

HIGH COURT OF MADHYA PRADESH AT JABALPUR

**Division Bench : Hon'ble Shri Justice S.K.Gangele, Judge
Hon'ble Smt. Justice Anjuli Palo, Judge**

CRA No. 376/2009

**Ramnath Pav
Vs.
State of Madhya Pradesh**

Smt. Shobhna Sharma, Amicus Curiae for the appellant.
Shri Pradeep Singh, Government Advocate for the
respondent/State.

Whether approved for reporting : Yes

Law laid down :- It is essential for Courts to consider the mental status of accused and find out whether at the time of incident he knew what he was doing or it was wrong and contrary to law.

Significant Paragraphs : - 27 to 33

JUDGMENT
(27/02/2018)

Per : Smt. Anjuli Palo, J :-

1. Appellant/accused has filed this appeal challenging the judgment dated 29.12.2008, passed by the Sessions Judge, Shahdol, in Session Trial No. 256/2007, whereby the appellant has been convicted for offence under Section 302 of the Indian Penal Code and sentenced to undergo life imprisonment and fine of Rs. 500/- with default stipulation and under Section 324 of IPC and sentenced to undergo RI for one year.

2. Prosecution story in nutshell is that, appellant Ramnath and

deceased Ramune Bai were residing in the same house at Village Jaldi Tola, District Anuppur. Both were close relatives. On 24.08.2007 at about 5:00 pm, the appellant, all of a sudden came to the house armed with *tangi* (axe) in his hand and attacked on the head of Ramune Bai. She died on the spot. Lalita (PW-3) witnessed the incident. She shouted. On hearing her cry, Mayawati (PW-5) came there and saw the appellant running over the *bari* (fence). Appellant straightaway went to his brother Kamta (PW-2) who was grazing buffallow. Appellant assaulted him with the same *tangi* (axe). Kamta and other persons snatched *tangi* (axe) from the appellant. They brought the appellant to home and tied him with a rope till the arrival of police. Jagdish (PW-1) / elder brother of the appellant lodged FIR at police station, Anuppur. After investigation, charge-sheet was filed against the appellant for offence under Section 302 of IPC.

3. The trial Court framed charges under Sections 302 and 324 of IPC against the appellant. Appellant abjured guilt and asserted his ignorance about the incident and put forward insanity as his defence

4. Learned trial Court has not accepted the defence of the appellant about his insanity and held the appellant guilty for committing murder of Ramune Bai and causing simple injuries to Kamta (PW-2). At that time, he was not suffering from unsoundness

of mind as provided in Section 84 of IPC. Hence, the appellant has been convicted and sentenced as mentioned in paragraph one of this judgment.

5. The appellant challenged the aforesaid findings on the ground that it was perverse and contrary to law. There are contradictions and omissions in the testimony of prosecution witness. Appellant had no motive to commit the offence. Only one blow was allegedly caused to the deceased Ramune Bai and one single injury was caused to Kamta (PW-2). Appellant Ramnath is suffering from unsoundness of mind. He should have been given benefit of Section 84 of the IPC. Most of the prosecution witnesses have admitted the insanity of the appellant. Therefore, his action cannot be termed to be knowingly or intentional. Learned trial Court, though admitted the medical insanity of the appellant but grossly erred in making difference in medical insanity and legal insanity. Therefore, the impugned judgment is liable to be set aside and appellant is entitled to be acquitted.

6. It is not in dispute that, deceased Ramune Bai was the *bu*a (paternal aunt) of the appellant and Kamta (PW-2) is the real brother of the appellant. At the time of the incident at about 4:00 pm, Lalita (PW-3) niece of the appellant aged about

9 years was present at the house of Kamta (PW-2). She deposed that her uncle/appellant came and inflicted blow of *tangi* on the head of the deceased. After witnessing the incident, she ran away towards the street. Pappu (PW-4) deposed that he heard the shouts of Lalita (PW-3). Lalita told him that the appellant/Ramnath had killed her *baba* (Ramune Bai).

7. Kamta Prasad (PW-2) supported the prosecution story. He deposed that, he was grazing buffaloes near the pond. Suddenly, appellant came there and clung to him and inflicted blow by *tangi* (axe). Then he went to his home and saw the injuries on the deceased Ramune Bai. Thereafter, he was taken to the hospital.

8. Mayawati (PW-5) and her husband Jagdish (PW-1) came to know about the incident from Lalita. Then they reached at the spot. They saw that Ramune Bai was lying dead and she sustained injury on the head. Thereafter, they went behind the appellant. They saw the appellant inflicting blow by a *tangi* (axe) on Kamta (PW-2). Jagdish (PW-1), Pappu (PW-4), Samharu (PW-6) and Gautam (PW-7) caught hold of the appellant. They brought him home and tied him with a rope. Pappu (PW-4), Gautam (PW-7) and Samharu (PW-6) have

supported the testimony of Mayawati (PW-5). Jagdish (PW-1) lodged the FIR at police station Anuppur. Thereafter, R.S.Pandey (PW-10), Inspector reached on the spot and prepared panchnama (Ex. P/3) of the body of the deceased and spot map Ex.P/10. Then the body of the deceased was sent to hospital for conducting postmortem.

9. R.S.Pandey (PW-10) Investigation Officer established that FIR was lodged against the appellant on the same day.

10. On the same date, Dr. Virendra Khes conducted autopsy of the deceased Ramune Bai at about 1:15 pm. The deceased had sustained following injuries :

- (i) Incised wound on right parietal region on 4 cm x 2 ½ cm x 7 cm.
- (ii) Incised wound on right parietal region of 4 cm x 2 ½ cm x 7 cm.

11. Both the injuries were caused by sharp object and antemortem in nature. Doctor also opined that deceased died due to excessive bleeding and fatal injury on her head. The injuries were caused within 48 hours of the postmortem.

12. Dr.Virendra Khes (PW-12) examined injured Kamta (PW-2). He found the following injuries on him :-

- (i) Lacerated wound of 2.5 cm x ¾ cm x ½ cm on the left forearm.
- (ii) Lacerated wound of 1 cm x ½ cm x ¾ cm on right forearm.

Dr. Khes opined that the above injuries were caused by hard and blunt object. Injuries were simple in nature and caused within 24 hours of the medical examination.

13. Thus, we find that the testimony of eye-witnesses and Kamta (PW-2) is duly to be supported by the medical evidence. Hence, prosecution story seems to be trustworthy and credible.

14. Learned counsel for the appellant urged that witnesses are near relatives of the deceased. Hence, their testimony is not sufficient to convict the appellant. We are not inclined to accept this contention. The deceased was *buā* (aunt) of the appellant. Jagdish (PW-1) and Kamta (PW-2) are real brothers of the appellant. Lalita (PW-3) is his niece. Mayawati (PW-5) is the sister-in-law of the appellant. Samharu (PW-6) and Pappu (PW-4) are the (distant) brothers of the appellant.

15. In case of **Arjun vs. State of C.G.** [2017 (2) MPLJ (Cri.) 305), the Hon'ble Supreme Court has held as under :

“Evidence of related witness is of evidentiary value. Court has to scrutinize evidence with case as a rule of prudence and not as a rule of law. Fact of witness being related to victim or deceased does not by itself discredit evidence.”

[See also Chandrasekar & Anr. Vs. State, 2017 SCC Online SC 620; Gangabhavani vs. Rayapali Reddy, AIR 2013 SC 3681; Jodhan Vs. State of MP, (2015) 11 SCC 52

and Kamta Yadav Vs. State of Bihar,
(2016) 16 SCC 164.]

16. In this regard, it is important to mention here that most of the witnesses are not only relatives of the deceased but they are relatives of the appellant also.

17. Gautam (PW-7) is the independent eye-witness. He supported the prosecution story. However, he turned hostile on some point. He has not stated that he witnessed the whole incident but, he heard the hue and cry then he saw the dead body of the deceased and her injuries. He went along with Jagdish to lodge report at police station. Therefore, the testimony of all the witnesses inspire confidence on the prosecution case.

18. R.S.Pandey (PW-10) is the Investigating Officer seized aforesaid *tangi* (axe) from the appellant which was snatched by the witnesses after the incident. He found blood stains on the handle of the *tangi* (axe).

19. Therefore, we have come to the conclusion that the trial Court rightly held the appellant guilty for committing murder of his *bu*a (paternal aunt) Ramune Bai and for voluntarily causing injury to his brother Kamta. In our opinion, the close relatives of the appellant and the deceased had no intention or

enmity to falsely implicate the appellant for the offence with their relatives.

20. In the instant case, the appellant has asserted his ignorance about the incident and put forward the insanity as his defence under Section 84 of the Indian Penal Code.

21. On the other hand, the learned Trial Court held that the appellant was not suffering from the unsoundness of mind as provided under Section 84 of IPC. Learned Trial Court thoroughly examined it in paragraph 56 to 67 of the impugned judgment. In paragraph 56, the learned Trial Court itself held that, “it is quite clear from the deposition of prosecution witness that the accused was insane.” But on the other hand opined that the prosecution witnesses have deposed about the medical insanity and the Court was only concerned about the legal insanity. It was also observed that at the time of incident, the appellant was of unsound mind but not mad enough to beat his own wife.

22. All the eye-witnesses have clearly stated that the appellant was insane at the time of incident.

23. Jagdish (PW-1) brother of the appellant stated in paragraph 9 and 11 that the mental condition of the appellant was unstable. He did not know as to what he was doing. He

was absolutely mad. Hence, his wife left him and remarried other person. He had no concern for his family. He did not look after himself. His family members including his brothers had taken care of him and provided food, etc., therefore, the question does not arise about determination of insanity of the appellant towards his wife.

24. The acts of the appellant clearly indicate that at the time of incident, he was insane. He had no sense about his acts. Some medical reports on record also indicate that during trial, the appellant was under treatment at Mental Hospital, Gwalior. Thereafter, he was referred for treatment by psychiatrist at medical college, Rewa. No report from medical college, Rewa is on record. All documents indicate that the mental status of the appellant needed a specific treatment. After treatment in Mental Hospital, Gwalior, the medical officer only opined that he showed improvement. Secondly, he is able to defend himself in the Court of law. This recommendation itself is not sufficient to establish that the appellant was in fit mental condition during the committal of crime.

25. Learned counsel for the State has relied upon the judgment of Hon'ble Supreme Court in case of **Elavarasan vs. State [(2011) 7 SCC 110]** wherein the appellant was working

as watchman. There was no history of any complaint as to his mental health from anyone supervising his duties, is significant. His spouse who was living with him under the same roof also did not suggest any ailment afflicting the appellant except sleeplessness which was diagnosed by the doctor to be the effect of excessive drinking. The Hon'ble Supreme Court held that the plea of insanity was rightly not accepted. The spouse of the accused was living with him under the same roof.

26. In the present case, there is an unshaken evidence of Jagdish (PW-1) that the appellant's wife left him and remarried other person. Appellant had no individual house and his family members took care of him. Such type of living conditions is an important circumstance for considering the mental status of the appellant. In the present case, it is true that the defence failed to produce any document with regard to the medical treatment of the appellant.

27. In our opinion, we cannot ignore the practical problem of poor families who cannot bear the medical cost of treatment in mental hospitals.

28. As per the testimony of Jagdish (PW-1), after the incident, Kamta tried to stop the appellant, thereafter, appellant caused simple injuries to him. In case of **Ratan Lal Vs. State of MP [AIR 1971 SC 778]**, the Hon'ble Supreme Court has held as under:

“It is now well-settled that the crucial point of time at which unsoundness of mind should be established is the time when the crime is actually committed and the burden of proving this lies on the accused. (See *State of Madhya Pradesh v. Ahmadullah In D.C. Thakker v. State of Gujarat* it was laid down that "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 which rests upon a party to civil proceedings." It was further observed :

The crucial point of time for ascertaining the state of mind of the accused is the time when the offence was circumstances which preceded, attended and followed the mind as to be entitled to the benefit of Section 84 of the Indian Penal Code can only be established from the circumstances which preceded, attended and followed the crime.”

“We are inclined to agree with the conclusion arrived at by the learned Magistrate. We hold that the appellant has discharged the burden. There is no reason why the evidence of Shyam Lal, D.W. 1, and Than Singh, D.W. 2, should not be believed. It is true that they are relations of the appellant, but it is the relations who are likely to remain in intimate contact. The behavior of the appellant on the day of occurrence, failure of the police to lead evidence as to his condition when the appellant was in custody, and the medical evidence indicate that the appellant was insane within the meaning of Section 84, I.P.C.”

29. Similarly, in case of **Surendra Mishra vs. State of Jharkhand [(2011) 11 SCC 495]**, it was held with regard to unsoundness of mind that accused must prove his conduct prior to

offence, at the time or immediately after offence with reference to his medical condition. Whether accused know that what he is doing is either wrong or contrary to law is of great importance and may attract culpability despite mental unsoundness have been established.

30. In the light of the above principle, we consider the mental status of the present appellant and find that at the time of the incident, he was absolutely insane and of unsound mind. His family members Jagdish (PW-1), Kamta (PW-2), Lalita (PW-3), Samhari (PW-6), Pappu (PW-4) and Gautam (PW-7) consistently deposed that the appellant was not able to understand and know what he was doing or it was wrong or right or it was contrary to law. This version of the prosecution witnesses itself establish the unsoundness of mind of the appellant. These witnesses were not declared hostile towards the unsoundness of the appellant nor the prosecution witnesses were examined at that point. Therefore, in our opinion, their testimony cannot be ruled out or discarded.

31. In case of **Surendra Misha (supra)**, the expression “unsoundness of mind” was thoroughly examined and it was held as under :

“Expression ‘unsoundness of mind’ has not been defined in IPC and it has merely been treated equivalent to insanity but the term “insanity” carries different meaning in different contexts and describes varying degrees of mental disorder. Every person who is suffering

from mental disease is not ipso facto exempted from criminal liability. The mere fact that the accused is conceited, odd, irascible and his brain is not quite all right, or that the physical and mental ailments from which he suffered had rendered his intellect weak and affected his emotions or indulges in certain unusual acts, or had fits of insanity at short intervals or that he was subject to epileptic fits and there was abnormal behaviour or the behaviour is queer are not sufficient to attract the application of Section 84 of the Indian Penal Code.”

32. In case of X vs. State of NCT Delhi [2017 SCC online

Del 11871], it was held as under :

41. In Sidhpal Kamala Yadav v. State of Maharashtra (2009) 1 SCC 124, the Supreme Court quoted from the judgment of the High Court, under appeal before it where, inter alia, while discussing Section 84 IPC, it was held as under:

"The onus of providing 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."

The role of the Court

42. There was an opportunity even during the trial for this angle to be examined. Given that in the testimonies and documents referred to there was sufficient indication of the treatment received by the Appellant in the period

immediately preceding the occurrence, the Court had the option of getting the treatment records requisitioned through the IO and calling as court witnesses experts to examine the said treatment records. In fact this is what this court did when the appeal was first heard by it.

43. In **Radhey Shyam v. State ILR 2010 Supp. (2) Delhi 475**, this Court reflected on this aspect by observing as under:

"38. It would be virtually impossible to lead direct evidence of what was the exact mental condition of the accused at the time of the commission of the crime. Thus, law permits evidence to be led where from the trier of the facts can form an opinion regarding the mental status of the accused at the time when the crime was committed. Thus, evidence which can be led can be characterized as of inferential insanity..... This evidence, common sense tells us would be the immediately preceding and immediately succeeding conduct of the accused as also the contemporaneous conduct of the accused.

39. Thus, with reference to the past medical evidence or the medical history of the accused as the backdrop, the duty of the Court is to evaluate the conduct of the accused before, at the time of and soon after the crime and then return a finding of fact, whether the accused was of such unsound mind that by reason of unsoundness he was incapable of knowing the nature of the act done or incapable of knowing that the act was wrong or contrary to law."

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46. Thus, a fair trial would require that if there is available proof before the Judge that the accused was suffering from a psychiatric or psychological disorder i.e. there was a history of insanity, it is the duty of the Court to require the investigator to subject the accused to a medical examination and place the evidence before the Court as observed in the decision reported as **AIR 2009 SC 97 Sidhapal Kamala Yadav vs. State of Maharashtra.**"

33. The trial Court was concerned with legal insanity and held that at the time of incident, the appellant was of unsound mind but not mad enough to beat his own wife. Further, the learned trial Court considered the conduct of the appellant while committing the offence. He ran away from the spot immediately. At that time, he was not just walking but was running therefore, it indicates that he knew what he was going to do with *tangi*. All these facts show that he was aware of his act and consequence.

34. In madness or in unsound condition of mind, a person always fears of being caught. It is also on record that the appellant had no motive to kill his own *bua* (aunt) or cause injury to his own brother. Due to insanity and madness, normally it happens that a person becomes furious or dangerous to others. Their behaviour and conduct sometimes become very violent. Therefore, people stay away from them. Hence, we are not inclined to accept the observations of the learned trial Court that the appellant came to the spot with a *tangi* which clearly shows the fact that he was aware of the act.

35. It is pertinent to mention here that the incident took place on 24.08.2007. The statement of the witnesses under Section 161 Cr.P.C. have been recorded by the police on the next day

of the incident. In those statements also, witnesses narrated that the appellant was mentally unfit.

36. We do not find that after filing of the charge-sheet, to corroborate the defence of the appellant, his close relatives and prosecution witnesses made out a theory of insanity.

37. The circumstances of the case shows that the appellant was suffering from insanity and was therefore entitled to claim benefit under Section 84 of the IPC. The essential elements of Section 84 are as follows:

- (i) The accused must, at the time of commission of the act be of unsound mind.
- (ii) The unsoundness must be such as to make the accused at the time when he is doing the act charged as offence, incapable of knowing the nature of the act or that he is doing what is wrong or contrary to law. Where it is proved that the accused has committed multiple murders while suffering from mental derangement of some sort and it is found that there is (i) absence of any motive, (ii) absence of secrecy, (iii) want of pre-arrangement, and (iv) want of accomplices, it would be reasonable to hold that the circumstances are sufficient to support the inference that the accused suffered from unsoundness of mind.

38. Section 84 of the IPC lays down the legal test of responsibility in case of unsoundness of mind. To commit a criminal offence *mens rea* is generally taken to be an essential

element of crime. It is said in maxim “*Furiosi 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 reus 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 conduct. In **Dahayabhai Chhaganbhai Thakkar Vs. State of Gujarat [Air 1964 SC 1563]**, it was held that when a plea of legal insanity is set up, the Court has to consider whether at the time of commission of the offence the accused, by reason of unsoundness of mind, was incapable of knowing the nature of the act or that he was doing what was either wrong or contrary to law.

39. In view of the discussion in the foregoing paragraphs, we find that the appellant is entitled to get benefit of provision under Section 84 of the IPC. He is not liable to be convicted and sentenced under Section 302 of the IPC.

40. Accordingly, this appeal is allowed. The impugned judgment and sentence passed by the Trial Court is hereby set aside. Appellant is in jail. He shall be released forthwith if not required in any other

case.

41. Copy of this judgment be sent to the Court below for information and compliance alongwith its record.

(S.K.GANGELE)
JUDGE

(SMT. ANJULI PALO)
JUDGE

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