

IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL REVISION APPLICATION NO.24 OF 2017.

State (Through Maina
Curtorim Police Station)
Margao Goa(Major) Petitioner.

Versus

Mr Cruz Fernandes Raikar,
s/o Felix Raikar, aged 40
years, r/o. H. No.86, Cotta
Davorlim, Salcete, Goa.
Presently lodged in Central
Jail Colvale. Respondent.

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

Mr. R. Menezes, Advocate for the respondent.

Coram:-PRITHVIRAJ K. CHAVAN,J.

Reserved on:-5th July,2017.

Pronounced on:- 12th July, 2017.

ORDER:

Legality, propriety, and correctness of the order passed below Exh.5 by the learned Additional Sessions Judge directing framing of charge under Section 304(II) IPC has been challenged by way of this revision petition.

2. The brief facts are that on 11.9.2016 at about 21.30

hours at Jose bar at Indona Davorlim, Salcete Goa, the accused committed murder of one Mr. Franky @ Beta Rebello by hitting on his head with an empty glass bottle of liquor and also with a stone resulting into his death. After investigation a chargesheet came to be filed against the accused wherein the learned Additional Sessions Judge, by the impugned order, directed to frame a charge under Section 304(ii) of IPC.

3. Heard Shri S. R. Rivankar, learned Public Prosecutor for the petitioner and Mr. R. Menezes, learned Counsel for the respondent.

4. The main thrust of the learned Public Prosecutor is on the aspect that by no stretch of imagination it can be said to be a culpable homicide not amounting to murder for the reasons that there were three injuries on the vital part of the deceased i.e on head inflicted by the accused not only by means of liquor bottle but also with a stone which warrants framing of charge under Section 302 IPC. According to the learned Public Prosecutor, the learned Addl. Sessions Judge based her observations on the wrong premise that the alleged offence occurred in a sudden fight in a spur of moment, out of sudden provocation but without any premeditation or pre-plan. He, therefore, strenuously urged to issue directions to frame a charge under Section 302 IPC in the light of the fact that

the postmortem report as well as the eye witnesses also clearly indicate that it is the case of murder. The learned Public Prosecutor drew my attention to the statements of the witnesses as well the other material on record.

5. On the other hand, Mr. R. Menezes, drew my attention to the exception (4) of Section 300 IPC. According to the learned Counsel, it was the deceased who picked up the quarrel and not the accused. The accused did not react for a considerable time, however, when the outburst crossed his tolerance, he reacted and thereafter a fight ensued between the deceased and the accused. There was neither premeditation nor any intention to kill. He, therefore, supported the impugned order.

6. The purpose of charge is to tell the accused as precisely and concisely as possible of the matter with which he is charged. The framing of a proper charge is vital to a criminal trial and this is a matter on which Judge who bestow the most careful attention. The object of a charge is to warn the accused of the case he is to answer. It is not an accusation in abstract, but a concrete accusation of an offence alleged to have been committed by a person. What is required to be seen is that if the evidence is such which, if unrebutted, would warrant conviction of the accused then only a charge can be framed against the accused. It is needless to

go meticulously in the evidence at the stage of framing of charge; what is required to be seen is whether a prima facie case is made out coupled with the statement of the witnesses recorded by the Investigating Officer.

7. The learned Public Prosecutor took me through the record, more particularly the statement of the witnesses Rupesh Mohan Naik, the complainant namely Manuel Costa who is the owner of Jose Bar at Indona Davorlim and one Sameer Mulla coupled with an autopsy report.

8. A bare look at the statement of witness Sameer Mulla would reveal that on the day of the incident when he was going from his resident to the shop of one Raju to buy some sweets, he heard some commotion taking place in front of Jose Bar. He noticed hot discussion between Frank @ Beta and Cruz. This witness knew both the deceased and the accused as he hails from the same village. His statement reveals that a scuffle ensued between Frank and Cruz. The respondent first hit Frank with an empty glass bottle on the head due to which there was a bleeding injury. Frank also assaulted Cruz on the tar road. Thereafter Frank ran behind the Jose bar and Cruz followed Frank with an empty glass bottle in his hand. There was also a scuffle between them in which Cruz again hit Frank with an empty glass bottle on his head

due to which Frank fell down on the ground. When Frank was trying to get up Cruz took one stone and hit Frank on his head atleast four to five times. There were many people watching the said scene. He further states that Cruz again pushed Frank while he had fallen down on the ground and gave a kick to him.

9. The statement of Rupesh Naik also reveals this fact in the same chronology wherein he states that he was in front of the Jose Bar at the time of incident and when there was argument between Cruz and Frank, Cruz picked up an empty bottle of "Royal stag" from the front side corner of the bar and started hitting Frank. This witness alongwith one Manuel tried to intervene and attempted to separate them but they were not in a mood to listen. They were uncontrollable, and, therefore, this witness and others decided not to interfere.

10. The complainant and owner of the Jose Bar Manuel Costa spoke in tune with these two witnesses.

11. Mr. Menezes learned Counsel for the respondent vehemently argued that at the relevant time the respondent who was regular visitor of the said bar was sitting over there and taking his drinks. When the deceased entered the bar at about 21.30 hours in a drunken state, he noticed the respondent and therefore

approached him and started arguing with him in konkani “Tuvem Mugele Konnak kitem Sangla” to which Cruz questioned by saying “haveen konaak kitem sangala? Tu naav Sang”. This heated argument which went on for five minutes and, therefore, it was the deceased who provoked the respondent as the respondent did not react for five minutes or so. There is no doubt that quarrel began when the deceased started arguing with the respondent. It cannot be said that the respondent had premeditated or intended to kill the deceased. However, both could have controlled their anger.

12. From the aforesaid material as reflected from the record, it is explicit that the respondent did not intend to commit murder of the deceased. It is also apparent that the deceased tried to provoke the respondent and therefore, there was exchange of hot words between them which perhaps resulted in a grave provocation to the respondent who in a heat of passion assaulted the deceased with an empty liquor bottle and then with a stone.

13. This case would fall within the scope of exception (4) of Section 300 IPC. The only thing which needs to be seen is whether the respondent had acted in a cruel or in an unusual manner. In order to invoke exception (4) of Section 300 four requirements must be satisfied namely (i) a sudden fight, (ii) there was no premeditation (iii) act was done in a heat of passion and (iv) offender

had not taken undue advantage or acted in a cruel manner. Here, in the case at hand, the first three conditions exists. However, it needs to be seen whether the respondent/offender had acted or taken undue advantage to act in a cruel or unusual manner. It is manifest that both were assaulting each other and therefore, there is hardly any question of the respondent taking any undue advantage. Second aspect is of 'cruel manner.' The memorandum of autopsy revealed as many as 14 injures out of which first three injures are on the head of the deceased which are indeed on the vital part of the body. The cause of the death as per the autopsy report is that because of the blunt impact by an object the aforesaid three injuries were caused which proved to be fatal. It does not necessarily mean that the respondent had acted in cruel manner. The infliction of the injuries on the vital part of the body even with a sharp object by enraged accused in a sudden quarrel would not tantamount to intentionally causing injuries to the deceased. There is difference between injury which is likely to cause death and injury which is sufficient in ordinary course of nature to cause death. Particulars of injury is not a sine qua non for inferring that the accused intended to cause death of the victim. This case therefore, would squarely fall within the scope and ambit of exception Section (4) of Section 300 IPC. I am afraid, I cannot buy the arguments of learned Public Prosecutor who has placed reliance on a ***Criminal Revision Application No. 29/2013***

decided by this Court on 17.12.2013 (***State Vs Shri Eknath Thakur***) for the simple reason that in the said case there was an earlier dispute and enmity between the deceased and the accused on account of cashew plantation at Naphale. I, therefore, do not find any irregularity in the impugned order passed by the learned Additional Sessions Judge in framing charge as per second part of Section 304 of the IPC. Consequently, there is no merit in the revision application, which stands rejected.

PRITHVIRAJ K. CHAVAN,J.

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