

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NO. 17 OF 2016

Mr. Santosh Kudtarkar,
s/o. Vishnu Kudtarkar,
37 years of age,
Business,
r/o. H. No. 145/2, Valpoi,
Sattari, Goa.

..... Petitioner

V e r s u s

1. STATE
Represented by the PP
Panaji, Goa.

2. Police Inspector,
Valpoi Police Station,
Valpoi, Goa.

..... Respondents

Mr. Arun Bras De Sa, Advocate for the Petitioner.

Mr. S. R. Rivankar, Public Prosecutor for the Respondents.

Coram :- C. V. BHADANG, J

Date of Reserving Order on : 21st April, 2016
Date of Pronouncement of Order on : 25th April, 2016

JUDGMENT

This Revision Application at the instance of the original Accused no. 6, takes exception to the Order dated 09.02.2016, passed by the learned Addl. Sessions Judge, at Mapusa in Session Case no. 13 of 2015. By the impugned order, the learned Sessions Judge has directed framing of charge against the Accused under Section 306 read with Section 34 of IPC and alternatively under Section 302 read with Section 34 of IPC.

2. The brief facts necessary for the disposal of the Revision Application may be stated thus :

That, Ankita Kudtarkar, is the daughter of the cousin brother of the Petitioner. Ankita and now deceased Pranay Padloskar, were in a relationship since about seven years prior to death of Pranay. There were disputes and differences between the families of Ankita and Pranay on account of the affair/relationship between them which were said to be patched up at Valpoi Police Station where the parties had landed on account of filing of complaint and counter complaints.

3. On 06.03.2014, at about 07.00 hours, Pranay attended his classes at ITI Bicholim, where he was pursuing his course in Civil Draughtsman stream. Pranay did not attend the post lunch classes and returned back home, met his mother, kept his belongings and left the residence without informing anyone as to where he was going. On 07.03.2014, at 10.30 hours, a police complaint was made with PS Valpoi about Pranay having gone missing.

4. On 08.03.2014, at about 07.00 hours, a Villager noticed the dead body of Pranay floating in the river which was informed to the family members of Pranay. The body was fished out after which Nago @ Uttam Padloskar, who is the father of Pranay, lodged an FIR against all the male members of family of Ankita including the Petitioner herein, alleging that the Petitioner and other co-accused in furtherance of their common intention, had caused the death of Pranay and

disposed of his dead body in the river in order to destroy evidence. On the basis of the said complaint, an FIR no. 15/16 was registered at PS Valpoi against the Petitioner and six others under Sections 323, 324, 302, 201 read with Section 34 of IPC.

5. The Petitioner came to be arrested on 08.03.2014 and was subsequently released on bail. Upon the completion of investigation, a chargesheet was filed against the Petitioner and the other co-accused alleging commission of offence punishable under Section 306 read with Section 34 of IPC which is registered as Sessions Case no. 13 of 2015 pending before the learned Addl. Sessions Judge at Mapusa.

6. The Petitioner and other Accused filed an application for discharge. While disposing of the same, the Sessions Judge has directed framing of the charge under Section 306 read with Section 34 of IPC and alternatively under Section 302 read with Section 34 of IPC which is subject matter of challenge in this Revision Application.

7. I have heard Shri D' Sa, learned Counsel for the Petitioner and Shri Rivankar, learned Public Prosecutor for the Respondent-State.

8. It is submitted by the learned Counsel for the Petitioner that alternate charge under Sections 302 and 306 of IPC cannot be framed as the offences under these Sections are distinct. It is submitted that prosecution cannot allege that the

deceased met with homicidal death and at the same time claim that the death was suicidal in nature which would be the requirement of the offences under Sections 302 and 306 of IPC respectively. The learned Counsel would submit that the Sessions Judge fell in error in directing framing of alternate charge under these two Sections.

9. Learned Counsel has placed reliance on the decisions of the Delhi High Court in the case of **Jatinder Kumar & Ors. vs. State (Delhi Admn.) Delhi** reported in **1992 CRI.L.J. 1482** and Allahabad High Court in the case of **Prasoon Gupta & Ors vs. State of UP & anr.** reported in **2010 STPL 23121 Allahabad**. He submitted that the matter be sent back to the Sessions Judge for deciding the issue afresh.

10. The learned Public Prosecutor in all fairness not only conceded that such an alternate charge cannot be framed but produced certain Judgments in support of the proposition namely the Judgment of the Hon'ble Supreme Court in the case of **Sangaraboina Sreenu vs. State of AP** reported in **1997(4) Supreme 214, Om Prakash & Ors. vs. State of Haryana** (supra). He fairly submitted that the matter will have to be sent back to the learned Sessions Judge.

11. I have considered the circumstances and the submissions made. There cannot be any manner of dispute that the offences punishable under Sections 302 and 306 of IPC are distinct and cannot be said to be offences of the same genre. While offence under Section 302 requires that the death is homicidal,

the one under Section 306 of IPC would require a finding that the death is suicidal in nature. The question is no longer resintegra and is covered by the decision referred to by the parties.

12. In the case of **Sangaraboina Sreenu** (supra), the Appellant before the high Court was convicted for the offence punishable under Section 302 of IPC. The High Court while setting aside the same, converted the conviction to one under Section 306 of IPC. It was in these facts held by the Hon'ble Supreme Court that the two offences are of distinct and different categories and the offence under Section 306 of IPC cannot be said to be minor offence in relation to the offence under Section 302 of IPC within the meaning of Section 322 of Cr.P.C. The following observations in para 2 of the Judgment are apposite :

“2. This appeal must succeed for the simple reason that having acquitted the appellant of the charge under Section 302 IPC which was the only charge framed against him – the High Court could not have convicted him of the offence under Section 306 IPC. It is true that Section 222 Cr.P.C. entitles a Court to convict a person of an offence which is minor in comparison to the one for which he is trial but Section 306 IPC cannot be said to be a minor offence in relation to an offence under Section 302 IPC within the meaning of Section 222 Cr.P.C. for the two offences are of distinct and different categories. While the basis constituent of an offence under Section 302 IPC is homicidal death those of Section 306 IPC are suicidal death and abetment thereof.”

It is true that the question in the case of **Sangaraboina Sreenu** (supra) was in relation to the provisions of Section 222 of Cr. P.C. However, the fact remains that it has been held that the offences under these Sections are distinct belonging to different categories. The said issue in relation to Section 221 of Cr.P.C. directly arose in the decision in the case of **Om Prakash & Ors.** (supra) before the Punjab and Haryana High Court and **Prasoon Gupta** (supra) before the Allahabad High Court.

13. Section 221 of Cr.P.C. which is an enabling provision reads thus :

“221. Where it is doubtful what offence has been committed.

(1) If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once; or he may be charged in the alternative with having committed some one of the said offences.

(2) If in such a case the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of sub- section (1), he may be convicted of the offence which he is shown to have committed, although he was not charged with it.

14. It has been held by the Delhi High Court in the case of **Jatinder Kumar** (supra) that the “doubt as contemplated in Section 221 of Cr.P.C. has to be as to the nature of the offence and not about the facts. The relevant observations

in Para 5 may be re-produced thus :

“A bare reading of the aforesaid section shows that the doubt has to be as to the nature of the offence and not about the facts. If in a given case, on the facts which can be proved by the prosecution, it is doubtful which of the offence the said facts will constitute the framing of charge in the alternative is permissible. S. 221 is not intended to be applied to a case where facts are in doubt. Ordinarily, an alternative charge cannot be framed in respect of distinct offences. The offence under S.302 IPC and the offence under S. 306 are distinct. The ingredients of the two provisions are altogether different. The prosecution has to take a stand whether it is a case of murder or suicide. The prosecution cannot say that the accused has murdered the deceased and if the deceased has committed suicide, the accused has abetted the commission of suicide. The framing of such charge is not permissible under S. 221 of Cr.P.C., as there is a doubt about the facts which can be proved and in that eventuality S. 221 of the Code has no application.”

15. It can thus be seen that it is impermissible to frame an alternate charge under Sections 302 and 306 of IPC. A perusal of the impugned Order shows that this aspect has not been considered by the learned Sessions Judge.

16. In such circumstances and in view of the concession on behalf of the Respondents, the impugned Order will have to be set aside directing the Sessions Judge to decide the issue of framing of charge afresh after hearing the parties. It

is, however, made clear that it will be open for the learned Sessions Judge to alter the charge, if any such evidence is adduced and comes on record during the course of the trial. With this, the following Order is passed :

ORDER

- (I) The Revision Application is partly allowed.
- (II) The impugned Order dated 09.02.2016 is hereby set aside.
- (III) The matter is remanded to the learned Sessions Judge.
- (IV) The learned Sessions Judge shall decide the matter of framing of charge after hearing the parties in the light of the observations made above.

C. V. BHADANG, J.

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