

MHRG010009962021



Sessions Case No.31/2021
The State of Maharashtra
Vs.
Vijendrasingh Yadav & Ors.

ORDER BELOW EXH.19

This is an application for discharge under Sec.227 of Cr.P.C. filed by accused No.3 Balaji Manohar Mundhe.

02. Perused the application and say given by State at Exh.29 and say given by the informant at Exh.30.

03. Heard advocate Shri.Ankit Bangera for the applicant and D.G.P. Shri.Bhushan Salvi for the State and advocate Shri.N.S.Pawar for the informant.

04. It is argued for the applicant that there is delay in filing FIR and it is alleged that accused Bhagwan Yadav was given hand loan of Rs.1,00,000/- by deceased who was the husband of informant, but he did not repay the amount. On 05/09/2020, said Bhagwan Yadav had called deceased to Command Hospital Vanwadi, Pune. Deceased Ganesh Thokal went to Pune. In the night at around 10.00 p.m. informant alleged to have received call and deceased talked her from Kashid Beach. On next day the deceased did not answer the phone. According to the learned advocate all accused and deceased were friends, they were working together and for the excursion they had been to Kashid Beach. It is simple case of accidental death wherein the deceased had died due to drowning. The accused Balaji Mundhe gave accidental

death report. The inquest panchanama was carried out, so also the postmortem examination. No surface injury was noticed when inquest panchanama was prepared as well as postmortem examination was done and as per the opinion of the medical officer, who did the postmortem examination, the cause of death was death by drowning i.e. death due to asphyxia due to drowning. He submitted that the false report is given after thought just to falsely implicate the applicants in the crime. It is alleged that when informant had seen body of the deceased, she had noticed injuries to the right eye and right ear of the deceased. The opinion given by expert is also not sufficient to reach any conclusion. He submitted that from the statements of material eye witness Rakesh Rakte the guard at Kashid Beach and witness Santosh Rane it is clear that death was accidental. The informant has given report out of the suspicion. It is settled law that charge cannot be framed on the basis of mere suspicion. He relied on reported judgments and prayed for the discharge of the accused.

05. Learned D.G.P. put reliance on the judgment of Hon'ble Bombay High Court in the case of **Govind Sakharam Ubhe Vs. State of Maharashtra, reported in MANU/MH/0427/2009** and argued that the allegations in the FIR are well founded. There are specific allegations in FIR that the deceased was good swimmer and he had no addiction to alcohol. So also, there is specific allegations that accused Bhagwan Yadav had borrowed Rs.1,00,000/- and the deceased had demanded said amount and on said count there were exchange of words amongst deceased and Bhagwan Yadav. It was accused Bhagwan Yadav who had

called deceased to Pune and from Pune all accused alongwith deceased went to Kashid Beach. It is argued that accused were working medical core and they cleverly managed to see that viscera of the deceased should not be taken. They had drowned deceased in such a way that no super facial injury would appear on the body, but when the body was brought to the native place of the deceased informant and relatives noticed the injuries near right eye and right ear of the deceased.

06. The learned advocate brought my attention to the photographs, filed on record alongwith charge-sheet, of the deceased taken with the accused when they were playing in the sea water as well as photographs of the dead body of the deceased on the beach and the photograph clicked when the body was brought to the native place. He also brought my attention to the Medico Legal Opinion given by Dr.Balaji Phalke of Department of Forensic Medicine, Sub District Hospital Panvel, Dist-Raigad. The opinion given by Dr.Balaji Phalke further strengthens the prosecution allegations regarding the homicidal death. He prayed for the rejection of the application.

07. Advocate Shri.Pawar for the informant argued on the same line and resisted the application for discharge.

08. Before touching to the facts of the case let us see the laws as propounded by the Hon'ble Supreme Court and Hon'ble Bombay High Court on the point of discharge. The learned advocate for the applicant Shri.Ankit Bangera put reliance on the judgment of Hon'ble Bombay High Court in the case of **Ashok Mariappa Dedhe Vs. State of**

Maharashtra, reported in 2007 ALL MR (Cri) 3188. It is held that when there is no material to show the co-accused had shared common intention with another accused, it is not a fit case to frame charge against him.

09. Second judgment relied by the applicant is the judgment of Hon'ble Supreme Court in the case of **Yogesh @ Sachin Jagdish Joshi Vs. State of Maharashtra, reported in (2008) 10 SCC 394.** In this case it is held that the suspicion on motive is not sufficient to bring home an offence of murder. Mere rise to suspicion as distinguished from grave suspicion is not sufficient to frame charge and it would be right to discharge the accused.

10. Third judgment relied is the judgment of Hon'ble Bombay High Court in the case of **Devendra Kumar Zialal Sukhchand Jaiswal & Ors. Vs. State of Maharashtra, reported in 2013 ALL MR (Cri) 25.** In this case the Hon'ble High Court found that there was not enough material to justify framing of charge.

11. The judgment relied by the D.G.P. is the judgment of the Hon'ble Bombay High Court in the case of **Govind Sakharam Ubhe Vs. State of Maharashtra, reported in MANU/MH/0427/2009** after noting the principles laid down by Hon'ble Supreme Court in various reported judgments summarized the law on discharge and it is held in para 25 that -

“The principles laid down by the Supreme Court in the above cases need to be summarized. It is settled law that at the stage of Section 227 of the Code, the court has power to sift the materials

collected by the prosecution to find out whether there is prima facie case against the accused or not. The court has to be satisfied that there is ground for presuming that the accused has committed the offence or that there is no sufficient ground for proceeding against him. The Court's enquiry must not be directed to find out whether the case will end in conviction. However, though roving enquiry is not permissible, the court can consider whether the material collected by the prosecution if accepted as it is without being subjected to cross-examination gives rise to strong and grave suspicion for presuming that the accused has committed the offence and that unrebutted material will lead to a conviction. If at the stage of Section 227 or Section 228, the scales as to the guilt or innocence of the accused are even then the court must proceed to frame a charge. There is no question of giving benefit of doubt to the accused and discharge the accused at that stage because the scales are even. That can be done only at the conclusion of trial. If there is a strong suspicion which leads the court to think that there is a ground for presuming that the accused has committed an offence, then the court will proceed to frame the charge. But if two views are possible and the court is satisfied that the evidence gives rise to some suspicion but not grave suspicion against the accused, the court will be within its right to discharge the accused. Suspicion has to be

strong and grave suspicion leading the court to presume that the accused has committed an offence. While basic infirmities and broad probabilities can be considered, the court cannot make a roving enquiry into the pros and cons of the matter and weigh the evidence as if it is conducting a trial. Probative value of the material cannot be gone into at that stage."

12. Here in present case, if we peruse the FIR i.e. report given by the informant it is clear that informant had made a specific allegations that her husband deceased Ganesh Thokal was working in Army Forces Command Hospital at Vanwadi Pune and all other accused were his colleagues and were working with him. Deceased Ganesh Thokal was retired on 31/07/2020. Deceased Ganesh had given Rs.1,00,000/- to accused Bhagwan Yadav as a hand loan and time and again Ganesh had demanded said amount back and there were exchange of words amongst them on phone. On 05/09/2020 accused Bhagwan Yadav made a phone call to the deceased Ganesh and called him at Command Hospital Pune. Ganesh went to Pune at around 11.00 a.m. but he did not return home. So the informant called him at around 10.00 p.m. and she was told by Ganesh that alongwith all accused, he had gone to Murud Kashid Beach for excursion. On next day at around 10.00 a.m. i.e. on 06/09/2020 the informant called deceased Ganesh and had a talk with him and he told that he would return by night. Thereafter at around 5.30 p.m. when informant called her husband though the call was connected, it was not picked and thereafter the phone was switched off. On

07/09/2020 at around 7.30 a.m. the ambulance came alongwith dead body of Ganesh Thokal. When she saw the dead body of her husband, she noticed there were injuries to the right eye and right ear of deceased Ganesh. She alleged that because of death of her husband, she was under shock and was not in a position to make complaint to the police. Ganesh was good swimmer and he had no addiction. On 25/09/2020 she gave application to the Murud Police raising doubt about the death of her husband and finally crime came to be registered on the basis of report dtd-16/11/2020.

13. So far as the motive to commit crime there are specific allegations in FIR that co-accused Bhagwan had taken hand loan of Rs.1,00,000/- from deceased and on the count of repayment on few occasions there were exchange of words amongst them. It was Bhagwan Yadav who had called deceased to Pune on 05/09/2020.

14. It is clear from the postmortem examination as well as inquest panchanama that no surface injuries were noticed on the body of deceased Ganesh Thokal and the doctor doing autopsy gave report that death was due to asphyxia due to drowning. The death by drowning may be a accidental death, may be a suicidal death or it may be a homicidal death. Then the ADR is registered and police investigated the crime initially pretend the death is accidental. It cannot be ignored that in FIR it is specifically alleged that deceased Ganesh Thokal was good swimmer and he had no addiction.

15. It cannot be ignored that it was Corona period,

the beaches were closed, but still all accused brought deceased from Pune to Kashid. This is material circumstances going against the accused. The photographs filed on record shows that at one moment when all accused alongwith deceased were playing at the beach, principal accused Bhagwan Yadav had pushed deceased Ganesh Thokal in sea water by holding around his neck. This is one of the important circumstance giving rise to grave suspicion that the death by drowning was not accidental, but a homicidal.

16. The statement of material eye witnesses are on record. Rakesh Rakte is life guard at Kashid Beach. Santosh Rane was the local and both have stated that on 06/09/2020 at around 12.30 hours they were together at the Kashid Beach. They saw 8 persons swimming in the sea water. They also stated that they all had consumed alcohol, they told those persons not to go deep in the water as it was high-tied and when water goes back it takes with it the person and there were many causalities in past. But those persons did not pay heed and told them that they could swim properly. At 2.00 p.m. when Santosh Rane was at the beach, he saw those persons were shouting and one of them was drowning and others were trying to help him. One Sikh person had thrown a cloth of his Pagdi to the person drowning. But they could not rescue him and after 15 to 20 minutes the body of the said person was found. There were no injuries on the body of deceased.

17. Though the statement of Santosh Rane and Rakesh Rakte shows that there were no injuries on the

person of the deceased. It shows that all accused who had claimed themselves to be good swimmer, did not try to save the deceased personally and one of them had thrown a cloth making an attempt to save the deceased. Which is not a natural conduct when the accused claimed themselves to be a good swimmer.

18. The photographs of the deceased clicked at the native place shows that there were injuries on the right eye and right ear of the deceased. However, in P.M. Notes no such injuries were noticed by the doctor, so also the inquest panchanama is silent. But the expert Dr.Balaji Phalke has given Medico Legal Opinion. It shows that these types of bruises appear after sustaining injury by blunt force application. Sometimes they are delayed by one or two days (delayed bruise / come out bruise). Sometimes ecchymosis maynot appear until after death when a contusion has been caused a few hours or a day before death. They do no occur due to post-mortem violence. Which is sufficient to show that bruises or injuries were a result of anti-mortem injuries. It further strengthen the allegations in FIR about the foul play. The spot panchanama is silent about any rocky surface at the spot of the incident. As such there is no possibility of injury because of body rubbing with rocky surface while drowning. The photographs on record shows that co-accused Bhagwan Yadav had hold the neck of the deceased and had pushed him in the water. All these circumstances taken into consideration together leads to grave suspicion pointing guilt of the accused persons. At this stage there is no question of giving any benefit of doubt to the accused. All the circumstances on record as

discussed above leads to strong suspicion. There are grounds to hold that accused person have hatched the conspiracy and taking the deceased to the Kashid Beach though it was Covid lock down they killed the deceased.

19. In a offences like criminal conspiracy it is difficult to find out the evidence regarding previous meeting of minds and sharing a common intention by one accused with another. That has to be inferred from all circumstances placed on record. Thus in given facts and circumstances the material on record prima facie is sufficient to show that accused have hatched the conspiracy and they took deceased to the Kashid Beach that too in Corona lock down when the beach was closed and committed his murder by drowning him in the water and therefore no case is made out for discharging the applicant. Accordingly, I pass following order.

ORDER

1. The application is rejected.

Alibag.
Dt.:19/05/2023

(A. Y. Thatte)
Additional Sessions Judge,
Raigad-Alibag