

**IN THE HIGH COURT OF BOMBAY AT GOA**

**CRIMINAL REVISION APPLICATION NO. 46 OF 2014**

Dr. Vijayraj R. Dessai,  
s/o Shri Raia Dessai,  
Major of age,  
r/o G-7, C Building,  
Kurtarkar Township,  
Ambaji, Margao.  
Presently in Judicial Custody,  
Sub-Jail, Sada,  
Vasco-da-Gama.

... Petitioner

Versus

1. State,  
Through PP,  
Central Bureau of  
Investigation (CBI),  
Hon'ble High Court of  
Bombay at Panaji, Goa.

2. Inspector of Police,  
Central Bureau of  
Investigation,  
Bambolim, Goa.

... Respondents

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Shri Arun Bras De Sa with Shri P. Shirodkar, Advocates for the  
Petitioner.

Shri Joseph Vaz, Special Public Prosecutor for the Respondents.

**CORAM:- C. V. BHADANG, J.**

**RESERVED ON:- 16<sup>th</sup> APRIL, 2015**

**PRONOUNCED ON:- 17<sup>th</sup> APRIL, 2015**

**JUDGMENT:**

Heard Shri Bras De Sa, learned Counsel for the petitioner.

2. Admit. Heard finally with the consent of the parties.

3. This revision application is at the instance of the original accused in Sessions Case No. 29/2014, on the file of the learned Session Judge at Margao. The revision application is directed against order dated 10.09.2014, by which the application-Exhibit-9, filed by the petitioner, for discharge from the offence punishable under Sections 302 and 201 of the Indian Penal Code (I.P.C., for short), has been dismissed.

4. The facts necessary for disposal of the revision application may be stated thus:

That the petitioner is a Doctor by profession and is serving in the Blood Bank at Goa Medical College, Bambolim. Now deceased, Archana Dessai was the wife of the petitioner. The marriage of the petitioner and Archana Dessai was solemnized on 23.02.1996 and soon thereafter, dispute arose between the parties allegedly on account of non satisfaction of the demand of dowry. According to the prosecution, the petitioner, mentally and physically ill treated the deceased. The deceased had written several letters to her maternal relations setting out the ill treatment meted out to her. It appears that deceased went missing from the matrimonial house at Margao on 05.12.2010. The deceased was serving as a Teacher in a Government High School, Vasco and had last attended the School on 04.12.2010. It appears that although the deceased went missing on 05.12.2010, the petitioner reported the matter to the Margao Police only on 14.12.2010, making out a spacious ground that the deceased was usually leaving the house uninformed. The petitioner also did not intimate about the incident to her maternal relations. It so happened that a dead body of a female, in a highly decomposed state was found on 11.12.2010, at a remote place at Sawantwadi

about 110 kms. away from the residence of the deceased. The C.F.S.L. report on the D.N.A. profiling has confirmed that the D.N.A. profile generated from the source of the bones of the dead body were of female origin and were consistent being the biological daughter of Aruna, the mother of the deceased.

It appears that initially, an offence at Crime No. 203/2011 was registered by the P.S. Margao on 14.06.2011, based on a complaint filed by Arvind Revonkar, the brother of the deceased. It was complained that Archana was subjected to physical and mental ill treatment, which led to her disappearance. The said offence was registered under Sections 323, 342 and 498-A of I.P.C. The petitioner came to be arrested and was released on bail. The complainant, Arvind Revonkar persisted, by filing Writ Petition No. 482/2011, seeking further investigation in the matter. This Court by an order dated 28.09.2011 had transferred the investigation to the C.B.I. It appears that a fresh F.I.R. under No.RC1(A)/2012/CBI/ACB/Goa for investigation was registered and during the investigation of the same, it transpired that the petitioner has committed murder of his wife, Archana and disposed of her dead body at a remote, isolated place, with a view

to destroy the evidence, to screen himself from the punishment. On a permission being granted by this Court, the case of murder was registered against the petitioner under No. RC1(S)/2014/CBI/ACB/Goa, with addition of the offences under Sections 120-B and 302 of I.P.C. This was on 18.02.2014. On investigation, a charge sheet came to be filed, which was committed to the Court of Sessions and was registered as Sessions Case No. 29/2014. The petitioner filed an application for bail as well as for discharge from the offence punishable under Sections 302 and 201 of I.P.C. The learned Sessions Judge by common order dated 10.09.2014, had dismissed both these applications. It is undisputed that Criminal Application (Bail) No. 227/2014, filed by the petitioner has been dismissed by this Court on 18.12.2014. By the present revision application, the petitioner is challenging the order rejecting the application-Exhibit 9 for discharge.

5. I have heard Shri Bras De Sa, learned Counsel for the petitioner and Shri Vaz, learned Special Public Prosecutor for the respondents. With the assistance of the learned Counsel, I have

perused the relevant record and the impugned order.

6. It is submitted by Shri Bras De Sa, learned Counsel for the petitioner that there is no eye witness account of the incident available in this case. It is submitted that prosecution case is based on circumstantial evidence, in which the material is quite weak and not sufficient to connect the petitioner to the alleged crime. The learned Counsel submitted that the prosecution is based on, (i) the last seen theory; (ii) about the disputes and quarrel between the petitioner and the deceased and (iii) the letters written by the deceased after the marriage. The learned Counsel has taken me through the statements of, Mrs. Chaya Rane who is the Teacher in the Government School; Mrs. Shanti Rodrigues who is working as a Clerk in the said School and one Shri Vasant Jadhav who is an employee of BSNL. The learned Counsel would submit that none of these statements would even remotely establish any circumstance which can be part of a link, so as to indicate the complexity of the petitioner. The learned Counsel would submit that the material as to quarrel and fights between the petitioner and the deceased cannot lead to inference

that it is the petitioner, who caused the death of his wife. It is submitted that the evidence of last seen theory is also weak. In so far as the letters written by the deceased are concerned, they are not proximate in time to the death of the deceased as they relate back to the period of more than ten years and in the absence of any live link, they cannot be taken into consideration under Section 32 of the Evidence Act. He therefore, submitted that the application for discharge be allowed.

7. The learned Counsel has placed reliance on the decision of the Hon'ble Apex Court in the case of ***Yogesh alias Sachin Jagdish Joshi Vs. State of Maharashtra***, reported in **(2008) 10 SCC 394**, in order to submit that at the stage of framing charge and consideration of the application under Section 228 of the Code of Criminal Procedure, the Court has to sift the material, in order to determine whether the case for trial has been made out by the prosecution. It is submitted that the material has to be examined with the limited purpose of finding out whether a *prima facie* case has been made out. When two views are equally possible and where the material can give rise only to a "suspicion"

as against "grave suspicion", the Court would be fully within its powers to discharge the accused.

8. On the contrary, it is submitted by Shri Vaz, learned Special Public Prosecutor for the respondents that there is enough material at this stage, to *prima facie* show that it is petitioner who has committed the murder of the deceased and has disposed of the dead body at far off place. The learned Counsel has submitted that initially, the police had conducted the search at the house of the petitioner on 01.07.2011 and thereafter, the C.B.I. had raided the house on 06.10.2012 however, nothing was found. He submitted that after the order dated 22.01.2014 passed in Criminal Writ Petition No. 114/2013, the house of the petitioner was raided again on 23.04.2014, a ladies purse, handkerchief, wrist watch, comb etc. belonging to the deceased were found. He submitted that there is no explanation forthcoming from the petitioner as to how these articles were found there. The learned Special Public Prosecution would submit that the fact that there were serious disputes between the petitioner and the deceased, and ill treatment before the incident would be a strong motive for

the petitioner to commit the offence. The learned Counsel submitted that the petitioner did not inform that the deceased had gone missing on 05.12.2010 till 14.12.2010. He did not even inform her maternal relations. The learned Special Public Prosecutor has referred to the complaint dated 14.12.2010, as also a subsequent letter dated 06.07.2011, in order to show that there is clear attempt to mislead the Investigating Agency, which would itself be an incriminating circumstances. It is submitted that the learned Sessions Judge has rightly found that there is *prima facie* case and the order does not call for any interference.

9. I have considered the rival circumstances and the submissions made. At the outset, it may be mentioned that the prayer at this stage, for discharge, is limited to the offences punishable under Sections 302 and 201 of I.P.C. It is not seriously in dispute that after the marriage there were some disputes between the parties. The petitioner is Doctor by profession. The deceased was serving as a Teacher in a Government School. Master Harshal is the son of the petitioner who was also studying in the same School.

10. At this stage it is not necessary to examine the material in details so as to record any final and binding opinion. The scope and ambit of the powers of the trial Court under Section 227 of the Code of Criminal Procedure, fell for consideration of the Hon'ble Supreme Court, in the case of **Yogesh alias Sachin Jagdish Joshi** (supra), in which the Hon'ble Supreme Court in paragraph 16 held thus:

*"16. It is trite that the words "not sufficient ground for proceeding against the accused" appearing in the section postulate exercise of judicial mind on the part of the Judge to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. However, in assessing this fact, the Judge has the power to sift and weigh the material for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine a prima facie case depends upon the facts of each case and in this regard it is neither feasible nor desirable to lay down a rule of universal application. By and large, however, if two views are equally possible and the Judge is satisfied that the evidence produced before him gives rise to suspicion only*

*as distinguished from grave suspicion, he will be fully within his right to discharge the accused. At this stage, he is not to see as to whether the trial will end in conviction or not. The broad test to be applied is whether the materials on record, if unrebutted, make a conviction reasonably possible. [See State of Bihar Vs. Ramesh Singh and Prafulla Kumar Samal (supra)]”*

11. It is thus clear that at this stage, the Court has to sift and weigh the material for the limited purpose of finding out whether a *prima facie* case against the accused has been made out. It can be seen that what would be required at this stage is that the material shall be sufficient to raise a grave suspicion and if that be so, the Court would be justified in refusing to discharge the accused. It is not necessary to see whether the trial will end in conviction or not.

12. Turning to the present case, *prima facie* there are several letters written by the deceased setting out the nature of the physical and mental cruelty to which she was subjected to. Some of such letters indicate that there was an attempt to

strangulate the deceased. She was also threatened with life and on certain occasions, locked in the room. The petitioner had also threatened the deceased and had stated that he knows several ways of killing, without the act being disclosed. This Court while dismissing the Criminal Application (Bail) No. 227/2014 had noticed that there is such a letter written on 01.07.2006 containing details of harassment. It was also found that the petitioner had taken a suicide note written by the deceased. *Prima facie* this Court had found that the question whether the letters are admissible under Section 32 of the Evidence Act can be gone into at the trial, however, they were relevant under Section 8 of the Evidence Act, to show the conduct/behaviour of the petitioner towards the deceased, prior to her death. It would be further significant to note that the petitioner did not report about the deceased having gone missing immediately after 05.12.2010. It is only after the dead body was recovered on 11.12.2010 that the petitioner reported the matter to P.S. Margao stating that the Principal of the School, where the deceased was working told him that Archana has been absent from the School. He has also stated that the deceased had left the house many times in the past and

returned back and that she had not carried her mobile phone. He also stated that he had not informed the parents and the brothers of the deceased as they were not on talking terms with her. What is significant to note is the subsequent communication dated 06.07.2011, in which the petitioner has informed P.S. Margao that his wife left the residential place at about 6:30 a.m., on 05.12.2010, in a black car bearing registration no. GA-08/E-2182 driven by their neighbour, Prabhudesai. The petitioner did not give this important information, (if at all, noticed by him), to the police when he had reported the matter on 14.12.2010. It would neither be necessary nor appropriate to go into the material in details, lest the parties would be prejudiced at the trial. Suffice it to mention that the learned Sessions Judge on consideration of the circumstances and the material produced has found in paragraph 51 of the order that the prosecution has made out a *prima facie* case to frame charge. In the absence of the findings being perverse or the impugned order showing exercise of jurisdiction with material irregularity, no interference is called for.

13. In the result, the revision application is hereby dismissed.

14. It is made clear that at the trial, the learned Special Judge shall not be influenced, by any of the observations herein.

**C. V. BHADANG, J.**

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