HIGH COURT OF GUJARAT AT AHMEDABAD.

CRIMINAL APPEAL NO. 408 OF 1991.
WITH
CRIMINAL MISC. APPLICATION NO. 3867 OF 1991.

DATE OF DECISION: 20th September, 1995.

THE HONOURABLE Mr. JUSTICE K.J.VAIDYA,

AND

THE HONOURABLE Mr. JUSTICE M.H.KADRI.

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KOLI KARSAN DAHYA vs. THE STATE OF GUJARAT.
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1. Whether Reporters of Local Papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether their Lordships wish to see the fair copy of judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

Mr.K.G.Sheth, Advocate (Appointed) for the Appellant in the Appeal and the Opponent in the Misc. Application.

Mr.S.R.Divetia, APP, for the Respondent in the Appeal and the petitioner in the Misc. Application.

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20th September, 1995.

COMMON ORAL JUDGMENT. (per VAIDYA, J.)

Karsanbhai Dahyabhai Koli, by this appeal has brought under challenge the impugned judgment and order dated l8.4.1991 rendered in Sessions Case No. 24 of l989, passed by the learned Additional Sessions Judge, Morbi, wherein he, on finding the appellant guilty for the alleged offences punishable under Ss.302 and 309 I.P.Code, at the end of the trial, convicted him for the same and sentenced to undergo R.I. for life. No separate sentence has been awarded for the offence under S.309 I.P.Code.

2. According to the prosecution, the incident in question wherein Karsan Dahya murdered his parents, viz. Dahya Amba, father and mother Makuben by means of a sickle, took place on 6.8.1989 at l9.00 hours in his house itself at Village Shekharadi. This incident was witnessed by three eye-witnesses, viz. (i) P.W.1 Raghu Ratna, (ii) P.W.2 Kesha Amba, and (iii) P.W.4 Bhawan Mavji. It is further the case of the prosecution that accused Karsan and his parents were all staying together in their house. Karsan had married twice having taken divorce with both wives, and was having two daughters. It is the say of the prosecution that Karsan was quite lazy bone, sleeping most of the time and was doing nothing. On this count, his parents were often scolding him, resulting into continuous bickerings. On the aforesaid date, time and place, it is alleged that, the parents of Karsan once again told him that he was not doing any work and was eating sitting idle. This irked Karsan, resulting into quarrel. This was heard by P.W.2 Kesha Amba, the brother of Dahya Amba. Thereafter hardly within sometime he further heard the shouts of Dahya Amba and Makuben yelling for help, as Karsan was beating them. As a result, P.W.2 Kesha Amba went to the scene of the

incident. In the meantime, Chhana Raja (not examined as a witness), P.W.1 Raghu Ratna and P.W.4 Bhawan Mavji also came rushing. When all these persons reached the house of Dahyabhai, its door was found bolted from inside, and as a result, all these three witnesses climbed up the house, and removed the roof tiles. At that time, while peeping inside, Karsan was seen having a sickle in his hand, with which he tore open the stomach of Dahyabhai, as a result of which the omentum had come out. Thereafter Karsan gave a sickle blow to Makuben, and she also met with the same fate of her husband, and her omentum also came out. As a result of these injuries, both Dahyabhai and Makuben fell down. Thereafter Karsan, with the sickle in his hand also inflicted self injury on his stomach. Immediately thereafter, P.W.2 Kesha Amba. his son Somo (not examined as a witness) and P.W.1 Raghu Ratna, jumped inside the house, and caught hold of Karsan, and as a result, the sickle fell down from his hand. Then, the door of the house which was bolted from inside was opened and Karsan was made to sit outside. Thereafter P.W.2 Kesha Amba and other persons decided to file complaint, and accordingly, P.W.2 Kesha Amba filed complaint Exh.29 at about 3.30 A.M. before P.W.9 Chandrasinh Lachusinh, who, at the relevant time, was the P.S.I. at Wankaner Taluka Police Station. On the basis of this complaint, after the investigation was over, the accused came to be charge-sheeted to stand trial on the charges of the alleged offences punishableunder Ss.302 and 309 of I.P.Code before the Sessions Court at Morbi, wherein, at the end, he was convicted for the same and sentenced to life imprisonment as stated in above paragraph l of this judgment, giving rise to the present appeal. It may also be incidentally stated that when this appeal came up for admission before this Court (Coram:M/s. B.S.Kapadia and D.G.Karia, JJ.) on 20.11.1991, while admitting the same, Their Lordships also issued notice for the enhancement of sentence against the appellant-accused, which came to be registered as Criminal Misc. Application No. 3867 of l99l.

3. Mr.K.G.Sheth, learned Advocate, while challenging the impugned order of conviction and sentence, after carefully taking us through the material prosecution evidence brought on the record, as well as the reasons for conviction and sentence given by the trial court was frank enough to admit that he was not in a position to assail and thereby take any exception to quite dependable evidence of the eye-witnesses and accordingly he would like to confine his entire submissions only on the

limited point whether having regard to the peculiar facts and circumstances of the case, the accused would be entitled to the benefit under S.84 of the I.P.Code. We at this stage only hasten to add that we have also carefully and quite anxiously gone through the evidence of the prosecution witnesses, and must say without any hesitation that there is indeed nothing on the record, on the basis of which Mr.Sheth could have persuaded this court to discard their evidence from being taken into consideration as connecting the accused with the crime alleged against him. In this view of the matter, we are now required to shift and focus our attention on the only submission of Mr.Sheth as to whether the facts of the present case squarely fall within the narrow compass of S.84 of the I.P.Code, to avail of the ultimate benefit to the appellant-accused if at all that is possible. According to Mr.Sheth at the time of commission of the offence, but for the apparent reason of unsoundness of mind, where the appellant was indeed incapable of ordinarily knowing the nature of the act, as to what he was doing, he would not have committed a double murder and that too of his parents. Making good this submission, Mr.Sheth further submitted that it is inherently improbable that any son worth the name relation would ever thus commit the murder, and that too, at a time, of his old parents. Further according to Mr.Sheth, the mere scolding, and that too, proceeding from none else than the parents themselves to the accused that he was not doing any work and was eating sitting idle, was not such provocative, which would enrage or infuriate the accused to such an extent that he would instantaneously go to the extent of killing them by using a sickle. Some such sort of differences between the parents and children cannot be said to be that uncommon. According to Mr.Sheth, the matter does not rest here, as according to him, quite surprisingly, the accused when ultimately came to be arrested, was found quietly sleeping in the corner of his house, the conduct which per se is otherwise quite unnatural, unless of course, he was totally stupid or of unsound mind. Further according to Mr.Sheth, in the ordinary course of human nature, having regard to the very natural instict of self preservation, nobody with whatever little senses, after committing a crime would make himself easily available to be a witness against self to be easily arrested, prosecuted, tried, convicted and then ultimately sentenced to life imprisonment. Further according to Mr.Sheth, despite all these facts, the accused, after having committed murder of his old parents on the alleged slightest provocation, did not run away. The combined effect of all these circumstances, according to Mr.Sheth,

clearly indicates that, but for the fact that the accused was a person of unsound mind, neither the unfortunate incident of murdering parents would have taken place as alleged, nor would have he made himself easily available to be arrested by the police to be ultimately sentenced to life. These tell-tale self satisfying circumstances, according to Mr.Sheth speak volume, and need no further elaboration and authority to satisfy this court that when the accused committed the murder, he was indeed incapable of knowing the nature and consequences of his act and in that view of the matter, his case squarely fell within the purview of S.84 of the I.P.Code In support of this contention, Mr.Sheth has relied upon the decision of this court rendered in the case of RAMILABEN, WIFE OF MANILAL vs. STATE OF GUJARAT, reported in 31(1990) 2 Cri.Law Reporter, 1202, wherein the accused killed her own four children and plea of insanity under S.84 of the I.P.Code came to be accepted. Mr.Sheth, on the basis of these submissions finally urged that once this position is accepted, the court shall have to stay its hand from confirming and upholding the ultimate order of conviction and sentence and instead, must allow this appeal and acquit the accused, at least giving him benefit of doubt.

4. As against the above, Mr.S.R.Divetia, the learned APP has referred, relied upon and adopted the very same reasonings upon which the learned trial Judge has based the impugned order of conviction and sentence, against the appellant-accused.

5. Now, having heard the learned Advocates appearing for the respective parties quite at length, it may be stated at the very outset that Mr.Sheth, despite best of his efforts, has failed to make out even a prima facie case under Sec.84 of the I.P.Code to quash and set aside the impugned order of conviction and sentence passed against the appellant-accused. Accordingly, in substance, our principal three reasons for holding that the accused was not of unsound mind at the relevant time, are as under:-

(i) That immediately prior to the incident of double murder of parents, a quarrel took place between the accused and his parents on being scolded that he was doing no work and eating, sitting idle.

(ii) That at the point of time the alleged incident took place, it clearly appears that enough care was taken by the accused to see that door of the

house was bolted from inside.

(iii) That after injuring his parents, the accused also tried to injure himself, but the injury sustained by him was not that serious as could be seen from the injury certificate at Exh. 14.

These three aspects provide us a key to unlock the mind of the accused and see for ourselves the real mental process that took place prior, at the time of and after the commission of double murder. Accordingly, from the first aspect, it is quite clear that because the parents scolded him, he lost his temper and control resulting into murder. This aspect speaks about the ego-centric nature and the resultant feeling of hurt and retaliation. With a person of unsound mind, this indeed is never possible as there is no mind to feel hurt. From the second aspect, it could further be seen that the accused had taken enough care to see that door of the house was bolted from inside so that the parents could not escape. This also, in a way rules out the possibility of unsoundness of mind of the accused. From the third aspect, it is further equally clear that once his rush of reaction and wrath stood exhausted, the immediate process of mental self-nagging and pricking the conscience by way of reaction started hovering and haunting him enquiring of him as to what he did. It was because the accused himself was on self-remand by his conscience. After the act was over, the accused realised that he has committed double murder of his parents, which urged him cause self-injury. All these facts quite clearly and positively indicate about the presence of mind or soundness of mind of the accused. In fact had really indeed, the accused was of so unsoundness of mind at the relevant point of time prior to committing the murder, at the time of the murder and after commission of the murder, as pleaded before us, his half-hearted attempt to commit suicide was out of question. This would clearly indicate that mental process of the accused was quite intact and alright because no person of unsound mind would act or behave like this. At this stage, Mr.Sheth submitted that the very fact that the accused did not make his escape good after committing the crime, clearly indicates that but for something wrong with his mind, he would have certainly run away, and would not have waited for the police to come and arrest him. Now there is no substance worth the name in this submission of Mr.Sheth. There is no set and standard straight-jacket general formula as to in which manner a person would react and behave in such circumstances. It is indeed a matter of common experience that different persons on different

occasions react differently when found in the same set of circumstances or otherwise. Further, one should not be surprised if a very same person reacts quite differently in the very same set of circumstances, if repeated in future. Human nature is what it is. His reactions and behavioural pattern are indeed quite unpredictable depending upon very many factors operating upon the mind and mood of the concerned person at the relevant time of the incident. In this view of the matter, the conduct of the accused remaining there at the scene of the incident, and not running away cannot be necessarily equated with the conduct of a person of unsound mind. The reason is that once having committed double murder of no less persons than the parents, that was bound to set in immediate chain of shock and sharp reactions in a manner putting the accused in a state of total shock, frustration and a sense of repentance, whereby in those weakest moments of life of mantle backout he would have loved to be arrested by the police as true repentance for killing the parents. Further, not only that, but in fact there was no question for the accused running away after the incident as the family members were all around him, who certainly would not allow him to go away so easily even if he intended to do so. However, speaking lightly, it can be said that in a way every criminal act is an act of insanity, and that is the reason why the great Lord Jesus Christ when nailed on the cross, HE mercifully said: "O Father in heaven ; please pardon them ! They simply don't know what they are doing ". Now, to take the benefit under S.84 of the I.P.Code, insanity to which Jesus Christ referred to has no relevance. Here the relevance is as to whether the insanity as contemplated by S.84 of the I.P.Code is made out or not.

6. Apart this, by now it is a settled legal position that the burden of proof that the mental condition of the accused was, at the crucial point of time, was such as is described by S.84, lies on the accused, who claims the benefit of the exemption. This is the view of the Supreme Court in the decision rendered in the case of STATE OF MADHYA PRADESH vs. AHMADULLA, AIR 1961 S.C. 998. It is true that the said burden upon the accused person is not as stringent, heavy and hard as the one upon the prosecution to prove its case beyond doubt. This onus can even be discharged by the accused on the basis of probability also. We may go even to the extent of saying that in a given case the accused may not plead that specific defence of legal insanity, and yet, if from the circumstances available on the record the same can indeed and unquestionably be reasonably culled out,

probabilised which from roof top proclaimed nothing but the unsound mind as laid down in S.84 of the I.P.Code, to the quite satisfaction of the judicial conscience of the court, then in that case, irrespective of the specific plea of unsound mind under Section 84 of the I.P.Code and proving the same by leading evidence, the accused can perhaps still be given the benefit under S.84 of the I.P.Code. It is ultimately for the court, doing justice to carefully examine the material available on the record and weigh it in a judicial balance to find out whether the same is such which evenly weighs and balances the requirements of S. 84 of the I.P.Code. As rightly observed by the Supreme Court in the case of DAHYABHAI CHHAGANBHAI THAKKAR, vs. STATE OF GUJARAT, AIR 1964 SC 1563, the crucial point of time for ascertaining the 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 S.84 of the I.P.Code, can only be established from the circumstances that preceded, attended and followed the crime.

7. In the present case, no doubt, in cross-examination of the various witnesses, a definite question was put to them suggesting that the accused was of unsound mind round about the time of the alleged incident. However, each one of them have categorically repelled the same. On the contrary, a view can be taken that mere statement of some of the witnesses that round about the time of alleged murder, the accused used to behave like a mad man, that by itself may not be sufficient for attracting S.84 of the I.P.Code. However, that all ultimately depends upon the overall facts and circumstances of that particular case. In this view of the matter, the circumstances high-lighted above by Mr.Sheth that the accused was not capable of knowing the nature of the act, viz. murder of the parents, and was therefore, of unsound mind is nothing but an attempt of creating an illusion, a ghost to which we refuse to succumb, or be haunted. We also reject the submission of Mr.Sheth that it is inherently improbable that accused who was a son would commit murder of his parents on mere scolding. Times have changed. These days, nothing is improbable. Further, the crime impulse when it overpowers, it paralyses all good senses and discretion of judging right and wrong action.

8. Incidentally it needs to be mentioned here that when this matter was called out earlier before this court at the request of Mr.Sheth, pending hearing, the

appellant was sent to Civil Hospital for examination of his mental condition, and the concerned Medical Officer was also directed to submit the necessary report of examination. Accordingly, the report has been submitted. We have perused the said report, wherein the ultimate diagnosis is "Chronic Schizophrenia (major psychotic disorder)". This is of no relevance at all. In order to see whether the accused was entitled to the benefit under S.84 of the I.P.Code, the court is required to find out whether at the point of time when the incident took place, by reason of unsoundness of mind, he was incapable of knowing the nature of the act and the consequences thereof. For the reasons already given above, there is nothing on the record, on the basis of which it can be said that the accused was of unsound mind at the point of time of the alleged incident, and was incapable of knowing the nature of the act, viz. murder of his parents. On the contrary, on the basis of the evidence, we can safely conclude that because the parents were constantly nagging the accused by saying that he was not doing any work, and was eating sitting idle, he gradually became stubborn, fast reactive, losing respect for the parents, outright frustrated and no more ready to hear further the nagging words coming from the parents. It is because of this resolute pent-up blinding frenzy and frustration perhaps that the temper mercury of the accused shot up reaching at the point of no return, that the accused committed the murder. Once this inevitable view is taken, there is indeed no question of the accused being entitled to claim benefit of legal insanity under S.84 of the I.P.Code to walk out of the prison till the period of life imprisonment is over.

9. Since, as an appellate court, we are in overall agreement with the appreciation of evidence and the other reasons given by the learned trial Judge, in support of the order, we do not deem it necessary to unnecessarily further burden this judgment by either renarrating or reappreciating the prosecution evidence as well as the reasons for the conviction given by the learned trial Judge. Suffice it to say that we are in agreement with the same as they are found to be quite cogent and convincing. This is the method we have adopted in light of the Supreme Court decision rendered in the case of STATE OF KARNATAKA vs. V. HEMAREDDY, AIR 1981 SC 1417, which is followed by this court in the decision rendered in the case of VORA MOHMADHUSEN FIDAHUSEN vs. DOSHI TALAKCHAND DURLABHDAS & ORS., 3l(2) (1990-2) G.L.R.735.

10. In view of the aforesaid discussion since,

Mr.Sheth has failed to make out a case under S.84 of the I.P.Code, we have indeed no alternative left, but to confirm and uphold the order of conviction and sentence passed by the learned trial Judge.

11. This takes us now to the next important question, viz. whether the life sentence ordered against the convict prisoner deserves to be enhanced, that is to say, whether the accused deserves to be sent to gallows ? No doubt, the ungrateful and unscrupulous son, at a time, mercilessly murdered his old and feeble parents. This is indeed an act which is, apart ghastly, shameful, reprehensible, unthinkable and no words can appropriately condemn it, still however, at the same time, it appears that this lazy-bone, parasite accused who was just sitting idle, doing nothing and was eating bread at home, quite unjustifiably lost his total respect and regard for the parents, and when the old record of scolding was repeated by the parents, he allowed his reaction to burst, resulting into the shocking tale of son killing the parents. Behind this unfortunate incident what ultimately appears is the ugly face of poverty, a conspiracy both of fate and circumstances which is fate of millions in the country. But for this, perhaps neither any parents would scold their children howsoever lazy and lotus-eater they are, nor any son would simply react to such scolding to the extent of bringing about the double murder. Under the circumstances, it cannot be said that the act of double murder standing by itself is one of the 'rarest of rare case,' to enhance and impose maximum penalty of capital punishment.

12. In the result, the appeal filed by the accused and the application for enhancement of sentence fail and are dismissed accordingly. Notice issued in the application is discharged.

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