
(2015) 11 BOM CK 0001

In the Bombay High Court

Case No : Criminal Revision Application No. 97 of 2015

Sau. Ashadevi and Others

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 18-11-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 397, 401, 482
Penal Code, 1860 (IPC) — Section 109, 201, 302, 34

Citation : (2016) ALLMR(Cri) 507 : (2016) 1 BomCR(Cri) 444

Hon'ble Judges : A.S. Chandurkar, J.

Bench : Single Bench

Advocate : Sunil V. Manohar, Senior Advocate and N.R. Tekade, Advocate, for the Appellant; R. Deshpande, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

A.S. Chandurkar, J.—Heard finally with the consent of Counsel for the parties. Perused the documents filed along with the charge-sheet in Sessions Trial No. 70/1999.

2. The present applicants, who are arrayed as accused Nos. 4 & 5, are facing trial with regard to an offence alleged to have been committed on 9-12-1998 punishable under Sections 302 , 201 , 109 read with Section 34 of the Indian Penal Code (for short, the Penal Code). As per the contents of the first information report lodged by accused No. 1 -Shivprakash Sawal, his wife - Shantadevi was found in a burnt condition in the store room of the third floor of their residential house. Said residential house was occupied by members of the joint family which included the brothers Jaiprakash -accused No. 2, Omprakash - accused No. 3 and their wives who are the present applicants as well as one juvenile -Rachana. It is further stated that said incident occurred between 5.30 p.m. and 6 p.m. on 9-12-1998. The dead body was sent for postmortem and on 11-12-1998, a provisional postmortem report was received in which it was stated that the right femur bone of the deceased had been broken and there was some

injuries on the right side of the head and hemorrhage in the right eye. Thereafter, offence was registered under the provisions stated herein above alleging that the husband of the deceased -accused No. 1 along with members of the joint family had assaulted the deceased and after murdering her had sought to destroy the evidence.

3. Subsequently, the final postmortem report was received in which it was stated that death was caused due to shock due to fracture of shaft femur (right) with contusion on right parietal hemisphere with conjunctival hemorrhage. After the said report was received, the Investigating Officer made certain queries with the Doctors who had conducted postmortem. It was opined by the Doctors that death was likely to have been caused about 12 to 24 hours prior to conducting the postmortem. The right femur bone had been broken on account of being hit by a blunt object. Photographs of an iron rod were also sent to the concerned doctors and it was opined by them that same could cause fracture of the femur bone, but injuries on the head were not likely to have been caused by said weapon. Similarly, excessive bleeding could have caused shock.

4. In the meanwhile, the investigation of aforesaid crime came to be transferred to the Crime Investigation Department of the State. During the course of said investigation, supplementary statements of various persons came to be recorded. The accused Nos. 1 to 3 applied for discharge from aforesaid trial and the learned Judge of the Sessions Court rejected their application. Said accused Nos. 1 to 3 had filed Criminal Revision No. 115 of 2005. Learned Single Judge by judgment dated 5-4-2010 found that the chargesheet, statements and the material collected by the prosecution was not enough to connect accused Nos. 1 to 3 with the alleged crime. On that basis accused Nos. 1 to 3 were discharged from Sessions Trial No. 70/1999.

The present applicants had also applied for discharge which application was rejected by the trial Court. This order was challenged in Criminal Revision Application No. 26 of 2014. The learned Single Judge in said revision application found that there was sufficient material on record to infer that the deceased was in the custody of the applicants and it was for them to explain as to how the deceased had died. It was observed that there were circumstances to indicate that the applicants did not bother to find out the whereabouts of the deceased. On that basis, this Court rejected the revision application. Being aggrieved, the applicants had approached the Supreme Court of India and by order dated 13-5-2015, the applicants were permitted to withdraw the Special Leave Petition and were permitted to argue on charge before the Sessions Court. The Sessions Court was directed to consider the matter on merits without being influenced by the observations made by this Court in Criminal Revision Application No. 26/2014.

5. Pursuant to aforesaid liberty granted by the Supreme Court, the applicants moved the learned Additional Sessions Judge. The applicants were heard pursuant to aforesaid orders and the learned Additional Sessions Judge came to the conclusion that the applicants must be having knowledge of the offence.

There was likelihood of involvement in the offence of murder of the deceased as well as in the matter of destroying the evidence after the murder. It was observed that though the evidence appeared to be somewhat short, as the offence was a serious one, there was prima facie sufficient evidence to frame charge under Sections 302 , 201 and Section 34 of the Penal Code. It is against this order dated 5-8-2015 passed by the learned Additional Sessions Judge that the present revision application under Section 397 read with Sections 401 and 482 of the Code of Criminal Procedure, 1973 (for short the Code) has been filed.

6. Shri Sunil Manohar, learned Senior Advocate for the applicants submitted that the present is a case in which the applicants were entitled to be discharged of the offences as alleged. It was submitted that there was no material whatsoever collected by the investigation agency even to raise a suspicion against the applicants. Even assuming that some suspicion could be raised against the applicants on account of they being members of the joint family, said suspicion was not grave or serious to warrant framing of charge so as to enable the Sessions Court to proceed with the trial against them. Perusal of the charge-sheet would indicate that the ingredients of the offences under Sections 302 and 201 of the Penal Code had not been made out. It was, therefore, submitted that in absence of any grave suspicion against the applicants on the basis of the material collected by the prosecution, a case for discharge had been made out. The learned Senior Advocate then took the Court through the material collected by the prosecution forming part of the charge-sheet. The statements of one Vithal Gadhe, Ramdas Pachpor and Gaurishankar Bundele who according to the prosecution were at the house of the accused for some period on 9-12-1998 were referred to. Similarly, the statements of the mother of the deceased - Jiyabai and her brother -Savaisingh were also referred to. The spot panchanama was referred to in order to indicate that an open staircase was available for approaching the third floor of the building. The seizure panchanama was referred to for indicating that though it was the case of the prosecution that the deceased had been assaulted with a blunt object causing fracture of the femur bone and injuries on the right side of the head, there was no weapon/blunt object seized as per seizure panchanama. On the basis of aforesaid material, it was, therefore, submitted that at the highest, the same could give rise to some suspicion against the applicants in contradistinction with grave suspicion that was necessary for framing charge so as to proceed with the trial against the applicants. Relying upon the judgment of the Supreme Court in State of Karnataka Vs. L. Muniswamy and Others, , it was urged that merely because some material on record could be said to be available to connect the accused with the crime, the prosecution could not be permitted to proceed against them. It was submitted that considering the material available on record, no purpose would be served by directing the accused to face the trial. Reliance was also placed on the decision of the Supreme Court in Niranjana Singh Karam Singh Punjabi and Others Vs. Jitendra Bhimraj Bijja and others, to urge that if two views were equally possible and the material available gave rise to some suspicion but not grave

suspicion, the accused would be entitled for being discharged. Referring to the discharge of accused Nos. 1 to 3 from the trial, it was submitted by relying upon the decision of the Supreme Court in Hari Dev Sharma Vs. State (Delhi Administration), that the prosecution case was one integrated story and with the discharge of accused Nos. 1 to 3, the entire premise for proceeding against the present applicants ceased to exist. It was submitted that though all these aspects were required to be considered by the learned Additional Sessions Judge in terms of the liberty granted by the Supreme Court, the same had not been given due consideration by the learned Judge. It was, therefore, submitted that the present was a case in which the applicants were entitled to be discharged.

7. On the other hand, Smt. R. Deshpande, learned Assistant Public Prosecution supported the impugned order and submitted that the material collected by the prosecution gave rise to grave suspicion against the present applicants and, therefore, the learned Judge of the Sessions Court was justified in refusing to discharge the applicants. The learned Assistant Public Prosecutor referred to postmortem report and submitted that the death had occurred during day time on 9-12-1998. The statements of Vithal Gade, Ramdas Pachpor, Lata Gambhirrao and Gaurishankar Bundele reveal that though aforesaid persons had visited the residential house on 9-12-1998 at various points of time, they had not noticed the deceased. It was on this basis that it was submitted that Shantadevi was not seen during the day time as she had already been done to death. Reference was made to the spot panchanama to indicate limited access to the store room on the third floor. It was submitted that the present applicants were present at the residential house on said day and therefore their conduct had been rightly noted by the learned Additional Sessions Judge while refusing to discharge them. In support of her aforesaid submissions, reliance was placed on the decision in Dilawar Balu Kurane Vs. State of Maharashtra, and it was urged that there was sufficient material placed on record to justify continuation of the trial against the present accused.

8. I have given thoughtful consideration to the respective submissions and I have also perused the material placed along with the chargesheet. The present is a case where the applicants seek discharge on the ground that the material available on record is highly insufficient to even raise a suspicion against them to permit the trial to proceed against them. Before considering whether the material available on record gives rise to grave suspicion against the applicants and whether the ingredients of the offence with which they have been charged have been made out, it would be apposite to refer to certain settled principles that are relevant while considering a prayer for discharge.

(a) State of Maharashtra, Etc. Etc. Vs. Som Nath Thapa, Etc. Etc., :

"32. If on the basis of material on record, a Court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently, if the Court were to think that the accused might have committed the offence it can frame the charge, though for conviction

the conclusion is required to be that the accused has committed the offence. It is apparent that at the stage of framing of a charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as true at that stage."

(b) State of Maharashtra Vs. Priya Sharan Maharaj and Others, :

"8..... At the stage of framing of the charge the Court has to consider the material with a view to find out if there is ground for presuming that the accused has committed the offence or that there is sufficient ground for proceeding against him and not for the purpose of arriving at the conclusion that it is not likely to lead to a conviction."

(c) State of Maharashtra Vs. Salman Salim Khan and Another, :

"12. We are of the opinion that though it is open to a High Court entertaining a petition under Section 482 of the Code to quash charges framed by the trial court, same cannot be done by weighing the correctness or sufficiency of evidence. In a case praying for quashing of the charge, the principle to be adopted by the High Court should be that if the entire evidence produced by the prosecution is to be believed, would it constitute an offence or not. The truthfulness, the sufficiency and acceptability of the material produced at the time of framing of charge can be done only at the stage of trial.....

(d) State of Delhi Vs. Gyan Devi and Others, :

"7..... The legal position is well settled that at the stage of framing of charge the trial Court is not to examine and asses in detail the materials placed on record by the prosecution nor is it for the Court to consider the sufficiency of the materials to establish the offence alleged against the accused persons. At the stage of charge the Court is to examine the materials only with a view to be satisfied that a prima facie case of commission of offence alleged has been made out against the accused persons. It is also well settled that when the petition is filed by the accused under Section 482 CrPC seeking for the quashing of charge framed against them, the Court should not interfere with the order unless there are strong reasons to hold that in the interest of justice and to avoid abuse of the process of the Court, a charge framed against the accused needs to be quashed. Such an order can be passed only in exceptional cases and on rare occasions. It is to be kept in mind that once the trial Court has framed a charge against an accused the trial must proceed without unnecessary interference by a superior Court and the entire evidence from the prosecution side should be placed on record. Any attempt by an accused for quashing of a charge before the entire prosecution evidence has come on record should not be entertained sans exceptional cases."

In the light of aforesaid legal position, the facts of the case can now be examined.

9. It would be necessary to consider the final report submitted under Section 173 of the Code and the material sought to be relied upon by the prosecution. To

begin with, the provisional postmortem report dated 10-12-1998 can be referred to. Column No. 17 of said report indicates two injuries on the body of the deceased. The first injury is 100% superficial to deep burns. The second injury is conjunctival haemorrhage from right eye. As per column No. 18, the other injury discovered was right shaft femur seen with naked eye. As regards injury No. 1, it has been stated that the burns were "postmortem" and injury No. 2 was ante mortem. Another injury is contused right parietal hemisphere at 4 cm x 4 cm area. The cause of death as stated is due to shock due to fracture shaft femur (Rt) with contusion on (Rt.) parital hemisphere with conjunctival haemorrhage in right eye with Post Mortem burns. During the course of investigation, the prosecution had made certain queries and had sought opinion from the team of Doctors that had conducted the postmortem. Question No. 5 dated 25-8-1999 was as to whether the injuries on the head of the deceased could have been caused by the weapon shown in the photograph. The answer given to aforesaid question was that the injuries shown on the head of the deceased were not caused by the weapon shown in the photograph.

10. During the course of investigation, the Crime Investigation Department to whom the investigation was handed over submitted its report. In said report which is at page 175 of the record, there is a reference to the deceased being hit by an iron rod on the right thigh resulting in a fracture. There is reference to a photograph indicating an iron rod and blood stains found at the spot. This iron rod was not seized as is clear from the list of items that were recovered by the prosecution during the course of investigation.

11. Reference may be made to the statements recorded by the prosecution. Statement of one Vitthal Gadhe indicates that on 9-12-1998, his wife had been admitted at the Nursing Home of one Dr. Nikhte. This Nursing Home was near the house of the accused. It has been further stated that between 5 to 5.15 p.m. when his wife was taken to the delivery room, he was told to bring Tulsi leaves and, therefore, he went to the neighbouring house of the accused. He saw one lady aged about 25 to 26 years who permitted him to pluck Tulsi leaves. He noticed one lady and a girl standing near the gate and he could also hear the sound of the television and of children speaking. He has further stated that after plucking the leaves, he went back to the Nursing Home. After about 20 to 25 minutes, he noticed some ladies looking to the house of the accused and he went there. He saw the two ladies of the family and one girl going on the staircase. He and his relative went near the gate leading to the staircase when the girl came running down and stated in a frightened voice that her aunt had been burnt. He has referred to what transpired thereafter including intimating the husband of the deceased. After the husband of the deceased came home, he followed him to the third floor and found the deceased with her clothes burnt.

In his supplementary statement recorded thereafter, he has reiterated the earlier statements recorded and has also stated that while entering the house, he found two ladies who are the present applicants and a girl climbing down the stairs in a

frightened state.

12. Another statement recorded is of Ramdas Pachpor who was doing household work with the accused. He has stated that on 9-12-1998, he had done his daily chores. In the afternoon at 4.30 p.m., he was called for having a cup of tea and he did not notice the deceased at that time. At 5.30 p.m. he took the children to the tuition class and after returning back, he was told to call the children. He has further stated that he had not heard any arguments between the family members.

The statement of one Lata Gambhirrao who was doing work of washing clothes and utensils was also recorded. She stated that on 9-12-1998, she noticed the applicants herein, but did not notice the deceased between 6 a.m. to 9.30 a.m. Even in the afternoon when she had returned, she did not notice the deceased.

13. The statement of one Gaurishankar Bundeale who was a washer-man was also recorded. He stated that at about 9.45 a.m. on 9-12-1998, he had gone to the house of the accused for collecting clothes for ironing the same. He did not notice the deceased as well as the applicant No. 2 or Ku. Rachana. This witness has referred to noticing arguments between the husband of the deceased, the deceased and the applicants about fifteen days to one month prior to the incident. After four to eight days, he had noticed the deceased sitting by the side weeping. His supplementary statement was also recorded.

14. The statement of the mother of the deceased was also recorded in which she has stated that about one year prior to the incident she had met her daughter who had stated that she was required to do all the house work. The statement of her brother Savaisingh was also recorded and he has stated that his sister would not be taken by her husband to various functions and he used to remain at his shop for most of the times. The deceased was required to do all the house work.

15. As per the law referred to herein above, it would not be permissible to weigh the correctness or sufficiency of evidence at this stage. Similarly, its truthfulness and acceptability is an aspect to be considered at the trial. What is to be seen after perusing the material is whether a prima facie case of commission of the offence is alleged have been made out.

Considering the entire material available on record in the form of statements as well as supplementary statements coupled with the postmortem report, it can be seen from the supplementary statement of Vitthal Gadhe that he had seen the present applicants as well as accused No. 6 in the evening of 9-12-1998 coming down from the stairs in a frightened state. To same effect is the statement of Anil Sapkal who was with Vithal Gadhe on 9-12-1998. The statement of Suresh Gadhe indicates that when he along with same police constables reached the site of the incident, he had noticed the burning fire where the body of the deceased was found which was subsequently put out by said police constables and members of the public.

16. These statements on being taken at their face value do give rise to a grave suspicion as regards the presence of the present applicants in the house just prior to the fact of Shantabai being found dead. The applicants were seen climbing down the stairs after which Shantabai had been found dead with her corpse burning.

In short, it can be said that there was material on record to prima facie indicate involvement of the applicants on the basis of which the trial could proceed against them. As observed in *State of Delhi (supra)* once the trial Court has framed charge against the accused, the trial must proceed without unnecessary interference by a superior Court and the entire evidence from the side of the prosecution should be placed on record. A plea for quashing of charge before the entire prosecution evidence has come on record should not be entertained in the absence of any exceptional case. The question is not whether the charge as framed can be brought home by the prosecution, but whether there is material on record giving rise to grave suspicion against the accused. The presence of the applicants having been found in various statements coupled with the fact as they were seen descending the stairs in a frightened state, it would be for the applicants to explain the charge against them. The fact that the investigation was subsequently handed over to the Crime Investigation Department also explains various details in the supplementary statements of witnesses whose statements had been earlier recorded. This aspect of further details being found in supplementary statements has been recognized by the Supreme Court in *Radhey Shyam Vs. Kunj Behari and Others*, .

17. Though it was urged that the learned Judge of the Sessions Court had not sifted the evidence before rejecting the prayer for discharge, on consideration of the entire material on record, I am satisfied that the same when taken at its face value gives rise to grave suspicion against the applicants which has not been properly explained. The present cannot be said to be a case wherein the material on record gives rise only to some suspicion, but not grave suspicion. After considering the observations of the Supreme Court in *State of Karnataka, Niranjansingh Karansingh Pajnabi (supra)*, the present is not found to be a case warranting discharge of the present applicants. Two views are not possible on the basis of the material on record.

As regards the prosecution case being one integrated story involving six accused, at this prima facie state, the discharge of the accused Nos. 1 to 3 would not be a factor relevant for discharging the present applicants. The discharge of accused Nos. 1 to 3 as reflected from the order dated 5-4-2010 in Criminal Revision No. 115/2005 was on the basis of absence of male members from the house on the date of the incident took place. In fact, the material on record prima facie reveals actual presence of the applicants in the house when the incident occurred. The observations of the Supreme Court in *Harideo Sharma (supra)*, therefore, do not assist the case of the applicants.

18. Thus, taking an overall view of the matter, I am satisfied that no case

warranting discharge of the present applicants from the trial has been made out. There is prima facie material on record to proceed with the trial against the applicants. I am, therefore, not inclined to exercise jurisdiction under Section 482 of the Code in favour of the applicants. The Criminal Revision Application, therefore, stands dismissed with no order as to costs.

19. At this stage, the learned Counsel for the applicants prays for continuing the interim relief that was granted on 23-9-2015.

In the facts of the case, the interim relief granted shall continue to operate for a period of six weeks from today. Order accordingly.