

VRJ

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL REVISION APPLICATION NO.488 OF 2019

Gulam Hussain Rangrej	... Applicant
V/s.	
The State of Maharashtra	... Respondent

Mr. Milan Desai i/by Mr. A.M. Desai for the applicant.

Mr. Arfan Sait, APP for the respondent/State.

Mr. A.T. Shirke, PSI, Antop Hill Police Station.

CORAM : AMIT BORKAR, J.

DATED : MARCH 31, 2023

P.C.:

1. By the impugned application for discharge for offence under section 304 of the Indian Penal Code, 1860 has been rejected. The prosecution case is as under.

2. On 19th April 2015, PSI, Naina Patil received call from Sion Hospital that one person Mohd. Shariff Mohd. Hussain aged about 35 years is lying near Sujata Hotel in front of library, S.M.D. Road, Antop Hill, Mumbai at around 10:00 a.m. He was admitted in the hospital by Shanoo Bablu Shaikh. He thereafter died. The inquest was conducted and the report under section 174 of the Code of Criminal Procedure, 1973 of unnatural death was registered. The investigating officer, thereafter, recorded the statements of witnesses.

3. According to the prosecution, the witness one Rakesh Ashok Chaudhary told that on 18th April 2015 at about 9:30 to 10:00 p.m. he heard noise. The deceased was assaulted by means of stick on his leg at that time the applicant was present.

4. According to the witness Allah Baksh assaulted the deceased on his mouth and chest resulting into he is fell down and due to such fall his head struck on the road. According to the prosecution, due to beating of the applicant and Allah Baksh the deceased died. The offence under section 304 read with 34 of the Indian Penal Code, 1860 was registered. After completion of investigation charge-sheet was filed.

5. The applicant, therefore, filed an application for discharge which has been rejected by impugned order. The Trial Court in paragraph 22 considered the material on record as under:

“22.

Witness Ashok Chavan is handicapped person who is using stick for walking. He categorically stated that the applicant snatched his stick and by the stick he assaulted the deceased on his legs, so also second accused assaulted the deceased by fist blows on his mount and chest and thereafter the deceased fell on the ground. That time first witness Ashok Chavan was also present. The statement of both these witnesses are corroborative in nature. It means they are eye witnesses to this incident.”

6. Learned advocate for the applicant submitted that assuming the statement of witnesses recorded after one month of the incident are considered as correct still offence under section 304 is not made out. There was neither knowledge nor intention to cause

death.

7. In the facts of the case, the offence registered is under 304 of the Indian Penal Code, 1860. Prima facie, it appears that there was some incident which resulted into felling of a person. Based on material on record, it is for the Trial Court to arrive at a conclusion as to whether ingredients of offence under section 304 are fulfilled or the accused can be convicted and sentenced for lesser offence. Said a course is not available at the stage of discharge.

8. Considering the reasons assigned by the Sessions Judge, in my opinion, there is no infirmity in the order.

9. The criminal revision application is, therefore, dismissed. No costs.

(AMIT BORKAR, J.)