

(2009) 12 GUJ CK 0010
In the Gujarat High Court
Case No : Criminal Appeal No. 262 of 2001

Ashaben Naileshbhai Shah

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 30-12-2009

Acts Referred:

Bombay Police Act, 1951 — Section 135(1)
Criminal Procedure Code, 1973 (CrPC) — Section 313
Evidence Act, 1872 — Section 105
Penal Code, 1860 (IPC) — Section 302, 84

Citation : (2010) 2 GLH 731

Hon'ble Judges : J.C. Upadhyaya, J;A.L. Dave, J

Bench : Division Bench

Advocate : Nitin M. Amin, for the Appellant; M.G. Nanavati, Assistant Public Prosecutor for Opponent 1, for the Respondent

Judgement

Mr. J.C. Upadhyaya, J.—The challenge in this appeal is to the judgment and order rendered by learned City Sessions judge, Ahmedabad on 26.03.2001 in Sessions Case No.270 of 1999 whereby the learned trial Judge recorded conviction of the appellant Ashaben Naileshbhai Shah, who was original accused in the aforesaid Sessions Case for committing murder of her mother-in-law, deceased Manoramaben, punishable u/s 302 of the Indian Penal Code ("IPC, for short) and also recorded her conviction for the offence punishable u/s 135(1) of the Bombay Police Act and the appellant was sentenced to undergo R.I for life and fine of Rs. 5000/- and in default, R.I for one year for the offence punishable u/s 302 of the IPC and simple imprisonment for one month and fine of Rs. 100/- and in default, S.I for one month for the offence punishable u/s 135(1) of the Bombay Police Act. The prosecution case as unfolded during the course of trial is that the incident occurred on dated 12.1.1999, at about 3.30 pm in the house No.2/40 Gujarat Housing Board, Khokhra, Mehmadabad. It is alleged that the appellant carrying a big knife, usually used to cut pineapple, came to the above-mentioned house where her mother-in-law Manoramaben was residing and the appellant

told her mother-in-law that she had ruined her life and started quarreling with her. Thereupon, Manoramaben went into the room and the appellant followed her. She closed the door of the room from inside and it is the prosecution case that appellant inflicted blows with knife on the neck and other parts of the body of Manoramaben. The appellant severed the head from the trunk of Manoramaben and Manoramaben was beheaded. The appellant placed the head of Manoramaben on a waterstand. PW-3 Dhanveshbhai Babulal, elder brother of appellant's husband Naileshbhai, PW-6 Jagrutiben, the wife of PW3 Dhanveshbhai as well as PW-1 Bharatkumar Balubhai, a neighbor, attempted to break open the door of the room, but, they could not succeed in their attempt. As per the prosecution case, same neighbour informed police, and immediately PW-2 ASI Khemabhai Solanki who was on patrolling duty, reached to the place and the door of the room was broken open by him. They all entered into the room and found the appellant seated on the floor of the room, holding the bloodstained knife in her hand and attempted to inflict blow with knife on her own neck. They also found that the appellant had sustained some injury on her neck. PW-3 Dhanveshbhai Babulal Shah reported the incident to Amraiwadi Police Station and his FIR was registered.

1.1 During the course of police investigation, statements of material witnesses were recorded. The appellant was admitted in Civil Hospital, Ahmedabad for her treatment about injury to her neck. Required panchnamas were drawn in presence of panchas. Muddamal articles collected from the scene of offence, including the weapon knife were forwarded to FSL for examination. Postmortem report was collected and after collecting required material for the purpose of lodgment of chargesheet, chargesheet came to be filed in the Court of learned Metropolitan Magistrate, Ahmedabad. Since the offence was exclusively triable by the Court of Sessions, learned Magistrate, committed the case to the City Sessions Court, Ahmedabad, which was registered as Sessions Case No. 270 of 1999.

2. Learned trial judge framed charge against the appellant at Exh.2 to which the appellant did not plead guilty and claimed to be tried. Thereupon the prosecution adduced its oral and documentary evidence. The prosecution examined in all 12 witnesses and produced necessary documentary evidence. After the prosecution concluded its evidence, the learned trial Judge recorded the further statement of the appellant u/s 313 of the Cr.P.C. and the appellant in her further statement pleaded her complete ignorance regarding the incriminating circumstances appeared from the evidence of the prosecution and put to her by the trial Court and filed her written statement in support of her further statement and alleged cruelty and ill-treatment meted out to her by her husband and her mother-in-law deceased Manoramaben. She further alleged that her husband and her mother-in-law ill-treated her to such an extent that she would become insane and gradually, in fact, she started behaving like insane and she had to take treatment of Psychiatrist in April 1998. That keeping the appellant and her minor daughter alone in the house, her husband had left the house and thereby she

was deserted. In nutshell, the appellant raised defence of insanity. The appellant in support of her defence of insanity examined six defence witnesses and produced medical evidence to that effect.

2.1 After appreciating the evidence adduced by the prosecution and the evidence adduced by the defence and considering the submissions made on behalf of both the sides, the learned trial Judge came to the conclusion that the involvement of the appellant in the incident is duly proved by the prosecution. The learned trial Judge so far as the defence of insanity raised by the appellant is concerned, came to the conclusion that the appellant prima-facie failed to prove her defence and that the appellant was not entitled to the benefit of general Exception contained u/s 84 of the IPC and observed that though there is evidence on record that prior to the date of the incident, the appellant had taken treatment of Psychiatrist Doctors and her mental ailment was opined to be chronic Schizophrenia and even evidence reveals that after the incident, she was treated for the same, but, there is no evidence on record that on the day of the incident, i.e. on dated 12.1.1999, she was suffering from any mental disorder. The learned trial Judge further observed that the manner in which the incident was committed and the fact that the appellant brought big knife, wrapped in a piece of paper and was concealed in a bag, reveals that the murder of her mother-in-law was preplanned, predetermined and with premeditation. The very fact that on the day of the incident, she travelled in rickshaw and came to the house of her mother-in-law and before the incident, she quarreled with her mother-in-law and when her mother-in-law went inside the room, she chased her and closed the door of the room from inside would reveal that it was preplanned murder. The trial Court held that there is major difference between medical insanity and legal insanity and so far as Section 84 of the IPC is concerned, the legal insanity plays predominant role. The trial Court ultimately came to the conclusion that considering the medical evidence on record and the conduct of the appellant before, at the time, and after commission of the offence, would definitely negative her defence of insanity, and thus, appellant failed to prove her defence. Ultimately, the trial Court recorded her conviction for the offences punishable u/s 302 of the IPC and Section 135(1) of the Bombay Police Act and awarded the sentence as hereinabove referred to in this judgment.

3. We have heard the arguments of learned Advocate, Mr.Amin, for the appellant and learned A.P.P., Mr.Nanavati, for the State.

4. Learned Advocate Mr.Amin for the appellant submitted that considering the evidence of witnesses PW-1 Bharatkumar Barot, PW-2 Khemabhai Solanki, PW-3 first informant Dhanveshbhai Babulal and PW-6 Jagrutiben Dhanveshbhai corroborated by other circumstantial evidence like scene of offence panchnama, autopsy evidence together with injury on the neck of the appellant, it is difficult to assail the involvement of the appellant in the incident. However, it is vehemently submitted that the appellant prior to the day of the incident, at the time of the incident and after the incident suffered from chronic schizophrenia.

Even considering the evidence adduced by the prosecution, namely, the deposition of PW-11 Dr.Raghunath Sambagh and the medical case papers produced by the prosecution as well as the deposition of PW-7 Kajalben Patwa from Jyotisingh, it clearly transpires that the appellant was a lady of unsound mind, as contemplated u/s 84 of the IPC. That over and above this, as defence witnesses, the defence examined five Doctors and the medical evidence adduced by the defence clearly reveals that prior to the incident from dated 17.4.1998 till 28.7.1998, the appellant had undertaken treatment for her ailment of chronic schizophrenia and after the incident, even during her judicial custody, she was administered treatment for the said ailment.

4.1 Learned Advocate Mr.Amin submitted that considering the evidence on record adduced by the prosecution as well as adduced by the defence, it can safely be said that the appellant successfully proved the general Exception as contained u/s 84 of the IPC. That there cannot be any dispute that medical insanity and legal insanity are two different and distinct terms.

4.2 Learned Advocate Mr.Amin further submitted that in the instant case, it further emerges from the evidence on record that brother and father of the appellant were suffering from the same mental ailment. Thus, the appellant has a family history. The trial Court in the impugned judgment also accepted said fact, but, the trial Court came to the conclusion that since another brother of the appellant is not suffering from any mental ailment, the fact that the appellant only inherited the mental ailment cannot be believed. That such finding is contrary to the medical science regarding the ailment of chronic schizophrenia.

4.3 On behalf of the appellant it is further submitted that the trial Court brushed aside the defence of the appellant of unsound mind on the ground that when Dr.Parikh examined appellant, though prior to the date of the incident, for her mental ailment, at that time, neither the husband of the appellant came before Dr.Parikh nor Dr.Parikh called her husband for any interaction about the behavior of the appellant at her residence. That considering the evidence of Dr.Parikh, examined by defence as DW-5, at Exh.90, nothing emerges that his finding to the fact that the appellant suffers from chronic schizophrenia is in any way faulty for want of any interaction with husband of the appellant.

4.4 Learned Advocate Mr. Amin for the appellant submitted that the trial Court in the impugned judgment, disbelieving the defence of the appellant held that the appellant was opined to be suffering from chronic schizophrenia prior to the date of the incident and even subsequent to the date of the incident while she was in judicial custody, but, the appellant failed to prove that at the time of the incident, she was suffering from mental ailment. Learned Advocate Mr.Amin submitted that such finding arrived at by the trial Court is per se erroneous. The trial Court should have considered the events precedent, attended and succeeded to the occurrence. The trial Court should have further considered the conduct of the appellant to kill her mother-in-law on account of trifling motive, and during broad-day light in the house, in presence of witnesses and brutality

used while killing the deceased, as she was beheaded and the head was placed on water-stand and the Panchnama, Exh.26 reveals that on the floor of the room where bloodstained knife was lying, in Gujarati language with the help of blood of the deceased, it was written as -L-. oet.-1.-.4. (Kan Jyotisangh). That it has come on record that even before police reached into the room by breaking open the door, the appellant had attempted to kill herself as she was severely injured on her neck. That the trial Court should have further considered that to establish the defence contained u/s 84 of the IPC, the burden on the accused is not as high as of the prosecution and the accused can succeed by for probalising the case of insanity. That, thus, the evidence on record clearly establishes the fact that even at the time of incident, the appellant was not sane, but what she did was done because of her unsound mind and on account of her ailment of chronic schizophrenia.

4.5 Considering the evidence of Jyotisangh, through the witness, PW-7 Kajalben Pankajbhai and the papers collectively produced at Exh.44 it clearly reveals that appellant, prior to the date of the incident, applied to Jyotisangh for settlement of her matrimonial dispute and the Jyotisangh evidence reveals that the appellant suspected her husband, mother-in-law and relatives of her husband, that they would cause immense harm to her and she would be done to death by treating her as lady of unsound mind. In her correspondence with Jyotisangh, it further reveals that the appellant started believing in supernatural things and black-magic, and her belief in witchcraft. That, thus, apart from the medical evidence, her conduct and behavior emerged from the correspondence reveals her unsound mind.

4.6 Learned Advocate Mr.Amin for the appellant submitted that even considering some of the judgments rendered by the Hon"ble the Apex Court and by this Court on this aspect, even the exact medical evidence of the accused suffering from chronic schizophrenia or any mental ailment, may not be required and the accused can establish his defence as contained u/s 84 of the IPC even by other evidence. It is submitted that in the instant case, the appellant has adduced cogent, clear medical evidence by examining Doctors as defence witnesses. Even the circumstances under which the incident occurred reveals the act by a person of unsound mind. It is submitted that mere fact that the appellant carried big knife in a cotton bag for killing her mother-in-law would not be sufficient to discard her defence of unsound mind for the simple reason that considering the medical evidence on record, it has come on record that the person may prepare for crime still under the attack of chronic schizophrenia.

4.7 Learned Advocate Mr.Amin for the appellant relied upon certain decisions rendered by Hon"ble the Apex Court and by this Court and, ultimately, it was submitted that the appeal may be allowed.

5. Per contra, learned A.P.P.. Mr.Nanavati, for the State vehemently opposed this appeal and submitted that considering the evidence on record, the involvement of the appellant in the incident is proved by the prosecution beyond any

reasonable doubt. The very defence raised by the appellant u/s 84 of the IPC presupposes the involvement of the appellant in the incident.

5.1 About the defence raised by the appellant u/s 84 of the IPC, it is submitted that the trial Court assigning cogent and convincing reasons disbelieved such defence and rightly recorded the conviction of the appellant for the offence punishable u/s 302 of the IPC. However, learned A.P.P., Mr.Nanavati, submitted that considering the overall evidence on record, there may not be any dispute that much prior to the date of the incident, appellant had taken medical treatment for chronic schizophrenia and after the incident, while she was in judicial custody, she was under treatment of chronic schizophrenia. However, considering the scheme of the general exception contained in Section 84 of the IPC, the relevant part is that the accused raising such defence must show that at the time of the commission of the crime by reason of unsoundness of mind, she was incapable of knowing the nature of the act or that what she was doing was either wrong or contrary to law. That in the instant case, nothing emerges that at the time of the incident, which occurred on dated 12.1.1999, she was suffering from chronic schizophrenia. It is submitted that on the day of the incident, the appellant travelled in rickshaw, brought big knife wrapped in a paper and kept in a cotton bag and quarreled with the deceased and when the deceased went inside the room, the appellant also entered into the room and took care of closing the door of the room from inside and then she committed the crime. That, therefore, the act was preplanned, predetermined and was committed with premeditation.

5.2 That there may not be any dispute that there is vast difference between the medical insanity and legal insanity. In the instant case, what is relevant is legal insanity and the appellant failed to discharge her burden to establish legal insanity. Ultimately, it is submitted that the appeal may be dismissed.

6. We have examined the record and proceedings in context with the submissions made by the rival sides.

7. Examining the evidence of eyewitnesses PW-1 Bharatkumar Balubhai, who is neighbour, PW-2 Khemabhai Solanki, Police Officer, who upon the receipt of message during patrolling, immediately reached to the place of the incident, first informant PW-3 Dhanveshbhai Babulal Shah, the son of the deceased and brother-in-law of the appellant, who upon receiving the telephone call, immediately reached to his house and the evidence of PW-6 Jagrutiben Dhanveshbhai Shah, the wife of PW-3 Dhanveshbhai Babulal Shah and the daughter-in-law of the deceased, it is clearly established that at the time of the incident, the appellant came to the house of deceased Manoramaben, her mother-in-law, and she quarreled with the deceased and when deceased went inside the room of her house, the appellant chased her and closed the door of the room from inside and the deceased was assaulted upon by the appellant. The witnesses who saw the incident from the glass window of the room described the manner and method in which the deceased was assaulted upon by the appellant

and how her neck was cut by the appellant. When the door of the room was broken open, the witnesses entered into the room, they found the appellant seated in the room, adjacent to the deadbody of the deceased without head as the head of the deceased was placed on a water-stand by the appellant. It is further submitted that in the room where the incident occurred, except the appellant none other was present. Bloodstained knife which was carried by the appellant was seized during the course of Panchnama of scene of occurrence. Therefore, in nutshell, so far as the involvement of the appellant in the incident is concerned, we are of the considered opinion that the prosecution has proved the involvement of the appellant beyond any reasonable doubt. We are, therefore, of the opinion that on behalf of the appellant, learned Advocate Mr.Amin rightly did not assail the incident and the involvement of the appellant in the incident.

8. Considering the evidence on record, including the oral evidence adduced by the prosecution as well as adduced by the defence, it clearly transpires that the appellant raised before the trial Court her defence contained u/s 84 of the IPC. Section 84 of the IPC runs as under:

Section 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.

9. To substantiate such defence, the appellant relies upon two types of evidence, namely, (1) the medical evidence and (2) her conduct and behavior emerges from the evidence prior to, at the time of and after the incident.

10. So far as the medical evidence is concerned, the appellant examined DW-2 Dr.Pratap Mehta at Exh.75 and considering the evidence of Dr. Mehta, it transpires that in the year 1987, he had examined one Timir P. Shah, who happens to be the brother of the appellant and he opined that Mr.Timir P. Shah was suffering from chronic schizophrenia. It has also come in evidence through the testimony of Dr.Mehta that said mental ailment is hereditary. Defence examined DW-3 Dr.Ajay Parshottambhai Chauhan, who at the relevant time was serving as full-time Psychiatrist (Class-I) in Hospital of Mental Health, Ahmedabad. On dated 5.6.1999, by the letter of learned Metropolitan Magistrate, the appellant was brought before him from Central Jail, Sabarmati. She was kept under observation from 5.6.1999 to 18.6.1999. Dr.Chauhan opined that from the observation papers, various features and characteristics in the nature of hallucination, auditory hallucination, schizophrenia, delusion etc. were observed in the conduct and behavior of Ashaben (the appellant) and uptil now, (this witness was examined on 27.2.2001) she was under his treatment. He also brought medical casepapers of Timir P. Shah, the brother of the appellant, who was suffering from chronic schizophrenia. Dr.Chauhan also deposed that the person may receive insanity in hereditary. It further reveals from his evidence that even father of the appellant, named, Pravinchandra Shah was also suffering from said mental ailment. In his cross-examination, in paragraph 8, Dr.Chauhan

deposed that in paranoid delusion, a person may act in delusion and violence may be well-planned and specific. However, he admitted that appellant Ashaben's husband was not examined by him. Thus, considering the evidence of Dr.Chauhan, it appears that after the incident, when the appellant was in judicial custody, he had examined the appellant and her mental ailment was diagnosed to be chronic schizophrenia.

11. The defence examined DW-5 Dr. Rajesh Parikh. Considering the evidence of Dr. Parikh, he is M. D. (Psychiatry). He also obtained degrees in USA and he had also worked for seven years in USA as consulting Psychiatrist in a Government clinic. According to the evidence of Dr.Parikh, on dated 17.4.1998, he had examined the appellant. Thereafter, for number of times, she had come to him and had examined her. According to his evidence, the appellant was suffering from chronic schizophrenia. He had last examined her on 28.7.1998. In paragraph 3 of his evidence, Dr.Parikh opined that a person under the influence of schizophrenia can go from one place to another, commit a crime and may not yet be knowing that the action committed by him/her is a crime. He categorically opined that a person under the influence of schizophrenia goes to one place to another, closes the door from inside, inflict as many as 24 injuries to another person, completely severed the head from the body and placed the head on a platform and then sits down and starts inflicting injuries on her own neck and does not open the door even at the shouting of outsiders does not react or respond in any way, she does not protest to be arrested on seeing policemen and remains speechless till seized by the police. Dr.Parikh opined that this type of conduct and behavior can be in schizophrenia. In his cross-examination, he admitted that the appellant had not taken any treatment from him after 28.7.1998, and, therefore, he cannot say anything about her mental condition thereafter.

12. The defence examined DW-6 Dr.Ganpatlal Vankar. At the relevant time, he was serving as Professor and Head of in Civil Hospital, Ahmedabad and he is M. D. (Psychiatry). According to his evidence, the appellant was brought before him from Sabarmati Central jail on dated 13.4.1999 and she was admitted to Psychiatry Department. She was discharged from the hospital on 24.4.1999. She was kept under his observation. He produced the relevant medical papers. According to his opinion, one of the known causes of schizophrenia is hereditary from parental lineage. However, in his cross-examination, he opined that he cannot say whether the appellant was insane prior to his examining the appellant on 13.4.1999. He further opined in his cross-examination that such patient may become violent at any time. He further opined that M.B.B.S. Doctor may not be able to say that the patient is suffering from schizophrenia.

13. Thus, from the medical evidence on record, it becomes clear that from dated 17.4.1998 till 28.7.1998, the appellant had taken treatment for her mental ailment of chronic schizophrenia. The incident occurred on dated 12.1.1999 after about six months from her medical treatment. It further transpires that soon

after the incident, while she was in judicial custody, she was sent for treatment in Mental Hospital. Considering the evidence of PW-11, Dr.Raghunath Sambag, examined by the prosecution, who examined the appellant on 12.1.1999 regarding injuries on her neck, deposed that he administered necessary treatment for her neck injury.

14. On 20.1.1999, she was discharged from the hospital. In cross-examination made on behalf of the defence, Dr.Sambag admitted that the case of the appellant is of psychiatric treatment. She was referred to Psychiatrist. In his cross-examination, he further admitted that the injuries on her neck was such that it was severe and she would have died. Thus, soon after the incident, initially her treatment for neck injury continued till 20.1.1999 and thereafter she was referred to Psychiatrist. Thus, the medical evidence reveals that prior to the incident, as well as after the incident, her ailment was diagnosed as chronic schizophrenia. However, on behalf of the State, it was vehemently submitted that at the time of the incident i.e. on dated 12.1.1999, the appellant was medically found to be insane is not duly established by the appellant.

15. Now, in this respect, it is necessary to consider the case of Shrikant Anandrao Bhosale Vs. State of Maharashtra reported in 2000 Cri.L.J. 4356. Considering the facts of said case, it appears that at the time of the incident, i.e. on 24.4.1994, the appellant was serving as Police Constable. He was residing with his wife in police quarters. He used to quarrel with his wife, Surekha. At the time of the incident, while Surekha was washing clothes in bathroom, the appellant hit her with grinding stone on her head. Surekha succumbed to the injuries. During the trial before the trial Court, the defence as contemplated u/s 84 of the IPC was raised, but, the trial Court did not accept the defence of insanity and recorded his conviction, which came to be upheld by High Court. In that case, considering the medical evidence on record, Hon''ble the Apex Court held that prior to the date of the incident the appellant was taking treatment for paranoid schizophrenia. Even soon after the incident, he was treated for said mental ailment. He suffered from suspicious idea, persecutory delusions, loss of sleep and excitement. There was also history of psychiatric illness in his father. In paragraph 10 of the said judgment, Hon''ble the Apex Court described as to what is paranoid schizophrenia. Paragraph 10 of the judgment runs as under:-

What is paranoid schizophrenia, when it starts, what are its characteristics and dangers flowing from this ailment. 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 develops into delusions of persecution. Auditory hallucinations follow, which in the beginning start as sounds or noises in the ears, but are afterwards changes 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 gives 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 prosecutory 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 money and orientation and does not show signs of insanity, until the conversations 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. [Modi's Medical Jurisprudence and Toxicology (22nd Edn.)]

15.1 Furthermore, in Shrikant Bhosale's case, an identical contention was raised to the effect that there was medical evidence on record to show that the appellant was suffering from mental ailment prior to the date of the incident and after the date of the incident, but, that was of no consequence when the appellant has failed to prove that he was suffering from that ailment at the time when the offence was committed. Hon"ble the Apex Court examined the evidence on record and the provisions contained u/s 84 of the IPC and held that though the burden to prove that the appellant was of unsound mind was of the appellant read with Section 105 of the Indian Evidence Act, but, the said burden is not as high as that of the prosecution to prove its case. It was held that the burden to prove insanity is no higher than that rests upon a party to a civil proceedings, which in other words means preponderance of probabilities. In paragraph 19 in the said judgment Hon"ble the Apex Court enumerated the circumstances which stood proved in that case. Paragraph 19 in the judgment runs as under:

The circumstances that stand proved in the case in hand are these:

1. The appellant has a family history his father was suffering from psychiatric illness.
2. Cause of ailment not known - hereditary plays a part.
3. Appellant was being treated for unsoundness of mind since 1992 Diagnosed as suffering from paranoid schizophrenia.
4. Within a short span, soon after the incident from 27th June to 5th December, 1994, he had to be taken for treatment of ailment 25 times to hospital.
5. Appellant was under regular treatment for the mental ailment.
6. The weak motive of killing of wife being that she was opposing the idea of the appellant resigning the job of a Police Constable.
7. Killing in day light no attempt to hide or run away.

15.2 Ultimately, analysing the circumstances proved on record, Hon"ble the Apex Court came to the conclusion that, from the circumstances of the case, clearly an inference can be reasonably drawn that the appellant was in a delusion at the relevant time. He was under treatment of the ailment. The Apex Court further came to the conclusion that, there is a reasonable doubt that at the time of commission of the crime, the appellant was incapable of knowing the nature of the act by reason of unsoundness of mind and, thus, he is entitled to the benefit of S. 84, I. P. C. Ultimately, Hon"ble the Apex Court allowed the appeal and set-aside the judgment of the High Court and the appellant was acquitted.

15.3. The facts and circumstances on record in the instant case are almost identical to the facts and circumstances and evidence on record in Shrikant Bhosale's case. In the instant case, it has come on record that father and brother of the appellant were suffering from chronic schizophrenia. Thus, the appellant has a family history of the disease. In the instant case, the appellant was treated for chronic schizophrenia from dated 17.4.1998 till 28.7.1998 viz. prior to the date of the incident. Soon after the commission of the crime, initially the appellant was treated for her injuries in neck because said treatment was required first in point of time. The medical evidence reveals that the injuries which she sustained in her neck were serious injuries and could have proved to be fatal, and on dated 20.1.1999, when her treatment for bodily injury was over, she was treated by Psychiatrist in Government Mental Hospital.

16. Furthermore, in the instant case, the manner and method in which the incident occurred, is required to be considered. Soon before the incident, there was a quarrel between herself and her deceased mother-inlaw Manoramaben. Appellant alleged that her matrimonial life was ruined by the deceased. The incident occurred in a broad-day light. The incident occurred between 3 p.m. to 3.30 p.m. in the house of the deceased, situated in Gujarat Housing Board. At the time of the incident, PW-6 Jagruti Dhanvesh Shah, the daughter-in-law of the deceased was there in the house. As soon as deceased went inside the room, the appellant also went in the room behind the deceased. The room was closed from inside. Hearing the shouting and screaming of Manoramaben, other eyewitnesses, namely, PW-1 Bharat Balubhai, a neighbour, PW-2 Khemabhai Solanki, a Police Officer etc. came to the place of the incident. Witnesses PW-1 Bharat Balubhai, PW-2 Khemabhai Solanki, PW-3 first informant Dhanvesh Shah and PW-6 Jagruti wife of PW-3 Dhanvesh saw the incident from a window of the room. They saw the appellant inflicting blows with knife on the neck and the head was severed. The door of the house was broken-open and the witnesses went inside the room and found head placed on a water-stand. The appellant was found seated near pool of blood in the room. The witnesses also noticed and as emerged from the scene of offence panchnama, Exh. 26, using blood of the deceased, on the floor of the room, it was written in gujarati as Kan Jyotisangh. The appellant was found in injured condition. However, on behalf of the State, it was submitted that the appellant attempted to cause said injury on her neck with the help of her knife, only after seeing the witnesses, including a Police Officer

entering into the room and this fact reveals her malice and criminal intention, which is inconsistent to her defence of unsoundness of mind. Now, in this respect, if the evidence of PW-6 Jagruti Shah who was present in the house right from the inception of the incident till its end, deposed that as the room was closed from the inside, glasses of the window of the room was broken and when they see through the window inside the room, they saw that deceased Manoramaben was lying on the floor and the appellant inflicted Wows with her own knife on her neck. Thereafter, her husband (PW-3) Dhanvesh Babulal went to call police and, thereafter, police came. Thus, in the instant case. before door was broken open, the appellant had caused injuries on her own neck. Therefore, it cannot be said that seeing the police coming in the room to arrest the appellant, the appellant with a predetermined mind and to save herself from being prosecuted for the offence of murder; caused self injury. It is further pertinent to note that her act to put the head of the deceased on the water-stand and to write down on the floor of the room using blood of the deceased, Kan Jyotisangh would definitely reveal that at the time of incident, she was of unsound mind as contemplated u/s 84 of the IPC. As held in the case of Bolabhai Hirabhai Vs. State of Gujarat, 2000(3) GLR 2122, this Court in a murder case wherein the defence contemplated u/s 84 of the IPC was raised by the accused, observed that events precedent, attended and succeeded to the incident are required to be considered. In the case of Rawal Mohanbhai Laxmanbhai v.State of Gujarat, 1998(2) GLH 196 this Court held that, it is not necessary that there should be a medical certificate to show unsoundness of mind. The circumstances in the present case spell out that the accused was of unsound mind at the relevant time....

17. Moreover, one more fact is to be considered, during the evidence of PW-7 Kajalben Pankajbhai who was working in Jyotisangh as social worker at the relevant time stated that the appellant had filed application against her husband and in-laws in connection with her matrimonial dispute. She deposed that on dated 26.11.1998 (about two months prior to the date of the incident), the appellant and her inlaws were called in the office of Jyotisangh. The appellant was excited. Through the evidence of PW-7 Kajalben, relevant documents from the office of Jyotisangh came to be produced at Exh.44 collectively. Referring page No. 11 and page 12 from Exh.44, this witness deposed that the appellant in her applications referred supernatural and superstitious facts like witchcraft, black magic etc. In this connection, if the documents collectively produced at Exh.44 are considered, which are applications and the narration of proceedings took place before Jyotisangh, it can safely be said that the behavior of the appellant reveals that she was suffering from delusion and hallucination. The appellant suspected her mother-in-law that her mother-in-law was conspiring to declare her insane and her mother-in-law would kill her. Even considering the evidence of PW-6 Jagruti Dhanvesh, the wife of brother of the husband of appellant, in her cross-examination, she stated that husband of the appellant told her that the appellant had become violent. Moreover, considering the indoor

case-papers collectively, produced at Exh.81, and more particularly considering the observation report prepared by Medical Officer of Mental Hospital, Ahmedabad, it was observed that the appellant was admitted in the hospital on dated 5.6.1999, and the report reveals that she shows wide range of emotional effect. She shows signs of auditory hallucination like hearing of voices of husband, sister-in-law, brother-in-law threatening her to kill. The medical papers further reveal that under the effect of delusion and hallucination, she saw her mother-in-law threatening her.

18. It is true that neither Dr.Chauhan nor Dr.Parikh called the husband of the appellant for interaction regarding the conduct and behaviour of the appellant. However, considering the evidence of the Medical Officers examined in defence by the appellant, nothing emerges that the consultation of the husband of the appellant was highly needed and that non-consultation of husband of the appellant affects adversely the final diagnosis about the mental ailment of the appellant arrived at by them. The medical evidence on record gets further corroboration about the strange behavior and conduct, as emerged from the other evidence on record, before the incident, at the time of the incident and after the incident.

19. We are, therefore, of the considered opinion that the defence of unsound mind raised by the appellant is duly established from the evidence and inference can reasonably be drawn that the appellant was under a delusion at the relevant time. She was under the attack of chronic schizophrenia. We are, therefore, of the view that the appellant has proved, existence of circumstances as required u/s 105 of the Evidence Act so as to get benefit of Section 84 of the IPC. In the result, the appeal merits acceptance. For the foregoing reasons, the appeal is allowed. The conviction recorded by learned City Sessions Judge, Ahmedabad on 26.3.2001 in Sessions Case No.270 of 1999 convicting the appellant accused Ashaben Naileshbhai Shah for the offence punishable u/s 302 of the Indian Penal Code and offence punishable u/s 135(1) of the Bombay Police Act and the sentence awarded to her thereunder are set-aside. The appellant Ashaben Naileshbhai is acquitted of all the charges levelled against her. Fine, if paid, be refunded to her. Her bail bond shall stand cancelled.