

**Judgement analysis**  
**Judgement in the case of trial of the accused for the offence under section 302**  
**of the Indian Penal Code**

Facts of the case are very simple. The accused is friend of one Darshan. Age of accused Soham is not mentioned but Soham, Darshan and deceased Vishal seems to be young boys of around 20 years. They seem to be residing in one Housing Society. Vishal had some quarrel with Dheeraj. The accused in this connection had been to the house of Vishal when he was not at home. At late night when he returned home the accused manhandled and threatened him. The matter was reported to the police. the police is considered it as report regarding non-cognizable case and did not take any action. Mother of Vishal, who lodged report on that occasion informed police that accused Soham has tendered apology for the incident reported by her and therefore no action should be taken against Soham. After 2 days of this incident accused Soham came with baseball bat when I was on the ground floor of the building and started to give him blows of baseball bat. Mother of Vishal, who witnessed this incident from the balcony of her house immediately rushed towards the place of incident followed by her daughter. The accused had given blows of bat on the head and face of Vishal and left the place of incident with the bat.

There are two eyewitnesses to depose about the incident, postmortem report which proves that Vishal died because of the blows of hard substance given on his head and face while he was recovering from the injuries at his home. The weapon of offence was recovered from the custody of the accused on his confessional statement made to the police. Besides this dying Declaration of Vishal was recorded while he was under treatment at the hospital. The prosecution placed direct evidence of eyewitnesses, evidence of discovery of weapon, dying declaration before the court.

The defence raised is of denial as well as that the act of the accused to give fatal blows to Vishal is an act done during the spell of schizophrenia and therefore covered under the exception under section 84 of the Indian Penal Code.

In a way judgement is nicely written, there is nice comprehension and marshalling of evidence. The prominent missing thing is appreciation of evidence and marking out proved facts. Since I read the judgement my thoughts are dwindling on the lameness of evidence of motive and the defence that act of the accused causing death of Vishal is an act done under the spell of schizophrenia. It is true that when there is a direct evidence of the evidence of eye witnesses which establishes that the accused was found giving blows of potential weapon to cause death on the vital Parts of the body of the deceased which resulted in his death there is little requirement of proof of motive for causing death. The act of the accused is covered under

part III of section 300 Indian Penal Code. It is pertinent to mention here that the defence that the accused was suffering from attacks of schizophrenia has not been raised by the accused out of blue. During the course of trial, the accused was sent to a psychiatrist of a government hospital and the psychiatrist reported that the accused is suffering from schizophrenia. Not only this the trial of the accused was deferred till the psychiatrist treating him reported that the accused is fit to face the trial. Further some part of the trial which was conducted during the reported period of insanity of the accused was scrapped and the witnesses examined during the said period were again examined by the prosecution and cross examined by the defence. In this situation scrutiny of the evidence is required to make it certain whether the act of the accused to cause death by giving blows of weapon was an intentional act spirited by strong motive to do such an act or it was an act done by the accused under the spell of schizophrenia in which person loses control on his mind and therefore unaware of consequences of the act done by him.

In the case of Dahyabhai Chhaganbhai Thakker vs State Of Gujarat AIR 1964 SC 1563 the supreme court has laid down following principles to consider the defence of insanity.

*"It is a fundamental principle of criminal jurisprudence that an accused is presumed to be innocent and, therefore, the burden lies on the prosecution to prove the guilt of the accused beyond reasonable doubt. The prosecution, therefore, in a case of homicide shall prove beyond reasonable doubt that the accused caused death with the requisite intention described in s. 299 of the Indian Penal Code. This general burden never shifts and it always rests on the prosecution. But, as s. 84 of the Indian Penal Code provides that nothing is an offence if the accused at the time of doing that act, by reason of unsoundness of mind was incapable of knowing the nature of his act or what he was doing was either wrong or contrary to law. This being an exception, under s. 105 of the Evidence Act the burden of proving the existence of circumstances bringing the case within the said exception lies on the accused; and the court shall presume the absence of such circumstances. Under s. 105 of the Evidence Act, read with the definition of "shall presume" in s. 4 thereof, the court shall regard the absence of such circumstances as proved unless, after considering the matters before it, it believes that said circumstances existed or their existence was so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that they did exist. To put it in other words, the accused will have to rebut the presumption that such circumstances did not exist, by placing material before the court sufficient to make it consider the existence of the said circumstances so probable that a prudent man would act upon them. The accused has to satisfy the standard of a "prudent man". If the material placed before the court. Such as, oral and documentary evidence, presumptions, admissions or even the prosecution evidence, satisfies the test of "prudent man", the accused will have discharged his burden. The evidence so placed may not be sufficient to discharge the burden under s. 105 of the Evidence Act, but it may raise a*

reasonable doubt in the mind of a judge as regards one or other of the necessary ingredients of the offence itself. It may, for instance, raise a reasonable doubt in the mind of the judge whether the accused had the requisite intention laid down in s. 299 of the Indian Penal Code. If the judge has such reasonable doubt, he has to acquit the accused, for in that event the prosecution will have failed to prove conclusively the guilt of the accused. There is no conflict between the general burden, which is always on the prosecution and which never shifts, and the special burden that rests on the accused to make out his defence of insanity.

The textbooks placed before us and the decisions cited at the Bar lead to the same conclusion. In Halsbury's Laws of England, 3rd edn., Vol. 10, at p. 288, it is stated thus: "The onus of establishing insanity is on the accused. The burden of proof upon him is no higher than which rests upon a party to civil proceedings."

Glanville Williams in his book 'Criminal Law', The General Part, 2nd Edn., places the relevant aspect in the correct perspective thus, at p. 516:

"As stated before, to find that the accused did not know the nature and quality of his act is, in part, only another way of finding that he was ignorant as to some fact constituting an ingredient of the crime; and if the crime is one requiring intention or recklessness he must, on the view advanced in this book, be innocent of mens rea. Since the persuasive burden of proof of mens rea is on the prosecution, on question of defence, or of disease of the mind, arises, except in so far as the prisoner is called upon for his own safety to neutralize the evidence of the prosecution. No persuasive burden of proof rests on him, and if the jury are uncertain whether the allegation of mens rea is made out ..... The benefit of the doubt must be given to the prisoner, for, in the words of Lord Reading in another context, "the Crown would then have failed to discharge the burden imposed on it by our law of satisfying the jury beyond reasonable doubt of the guilt of the prisoner."

This Court in *K. M. Nanavati v. State of Maharashtra*(1) had to consider the question of burden of proof in the context of a defence based on the exception embodied in s. 80 of the Indian Penal Code. In that context the law is summarized thus:

"The alleged conflict between the general burden which lies on the prosecution and the special burden imposed on the accused under s. 105 of the Evidence Act is more imaginary than real. Indeed, there is no conflict at all. There may arise three different situations: (1) A statute may throw the burden of proof of all or some of the ingredients of an offence on the accused: (see ss. 4 and 5 of the Prevention of Corruption Act). (2) The special burden may not touch the ingredients of the offence, but only the protection given on the assumption of the proof of the said ingredients: (see ss. 77, 78, 79, 81 and 88 of the Indian Penal Code). (3) It may relate to an exception, some of the many circumstances required to attract the exception, if proved, affecting the proof of all or some of the ingredients of the offence: (see s. 80 of the Indian Penal Code)..... In the

*third case, though the burden lies on the accused to bring his case within the exception the facts proved may not discharge the said burden, but may affect the proof of the ingredients of the offence."*

After giving an illustration, this Court proceeded to state:

*"That evidence may not be sufficient to prove all the ingredients of s. 80 of the Indian Penal Code, but may prove that the shooting was by accident or inadvertence, i.e., it was done without any intention or requisite state of mind, which is the essence of the offence, within the meaning of s. 300, Indian Penal Code, or at any rate may throw a reasonable doubt on the essential ingredients of the offence of murder..... In this view it might be said that the general burden to prove the ingredients of the offence, unless there is a specific statute to the contrary, is always on the prosecution, but the burden to prove the circumstances coming under the exceptions lies upon the accused." (1) [1962] Supp. 1 S.C.R. 567, 597, 598.*

What is said of s. 80 of the Indian Penal Code will equally apply to s. 84 thereof. *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."*

On the basis of above ratio let's consider proved facts of this case to find out on which side the balance tilts. It will be appropriate to mention here that the evidence is not before me but it was before the judge who decided the case so he was in a better position to take the decision and there cannot be any reason to find fault with his decision. Just for the academic purpose I am revisiting the facts which are mentioned in the judgement to find out whether the prosecution establishes *mens rea* or the defence satisfies test of a prudent man to establish that the accused to gave fatal blows to the deceased when he was unable to understand the consequences of the act done by him.

Death of Vishal was a homicide as he died because of the injuries caused to him by the blows of baseball bat. The prosecution in order to bring the act of the accused within the definition of section 300 of the Indian Penal Code has to establish following two set of ingredients, 300. Murder.—Except in the cases hereinafter excepted, culpable homicide is murder, (Secondly) —If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or—

(Thirdly) —If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, In both the set of ingredients intention of causing bodily injuries sufficient to cause death is material. In the former set intention shall be accompanied with knowledge and in later set intention is accompanied with causing bodily injuries sufficient in ordinary course of nature to cause death. There is no denying to the fact that the prosecution proved that the accused gave multiple blows of baseball bat which has a concentrated mass on one of its end on the face and head resulting in multiple fractures in the cranium and causing hemorrhage. It is also not in dispute that the accused was found to have been suffering with schizophrenia during the course of trial. Not only this the court believed the opinion of doctor about the mental condition of the accused and deferred the trial and brushed aside some part of the trial which proceeded during the period from the report of the doctor that the accused is suffering from schizophrenia till he certified accused's fitness for trial.

American psychiatric Association provided for symptoms, causation and application of rehabilitation of a person suffering with schizophrenia.

### **Symptoms**

- When the disease is active, it can be characterized by episodes in which the person is unable to distinguish between real and unreal experiences. As with any illness, the severity, duration and frequency of symptoms can vary; however, in persons with schizophrenia, the incidence of severe psychotic symptoms often decreases as the person becomes older. Not taking medications as prescribed, the use of alcohol or illicit drugs, and stressful situations tend to increase symptoms. Symptoms fall into three major categories:
- Positive symptoms: (those abnormally present) Hallucinations, such as hearing voices or seeing things that do not exist, paranoia and exaggerated or distorted perceptions, beliefs and behaviors.
- Negative symptoms: (those abnormally absent) A loss or a decrease in the ability to initiate plans, speak, express emotion or find pleasure.
- Disorganized symptoms: Confused and disordered thinking and speech, trouble with logical thinking and sometimes bizarre behavior or abnormal movements.
- Cognition is another area of functioning that is affected in schizophrenia leading to problems with attention, concentration and memory, and to declining educational performance.
- Symptoms of schizophrenia usually first appear in early adulthood and must persist for at least six months for a diagnosis to be made. Men often experience initial symptoms in their late teens or early 20s while women tend to show first signs of the illness in

their 20s and early 30s. More subtle signs may be present earlier, including troubled relationships, poor school performance and reduced motivation.

- Before a diagnosis can be made, however, a psychiatrist should conduct a thorough medical examination to rule out substance misuse or other neurological or medical illnesses whose symptoms mimic schizophrenia.
- Researchers believe that a number of genetic and environmental factors contribute to causation, and life stressors may play a role in the start of symptoms and their course. Since multiple factors may contribute, scientists cannot yet be specific about the exact cause in each individual case.

### **Rehabilitation and Living With Schizophrenia**

Treatment can help many people with schizophrenia lead highly productive and rewarding lives. As with other chronic illnesses, some patients do extremely well while others continue to be symptomatic and need support and assistance.

After the symptoms of schizophrenia are controlled, various types of therapy can continue to help people manage the illness and improve their lives. Therapy and psychosocial supports can help people learn social skills, cope with stress, identify early warning signs of relapse and prolong periods of remission. Because schizophrenia typically strikes in early adulthood, individuals with the disorder often benefit from rehabilitation to help develop life-management skills, complete vocational or educational training, and hold a job. For example, supported-employment programs have been found to help people with schizophrenia obtain self-sufficiency. These programs provide people with severe mental illness competitive jobs in the community.

The above study leads to some conclusions regarding a person suffering from schizophrenia,

1. Desires occurs when a person is in his 20s
2. May be caused because of genetic factors or stressful conditions
3. The affected person goes for episodes of attacks in which he suffers with symptoms of hallucination, loss of rational thinking, bizarre or abnormal behaviour
4. There is no specific treatment but the patient can be rehabilitated by improving his rational thinking and developing mental power to adopt to the social norms ignoring the symptoms of hallucination.

In the light of this expert's opinion let us revisit the facts of the case particularly regarding the previous and subsequent behaviour of the accused. Vishal had some quarrel with Darshan, who is a friend of the accused and not with the deceased. On this count the accused manhandled and threatened the deceased and directed him henceforth not to talk to Darshan. As stated by the informant i.e. mother of the deceased, while logging report of this incident, the accused visited the house of informant and apologized for manhandling and threatening the deceased.

The information requested the police not to take any action against the accused which means social behaviour of the accused as observed by the informant was normal and he has no history of involving in violent events to the knowledge of people residing in colony. After two days of this first incident the incident of causing fatal injuries occurred. The weapon of offence used by the accused may normally be found with the youngsters who play Baseball. There is no evidence to show that the accused made special preparation for causing death of Vishal. The accused however gave blows of baseball bat on the head and face of the deceased causing multiple fractures of cranium, jaw and nasal bone. After the arrest of the accused baseball bat having blood stains was recovered beside compound wall of a school which as per the prosecution was concealed by the accused. These entire proved facts make it possible to believe that the behaviour of the accused was not that of a normal person. The motive is very lame and at the most sufficient for the first incident. If the accused was so angry with Vishal, there was no reason for him to apologize to his mother about the incident. This act of the accused seems abnormal. There is no evidence to show that the accused made preparation by harming him with the weapon and coming to the place of incident knowingly when the deceased was there. In this situation it also becomes probable the accused was under the spell of schizophrenia when he saw Vishal and started to give him blows of baseball bat which was in his hand. After the incident the accused did not take care to destroy the weapon of offence or at least remove the blood stains there from. It seems probable that when the accused realised about the act done by him when he came out of the spell he has thrown the bat at a lonely place. Thus, the facts stated above create a probability supported by medico legal evidence that the accused was suffering from schizophrenia when the incident occurred and there is a great probability that the offence was committed by him when he was under the spell of schizophrenia. On the other hand the conclusion drawn by the court that the accused was found with weapon having capacity to cause death, he inflicted blows of that weapon on the vital part of the body of the deceased spells out an intention to cause such bodily injuries which in ordinary course of nature sufficient to cause death and a subsequent behaviour to flee away from the place of incident with weapon of offence and hiding the said weapon of offence lead to the conclusion that he is guilty of Murder also seems reasonable. The thin line of distinction is whether the accused was knowing the consequences of his act when he has committed the said act.

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