

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (BA) NO.1 OF 2020

Leeladhar alias Nilesh s/o Vinayak Sawarkar .Vs. State of Maharashtra,
through PSO, PS, Karanja (Ghadge), Tah. Karanja (Ghadge, Dist. Wardha.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. J.M. Hingwe, Advocate for applicant.
Mr. V.A. Thakare, A.P.P. for non applicant-State.

CORAM : V. M. DESHPANDE, J.

DATED : JANUARY 16, 2020.

Heard Mr. J.M. Hingwe, learned counsel for the applicant and Mr. V.A. Thakare, learned Additional Public Prosecutor for non applicant-State. Also, perused the reply filed on behalf of the prosecuting agency and the entire charge-sheet.

Applicant is arrested on 13.08.2019 in connection with Crime No. 268/2019 registered with Police Station, Karanja (Ghadge), Dist. Wardha for an offence punishable under Section 302 of the Indian Penal Code.

Investigation is over and charge-sheet is already filed.

Charge-sheet shows that wheels of criminal law were set into motion by Laxman Narayan Thakare on 13.08.2019. He is father of the deceased Prakash Thakare.

As per report, there was a marital discord in between Prakash Thakare and his wife. Therefore, his wife was residing along with their progeny at her parental house

at Savargaon (Yenikuni), Tahsil Narkhed since last one year and Prakash Thakare was residing at village Anjandoh.

Report further states that on 13.08.2019 when Laxman was doing his agricultural work at one Bajirao Hajare's agricultural field, he received one phone call from Vaibhav Hajare in which he disclosed that Prakash took forcible entry in the house of Vinayak Sawarkar and on that account Vinayak's son Leeladhar alias Nilesh (present applicant) assaulted on Prakash and he is laying near house of Vinayak Sawarkar. From the First Information Report (FIR) it is clear that first informant is not an eye witness.

The postmortem report was prepared when the dead body of Prakash was sent to the hospital and according to postmortem report, he died due to head injuries.

According to the prosecution, the incident of assault at the hands of applicant on deceased was witnessed by Smt. Vaishali Vadhve. Her two statements are available in the charge-sheet. Her first statement dated 14.08.2019 recorded by investigating officer under Section 161 of the Code of Criminal Procedure (Cr.P.C.) whereas her another statement is dated 22.08.2019 recorded by learned Magistrate under Section 164 of the Cr.P.C.

From both the statements it is clear that she is resident of village Aajandoh and in her neighbour Vinayak Sawarkar resides. As per her statement, Vinayak Sawarkar is having two daughters and one son (applicant). His elder daughter is married whereas another Savita is mentally retarded girl.

As per first statement of Vaishali, on 13.08.2019, when she went to house of Raju Uike, that time she noticed applicant giving blow of “*Balli*” resulting into felling of Prakash on ground and applicant threw his “*Balli*” on the spot itself. As per her statement, that time she noticed that Prakash was completely necked. Her statement would show that when she made inquiry with applicant that time it was stated to her by applicant that the deceased (Prakash Thakare) was found to be in necked condition on the person of his mentally retarded sister and therefore, he made an assault.

In her statement under Section 164 of Cr.P.C. she does not state that she witnessed the actual assault. She only states that she noticed that deceased Prakash was lying on the ground on necked condition and applicant Nilesh was present near him and was armed with “*Balli*”. Her said statement is also in the line of her first statement that the applicant disclosed that he assaulted because deceased was sleeping in necked condition on his mentally retarded sister. The charge-sheet contains the certificate from Department of Psychiatry, Mahatma Gandhi Institute of Medical Science, Sevagram, which shows that Savita is mentally retarded girl. Charge-sheet also contains statement of mentally retarded girl which was recorded with the assistance of special teacher of *Chintamani Niwasi Matimand Vidyalaya, Pulgaon*. Statement of said Savita would show that when on the day of the incident deceased came to her house, he removed his

cloths and slept on her person.

In my view, the act on the part of the applicant is reaction when he noticed that deceased was sleeping in necked condition on the body of his mentally retarded sister. As per postmortem report, applicant has not taken any disadvantage and has not done any cruel act. In that view of the matter, in my view, during the trial, the offence can be scaled down to a lessor one.

The investigation is already over and charge-sheet is already filed. In view of the aforesaid, I am of the view that discretion has to be exercised in favour of the applicant. That leads me to pass the following order:

ORDER

- (i) The application is allowed.
- (ii) Applicant – Leeladhar alias Nilesh s/o Vinayak Sawarkar be released on bail in connection with Crime No.268/2019 registered with Police Station, Karanja (Ghadge), Dist. Wardha for an offence punishable under Section 302 of the Indian Penal Code, on he executing P.R. bond in the sum of ₹5,000/- with one solvent surety in the like amount.
- (iii) Applicant is directed to attend Police Station, Karanja (Ghadge), Dist. Wardha once in two months i.e. on Sunday and shall be with the investigating officer, until culmination of trial.

The application is disposed of.

JUDGE

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