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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO. 147 OF 2017**

**Ajay Ram Pandit,**

Age : 31 years,

Convict Prisoner No.17021

Undergoing Sentence at

Yerwada Central Prison And

Previously Residing at S.No.75,

Shantinagar, Wanvadi, Pune.

**.. Appellant /**  
**(Ori. Accused)**

**Versus**

**The State of Maharashtra**

(Through Wanvadi Police Station)

**.. Respondent**

Ms. Nasreen S. Ayubi, Appointed Advocate for Appellant.

Mrs. J.S. Lohakare, APP for Respondent - State.

**CORAM** : A.S. GADKARI &  
MILIND N. JADHAV, JJ.

**RESERVED ON** : 10<sup>th</sup> October 2022.

**PRONOUNCED ON** : 18<sup>th</sup> October 2022.

**JUDGMENT (PER : MILIND N. JADHAV, J.)**

. This Criminal Appeal challenges the Judgment and Order dated 25.03.2015 passed by the learned Additional Sessions Judge, Pune (for short "**Trial Court**") in Sessions Case No.34 of 2012 convicting Appellant under Section 235(2) of the Criminal Procedure Code, 1973 (for short "**Cr.P.C.**") of offence punishable under Section 302 of the Indian Penal Code (for short "**IPC**") and sentenced to undergo imprisonment for life and to pay fine of Rs.100/-.

**2.** Prosecution case is as under:-

**2.1.** On 03.09.2011, one Darpan Divakar Desai from his mobile No.9822076722 gave a phone call to PW – 1 Ashok Kisanrao Patil, PSI Wanwadi Police Station, Pune informing that at Shivarkar Road in front of Axis Bank on the footpath one person had assaulted a pedestrian with an iron angle (iron rod). That due to the blow the pedestrian fell down on the footpath in an injured condition and blood was oozing from his head. That after the pedestrian fell down on the ground, the Appellant inflicted a second blow with the iron rod on the injured pedestrian's head.

**2.2.** The informant along with Police Inspector Muthe and staff members came to the spot of incident and saw that deceased was lying on the road in an injured condition and Appellant with iron rod in his hand was apprehended by two persons namely, Nitin Abaji Khude (PW-4) and Sukhdeo Namdeo Tujare (PW-5).

**2.3.** That on inquiry by the first informant and the Police Officer it was revealed that Appellant was abusing people/passers by near the spot of incident and at about 04:30 p.m. he abused the injured pedestrian and when the pedestrian questioned him for his abuses, he inflicted a blow on his head with the iron rod.

**2.4.** That when asked, the Appellant disclosed his name as Ajay Ram Pandit. The injured pedestrian was admitted in Command

Hospital, Wanwadi and at about 05:25 p.m. he was declared dead.

**2.5.** PW-1 - Ashok Kisarnrao Patil, PSI lodged a report of incident in Wanwadi Police Station and registered C.R. No.202 of 2011 under Section 302 IPC against Appellant.

**2.6.** On 03.09.2011, PSI Muthe prepared spot panchanama (Exh.35) and arrest panchanama (Exh.33). The Investigation Officer prepared inquest panchanama (Exh.16). Clothes of accused were seized vide seizure panchanama (Exh.13 and Exh.14). In the spot panchnama sample of blood and soil and the weapon used i.e. iron angle (iron rod) were recovered from the spot of incident. On 07.09.2011, IO sent the muddemal which was seized to the Chemical Analyzer for forensic analysis.

**3.** Statement of witnesses were recorded and after completing investigation on 28.11.2011, chargesheet was filed in the Court of Judicial Magistrate First Class, Cantonment Court. Since offence under Section 302 IPC is exclusively triable by the Court of Sessions, case was committed to Sessions Court for trial. Charge was framed vide Exh.2 against Appellant. Its contents were read over and explained to him in vernacular to which he pleaded not guilty and claimed to be tried; his defence was of total denial.

**4.** The Trail Court framed the following point for determination:-

“1. Does prosecution prove that on 03.09.2011 in between 4.30 p.m. or thereabout, in front of Axis Bank, near Shantinagr Road, on footpath, Wanwadi, Pune the accused intentionally and knowingly committed murder of unknown person and thereby committed an offence punishable under section 302 of Indian Penal Code?”

4.1. The Trial Court answered the aforesaid points in the affirmative.

5. In order to bring the guilt of accused prosecution has examined 9 witnesses. Prosecution examined PW-4 and PW-5 who were the eye witnesses to the incident. Both PW-4 and PW-5 apprehended the Appellant immediately after the incident, both these prosecution witnesses have given identical narration of the incident. They have deposed that on the date of incident at about 04:00 p.m. Appellant was standing on the footpath holding the iron angle in his hand and he was abusing the passers-by. That he abused one pedestrian walking on the footpath and there was an exchange of words between them. Appellant initially abused the pedestrian and in return the pedestrian also abused him. That thereafter Appellant inflicted a blow with the iron angle on the head of the pedestrian from behind. That the pedestrian sustained head injury and he collapsed on the road. Thereafter Appellant gave a second blow on the head of the pedestrian with the iron angle. They both have deposed that at that time people gathered near the place of incident and thereafter caught hold of the Appellant and held him until police officers came on the

spot. Both these witnesses have identified the Appellant in the Court and also identified the iron angle which was used by the Appellant.

6. In cross-examination of PW-4 he has stated that prior to the assault there was abusing between the Appellant and the victim. At that time there were some people present who caught hold of the Appellant. In cross-examination he has deposed that the people stated that Appellant was insane, however he is not insane.

7. PW-5 in his cross-examination has stated that he was standing at a nearby tea stall which was at a distance of 100 ft. from the spot of incident. That he saw Appellant abusing people at the spot of incident. He has however denied that there was discussion between the gathered people that Appellant was insane.

8. In the context of the above ocular evidence of the two eye witnesses, deposition of PW-7 - Shantaram Shete, Police Naik is required to be seen. PW-7 has deposed that after he received a phone call that one pedestrian was assaulted and lying injured, he and his other police staff visited the spot of incident. He has deposed that deceased was lying on the footpath in an injured condition and two persons had held the Appellant. Thereafter he inquired with the two persons namely, Nitin Khude (PW-4) and Sukhdeo Tujare (PW-5) who told him that the Appellant was abusing the pedestrian at about 4:30 p.m. and when he was asked by him, he was assaulted by Appellant

with the iron angle. That after the deceased fell down on the footpath the Appellant once again inflicted a blow with the iron angle on his head. PW-7 thereafter asked Appellant his name and in reply Appellant gave his name as Ajay Ram Pandit, resident of Shantinagar. In his cross-examination, PW-7 has stated that the persons who had caught hold of Appellant informed him that he was mentally retarded.

9. Conjoint reading of the depositions and admissions given in the cross-examination by the aforesaid three witnesses reveal an important facet in the present case i.e. the fact of insanity of Appellant. That the police officer who first reached the spot of incident and apprehended the Appellant and brought him to the police station had specific knowledge that he was having mental issues. In that view of the matter, this specific knowledge is confirmed when PW-7 himself states in his cross-examination that he was specifically informed by the persons who caught hold of Appellant that he was mentally retarded. In this background, it was the duty of the Police Officer / IO to immediately subject the Appellant to medical treatment which we find lacking and having not done by the prosecution in the present case. We find that in the cross-examination suggestion is put to both the eye witnesses as well as PW-7 and in answers to those suggestions all three prosecution witnesses have categorically confirmed that the Appellant was insane and unstable and he was abusing the passersby

even before the occurrence of the incident in the present case. In that view of the matter, once the IO was seized of the fact that the Appellant had previous history of insanity, which reveals that Appellant ought to have been subject to medical examination and the same should have been place in evidence before the Court.

10. PW-6 – Dr. Ravi Rautji is the doctor who conducted postmortem of the victim's dead body. In the postmortem notes (Exh.26) he has observed the following injures:

**External Injuries:-**

*“(1) A horizontal lacerated would of size 4 cm x 0.5 cm, gaping bone deep present over right side of scalp 08 cm above helix of right ear over temporo parietal region.*

*(2) An inverted lacerated would of (inverted Y) of size 4 cm x 1(base) cm upper limb 5 cm x 0.5 cm and lower limb 4 cm x 0.5 cm horizontally placed. Injury was bone deep, fracturing underlying temporal bone and it was 4 cm below injury no.1.*

*(3) The lacerated would horizontally placed of size 3 cm x 0.5 cm bone deep present on forehead 5 cm above of middle of left eyebrow surrounded by an area of about 1 cm diameter contusion.*

*(4) A grazed abrasion of size 6 cm x 2 cm horizontally placed over left side of cheek extending till tragus of left ear.*

*(5) A grazed abrasion of size 3 cm x 1 cm horizontally placed on the upper 1/3rd of left side of neck.”*

**Internal Injuries:-**

*“Sub scalp haematoma was present over right temporal frontal region. There was communitated fracture of squamous part of right temporal over an area of 1 cm diameter, extending up to petrous ridge on right side and middle cranial fossa. Diffused subdural and subarachnoid haemorrhage was present over right temporal parietal region. Diffuse haematoma was present around cerebellum and medulla. There was laceration of cerebral cortex over all area of 1.5 cm diameter on right temporal region.”*

11. We have heard Ms. Nasreen Ayubi, learned Advocate appointed on behalf of Appellant and Mrs. J.S. Lohakare, learned APP appearing on behalf of State and with their able assistance perused the evidence and record of the case.

12. In the present case it is seen that after examining the first six witnesses, Application was preferred on behalf of the Appellant before the learned Trial Court for seeking Psychiatric Assessment Report of Appellant. By letter dated 28.10.2014 Chief Medical officer of Yerawada Central Prison, Pune submitted the Psychiatric Assessment Report to the Medical Superintendent, Sassoon General Hospital, Pune. By letter dated 21.11.2014 the Department of Psychiatry B.J.G. Medical College and Sassoon General Hospital, Pune submitted the Psychiatric Assessment Report of the Appellant wherein it is stated that the Appellant was admitted in the Psychiatry Ward from 11.11.2014 to 21.11.2014 for observation and evaluation. On the basis of observation and evaluation of Appellant the following opinion was given:-

*“ His Serial Mental Status Examinations showed that he was conscious, well oriented to time, place and person. His affect was euthymic, reactive and appropriate. He did not report perceptual disturbances. His thinking revealed no psychotic, mood or anxiety features. His memory, concepts, and social judgment were intact. He was seen to have a clear understanding regarding the trial case, the court proceedings, and implications of crime. No abnormal behaviour was noted during his stay in the ward.*

**Impression:** *No active psychopathology at present.”*

13. However it needs to be noted that the date of incident is 03.09.2011 whereas the date of the psychiatric report is 21.11.2014 i.e. more than 3 years after the date of incident.

14. PW-7 - Shantaram Shete is the Investigating Officer and from his deposition it is revealed that on the date of incident he had apprehended and arrested the Appellant and he was having knowledge that the Appellant had mental issues/that he was mentally retarded.

15. In view of the evidence given by the prosecution witnesses, it is noted that the Appellant was not subjected to mental examination with respect to the status of his mind after the incident despite the IO having knowledge of the same. The doctrine of burden of proof in the context of the plea of insanity is required to be proved by the prosecution beyond reasonable doubt that the Appellant has committed the offence with the requisite *mens rea*. That on the basis of evidence placed before the learned Trial Court either by the Appellant or by the prosecution if a reasonable doubt arises in the mind of the Court as regards the mental insanity of the Appellant then it is the duty of the prosecution to place adequate material on record to discharge the doubt relating to the aforesaid factors. Before the learned Trial Court it was the case of Appellant that a discharge card was found on the person of the Appellant. The discharge card

indicated that Appellant was admitted in Regional Mental Hospital, Yerawada on 16.02.2010 and discharged on 01.05.2010 as he was feeling better. The Incident occurred 16 months thereafter. It was submitted that the said discharge card should be considered. However admittedly the discharge card (old medical document) found on the person of the Appellant was not marked in evidence and has not been proved by the prosecution.

**16.** In the present case it is seen that despite having absolute knowledge of the Appellant's insanity on the date of incident, the IO did not subject Appellant to the medial examination after his arrest. Subjecting the Appellant to medial examination would have proved the status of the Appellant's mind immediately after the occurrence of the incident.

**17.** Section 84 of IPC states 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 what he is doing is either wrong or contrary to law.

**17.1.** From a plain reading of said Section it is clear 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.

18. Learned Advocate appearing for the Petitioner has referred to and relied upon the following decisions:-

- (i) *State of Rajasthan Vs. Shera Ram Alias Vishnu Dutta*<sup>1</sup>;
- (ii) *Deepak Bapurao Yedage Vs. The State of Maharashtra*<sup>2</sup>;
- (iii) *Sarjerao Rambhau Machale Vs. The State of Maharashtra*<sup>3</sup>; and
- (iv) *Sagar Dwarkanath Patil Vs. State of Maharashtra*<sup>4</sup>.

19. In the aforesaid context, we would like to refer to and rely upon the decision of the Supreme Court in the case *Bapu alias Gujraj Singh Vs. State of Rajasthan*<sup>5</sup> and in particular para Nos.8, 11 and 12 of the said decision which reads 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*

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1 (2012) 1 SCC 602

2 2015 ALL MR (Cri.) 4453

3 Cri. Appeal No.621 of 1993

4 2018 4 Crimes (HC) 432

5 (2007) 3 SCC Cri. 509

*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 Sherall Walli Mohammed v. State of Maharashtra: (1972 Cr.LJ 1523 (SC)), held that: (SCC p.79)*

*“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 19<sup>th</sup> 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. In view of the above discussion and findings, we are of the considered opinion that once PW-7 – IO became aware of the fact after apprehending the Appellant that he was mentally retarded, it was his lawful duty to subject the Appellant to medical examination and place the evidence of such medical examination before the learned Trial Court. From the record it is also seen that PW-7 has recorded statements of PW-4 and PW-5 under Section 164 of Cr.P.C. The two prosecution witnesses who had apprehended the Appellant immediately after occurrence of the incident have stated that, the Appellant had in the past beaten several people and the people in the locality used to consider him as a mad person and neglect him.

21. In the Section 313 statement of the Appellant, he has denied committing the offence and stated that he is suffering from mental illness and before the incident he was admitted to the hospital for treatment for mental illness. He has further stated that when his

mental status was normal, on those days he worked as a labour. This statement in addition to the fact that the IO became aware on the date of incident that Appellant was suffering from mental issues therefore assumes significance.

**22.** From the above it is discernible that no doubt through the evidence of PW-4 and PW-5 the prosecution has established that the Appellant inflicted two fatal blows on the victim (deceased) with the iron angle, however through the evidence of PW-7 it is clearly evident that the Appellant was suffering from mental disturbance/mental disorder on the date of commission of present crime. It was the duty of the IO on apprehending the Appellant to immediately subject him to medical examination and place the report of such medical examination before the learned Trial Court in evidence. Admittedly, PW-7 – IO has not done so in the case of the Appellant after the occurrence of the incident and after apprehending him. On the contrary, prosecution has relied upon the medical report given by the Department of Psychiatry B.J.G. Medical College and Sassoon General Hospital, Pune in the year 2014 i.e. three years after occurrence of the incident. This medical report (Exh.29) states that the Appellant was conscious and oriented and did not suffer from any insanity. However, the report produced on record vide Exh.29 cannot be relied upon by the prosecution since it has been obtained after a period more than three

years after the date of incident. It was incumbent upon the IO to subject the Appellant to medical examination by the Psychiatrist immediately after he was apprehended which was admittedly not done by the IO.

**23.** In that view of the matter, the benefit of doubt deserves to be given to the Appellant as there is evidence on record which shows that the Appellant was mentally retarded at the time of incident and it was to the knowledge of the prosecution. Hence, after carefully and minutely scrutinizing the entire evidence available on record, it is seen that in the present case the IO has failed to get the Appellant examined through a Psychiatrist after the incident and produce the result of such examination in evidence. This omission on the part of the IO creates a very serious infirmity in the prosecution case and the benefit of doubt therefore has to be given to the Appellant. Applying the ratio laid down in the case of *Bapu alias Gujraj Singh* (supra), we are of the considered opinion that the Appellant deserves to be given the benefit of doubt.

**24.** The Appellant is accordingly acquitted from the charges framed against him.

**25.** The impugned Judgment and Order dated 25.03.2015 passed in Sessions Case No.34 of 2012 stands quashed and set aside.

**26.** Criminal Appeal stands allowed in the aforesaid terms.

**27.** We direct that, before the Appellant is released from jail he shall be subjected to medical examination in Sassoon General Hospital, Pune and report on the mental status of the Appellant be called for by the Jail Authorities. If the said report certifies that the mental status of the Appellant is normal then the Appellant shall be released forthwith from jail. This exercise shall be carried out within a period of two weeks from the date of receipt of this Judgment and Order. However, if the report certifies that there is any issue with respect to the mental status of the Appellant, the Appellant shall be referred to and treated in the mental asylum / Mental Hospital at Pune for his ailment by the Jail Authorities and released after his treatment is over.

**28.** Before parting with the Judgment, we would like to place on record appreciation for efforts put in by Mrs. Nasreen Ayubi learned appointed Advocate appointed by High Court Legal Services Committee, Mumbai for espousing the cause of Appellant, she was thoroughly prepared in the matter and rendered proper and able assistance to the Court.

[ MILIND N. JADHAV, J. ]

[ A.S. GADKARI, J.]