

MHPU140014452020



**Sessions Case No. 84/2020**

State of Maharashtra

Vs.

Sitaram Shankar Gaikwad

**ORDER (BELOW EXH.3)**

This application has been filed under Section 227 of the Code of Criminal Procedure for discharging the accused from the charges in Sessions Case No. 84/2020.

2] It is contended that the offence has been registered against present accused at Yavat police station for the offences punishable under sections 302 and 506 of the Indian Penal Code vide C.R. No. 355/2020 on 08.04.2020. He got arrested on 09.04.2020 and presently he is in the Magisterial custody. After the investigation police filed charge-sheet and the case has been committed to this Court. Present case is in respect of single injury sustained by the deceased. Section 302 of the I.P.C. is not at all attracted to the present crime. The F.I.R. itself shows that the accused had no intention to kill the deceased. The incident took place on sudden provocation. Further, it is alleged that the accused used a wooden stick which is not a deadly weapon. It is further submitted that the deceased was addicted to Toddy and under its influence he fall down and got injured. Thus, the case is apparently covered under Exception 4 to section 300 of the Indian Penal Code. Hence, prayed to discharge the accused from section 302 of the I.P.C. Hence, the application.

3] The Ld. APP filed say on the overleaf of the application itself and took strong objection to discharge he accused. It is further submitted that there is prima facie sufficient evidence against the present accused. It is also clear that just prior to the incident, the accused threatened the deceased to kill ('तु माझे लहान मुलाला का ओरडला, तुला आता खल्लास करतो'). Hence, there is clear cut motive or intention of the accused to commit murder of the deceased. There are eye witnesses to the incident. Further, the Postmortem report also shows cause of death as 'death due to head injury'. Hence, prayed to reject the application.

4] Heard, the learned **Adv. Mr. S. C. Kshirsagar** for the applicant and the learned **APP K. S. Navale**

5] At the outset it is necessary to consider that the Hon'ble Apex court in case of **Union of India Vs. Prafulla Kumar Samal and others [1979 (3) SCC 4]** has formulated following 7 guiding principles to be considered at the time of deciding application for discharge such as :

*1- The Judge while considering the question of framing of charges under section 227 of the Cr.P.C. has the undoubted power to sift and weigh the evidence for the limited purpose of finding and whether or not a prima facie case against the accused has been made out.*

*2- Where the materials placed before the Court discloses grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial.*

3- *The Court can not merely act as a post office or mouth piece of the prosecution but it has to consider the broad probabilities of the case.*

4- *On the basis of material on record if the Court could form an opinion that the accused might have committed the offence, it can frame the charge.*

5- *At the time of framing of charges, the probative value of the material on record can not be gone into but before framing of charge the Court must apply its judicial mind on the material placed on record and must be satisfied that the commission by the accused was possible.*

6- *At the stage of section 227 and 228 of the Cr.P.C., the Court is required to evaluate the material and documents on record with a view to find out the existence of all the ingredients constituting the alleged offence but the Court cannot be expected to presume that the prosecution story is gospel truth.*

7- *If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial judge will be empowered to discharge the accused irrespective of the result of the trial.*

6] On the backdrop of these settled principles and as per section 227 of the Cr.P.C. after considering the record of the case and documents submitted and after hearing submissions of the accused and prosecution if the Judge considers that there is no sufficient ground for proceeding against the accused, the accused shall be discharged.

7] Further, the Hon'ble Apex Court in the case of **Yogesh Vs. State of Maharashtra [AIR 2008 SC 299]** has laid down that

*words “not sufficient ground for proceeding against the accused”, postulate exercise of judicial mind by Judge. At this stage, he is not to see as to whether the trial will end in conviction or not.*

8] In the present matter the report has been lodged by wife of deceased Satish Gaikwad, who is happened to be an eye witness to the incident. Her statement has also been recorded under section 164 of there Cr.P.C. Wherein, she has elaborately stated the manner of the incident. As per the prosecution case, prior to the assault the accused had threatened the deceased to kill, in verbatim it is as: (‘तु माझे लहान मुलाला का ओरडला, तुला आता खल्लास करतो’). Further, the accused came on the spot by holding a wooden stick in his hand and inflicted the same on the back of the deceased. Further he pushed the decease from the *Ota*. Due to which deceased fall on the ground and sustained grievous injuries on his head. The Postmortem report also makes it clear that deceased died due to head injury.

9] The Ld. Advocate for the accused stressed his arguments on the entries mentioned in Column No. 21 of the Postmortem report. Wherein, it has been mentioned that the stomach contains partly digested food particles with smell of alcohol. When the ocular witnesses are there, the entry made in the Postmortem report is not sufficient to hold that there is no evidence against the present accused.

10] At the time of dealing with the application for discharge, the Court has duty to see the *prima facie* case against

the accused. In the case in hand the prosecution has come with a specific case and there is a sufficient ground for proceeding against the accused. Therefore, considering the facts and circumstances in the light of aforesaid cited ratios the application deserves to be rejected. Hence, the order.

**ORDER**

Application (Exh. 3) stands rejected.

Baramati.  
Date : 30/12/2020

(J. P. Darekar)  
Additional Sessions Judge,  
Baramati.

**CERTIFICATE**

I affirm that the contents of this P.D.F. file Order are same word for word as per original Order.

Name of Stenographer : I. E. Deshmukh stenographer (G-1)

Court Name : J.P. Darekar  
Additional Sessions Judge,  
Baramati, Dist. Pune.

Date of Order : 30.12.2020

Order signed by  
Presiding Officer : 31.12.2020

Order uploaded on : 31.12.2020