

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

CRIMINAL REVISION APPLICATION NO.81 OF 2003

The State of Maharashtra,
Through The Public Prosecutor,
High Court, Bench at Aurangabad

..Petitioner

Versus

1. Jayram Machindra Gunjal,
Age 23 years, r/o Wangi,
Taluka Paranda, District
Osmanabad

2. Rajendra Machindra Gunjal,
Age 30 years,
R/o as above

..Respondents

Mrs M.A. Deshpande, A.P.P. for petitioner

Mr K.B. Autade, Advocate (amicus curiae) for respondents

CORAM : N.W. SAMBRE, J.

DATE : 11th September 2015

ORAL JUDGMENT

1. This revision is by the prosecution questioning the order passed by Ad-hoc Additional Sessions Judge, Osmanabad on 6th January 2003 below Exh.52 in Sessions Case No.122 of 1999, an application praying alteration of charge for an offence punishable under Section 306 to Section 302 of Indian Penal Code. The said application is moved after the evidence of the prosecution was closed.

2. Few facts, as are necessary for deciding the present revision are as under :

3. The complainant Indubai's daughter Rekha was married to Jayram, respondent No.1 herein. The accused persons are

agriculturists and were interested in having a water well dug in their farm. As the accused persons were short of amount and as demand of Rs.10,000/- for digging the well was not honoured by the complainant, they started ill-treating the complainant's daughter Rekha. It is then claimed that the death of Rekha was occurred within seven years from the date of her marriage.

4. The accused Jayram was also doing labour work. Complainant Indubai received an intimation through her brother-in-law namely Maroti that her daughter is suffering from vomiting and dysentery. It is further claimed that deceased Rekha has committed suicide, as the complainant has not honoured the demand of dowry, resulting into registration of offence in question.

5. After the charge-sheet for offence punishable under Section 306 of Indian Penal Code came to be filed and pursuant to completion of investigation in that direction and the evidence of prosecution was closed, learned A.P.P., based on the evidence of prosecution witness complainant Indubai, whose daughter Rekha died of suicidal death, moved an application Exh.52 invoking provisions of Section 216 of Cr.P.C. seeking modification of charge from Section 306 to Section 302 of Indian Penal Code.

6. The said application came to be rejected by the Ad-hoc Additional Sessions Judge, Osmanabad by order dated 6th January 2003, as such present revision.

7. Learned A.P.P., while questioning the legality and validity of the order impugned, submits that learned Additional Sessions Judge has committed an error of law in rejecting the application moved under Section 216 of Cr.P.C., as according to him, there was enough material available on record of the Court, so as to establish connection or link with the charge sought to be amended or added. He would then urge that the addition/modification of charge could be done at any stage of the trial and the rejection, as ordered by the learned Court below is not sustainable.

8. Learned Counsel Mr Autade, who was appointed by this Court on behalf of respondents, by order dated 29th July 2015 would urge that the order passed by the learned Additional Sessions Judge is just and proper, as there is hardly any material on record to connect the accused to the crime punishable under Section 302 of the Indian Penal Code. According to him, learned Additional Sessions Judge has passed a detailed and reasoned order and by relying upon the judgment of Apex Court in the matter of **Dinesh Tiwari V. State of U.P. & anr.**, reported in **2014 CRI L.J. 4192** and **C.B.I. V. Karimullah Osan Khan**, reported in **2014 CRI.L.J. 1870**, would urge that the present revision does not deserve any consideration and it be rejected.

9. Having considered the rival submissions of the parties, it is required to be considered that Section 228 of Cr.P.C. confers powers on the trial Court to frame charge in exercise of jurisdiction vested in it. The said powers are exercised after the Court has reached to a conclusion that accused does not deserve discharge from the case

under Section 227 of Cr.P.C. While exercising the powers under Section 227 and Section 228 of Cr.P.C., what is required to be considered is the material that is available on record of the Court in the said case. The Court, based on the said material as is placed on record, collected during the investigation and after hearing the parties, may either discharge the accused or may form an opinion that the accused has committed an offence and as such, may frame charge. The Court, having satisfied about the material for framing of charge, may proceed further and frame the charge accordingly. It is then required to be noted that Section 216 of Cr.P.C. confers powers on the trial Court that even after completion of evidence, arguments are over and the judgment is reserved, it can alter or add any charge subject to the satisfaction of requirement provided under the said section. The Apex Court has already interpreted the words “at any time” in the judgment of C.B.I. Vs. Karimullah (cited supra) and paragraphs 14 and 15 of the said judgment are worth referring to rely upon. The Court, of course, can exercise the powers conferred under Section 216 of Cr.P.C. for alteration/modification of the charge provided the prosecution establishes a link or connection with the charge sought to be amended based on the material or the evidence that has been brought on record of the Court. In this background, the evidence of witness Indubai at Exh.23, Dr. Nilophar, Medical Officer at Exh.35, which is formed to be basis for alteration of the charge if perused, learned A.P.P., relying upon the evidence of complainant Indubai at Exh.23 has moved an application for alteration of charge. According to him, since Indubai has stated that the accused persons

have committed murder of her daughter Rekha as could be inferred from the testimony of P.W.7 Dr. Nilophar, who was examined in support of the prosecution case. Said witness has conducted post mortem over the body of deceased Rekha, has stated that there were burn injuries of 2" x 1/2" vertical 1" about the right elbow on antero lateral aspect of upper arm; redish black injury discolouration of thenar, hypothenar and tips of fingers of both the hands, which were ante mortem.

10. It is required to be noted that the learned Additional Sessions Judge, while dealing with the above referred application, after hearing the parties noted entire history of the investigation. Learned Additional Sessions Judge has observed that the complaint came to be filed on 4th May 1999, for offences punishable under Sections 498-A, 306 read with sec.34 of Indian Penal Code, for which Crime No.34 of 1999 came to be registered. The Investigating Officer, after conducting the investigation, submitted the charge-sheet for offence punishable under said Sections and the Court has framed charge against the accused persons on 5th December 2001. The evidence in the matter has already commenced and has reached to the stage of completion of prosecution evidence after recording the statements of accused under Section 313 of Cr.P.C. It is during recording the evidence of Indubai, she has stated that accused persons have committed murder and she has submitted copy of complaint moved to the Chief Minister. According to said complaint, the grievance was made against the Police Officer, who investigated the matter and the learned A.P.P. was called upon to submit report in respect of said complaint. The report of the D.I.G., Aurangabad and Additional

Superintendent of Police, Osmanabad along with copies of documents is placed on record at Exh.46. It is, during investigation and subsequent inquiry by the superior officers, as is reflected in the report called by the learned Additional Sessions Judge through the A.P.P., noticed that there was no substance in the complaint of complainant Indubai that her daughter was murdered. The Court then has taken into account the reports at Exhs.37 and 38 and the opinion of the Medical Officer as regards cause of death. Learned Sessions Court then noted that but for the statement of complainant Indubai, there is hardly any material to link the accused persons to an offence punishable under Section 302 of the Indian Penal Code.

11. In this background, I have gone through the evidence of complainant Indubai and Dr. Nilophar, which is produced along with the present application. What could be inferred from the evidence of Indubai is, she has stated about death of her daughter Rekha because of murderous attack by the accused persons. So far as the other evidence i.e. Dr. Nilophar is concerned, who has performed post mortem has given the cause of death as poisoning. The entire investigation in the matter pursuant to complaint of Indubai was carried out on the line, as was mentioned in the F.I.R. Leave apart, pursuant to complaint of Indubai, the senior Officers have already supervised and looked into the investigation papers so as to examine the angle of murder, as claimed by Indubai. The medical evidence does not support the version of the complainant Indubai.

12. Apart from above, the version of two independent witnesses who are sought to be relied upon are not residents of same village, however, their testimony, at the most could be taken into account to the extent of considering the offence punishable under Section 498-A of the Indian Penal Code.

13. In the above background, in my opinion, the view as expressed by learned Court below that the powers under Section 216 of Cr.P.C. are not required to be exercised in the present case for alteration of charge for an offence punishable under Section 306 to Section 302 of Indian Penal Code needs to be rejected, appears to be a plausible view taken during the trial. In my opinion, no case for interference under the revisional jurisdiction is made out. As such, Criminal Revision Application fails, stands rejected. Rule discharged.

(N.W. SAMBRE, J.)

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