

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

Criminal Revision Application (REVN) No. 51 of 2020

Leeladhar @ Nilesh s/o Vinayak Sawarkar

Vs.

State of Maharashtra Through Police Station Officer, Police Station Karanja
(Ghadge) and Another

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

Court's or Judge's orders

Mr. B.H. Tekam, Advocate for the applicant
Mr. S.P. Deshpande, APP for the respondent No.1.
Mr. S.S. Das, Advocate appointed for the respondent No.2.

CORAM : MANISH PITALE, J.

DATED : DECEMBER 21, 2020

Heard learned counsel for the applicant, the learned APP and Mr. S.S. Das, learned counsel appointed by the Legal Aid Sub Committee to appear on behalf of respondent No.2 (original complainant).

2. By this Revision Application, the applicant has challenged order dated 18/01/2020, passed by the Court of Additional Sessions Judge, Wardha, whereby an application for discharge filed by the Revision Applicant has been rejected.

3. By FIR dated 13/08/2019, an offence under Section 302 of the Indian Penal Code, 1860, was

registered against the applicant. As per the oral report, leading to registration of the FIR, it was recorded that the applicant had allegedly caused the death of son of the respondent No.2 by assaulting him by means of a wooden log. The investigation in the matter was taken up, statement of witnesses were recorded, chargesheet was submitted before the Court below.

4. The applicant contended before the Court below that the material that had come on record along with the chargesheet, in pursuance of the investigation, itself indicated that the applicant had acted in exercise of his right of private defence and by operation of Section 96 read with Section 100 of the Indian Penal Code, 1860, the revision applicant deserved to be discharged. The Court below considered the material on record and held as follows :

“I have gone through the facts and circumstances and above cited case and case in hand, with due respect to the ratio laid down in the above cited cases, I would like to state here that ratio laid down in the above cited cases are not applicable to the case in hand. Because, at this stage, there is eye witnesses of the incident, who saw the accused with wooden log after assault to the deceased and there were talks between the accused and the witnesses. The postmortem report reveals about the fracture of skull and internal brain hemorrhage as well as other injuries over neck, left thigh, left wrist, right chest on the person of deceased. Whether assault to the deceased was pre-planned or certain circumstances provoked the accused to assault deceased is a matter of trial and not at this stage. At this

stage, there is prima facie case, evidence against the accused to frame charge against the accused. During trial, accused has to prove existence of circumstances, bringing the case within any of the general exception in the Penal Code or in special exceptional under any other law for the time being in force. Hence, on these reasons and in the light of above discussion, I do not find substance in the application. Hence, the application is liable to be rejected. Hence, I proceed to pass the following order.”

5. The learned counsel for the applicant submitted that a perusal of the material on record would show that even if the statements of the witnesses, including that of the sister of the applicant was to be taken into consideration, the manner in which the incident occurred clearly demonstrated that the applicant had acted in exercise of his right to private defence. It was submitted that the statements recorded under Sections 161 and 164 of the Criminal Procedure Code, 1973, of the material witnesses, indicated that the victim in the present case was in the process of sexually assaulting and committing rape on the sister of the applicant and in order to avert such an incident, the applicant was constrained to assault the victim, resulting in his death. It was submitted that Section 96 of the IPC clearly stipulates that nothing is an offence, which is done in exercise of right of private defence. It was further submitted that under Section 97 of the IPC, a person can exercise such right of private defence not only in respect of his own body,

but, the body of another person also. It was then submitted that the contingencies enumerated in Section 100, particularly, thirdly and fourthly, directly applied to the facts of the present case indicating that the Court below had erred in rejecting the application for discharge.

6. On the other hand, the learned APP invited attention of this Court to the material on record, as also the aforesaid provisions of the Indian Penal Code and it was submitted that the reasoning contained in above quoted paragraph 7 of the impugned order passed by the Court below was fully justified and no interference was warranted.

7. The learned counsel appearing for the respondent No.2 (original complainant) submitted that it was necessary for this Court also to appreciate Sections 97, 99, 100 and 102 of the IPC, so as to appreciate as to whether the applicant in the present case could successfully claim right of private defence at this stage. It was submitted that Section 99 read with Section 102 of the IPC, clearly indicated that the Court was required to examine on the basis of material on record as to when the right of private defence commences and when it comes to an end. This, according to the learned counsel for the respondent No.2 was crucial and when the material on record in the present case, particularly, the statement of sister of

the applicant was taken into consideration, it would show that the right of private defence can certainly not be successfully claimed by the applicant at this stage and that the matter deserves to go to trial.

8. Having heard the learned counsel for the rival parties, this Court has considered and appreciated the material on record. Much emphasis was placed by the learned counsel for the applicant on the statements recorded under Sections 161 and 164 of the Criminal Procedure Code, 1973, of the witnesses. It was submitted that the said statements clearly indicated that the applicant was constrained to assault the victim because he was in the process of committing sexual assault or rape of the sister of the accused. It was further stated that the prosecution itself had brought on record a document issued by the Department of Psychiatry of the Medical College, indicating that the sister of the accused was mentally challenged. On this basis, it was submitted that such a mentally challenged girl could be equated to a minor and that the purported consent of such a girl for the sexual act was irrelevant and that, therefore, the material on record clearly indicated that the right of private defence could certainly be invoked by the applicant at this stage itself.

9. This Court has looked at the material on record. The statements of witnesses show that according to them, the applicant had committed the

aforesaid act upon finding that the victim was in the process of imposing himself on the sister of the applicant and that both of them were found to be without their clothes. But, what is crucial is that statements of the witnesses indicated that upon observing the aforesaid condition in which the sister of the accused and the victim were found, the applicant pulled the victim away and repeatedly assaulted him while taking him out of the house into the lane, thereby causing injuries to various parts of the body, including a fatal blow on the head of the victim. This aspect is crucial in the present case because even as per the statements of witnesses on record the assault committed by the applicant appears to have continued for sometime.

10. In fact, the Court below in the above quoted portion of the impugned order, has referred to the post-mortem report and the fact that there was fracture to the skull and internal brain hemorrhage and other injuries over neck, left thigh, left wrist and right chest of the victim. This aspect was appreciated by the Court below while holding that the contentions based on right to private defence raised by the applicant could be considered only when the matter goes to trial.

11. The learned counsel for the respondent No.2 specifically invited attention of this Court to the statement given by sister of the accused, which

indicated that perhaps the act said to be undertaken by the victim and the sister of the applicant was voluntary. Apart from this, the statement of father of the applicant / accused itself indicated that according to him, the applicant had stated that he was enraged on finding his sister and the victim in the naked condition together on the bed and thereupon the applicant pulled the victim away and repeatedly assaulted him with wooden log, dragging him out into the lane. Such statements on record are crucial for examining the contention raised on behalf of the applicant that right to private defence is made out at this stage and that application for discharge ought to have been allowed.

12. Perusal of Sections 96, 97, 99, 100 and 102 of IPC shows that even if a person can claim right of private defence in respect of body of another person, such right in no case can claim to inflict more harm than necessary for the purpose of defence and further that the right of private defence commences when the reasonable apprehension of danger to body arises and continues so long as such apprehension continues.

13. A proper appreciation of the aforesaid provision would show that it is only upon trial that in the facts and circumstances of the present case, it can be established as to whether the applicant was entitled to exercise his right to private defence throughout the sequence of events and the manner in which the

incident took place. It is in this context that the above quoted observations made by the Court below in the impugned order are justified. This Court is of the opinion that no error can be attributed to the impugned order and that the material available on record clearly indicates that the matter will have to go to trial for the applicant to establish his right to private defence.

14. In this light, the reliance placed on behalf of the applicant on the judgment of the Hon'ble Supreme Court in the case of **Vadilal Panchal Vs. Dattaraua Dulaji Ghadigaonkar and another 1960 CRI.L.J. 1949** and judgment of the **Madras High Court in the case of Anuj Jermi Vs. State by Inspector of Police, T-14, Mangadu Police Station, Mangadu, Chennai and Another (Order dated 01/08/2012, passed in Criminal O.P. No. 17837 of 2012)** cannot take the case of the applicant any further. In these cases, on facts, the Court appears to have come to a conclusion that the right to private defence was made out even at the stage of completion of investigation and material brought on record. As noted above, in the facts and circumstances of the present case, it will have to be established upon trial as to whether right to private defence, as claimed by the applicant continued throughout the incident, resulting in death of the son of respondent No.2.

15. In view of above, this Court finds no merit

in the present Revision Application and accordingly, it is dismissed.

JUDGE

MP Deshpande