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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1121 OF 2006

Sanjay Madhukar Satam,
Kolhapur Central Prison,
Convict No.3841, Kalamba,
Kolhapur - 416 007. ... Appellant
[Ori. Accused]

Vs.

The State of Maharashtra ... Respondent

Mr.Arfan Sait, Advocate appointed for the Appellant.

Mr.P.S.Hingorani, A.P.P. for the State.

CORAM : SMT.V.K.TAHILRAMANI &
SHRI. P.D. KODE, JJ.

DATED : 26TH MARCH, 2013

ORAL JUDGMENT [PER SMT. V.K. TAHILRAMANI, J.] :-

1 The appellant original accused has preferred this appeal against the judgment and order dated 31st July, 2006 passed by the 2nd Ad-hoc Additional Sessions Judge, Thane, in Sessions Case No.206 of

2005. By the said judgment and order, the learned Sessions Judge convicted the appellant under Section 302 of Indian Penal Code and sentenced him to suffer imprisonment for life and fine of Rs.5000/-, in default, rigorous imprisonment for one year.

2 The prosecution case, briefly stated, is as under:

PW-1 Madhukar was the husband of Suhasini (deceased). The appellant was the younger son of PW-1 Madhukar and Suhasini. PW-1 had two sons, the elder son was Rajesh and the younger son was the appellant Sanjay. PW-1 Madhukar, his wife Suhasini, the appellant and Rajesh were residing at Flat No.202, Sai Darshan Society, Kopari, Thane. After Rajesh got married, he along with his wife shifted to Lokmanya Nagar at Dombivali. The appellant continued to stay with PW-1 Madhukar and Suhasini. PW-1 was retired. From Monday to Friday he used to live with his elder son Rajesh to look after his small daughter as Rajesh and his wife were both working. On Saturdays, Sundays and holidays, PW-1 used to come back to Kopri. In his absence, only his wife Suhasini and the appellant used to reside in the residence at Kopri. On 17th January, 2005 PW-1 went to the house of his elder son in Lokmanya Nagar. At that time, his wife Suhasini and appellant were present at his house at Sai Darshan. On 21st January, 2005, PW-1 Madhukar came

back to the flat at Sai Darshan at about 9.30 a.m. He opened the house with duplicate key. He got a foul smell. He saw his wife lying dead in a pool of blood. She had sustained bleeding injuries on her head and face. A blood stained wooden log was lying nearby. PW-1 started shouting. He went to the neighbour and informed them about the incident. They in turn informed the police. Police arrived at the spot. PW-1 informed the police that the appellant committed murder of Suhasini. His F.I.R. came to be recorded. Thereafter investigation commenced. The dead body of Suhasini was sent for postmortem. According to the doctor the cause of death was haemorrhagic shock due to intra cranial haemmorhage with fracture of skull due to multiple CLWs caused by hard and blunt weapon. According to the doctor, all the injuries were possible by wooden log Article "A" The appellant came to be arrested on 23rd January, 2005. After completion of investigation, the charge sheet came to be filed against the appellant under Section 302 of IPC.

3 Charge came to be framed against the appellant under Section 302 of IPC. The appellant pleaded not guilty to the said charge and claimed to be tried. The defence of the appellant is that of total denial and false implication. After going through the evidence adduced in this case, the learned Sessions Judge convicted and sentenced the appellant

as stated in para 1 above. Hence, this appeal.

4 We have heard the learned Advocate for the Appellant and the learned APP for the State. After giving our anxious consideration to the facts and circumstances of the case, arguments advanced by the learned Advocates for the parties, the judgment delivered by the learned Sessions Judge and the evidence on record, for the reasons stated below, we are of the opinion that the appellant assaulted his mother Suhasini on the head with a wooden log and caused her death.

5 There is no eye witness in the present case and the case is based only on circumstantial evidence. The evidence of PW-1 Madhukar shows that the appellant is his younger son. PW-1 was residing at Kopri, Thane, along with his wife Suhasini and the appellant. PW-7 Rajesh - the elder son of PW-1 Madhukar was residing separately at Lokmanya Nagar at Dombivli. From Monday to Friday he used to live with his elder son Rajesh to look after his small daughter as Rajesh and his wife were both working. On Saturdays, Sundays and holidays, PW-1 used to reside in his residence at Kopri. On 17th January, 2005 PW-1 went to the house of his elder son in Lokmanya Nagar. At that time, his wife Suhasini and appellant were present at his house at Sai Darshan at Kopri.

On 21st January, 2005, PW-1 Madhukar came back to flat at Sai Darshan at about 9.30 a.m. He opened the house with duplicate key. He got a foul smell. He saw his wife lying dead in a pool of blood. She had sustained bleeding injuries on her face and head. A blood stained wooden log was lying nearby. PW-1 started shouting. He went to the neighbour and informed them about the incident. They in turn informed the police. Police arrived at the spot. PW-1 informed the police that the appellant committed murder of Suhasini. The evidence of PW-1 shows that on Monday to Friday in his absence, only his wife Suhasini and the appellant used to reside at his residence at Kopri. The evidence of PW-7 Rajesh also shows that from Monday to Friday PW-1 Madhukar used to stay at his house and on Friday evening, he used to go back to his house at Kopri, Thane. On Saturday and Sunday, Madhukar used to stay with his wife Suhasini and son Sanjay i.e. the appellant.

6 Thus, from the evidence of PW-1 Madhukar and PW-7 Rajesh, it is seen that, at the relevant time the appellant and the deceased were the only two persons residing in the house. In such case, we would like to refer to Section 106 of the Evidence Act. Section 106 of the Evidence Act provides that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. In several recent

decisions, the Supreme Court has held that the principles which underlies Section 106 of the Evidence Act can be applied when certain facts are especially within the knowledge of a person. In the **State of Rajasthan Vs. Kashi Ram (2006) 12 SCC 254: (AIR 2007 SC 144),** the Supreme Court has observed that if the accused fails to offer an explanation on the basis of facts within his special knowledge, he fails to discharge the burden cast upon him by Section 106 of the Evidence Act. In a case resting on circumstantial evidence if the accused fails to offer a reasonable explanation in discharge of the burden placed on him, that itself provides an additional link in the chain of circumstances proved against him. Section 106 does not shift the burden of proof in a criminal trial, which is always upon the prosecution. It lays down the rule that when the accused does not throw any light upon facts which are specially within his knowledge and which could not support any theory or hypothesis compatible with his innocence, the Court can consider his failure to adduce any explanation as an additional link which completes the chain.

7. The prosecution has also relied upon the evidence of PW-10 Dr.(Mrs.) Pendse. She has stated that the accused was admitted in

hospital at Shirdi on 20th January, 2005. He had complained of chemical burns at the back of his neck. On 22nd January, 2005 she read a news item in Lokmat Daily regarding commission of murder of mother of Sanjay Madhukar Satam. As the name of accused was resembling the name of the patient in the hospital, she informed the police. Meanwhile, the appellant confessed to her about the crime committed by him. Thus, the evidence of PW-10 shows that an extra judicial confession was made by the appellant to her that he had murdered his mother Suhasini and hence PW-10 Dr.(Mrs.) Pendse handed over the appellant to the police.

8 The prosecution has also relied on the circumstance of recovery of blood stained clothes at the instance of the appellant. Panch witness PW-3 Dilip has deposed on this aspect. The memorandum and panchanamas are at Exhs.29 and 30. However, we are not inclined to rely on the circumstance of recovery of blood stained clothes at the instance of the appellant. The reason is that this recovery has taken placed on 23rd January, 2005, whereas on 21st January, 2005 when the police were informed about the incident by the neighbour of PW-1 Madhukar, the police came to the flat and at that time the police would have looked at the situation in the flat and if a blood stained shirt was lying in the bathroom they would have certainly noticed the same and

prepared the seizure panchanama. It is not believable that the blood stained shirt was lying in the bathroom of the house from 21st January, 2005 to 23rd January, 2005. PW-11 API Bapu has stated that, on 21st January, 2005 they had searched the entire flat. If this was the case, the blood stained shirt which was lying in the bathroom, would have been seized by the police. Thus, we do not find the circumstance of recovery of blood stained shirt to be a reliable circumstance. Hence, we are not inclined to rely on the same.

9 No doubt through the evidence of PW-1 Madhukar and PW-7 Rajesh and the other evidence on record, the prosecution has established that the appellant assaulted his mother Suhasini with a wooden log. However, the evidence of PW-1 Madhukar also shows that the appellant, since prior to his marriage, was taking medical treatment from Dr.Nadkarni and Dr.Srikant Joshi from the year 2001 for mental illness. PW-1 has admitted that both the doctors are Psychiatrists. PW-1 Madhukar has further stated that his wife Suhasini used to accompany the appellant to both the doctors. He has further stated that the appellant used to remain isolated. Learned advocate for the appellant submitted that the appellant was suffering from mental illness since much prior to the time of the incident and at the time of incident during

mental disturbance the appellant murdered his mother. He submitted that, in such case, the appellant is entitled to the benefit of exception in Section 84 of I.P.C. In support of his contention that the appellant was suffering from mental disorder since long time, he has drawn our attention to the evidence of PW-1 Madhukar as well as the medical papers in relation to psychiatric treatment given to the appellant. It is pertinent to note that the accused had taken up the defence of his mental disorder even before the Trial Court and he has submitted that he was taking treatment from some psychiatrists prior to the incident. Hence, the Trial Court summoned Dr.Joshi, psychiatrist to produce the documents regarding the medical treatment given to the appellant. Accordingly Dr.Joshi produced documents regarding the medical treatment given to the appellant. The Trial Court has observed that the documents did not speak that the accused was suffering from mental disorder of any kind. It is further observed in the impugned judgment that the appellant was examined by jail hospital authority and they did not observe any abnormality in the behaviour of the appellant. Nevertheless, from the security point of view, the jail authority kept him in a separate cell. If the appellant was a normal person, there was no need to keep him in a separate cell and he would have been kept in a cell with other convicts. The very fact that he was kept in a separate cell

shows that there was something seriously wrong with his behaviour.

10 We have perused the documents produced by Dr. Joshi and we find that the observations made by the Trial Judge that the documents did not speak that the accused was suffering from mental disorder of any kind, is totally erroneous. The papers produced by Dr. Joshi clearly show that the appellant had serious psychiatric disturbances of the type which can lead to suicide or homicide. The report of Dr.Nadkarni which was produced at the behest of the Trial Court shows that the appellant was receiving Electro Convulsive Therapy treatment in March, 2000. Electro convulsive therapy or electric shock therapy is given to a person suffering from severe mental disorder. In view of the clear findings of the two doctors, the observations made by the Trial Court that the documents did not speak that the accused was suffering from mental disorder of any kind, is absolutely erroneous. These papers show that from much prior to the incident the accused was suffering from mental illness which was so serious that he had to be given electro convulsive therapy.

11 By an order dated 18th March, 2013, this Court, in view of the claim of the appellant that he was of unsound mind, directed the

Superintendent of Jail to produce the papers relating to the medical treatment given to the appellant who was in Kolhapur Central Prison. Accordingly, the papers relating to the treatment of the appellant have been produced before this Court. The same are taken on record and marked "A" for identification.

12 These papers show that the appellant is even as of today under observation and is being given treatment for his mental illness. As per the record of Shri Joshi since 14th June, 2004, the appellant was receiving treatment from him for his psychiatric problem. The observation of Dr.Joshi was that the appellant was found to have obsessive convulsive disorder with paranoid dilation. His report further shows that the appellant had serious psychiatric disturbance.

13 However, the learned A.P.P. submitted that the appellant failed to prove that he was suffering from unsoundness of mind at the time of commission of the offence. He submitted that the fact that the appellant was suffering from mental illness before or after commission of the offence, are of no consequence, but it has to be proved that the appellant was suffering from mental illness at the time of the incident. He further submitted that the appellant has failed to prove that at the

relevant time he was suffering from mental illness.

14 The burden to prove that the accused was of unsound mind and as a result thereof he was unable to know the nature and consequences of his acts, is on the accused. Section 84 of I.P.C. is one of the provision in Chapter IV of I.P.C. which deals with general exceptions. The section provides that 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. The burden of proving the existence of circumstances bringing the case within the purview of Section 84 lies upon the accused under Section 105 of the Evidence Act. Under the said section, the Court shall presume the absence of such circumstance. Illustration (a) to Section 105 is as under :

Illustration :

(a) A, accused of murder, alleges that, by reason of unsoundness of mind, he did not know the nature of the act. The burden of proof is on “A”.

The question whether the appellant has proved the existence of circumstances bringing his case within the purview of Section 84 will

have to be examined from the totality of circumstances. The unsoundness of mind as a result whereof a person is incapable of knowing nature and consequences is a state of mind of a person that ordinarily can be inferred from the circumstances.

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 of the Indian Penal Code. In **Dahyabhai Chhaganbhai Thakker v. State of Gujarat [(1964) 7 SCR 361],** the Supreme 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 which rests upon a party to civil proceedings which, in other words, means preponderance of probabilities.

16 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 sane, 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 which rests upon a party to civil proceedings. (3) Even if the accused is 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. Similar view was taken by the Supreme Court in the case of **Shrikant Anandrao Bhosale v/s. State of Maharashtra** reported in **AIR 2002 SC 3399.**

17 The circumstances that stand proved in this case in relation to the defence of the appellant of mental illness are that :

> (i) the appellant had a history of psychiatric illness since much prior to the incident. (ii) Even in the jail, the appellant was given treatment for his mental illness and even as of today he is receiving treatment for his mental illness. (iii) his mental illness was to such an extent that he was given 5 electric shocks i.e. electro convulsion therapy, in addition to other treatment.

18 The unsoundness of mind before and after the incident is a relative fact. It has to be seen in the totality of the circumstances in the light of the evidence on record which shows that the appellant was suffering from severe psychiatric disturbance. From the circumstances of the case, an inference can be reasonably drawn that the appellant was suffering from a bout of insanity at the relevant time. Having regard to the nature of burden of proof on the appellant, we are of the view that the appellant has proved the existence of circumstances as required under Section 105 of the Evidence Act so as to get benefit of Section 84 of I.P.C. There is a reasonable doubt that at the time of commission of

the crime, by reason of unsoundness of mind the appellant was incapable of knowing the nature and consequences of the act or that it was wrong or contrary to law and thus he is entitled to the benefit of Section 84 of I.P.C. Hence, the conviction and sentence of the appellant cannot be sustained.

19 Before parting with this judgment, we wish to place on record our appreciation for the able assistance rendered by the learned advocate Mr.Arfan Sait who even at a very short notice, was throughly prepared and very ably conducted the matter. We quantify legal fees to be paid to him by the High Court Legal Services Committee at Rs. 2400/-. The said fees be paid to Advocate Sait within four months from today.

20 For the aforesaid reasons, we set aside the impugned judgment and order whereby the appellant came to be convicted and sentenced under Section 302 of I.P.C. and allow the appeal.

21 Hence, we pass the following order :-

O R D E R

(I) Appeal is allowed.

(II) The appellant is acquitted of the offence punishable

under Section 302 of I.P.C.

(III) The appellant shall be set at liberty, if not required in any other case.

(IV) Office to communicate this order to the concerned prison Authorities and to the Appellant who is in jail.

(V) Writ of Order be expedited.

(P. D. KODE, J.) (SMT.V.K.TAHILRAMANI, J.)