
(2015) 07 BOM CK 0279

In the Bombay High Court

Case No : Criminal Appeal No. 621 of 1993 and Criminal Application No. 390 of 2015

Sarjerao Rambhau Machale

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 29-07-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 209
Evidence Act, 1872 — Section 25
Penal Code, 1860 (IPC) — Section 302, 84

Citation : (2015) 07 BOM CK 0279

Hon'ble Judges : B.P. Dharmadhikari, J;A.S. Gadkari, J

Bench : Division Bench

Advocate : Kuldeep Patil, for the Appellant; H.J. Dedhia, APP, Advocates for the Respondent

Final Decision : Disposed off

Judgement

A.S. Gadkari, J—The appellant, original accused, has impugned the judgment and order dated 14th October 1993 passed by the Additional Sessions Judge, Pune in Sessions Case No. 39 of 1993 thereby convicting him for an offence punishable under Sections 302 of the Indian Penal Code and has sentenced to undergo life imprisonment and to pay fine of Rs. 1,000/- and in default of payment of fine, to further undergo two months rigorous imprisonment.

2. The facts which give rise to and are necessary to decide the present appeal can briefly be stated thus:--

"(i) Shri Nanasaheb Ghadge (PW No. 1) was police patil of village of Inamgaon. That on 19.8.1992 at about 7 p.m. one person by name Balu Machale had come to him and told that his uncle Sarjerao (appellant) has killed his wife Smt. Nanda by hitting stone. Shri Nanasaheb Ghadge (PW No. 1) went to the spot of incident which was situated at Deokhal Vasti. He went to the house of the appellant. The appellant was present at the spot. He made enquiry with the appellant who in

tern told him that he suspected character of his wife (deceased) and therefore he killed her. Shri Nanasaheb Ghadge (PW No. 1) saw the dead body in the room. He also noticed injuries on forehead, chest and left hand. That blood was oozing from the injuries. Shri Nanasaheb Ghadge (PW No. 1) then went to the police chowki at Mandav Gan and lodged report with the police. The said report was treated as first information report which is at Exhibit 12.

(ii) After lodgment of the said first information report, Shri Tukaram Gaud, Police Sub-Inspector (PW No. 6), registered crime on the basis of the said report bearing No. 66 of 1992 under Section 302 of Indian Penal Code. Shri Tukaram Gaud, Police Sub-Inspector visited the spot of incident on 20.8.1992 and effected inquest panchanama at Exhibit 7. He also conducted spot panchanama at Exhibit 14. He thereafter recorded the statements of witnesses. He arrested the accused person. He also seized the clothes of the deceased under pacnahanam at Exhibit 9. He seized one stone which was found at the spot which is Article No. 1 on record. He also seized the clothes of the accused and deceased and sent them to Chemical Analyser for examination. After receipt of Chemical Analyser's report and Postmortem report of the deceased Smt. Nanda from the concerned authorities, he submitted chargesheet against the appellant in the Court of Judicial Magistrate First Class, Ghodnadi.

(iii) The Judicial Magistrate First Class committed the said case to the Court of Sessions in view of the provisions of Section 209 of Cr. P.C. The Trial court framed charge below Exhibit 2. The same was read over to the appellant to which he denied and claimed to be tried. The defence of the appellant was that he is a patient suffering from illness "bipolar mood disorder". That he was suffering from the said disease since last many years. He was also admitted to Sassoon Hospital at Pune for a treatment by the Psychiatrist in September 1991 and therefore he claimed exception as contemplated under Section 84 of the Indian Penal Code, of insanity at the time of commission of offence.

(iv) The prosecution in support of its case examined in all six witnesses. The appellant in defence of his case examined three defence witnesses who were the doctors who treated him for his psychiatric problem. The learned Trial Court after recording the evidence and after hearing parties to the said Sessions Case, was pleased to convict the appellant by its judgment and order dated 14.10.1993."

3. Heard Mr. Kuldeep Patil, the learned Counsel for the appellant and Mr. H.J. Dedhia, the learned APP for the State and with their assistance perused the entire evidence available on record.

4. The learned Counsel for the appellant submitted that the entire evidence of the prosecution rests on the testimony of PW No. 4 Satish Sarjerao Machale, the minor son of the appellant and the alleged eyewitness in the present case. He submitted that at the time of recording the evidence of PW No. 4, he was in the custody of his maternal uncle who is a doctor. He further submitted that the prosecution has not brought on record the height of the window from where the

PW No. 4 has alleged to have seen the incident. He therefore contended that the conviction cannot be based on the sole testimony of this child witness, who according to the learned Counsel for the appellant is not trustworthy. The learned Counsel for the appellant has further contended that the alleged extra-judicial confession given to PW No. 1, police patil by the appellant cannot be relied upon as it is given to a police officer. He further submitted that the said alleged extra-judicial confession given by the appellant to the said police patil (PW No. 1) is a very weak piece of evidence and there is no corroboration to the same. He lastly contended that the appellant was suffering from mental disorder, he had undergone treatment and the said fact has been proved by leading the evidence of three defence witnesses who are the doctors, who had treated the appellant prior to the incident and after his arrest also. He further submitted that after the arrest, the appellant immediately moved an application before the Judicial Magistrate First Class which is at Exhibit No. 4 in file No. 5 of record, for his examination by a psychiatrist. The learned Trial Court by order dated 3.9.1992 allowed the said application. He therefore submitted that the appellant was suffering from the mental disorder immediately prior to and after the incident and hence the benefit of Section 84 of the Indian Penal Code may be extended to him. In short, the learned Counsel for the appellant has raised the plea of "insanity" of the appellant at the time of commission of offence. The learned Counsel for the appellant therefore urged before us that the benefit of doubt may be given to the appellant with the aid of Section 84 of Indian Penal Code and the appellant may be acquitted from all the charges levelled against him.

The learned APP per contra submitted that the manner in which the appellant has committed the crime demonstrates that he was in normal state of condition at the time of commission of offence and therefore the benefit of Section 84 of the Indian Penal Code cannot be extended to him. The learned APP further submitted that the police patil (PW No. 1) is not a "police officer" and therefore the extra-judicial confession given by the appellant to him can safely be relied upon with other corroborative evidence. The learned APP further contended that the evidence on record shows that the appellant was not suffering from any mental disorder at the time of commission of the offence. He therefore prayed before us that the conviction and sentence of the appellant may be sustained and the present appeal may be dismissed.

5. With a view to deal with the submissions of the learned Counsel for the appellant and the learned APP, it is necessary and useful to advert, in brief, to the evidence of the witnesses available on record.

6. PW No. 1 is Nanasaheb Ghadge, the police patil of village Inamgaon, and the facts narrated by him in his examination-in-chief has already been stated in forgoing paragraph No. 2(i) and for the sake of brevity repetition of the same is avoided herein.

It is to be noted here that the appellant after commission of the said offence was present at the spot and on enquiry being made by PW No. 1, the appellant told

PW No. 1 that he suspected character of his wife and hence he had killed her. This is the said extra-judicial confession given by the appellant to Nanasaheb Ghadge (PW No. 1), police patil and relied upon by the prosecution for maintaining the conviction.

In the cross-examination, a suggestion was put to this witness that the accused was making gestures by waiving his hands in the air and crossing his fingers to which this witness has denied. He has admitted that the brothers of accused and other relatives and family members were present at the spot and that he did not see the appellant while talking with his family members.

7. PW No. 2 is Ramdas Baburao Raut, a panch-witness to the scene of offence panchanama at Exhibit-14. In his testimony he has stated that one big stone was found towards west side of the that near the scene of offence. That pieces of bangles were lying on the ground and there were blood stains on the floor.

In his cross-examination, this witness has admitted that Arjunrao Machale is the brother of the appellant. That he was in the service of Arjunrao Machale. That he knew the appellant since considerable period. He has further admitted that the appellant was suffering for last ten years from lunacy. This witness has further admitted that whenever the appellant was under the attack of lunacy, he used to abuse people at large. That under the attack of lunacy, the appellant used to shout by saying that people were beating him. He has further admitted that the appellant while under the attack of lunacy grinds the teeth and crosses his fingers.

8. PW No. 3 is Machindra Tukaram Sonalkar, the Medical Officer who was then attached to the Municipal Dispensary, Shirur and had conducted postmortem examination of the deceased Smt. Nanda Sarjerao Machale. PW No. 3 has stated that he conducted postmortem of deceased Smt. Nanda on 20.8.1992 from 1.10 p.m. to 2.15 p.m. He observed following injuries on the dead body of Smt. Nanda:

"1. C.L.W. between two eye-brows. 2 1/2 cm x 2 1/2 cm. into bone deep. Forehead fracture.

2. Small abrasion on nose

3. C.L.W. over upper lip of mouth, middle third part, 2 x 1/4th x 1/4th cm.

4. Abrasion left maxillary region 4 x 1/2 cm.

5. Abrasion between left ear and left eye, 8 x 2 c.m.

6. Abrasion on mandibular region 6 x 2 cm.

7. Abrasion below sixth injury, 4 x 2 cm.

8. Abrasion on the lower lip of mouth 1 x 1/2 cm.

9. C.L.W. over lower lip (lip) of mouth 1 x 1/2 x 1/2 cm.

10. Abrasion below left eye 1/2 x 1/2 cm.
11. Abrasion on sternal 5 x 1 cm.
12. Five small abrasions on sternal right side.
13. Three small abrasions on sternal left side.
14. Compound fracture, lower third radius and ulna left.
15. Abrasion on right tibial tuberosity 1 x 1 cm and 1/2 x 1/2 cm.
16. Abrasion on back at lumbar vertebra 15 x 3 cm 6 x 2 cm.
17. C.L.W. over occipital region, right side 2 x 1 cm into bone deep."

He has further stated that the above injuries were ante-mortem. He has stated that the corresponding internal injuries have been mentioned in page No. 5 in column Nos. 19 and 20 of the P.M. Notes. PW No. 3 has opined that the death of Smt. Nanda was caused due to shock due to haemorrhage due to rupture lungs, due to fractures ribs and laceration brain due to fracture forehead. PW No. 3 has further stated that the injuries mentioned in the P.M. Notes were possible due to hitting by a stone which is article No. 1, on the forehead of the person and other parts of the body.

In the cryptic cross-examination by the appellant, no material has been elicited by the appellant which would support him.

9. PW No. 4 is Satish Sarjerao Machale, son of the appellant and deceased Smt. Nanda and eye-witness to the incident. The testimony of this witness was recorded on 8.7.1993 when he was 13 years of age. The date of incident is 19.8.1992 and therefore this witness was about 12 years of age on the date of incident.

The learned Trial Court after putting the necessary questions to this child witness, satisfied itself that this witness understands the sanctity of oath. PW No. 4 Satish in his testimony has stated that the appellant is his father. That the name of his mother was Smt. Nanda. That he is having two brothers and two sisters. That on 18.8.1992, he himself with his other brothers and sisters were sleeping in their house at night. His parents were also sleeping. In the morning a quarrel took place between his father and mother. He therefore woke up. That he saw his father was quarreling with his mother, suspecting her character. His father was telling his mother that she had illicit relations with others as she used to talk to others. His father started abusing his mother. That there were often quarrels on the previous occasion also between his parents on the same count. That his paternal uncle used to pacify his father. However, the appellant never took his advice seriously. PW No. 4 did not attend the school, on the day of incident on the say of his mother. His mother asked him to stay at house as she was apprehending some trouble from his father. That his other brothers and sisters went to school at about 10 a.m. That at 8.00 a.m. his father went to

village Inamgaon. They reside at Deokhal Vasti. That his father returned back at about 9.00 a.m. to 9.30 a.m. and thereafter went to agricultural field. PW No. 4 stayed at home. His mother was also present in the home. His mother was sleeping at about 3 p.m. inside the house. PW No. 4 was outside the house on otta. At about 4 p.m. his father returned back to his house. The stone was lying outside of the house in the courtyard. That the appellant took one big stone and entered inside the house. He closed the door. PW No. 4 made an attempt to open the door, but could not open it. That the window of the room was open. PW No. 4 peeped through the window and saw that his father, hitting by means of the stone on the forehead of his mother. He also saw the appellant while hitting by the said stone on her chest. PW No. 4 shouted for help, but nobody was there. That his mother died on the spot without making any noise. PW No. 4 identified the article No. 1 stone in the Court. That PW No. 4 went to his cousin brothers, Dilip and Sanjay and informed them about the incident. His father was present at the spot. That article No. 1 stone was lying near the dead body of his mother.

In the cross-examination, this witness has admitted that at present he was residing at Pune at his maternal uncle's house. His another maternal uncle is Doctor Sanjay, who runs the dispensary at Pune. That Deokhal Vasti is three kilometers away from Ingamgaon. That his cousin brothers Dilip and Balu reside nearby. PW No. 4 has admitted that the appellant did not come to the house till 4 p.m. for taking his meal. That he and his mother took meal at about 2.00 p.m. together. That at about 3.00 p.m., his mother went for sleeping. PW No. 4 has further admitted that his father was not present at the house at least for 15 days. PW No. 4 has denied the suggestion that his father was admitted in Sassoon Hospital one year prior to the incident.

10. PW No. 5 is Ashok Kondiba Tekawade, brother of deceased Smt. Nanda. PW No. 5 in his testimony has stated that Smt. Nanda was his elder sister. That she was married 15 to 16 years prior to the incident with the appellant. There were normal relations between Smt. Nanda and the appellant for about 14 years after marriage and thereafter his sister made complaint against the appellant that she was being ill-treated on the ground of her character. That one year prior to the incident, the appellant had beaten Smt. Nanda and there was serious injury to her head. PW No. 5 visited the hospital where Smt. Nanda was admitted. That on visiting to the hospital by PW No. 5, Smt. Nanda had informed him that the said head injury was caused by the appellant by hitting by means of iron power (powder). That she was admitted in the hospital of Dr. Jagtap at Kashti for about 10 to 12 days. That she was thereafter taken to Pune for further treatment. She stayed with her sons for about six months at Pune. That the brothers of the appellant came to his house and assured that she will not be ill-treated furthermore at the hands of the appellant and on that assurance she was taken by them to her matrimonial home.

In the cross-examination of this witness, a suggestion was put to him that the appellant was being treated by Dr. Vatave (D.W. No. 2.), to which he denied. He

has denied the suggestion that his brother Dr. Sanjay admitted appellant in the Sassoon Hospital in the month of September 1991 and Dr. Pande and Dr. Mohan Agashe gave treatment to him in the Sassoon Hospital. He has further denied the suggestion that since the year 1984 the appellant was suffering from insanity.

11. PW No. 6 is Tukaram Goud, the Investigating Officer. The facts mentioned by him pertaining to the investigation carried out by him of the present crime, in his examination-in-chief have been recorded in forgoing paragraph No. 2(ii) and for the sake of brevity repetition of the same is avoided herein.

In the cryptic cross-examination of this witness, no material at all, which would help the appellant has been brought on record. It is to be noted here that this witness has proved the reports of the Chemical Analyser which are at Exhibits 21 and 22.

12. The record discloses that the prosecution closed its evidence by filing pursis/application at Exhibit 24 dated 9.7.1993. The appellant thereafter examined three witnesses in defence of the charge. The said three defence witnesses are the doctors who had treated the appellant for his psychiatric problems.

13. D.W. No. 1 is Dr. Bhalchandra Mhaswade. D.W. No-1 in his testimony has stated that he is M.D. in Psychiatry and D.P.M. That he used to treat the patients suffering from mental illness. That in pursuance of orders passed by the Court at Shirur, the appellant was admitted to his hospital on 19.10.1992 (when the appellant was in judicial custody) for treatment. That he examined the appellant for substantial time. That he diagnosed the appellant of Schizophrenia. That it was a major mental illness. That patient was dull and retarded. That patient gave short cursory answers to the questions. That the patient was murmuring to self. That he had vague persecutory delusions. His orientation was impaired and he lacked insight. His findings were confirmed by Dr. Lavate, Superintendent of Mental Hospital. He gave treatment to the patient by giving anti psychotic drugs and electric shock treatment. The said patient was produced before the Visitors Committee and Visitors Committee declared him fit for trial. D.W. No. 1 has further stated that the disease suffering by the appellant is relapsable. He has further stated that if any patient does any act under the attack of such disease, he cannot differentiate between right and wrong and he does not know the consequences of his act.

This witness was cross-examined at length by the learned APP. In the cross-examination, this witness has given admission to the effect that one cannot say about the duration of the normal period between two attacks. That normalcy can remain in existence for years together between two attacks. That it is possible that after commission of any act due to mental stress, the person can break down and the symptoms which he narrated can be developed subsequently.

14. DW No. 2 is Dr. Vidhyadhar Vatave who treated the appellant for his mental ailment between 1985 and 1990. DW No. 2 has stated that the appellant was suffering from illness called "Bipolar Mood Disorder", means mood swing of the

patient. The appellant showed moods of elation as well as moods of depression. That this is severe type of mental disorder. It is relapsable disease. That the appellant who was a patient of the said disease could not be cured completely. The accused was under mood stabilizer and antipsychotics during the phase of elation and during the period of depression mood stabilizer with anti-depression. This witness has identified and proved various prescriptions which are at Exhibits 30 to 36 given by this witness to the appellant. This witness has further stated that during the attack of mental disorder of the patient, it is difficult to assess by the patient about the reality and consequences during the act. That the appellant was suffering from that type of disease.

In the cross-examination by the learned APP, this witness has admitted that he has not mentioned in any of the prescriptions which are at Exhibits 30 to 36, about bipolar mood disorder. He has further admitted that in his practice of 16 years, he had examined approximately 10,000 to 12,000 patients. That bipolar mood disorder disease is not curable and is relapsable disease. That the appellant used to come to his clinic alone. That he never gave electric convulsive treatment to the appellant.

15. DW No. 3 is Dr. Dhananjay Chavan who was then attached to Sassoon Hospital in Psychiatric Ward as a Resident Doctor during the period from 1989 to 1992. That the appellant was admitted in Sassoon Hospital for 10 days from 20.9.1991 to 29.9.1991. That the appellant was suffering from bipolar mood disorder. That the case history of the appellant was given by the brother-in-law and wife of the appellant. The period when the appellant was symptomatic was very distressful to his wife, as mentioned by his wife Smt. Nanda. He has further stated that Dr. Sanjay, his colleague, had written on page-3 of the document/report maintained by the department as "admitted in agitated, depressed state and self referentially, disturbed sleep, irritability (assaulted wife couple of days ago) with marked somativ anxiety". The said case papers signed by Dr. Sanjay. DW No. 3 prepared discharge card of the patient Machale. DW No. 3 had noted down the clinical findings such as multiple episodes of major depression over last six years. Rapid cycle. Treatment with trifluoperazina before. No major depression with melancholic features. That he had called the appellant after 20 days of discharge. In the cross-examination by the learned APP, this witness has admitted that during the admission in the hospital, the appellant maintained insight meaning thereby he understood his own sufferings. That his intelligence was normal. The appellant was capable to distinguish between right and wrong during the period of his admission. He has stated that because of the personality disorder chances of murder are remote. That after discharge the patient (appellant) was improving. That he was happy with the progress of the appellant when he last examined him.

16. The learned Counsel for the appellant submitted that the alleged extra-judicial confession given by the appellant to PW No. 1 police patil is firstly not admissible at all as it was given to the police officer and it is hit by Section 25 of

Evidence Act and assuming that it is admissible, it is a very weak piece of evidence.

The learned APP on the other hand by placing reliance on the judgment in the case of *The State of Maharashtra Vs. Arjun Dattaram Bhekare, Atmaram Arjun Bhekare and Santosh Arjun Bhekare*, (2005) CriLJ 472, contended that the High Court has held that the extra-judicial confession made by the accused to police patil of a village is admissible in evidence as the police patil of the village is not a police officer since he had no power to file report under Section 173 of Cr. P.C. Thus, it is clear that the extra-judicial confession given by PW-1 to a police patil is admissible in evidence. The aspect that, when the appellant gave the said extra-judicial confession to PW-1, he was undergoing phase of the lunacy and/or mental imbalance is the question for our consideration herein and we will deal with the same in the following paragraphs.

17. The learned Counsel for the appellant thereafter contended that the evidence of PW-4 Satish Machale, son of the appellant cannot be taken into consideration as according to him the said witness was tutored by his uncle Sanjay and the said witness being child witness his evidence is not trustworthy and reliable. In support of his contention, he relied upon two judgments of Apex Court namely (1) *State of Bihar, etc. Vs. Kapil Singh, etc.*, AIR 1969 SC 53 : (1969) CriLJ 279 : (1968) 3 SCR 810 and (2) *Bharvad Bhikha Valu and Others Vs. The State of Gujarat*, AIR 1971 SC 1064 : (1971) CriLJ 927 : (1971) SCC(Cri) 500.

There cannot be any dispute about the settled legal position that the evidence of child witness has to be appreciated with utmost caution. In the present case, PW-4 Satish was about 12 years of age when the incident in question occurred. As has been held by the Apex Court that, while such a child witness can often be expected to give out a true version because of its innocence, there is always the danger in accepting the evidence of such a witness that, under influence, he/she might have been coached to give out a version by persons who may have influence on him/her. We have carefully scrutinized the evidence of PW-4 Satish, son of the appellant. We find that PW-4 Satish, son of the appellant, has no reason to falsely implicate his own father in the present crime. He has given a true and correct account of the facts and circumstances which took place at about 4 p.m. on the date of incident and according to us his evidence is trustworthy and wholly reliable.

18. The learned Counsel for the appellant thereafter contended that at the time of incident, the appellant was undergoing the phase of unsoundness of mind/lunacy and was incapable of knowing the nature of act which he was doing. In support of his contention, he relied upon two decisions of the Apex Court namely (1) *Shrikant Anandrao Bhosale Vs. State of Maharashtra*, AIR 2002 SC 3399 : (2002) CriLJ 4356 : (2002) 7 JT 386 : (2002) 7 SCALE 37 : (2002) 7 SCC 748 : (2002) 2 SCR 612 Supp : (2002) 2 UJ 1401.

In the case of *Shrikant Anandrao Bhosale* (supra), the Apex Court in paragraph

Nos. 15 and 17 has held as under:

"15. At this stage, it is necessary to notice the nature of the burden that is required to be discharged by the accused to get benefit of Section 84 IPC. In *Dahyabhai Chhaganbhai Thakker Vs. State of Gujarat*, AIR 1964 SC 1563 : (1964) CriLJ 472 : (1964) 7 SCR 361 this Court has held that 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 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. The burden of proof on the accused to prove insanity is no higher than that rests upon a party to civil proceedings which, in other words, means preponderance of probabilities. This Court held that : (SCR pp 367-68)

"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 Section 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."

"17. Undoubtedly, the state of mind of the accused at the time of commission of the offence is to be proved so as to get the benefit of the exception."

In the case of *State of Rajasthan v. Shera Ram alias Vishnu Dutta* (supra), in paragraph Nos. 16 and 17, the Supreme Court has held as under:

"16. Section 84 states that :

"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 what he is doing is either wrong or contrary to law."

It is obvious from a bare reading of this provision that what may be generally an offence would not be so if the ingredients of Section 84 IPC are satisfied. It is an

exception to the general rule. Thus, a person who is proved to have committed an offence, would not be deemed guilty, if he falls in any of the general exceptions stated under this Chapter.

"17. To commit a criminal offence, mens rea is generally taken to be an essential element of crime. It is said *furiosus nulla voluntus est*. In other words, a person who is suffering from a mental disorder cannot be said to have committed a crime as he does not know what he is doing. For committing a crime, the intention and act both are taken to be the constituents of the crime, *actus non facit reum nisi mens sit rea*. Every normal and sane human being is expected to possess some degree of reason to be responsible for his/her conduct and acts unless contrary is proved. But a person of unsound mind or a person suffering from mental disorder cannot be said to possess this basic norm of human behavior."

19. The learned APP on the other hand relied upon the decision of Supreme Court in the case of *Bapu alias Gujraj Singh v. State of Rajasthan* [(2007) 3 SCC Cri. 509] and particular paragraph Nos. 8, 11 and 12 which read as under

"8. Under Section 84 IPC, a person is exonerated from liability for 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. The accused is protected not only when, on account of insanity, he was incapable of knowing the nature of the act, but also when he did not know either that the act was wrong or that it was contrary to law, although he might know the nature of the act itself. 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. The onus of proving unsoundness of mind is on the accused. But where during the investigation previous history of insanity is revealed, it is the duty of an honest investigator to subject the accused to a medical examination and place that evidence before the Court and if this is not done, it creates a serious infirmity in the prosecution case and the benefit of doubt has to be given to the accused. The onus, however, has to be discharged by producing evidence as to the conduct of the accused shortly prior to the offence and his conduct at the time or immediately afterwards, also by evidence of his mental condition and other relevant factors. Every person is presumed to know the natural consequences of his act. Similarly every person is also presumed to know the law. The prosecution has not to establish these facts."

"11. The section itself provides that the benefit is available only after it is proved that at the time of committing the act, the accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or that even if he did not know it, it was either wrong or contrary to law then this section must be applied. The crucial point of time for deciding whether the benefit of this section should be given or not, is the

material time when the offence takes place. In coming to that conclusion, the relevant circumstances are to be taken into consideration, it would be dangerous to admit the defence of insanity upon arguments derived merely from the character of the crime. It is only unsoundness of mind which naturally impairs the cognitive faculties of the mind that can form a ground of exemption from criminal responsibility. Stephen in History of the Criminal Law of England, Vol. II, page 166 has observed that if a persons cut off the head of a sleeping man because it would be great fun to see him looking for it when he woke up, would obviously be a case where the perpetrator of the act would be incapable of knowing the physical effects of his act. The law recognizes nothing but incapacity to realise the nature of the act and presumes that where a man's mind or his faculties of ratiocination are sufficiently dim to apprehend what he is doing, he must always be presumed to intend the consequence of the action he takes. Mere absence of motive for a crime, howsoever atrocious it may be, cannot in the absence of plea and proof of legal insanity, bring the case within this section. This Court in Sheralli Wali Mohammed Vs. The State of Maharashtra, AIR 1972 SC 2443 : (1972) CriLJ 1523 : (1973) 4 SCC 79 : (1973) SCC(Cri) 726 : (1973) 5 UJ 204

"The mere fact that no motive has been proved why the accused murdered his wife and children or the fact that he made no attempt to run away when the door was broken open, would not indicate that he was insane or that he did not have necessary mens rea for the commission of the offence.""

"12. Mere abnormality of mind or partial delusion, irresistible impulse or compulsive behaviour of a psychopath affords no protection under Section 84 as the law contained in that section is still squarely based on the outdated M'Naughton rules of 19th Century England. The provisions of Section 84 are in substance the same as those laid down in the answers of the Judges to the questions put to them by the House of Lords, in M' Naughton's case. (1843) 4 St. Tr. (NS) 847. Behaviour, antecedent, attendant and subsequent to the event, may be relevant in finding the mental condition of the accused at the time of the event, but not that remote in time. It is difficult to prove the precise state of the offender's mind at the time of the commission of the offence, but some indication thereof is often furnished by the conduct of the offender while committing it or immediately after the commission of the offence. A lucid interval of an insane person is not merely a cessation of the violent symptoms of the disorder, but a restoration of the faculties of the mind sufficiently to enable the person soundly to judge the act; but the expression does not necessarily mean complete or perfect restoration of the mental faculties to their original condition. So, if there is such a restoration, the person concerned can do the act with such reason, memory and judgment as to make it a legal act; but merely a cessation of the violent symptoms of the disorder is not sufficient."

20. The learned APP submitted that at the time of commission of offence, as per the evidence on record, the appellant was in a fit state of mind and was not

undergoing any unsoundness of mind or suffering from insanity and therefore benefit of Section 84 cannot be extended to appellant.

The learned Counsel for the appellant by relying upon an excerpt from paragraph No. 8 of the judgment in the case of Bapu alias Gujraj Singh v. State of Rajasthan (supra) submitted that the onus of proving unsoundness of mind is on the accused. But where during the investigation previous history of insanity is revealed, it is the duty of an honest investigator to subject the accused to a medical examination and place that evidence before the Court and if this is not done, it creates a serious infirmity in the prosecution case and benefit of doubt has to be given to the accused. He therefore contended that as in the present case there was history of mental unsoundness of the appellant, the Investigating Officer himself ought to have investigated the matter from that angle and ought to have subjected the appellant to the strict medical test before filing of the chargesheet in the present crime.

21. We have carefully and minutely scrutinized the entire evidence available on record. The defence witness Nos. 1 to 3, the doctors who had treated the appellant before and after the commission of offence by the appellant have stated that the appellant was and is a patient of schizophrenia and was also suffering from bipolar mood disorder. D.W. No. 1 Dr. Bhalchandra Mhaswade has stated that when the appellant was in judicial custody, he was admitted to his hospital on 19.10.1992 for the treatment of mental illness and he found that the appellant was suffering from schizophrenia. D.W. No. 2 Dr. Vidhyadhar Vatave has stated that the appellant was suffering from mental illness between 1985 and 1990 and the said illness was called as bipolar mood disorder. D.W. No. 3 Dr. Dhananjay Chavan has stated in his testimony that the appellant was admitted in Sassoon hospital for 10 days from 20.9.1991 to 29.9.1991 as the appellant was suffering from bipolar mood disorder. It is further to be noted here that PW-4 Satish, son of the appellant in his testimony has stated that in the night of 18.8.1992 he was sleeping with his brothers and sisters in the house. His parents were also in the house. He has further stated that in the morning a quarrel took place between his father and mother. He therefore woke up and saw his father was quarreling with his mother, suspecting her character. On the date of incident i.e. on 19.8.1992 his mother asked him to stay at house and not to attend the school as she was apprehending some trouble from his father. From his testimony it appears to us that the behaviour of the appellant on 19.8.1992 was not normal since morning. It is further pertinent to note that even after commission of the said offence which PW No. 4 had witnessed, the appellant did not leave the place and/or did not talk anything. The appellant was present at the spot when PW-4 Satish called his cousin brothers. The evidence of PW-1 Nanasaheb Ghadge, police patil also discloses that after receipt of the information about the said incident when he reached to the house of the appellant, he noticed the appellant was present at the spot and on enquiry the appellant informed him that he had killed his wife on account of her fidelity. In our view the appellant was undergoing and/or suffering from mental illness and/

or imbalance at the time of commission of offence on 19.8.1992 and therefore the said extra-judicial confession given by the appellant to P.W. No. 1 Nanasaheb Ghadge, the police patil of village Inamgaon does not assume any importance to it and it has to be left aside from the consideration by giving the benefit of exception of Section 84 of Indian Penal Code to the appellant.

22. Thus, it is clear that the deceased Smt. Nanda due to her previous experience was apprehending some untoward incidence after taking into consideration the abnormal behaviour of the appellant from morning of 19.8.1992 till the time of the said offence i.e. at about 4 p.m. on 19.8.1992 at the behest of the appellant. It appears to us that the conduct of the appellant as has been narrated by PW-4 Satish was also abnormal in nature since morning of 19.8.1992 till and after the commission of offence. D.W. Nos. 1, 2 and 3 in their evidence have narrated the history of the mental illness of the appellant. As stated herein, D.W. No. 1 has also treated the appellant immediately after he was sent to the judicial custody. The perception and conduct of unfortunate victim also substantiate this conclusion. It further appears from the record that the Investigating Officer during investigation did not subject the appellant to the medical examination and place that evidence before the Court and in view of the ratio laid down by the Apex Court in paragraph No. 8 of *Bapu alias Gujraj Singh v. State of Rajasthan* (supra), it creates a serious infirmity in the prosecution case and the benefit of doubt has to be given to the appellant for the same.

23. The appellant accused is given benefit of doubt and acquitted. Accordingly judgment dated 14th October 1993 delivered by the Additional Sessions Judge, Pune in Sessions Case No. 39 of 1993 is quashed and set aside.

Bail bonds executed by him are cancelled.

Muddemal property be destroyed after appeal period is over. Pending Applications, if any, stand disposed of.