without realising that in the process, he had actually throttled her. In other words, he pleaded the defence of accidental death. The learned Addl. Sessions Judge, after appreciating the evidence on

record and the further statement of the appellant, held that the prosecution had established beyond any reasonable doubt the offence punishable u/s 302 of the IPC committed by the appellant. According to the learned Judge, the evidence led by the appellant to substantiate his defence regarding insanity was not sufficient to attract the requirement of section 84 of the IPC and bring his case under general exceptions. He, therefore, passed the order of conviction and sentence against the appellant. Hence this appeal.

6. As stated above, the appellant having admitted his act of killing his wife by making extra judicial confession before PW 4 Rameshchandra Parmar and also in his further statement before the Court, it is not necessary for us to consider the evidence of prosecution witnesses. The question for consideration before us is whether the act committed by him is of an insane person so as to attract the provisions of section 84 of the IPC. Section 84 of the IPC reads as under:

"84. 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 plain reading of the section shows that though the offending act is committed, it would fall within the ambit of section 84, if it is, successfully, shown that the accused, at the time of doing the act, by reason of unsoundness of mind, was incapable of knowing the nature of the act or what he was doing was either wrong or contrary to law. Act committed by a person in such a situation will not constitute offence and it is not punishable. A person is incapable of knowing the nature of the act or that he is, mentally, incapacitated to perceive or conceive what he was doing was either wrong or contrary to the provisions of law is exempted from being punished by virtue of inhibition projected in section 84 of the IPC.

7. Section 84 of the IPC is one of the General Exceptions incorporated in Chapter IV of IPC comprising sections 76 to 106. The General Exceptions in Chapter IV of IPC show that such are the Exceptions which are in favour of infants, lunatics, idiot persons, or persons incapable of judgment by reason of intoxication caused against his will, etc. The accused who propounds the defence of insanity has to satisfy the Court that the incriminating act was not an intended one or that there was incapacity to know and understand the nature of the act and the resultant effect thereof.

8. In view of the above principles, the appellant has to establish that he was insane when he committed the act. For the purpose of establishing insanity of the appellant, the defence has examined Dr. Hansal Bhachech as DW 1 Ex. 103. Dr. Bhachech is M.D. (Psychologist) and is also a Member of American Psychiatric Society. According to him, he is doing private practice since five years and is having two Clinics, one at Maninagar and another at Khadia. He is giving honorary services to Rajasthan Hospital as Psychiatrist. He is also giving honorary services to Gujarat Education Trust in Addiction Relieving Center. He is

also Column Writer in daily newspaper and has also published two books on how to get rid of addiction and on releasing mental stress. According to him, as a Psychiatrist, he has examined about 8000 to 10000 cases. Out of them, many were suffering from depression mania, schizophrenia and addiction. 30% of the cases were of schizophrenia. He had examined the appellant as a patient when he first visited him with his wife on 28.12.1991. The case history of the appellant, he having suspicious nature was given by his wife. According to him, the appellant was highly quarrelsome person, not getting sleep at night and not doing office work. The witness was informed by the wife of the appellant that the appellant was having suspicion that his wife and his brother were giving him brown sugar in food and thereby keeping him under intoxication and she was maintaining relations with other persons, the appellant was suffering from mental disease. Dr.Bhachech had found that the appellant was the patient of Paranoid Schizophrenia and he started his treatment. This witness had brought separate file of the appellant giving details of the treatment from 28.12.1991 to 1.2.1993. According to this witness, the patient of Schizophrenia requires long drawn regular treatment. The behaviour of the patient of Schizophrenia is uncertain and nobody can say as to how the patient will behave. Such patients are having certain beliefs; they are totally indifferent and careless for their appearance. On so many occasions, they show odd behaviour; sometimes they cry standing on the road, give abuses, take out clothes. According to this witness, Schizophrenia is one type of madness. After 1.2.1993, the appellant had not visited Dr. Bhachech. It is only in November 1995 that the mother of the appellant had met him and informed him that the appellant was involved in a murder case. She thereafter showed him post-mortem report. Four to five days thereafter, Dr. Bhachech gave her certificate Ex.104. He has also produced certificate dated 2.3.1992 at Ex. 105.

This witness has been cross examined. According to him, it was not possible to give any specific time limit for the total recovery of patient of Schizophrenia. He has denied the suggestion that in certificate Ex. 105, he had stated that the appellant would be cured within one year treatment. Looking at the file Ex. 106, he had stated that he had noticed recovery in the condition of appellant on 4.3.1992. However, he was not in a position to give the exact percentage of recovery. He has further stated that when on the second occasion, the appellant met him on 3.1.1992, he had asked many questions for the purpose of knowing the improvement. However, he did not notice any improvement and, therefore, he had increased the dose of medicines. This witness has stated that as per the history given by the wife of the appellant, the father of the appellant was also suffering from Schizophrenia. According to him, Schizophrenia can be hereditary. In para 23, he admitted that he had examined the appellant on 10.1.1992, 20.1.1992, 30.1.1992 and 13.2.1992 and he noticed improvement in the condition of the appellant. He has also admitted that when he had examined the appellant on 13.2.1992, 4.3.1992 and 18.4.1992, he had not given any irrelevant answers. According to this witness, from 28.4.1992 to 16.9.1992, no

irrelevant answers were given by the appellant to him. However, when the appellant met him on 2.11.1992, he found mental disorder of the appellant. Again when he met him on 1.2.1993, he found that the mental condition of the appellant had further deteriorated. According to him, from 28.12.1991 to 1.2.1993, he neither found the behaviour of the appellant dangerous nor violent. He has stated that when the mother of the appellant met him in November 1995, the brother of the appellant had also accompanied her. This witness has stated that even though the appellant was the patient of Schizophrenia, he had not shown any homicidal tendency. He has denied the suggestion that the patient of Schizophrenia, after committing crime, will not try to hide the offence like ordinary person. It was not possible for him to say as to how many hours the mental disorder of the patient of Schizophrenia may continue. According to him, ordinarily, the mental disorder may continue for less than 24 hours.

29.7.2004:

9. From the evidence of Dr. Bhachech who is examined as an Expert by the defence, it is clear that the appellant who had taken treatment as a patient of Schizophrenia on 8.12.1991 and 1.2.1993, for sometime during the treatment, some improvement in the condition was noticed by this witness. When the appellant met him lastly on 1.2.1993, his mental condition was further deteriorated.

10. Bipinbhai Mahendrabhai, the brother of the appellant was examined by the defence as DW 2 Ex.108. According to him, the appellant was Diploma in Electrical Engineering and serving in I.G.India Ltd., Surat. The appellant had got married in 1984 to Malvika. However, since both of them used to quarrel, they were not having happy married life. According to him, the appellant was quarrelsome and a person of suspicious nature and was not properly doing the job; because of the nature of the appellant, his wife was staying with her parents. The appellant was staying with his mother on the first floor while the witness with his family was staying on the ground floor. According to him, as his mother was suffering from High BP and Asthma, in 1987, an advertisement for maid servant was given. In response to the same, Jigisha had come with her mother and she was engaged as a maid servant. Thereafter, the appellant fell in love with said Jigisha in 1988 and as a result of illicit relations, Jigisha delivered a child. Thereafter, quarrel used to take place between Jigisha and the appellant as Jigisha was insisting for marriage. Jigisha had gone to her mother's place. From there, she gave legal notice. After giving divorce to Malvika, the appellant married Jigisha. This witness has given details about the behaviour of the appellant from 1989 onwards. In the year 1990, the appellant had taken medical treatment from Dr. V.D.Shah. However, there was no improvement. After taking treatment from Dr. Bhachech up to February 1993, the appellant had stopped taking treatment from him due to his poor financial condition. He had also given up his job. The appellant took treatment in LG General Hospital as an outdoor patient up to June 1993 as the witness was not in a position to bear the medical

expenses of the treatment of the appellant. According to him, after discontinuing the treatment of Dr. Bhachech, the appellant became violent and he started beating all including this witness as well as his wife. On 10.7.1993, the appellant had gone to Godhra to inquire about the ailing mother of his wife Jigisha. After staying there for about two to three days, he returned to Ahmedabad and thereafter he had gone to Godhra for the purpose of joining new service in Halol in Padma Textiles Engineering.

11. From the evidence of this witness Bipinbhai who is the brother of the appellant, the defence has tried to suggest that the mental condition of the appellant further deteriorated no sooner he stopped taking treatment from Dr. Bhachech. From 1990 onwards, there was no improvement in the mental disorder of the appellant. Because of losing job, the appellant was not in a position to take treatment from the competent doctor and, therefore, he had to take treatment from LG Hospital as an outdoor patient. He used to quarrel with his wife and brother. The brother had to change his residence because of the behaviour of the appellant. From the evidence on record, the defence has brought out the following peculiar and unusual features of conduct of the appellant and the resultant effect thereof.

(1) The failure of first marriage with Malvika because of quarrelsome and suspicious nature of the appellant resulting in extramarital relations with the deceased who was a maid servant in the house engaged to look after his mother.

(2) Because of illicit relationship with the deceased, she delivered a baby girl before solemnising marriage.

(3) Because of abnormal behaviour, the deceased had to leave the place of the appellant and had to give a legal notice to the appellant.

(4) The appellant married the deceased by way of compromise only after obtaining divorce from his first wife.

(5) Because of mental disorder, the appellant had to leave the job and was unemployed till the incident in question.

12. The above facts will clearly go to reveal the mental condition of the appellant. It would be reasonable to conclude that the appellant was not a normal man. He being patient of Schizophrenia, it will be difficult to predict how and in what manner, he will behave. It is pertinent to note that the appellant had remained patient of Schizophrenia even after the incident. From the record, it appears that on 23.5.1994, application Ex. 11 was given stating that the appellant was mentally unfit. The trial court, on 27.5.1994, passed an order to send the appellant for medical examination. The report Ex. 31 dated 31.12.1994 shows that in the opinion of the expert, after having treatment for six months, the appellant would be fit to face the trial. On 31.5.1994, by Ex. 36, even after framing of charge, the trial court sent the appellant for medical examination. The certificate issued by Dr. Desai dated 2.6.1995 Ex. 39 shows that even while the

appellant was mentally under control, he was on drugs.

13. It will not be out of place to mention at this stage that even after the order of conviction, this Court, on 16.7.1997, had released the appellant on temporary bail up to 5.8.1997 in Criminal Misc. Application No. 3336 of 1997 which was extended up to 3.9.1997 and thereafter up to 16.10.1997. Again on 16.2.2004, this Court was informed by the Medical Officer, Baroda Central Jail Dr. Kalpesh Patel that as the appellant was not keeping good health, he was shifted to Jamnagar Mental Asylum. The certificate produced also reveals that the appellant was admitted in SSG Hospital, Baroda for treatment from 28.10.2003 to 24.10.2003. Thereafter, he was referred to Mental Hospital. There, he was treated as OPD patient till 15.1.2004 and further treatment was given till 30.1.2004. From the record, it appears that when the appellant was released on temporary bail, the appellant behaved in most abnormal manner with his relatives, often became violent and even tried to outrage the modesty of his own mother with the result the brother of the appellant had to request the Court to cancel the period of temporary bail. By giving the aforesaid facts, we would like to emphasize that the appellant was not mentally sound during the trial and his condition had worsened after the trial.

In the aforesaid background, let us examine the offence committed by the appellant.

14. PW 4 Rameshchandra Mafatlal Parmar, Ex. 58, the District Social Welfare Officer was at the relevant time associated with Mahipatram Ashram, Ahmedabad. In his evidence, he has stated that in the month of July at about 10.00 o'clock morning, the appellant came with his daughter Kruti and met him for the purpose of admitting her in the Ashram. The witness inquired about the mother of the daughter. After giving evasive reply, the appellant told him that the mother of the child had expired. This witness insisted for the death certificate of the mother before admitting the daughter. The appellant thereafter told him that as he was hungry since three days, food be provided to him. The witness made arrangement for the food. However, the appellant left with the food and after having some food, again met the witness and told him that he wanted to disclose certain facts. Before disclosing the facts, he insisted for admission of his daughter. The appellant thereafter confessed that he had come there after causing death of his wife. His daughter was with him since three days and, therefore, he was not in a position to produce death certificate. Again he insisted that his daughter be admitted in the Ashram and thereafter he would surrender before the police. This witness observed that the appellant was behaving like an insane person. This witness thereafter called the police by informing the facts narrated by the appellant. It appears that the Court permitted the Prosecutor to contradict this witness without declaring him hostile. This witness has admitted that in his police statement, he had stated that the appellant had informed him (Translated version) that "My wife Jigisha, by mixing brown sugar in the food was trying to kill me and, therefore, our relations had become strained. I came with

my wife from Godhra to Halol where we stayed in Kamla Guest House. In the early morning on 17.7.1993, I throttled my wife Jigisha by pressing her neck by hand. Saliva as well as tongue came out from the mouth. I pressed her neck till she died. When she fell down on the ground, on examining her pulse and heartbeats and after finding that they had stopped, I kept the dead body in the bathroom and thereafter I went away with my daughter Kruti. As I had no money, I had gone to Indore by truck. He gave me the names of two to three places. However, I have forgotten the names."

Nothing substantial has been brought out from the evidence of this witness. By the above extra judicial confession before PW 4, the appellant admitted the act committed by him. However, in the further statement recorded u/s 313 of the Code of Criminal Procedure, while admitting the death of his wife, the appellant came out with a different story and submitted that it was by accident. In Ex. 41, he has given all details of his life. He started his career as an Engineer; his marriage with Malvika, his relationship with the deceased, his taking treatment with Dr. V.D.Shah; Dr. Bhachech and thereafter in LG General Hospital and his relationship with his brother. About the incident, he has stated that on 16.7.1993, in the morning at about 9.00 o'clock, he had gone to Halol and met the Assistant Manager of Padma Textiles Engineering, Halol who asked him to stay for a day. After visiting Pavagadh, he and the deceased had gone to see a movie titled "Rat". The movie was sexy. He, therefore, got sexually excited and they left the movie in the interval. At night, he could not control himself from enjoying sex as he had seen sexy movie. Since the deceased was reluctant to cooperate, to see that she may not leave half way, he tightened his grip and was so much engrossed in sexual act that he did not anticipate the effect of force used by him upon her. It was only after discharge of semen when the grip around the neck was loosen, he found his wife like a dead person. On seeing her in this condition, he was shocked and frightened. He sprinkled water on her face. Since she did not regain consciousness, he took her to the bathroom and poured water on her. He thereafter realised that she had died. He got frightened and became sad and he repented for the act done by him. He cursed himself. As he was helpless, he decided to shorten his life. However, as the minor daughter was with him which was his main worry. He was also under extreme pressure, tension and difficulties. In this mental condition, for his own safety, he had written a chit and kept in his pocket and thereafter gone to Mahipatram Ashram.

Lastly, he has stated that he has not committed any offence. There was no intention on his part to kill Jigisha. He had enjoyed sex as a patient of Schizophrenia without anticipating the consequences of the act committed by him while enjoying sex with his wife.

15. In the extra judicial confession made before PW4, the appellant has not stated anything about he having accidentally killed Jigisha while enjoying sex. The said extra judicial confession gives an impression that because of his suspicion that his wife Jigisha was giving brown sugar to him in his food and was,

thus, trying to kill him, their relations were strained. The learned APP Mrs. Harsha Devani has tried to connect the killing of Jigisha with this fact. According to her, this being the earliest version, the subsequent version given in further statement u/s 313 of the Code of Criminal Procedure about accidental death cannot be of any importance. In our opinion, the learned APP is not right in her submission. Narrating the facts before PW 4 of Jigisha giving brown sugar to the appellant and, therefore, their relations having become strained, is a fact which, on the contrary, lends support to his plea regarding mental illness. Of course, the probability regarding whether on the fateful night, it was deliberate killing or accidental death, has to be seen. If the relations between the appellant and the deceased were so strained, he would not have brought her from Godhra to Halol and gone to see a movie at night. Therefore, the story put forward by him that after watching sexy movie, he was over excited and wanted to enjoy sex with his wife anyhow appears to be more consistent with the evidence on record.

16. From the evidence of Dr. Sunil Nagori, PW 3 Ex. 56, it is clear that the deceased had a bite mark on left cheek, abrasion on left as well as right side of neck and bruise mark on the left side of neck besides abrasion on the thigh below waist. According to Dr. Nagori, the injuries were antemortem. Dr. Nagori has admitted that while enjoying sex, the abrasion by nail as well as bite on the cheek were possible. According to this witness, the cause of death was due to asphyxia due to throttling leading to death.

17. At this stage, the inquest panchanama Ex. 44 shows that the blood was oozing out from the nose of the deceased. Bite injury was noticed on the left cheek as well as injuries in the nature of abrasions were also found on the neck. The undergarments of the deceased were wet and had white stains.

The panchanama of the scene of offence Ex. 45 shows that on Cot No.4 of the room of the Guest House, one pillow was lying with blood stains in its middle. Another pillow with white cover with blood stains was also lying on Cot No.5. A red "Bindi" having black border of Cross shape was stuck to the pillow.

18. Taking into consideration the above situation, the story suggested by the appellant in his further statement appears to be more probable and consistent. The appellant seems to have got over-excited after watching a sexy movie, wanted to enjoy sex with the deceased. The deceased appears to have shown utter reluctance and not a willing party to the sex and resisted the effort of the appellant. It also appears that the appellant in over-excitement, gave a bite on the cheek of the deceased and put his hand across the neck to prevent the deceased from running away and in the process, he throttled her causing damage to pericard cartilage. The appellant realised the situation after spending himself. Unfortunately, the white spots noticed on the undergarments put on by the deceased were not sent for chemical analysis. However, the possibility of white spots being semen stains cannot be ruled out. This is clear from the fact that as per the opinion of FSL Ex. 94(3), vaginal snob sent for analysis does not contain blood or semen. Thus, there was no sexual intercourse, but the appellant

had exhausted himself on the clothes of the deceased. The fact that the deceased was found dead with her saree and petticoat having been raised up to knee as can be seen from the inquest panchanama, would further go to show that the deceased was not a willing partner and was not even prepared to take off her clothes. On visualizing the situation, it appears that the appellant being the patient of Schizophrenia, overcame by his sexual desire, and having got no response from his wife to have sexual pleasure, lost mental balance and appears to be completely unaware of the consequence of what he was doing. In other words, the possibility of act having been done on account of his mental illness cannot be ruled out.

19. Mrs. Harsha Devani, learned APP submitted that in order to determine the plea of insanity, state of mind before and after the commission of act is relevant. By inviting our attention to the inquest panchanama, scene of offence and the evidence of PW 1 Jyotiben, she pointed out the circumstances, viz. chappals of the deceased lying near her feet in the bathroom, two wet pillows with blood stains, Bindi sticking to the said pillows, making use of those pillows for suffocating the deceased etc. According to the learned APP, everything was normal prior to the incident as the appellant had gone to see his mother-in-law from Ahmedabad to Godhra on 10th and returned on 11th and again on 15th, he had gone to Godhra. On 16th, he took the deceased Jigisha to Halol. At night, both of them had gone to see a movie. In the early hours of following morning, he caused the death of his wife. After the incident, he washed the pillow, put the dead body in the bathroom, placed the chappal near her feet, locked the room and gave the key in the office; took his daughter to Indore at unknown place. After three days, he returned back to Ahmedabad to hand over the custody of minor daughter. According to her, all these factors show that the appellant, at the time of committing the offence, was in proper mental condition and he had deliberately caused her death. Not only that, he also knew what he had done was wrong and against law and, therefore, with a view to avoid his arrest, he absconded to Indore and other places.

20. By highlighting the aforesaid circumstances, learned APP submitted that prior to the incident and after the incident, the mental condition of the appellant was quite sane at the time he committed the offence and, therefore, the defence has not made out the case of insanity. To substantiate her submissions, she has invited our attention to the decision of the Apex Court rendered in the case of *Jai Lal Vs. Delhi Administration*, and the decision of this Court in the case of *Bholabhai Pirabhai Vs. State of Gujarat* 41(3) GLR 212.

There cannot be any dispute with regard to the principle laid down in the said decisions that the state of mind before and after commission of the act is relevant to judge his mental condition at the time of committing the offence. However, while following the said principle, the Court is required to appreciate the evidence on record which has been done in the above decisions.

21. In the case of *Dahyabhai Chhaganbhai Thakker Vs. State of Gujarat*, the

Apex Court observe as under:

"When a plea of legal insanity is set up, the Court has to consider whether at the time of commission of the offence, the accused, by reason of unsoundness of mind, was incapable of knowing the nature of the act or that he was doing what was either wrong or contrary to law. The crucial point of time for ascertaining the state of mind of the accused is the time when the offence was committed. Whether the accused was in such a state of mind as to be entitled to the benefit of S. 84 of the Penal Code can only be established from the circumstances which preceded, attended and followed the crime. "

It was held that the entire conduct of the accused from the time he killed his wife up to the time the sessions proceedings commenced was inconsistent with the fact that he had a fit of insanity when he killed his wife.

True, the circumstances showed by the learned APP do show that the appellant was behaving like a normal life. However, one should not lose sight of the fact that the appellant is the patient of Schizophrenia which is a mental disease and it can recur anytime. From the evidence of Dr. Bhachech, it is clear that the patients of Schizophrenia can become abnormal any time even by slightest provocation. As already observed by us, the defence version narrated in further statement recorded u/s 313 of the Code of Criminal Procedure sounds more probable and in consonance with surrounding circumstances. It, therefore, appears that the entire incident is the result of total non cooperation by the deceased in sexual life. There are all possibilities of losing mental equilibrium by the appellant at that point of time. The Apex Court, in the case of Shrikant Anandrao Bhosale Vs. State of Maharashtra, , while considering the case of the patient of Paranoid Schizophrenia, held as under:

"Paranoid Schizophrenia is a mental disease. It can recur. When a person is under paranoid delusion, he is not fully aware of his activities and its consequences. The cause of schizophrenia is still not known but heredity plays a part. Paranoid schizophrenia, in the vast majority of cases, starts in the fourth decade and develops insidiously. Suspiciousness is the characteristic symptom of the early stage. Ideas of reference occur, which gradually develop into delusions of persecution. Auditory hallucinations follow, which in the beginning, start as sounds or noises in the ears, but afterwards change into abuses or insults. Delusions are at first indefinite, but gradually they become fixed and definite, to lead the patient to believe that he is persecuted by some unknown person or some superhuman agency. He believes that his food is being poisoned, some noxious gases are blown into his room and people are plotting against him to ruin him. Disturbances of general sensation give rise to hallucinations, which are attributed to the effects of hypnotism, electricity, wireless telegraphy or atomic agencies. The patient gets very irritated and excited owing to these painful and disagreeable hallucinations and delusions. Since so many people are against him and are interested in his ruin, he comes to believe that he must be a very important man. The nature of delusions thus may change from persecutory to

the grandiose type. He entertains delusions of grandeur, power and wealth, and generally conducts himself in a haughty and overbearing manner. The patient usually retains his memory and orientation and does not show signs of insanity until the conversation is directed to the particular type of delusion from which he is suffering. When delusions affect his behaviour, he is often a source of danger to himself and to others."

The circumstances shown in the said decision to attract the requirements of section 84 of IPC are clearly applicable to the facts of the present case. In the case on hand also, the appellant has a family history, his father was suffering from Schizophrenia. The appellant was being treated for Schizophrenia since 1990 and thereafter during the trial and even after the conviction.

22. The condition of the appellant had deteriorated after discontinuing treatment of Dr. Bhachech and gradually it had gone from bad to worst. As a result of poor financial position due to losing job, the appellant had to take treatment as an outdoor patient from LG Hospital. After killing wife, running away to Indore with a three year small daughter is not an act of a prudent man as anybody in his place would have handed over the custody of the minor to relatives.

23. Therefore, considering the matter from this angle, we are of the opinion that the provisions of Section 84 of IPC are attracted in the present case. We accordingly hold that though the act of homicide committed by the appellant otherwise would have been the offence of murder, he cannot be convicted of the same as it is clearly established from the facts and circumstances of the case that the appellant was not capable of knowing the nature of the act and what was wrong and against law. In our considered opinion, the learned Trial Judge has not examined the matter from this angle and, therefore, has committed an error in convicting the appellant for offence punishable u/s 302 of IPC.

24. In the result, the appeal is allowed. The judgment and order dated 6.5.1996 convicting the appellant u/s 302 of IPC and sentencing him to suffer R.I. for life, passed in Sessions Case No.186 of 1993 by the learned Addl. Sessions Judge, Godhra, are quashed and set aside.

Before releasing the appellant, the jail authorities are directed to obtain latest medical opinion from the expert doctors treating the appellant about the present mental condition of the appellant. On their certifying the appellant being mentally fit and free from Schizophrenia for the present, he be released. Till then, the appellant be kept in Mental Asylum. It is further directed that in case of any adverse opinion against the appellant, the appellant be examined at the interval of every three months and on the basis of favourable certificate, the appellant be released.

The jail authorities shall communicate this decision to the relatives of the appellant."