

(2002) 02 BOM CK 0131

In the Bombay High Court

Case No : Criminal Application No. 520 of 1998

Manohar Pranjale

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 18-02-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 227, 482
Penal Code, 1860 (IPC) — Section 306, 34, 376
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(1)

Citation : (2002) BomCR(Cri) 688

Hon'ble Judges : D.D. Sinha, J

Bench : Single Bench

**Advocate : S.V. Manohar, for the Appellant; K.S. Dhote, Additional Public
Prosecutor, for the Respondent**

Final Decision : Allowed

Judgement

D.D. Sinha, J.—Heard Shri Manohar, learned Counsel for the applicant, and Shri Dhote, learned Additional Public Prosecutor for the respondent.

2.The present application u/s 482 of Code of Criminal Procedure is directed against the order dated 5.3.1998 passed by the Assistant Sessions Judge, Chandrapur below Exh. 8 in Special Case No. 27/1993 whereby application moved by the applicant u/s 227 of Code of Criminal Procedure for discharge from the offences punishable under Sections 376 and 306 read with Section 34 of Indian Penal Code and Section 3(1)(x) and (xii) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act came to be rejected.

3.Shri Manohar, learned Counsel for the applicant, submits that applicant is Chief Editor of a weekly known as Samachar Vrajarsheel and also a General Manager of the theatres at Bhadravati and Ghugus. The applicant owns agricultural lands at Manora where he resides. One Ku. Archana Atram, who was neighbour of the applicant, committed suicide by consuming poison on 6.11.1991. At the relevant

time, she was pregnant. It is contended that Sarlabai, mother of Archana, lodged a report with the Police Station, Bhadravati in which she has stated that she resides at village Manora with her daughter Archana, another daughter Madhuri and son Nitin since last many years. On the day of incident, in the afternoon she had gone to the market at Bhadravati and when she returned back, she found that the door of her house was locked. So she climbed the house and after removing the roof tiles, she entered the house and found that her daughter Archana was lying dead. It is contended that in the said report lodged by Sarlabai on 6.11.1991 about the incident in question there is not even a whisper about complicity of the applicant. Sarlabai in the said report has not made any allegation against the applicant.

4.Learned Counsel Shri Manohar further states that Investigating Officer recorded the statement of Sarlabai on the next day, i.e. 7.11.1991 wherein she has claimed that after she returned from market, she found her daughter Archana lying dead in the house and that she had consumed poison. She has further stated that she does not know from where poison was brought and she does not suspect any foul play in regard to the death of her daughter. The post mortem of the dead body of Archana was conducted by the Medical Officer and it was found that girl was pregnant and pregnancy was about three months old. The Investigating Officer then recorded statement of brother of deceased Nitin, who claimed that as his sister was pregnant, to avoid disrepute in the society, she had consumed poison and committed suicide. He further stated in the report that he had no suspicion on anybody with regard to the death of his sister Archana.

5.It is submitted by the learned Counsel for the applicant that mother of deceased Archana, Sarlabai on 8.11.1991 around 9 p.m. submitted a written report to the Police Station Officer, Police Station, Bhadravati alleging therein that she learnt eight days prior to the incident that the applicant had illicit relations with her daughter and, therefore, she had prohibited the applicant from coming to the house. It was further alleged in the report that the applicant, therefore, threatened her that he would commit murder of Sarlabai and as the said incident would bring disrepute to her, she did not disclose the same to anybody. She further alleged in the report that on 6.11.1991 around 4 p.m. she had gone to market at Bhadravati and in her absence, applicant and his servant Raju Khade were standing in front of her house, which was noticed by Rekha Ghosare and Madhuri Atram. She further alleged that her daughter was three months pregnant and applicant and his servant Raju Khade used to come to her house and she believes that her daughter was pregnant because of them and with a view to avoid disrepute, they have forcibly administered poison to her daughter and they throttled her neck and thereby committed her murder.

6.It is contended by learned Counsel Shri Manohar that there is an endorsement made in the said report dated 8.11.1991 that the said report is drafted as per dictate of ex-M.L.A. Shri Nilkanthrao Shinde and reduced into writing by his

Munim (servant) and is presented by Sarlabai, mother of deceased Archana. The said report was written by Shri Nilkanthrao Shinde, who was on inimical terms with the applicant and it is evident that the said report was dictated by Shri Shinde so as to implicate the applicant. Sarlabai, mother of deceased Archana, had already lodged a report on 6.11.1991 as also her statement was recorded on 7.11.1991 and in both, i.e. report and statement she has categorically stated that her daughter Archana had committed suicide and nobody is responsible for the same. It is submitted by the learned Counsel that deceased Archana had also written a suicide note, which was seized by the Investigating Agency, which reveals that Archana committed suicide and nobody is responsible for the same. It is contended that in spite of these facts, Shri Shinde took advantage of the situation and got the report submitted through Sarlabai Atram in order to anyhow implicate the present applicant.

7. Learned Counsel Shri Manohar states that statement of Sarlabai Atram was again recorded on 9.11.1991. In the said statement, she has stated that she was working with the applicant since last five years. However, she has stopped going on the said work since last one year. One Raju Khade, who was working with the applicant, used to come to her house since last one year. Raju Khade used to visit her house in her absence. This fact was noticed by her one month prior to the incident and, therefore, about ten days before the incident, she told Raju Khade not to come to her house. However, Raju Khade threatened her. It is further stated in the statement that on 6.11.1991 when she returned from market, she found her daughter lying dead. She thought that Raju Khade and Manohar Pranjale, i.e. present applicant had illicit relations with her daughter, due to which she might have become pregnant. She feels that these two persons, i.e. Raju Khade and applicant must be involved in the death of her daughter and, therefore, matter needs to be investigated. It is vehemently contended by learned Counsel Shri Manohar that it could be seen from the said statement dated 9.11.1991 of Sarlabai that there is no allegation whatsoever against the present applicant and only reference to the name of applicant is that she feels that applicant along with Raju Khade had illicit relations with her daughter. It is submitted that the said statement is nothing, but her opinion or belief, which cannot be treated to be admissible evidence in the Court of law against the applicant. Hence, the said statement is totally innocuous as far as present applicant is concerned. Shri Manohar submits that Sarlabai again produced a written report dated 29.11.1991 wherein she alleged that on 6.11.1991, the applicant and Raju Khade throttled the neck of her daughter Archana and committed her murder as she was pregnant due to illicit relations of the applicant with her daughter. Sarlabai further alleged that she had already given a written report on 8.11.1991 to the Police Station and as no action is being taken by the Investigating Agency and accused is not arrested, the applicant is threatening her. She also alleged in the said report that applicant instigated her daughter to consume poison as she was pregnant because of him. She alleged that because of the applicant, there is a danger to her life.

8. It is further submitted by learned Counsel Shri Manohar that Sarlabai, in the aforesaid report, again expressed her suspicion that her daughter was pregnant because of the applicant and, therefore, he committed her murder. In the same breath, she further stated that as her daughter was pregnant because of the applicant, the applicant instigated her to commit suicide by consuming poison. It is contended by the learned Counsel that the report dated 29.11.1991 itself is self contradictory and the same only expresses suspicion against the present applicant even if same is taken to be true on its face. The suspicion and opinion of Sarlabai cannot be treated as piece of evidence admissible in law.

9. It is further contended by learned Counsel Shri Manohar that statement of Sarlabai was once again recorded on 30.11.1991 wherein she has stated that field of the applicant is situated opposite to her house and her daughter Archana used to go to his field for fetching water from the well. She has stated that in the field of applicant one Raju Khade used to work and he used to come to the house of Archana when Sarlabai used to be away. A month earlier she found Raju Khade with her daughter Archana in her house and, therefore, she scolded Raju Khade and asked him not to come to her house any more. Sarlabai has further stated in her statement that when Archana used to go to the field of the applicant, the applicant used to talk to her. According to her, one day Manohar Pranjale (applicant) held the hand of her daughter Archana. According to her, her daughter used to go to the field of applicant as there was no other well. She has further stated that on 6.11.1991 when she returned from market, she found that her daughter was lying dead in the house. There was a suicide note written by deceased Archana in a copy wherein she mentioned that she is committing suicide and she is alone responsible for the same. No person from her family or any of the neighbour is responsible for her death. In the said report, Sarlabai has further stated that on the next day, she learnt that her daughter was pregnant and pregnancy was due to Raju Khade and applicant as they had illicit relations with her. According to Sarlabai, this was her suspicion and, therefore, she suspects that Raju Khade and applicant must be involved in the death of her daughter.

10. It is pointed out by learned Counsel Shri Manohar that even in the statement of Sarlabai, there is nothing except the suspicion expressed by her that the applicant is involved in the death of her daughter and that he had illicit relations with her. It is vehemently argued that suspicion expressed by Sarlabai cannot be treated as admissible evidence and, therefore, the said statement is no evidence in law and is not a legal evidence at all, which could be tendered in the Court.

11. It is further contended by learned Counsel Shri Manohar that statement of Nitin, brother of deceased Archana, was again recorded by the Investigating Officer on 1.12.1991. In the said statement, there is not even a reference to the present applicant and it is stated that Raju Khade used to come to their house and once when he found Raju Khade in his house with his sister Archana, he scolded Raju Khade. Nitin further stated in the said statement that Raju Khade

had illicit relations with his sister and she was pregnant due to him.

12. It is contended by the learned Counsel that during the course of investigation, statement of Tirawana Petkar was recorded on 9.11.2001, who was neighbour of deceased Archana. She has stated that Raju Khade used to go to the house of deceased Archana and on the day of incident, when she was returning from the market at about 5 p.m. she met Raju Khade and he enquired from her about health of Archana and after she returned, she came to know that Archana had committed suicide by consuming poison. The statement of Tirawana was again recorded on 30.11.1999 wherein she reported that Raju Khade used to go to the house of deceased Archana and, therefore, Raju Khade had illicit relations with Archana and she was pregnant because of him. It is argued by the learned Counsel that the present applicant is not at all implicated in the crime in question by this witness. There are no allegations whatsoever against the present applicant in the said statements.

13. It is pointed out by the learned Counsel that similarly statement of Damu Ramteke was also recorded during the course of investigation, who has stated that many people used to go to the house of Sarlabai and Raju Khade used to go to the house of Sarlabai when she was not used to be in the house. He has further stated that on 6.11.1991 he came to know that Archana committed suicide. Therefore, he had gone to the house of Sarlabai. Shri Manohar submits that in the statement of Damu Ramteke, there is no reference to the present applicant nor is he in any way implicated in the crime.

14. Learned Counsel Shri Manohar further submits that the statement of Wasudeo Nanaji was recorded on 7.11.1991. The said witness stated in the statement that since last four-five years, husband of Sarlabai was staying away from her. According to him, he used to find many people going to the house of Sarlabai at odd hours. He further stated that in the evening around 5.30 p.m. on 6.11.1991, he came to know that Archana had died and, therefore, he had gone to the house of Sarlabai. Shri Manohar states that this witness has also not implicated the applicant at all in the crime in question.

15. It is contended by the learned Counsel that on 9.11.1991, statement of Khushalrao Ramteke was recorded. He has stated that since last one year, Raju Khade used to go to the house of Archana when Sarlabai was not in the house. According to this witness, Archana used to talk to Raju Khade very often and on 6.11.1991 Sarlabai climbed the roof of her house and by removing roof tiles, entered in her house and started crying and, therefore, he had gone to see as to what had happened and found Archana lying dead. Learned Counsel Shri Manohar states that this witness also in his statement has not alleged anything against the present applicant. The supplementary statement of this witness was recorded on 1.12.1991. In that statement, he has stated that Raju Khade used to go to the house of Archana and, therefore, he suspects that Archana could be pregnant from Raju Khade and on the day of incident, at about 2.30 - 3 p.m., he saw Raju Khade on a bicycle near her house. There are no allegations against the

present applicant in this statement also.

16. It is contended by learned Counsel Shri Manohar that statement of Anandrao Date was recorded on 9.11.1991, who has stated that Raju Khade used to go to the house of Archana since last one year. This witness claimed to have told Sarlabai that it is not good that people come to her house in the day and in the night. According to him, on this, Sarlabai told him that it is her house and this witness had nothing to do with the same. Therefore, he stopped talking to Sarlabai. On 6.11.1991 he learnt that daughter of Sarlabai, Ku. Archana, had died. A supplementary statement of Anandrao Date was recorded on 1.12.1991. In the supplementary statement, he has stated that Raju Khade used to go to the house of Sarlabai very often and according to this witness, Raju Khade must be responsible for pregnancy of Archana. Learned Counsel Shri Manohar states that this witness also in his statements has not implicated the applicant nor there is any allegation made against the applicant by this witness.

17. Shri Manohar vehemently submits that from the entire material on record, there is no legal evidence against the applicant. The applicant is charge-sheeted for the offences punishable u/s 376 and 306 read with Section 34 of Indian Penal Code and also u/s 3(1)(x) and (xii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. It is contended that it could be seen that the statements of all the witnesses even if taken at their face value and accepted in their entirety do not constitute any offence against the applicant. It is submitted that there is no incriminating circumstance against the applicant in the statement of any of the witnesses. It is further submitted that report dated 8.11.1991 wherein reference is made by Sarlabai to the applicant is written as per dictates of Nilkanthrao Shinde and as such, same is not admissible. In another report lodged by Sarlabai dated 29.11.1991 and statements of Sarlabai dated 9.11.1991 and 30.11.1991, she has merely expressed suspicion that the applicant had illicit relations with her daughter. Shri Manohar submits that it is noteworthy that Sarlabai in her statement dated 30.11.1991 stated that she came to know on the next day that the present applicant and Raju Khade had illicit relations with her daughter. It could be seen that in both these statements dated 9.11.1991 and 30.11.1991 as also report dated 29.11.1991 Sarlabai has expressed only suspicion that the applicant had illicit relations with her daughter. It is contended by the learned Counsel that suspicion can never be evidence in the Court of law for putting a person on trial. There has to be legally admissible evidence. Learned Counsel Shri Manohar further submits that in the present case, there is neither legal nor admissible evidence to proceed against the applicant. The evidence available is not admissible under the Evidence Act and as such, in the absence of any legal evidence, present applicant cannot be put to trial.

18. The learned Counsel for the applicant further submits that trial Court while rejecting application for discharge has held that the prosecution has come up with a case that age of Archana was 16 years. It is surprising that trial Court has

further held that question of age cannot be investigated at this juncture and age of the girl might be more or less 16 years and in case it is found that her age was below 16 years, then obviously her consent loses its importance and the charge u/s 376 of Indian Penal Code would be sustainable. It is contended by the learned Counsel that the trial Court in one breath says that prosecution itself has come up with the case that age of Archana is 16 years and it can be seen from the material produced on record that it is not the case of the prosecution that age of Archana was below 16 years and as such, the trial Court while deciding the question of framing of charge has to go by the material produced by the prosecution on record and same cannot be decided on the basis of conjectures. It is submitted that the said finding recorded by the trial Court is perverse and against the settled norms.

19. It is further contended by learned Counsel Shri Manohar that the trial Court has relied upon the circumstance against the applicant that it was stated by Sarlabai in her statement dated 30.11.1991 that she had seen that applicant had held hand of her daughter in his field when she had gone to fetch water. It could be seen that such circumstance cannot even remotely connect the applicant with the alleged crime. It is contended that the said circumstance relied by the trial Court is of no consequence. The learned Counsel submits that from the material on record, it is clear that on examination of the statements of witnesses recorded by the Investigating Agency, there is no legally admissible evidence against the applicant so as to put him on trial. Sarlabai has expressed her suspicion and suspicion cannot be a legal evidence. As such, there is no material on record so as to even remotely connect the applicant with the crime in question and, therefore, he cannot be proceeded against.

20. It is lastly contended by learned Counsel Shri Manohar that at the time of framing of charge, the Court has to look into the material on record, which could be admissible in evidence. In the present case, there is no material on record, which could be admissible in the Court of law. It is submitted that other material regarding talking to deceased Archana and statement of Sarlabai regarding holding of hand of Archana by the applicant few days prior to incident in his field, even accepted in its entirety, cannot result in conviction of the applicant. It is submitted that it is a settled principle of law that the accused needs to be discharged when the material on record, even if accepted at its face value, would not result in conviction. Thus, there is no evidence against the applicant so as to even frame charge against the applicant and as such, applicant deserves to be discharged. It is submitted that facing trial is a serious hardship and the person has to undergo mental tension and at no point of time, legal machinery can be used to achieve ulterior purpose and in the present case, it can be seen from the material on record that the applicant is being roped in at the behest of Nilkanthrao Shinde, who is on inimical terms with the applicant. The applicant, therefore, deserves to be discharged.

21. Shri Dhote, learned Additional Public Prosecutor for the respondent, on the

other hand, supports the impugned order passed by the Assistant Sessions Judge, Chandrapur and submits that the trial Court has rightly observed that prosecution is coming with the case that age of deceased Archana was 16 years and question of age cannot be investigated at this juncture. It might be more or less than 16 years. It is contended that report lodged by Sarlabai, mother of Archana, discloses that she came to know about illicit relations between her daughter Archana and applicant. Sarlabai also warned the applicant and told him not to come to her house. Thereupon, applicant threatened to commit murder of her daughter. It is submitted that there is a material on record to show that applicant Manohar used to call Archana in Banda situated in his field and Sarlabai had personally seen the applicant holding hand of Archana. It is, therefore, contended that there is some material on record, which in fact is sufficient for framing of the charge against the applicant for the offences referred to hereinabove. The learned Additional Public Prosecutor, therefore, supports the impugned order.

22. I have given my anxious thought to the contentions canvassed by the learned respective Counsel for the parties and also perused the impugned order dated 5.3.1998 passed by the Assistant Sessions Judge, Chandrapur. It will be appropriate at this stage to consider the relevant legal aspects regarding as to whether the prima facie case is made out on the basis of material available or the accused is entitled to be discharged from the case u/s 227 of Code of Criminal Procedure or the evidence/material available with the prosecution warrants framing of charge against the accused.

23. It must be borne in mind that while considering the question of framing of charges, the Judge is required to apply his mind to the evidence produced by the prosecution in support of its case and find out whether a prima facie case against the accused has been made out. The test to determine prima facie case would always depend upon facts of each case and there cannot be a general rule of universal application in all cases. The Judge has to consider the broad probabilities of the case, total effect of evidence and documents produced before the Court, any basic infirmities appearing in the case, etc. In other words, the Judge has to find out whether there are sufficient grounds to proceed to frame a charge for the offences against the accused. One of the important considerations, which need to be kept in mind, is whether allegations contained in the first information report or complaint, even if they are taken to be true at their face value and accepted in entirety, constitute the offence, as alleged by the prosecution. It is also required to be seen by the Judge that all the allegations contained in various statements of the witnesses to whom prosecution proposes to examine, whether make out even a prima facie case for the offences charged against the accused.

24. On the backdrop of the above legal position, it will be proper to consider the factual aspect of the case at hand. In the instant case, Sarlabai, mother of deceased Archana, lodged a report with Police Station, Bhadravati on the date of

incident itself, i.e. on 6.11.1991. In the said report, she has stated apart from other formal things that when she entered the house after removing the roof tiles, she found her daughter Archana lying dead and there is not even a whisper nor there are any allegations against the applicant made by her in the first information report. She has not expressed even a suspicion against anybody, who could be responsible for the death of Archana including that of the applicant. The first information report lodged by Sarlabai assumes importance in the present case since the same is lodged on the date of incident itself and, therefore, recitals in the said report are true and natural utterance of Sarlabai, which are available in the form of first information report in the present case. Sarlabai in the said report has stated that she was residing at village Manora with her daughter Archana and another daughter Madhuri and son Nitin for last many years. On the date of incident, in the afternoon, she had gone to market at Bhadravati. She came back and found that door of the house was locked and, therefore, she climbed the roof of the house, removed roof tiles and entered in the house and found her daughter Archana lying dead. Except these facts, there is absolutely no mention about anything in the said report. Sarlabai has not even suspected any foul play and thought that Archana committed suicide by consuming poison. Since this report was lodged without lapse of time, it rules out possibility of concoction and fabrication and whatever is coming forward in the form of first information report is truthful version of Sarlabai, which she has disclosed in the first information report. Hence, as far as first information report is concerned, there is nothing against the applicant, which would connect him with the crime in question.

25. On 7.11.1991 the Investigating Officer recorded the statement of Sarlabai. Even in this statement, Sarlabai has stated that after she returned from market, she found her daughter Archana lying dead in the house and that she had consumed poison. She has further stated that she does not know from where poison was brought and it is categorically stated by her that she has no suspicion with regard to the death of her daughter on anybody. This statement of Sarlabai was also recorded by the Investigating Officer without lapse of much time, i.e. on the very next day of the incident and since she right from the beginning did not suspect any foul play, had given a straight-forward version, which is truthful and most natural. She has categorically stated in her statement dated 7.11.1991 that she has no suspicion with regard to the death of her daughter Archana on anybody. It is pertinent to note that Sarlabai at no point of time right from the beginning even remotely thought that present applicant is connected with the crime in question. On the other hand, recitals in both these statements clearly point out that Sarlabai in fact did not suspect any foul play in regard to the incident and positively thought that Archana committed suicide by consuming poison.

26. It is pertinent to note that the Investigating Officer recorded the statement of brother of deceased Archana, named Nitin. In his statement, he has stated that his sister was pregnant and to avoid disrepute in the society, she had

consumed poison and committed suicide. He has also stated that he has no suspicion on anybody with regard to the death of his sister Archana. The recitals in the statement of Nitin would demonstrate that he also did not suspect any foul play and stated that Archana committed suicide by consuming poison in order to avoid disrepute in the Society since she was pregnant. This witness has also categorically ruled out even remote possibility of the applicant being connected with the crime in question. On the other hand, this witness never suspected anybody responsible for the cause of death of his sister.

27. It is curious to note that on 8.11.1991 for the first time, Sarlabai submitted a written report to the Police Station, Bhadravati. It is important to note that there is an endorsement made in the said report, which reveals that report was drafted as per dictate of Ex-M.L.A. Shri Nilkanthrao Shinde and reduced into writing by his Munim (Clerk. and same was presented by Sarlabai to the Police Station. It is not in dispute that Sarlabai is an illiterate woman. The above referred endorsement itself renders this report inadmissible in law. This is not even a hearsay evidence, but totally inadmissible piece of document drafted by somebody other than the complainant, i.e. by Shri Shinde and it was reduced into writing by his Clerk. Sarlabai only presented this document in the Police Station and on the basis of the same, offences came to be registered against the applicant. The endorsement referred to hereinabove totally destroys the theory that recitals in the said document were as per version of Sarlabai. On the other hand, it is clear that same are at the behest of Shri Nilkanthrao Shinde and complainant Sarlabai is not at all associated with the same. In my opinion, this document on the face of it, is of no consequence and does not further the case of the prosecution as against the applicant.

28. There is another relevant circumstance, which needs consideration is the suicide note, which appears to have been written by Archana and seized by the Investigating Agency during the course of investigation. The recitals in the said suicide note demonstrate that Archana committed suicide and nobody is responsible for the same.

29. The Investigating Officer again on 9.11.1991 recorded the statement of Sarlabai Atram and from the recitals of the said statement, it could be seen that she feels that applicant along with Raju Khade had illicit relations with her daughter. The solitary reference made by Sarlabai to the applicant in her statement dated 9.11.1991 is in the form of suspicion and that too, at the belated stage, i.e. on 9.11.1991. It must be borne in mind that the evidence available may give rise to some remote suspicion and does not spell out grave suspicion against the applicant. If Sarlabai really had a grave suspicion against the applicant, then she would not have made a mere passing reference to the applicant and would have asserted in this regard and would have made positive allegations against the applicant if she was of the view that the applicant along with other co-accused were responsible for death of her daughter. Apart from the factual aspect of the matter, we cannot lose sight of the fact that Sarlabai in no

uncertain terms and at the earliest possible opportunity made a categorical statement in her two statements that her daughter Archana was found lying dead in her house on 6.11.1991 and she had committed suicide by consuming poison. She has also stated that she does not suspect any foul play in the matter. On the backdrop of this factual aspect, mere suspicion expressed by her against the applicant in her statement, which was recorded on 9.11.1991 is hopelessly inadequate to disclose prima facie case against the applicant.

30. Sarlabai again on 29.11.1991 produced a written report. In the said report dated 29.11.1991, she has once again expressed her suspicion that her daughter was pregnant because of the applicant and, therefore, he committed her murder. It is pertinent to note that in the same breath, she has stated that applicant instigated her daughter Archana to commit suicide by consuming poison. The report is a glaring example how Sarlabai has developed imaginary story and recitals in the said report are figment of her imagination since she herself is not aware as to whether applicant committed murder of her daughter or instigated her daughter to consume poison.

31. In another statement of Sarlabai recorded by the Police on 30.11.1991, it is alleged by her that her daughter used to go to the field of the applicant to fetch water from well and applicant used to talk to her and on one occasion, applicant held hand of her daughter. In the said statement, Sarlabai has stated that on 6.11.1991 when she returned from the market, she found that her daughter was lying dead in her house. There was a suicide note of deceased Archana on a copy wherein she had written that she is committing suicide and she alone is responsible for the same. No person from her family or anybody from neighbourhood was responsible for her death. Sarlabai has further stated that on the next day, she learnt that her daughter was pregnant and pregnancy was caused due to Raju Khade and applicant as they had illicit relations with her. This again was her suspicion. The recitals in the report apart from being self contradictory in nature, clearly demonstrate the wayward mind of Sarlabai and further discloses some kind of suspicion expressed by her on being told by others in this regard to her. The material particulars referred to against the applicant are hearsay in nature and are totally inadmissible in evidence and, therefore, same are of no consequence to the prosecution.

32. The Investigating Officer again recorded the statement of brother of deceased Archana, named, Nitin on 1.12.1991. In the said statement, there is not even a reference to the present applicant and entire statement is against Raju Khade, who, according to Nitin, had illicit relations with his sister Archana and she was pregnant due to him. Similarly, on 9.11.1991 statement of Tirawana Petkar, who was neighbour of deceased Archana, was recorded. She has also stated that Raju Khade used to go to the house of deceased Archana and on the day of incident, she came to know that Archana had committed suicide by consuming poison. The statement of Tirawana was again recorded on 30.11.1991. In the said statement, she has again stated that Raju Khade had

illicit relations with deceased Archana. It is pertinent to note that in the statement of Nitin dated 1.12.1991 and statements of Tirawana dated 9.11.1991 as well as 30.11.1991, there is not even a whisper about the present applicant nor applicant is in any manner tried to be connected by these witnesses with the crime in question. The allegations are only against Raju Khade.

33. Similarly Investigating Officer during the course of investigation recorded statement of Damu Ramteke, Wasudeorao Nanaji, Khushalrao Ramteke and Anandrao Date. The recitals in all these statements show that there are no allegations made by these witnesses against the applicant whatsoever and the allegations are made only against Raju Khade. All these witnesses appear to have specifically and categorically stated that Raju Khade had illicit relations with deceased Archana. None of these witnesses stated anything in their respective statements against the applicant.

34. It is well settled that framing of charge is not a mere formality, but a judicial act put forth by the Judge after applying his judicial mind to the consideration as to whether there is any ground for presuming that the accused had committed the offence. The Judge is not expected to blindly accept the prosecution material submitted in the Court u/s 173 of Code of Criminal Procedure and ask the accused to face the trial. The Judge has to look into all the material on record before coming to the decision that the accused is in any manner connected with the incident leading to his prosecution. He has to further consider whether material produced by the prosecution establishes a reasonable basis for presuming that the accused has committed an offence. In such situation alone, the Judge is required to frame a charge against the accused. Another test for proceeding against the accused could be whether material on record, if unrebutted, makes a conviction reasonably possible. The Court has to apply its mind to the question whether or not there is any ground for presuming commission of the offence by the accused.

35. I must express that above referred aspects are the relevant parameters on the basis of which Judge has to assess the material produced by the prosecution and after due application of mind in this regard, the Judge has to take a decision whether material, if unrebutted, discloses prima facie case against the accused for the offences charged and makes a conviction reasonably possible. On the backdrop of this settled legal position, it will be proper at this stage to have a look at the evidence produced by the prosecution and as disclosed above, whether the same is sufficient or not to proceed against the applicant for the offences charged. In the instant case, Sarlabai lodged the first information report on 6.11.1991 of the incident and her statement dated 7.11.1991 was recorded by the Police. In both these documents, which are first in point of time, Sarlabai has not even whispered about the applicant. Statement of Nitin (brother of deceased Archana) was recorded on 1.12.1991. There is no allegation against the applicant nor any reference is made by him against the applicant. The statement of Tirawana Petkar was recorded on 9.11.1991, statement of Wasudeo

Nanaji was recorded on 7.11.1991, statement of Khushalrao Ramteke was recorded on 9.11.1991, statement of Anandrao Date was recorded on 9.11.1991, supplementary statement of Shri Date was again recorded on 1.12.1991 and statement of Damu Ramteke was recorded by the Investigating Officer during the course of investigation. All these witnesses in their respective Police statements have not even remotely implicated/connected the applicant in the crime in question though some of them have implicated other co-accused Raju Khade in the crime in question. The recitals in all these statements do not refer to the applicant at all and in the absence thereof, it is difficult to presume as to how applicant could be connected with the crime in question.

36. As far as complicity of the applicant in crime in question is concerned, Sarlabai, mother of deceased Archana, made a totally general and vague statement in her Police statements dated 9.11.1991 and 30.11.1991. The allegations made in these statements are totally short of making out a prima facie case against the applicant for the offences charged. The entire statements dated 9.11.1991 and 30.11.1991 are innocuous, which, in my opinion, cannot connect the applicant with the crime in question.

37. The report lodged by Sarlabai dated 29.11.1991 is also of similar nature. In this report, Sarlabai has only expressed her remote suspicion about complicity of the applicant in the crime in question. On the basis of allegations in this statement, it cannot even be said that the suspicion expressed by Sarlabai is grave in regard to complicity of the applicant in crime in question.

38. As far as report of Sarlabai dated 8.11.1991 is concerned, it has been already observed that this is a document which has been written as per dictates of Nilkanthrao Shinde by his Clerk and same is merely submitted by Sarlabai in the Police Station. This document is, therefore, inadmissible in evidence and cannot be looked into even at the threshold as it does not have any evidentiary value.

39. On the backdrop of the above referred facts and law, it is hardly possible to conclude that the applicant was responsible for the commission of the crime in question. The careful scrutiny of the material on record would show that there is no material connecting the applicant with the alleged offence of rape and abetment to commit suicide. The learned Additional Public Prosecutor also did not show any other material that would justify implication of the applicant with the offences for which he stands charged. In my considered opinion, no conviction can be recorded on the mere vague allegations, which are not even in the form of grave suspicion and as such, the entire proceedings as against the applicant only are abuse of process of Court. It appears that the trial Judge did not examine the matter properly, otherwise from the kind of evidence discussed above, framing of charge against the applicant is hardly possible. The Assistant Sessions Judge failed to consider all these vital factors and erred in rejecting the application of the applicant u/s 227 of Code of Criminal Procedure for discharge.

40. Before parting with the judgment, it is made clear that I have not expressed any opinion on merits of the case of other co-accused and Court trying the case shall not be influenced by any of the observations made in this judgment.

41. For the reasons stated hereinabove, the criminal application is allowed. The impugned order dated 5.3.1998 passed by the Assistant Sessions Judge, Chandrapur is quashed and set aside. The applicant stands discharged from the case.