

(2018) 03 BOM CK 0016

In the Bombay High Court

Case No : CRIMINAL APPEAL NO.355 OF 2013

KISHOR JAISING SONWANEVs THE STATE OF MAHARASHTRA

Date of Decision : 08-03-2018

Acts Referred:

Code of Criminal Procedure, 1973 — Section 313, 374(2)

Indian Penal Code, 1860 — Section 84, 302, 307

Arms Act — Section 4, 25

Indian Evidence Act, 1872 — Section 105

Citation : (2018) 03 BOM CK 0016

Hon'ble Judges : S.S.SHINDE, J, MANGESH S. PATIL, J

Bench : Division Bench

Advocate : M.A.Tandale, D.R.Kale,

Final Decision : Dismissed

Judgement

(Mangesh S. Patil, J.) :Â?

This is an appeal under Section 374(2) of the Code of Criminal Procedure (hereinafter referred to as 'Cr.P.C.') against the order passed by the

learned Additional Sessions Judge, Ahmednagar in Sessions Case No.5 of 2013 convicting the appellantÂaccused for the offences punishable under

Section 302 as well as 307 of the Indian penal Code (hereinafter referred to as 'IPC') as also for the offence punishable under Section 25 read with

Section 4 of the Arms Act and sentencing him to suffer imprisonment for life and fine of Rs.2,000/Â, in default of payment of fine for Rigorous

Imprisonment for six months under Section 302 of the IPC, Rigorous Imprisonment for ten years and fine of Rs.2,000/Â in default to further R.I. for

six months under Section 307 of the IPC and Rigorous Imprisonment for two years and fine of Rs.1,000/Â in default further R.I. for six months under

Section 25 read with Section 4 of the Arms Act and further directing the sentences to run concurrently.

2. The prosecution case as can be made out from the FIR and the charge sheet is to the effect that informant Aruna (P.W.1) is the wife of the

appellant / accused. The couple have two children, a son injured Rushikesh (P.W.2) and a girl deceased Minakshi who was 16 years of age. The

appellant / accused was serving as a worker in Larsen and Toubro Company (hereinafter referred to as 'L and T Company') for many years.

When everything was going on smoothly, on 03.10.2012 as usual all the family members had their dinner, watched television programmes and went to

bed between 11.00 p.m. to 12.00 in the mid night. Aruna (P.W.1) and her daughter Minakshi slept on one cot. Rushikesh (P.W.2) slept on another cot

whereas the appellant slept on a sofa set. Next day morning, that is on 04.10.2012 Aruna (P.W.1) woke up at about 5.00 a.m. She asked the appellant

to get up but he told her to first finish her bath. Aruna then went inside the bathroom. She then heard shouts of her son Rushikesh (P.W.2) calling 'Aai

Aai'. When she rushed out of the bathroom she saw that Minakshi was lying on the cot in a prone position and had received injury to the neck and

was bleeding. She also saw that Rushikesh (P.W.2) was standing on the cot and the appellant was assaulting him with a sickle. Rushikesh (P.W.2)

also had sustained injuries on his head, neck and hands. She immediately pushed the appellant aside and snatched the sickle from his hand and hidden

it beneath a cupboard. Minakshi had died. The appellant also told about having assaulted the children. After hearing the hue and cry neighbours Anil

Nimse, Lavande, Deshmukh and Bhagat and few others rushed to the spot. Rushikesh (P.W.2) was taken to a hospital. Aruna (P.W.1) then lodged

the report (Exh.12). The offence was registered as Crime No. I.A. 330 of 2012 for the afore mentioned offences.

3. The appellant was arrested. The inquest was conducted. A spot panchnama was conducted during which the sickle was seized. Further

investigation was carried out and in due course of time the charge sheet was filed. After committal of case the learned Additional Sessions Judge

framed the charge, recorded the plea and conducted the trial.

4. The appellant took the defence of insanity under Section 84 of the IPC. He also led evidence to show that since before the incident he was

suffering from mental illness and even after his arrest, the jail authorities had to refer him for medical treatment and the incident had taken place when

he was not in a conscious state of mind. Refuting the defence by the impugned judgment and order the learned Additional Sessions Judge convicted the appellant as mentioned herein above.

5. The learned Advocate for the appellant submitted that the learned Additional Sessions Judge has not appreciated the defence appropriately. The specific defence of insanity was taken and was duly substantiated by leading cogent and reliable evidence in the form of testimonies of doctors and particularly the psychiatrist who had treated him for years prior to the incident. The very fact that the manner in which the incident had occurred is suggestive of his mental instableness. No motive has been attributed to him to commit murder of his 16 year old daughter and assaulting his adult son with a deadly weapon like a sickle causing him several grievous injuries. No man with his senses in place would indulge in such a brutality unless his mental faculties are disturbed. The learned advocate also pointed out that the conduct of the appellant immediately after occurrence in declaring to his wife Aruna (P.W.1) about he having assaulted his children and not leaving the place / fleeing from the spot is further compatible with the inference that in all probabilities his mental faculties were not working properly and he must have committed the offence when he was not capable of understanding the consequences of his acts. The learned advocate also pointed out that evidence was also led before the learned Additional Sessions Judge in the form of record of his employer that is the L and T Company which shows that he was suffering from some derailment over a period of years. Thus according to the learned advocate there was ample evidence to draw an inference that the applicant was not in his senses and was not capable of understanding consequences of his act when the incident took place.

6. The learned advocate further referred to and sought to rely upon the decision of the Supreme Court in the case of Bapu @ Gujraj Singh Vs. State of Rajasthan ; [(2007) 8 SCC 66] and submitted that as is laid down by the Supreme Court it was the duty of the Investigating Officer to have subjected the appellant to medical examination and to have placed the evidence before the court and he having failed to do that, it creates a serious infirmity in the prosecution and the appellant is entitled to the benefit of doubt. The learned advocate therefore submitted that the appellant was able to discharge the burden cast upon him to substantiate the defence of unsoundness

of mind that was available to him under Section 84 of the IPC.

However, the learned Additional Sessions Judge has without sufficient and cogent reasons discarded the defence and has convicted the appellant.

Therefore, the conviction may be set aside and the appellant may be acquitted of all the charges.

7. The learned APP strenuously submitted that since the appellant has taken up the defence of unsoundness of mind contemplated under Section 84 of

the IPC, he has not been seriously disputing the incident. In fact during the cross-examination of the prosecution witnesses the fact of occurrence of

the incident as narrated by the witnesses and particularly the eye witnesses Aruna (P.W.1) and Rushikesh (P.W.2) has not been disputed. Thus the

burden was cast upon him to prove that he was suffering from unsoundness of mind right in the nick of time. It was not sufficient for him to have led

evidence that his mental faculties were disturbed and he was taking treatment of a psychiatrist prior to the incident and even subsequent thereto. He

also referred to the decision in the case of Dahyabhai Vs. State of Gujrat ; [AIR 1964 S.C. 1563] and submitted that the crucial point of time for

ascertaining the state of mind of the accused is the time when the offence was committed. Only because on former occasions he was subjected to

some mental disorder and even his subsequent acts and behaviour showing that he was mentally deficient person per se would not be sufficient to

discharge the burden to derive the benefit of Section 84 of the IPC. He submitted that the evidence led by the appellant about his mental illness at the

most would establish that he was taking a treatment for some mental disorder. However conspicuously none of the psychiatrists particularly Dr.

Karale (D.W.2) and Dr. Gosavi (D.W.3) have ever stated that he was suffering from a mental disorder of the kind which would have made him

violent. On the contrary they have opined that he was suffering from some depressive psychosis and the symptoms narrated by them do not show that

a person with such a state of mental health would become violent and would not be capable of understanding the consequences of his acts.

8. The learned APP also pointed out that the systematic manner in which the appellant has committed the heinous crime clearly shows that he was

acting with a specific design. The fact that on a previous day he purchased the sickle from the shop of Mr. Gandhi (P.W.4) even when he does not

have any land, his further conduct in being able to hide this fact and even the weapon, behaving normally till the previous night and committing the murder of Minakshi and causing the serious injuries to Rushikesh (P.W.2) after sending his wife Aruna to bathroom is sufficient to infer that he was acting in a preplanned manner which may not be possible for a man with unsound mind. The learned Additional Sessions Judge has rightly appreciated all the facts and circumstances and the evidence led by the defence and has come to a correct conclusion in holding the defence to have failed to discharge the burden. He has rightly convicted and sentenced the appellant, which calls for no interference.

9. We have carefully considered the evidence and the impugned judgment and order. Aruna (P.W.1) and Rushikesh (P.W.2), both are the prime witnesses and have specifically stated the manner in which the incident had taken place, although none of them have seen the appellant killing Minakshi. Aruna (P.W.1) was in the bathroom and Rushikesh (P.W.2) woke up only after he was hit on the head. He has stated that when he got up after he was hit on the head, Minakshi was already killed. This is suggestive of the fact that he had not seen the appellant killing Minakshi. But the very fact that the appellant was having a sickle in his hand and was assaulting Rushikesh (P.W.2) and Minakshi was lying dead on a nearby cot, when there was no other probability of somebody else entering into the house, in all probabilities it was the appellant who must have killed Minakshi and assaulted Rushikesh (P.W.2) with a sickle.

10. Medical Officer Dr. Patil (P.W.5) who conducted the Post Mortem Examination on the dead body of Minakshi has noticed three injuries on the neck and has opined that she has died due to Neuro Haemorrhagic shock due to deep cutting injury to the neck and the injuries being anti mortem. This clearly establishes the fact of she having died a homicidal death.

11. Both, Aruna (P.W.1) and Rushikesh (P.W.2) have deposed in unison about the manner in which the incident had taken place. Rushikesh (P.W.2) has specifically stated that he got up when he was hit on the head and his father started assaulting him with a sickle. Aruna (P.W.1) has also stated that when she was in the bathroom she heard the call of Rushikesh (P.W.2) 'Aai Aai' and when she came out of the bathroom she saw that appellant was assaulting Rushikesh (P.W.2) with a sickle and she snatched it from

his hand. It is important to note that during their cross-examination their version regarding the manner in which the incident had occurred and specifically the role attributed by them to the appellant has not been sought to be controverted. The entire attempt is made only to put certain suggestions to substantiate the defence of insanity. There is no serious challenge made during their cross-examination to dispute their version as to the manner in which the incident had taken place. The authorship of crime can therefore, be easily attributed to the appellant. For that matter, even during his examination under Section 313 of the Cr.P.C. he has not disputed these facts attributing him of committing murder of Minakshi and assaulting Rushikesh (P.W.2) with a sickle. It is thus quite clear that since inception the appellant has been trying to defend himself on the basis of plea of insanity alone. Therefore, the fate of the matter entirely hinges on the fact as to if he has been able to discharge the burden cast upon him by virtue of Section 105 of the Indian Evidence Act, in establishing the defence of unsoundness of mind available under Section 84 of the IPC.

12. Before turning to the facts it is necessary to recapitulate the law laid down by the Apex Court in the matter of purport and scope of plea of unsoundness of mind under Section 84 of the IPC. In the case of Bapu (supra) it has been laid down that under Section 84 of the IPC, a person is exonerated from liability from 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. 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. It has been further laid down that mere abnormality of mind or partial delusion, irresistible impulse or compulsive behaviour of psychopath affords no protection under Section 84 of the IPC. The mere fact that the accused is conceited, odd, irascible and his brain is not quite or 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 Section 84 of the IPC. The standard to be applied is as to whether according to the ordinary standard adopted by a reasonable man the act was right or wrong.

13. Again, as laid down in the case of Dahyabhai (supra) the crucial point of time for ascertaining the state of mind of the accused is when the

offence was committed. It has also been laid down that mere fact that on former occasions he had actually been subjected to some derangement of

mind and subsequently at times he had behaved like a mentally deficient person per se would not be sufficient to derive the benefit of Section 84 of the

IPC. Bearing in mind these observations let us examine the matter in hand.

14. Dr. Warwadkar (D.W.1), Dr. Karale (D.W.2) and Dr. Gosavi (D.W.3) are the doctors who had examined the appellant at different times. Dr.

Warwadkar (D.W.1) has specifically admitted that he is not a psychiatrist and therefore his evidence is not much of a help.

15. Dr. Karale (D.W.2) has stated that the appellant has been suffering from dysphoria which according to him means depressed mood, depressed

feelings, decreased interest in enjoying the activities. He specifically admitted during his cross-examination that the appellant was not suffering from

any other ailment except depression. He further admitted that such patients with depression have negative thinking and negative cognition and may

indulge in self inflicted injuries and even may commit suicide. Conspicuously, Dr. Karale (D.W.2) has not stated that the appellant was suffering from

the kind of mental illness which could have led him to indulge into any aggressive behaviour turning him violent. Accepting the fact that he was

treating the appellant for more than three years prior to the incident, he could have easily opined that going by the illness with which he was suffering

the appellant could have turned violent. Even by resorting to probabilities also he has not stated that the behaviour of the appellant and the mental

illness with which he was suffering, he could have committed the crime while being under some delusion and without being capable of understanding

the consequences of his act.

16. An attempt was also made to lead the evidence in the form of record of L and T Company to show that even at the work place the behaviour of

the appellant was not normal. There were several complaints about his objectionable and derailed behaviour even at the work place. Accepting such

evidence at its face value, it would only indicate that he was not a normal human being at the work place. There were sporadic incidence of his

misdemeanor. However as is laid down in the cases of Bapu and Dahyabai (supra) and as has been rightly considered and concluded by the learned

Additional Sessions Judge, we see no reason as to how Â such sporadic behaviour of the appellant would be sufficient to discharge the burden cast

upon him to substantiate the defence under Section 84 of the IPC. Apparently he has been working in the L and T Company for years inspite of such

nature and has been allowed to do so is further incompatible with the version of his being of unsound mind.

17. There is evidence to show that the appellant has committed the crime in a systematic and a preplanned manner. Buying the sickle on the previous

day, behaving in a manner which would not give any hint to the family members, deliberately hiding the weapon so that it is not seen by the family

members, making his wife Aruna (P.W.1) to go to the bathroom and killing the daughter by inflicting injuries on the vital part like neck without making

any noise and thereafter assaulting Rushikesh (P.W.2), would clearly indicate that he was knowing the consequences and had performed the crime

while being conscious of his acts, which clearly refutes the theory of unsoundness of mind.

18. In our considered view, the learned Additional Sessions Judge has rightly appreciated the law and the facts as well as the evidence and has come

to a correct conclusion.

19. The learned Additional Sessions Judge has also considered all these circumstances and has come to right conclusion in convicting and sentencing

the appellant. We see no any justifiable reason to set aside the conviction or the sentence.

20. The appeal is dismissed.

21. Since, Mr. M.A.Tandale, the learned counsel has been appointed to represent the appellant, we quantified his fees at Rs.7,500/Â?.