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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL REVISION APPLICATION NO. 155 OF 2016

Satish Ramdas Shende,
Age: 35 years, Occu: Agriculture,
R/o: Newasa Fata, Tq. : Newasa,
Dist. Ahmednagar

..APPLICANT

VERSUS

The State of Maharashtra

..RESPONDENT

Mr Joydeep Chatterji, Advocate for applicant;
Mr K. D. Munde, Addl. Public Prosecutor for respondent

CORAM : N.W. SAMBRE, J.

DATE : 29th August, 2016

ORAL ORDER :

The applicant-accused sought discharge vide application preferred under section 227 of the Code of Criminal Procedure, in Sessions Case No. 53 of 2015, wherein he is chargesheeted for offences punishable under sections 302, 201 read with section 34 of the Indian Penal Code. The said prayer for discharge came to be rejected by learned Additional Sessions Judge, Newasa, vide order dated 20th May, 2016, on following counts :

“i) Statement of Tarabai that the accused were present at some distance from the well. When she went there and saw Gulab lying in the well.

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ii) Injury is noted on the head of the deceased which is inconsistent to accidental fall theory.

lii) Clothes of the deceased found to be torn. In case of accidental fall, tearing of clothes in such a manner, is not possible.

iv) There is evidence of quarrel between accused and deceased Gulab before three days of the occurrence.”

2. While trying to make out a case for discharge of the applicant, Mr Chatterji, learned Counsel appearing on behalf of the applicant has taken me through the entire charge-sheet and would submit that the incident in question had taken place on 21st June, 2013. According to him, complainant Ranjana was married to deceased Gulab, who was working as a labour in the field of one Narayan Wakale, where work of deepening of well for having more water source, was taken recourse to. According to him, Narayan, the owner of the field was in differences with the present applicant and other persons, who on approach road of his field committed encroachment. He would then urge that there was a complaint under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, against Narayan, from which he was absolved.

3. Learned Counsel would then submit that on 21st June, 2013, when the maternal aunt of deceased Gulab, who was staying with his wife Ranjana went to the field on foot, she could notice that Gulab was lying in the well and same has resulted into lodging an intimation by Narayan, owner of the field, to the police. He would then submit that initially, an

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accidental death report came to be registered, however, on or about 13th November, 2014, i.e. almost 1 ½ year of the date of incident of death of Gulab, a complaint came to be lodged by Ranjana, resulting into registration of the crime in question. He would then urge that Ranjana had claimed to have knowledge about the incident in question, through Tarabai, her mother-in-law, who in fact, is also not an eye witness to the incident but she was first to note fall of Gulab in the well in question. According to him, the entire case rests upon circumstantial evidence, as there are no eye witnesses to the incident. He would then urge that Tarabai had given three statements to the police; first on 13th November, 2014, wherein she had stated that when she had gone to the field on 21st June, 2013, she could see in all nine accused including the present applicant. The second statement of Tarabai was recorded on 25th June, 2013, in which she had, in clear terms, stated that she was not suspecting any foul play on the part of the accused persons *qua* death of Gulab. In her third statement, which was recorded on 8th April, 2014, she had stated that but for the present applicant, rest of the accused persons had quarreled with deceased Gulab on the issue of spreading of murum which was withdrawn from the well and at that time the co-accused had extended threats to the deceased.

4. Apart from above, the post-mortem report shows that deceased Gulab suffered following major injuries :

CLW of 5 x 3 cm present on vertex region with exposure of underlying bone – redish colour

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Fracture of right parietal bone

Fracture of distal 1/3rd of right radius + ulna

Fracture of distal 1/3rd of left radius + ulna

5. The cause of the death cited in the post-mortem report is death due to acute cardio respiratory arrest due to head injury.

6. In the above background, learned Counsel appearing on behalf of the applicant would urge that even if assuming that, what Tarabai stated in her statement is correct, though the present applicant is named in one of the statements that was given on 13th November, 2014 as one of the suspects, still, in other two statements, the applicant is not at all named as a suspect. He would then urge that the chain of events, sought to be brought during the investigation and which is to be considered as against the applicant for grant of discharge, is not complete, as according to him, the prosecution owes an explanation that the applicant's name is absent in earlier two statements. He would then urge that the cause of death of Gulab coupled with the material evidence that is brought on record shows that admittedly there is no role attributed to the applicant and as such, he is entitled for discharge.

7. Learned Addl. Public Prosecutor, while trying to oppose the prayer for discharge, would invite attention of this Court to the statement of Tarabai dated 13th November, 2014, naming the present applicant as one of the suspects. Learned Addl. Public Prosecutor then would urge that it is

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pursuant to the narration by Tarabai, the wife of deceased Gulab, has lodged the complaint in question. According to him, the nature of injuries suffered by deceased Gulab, the earlier dispute between the accused persons and the owner of the field, with whom deceased Gulab was working, namely, Narayan and threats issued by the accused persons to deceased Gulab on earlier occasion, constitute sufficient motive for commission of the crime in question. He then would urge that an opinion was sought during the investigation by the learned Addl. Public Prosecutor, who had in clear terms stated that the injury as was suffered by Gulab could be caused only by physical attack and not by fall. According to him, the Court below has rightly rejected the application.

8. Having considered the rival submissions and perused the investigation carried out till date, it is not in dispute that Gulab died on 21st June, 2013 after his body was first time noticed by his maternal aunt Tarabai with whom he was staying since his childhood. Tarabai, from her narrations, particularly upon perusal of her three statements, does not appear to be an eye witness to the incident.

9. Apart from Tarabai, the investigation depicts that there are no eye witnesses to the incident in question. The first person who noticed body of Gulab in the well was Tarabai, who in turn narrated the said incident to the wife of Gulab, namely Ranjana. For the first time, the statement of Tarabai came to be recorded by the Investigating Officer on 21st June, 2013, when she stated that her nephew Gulab had died of fall in the well as he slipped therein and nobody could be blamed for his death.

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Thereafter, the statement of Tarabai was recorded on 13th November, 2014, wherein she named the present applicant - accused No. 9 to be one of the suspects.

10. The second statement of Tarabai, which came to be recorded on 25th November, 2014, wherein she had not specifically named the present applicant as an accused, rather she had named other three persons and mentioned that the applicant could be from the group of Shende family, which is suspected to be involved in the crime in question.

11. There is one more statement given by Tarabai, which does not bear any date, as is reflected in the charge-sheet. In the said statement, the present applicant is not named as an accused.

12. While considering the aspect of motive attributed as against the present applicant for commission of the crime in question, it is required to be noted that there appears to be a boundary dispute with one Narayan, who owns an adjoining land, with whom deceased Gulab was working as a labour. It is the case of the prosecution that Narayan and Shende family had differences over boundary of the agricultural land as Shendes had encroached on the land of Narayan and also there was a dispute *qua* the approach road to the field, as Shendes were not having any approach road, but started using the path from the field of Narayan for the said purpose. Even assuming that there exists dispute and enmity between the

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parties, same could be against Narayan. So far as the role attributed to the present applicant, no allegation whatsoever is attributed to deceased *qua* enmity with deceased Gulab, but for spreading of murum as one of the instances, which was objected by the accused persons. The present applicant is not shown to have played any specific role, even in the earlier threats issued to deceased Gulab.

13. Apart from above, it is to be noted that the evidence as is brought on record is required to be considered to be correct for drawing an inference, whether the applicant is involved in crime in question, considering the enmity or the motive. In the light of the opinion tendered by the Additional Public Prosecutor, at the relevant time, about involvement of the accused persons in the offence punishable under section 302 of the Indian Penal Code, all the nine persons who are named as accused even if participated, the act on the part of the applicant and the co-accused could be that of getting caught hold of Gulab and throwing him in the well. The said attempt would have been resisted by Gulab resulting into suffering some physical injuries out of the same. The injuries as could be noticed on the body of deceased Gulab through post-mortem report and the inquest, as are narrated herein above, are in all four in number. Deceased Gulab had suffered two grievous injuries on head and two to his hands. If the said injuries are appreciated in the background of the narration as is made in the entire charge-sheet, particularly in the first statement given by Tarabai, the slipping of Gulab into the well and felling on his head while trying to take support of his hand, cannot be ruled out. Perhaps, he had suffered

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injuries only to the head and hands and cause of death is cited to be head injury. It is worth to mention here that there was hardly any water of 1-2 ft. in the well and Gulab had not died of drowning. The cause for which deceased Gulab went to the field of Narayan in the capacity of labour, in the investigation, appears to be that of setting the boundaries of well at its proper place, as same was disturbed during digging of the well. Hence, as per prosecution story, deceased Gulab was working on the edge of the well. Hence, in absence of strong motive against the applicant, deceased Gulab might have slipped into the well cannot be ruled out.

14. If the cumulative effect of overall evidence, as is discussed herein above is taken to be true at its face value, *prima facie*, this Court is required to draw an inference that there is hardly any material on record to connect the present applicant to the crime in question, much less his involvement is based on circumstantial evidence.

15. In my opinion, this is a fit case warranting this Court to exercise powers under section 227 of the Code of Criminal Procedure, for discharge of the applicant.

16. In view thereof, in my opinion, the present application deserves to be allowed. I, therefore, pass following order :

The order dated 20th May, 2016, passed by learned Additional Sessions Judge, Newasa, below Exh. 15, in Sessions Case No. 53 of

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2015, is hereby quashed and set aside. Application Exh. 15 preferred by the applicant for discharge under section 227 of the Code of Criminal Procedure stands allowed.

Consequently, Criminal Revision also stands allowed in above terms.

(N.W. SAMBRE, J.)

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