

(1984) 08 BOM CK 0008
In the Bombay High Court
Case No : Criminal Appeal No. 503 of 1983

Nivrutti Dhondiba Shinde

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 10-08-1984

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 302, 84

Citation : (1984) 2 BomCR 722 : (1984) 86 BOMLR 462

Hon'ble Judges : R.R. Jahagirdar, J;H.H. Kantharia, J

Bench : Division Bench

Judgement

Kantharia, J.—The Accused-appellant, Nivrutti alias Limba Dhondiba Shinde (hereinafter referred to as "the accused"), by this appeal has challenged his conviction for an offence of murder punishable under S. 302 of the Indian Penal Code and sentence to suffer imprisonment for life recorded against him by the learned Additional Sessions Judge, Pune on 16th August, 1983 in Sessions Case No. 136 of 1983.

2. The facts, as they are relevant for the disposal of this appeal, shortly stated are as under :-

The accused is a resident of village Urse, Taluka Vedgaon Maval, District Pune. He resided there with his wife, two children and mother at the relevant time. He was employed in a private company viz. Eagle Flask at Talegaon and had to work in different shifts. On the night of 23rd November, 1982 and 24th November, 1982 he was working in the night shift from 8.00 p.m. to 2.00 a.m. He came back home from work at about 8.00 a.m. on 24th November, 1982. Soon after he came home, he told his wife Alka (P.W. 1) that he had a dream that their two month old son Madhu was a devil and that if he would not die, both of them would have to die and, therefore, he (Madhu) should be killed. His wife Alka told him that he should not think of killing the child and that they would give away the child to somebody else. The accused said that it would not be proper to hand

over the devil to someone and, in any case, the devil had to be killed, otherwise he and Alka both would have to die. He went on repeating this throughout the day. At sometime of the day, his mother also intervened and said to the accused that he should not think of killing the child and that the child could be given to somebody else for maintenance. The accused became angry with his mother and asked her to keep quiet. Alka cooked the food for the afternoon meals. The accused did not take his food, as he was usually taking. He was sitting in a corner of the house and was weeping. He was continuously repeating that the devil (Madhu) had to be killed otherwise he and his wife will have to die. His wife wiped his tears and again told him not to kill the child and he should not behave in that fashion but the accused would go on repeating the same words. He also indulged in eating, throughout the day, turmeric powder. The went on up to about 4.00 p.m. or 4.30 p.m. when he closed the door of the house. He then pushed Alka aside and gave two-three blows with a stick to Madhu on stomach and leg. Alka pushed the accused aside and took the child on her lap. But the accused once again pushed her aside and caught hold of Madhu by his legs and thrashed him on the pounding stone thrice. Madhu died on the spot. The door of the house thereafter was opened by the brother of the accused, Raghunath, when the accused quietly came out of the house. His mother went into the house and saw that the child was dead. Accused asked his wife Alka not to weep as, according to him, the devil was destroyed and that they could have two more children. Several people collected at the scene of the offence. Police Patil Chhabu Tukaram Ambekar (P.W. 2) also arrived there. Alka narrated the incident to him saying that the accused killed the child because he was mentally affected. Police Patil Ambekar then asked a watchman to look after the dead body of the child and took the accused in his custody and took him to Panchayat Office. He then, went to Talegaon Dabhade Police Station and lodged his first information report as per Exh. 8. The Sub-Inspector of Police Shankar Lewand (P.W. 4) registered a crime on the basis of the first information report and carried out further investigation. He arrested the accused on the same night at about 1.30 a.m. and noticed that the accused was not behaving as a normal person and was also not taking food. He, therefore, got him medically examined by sending him to Sassoon Hospital, Pune. He also made a report to the Judicial Magistrate, First Class, for taking steps to sent the accused to Mental Hospital. On completion of the investigation, the accused was charge-sheeted, committed and tried by the learned Additional Sessions Judge, Pune.

3. The accused did not specifically take up any defence either in the cross-examination of the prosecution witnesses or in his statement recorded under S. 313 of the Cr.P.C. In reply to various questions put to him with regard to the evidence that appeared against him he said that he did not remember anything as to what had happened on that day. But the accused who pleaded not guilty to the charge framed against him under S. 302 of the Indian Penal Code, put up the defence of insanity. According to him, he had gone insane at that particular moment and was not in a position to know what he was doing and contented at

the trial that he now did not remember anything. Thus without admitting the guilt, he put up a defence of insanity. The accused did not adduce any defence evidence.

4. On appreciation of the evidence adduced before him, the learned trial Judge disbelieved the defence of insanity and found the accused guilty of an offence of murder and sentenced him as stated above. Hence the accused filed the present appeal.

5. Now, in this case, the entire evidence adduced by the prosecution is not controverted by the accused. The facts, therefore, as stated above, are not in dispute. Since the accused took up the plea of insanity, the moot point is whether he can get protection under the provisions of Section 84 of the Indian Penal Code. S. 84 of the Indian Penal Code reads as under :-

"84. Act of a person of unsound mind - Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law."

Thus, from the evidence on record we have to see whether at the time of commission of the act, the accused was incapable of knowing the nature of his act or that what he was doing was either wrong or contrary to law. The law on this point is well settled as laid down by the Supreme Court in Dahyabhai Chhaganbhai Thakker Vs. State of Gujarat, 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 section 84 of the Indian Penal Code can only be established from the circumstances which preceded, attended and followed the crime.

We may also refer to the observations made by the Supreme Court in another case viz. Jai Lal Vs. Delhi Administration,

"To establish that the acts done are not offences u/s 84 it must be proved clearly that at the time of the commission of the act the appellant by reason of unsoundness of mind was incapable of either knowing that the acts were either morally wrong or contrary to law. The question is whether the appellant was suffering from such incapacity at the time of the commission of the acts. On this question, the state of his mind before and after the crucial time is relevant".

6. The evidence in this case consists of only five witness. P.W. 1 Alka is the wife of the accused who had narrated the entire incident as stated above. P.W. 2 is the Police Patil Chhabu Ambekar who arrived on the scene at about 6-00 p.m. and heard the story from Alka and went to Talegaon Dabhade Police Station and

lodged a complaint as per Exh. 8. P.W. 3 Dr. Prakash Nemade is a post-graduate medical student attached to Psychiatric Ward of Sassoon Hospital, Pune. He had examined the accused on 29-11-1982 to find out whether the accused was mentally ill. P.W. 4 is the Investigating Officer, Police Sub-Inspector, Shankar Lawand, who in addition to investigating the offence, took steps to ascertain whether the accused was mentally deranged. And lastly P.W. 5 is Dr. Kali Krishna Banerjee, who performed the post-mortem examination on the dead body of deceased Madhu and opined as to the cause of death.

7. What is established from the evidence of these five Prosecution Witnesses are the circumstances prior to the incident, at the time of the occurrence of the incident and after the incident. We shall, therefore, point out all these circumstances covering pre-incident, attending incident and post-incident. Thus the pre-occurrence behaviour of the accused was not that of a normal human being. It is established that the appearance of the accused in the morning of the day of the incident when he came back home from work at about 8.00 a.m. was, according to his wife Alka, changed. He was not looking normal as usual. His eyes at that particular moment were red. Then he was continuously repeating that his son Madhu was a devil and that he should be killed otherwise both he and his wife Alka would have to die. He also said that he would not feel all right till the child was killed. When his mother tried to pacify him by saying that the innocent child should not be killed he became angry with her and asked her to keep quiet. He was sitting in a corner of the house and was weeping throughout and was repeating the same words that if the child was not killed, he and his wife will have to die. He was getting angry throughout the day. He also declared that his son was a devil dangerous not only to him and his wife but also to the whole world. He was continuously eating turmeric powder.

8. The circumstances existing at the time of the occurrence which are established by the prosecution are that the accused beat his two month old child with a stick and thereafter thrashed him thrice on a pounding stone. He caused as many as 27 injuries to the child and almost reduced it to pulp.

9. The circumstances showing the behaviour of the accused soon after the incident and thereafter which are established by the prosecution are that he did not try to run soon after the incident of committing a ghastly act of killing his child. He quietly came out of the house after the door of the house was opened and was sitting on one side as if nothing had happened. He repeated to the Police Patil that he had removed the devil from this world. He quietly accompanied the Police Patil and did not resist his arrest. The medical evidence shows that on 29-11-82 his speech was not spontaneous. His answers were casual. He was not co-operative for medical examination. His insight was impaired and judgment was poor.

10. Therefore, let us see whether, from these circumstances, it can be said that the accused who is otherwise presumed to be sane, rebutted the said presumption and brought his case within the ambit of section 84 of the Indian

Penal Code. The burden of proving that at the time of commission of the act he was insane is on the accused but the burden upon him is not that heavy as it is on the prosecution; but it is the same as the one which a party in a civil proceeding has to discharge. As regards the burden of proof in such a case, the Supreme Court held in the case of Dahyabhai Chhaganbhai Thakkar 1964 (2) Cri LJ 472 as follows :-

"The doctrine of burden of proof in the context of the plea of insanity may be stated in the following propositions : (1) The prosecution must prove beyond reasonable doubt that the accused had committed the offence with the requisite mens rea; and the burden of proving that always rests on the prosecution from the beginning to the end of the trial. (2) There is a rebuttable presumption that the accused was not insane, when he committed the crime, in the sense laid down by S. 84 of the Indian Penal Code : the accused may rebut it by placing before the Court all the relevant evidence - oral, documentary or circumstantial, but the burden of proof upon him is no higher than that rests upon a party to civil proceedings; (3) Even if the accused was not able to establish conclusively that he was insane at the time he committed the offence, the evidence placed before the Court by the accused or by the prosecution may raise a reasonable doubt in the mind of the Court as regards one or more of the ingredients of the offence, including mens rea of the accused and in that case the Court would be entitled to acquit the accused on the ground that the general burden of proof resting on the prosecution was not discharged".

11. In the instant case the accused did not adduce any evidence to prove his insanity. Hence as observed in the above case by the Supreme court he can take advantage of the evidence adduced by the prosecution and may raise a reasonable doubt in the mind of the Court that at the time of committing the Act, he was insane. From the circumstances enumerated above, which stand proved, we are of the opinion that the cognitive faculties of the accused were, as a result of unsoundness of mind, completely impaired. His unusual appearance when he came home from work was indicative of the fact that everything was not all right with him in the morning of the day of the incident. He was obsessed with an idea that his life and the life of his wife were in danger at the hands of his own son who was a devil and as such dangerous to him and his wife as also to the whole world and therefore he should be killed. Any amount of entrustment from his wife and mother did not dislodge him from this obsession. He was afraid of being killed at the hands of his son and was therefore crying on account of fear. He sat down in a corner of the house and did not eat his food as usual which indicated that he was withdrawing himself from day to day life because of fear from the devil, his own innocent two month old child. It was also very much unusual that he was eating turmeric powder the whole day. This was perhaps with a view to keep the devil away from him. The ferocity with which he killed the child definitely demonstrated the insanity from which the accused was suffering. Ferocity by itself may not prove insanity but in this case such ferocity assumes importance because the two month old child could not have given him any

provocation to be so violent as he was at the time of committing the act. Where was the necessity for him to be so violent in killing a two month old child unless he was insane ? The very fact that he almost reduced the child to pulp shows how badly he had lost his mental faculty. Then after the incident he neither tried to run away nor did he resist his arrest which demonstrated that he did not have mens rea. He did not think that what he had done was wrong or was contrary to law. Had he had even the slightest guilty mind, he would not have told the Police Patil that he had removed the devil from the world. In fact, he was thus proclaiming that what he had done was a right thing. The totality and the cumulative effect of all this evidence and circumstances brought on the record and all things considered carefully, lead to an irresistible inference that at the crucial moment the accused was suffering from legal insanity. The accused thus did rebut the initial presumption against insanity and satisfactorily discharged the burden to the extent that he had to discharge under law.

12. Regard being had to these facts and circumstances we hold that the accused did commit the act of killing his two month old child. However, his act of killing his son Madhu does not amount to an offence as he gets protection under the provisions of section 84 of the Indian Penal Code. The accused, therefore, is entitled to acquittal of the charge levelled against him. We accordingly set aside the order of conviction recorded against him by the learned trial Judge as also the sentence imposed upon him in Session Case No. 136 of 1983 on 16th August, 1983 and acquit him. The appeal is thus allowed.

13. However, we direct that the accused shall be detained in safe custody in the jail wherever he is now and the jail authorities shall submit a report to the State Government forthwith whether the accused can be released without danger of his doing injury to himself, or to any other person and upon receipt of such a report from the jail authorities, the State Government shall take appropriate steps as envisaged under S. 338 of the Cr.P.C., 1973 in the matter of release of the accused. We also direct that the office shall send a copy of this judgment to the State Government under S. 335(4) of the Cr.P.C., 1973. We further direct that the operative part of this judgment be sent to the jail authorities immediately.

14. Order accordingly.