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**(2008) 03 BOM CK 0059**  
**In the Bombay High Court**  
**Case No : Criminal Appeal No. 247 of 2006**

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|--------------------------------|----|------------|
| Pramodsingh Bharatsingh Rajput | Vs | APPELLANT  |
| The State of Maharashtra       |    | RESPONDENT |

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**Date of Decision :** 31-03-2008

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 229, 230, 294, 313, 342  
Penal Code, 1860 (IPC) — Section 302

**Citation :** (2008) 03 BOM CK 0059

**Hon'ble Judges :** P.R. Borkar, J;Naresh H. Patil, J

**Bench :** Division Bench

**Advocate :** V.N. Damle, A.H. Kapadia and H.M. Pawar, for the Appellant; V.B. Ghatge, Additional Public Prosecutor, for the Respondent

**Final Decision :** Allowed

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## Judgement

P.R. Borkar, J.—This is an appeal preferred by the appellant challenging the order of conviction u/s 302 Indian Penal Code for murder of his mother and sentence to suffer imprisonment for life and to pay fine of Rs. 5000/-, in default, to undergo simple imprisonment for one year, passed by 1st Ad-hoc Additional Sessions Judge, Shahada in Sessions Case No. 9 of 2005 decided on 7-3-2006.

2. Briefly stated it is the case of the prosecution that PW 1 - Devisingh Rajput is the brother of appellant Pramodsingh. Deceased Rajkuwarbai was their mother. They were residing at village Jawde Tarfe Haweli. They own two houses. On 11-9-2004 at about 12 to 12.30 noon the deceased Rajkuwarbai had taken the appellant to their another house which is on the opposite side for reading Hanuman chalisa. At that time PW 1 Devisingh was in their main house. After some time Pramodsingh came from the opposite side. His head was wet. At that time Devisingh was sitting on Ota. Wife of Devisingh served food to the appellant who took food. Devisingh gave him medicines and thereafter the appellant went into village. After some time, PW 4 Sakharam came running and told PW 1 Devisingh that the appellant had came to his house and told him that he had

killed his mother with an axe. So Devisingh immediately went to his another house which was on the opposite side where his mother Rajkuwarbai had went with the appellant earlier. At that time Lata -wife of PW 1 Devisingh and Sakharam were also with him. They went and saw that Rajkuwarbai was lying on a Chatai in a pool of blood. She had injury on her head. Thereafter PW Devisingh went to Mhasavad Police Station and lodged complaint. Crime was registered. During investigation police found that the appellant had also gone to the house of one Raghunath (PW 5) and wanted to make telephone call. PW Raghunath was reluctant to allow the appellant to make phone call, but the appellant gave him threat of killing and therefore Raghunath (PW 5) allowed the appellant to make telephone call. The appellant made a call to his relative that he should come as his mother has died. Thereafter the appellant went away. Raghunath redialed the said number and informed the relative of the appellant that no such incident had occurred.

3. After filing of the complaint of PW Devisingh, the police came to the spot and drew inquest. They also drew spot panchanama. The dead body was sent for post mortem examination. The appellant was arrested. PW 1 Devisingh produced one blade of an axe which was attached under a separate panchanama. Thereafter clothes of the appellant were also attached under a panchanama. They were blood stained clothes. The attached articles were sent to the CA and finally charge sheet was sent.

4. In this case PW 1 Devisingh, PW 4 Sakharam and PW 5 Raghunath, who are examined at Exhibits 8,11 and 12 respectively, have turned hostile and did not support the prosecution case. Devisingh stated that he had gone to field at about 9 to 9.30 a.m. He came back at 12 to 12.30 noon. His wife told him to call his mother from another house, so he went and saw that his mother was lying in a pool of blood. He denied that PW Sakharam had come to inform him and told him that the appellant had told him about commission of murder of his mother. PW 4 Sakharam also denied that the appellant had come to his house and had confessed murdering his mother. PW 5 Raghunath also did not support the prosecution case. All these three witnesses were declared hostile and the learned Public Prosecutor was permitted to put questions to these witnesses in the nature of cross-examination, but nothing incriminating was brought in their cross-examination.

5. PW 2 Dangal Shirsath and PW 3 Dagdusing Rajput were panch witnesses. Both of them turned hostile and did not support the prosecution case. Thus, out of six witnesses examined, five have turned hostile. Only API Varade has supported the prosecution case. The appellant admitted the inquest panchanama at Exhibit 7 u/s 294 of the Criminal Procedure Code. Similarly, panchanama of attachment of clothes of the deceased Exhibit 15, panchanama of the arrest of the appellant and attachment of his clothes Exhibit 16 are admitted under Section 294 of the Cr.P.C. Post mortem notes are also admitted by the defence and the same are at Exhibit 17. As per post mortem notes following injury was found by the doctor.

Huge CLW on right head extending from maxilla to mid occipital region. size 10 to 12 cm in length, 4 - 5 cm width and 4 c deep. Brain matter oozing out through CLW.

The doctor gave opinion that deceased Rajkuwarbai died due to sudden cardiac arrest due to hypotolumic shock due to head injury. So the inquest panchanama and the post mortem notes clearly show the case of homicidal death.

6. API Varade at Exhibit 18 has stated that he recorded complaint lodged by PW 1 Devisingh at Exhibit 19. He went to the place of incident and drew inquest panchanama Exh.7. Thereafter her drew spot panchanama which is at Exh.20. He seized one axe blade from the spot under a separate panchanama. He arrested the appellant on 12-9-2004 under panchanama Exhibit 16. The clothes of the appellant i.e. banian and pant were found blood stains. Subsequently he sent the muddemal articles to the Chemical Analyser along with forwarding letter Exhibit 24. The C.A. reports are at Exhibits 25 and 26. The Chemical Analyser found blood stains of "B" group on the axe blade, carpet (chatai) and on the saree, blouse and petticoat of the deceased and on the banian and full pant of the appellant. Exhibit 26 shows that blood group of the appellant could not be ascertained as the results were inclusive.

7. The prosecution heavily relies for conviction on the plea of the appellant recorded at Exhibit 5. The plea recorded in English at Exhibit 5 is reproduced hereinbelow.

Q.1 Have you received all the copies of police papers?

Ans: Yes.

Q.2 Have you understood the charge now read over and explained to you?

Ans: Yes.

Q.3 Do you plead guilty the charge or want to defence the case?

Ans: No.

Q.4 Do you want to engage an advocate under the true legal Aid Scheme or at your own Case.? (sic)

Ans: I was not in position to understand and in that situation I have committed alleged act.

The Marathi version of the plea of the appellant is as follows:

These pleas were signed by the Judge on 16-12-2005. It may be noted that Questions Nos.3 and 4 in English version are respectively Question Nos.4 and 3 in Marathi version and we find same answers. Thus, as per the reply to question No. 3 in English version the appellant pleaded not guilty to the charge which he understood as per answer to question No. 2. But while answering question No. 4 which was recorded in English viz. whether the appellant desired to engage

advocate or wants advocate at the State expenses, the answer was that the appellant was not in a position to understand and in that condition he had committed the alleged act. We have quoted both the English and Marathi versions because the prosecution has relied on said plea as the sole basis for conviction in this case.

8. Sections 229 and 230 of the Code of Criminal Procedure read thus:

Section 229 Conviction on plea of guilty. If the accused pleads guilty, the Judge shall record the plea and may, in his discretion, convict him thereon.

Section 230. Date for prosecution evidence. If the accused refused to plead, or does not plead, or claims to be tried or is not convicted u/s 229, the Judge shall fix a date for the examination of witnesses, and may, on the application of the prosecution, issue any process for compelling the attendance of any witness or the production of any document or other thing.

Thus, Sections 229 and 230 clearly show that even though an accused pleads guilty the Judge may in his discretion proceed with the trial and fix date for examination of witnesses. In this case the learned Sessions Judge has passed the following order below the Charge Exhibit 4.

The contents of the charge read over and explained to the accused and he pleaded not guilty and he has admitted before the Court that he was not in position to understand and in that situation he has committed the alleged act. By considering the seriousness of the offence punishable u/s 302 of IPC, it is not desirable to accept such vague plea of the accused, by which the trial of the accused is proceeded according to law.

9. The question that arises for our consideration in the present situation is whether the plea of the appellant that he was not in a position to understand and in such mental condition he had committed alleged act can be considered sufficient admission of the act of homicide so as to base conviction thereon. Here we may state that in his statement API Varade has not identified particular clothes as the articles attached from the person of the appellant nor he stated that they were properly packed, labelled and sealed. Moreover, the appellant is son of the deceased and as such presence of blood on his clothes would not be sufficient evidence to conclude that he committed act of causing death of his mother. While lifting body of his mother for taking it for post mortem the accused might have occasion to come in contact with blood of deceased. The panchanama of attachment of clothes was drawn on next day of incident i.e. on 12-9-2004. The blood group of the appellant was not ascertained to exclude possibility of stains being of his own blood.

10. In the case of Abdul Kader v. Emperor reported in AIR 1947 Bom 345 a Special Bench consisting of three Judges of this Court had come across a similar case. In that case the appellant had pleaded guilty when charge was framed against him. But the observations in para 6 show that as per statement u/s 342

of the Cr.P.C. 1898 (which is corresponding to Section 313 of the Cr.P.C. 1973) the accused denied to have committed any offence. The question and answer reproduced at the end of para 6 is as follows:

When the charge was read out, why did you plead guilty", to which he made answer:

My wife died several years ago. Now my only daughter has been murdered. After that I thought I could not live alone and felt tired of my life. So I made a false plea, in the hope that I would be hanged and be free from my miserable life. In fact I did not kill my daughter.

The statement of the accused in the present case u/s 313 Cr.P.C. shows that he had also not admitted any of the circumstances put to him. While answering Question No. 24 he categorically stated that a false case is filed against him.

11. The Special Bench in the case of Abdul Kader (supra) observed in paragraphs 4 and 5 that if proper safeguards are taken a plea of guilty can be accepted. Such safeguards must include the accused's representation by counsel who must be in a position to answer the questions of the Court, with regard to whether the accused knows what he is doing and the consequences of his plea and also a medical report or medical evidence upon him. Unless such safeguards are taken and unless the Judge is prepared to accept a plea of guilty the proper course is to tell the accused that he should claim to be tried and if he refused to claim to be tried, to record plea of "does not plead". In para 10 it is observed that if the plea of guilty was not accepted then there was no plea and the question "why did you plead guilty?" should never have been put to the accused. In other words, such plea could not form basis for sole conviction. It is further observed in para 12 that if a plea not being a "circumstance appearing in evidence against the accused" within the meaning of Section 342 of the Code, the Judge is not justified in putting question to the accused regarding the plea. It is further observed in para 14 that the Judge having decided not to act on the plea, it should have been treated as non-existent throughout the trial or as a matter requiring no explanation from the accused. It is also observed at the end of para 12 that such plea is not a piece of evidence in the trial.

12. In the case of State of Maharashtra Vs. Sukhdeo Singh and another Vs. State of Maharashtra Through C.B.I. Vs. Sukhdev Singh alias Sukha and others, it is observed as follows:

52. ...Where the Judge frames the charge, the charge so framed has to be read over and explained to the accused and the accused is required to be asked whether he pleads guilty of the offence charged or claims to be tried. Section 229 next provides that if the accused pleads guilty, the Judge shall record the plea and may, in his discretion, convict him thereon. The plain language of this provision shows that if the accused pleads guilty the Judge has to record the plea and thereafter decide whether or not to convict the accused. The plea of guilt tantamounts to an admission of all the facts constituting the offence. It is,

therefore, essential that before accepting and acting on the plea the Judge must feel satisfied that the accused admits facts or ingredients constituting the offence. The plea of the accused must, therefore, be clear, unambiguous and unqualified and the Court must be satisfied that he has understood the nature of the allegations made against him and admits them. The Court must act with caution and circumspection before accepting and acting on the plea of guilt. Once these requirements are satisfied the law permits the Judge trying the case to record a conviction based on the plea of guilt. If, however, the accused does not plead guilty or the learned Judge does not act on his plea he must fix a date for the examination of the witnesses i.e. the trial of the case....

In this case the Judge has rightly decided to proceed with the trial.

13. We have reproduced questions 3 and 4 from the Marathi and English versions of the plea recorded in this case. We are not sure that the appellant has really understood the questions. When he was not understanding what he was doing, it is doubtful if he was able to remember his act. Possibility of the accused giving particular answer at the behest of someone needs to be ruled out in the present case.

14. In this case in cross examination of hostile prosecution witnesses, it is brought on record that prior to the incident the appellant was suffering from mental disease and was treated by various doctors. The record of the trial Court shows that pending trial for some time the appellant was treated for mental illness. So the plea recorded in this case was not of a normal person. Ordinarily admission of an act by a normal person before Court can be considered to base conviction, but in this case it is unsafe to do so. There is no corroboration whatsoever to hold that the appellant has committed the act. For all foregoing reasons it is preferable to give benefit of doubt to the appellant.

15. In the result, the appeal is allowed. The judgment and order dated 7th March 2006 passed by the 1st Ad-hoc Additional Sessions Judge Shahada in Sessions Case No. 9 of 2005 is quashed and set aside. The appellant is acquitted of the charge of murder punishable u/s 302 of the Indian Penal Code. Fine amount if paid be refunded to him. He be set at liberty forthwith if not required in any other case.