

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

CRIMINAL APPLICATION (APL) NO.1053 OF 2022

Prashant Sukhdeo Tipale,
age 35 years, occupation : private,
r/o Gandhinagar, Pulgaon,
District Wardha.

... Applicant

- Versus -

1) State of Maharashtra, through
Police Station Officer,
Police Station, Pulgaon,
District Wardha.

2) Sau. Jyoti Sagar Barde,
age 39 years, occupation : private,
r/o Ward No.16, Subhash Nagar,
Devali, Pulgaon, District Wardha.

... Non-applicants

Shri R.R. Vyas, Advocate for applicant.

Shri S.S. Doifode, Additional Public Prosecutor for non-applicant
no.1.

CORAM : SUNIL B. SHUKRE AND
M.W. CHANDWANI, JJ.

DATED : DECEMBER 6, 2022

ORAL JUDGMENT (PER SUNIL B. SHUKRE, J.) :

Rule. Rule is made returnable forthwith. Heard finally
with the consent of the learned Counsel appearing for the parties.

2) By this application, the applicant is seeking relief of quashing and setting aside charge-sheet No.151/2022 registered as Sessions Case No.80/2022 arising from Crime No.456/2022 registered for an offence punishable under Section 302 of Indian Penal Code at Police Station, Pulgaon, District Wardha.

3) The facts of the case, which led to registration of crime against the applicant, are stated in brief as under :

On 19/5/2022 deceased Akash Gharde, rider of the motor-cycle, pillion rider complainant Jyoti Barde and another pillion rider Ratnapal Tamgadge were proceeding on the motor-cycle towards Gandhi Nagar from Panchdhara road, Pulgaon. At that time, motor-cycle driven by deceased Akash Gharde brushed another moped on its one side, as a result of which quarrel ensued between moped rider and deceased Akash Gharde. Moped rider, who is applicant here, is alleged to have beaten up deceased Akash Gharde by giving him slaps and fist blows on his face and also in his abdominal region. Deceased Akash Gharde fell unconscious due to injuries suffered on his face and stomach by fist blows rained upon him by the applicant. Deceased Akash Gharde was immediately

taken to Government Hospital, Pulgaon, but unfortunately he was pronounced dead when brought to the Hospital. A report of the incident was lodged by complainant Jyoti Barde with Police Station, Pulgaon. On the said allegations made in the report, Pulgaon Police registered an offence punishable under Section 302 of Indian Penal Code and investigated the matter. After completion of the investigation, Police filed final report, i.e. charge-sheet under Section 173 of the Code of Criminal Procedure before the concerned Court of Judicial Magistrate, which Court later on committed the accused, i.e. applicant along with case to the Sessions Court for trial. The final report was filed under Section 302 of Indian Penal Code.

4) Shri Vyas, learned Counsel for the applicant, submits that considering the allegations made in the first information report filed against the applicant, no offence punishable under Section 302 of Indian Penal Code should have been registered and at the most the offence punishable under Section 304 Part II of Indian Penal Code could have been registered as the allegations taken at their face value did not disclose any intention or knowledge on the part of the applicant. He further submits that as some more material was collected by the Investigating Officer during the course of

investigation disclosing that even offence punishable under Section 304 of Indian Penal Code was not made out, the Investigating Officer ought not to have filed charge-sheet under Section 302 of Indian Penal Code. Thus, he submits that this is a case of complete non application of mind on the part of the Investigating Officer. He points out that all the relevant Sections under which cognizable offences are registered and investigation is made and final report is filed, such as Sections 154, 157, 169, 170 and 173 of the Code of Criminal Procedure, mandatorily require the Investigating Officer to apply his mind to the facts and circumstances of each case and decide as to which offences amongst several options available before him would be prima facie made out and accordingly make his investigation and file his final report. He submits that this is also the requirement of law as expounded in the case of *Lalita Kumari vs. Government of Uttar Pradesh and others* {(2014) 2 SCC 1} (para 102). On these grounds, learned Counsel for the applicant seeks relief of quashing of the charge-sheet filed against the applicant.

5) The application is strongly opposed by Shri Doifode, learned Additional Public Prosecutor for the non-applicant no.1,

submitting that no injustice has been done to the applicant as the applicant still has an opportunity of submitting his claim that he has not committed even in a prima facie manner any offence of murder or any offence as punishable under Section 304 of Indian Penal Code, which prescribes the punishment for culpable homicide not amounting to murder, at the time of framing of charge. He further submits that if the charge is framed, the applicant would still have the opportunity of seeking alteration of charge to applicable Sections of Indian Penal Code.

6) Shri Doifode, learned Additional Public Prosecutor further submits that if the allegations made in the first information report are taken at their face value, one can easily say that they do disclose cognizable offence prima facie committed by the applicant and since the severe beating of the deceased by the applicant, may be by means of slaps and fist blows, resulted in instantaneous death of Akash Gharge, it cannot be said that the Investigating Officer failed to apply his mind to the facts and circumstances of this case and wrongly registered offence punishable under Section 302 of Indian Penal Code. He further submits that if the post mortem report discloses cause of death being hepatic failure due to excessive intake

of alcohol, it would be a matter of evidence to ascertain the cause and effect of incident, which took place in the night of 19/5/2022 and it is not for the Investigating Officer to act like a Court and decide the matter. It is further submitted that in this case, whether offence punishable under Section 302 of Indian Penal Code has been committed or offence as contemplated under Section 304 of Indian Penal Code has been committed or any other offence as contemplated under Section 323 or Section 325 of Indian Penal Code is committed is required to be considered by the competent Court of law initially at the time of framing of charge or at the time of considering any application for alteration of charge or later at the time of appreciation of evidence.

7) Upon consideration of various facts and circumstances of this case, as ascertained from the material available in the charge-sheet and also the provisions of law pointed out by the learned Counsel for the applicant, we find no substance in the argument of the learned Counsel for the applicant and find merit in the submissions of the learned Additional Public Prosecutor. Our reasons are given in the ensuing paragraphs.

8) The reasons for not agreeing with the submissions of the learned Counsel for the applicant by us lie in the manner in which the incident has taken place. The incident comprises facts, such as giving of slaps and fist blows on the face and also in the abdominal region of deceased Akash, deceased Akash falling unconscious immediately after receiving the blows of slaps and fist, deceased Akash being immediately taken to Government Hospital, Pulgaon and deceased Akash being pronounced “brought dead” to the Hospital. These facts are something, which would require unravelling of intention and/or knowledge on the part of the assailant, i.e. applicant and just because post mortem report says that cause of death was hepatic failure due to excessive intake of alcohol, it cannot be said that the incriminating facts, which have been disclosed by the eye witnesses, are improbable to be believed at this stage itself. After all account of eye witnesses in a given case assumes importance and sometimes even precedence over the circumstantial evidence and this is all the more so when the circumstantial evidence itself is of doubtful nature. There is a saying, which has gained coinage in our system of administration of justice, which goes like this “while man may lie, circumstances do never”. These words are true only when the incriminating circumstances establishing a complete chain

of events pointing out towards nothing, but guilt of the accused have been established beyond any manner of doubt. Here in this case, the post mortem report itself says that viscera was not preserved. If that is so, one wonders as to how the Doctor, who conducted post mortem examination, could have said with any iota of confidence that there was hepatic failure, that there was excessive intake of alcohol and that there was cause and effect between excessive consumption of alcohol and hepatic failure. In fact, the post mortem report, which has been issued by the concerned Doctor, as of now is of doubtful nature and it does not appear probable that even during the trial, the doubt, which it has given rise to, would be dispelled as the concerned Doctor has failed to preserve the viscera. Such failure of the Doctor himself is a cause of investigation or at least cause of departmental enquiry – a call in respect of which, we are sure, would be taken by the concerned Authorities in due course of time. But the fact remains that in the present case, the circumstantial evidence in the nature of post mortem report does not create any doubt about the version of the eye witnesses *prima facie* indicating that there was an intimate relation between raining of fist blows and slaps on deceased Akash by the applicant and immediate death of deceased Akash as a direct consequence thereof. It would then follow that a

detailed appreciation of evidence in the present case would be necessary to discover truth behind cause of death of Akash and that would be possible not at this stage, but at the stage when evidence is adduced by the prosecution and that would mean that the applicant needs to be relegated to whatever remedy he may have in the present case before the trial Court. This is also the reason why we find that case of *Lalita Kumari* (supra) does not help the applicant.

9) In the result, we do not find any merit in the application. The application stands dismissed. No costs.

JUDGE

JUDGE

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