

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL Nos. 45-46 OF 2019

(Arising out of S.L.P. (CRL.) NO. 3169-3170 OF 2015

SANTOSH MARUTI MANE

APPELLANT(S)

VERSUS

THE STATE OF MAHARASHTRA

RESPONDENT(S)

O R D E R

Leave granted.

We have heard learned counsel for the appellant and also the learned counsel appearing for the respondent-State.

Brief facts, in nutshell, are as follows. The appellant was working as a driver in Maharashtra State Road Transport Corporation since 08.08.1999 and, at the relevant time, he was working with Swargate S.T. Depot, Pune. On 25.01.2012, the appellant had requested Shashikant Damkale (PW-23), who was Assistant Traffic Controller of Swargate Depot, to change his duty from night out duty to single day duty. After PW-23 declined his request, he quietly walked out of his office and went to S.T. Bus which was standing in the Depot, entered it along with the key which was available with him, started the said bus and hijacked it. He took two rounds in the Bus Depot during which he knocked down and

crushed to death 2 to 3 people. When he was asked to stop the bus by the Officers of the S.T. Depot, he took out the S.T. Bus, drove the vehicle on circuitous route for about 14 to 16 kilometers, killed another six people in the process of driving the vehicle in the most reckless manner, grievously injured 36 persons, some of whom are permanently disabled, and damaged the public property by driving his S.T. Vehicle over rickshaws, scooters, cars electric polls until he was finally stopped and apprehended by a Police man who entered the S.T. Bus from one of the windows.

It may be mentioned at the outset that insofar as the incident in question is concerned, there is no dispute about the same and further the prosecution was able to prove this incident beyond reasonable doubt by leading cogent and credible evidence. The entire case set up by the appellant before the courts below as well as in this appeal is that he was a person of unsound mind and did not know as to what he had done and, therefore, he should have been given the benefit of Section 84 of the Indian Penal Code ("IPC"). In support of the submission, the learned counsel for the appellant has referred to the medical evidence that was produced before the trial court. He has submitted that immediately after the incident in question, when the appellant was apprehended, he was

produced for medical examination and examined by four Doctors, three of them were general physicians and one was a psychiatrist. It is submitted that the psychiatrist who had examined the appellant was not produced as a witness by the prosecution during the trial. The learned counsel has also referred to the medical examination conducted by one Dr. S.J. Mahamuni, another psychiatrist in Regional Mental Hospital, Pune, two days after his arrest, i.e., 27.01.2012. Relying upon the said evidence, it is argued that as per this Doctor, at the time of his examination, the appellant was having blunt thoughts, delusion of persecution, delusion of black magic, no guilt/ remorse on the incident and auditory hallucination (making verbal sounds as if somebody is throwing him on the ground and beating him). This evidence, according to the learned counsel, would show that the appellant was not in a normal state of mind when the incident took place.

It is further submitted by the learned counsel for the appellant that, no doubt, the burden was on the appellant to prove his insanity by producing evidence in accordance with Section 84 of the IPC. However, the learned counsel argues, even when the evidence has been brought, which throws some doubts that the accused is insane, the ultimate burden which is always upon the prosecution to prove the guilt

beyond reasonable doubt which the prosecution has not discharged in this case. In support of this proposition, he has referred to the judgment of this Court in Dayabhai Chhaganbhai Thakker vs. State of Gujarat, (1964) 7 SCR 361 and, in particular, the following discussion therefrom:

"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 insane, when he committed the crime, in the sense laid down by s. 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."

Learned counsel for the respondent, on the other hand, has relied upon the discussion in the

judgment of the High Court and, according to him, the High Court has considered all the aspects and nuances of the matter and has come to the conclusion that the appellant could not prove that he was insane and, therefore, was rightly denied the benefit of Section 84 of the IPC. His further submission is that, in fact, the occurring of the incident has been proved by sufficient evidence.

After perusing the judgment of the trial court as well as the High Court and going through the records, we are of the opinion that the courts below have rightly rejected the defence of the appellant predicated on Section 84 of the IPC. Even in the judgment in the case of Dayabhai Chhaganbhai Thakker vs. State of Gujarat (supra) cited by the learned counsel for the appellant, having regard to Section 105 of the Indian Evidence Act, onus is upon the defence to produce the evidence to make out the case to get it covered under the provisions of Section 84 of the IPC. It is worthwhile to mention that even in the aforesaid case, on merits, the court found absence of sufficient evidence to attract the provisions of Section 84 of the IPC.

In the instant case, the High Court has discussed the entire evidence on this issue including the one referred to by the appellant and after analysing the same has held this aspect against the

appellant. It is not necessary to reproduce the evidence discussed by the High Court in this behalf. Suffice is to mention that, in defence, the appellant had produced two witnesses, namely, DW-1, Dr. Dilip Shankar Burte and DW-2, Mr. Shrivvanand Gangadhar Shete, Pharmacist. However, testimonies of both of them could not advance the case. It may also be mentioned that the High Court has specifically dealt with and analysed the subject matter under the following heads: (i) conduct of the appellant a day prior to the incident; (ii) conduct of the appellant immediately prior to the incident; (iii) conduct of the appellant during the incident; (iv) evidence to show that the appellant was aware of what he was doing during the incident; and (v) defence evidence of the appellant.

We do not find any error in the approach adopted by the High Court in discussing the aforesaid aspects. As a result, insofar as the conviction of the appellant is concerned, the same stands.

With this, we advert to the issue of imposition of death sentence given by the trial court and affirmed by the High Court. We find that even though the appellant has not been able to establish the defence of insanity, the appellant was under mental strain and stress which resulted into the aforesaid reaction on his part. Otherwise, he is not

a person of any criminal antecedents. Nothing is indicated about his propensity of criminality on his part. We were also informed by the learned counsel for the respondent that his conduct in Jail has been satisfactory. There is every possibility of his reform. In fact, he may be a reformed person already as we are informed that the appellant is regretting his aforesaid action taken in undue palpitation. Therefore, we do not agree with the High Court that the appellant has become a menace and threat to the harmonious and peaceful coexistence of the society or that it is a rarest of rare case.

For the aforesaid reasons, we commute the death sentence and substitute it with the sentence of life imprisonment.

The appeals are partly allowed in the aforesaid terms.

.....J.  
(A.K. SIKRI)

.....J.  
(S. ABDUL NAZEER)

.....J.  
(M.R. SHAH)

NEW DELHI,  
JANUARY 9, 2019

ITEM NO.105

COURT NO.2

SECTION II-A

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (CrI.) No(s). 3169-3170/2015

(Arising out of impugned final judgment and order dated 09-09-2014 in CC No. 2/2013 09-09-2014 in CRLA No. 148/2014 passed by the High Court Of Judicature At Bombay)

SANTOSH MARUTI MANE

Petitioner(s)

VERSUS

THE STATE OF MAHARASHTRA

Respondent(s)

Date : 09-01-2019 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.K. SIKRI  
HON'BLE MR. JUSTICE S. ABDUL NAZEER  
HON'BLE MR. JUSTICE M.R. SHAH

For Petitioner(s) Mr. Amol Chitale, Adv.  
Mrs. Pragya Baghel, AOR

For Respondent(s) Mr. Nishant Ramakantrao Katneshwarkar, AOR

UPON hearing the counsel the Court made the following  
O R D E R

Leave granted.

The appeals are partly allowed in terms of the signed order.

Pending applications, if any, stand disposed of.

(SUSHIL KUMAR RAKHEJA)  
AR-CUM-PS

(RAJINDER KAUR)  
BRANCH OFFICER

(Signed order is placed on the file.)