



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

CRIMINAL APPLICATION (BA) NO.1196 OF 2023

(Raghav Baccha Jha Vs. The State of Maharashtra)

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. R.S. Renu, Advocate for the applicant.

Mr. A.R. Chutke, APP for the non-applicant/State.

CORAM:- URMILA JOSHI-PHALKE, J.

DATED :- JANUARY 17, 2024.

The applicant came to be arrested on 22.04.2023 in connection with Crime No.376/2023 for the offence punishable under Sections 302 and 201 read with Section 34 of the Indian Penal Code.

2. The accusation against the present applicant is on the basis of report lodged by co-accused i.e. Shiwani herself on the contention that the deceased is her uncle (mother's sister's husband). She was residing along with her maternal grandmother Pushpa Shyamrao Kodurwar since childhood in Ballarsha. She is a student studying in 1st Year of M.B.A. in S. B. Jain Institute of Technology, Management and Research, Nagpur. The said Pushpa has three daughters namely Sunita, Sangita and Yamini. Her daughter Sangita married to Vishal Dasarwar, who is the deceased. After marriage, Sangita resumed cohabitation with her husband at his place for two years, but as deceased was addicted to bad vices like drinking liquor used to beat her daily. Due to the continuous ill-treatment

at the hands of deceased, Sangita left the house of the deceased and started staying with her parents in Ballarshah. However, deceased used to visit Sangita's maternal home in drunken condition, used to trouble all the family members constantly. He was harassing the grandmother of the co-accused - Shiwani on account of transferring the property in his name. On 18.04.2023, Shiwani's grandmother was admitted to the Government Hospital. On 20.04.2023, deceased assaulted Shiwani with the hammer. On 21.04.2023, Sangita left her maternal house along with her daughter as deceased was constantly beating her. On 21.04.2023 at about 10:30 p.m., deceased was abusing Shiwani and her family members in drunken state and thereafter left. Again he came in night at about 1:00 a.m. and thereafter he found lying on bed. It is alleged that prior to the incident, he has assaulted the Shiwani by throwing her on the ground. As the applicant - Shiwani fed up with his continuous harassment, she alleged to have committed his murder with the help of another applicant - Ramprakash and other co-accused. Shiwani herself approached to the Police Station and lodged report and narrated the incident that she has pressed the neck of the deceased and committed his murder. Subsequently, the statement is recorded and in that she has stated that with the help of the another applicant - Ramprakash and other co-accused by tying the hands and legs of the deceased, she gave a blow by means of shaving blade on the neck of the deceased and caused

his death. On the basis of said report, Police have registered the crime against both the applicants.

3. Mr. Renu, learned counsel appearing for the applicant submitted that the co-accused namely Ramprakash Tiwari alias Tripathi against whom the similar allegations are made and the main accused are already released on bail. As far as the role of the present applicant is concerned, only allegations is that he holds the legs of the deceased. Now, the investigation is completed and charge-sheet is filed. He further submitted that the circumstances under which the alleged incident has taken place are to be taken into consideration as every family member was fed up with the behavior of the deceased, and therefore, the alleged incident has taken place.

4. After hearing the learned Counsel for the applicant and after perusal of the investigation papers, there is no dispute as to the fact that the crime is registered on the basis of report lodged by the co-accused Shiwani herself. The recitals of the FIR is in the nature of the confessional statement. During the investigation, the investigating Officer has recorded the statement of the wife of the deceased, who has also substantiate the contentions which are narrated in the FIR. In her statement she also stated that her husband was continuously harassing not only to her but her family member also. Though she left the company of the husband

he used to visit her parents house and was insisting her mother to transfer the property in his name. On 10.04.2023, the co-accused Shiwani had come to Ballarshah and on 20.04.2023 since 6:00 am deceased was abusing her sister and co-accused Shiwani continuously. He had also thrown co-accused Shiwani on the ground and assaulted her. On 21.04.2023 also the deceased came to her home under the influence of liquor and was threatening her that he will kill the co-accused Shiwani and was kicking the door of the room wherein co-accused Shiwani and her mother were staying. In the same incident co-accused Shiwani had sustained injuries. Therefore, she left the house of her mother and went at her friend's house. On 22.04.2023, wife of the deceased received the information regarding the death of the deceased. Thus from the statement of the wife of the deceased, it reveals that as the deceased was continuously harassing the family members and especially co-accused – Shiwani. Co-accused Shiwani eliminated him with the help of the present applicant.

5. The bail was granted to the co-accused against whom the allegation is made that she has killed the deceased by referring the observation of the Hon'ble Apex Court in the case of *Aghnoo Nagesia vs State of Bihar*, reported in *[(1996) 1 SCR 134]* wherein it is held that the law regarding confession is discussed by the Hon'ble Supreme Court and in para No.18 it is held that if the first information report is given by the accused to a

Police Officer and amounts to a confessional statement, proof of the confession is prohibited by Section 25. The confession includes not only the admission of the offence but all other admissions of incriminating facts related to the offence contained in the confessional statement. No part of the confessional statement is receivable in evidence except to the extent that the ban of Section 25 is lifted by Section 27. The Hon'ble Apex Court has also held that the confession in the nature of first information report is not admissible against the appellant and appeal was allowed by acquitting the accused. This Court has also considered the aspect of first information report by the accused and held in *Rohidas Manik Kasrale vs. State of Maharashtra, Criminal Appeal No.1496 of 2003 decided on 07.12.2011*, wherein it is held that the first circumstance sought to be proved against the appellant is that he had confessed about his guilt. There is no doubt that the first information report lodged by him, being confessional in nature, cannot be used against him in view of the provisions of Section 25 of the Evidence Act. The legal position being very clear and undisputed on this point, this aspect does not need any further discussion. This Court has further referred various judgments and held that Section 25 of the Evidence Act provides that no confession made to a Police Officer shall be proved as against a person accused of any offence. Section 26 of the Evidence Act provides that no confession made by any person whilst he is in the custody of a Police Officer shall be proved as against him unless

such confession is made in the immediate presence of a Magistrate.

6. Thus, the admissibility of a confession made by an accused to a third person in the presence of Police Officer has been an issue which has been the subject matter of the appeal before the Court and while dealing with this aspect, it is held that the confession in the nature of first information report by the accused cannot be used against the accused. In *Om Prakash vs. State of U.P.*, [AIR 1960 SC 409], also this aspect is considered and by referring the judgment of Privy Council in *Pakala Narayana Swami vs. Emperor*, and held that a confession must either admit in terms the offence, or at any rate substantially all the facts which constitute the offence. An admission of a gravely incriminating fact, even a conclusively incriminating fact is not of itself a confession, for example an admission that the accused is the owner of and was in recent possession of the knife or revolver which caused a death with no explanation of any other man's possession. Some confusion appears to have been caused by the definition of 'confession' in Article 22 of Stephen's 'Digest of the Law of Evidence' which defines a confession as an admission made at any time by a person charged with a crime stating or suggesting the inference that he committed that crime. If the surrounding circumstances are examined it will be apparent that the learned Author after dealing with admissions generally is applying himself to admissions in criminal cases, and for

this purpose defines confessions so as to cover all such admissions, in order to have a general term for use in the three following Articles, confession secured by inducement, made upon oath, made under a promise of secrecy. The definition is not contained in the Evidence Act, 1872 and in that Act, it would not be consistent with the natural use of language to construe confession as a statement by an accused 'suggesting the inference that he committed' the crime. Thus, now it is well settled law that the confession by the accused before the Police Officer cannot be used against the accused.

7. In *Murli alias Denny vs. Rajasthan*, [1995 *Supp (1) SCC 39*], wherein also the Hon'ble Apex Court held that confessional statement cannot be used for any purpose in favour of prosecution against the accused. However, the only admission in favour of accused can be taken into account to examine whether the case falls under exception 1 to Section 300 of IPC, particularly, when there is no other evidence disclosing as to how the quarrel ensued and attack took place.

8. Having gone through the settled law and the facts of the present case, in the present case also, the various statements recorded by the Investigating Agency shows that the deceased was addicted to bad vices and was continuously harassing the family members prior to the incident and also to the co-accused. The recitals of the FIR and the statement of the wife of the deceased also

substantiate the same contention. The allegation further shows that deceased has thrown the co-accused on the ground and also assaulted her. Thus, the fact shows that it has created the fear in the mind of the co-accused and thereafter the said occurrence has taken place. There is a clear indication from the FIR and the statement of the witnesses that it was the deceased who was in aggressive at the house of the co-accused and abused her due to which she lost her control and alleged occurrence has taken place. As far as role of the present applicant is concerned, he has assisted the co-accused to eliminate the deceased.

9. Thus, at this stage there is *prima facie* case to held that the case falls under exception 1 of Section 300 particularly in view of the fact that there is no other evidence disclosing as to how the quarrel has taken place. Having carefully considering the entire material, admittedly the applicant has made out the case to release him on bail. In view of that the application deserves to be allowed. Accordingly, I proceed to pass the following order:

- i) Criminal Application is allowed.
- ii) The applicant - Raghav Baccha Jha is released on bail on executing PR. Bond in the sum of Rs.25,000/- with one solvent surety of like amount in connection with Crime No.376/2023 for the offence punishable

under Sections 302 and 201 read with Section 34 of the Indian Penal Code.

iii) The applicant shall attend the concerned Police Station once in a week i.e. first day of every month, till the culmination of trial.

(iv) The applicant shall not directly or indirectly make any inducement and threat or promise to any person acquainted with the facts of the present case.

(v) The applicant shall furnish his cell phone number and address with address proof.

10. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)

**Divya*