

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL REVISION APPLICATION NO. 258 OF 2014

Mukesh Kanungo .. Applicant

Versus

The State of Maharashtra .. Respondent

Mr. Girish Kulkarni I.b M. G. Shukla, Advocate for the
applicant

Mr. V.B. Konde-Deshmukh, APP for the respondent-State

CORAM:-M.L. TAHALIYANI,J.

DATED : -13/01/2015

P.C.

Admit. Respondent waives service. By consent of
the parties, application is heard finally.

2 Heard Mr. Kulkarni, learned counsel for the
applicant and Mr. Konde-Deshmukh, learned Addl. PP for the
respondent-State.

3 The applicant is facing trial for the offence
punishable u/s 302 r/w Section 34 of IPC, in Sessions Court,

Mumbai. There is one more accused along with the applicant. The applicant had allegedly assaulted the deceased Indramohan Ramkaran Jha. The Medical Officer has stated in the postmortem report, after examining the viscera report, that the deceased had died due to Cerebropulmonary edema with pulmonary edema under the influence of alcohol.

4 The learned counsel for the applicant has submitted that the cause of death is pulmonary edema which could not have caused due to the alleged assault. It is seen from the literature on the point that pulmonary edema can be caused due to direct injury on the lung. In the present case there was no external injury on that portion of the body of the deceased. However, what will have to be examined by the trial court is whether the other injuries could have caused injury to the lung, which could have resulted in pulmonary edema.

5 The learned counsel has submitted that since the deceased was habitually drinking liquor, he had suffered

pulmonary edema and died due to the same. Since there are other causes also of pulmonary edema according to the literature available on the net which is relied upon by the learned counsel for the applicant, the trial court will have to examine whether in the present case pulmonary edema was caused to the deceased due to consumption of alcohol or due to the injuries sustained by him. What is pertinent to note is that the medical officer has not stated that it was due to alcohol. He has stated that it was “under the influence of alcohol”. In the circumstances, the interpretation of opinion will have to be obtained from the medical officer while recording evidence.

6 In my opinion, the case is not made out for discharge from the offence punishable u/s 302 of IPC. It is possible that the applicant may get some relief at the end of trial. The issues involved in the present case on the basis of which the discharge is sought cannot be examined in detail at this stage. The application stands dismissed.

7 Any observations made by this Court on the issue of pulmonary edema shall not influence the trial Court. The trial Court is at liberty to study the issue and form its own opinion in this regard.

(JUDGE)

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