Devidas Loka Rathod vs The State Of Maharashtra on 2 July, 2018

Equivalent citations: AIR 2018 SUPREME COURT 3093, AIR 2018 SC(CRI) 900, (2018) 3 BOMCR(CRI) 289, (2018) 3 CRILR(RAJ) 676, (2019) 1 MADLW(CRI) 632, (2018) 3 PAT LJR 296, (2019) 2 MH LJ (CRI) 534, (2018) 3 RECCRIR 784, (2018) 3 MAD LJ(CRI) 378, 2018 (3) SCC (CRI) 320, (2018) 8 SCALE 356, (2018) 2 UC 1476, (2018) 3 JLJR 261, (2018) 3 KER LJ 2, (2018) 3 CURCRIR 113, (2018) 188 ALLINDCAS 120 (SC), (2018) 3 CRIMES 147, 2018 CRILR(SC MAH GUJ) 676, 2018 ALLMR(CRI) 3152, (2018) 104 ALLCRIC 613, 2018 (7) SCC 718, (2018) 6 MH LJ (CRI) 104, 2018 (4) KCCR SN 444 (SC)

Author: Navin Sinha

Bench: Navin Sinha, A.M. Khanwilkar

REPORTA

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.814 OF 2017

DEVIDAS LOKA RATHOD ....APPELLANT(

VERSUS

STATE OF MAHARASHTRA ...RESPONDENT(

JUDGMENT

NAVIN SINHA, J.

The appellant assails his conviction under Section 302 and 324 of the Indian Penal Code (IPC), rejecting his defence that he was of unsound mind.

2. In the morning of 26.09.2006, the appellant suddenly picked up a sickle from the shop floor of the iron smith and attempted to assault Gulab Pawar (P.W.11), but which injured Santosh Jadhav (P.W.5) on the jaw and cheek and gave a further blow on his shoulder. The same day, he later assaulted Ulhas Rathor (P.W.3) on his back and neck and rained blows on the back and stomach of the deceased Harish Chandra Chauhan, when the latter tried to intervene. The appellant then tried to flee, throwing the sickle enroute, when he was apprehended by the villagers and handed over to the police.

3. The Additional Sessions Judge, Akola rejected the defence plea for unsoundness of mind, citing insufficient evidence relying on the evidence of Dr. Sagar Srikant Chiddalwar (C.W.1) that the appellant was not mentally sick and fit to face trial. The subsequent conduct of the appellant while in custody, his demeanour during the trial, were further relied upon to conclude that the appellant was conscious of his wrongful acts which were deliberate in nature, evident from the repeated assaults and running away from the place of occurrence after throwing the sickle. The High Court declined to interfere with the conviction.

4. Ms. Aparna Jha appearing on behalf of the appellant urged that in absence of any mens rea, conviction under Section 302 I.P.C. was unsustainable, relying upon Dahyabhai Chhaganbhai Thakker vs. State of Gujarat, 1964 (7) SCR 361. It was next contended that the evidence of Mankarna Chavan (D.W.1) and Gograbai Rathod (D.W.2), with regard to the unsoundness of mind of the appellant has not been properly appreciated and wrongly rejected as insufficient. The appellant belonged to a very poor family and they could not be expected to keep his medical records and prescriptions meticulously. The defence witnesses had deposed that the appellant was under the treatment of Dr. Kelkar at Akola. There existed sufficient evidence for a plausible defence for unsoundness of mind under Section 84 of the Indian Penal Code read with Section 105 of the Evidence Act on a preponderance of the probability. The prosecution failed to lead any evidence in rebuttal, for which reliance was placed on Elavarasan vs. State represented by Inspector of Police, 2011 (7) SCC 110. The conviction was, therefore, unjustified and the appellant was entitled to acquittal.

5. Learned counsel for the State, Shri Katneshwarkar, opposing the appeal, submitted that the appellant had failed to prima facie establish a case for unsoundness of mind on probability. The trial judge had taken adequate precautions in calling for medical reports from time to time and satisfying himself with regard to the ability of the appellant to defend himself quite apart from also noticing his demeanour in court. The conduct of the appellant in making repeated assaults, running away from the place of occurrence, throwing the sickle on the way, were all sufficient to establish the commission of the offence knowingly by him, incompatible with the defence of unsoundness of mind.

6. We have considered the respective submissions. Normally, this Court is reluctant to interfere with concurrent findings of facts by two courts, under Article 136 of the Constitution, as also observed in Deepak Kumar vs. Ravi Virmani and another, 2002 (2) SCC 737. But this does not preclude it in appropriate cases to reappraise evidence in the interest of justice, if it entertains any doubt about the nature of evidence and its appreciation or non-appreciation. There can be no hard and fast rule in this regard, and much will

depend on the concept of justice in the facts of a case, coupled with the nature of acceptable evidence on record.

7. The prosecution, including the injured witnesses, undoubtedly denied that the appellant was of unsound mind. But the evidence of police Sub-Inspector Chandusingh Mohansingh Chavan (P.W.14), coupled with the reference to the medical reports of the appellant, persuaded us to examine the original records of the trial court ourselves in order to satisfy us that there had been proper and complete appreciation of all evidence and that the findings were not perverse or obviated by non-consideration of relevant materials, so that justice may ultimately prevail.

8. That the appellant was a very poor person stands established by P.W. 14, and which consequently necessitated legal assistance to him for his defence by the District Legal Services Authority, Akola as also before the High Court and also before this court by the legal aid cell.

9. P.W.14, in his examination-in-chief, stated that the appellant was caught immediately after he made the assault on 26.09.2006 and brought to the police station. The FIR was registered the same day. But the appellant was taken in custody only on 28.09.2006 because he was not keeping well and had been admitted in the hospital. The information of his arrest was not given to his sister or mother, but only to his friend Nagorao Baghe, who has not been examined. In view of the previous history of insanity of the appellant as revealed, it was the duty of an honest investigator to subject the accused to a medical examination immediately and place the 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, as observed in Bapu vs. State of Rajasthan, (2007) 8 SCC 66. The admitted facts in the present case strongly persuades us to believe that the prosecution has deliberately withheld relevant evidence with regard to the nature of the appellant's mental illness, his mental condition at the time of assault, requiring hospitalization immediately after the assault and hindering his arrest, the diagnosis and treatment, the evidence of the treating doctor, all of which necessarily casts a doubt on the credibility of the prosecution evidence raising more than reasonable doubts about the mental condition of the appellant. Unfortunately, both the trial court and the High Court, have completely failed to consider and discuss this very important lacuna in the prosecution case, decisively crucial for determination or abjurement of the guilt of the appellant.

10. The law undoubtedly presumes that every person committing an offence is sane and liable for his acts, though in specified circumstances it may be rebuttable. The doctrine of burden of proof in the context of the plea of insanity was stated as follows in Dahyabhai Chhaganbhai Thakkar v.

State of Gujarat, (1964) 7 SCR 361 :

> "(1) The prosecution must prove beyond reasonable doubt that the accused had committed the offence with the requisite mens rea, and the burden of proving that always rests on the prosecution from the beginning to the end of the trial.
>
> (2) There is a rebuttable presumption that the accused was not insane, when he committed the crime, in the sense laid down by Section 84 of the Indian Penal Code: the accused may rebut it by placing before the court all the relevant evidence oral, documentary or circumstantial, but the burden of proof upon him is no higher than that rests upon a party to civil proceedings.
>
> (3) Even if the accused was not able to establish conclusively that he was insane at the time he committed the offence, the evidence placed before the court by the accused or by the prosecution may raise a reasonable doubt in the mind of the court as regards one or more of the ingredients of the offence, including mens rea of the accused and in that case the court would be entitled to acquit the accused on the ground that the general burden of proof resting on the prosecution was not discharged."

11. Section 84 of the IPC carves out an exception, that an act will not be an offence, if done by a person, who at the time of doing the same, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or what he is doing is either wrong or contrary to law. But this onus on the accused, under Section 105 of the Evidence Act is not as stringent as on the prosecution to be established beyond all reasonable doubts. The accused has only to establish his defence on a preponderance of probability, as observed in Surendra Mishra vs. State of Jharkhand, (2011) 11 SCC 495, after which the onus shall shift on the prosecution to establish the inapplicability of the exception. But, it is not every and any plea of unsoundness of mind that will suffice. The standard of test to be applied shall be of legal insanity and not medical insanity, as observed in State of Rajasthan vs. Shera Ram, (2012) 1 SCC 602, as follows :

> "19. .....Once, a person is found to be suffering from mental disorder or mental deficiency, which takes within its ambit hallucinations, dementia, loss of memory and self□control, at all relevant times by way of appropriate documentary and oral evidence, the person concerned would be entitled to seek resort to the general exceptions from criminal liability."

12. The crucial point of time for considering the defence plea of unsoundness of mind has to be with regard to the mental state of the accused at the time the offence was committed collated from evidence of conduct which preceded, attended

and followed the crime as observed in Ratan Lal vs. State of Madhya Pradesh, (1970) 3 SCC 533, as follows:

> "2. 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 ties on the accused. In D.G. 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".

13. If from the materials placed on record, a reasonable doubt is created in the mind of the Court with regard to the mental condition of the accused at the time of occurrence, he shall be entitled to the benefit of the reasonable doubt and consequent acquittal, as observed in Vijayee Singh vs. State of U.P., (1990) 3 SCC 190.

14. We shall now consider the sufficiency of other medical and defence evidence to examine if a reasonable doubt is created with regard to the mental state of the appellant at the time of commission of the assault on a preponderance of probability, coupled with the complete lack of consideration of the evidence of P.W.14. Merely because an injured witness, who may legitimately be classified as an interested witness for obvious reasons, may have stated that the appellant was not of unsound mind, cannot absolve the primary duty of the prosecution to establish its case beyond all reasonable doubt explaining why the plea for unsoundness of mind taken by the accused was untenable.

15. The accused was taken into custody on 28.09.2006. Charge-sheet was submitted on 29.12.2006 and commitment done on 16.02.2007. The Trial Court records reflect several medical visits in prison, even weekly, 12 in number, between the period from 09.01.2007 to 07.04.2007, administering of antipsychotic drugs such as tablet Haloperidol and tablet Olanzapine and tablet Diazepam to the appellant with the impression recorded by the Doctor that the patient is psychotic and needs continuation of treatment. The significance of use of the words "continuation" cannot be lost sight of, and has obviously been used with regard to a pre-existing ailment and which includes the period prior to and from 26.09.2006 to 28.09.2006. On 03.05.2007, an application was moved on behalf of the appellant under Chapter-XXV of the Code of Criminal Procedure that he was not fit to face trial. A fresh medical report was called for on 14.06.2007 which opined on 19.06.2007 that the appellant was a chronic patient of psychotics who has been evaluated time and again by the Mental Hospital, Nagpur, the present doctor at Akola and also by the Psychiatrist. On 13.07.2007,

the Trial Court directed him to be sent to the Mental Hospital and called for a fresh report. On 11.04.2008, fresh report was called for and the appellant was prescribed Trinicalm Forte tablet/Trinicalm Plus tablet amongst other medicines. The treating Doctor, Dr. Pramod Thakare, opined in writing on 20.05.2009 as follows:

> "1) Above named prisoner is suffering from mental illness (psychosis) since unknown duration. He is being treated and examined by several psychiatrists attached to Govt. Medical College and Hospital, Akola since January 2008 during specialists visit to prison.
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> 2) This prisoner showed suicidal tendency, aggressive behavior, disturb sleep, poor communication and occasional erratic behavior.
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> 3) He was treated with a various antipsychotic drugs since January 2008 till today.
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> .....At present he is under control with antipsychotic drugs and is still maintained on drugs. He may be referred to Mental Hospital, Nagpur for further investigations and expert opinion, for further proceedings."

16. The nature of illness of the appellant, and its correlation to the nature of treatment required may appropriately be set out as follows:

> Haloperidol is used to treat certain mental/mood disorders (e.g., schizophrenia, schizoaffective disorders). This medicine helps you to think more clearly, feel less nervous, and take part in everyday life. It can also help prevent suicide in people who are likely to harm themselves. It also reduces aggression and the desire to hurt others. It can decrease negative thoughts and hallucinations.
>
> Olanzapine is an antipsychotic medication that affects chemicals in the brain. Olanzapine is used to treat the symptoms of psychotic conditions such as schizophrenia and bipolar disorder (manic depression) Diazepam is used to treat anxiety, alcohol withdrawal, and seizures. It is also used to relieve muscle spasms and to provide sedation before medical procedures. This medication works by calming the brain and nerves. Diazepam belongs to a class of drugs known as benzodiazepines.
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> Trinicalm Forte Tablet is a combination of three medicines:
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> Chlorpromazine, Trihexyphenidyl and Trifluoperazine. Chlorpromazine is a typical antipsychotic. It works by

blocking the action of dopamine, a chemical messenger in the brain that affects thoughts and mood. Trihexyphenidyl is an ant cholinergic which works on the nervous system and corrects some of the side effects occurring during antipsychotic treatment. Trifluoperazine is a typical antipsychotic. It works by blocking the action of dopamine, a chemical messenger in the brain that affects thoughts and mood.

Trinicalm Plus 5 mg/2 mg Tablet is a combination of two medicines: Trifluoperazine and Trihexyphenidyl. Trifluoperazine is a typical antipsychotic. It works by blocking the action of a chemical messenger (dopamine) in the brain that affects thoughts and mood. However, it may cause side effects such as involuntary movements (shaking of hands, muscle spasms). Trihexyphenidyl is added to treat and prevent these side effects.

17. C.W.1 was also examined by the defence as D.W.3 and deposed that he had no materials with regard to the previous history of the appellant, that none of his relatives were present at the time of such examination, and he could not therefore say anything regarding any pre□ existing mental disorder of the appellant.

18. D.W.1, the sister of the appellant, and his mother D.W.2, had stated that the appellant had to be tied up at times and was unable to take care of himself, including clothing on his person. The prosecution did not deny the fact of a treating Psychiatrist at Akola, by the name of Dr. Kelkar, mentioned by the witness. The appellant and his family were poor people and could hardly be expected to meticulously preserve medical papers or lead expert evidence as observed in Ratan Lal (supra). Merely because five years later in the witness box the witness may have stated that there was no complaint from the police with regard to the conduct of the appellant in custody, the trial judge manifestly erred in his conclusion with regard to the mental state of the appellant at the time of occurrence by testing it on the touchstone of the present demenaour in court and present conduct of the appellant, without any reference to the medication that was being provided to the appellant while in custody. Naturally, if the appellant was being provided proper medical treatment during custody, his condition would certainly improve over time.

19. The trial judge erred in proper consideration and appreciation of evidence, virtually abjuring all such evidence available raising doubts about the mental status of the appellant at the time of commission of the offence, so as to leave his conviction as a foregone conclusion. The trial judge unfortunately did not consider it

necessary to put further questions to P.W.14 with regard to the hospitalisation of the appellant immediately after the occurrence and why the prosecution had not placed the necessary evidence in this regard before the court. The truth therefore remained elusive, and justice thus became a casualty. The Trial Judge therefore erred in his duty, as observed in State of Rajasthan vs. Ani alias Hanif and others, (1997) 6 SCC 162 as follows:

> "12. Reticence may be good in many circumstances, but a Judge remaining mute during trial is not an ideal situation. A taciturn Judge may be the model caricatured in public mind. But there is nothing wrong in his becoming active or dynamic during trial so that criminal justice being the end could be achieved. Criminal trial should not turn out to be a bout or combat between two rival sides with the Judge performing the role only of a spectator or even an umpire to pronounce finally who won the race. A Judge is expected to actively participate in the trial, elicit necessary materials from witnesses in the appropriate context which he feels necessary for reaching the correct conclusion. There is nothing which inhibits his power to put questions to the witnesses, either during chief examination or cross-examination or even during re-examination to elicit truth. The corollary of it is that if a Judge felt that a witness has committed an error or a slip it is the duty of the Judge to ascertain whether it was so, for, to err is human and the chances of erring may accelerate under stress of nervousness during cross-examination. Criminal justice is not to be founded on erroneous answers spelled out by witnesses during evidence-collecting process. It is a useful exercise for trial Judge to remain active and alert so that errors can be minimized."

20. The Appellate Court also had a duty to consider the nature of the evidence led by P.W.14 and the other medical evidence available on record with regard to the appellant. Unfortunately, it appears that the Appellate Court also did not delve into the records in the manner required, as observed in Rama and others vs. State of Rajasthan, (2002) 4 SCC 571

> "(4) ..... It is well settled that in a criminal appeal, a duty is enjoined upon the appellate court to reappraise the evidence itself and it cannot proceed to dispose of the appeal upon appraisal of evidence by the trial court alone especially when the appeal has been already admitted and placed for final hearing. Upholding such a procedure would amount to negation of valuable right of appeal of an accused, which cannot be permitted under law."

21. We are therefore of the considered opinion, that the appellant has been able to create sufficient doubt in our mind

that he is entitled to the benefit of the exception under section 84 I.P.C. because of the preponderance of his medical condition at the time of occurrence, as revealed from the materials and evidence on record. The prosecution cannot be said to have established its case beyond all reasonable doubt. The appellant is therefore entitled to the benefit of doubt and consequent acquittal. The appeal is allowed. He is directed to be released from custody unless wanted in any other case.

22. In view of our conclusions and findings based on the medical evidence with regard to the appellant, it is considered necessary to give further directions under Section 335 or 339 of the Criminal Procedure Code, as the case may be, so that the appellant is not exposed to vagaries and receives proper care and support befitting his right to life under Article 21 of the Constitution of India. A copy of this order be sent to the District Legal Services Authority, Akola for the needful.

.....J. [A.M. KHANWILKAR] .....J. [NAVIN SINHA] NEW DELHI JULY 02, 2018.