

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL REVISION APPLICATION NO. 470 OF 2013

Riyazul Hasan Amir Hasan Shaikh & Ors. .. Applicants

Versus

The State of Maharashtra .. Respondent

Ms. Anjali R. Awasthi , Advocate for the applicants.
Smt. V. S. Mhaispurkar, APP for the respondent-State.

CORAM:-M.L. TAHALIYANI,J.
DATED : -23/01/2015

P.C.

Heard Ms. Awasthi, the learned counsel for the applicants and Smt. Mhaispurkar, learned APP for the respondent-State.

2 The applicants are aggrieved by the order passed by the trial Court rejecting their prayer for converting the charge from Section 304 of I.P.C. to 304A of I.P.C.

3 I have gone through the impugned order. In the order, the learned trial judge has stated “the matter is very serious one, wherein many persons have lost their lives and many got injured.

Considering this aspect also, the application of Sec. 304 of the IPC comes into fray. Hence, following Order:-

“Application (Exh. 4) stands rejected and, disposed off finally”.

4 What is noted is that the learned trial Judge has not stated in his order whether *prima facie* case is under section 340 (I) or 304 (II) of I.P.C. The learned trial Judge should realize that there is a big difference between the ingredients of two parts of Section 304 of IPC. The order is, therefore, set aside. The order passed by the learned Addl. Sessions Judge below Exhibit-4 in Sessions Case No. 781 of 2012 is set aside.

5 The learned Addl. Sessions Judge is directed to give fresh hearing to the applicants and the State and decide as to whether Section 304 Part-I of I.P.C. will be applicable or Section 304 Part-II of I.P.C. will be applicable.

(JUDGE)

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