IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL (AGAINST CONVICTION) NO. 1326 of 2014

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE ILESH J. VORA
and
HONOURABLE MR. JUSTICE R. T. VACHHANI

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Approved for Reporting	Yes	No
	Yes	--

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MAHENDRAKUMAR NARANBHAI JADHAV
Versus
STATE OF GUJARAT

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Appearance:
HCLS COMMITTEE(4998) for the Appellant(s) No. 1
MR MIHIR H PATHAK(5261) for the Appellant(s) No. 1
MR RONAK RAVAL, APP for the Opponent(s)/Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE ILESH J. VORA**
and
HONOURABLE MR. JUSTICE R. T. VACHHANI

Date : 15/12/2025

ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE ILESH J. VORA)

1. This conviction appeal is filed by the appellant sole accused-Mahendra Jadav, against the judgment of conviction and order of sentence dated 2.11.2012, passed by the City Sessions Court, Ahmedabad, in Sessions Case No.308 of 2011, wherein, the appellant came to be tried for the offences punishable under Sections 302, 307 of Indian Penal Code and Section 135 of the Bombay Police Act. The appellant came to be convicted and sentenced as tabulated hereunder:-

Conviction under Section	**Punishment**	**Fine**	**In default of fine**
302 of IPC	Life Imprisonment	Rs. 500/-	3 month RI
324 of IPC	1 year RI	Rs. 500/-	3 month RI

2. Brief facts which are necessary to dispose of the present appeal are in nutshell as under:-

3. The appellant-accused had killed his father-in-law Meghram, when the deceased was cultivating his farm. According to prosecution case, the deceased was harassing the accused saying that he did not sincerely worked of his office and used to remain absent. The accused keeping the grudge in his mind about the conduct and attitude of his father-in-law, on 18.2.2011, stabbed multiple times the deceased with the knife. The brother of the deceased, PW-5, Magan Maheria, after seeing the incident, rushed to the place and when he intervened to save the deceased, he also stabbed by the accused-appellant on his head and other parts of the body. The incident was also seen by neighbour, PW-4, Vinu Makwana, who was present in his house and from the backyard of the house he could see the incident. In such circumstances, the deceased was immediately taken to the nearby hospital and he was declared dead. The injured, PW-5 was also treated by the concerned doctor of the hospital. The FIR came to be lodged by the brother of the deceased, PW-5. The IO of the Vatva Police Station, Ahmedabad, (PW-7), during the course of investigation, drew the panchnama of place of occurrence and

collected necessary samples for forensic science analysis, sent the dead body of postmortem, recorded the statements of the witnesses, arrested the accused and sent the seized articles to the FSl for analysis and after completion of investigation, he led the charge sheet before the Metro Court, Ahmedabad, who committed the case to the Sessions Court, Ahmedabad.

4. After framing of the charge and upon the accused pleaded not guilty, the trial commenced before the Additional City Sessions Court, Ahmedabad.

5. In order to prove the charge, the prosecution has examined as many as seven witnesses and relied upon the following exhibited documents.

Oral evidence:-

PW 1 – Exh.15	Ramabhai Shakrabhai Gohil, Panch witness
PW 2 – Exh.22	Dr. Manishbhai Chimanlal Sutriya, PM Doctor
PW 3 – Exh.27	Vasudevbhai Dayabhai Parmar, Panch witness
PW 4 – Exh.30	Vinubhai Ambalal Makwana
PW 5 – Exh.33	Maganbhai Shanabhai Maheriya, Complainant
PW 6 – Exh.35	Dr. Mayurbhai Sureshchandra Shukla
PW 7 – Exh.38	Girirajsinh Pratapsinh Chouhan, IO

Documentary evidence:-

Exh.16	Panchnama of place of offence
Exh.19	Inquest panchnama
Exh.20	Panchnama of clothes of deceased
Exh.23	Deceased body report
Exh.25	Panchnama of state of body of accused
Exh.26	Panchnama of blood sample of accused
Exh.28	Panchnama of weapons seized
Exh.34	Complaint

Exh.36	Injury report of Meghrambhai
Exh.37	Injury report of Maganbhai
Exh.39	Panchnama of blood sample of deceased
Exh.40	FSL forwarding notes
Exh.41	FSL Receipt
Exh.42	LG Hospital Varghi
Exh.43	S.157 Report
Exh.44	FSL Visitation report
Exh.45	FSL Letter
Exh.46	FSL report
Exh.47	FSL Serological report
Exh.48	Announcement regarding ban on weapons

6. After closure of the prosecution evidence, the appellant accused was questioned under Section 313 of Criminal Procedure Code, in which he stated that he was innocent and being falsely implicated in the offence. He has further claimed that he sincerely performed his duty and he never come into confrontation with his father-in-law, wife and other family members. On his mental illness, he has stated that he is on medication.

7. Though opportunity was extended, no evidence being tendered from the side of the appellant-accused.

8. The learned Sessions Judge, after hearing the parties and upon appreciation of evidence held the appellant-accused guilty for the murder of his father-in-law Meghram and causing injuries to the witness PW-5. The trial Court mainly relied on the evidence of the injured witness, PW-5 and medical evidence, while recording the finding to the effect that the act of the appellant for causing death of Meghram would fall under the definition of “murder”.

9. Being dissatisfied with the judgment of conviction and order of sentence, the appellant-accused has come up before this Court with the present appeal.

10. We have heard Mr.Mihir Pathak, learned counsel appearing for and on behalf of the appellant-accused and Mr.Ronak Raval, learned Additional Public Prosecutor for the State.

11. Mr.Mihir Pathak, learned counsel, took us through the record of the case, including the evidence of the prosecution witnesses and contended that the impugned judgment of conviction and order of sentence cannot be sustained and the trial itself is not legal and valid, as before framing the charge of the case, the application was tendered by the accused that he was suffering from mental disorder and prior to the incident, he had taken treatment from the mental hospital, Ahmedabad, and, he requested that he may be referred to the mental hospital for examination and necessary inquiry about his unsoundness of mind and incapacity to stand the trial be determined; the trial Court issued notice to the RMO, Mental Hospital; the trial Court *vide* order dated 8.12.2011 by granting the application, Exh.6, ordered that the accused shall be referred to the Mental Hospital, Ahmedabad, for treatment and examination and the jail authority was further directed to place on record the progress report of the treatment and certificate of treating doctor; despite of this order passed by the trial Court, the accused was not referred to the Mental Hospital, Ahmedabad, and proper inquiry under Section 329 of

Criminal Procedure Code has not been held by the trial Court and the trial Court failed to record a finding with respect to insanity of the appellant-accused.

12. In such circumstances, referred to above, without entering into merits of the case, learned counsel Mr.Pathak contended that the procedure adopted by the trial Court in proceeding with the trial of the case is not in accordance with the provisions of Section 329 and trial is vitiated and, therefore, the present conviction and sentence cannot be sustained and by allowing this appeal, the same may be set aside.

13. Opposing the contention, learned Additional Public Prosecutor, Mr.Ronak Raval, contended that the accused-appellant has no mental illness, nor he is suffering from psychiatric problem and merely claiming mental illness would not *ipso facto* exempt him from criminal liability because burden of proof to prove the insanity lies on the accused that while doing the act, he was not capable of knowing the nature of act, which was prohibited in law. The appellant-accused was government employee and considering his behavior throughout the trial, would suggestive of the independent fact that he was a normal man. Thus, therefore, it was submitted that after the conviction, at this stage, issue of non-compliance of Section 329 of Criminal Procedure Code cannot be raised and the trial Court has rightly, after giving due opportunity to the accused passed and order of conviction and sentence.

14. We have considered the contentions on the issue of law raised by the learned counsel, Mr.Pathak and perused the case records and proceedings. As per the prosecution case, the appellant-accused killed his father-in-law by stabbing him multiple times with the knife and the brother of the deceased, who had intervened to save the deceased, he also sustained injuries allegedly caused by the appellant. The incident in question being took place on 18.2.2011. The charge came to be framed by the trial Court on 18.10.2011. Before recording the evidence, the brother of the accused filed an application, Exh.6, under Section 329 of the Criminal Procedure Code, inter alia, stating that his brother is suffering from mental illness and prior to the incident, he was treated by the Mental Hospital, Ahmedabad, and his case was registered with the hospital as OPD 543/2010 and he was examined by Dr.Ajay Chauhan, who had issued certificate thereof dated 8.4.2010 and, as per the clinical opinion, he was not cooperative and was having dysphonic mood with negative thought. In the application, Exh.6 filed under Section 329 of the Criminal Procedure Code, it is prayed that the accused may be referred to the Mental Hospital, Ahmedabad, for examination and treatment and the case papers and certificate thereof be placed on record, and let proper inquiry be held with respect to the insanity of the accused. Upon taking cognizance of the mental illness, as referred in the application, Exh.6, the learned trial Court, by allowing the application *vide* its order dated 8.12.2011, directed the jail authority to refer the accused to the Mental Hospital, Ahmedabad, for treatment and examination and further directed to produce progress report

along with the certificate. Accordingly, the appellant was referred to the Mental Hospital, Ahmedabad. So far as progress report and certificate is concerned, the admission of the accused in the hospital was necessary. In that view of the matter, by letter dated 17.12.2011, Dr.S.N.Singh, Medical Officer, Ahmedabad Central Jail, addressed to Superintendent, Central Prison, Ahmedabad, requested to get the order of the concerned Court, is necessary to refer, which reads thus:-

> *"With reference to the above subject, it is to draw your kind attention that Honurable City Sessions Court has passed an order to send the patient to mental hospital, Delhi Darwaja, Ahmedabad and to get a certificate regarding mental condition and produce the same before the Court. In response, he was referred to said hospital, according to the psychiatry team of the hospital for mental health, the patient needs to be admitted for detailed evaluation of mental condition. Only then further opinion can be given. For this, observation order of the concerned court is required. So please do the needful."*

14.1 In view of the aforesaid, on 20.1.2012, learned Additional Public Prosecutor requested the trial Court to pass necessary observation order for the examination of the accused by the Mental Hospital. The trial Court instead of granting observation order, directed the court registry to send *yadi.* It is also evident that the jail authority *vide* letter dated 13.2.2012 sent the report in the form of certificate in a sealed cover.

15. The aforesaid sequence of facts shows that the learned trial Court, before recording the evidence of the witnesses, was having knowledge that the accused was mentally unstable and suffers from psychiatric problem. In nutshell, much before the FIR registered and subsequent to the filing of the charge-sheet the fact of the accused-appellant being suffering from mental illness and is undergoing treatment had come on record. The trial Court failed to comply with the mandatory procedure, as contemplated under Section 329 of the Criminal Procedure Code, with respect to whether the accused was of unsound mind and incapable of making his defence and without making inquiry about the unsound mind and without recording findings on this point, which are mandatory in nature, the trial Court could not have proceeded to record the evidence and conclude the trial.

16. In case of accused of unsound mind at the time of inquiry or trial, the trial Court is obliged to ascertain the unsound mind of the accused and consequently incapable of making his defence. Section 329 pertains to the procedure in the case of person of unsound mind and in order to appreciate the contention, we may refer it and same reads thus:-

> *“Section 329. Procedure in case of person of unsound mind tried before Court.*
>
> *(1) If at the trial of any person before a Magistrate or Court of Session, it appears to the Magistrate or Court that such person is of unsound mind and consequently incapable of making his defence, the Magistrate or Court shall, in the first instance, try the fact of such*

unsoundness and incapacity, and if the Magistrate or Court, after considering such medical and other evidence as may be produced before him or it, is satisfied of the fact, he or it shall record a finding to that effect and shall postpone further proceedings in the case.

[(1A) If during trial, the Magistrate or Court of Sessions finds the accused to be of unsound mind, he or it shall refer such person to a psychiatrist or clinical psychologist for care and treatment, and the psychiatrist or clinical psychologist, as the case may be shall report to the Magistrate or Court whether the accused is suffering from unsoundness of mind:

Provided that if the accused is aggrieved by the information given by the psychiatric or clinical psychologist, as the case may be, to the Magistrate, he may prefer an appeal before the Medical Board which shall consist of--

(a) head of psychiatry unit in the nearest government hospital; and

(b) a faculty member in psychiatry in the nearest medical college.]

[(2) If such Magistrate or Court is informed that the person referred to in sub-section (1A) is a person of unsound mind, the Magistrate or Court shall further determine whether unsoundness of mind renders the accused incapable of entering defence and if the accused is found so incapable, the Magistrate or Court shall record a finding to that effect and shall examine the record of evidence produced by the prosecution and after hearing the advocate of the accused but without questioning the accused, if the Magistrate or Court finds that no prima facie case is made out against the accused, he or it shall, instead of postponing the trial, discharge the accused

and deal with him in the manner provided under section 330:

Provided that if the Magistrate or Court finds that a prima facie case is made out against the accused in respect of whom a finding of unsoundness of mind is arrived at, he shall postpone the trial for such period, as in the opinion of the psychiatrist or clinical psychologist, is required for the treatment of the accused.

(3) If the Magistrate or Court finds that a prima facie case is made out against the accused and he is incapable of entering defence by reason of mental retardation, he or it shall not hold the trial and order the accused to be dealt with in accordance with section 330.]"

17. From the above, Section 329 Cr.P.C. lays down that if the Court finds that accused is incapable of making his defence due to unsoundness of mind, to refer such person for appropriate treatment in accordance with Section 330 of Cr.P.C. The bear words of the Section says that if at the trial of any person, it appears to the Court that such person is of unsound mind and consequently incapable of making his defence, the Court shall, in the first instance, try the fact of such unsoundness and incapacity, and if the Magistrate or the Court, after considering such medical and other evidence, as may be produced before him or it, is satisfied of the fact, he or it shall record a finding to that effect and shall postpone further proceedings in the case.

18. In the facts of the present case, as discussed in the preceding paragraphs, viz. paragraphs 14 and 15, the trial

Court failed to make inquiry as mandated under Section 329 Cr.P.C. and did not record a finding with respect of the insanity of the appellant-accused. The trial Court itself sought a progress report and certificate from the Mental Hospital and despite of proceedings with the matter as contemplated under Section 329, abandoned the proceedings and proceeded to record the evidence of witnesses and concluded the trial without deciding the unsoundness of mind and incapacity of making his defence. We may refer the observations of the Supreme Court made in the case of **Prakash Nai v. State of Goa (2023 Livelaw SC 71)**, wherein while dealing with the accused, who, at the time of trial, was suffering from schizophrenia and had claimed the exception under Section 84 of IPC that by reason of unsoundness of mind, he was incapable of knowing the nature of the act and, therefore, he cannot be made to suffer punishment. In paragraph 6 of the judgment, the Supreme Court observed that, “a person of unsound mind does not know that such an act is right or wrong and his act cannot be termed as mental rebellion constituting a deviate behavior leading to a crime against society and he stands as a victim in the need of help and, therefore, cannot be charged and tried for an offence.”

19. For the aforementioned reasons and considering the peculiar facts and circumstances of the present case, in our opinion, trial is vitiated because of non-compliance of the mandatory provisions of Section 329 of Cr.P.C., therefore, the judgment of conviction and order of sentence is not sustainable in the eye of law and this appeal, on this count,

deserves to be allowed. We have not gone into the merits of the case. We deem it fit to remit the case for fresh trial from the stage of framing of charge. The accused is in jail and as per the jail remarks, the incarceration period is 11 years and more. He is directed to be release on bail on his furnishing personal surety of Rs.10,000/- and further directed to cooperate with the trial proceedings and he will not leave India without prior permission of the trial Court concerned.

20. Accordingly, the appeal is allowed in aforesaid terms. The judgment of dated 2.11.2012 passed by the City Sessions Court, Ahmedabad, in Sessions Case No.308 of 2011 is set aside and case is remitted to the trial Court for *de-novo* trial, as observed, and the same be disposed of after following the provisions of Section 329 Cr.P.C. in accordance with law. The appellant-accused, pending the proceedings, is released on bail, as observed above.

Sd/-

(ILESH J. VORA,J)

Sd/-

(R. T. VACHHANI, J)

R.S. MALEK

Original copy of this order has been signed by the Hon'ble Judges.
Digitally signed by: RIYAZMIYA SABIRMIYA MALEK(HC00180), PRINCIPAL PRIVATE SECRETARY, at High Court of Gujarat on 15/12/2025 11:11:13