REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1820 OF 2019
(Arising out of SLP(Crl.) No.6964 of 2019)

BHAWNA BAI ...Appellant

VERSUS

GHANSHYAM AND OTHERS …Respondents

J U D G M E N T

R. BANUMATHI, J.

Leave granted.

2. This appeal arises out of the impugned judgment and final order dated 25.02.2019 passed by the High Court of Madhya Pradesh at Indore Bench in Criminal Revision No.402 of 2019 in and by which the High Court has quashed the charges framed by the trial court/Additional Sessions Judge against respondent Nos.1 and 2/accused Nos.1 and 2.

3. Brief facts which led to filing of this appeal are as follows:-

On 24.12.2015, the husband of the complainant-Gopal Saran at about 06.00 pm went saying to prepare food as he is going outside to plough the field and shall return by 09.00-10.00 pm. Even by 12.00 mid night, Gopal Saran did not return home; then his wife Bhawna Bai, appellant herein tried to contact him over his

mobile; but he did not receive the call. The appellant informed her father-in-law who tried to search the deceased and there was no information about the deceased. On the next morning at about 08.00 am, the appellant-complainant and her family members came to know from the neighbours that Gopal Saran was lying in the tank//hose in the field of the first respondent-Ghanshyam. The appellant has alleged that when she tried to approach her husband then Ganesh s/o Mohanlal Kushwah prevented her going near her husband and locked her in a room and did not allow her to see her husband. The dead body of Gopal Saran was taken to government hospital. The appellant-complainant alleged that without informing her, post-mortem of her husband was conducted. Merg No.94 of 2015 was registered for investigation under Section 174 Crl.P.C.; but no case was registered against any person.

4. On 31.12.2015, the appellant made a written complaint before the Superintendent of Police, Khargaon and in spite of the same, no case was registered. Thereafter, the complainant-appellant filed a complaint before the Additional Chief Judicial Magistrate (ACJM), Kasrawad under Section 156(3) Crl.P.C. on 12.04.2016. The learned ACJM accepted the complaint and directed the Officer-in-Charge, P.S. Kasrawad to register the FIR under Section 302 IPC

and proceed with the investigation. FIR was registered in Crime No.145 of 2016 under Section 302 IPC read with Section 34 IPC. Challenging the direction of ACJM to register a FIR, the State of Madhya Pradesh has filed revision before the Additional Sessions Judge, Mandleswar in Criminal Revision No.300051 of 2016. The said revision petition was dismissed vide order dated 27.10.2016.

5. Respondent Nos.1 and 2/accused Nos.1 and 2 have prayed for anticipatory bail and the same was dismissed by the learned Special Judge SC/ST (Prevention of Attrocities) Act, West Nimad, Mandleswar vide order dated 10.09.2018. Being aggrieved, respondent Nos.1 and 2 filed appeal before the High Court and the High Court had granted anticipatory bail to them vide order dated 19.09.2018. Against the grant of anticipatory bail, the appellant-complainant has filed SLP(Crl.) Diary No.39785/2018 before the Supreme Court in which the Supreme Court by order dated 14.12.2018 has issued notice. In the meanwhile, charge sheet has been filed against the accused-respondent Nos.1 and 2 under Section 302 IPC read with Section 34 IPC on 26.09.2018. Upon hearing the prosecution and also the respondents-accused, vide order dated 12.12.2018, the learned Second Additional Sessions Judge, Mandleswar has found that there are sufficient grounds for

proceeding against the accused and framed the charges against the accused-respondent Nos.1 and 2 under Section 302 IPC read with Section 34 IPC.

6. Challenging the order of framing charges, respondent Nos.1 and 2 have filed revision before the High Court. Holding that, while framing charges, the court should apply the judicial mind and should give reasons in concise manner for framing charges and that the trial court has failed to apply its mind while framing charges, the High Court vide impugned order dated 25.02.2019 has quashed the charges against respondent Nos.1 and 2 and discharged them. Being aggrieved, the appellant-complainant has preferred this appeal.

7. Mr. Bijan Kumar Ghosh, learned counsel appearing for the appellant has submitted that there are circumstances like “last seen together”; “recovery of dead body”; “not informing the family of the victim immediately upon discovery of dead body”; “not informing the police”; “recovery of other belongings of dead body including tractor” and such other circumstances connecting the accused-respondent Nos.1 and 2 with the death of Gopal Saran and considering those circumstances, the learned Second Additional Sessions Judge satisfied himself that there are sufficient ground for framing charges

against the accused. The learned counsel submitted that when the trial judge has so satisfied that there are sufficient grounds for framing the charges against the accused, in exercise of its revisional jurisdiction, the High Court ought not to have interfered and quashed the charges framed by the trial court.

8. Mr. Harsh Parashar, learned counsel appearing for the State of Madhya Pradesh reiterated the contentions and submitted that the averments in the charge sheet and the circumstances indicated thereon are sufficient to *prima facie* link respondent Nos.1 and 2 to the occurrence and while so, the High Court erred in setting aside the order of the Second Additional Sessions Judge and quashing the charges.

9. Mr. Santosh Kumar, learned counsel appearing for the accused-respondent Nos.1 and 2 submitted that even if the averments in the charge sheet are accepted, no *prima facie* case is made out against the accused-respondent Nos.1 and 2 and there was non-application of judicial mind by the learned trial judge and considering the facts and circumstances of the case, the High Court rightly quashed the charges framed against the accused-respondent Nos.1 and 2 and the impugned order therefore, does not suffer from any infirmity.

10. We have carefully considered the submissions and perused the impugned order and materials on record.

11. As per the allegations in the charge sheet, on the date of occurrence i.e. 24.12.2015, the accused-respondents Ghanshyam and Bhagwan went with deceased Gopal Saran to the farm of Ghanshyam for ploughing the land with tractor and that all the three consumed liquor together at the place of incident. Thus, as per the allegations in the charge sheet, the deceased was last seen alive in the company of accused-respondent Nos.1 and 2. As per the statement of Usha, wife of Ghanshyam and Nisha, daughter of Ghanshyam, the accused-respondent Nos.1 and 2 had returned home at 09.00 pm in the night of 24.12.2015. Though, the body of deceased was found in the field of respondent-accused Ghanshyam, he did not inform the family of deceased Gopal Saran nor informed the police about the same. In the complaint filed by the appellant before the Magistrate, the appellant has alleged that "*when she went running near to her husband's dead body, Ganesh son of Ghanshyam caught hold of her and forcibly locked her in a room in his house and did not allow her to go near the dead body of her husband*". The allegations in the charge sheet also suggest that the accused-respondent Nos.1 and 2 had earlier quarrelled with

deceased Gopal Saran and thereby suggesting a motive for the crime.

12. Though the circumstances alleged in the charge sheet are to be established during the trial by adducing the evidence, the allegations in the charge sheet show a *prima facie* case against the accused-respondent Nos.1 and 2. The circumstances alleged by the prosecution indicate that there are sufficient grounds for proceedings against the accused. At the time of framing the charges, only *prima facie* case is to be seen; whether case is beyond reasonable doubt, is not to be seen at this stage. At the stage of framing the charge, the court has to see if there is sufficient ground for proceeding against the accused. While evaluating the materials, strict standard of proof is not required; only *prima facie* case against the accused is to be seen.

13. Chapter XVIII Crl.P.C. deals with "**Trial before a Court of Session**". As per Section 226 Crl.P.C., the public prosecutor is required to open the case before the Sessions Court by describing the charge brought against the accused and stating by what evidence, he proposes to prove the guilt of the accused. Section 227 Crl.P.C. deals with discharge and it reads as under:-

> "**227. *Discharge***.—If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of

the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing."

14. Considering the scope of Sections 227 and 228 Crl.P.C., in *Amit Kapoor v. Ramesh Chander and another* **(2012) 9 SCC 460**, the Supreme Court held as under:-

"17. Framing of a charge is an exercise of jurisdiction by the trial court in terms of Section 228 of the Code, unless the accused is discharged under Section 227 of the Code. Under both these provisions, the court is required to consider the "record of the case" and documents submitted therewith and, after hearing the parties, may either discharge the accused or where it appears to the court and in its opinion there is ground for *presuming that the accused has committed an offence*, it shall frame the charge. Once the facts and ingredients of the section exists, then the court would be right in presuming that there is ground to proceed against the accused and frame the charge accordingly. This presumption is not a presumption of law as such. The satisfaction of the court in relation to the existence of constituents of an offence and the facts leading to that offence is a sine qua non for exercise of such jurisdiction. It may even be weaker than a prima facie case. There is a fine distinction between the language of Sections 227 and 228 of the Code. Section 227 is the expression of a definite opinion and judgment of the Court while Section 228 is tentative. Thus, to say that at the stage of framing of charge, the Court should form an opinion that the accused is certainly guilty of committing an offence, is an approach which is impermissible in terms of Section 228 of the Code.

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19. At the initial stage of framing of a charge, the court is concerned not with proof but with a strong suspicion that the accused has committed an offence, which, if put to trial, could prove him guilty. All that the court has to see is that the material on record and the facts would be compatible

with the innocence of the accused or not. The final test of guilt is not to be applied at that stage. We may refer to the well-settled law laid down by this Court in *State of Bihar* v. *Ramesh Singh* (1977) 4 SCC 39: (SCC pp. 41-42, para 4)

> "*4*. Under Section 226 of the Code while opening the case for the prosecution the Prosecutor has got to describe the charge against the accused and state by what evidence he proposes to prove the guilt of the accused. Thereafter comes at the initial stage the duty of the court to consider the record of the case and the documents submitted therewith and to hear the submissions of the accused and the prosecution in that behalf. The Judge has to pass thereafter an order either under Section 227 or Section 228 of the Code. If 'the Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing', as enjoined by Section 227. If, on the other hand, 'the Judge is of opinion that there is ground for presuming that the accused has committed an offence which — … (*b*) is exclusively triable by the court, he shall frame in writing a charge against the accused', as provided in Section 228. Reading the two provisions together in juxtaposition, as they have got to be, it would be clear that at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the Prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under Section 227 or Section 228 of the Code. At that stage the court is not to see whether there is sufficient ground for conviction

> of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the court to think that there is ground for presuming that the accused has committed an offence then it is not open to the court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the court should proceed with the trial or not. If the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial. An exhaustive list of the circumstances to indicate as to what will lead to one conclusion or the other is neither possible nor advisable. We may just illustrate the difference of the law by one more example. If the scales of pan as to the guilt or innocence of the accused are something like even at the conclusion of the trial, then, on the theory of benefit of doubt the case is to end in his acquittal. But if, on the other hand, it is so at the initial stage of making an order under Section 227 or Section 228, then in such a situation ordinarily and generally the order which will have to be made will be one under Section 228 and not under Section 227.""

15. After referring to *Amit Kapoor*, in *Dinesh Tiwari v. State of Uttar Pradesh and another* **(2014) 13 SCC 137**, the Supreme Court held that for framing charge under Section 228 Crl.P.C., the judge is

not required to record detailed reasons as to why such charge is framed. On perusal of record and hearing of parties, if the judge is of the opinion that there is sufficient ground for presuming that the accused has committed the offence triable by the Court of Session, he shall frame the charge against the accused for such offence.

16. As discussed above, in the present case, upon hearing the parties and considering the allegations in the charge sheet, the learned Second Additional Sessions Judge was of the opinion that there were sufficient grounds for presuming that the accused has committed the offence punishable under Section 302 IPC read with Section 34 IPC. The order dated 12.12.2018 framing the charges is not a detailed order. For framing the charges under Section 228 Crl.P.C., the judge is not required to record detailed reasons. As pointed out earlier, at the stage of framing the charge, the court is not required to hold an elaborate enquiry; only *prima facie* case is to be seen. As held in *Knati Bhadra Shah and another v. State of West Bengal* **(2000) 1 SCC 722**, while exercising power under Section 228 Crl.P.C., the judge is not required record his reasons for framing the charges against the accused. Upon hearing the parties and based upon the allegations and taking note of the allegations in the charge sheet, the learned Second Additional Sessions Judge was satisfied that there is sufficient ground for proceeding against

the accused and framed the charges against the accused-respondent Nos.1 and 2. While so, the High Court was not right in interfering with the order of the trial court framing the charges against the accused-respondent Nos.1 and 2 under Section 302 IPC read with Section 34 IPC and the High Court, in our view, erred in quashing the charges framed against the accused. The impugned order cannot therefore be sustained and is liable to be set aside.

17. In the result, the impugned judgment dated 25.02.2019 passed by the High Court of Madhya Pradesh at Indore Bench in Criminal Revision No.402 of 2019 is set aside and this appeal is allowed. Sessions Trial Case No.ST/150/2018 is restored and Second Additional Sessions Judge, Mandleswar, West Nimad, Madhya Pradesh shall proceed with the matter in accordance with law. We make it clear that we have not expressed any opinion on the merits of the matter.

……J.
[R. BANUMATHI]

……J.
[A.S. BOPANNA]

……J.
[HRISHIKESH ROY]

New Delhi;
December 03, 2019.