

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.269 OF 2017

1) YUVRAJ LAXMILAL KANTHER)
2) NIMESH PRAVINCHANDRA SHAH)...APPLICANTS

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Kuldeep Patil, Advocate for the Applicants.

Mr.S.S.Pednekar, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 2nd NOVEMBER 2017

P.C. :

1 Applicants/accused in Sessions Case No.749 of 2014 for offences punishable under Sections 304 and 304A of the Indian Penal Code (IPC) arising out of Crime No.316 of 2013 registered with Police Station Vishrambagh, Pune, by this revision petition are challenging orders below Exhibits 6 and 10 passed on 1st April 2017 by the learned Additional Sessions Judge, Pune, thereby rejecting their application for discharge.

2 Heard the learned advocate appearing for revision petitioners/accused. He drew my attention to the First Information Report (FIR) lodged by Sambhaji Patil, Police Sub-Inspector as well as statements of witnesses and submitted that there was no requirement for providing rubber shoes, safety belt or wooden scaffolding to the workers who were entrusted with the work of preparing furniture or interior decoration of the shop. The learned advocate further argued that there is no iota of evidence to infer commission of offences punishable under Sections 304 and 304A of the IPC and that death of workers caused in the accident does not amount to culpable homicide.

3 The learned APP supported the impugned order rejecting the application for discharge.

4 I have considered the rival submissions and also perused the entire charge-sheet. The crime in question is registered on the basis of the report lodged by Sambhaji Patil, Police Sub-Inspector, Vishrambagh Police Station, initially for the

offence punishable under Section 304A of the IPC read with 34 thereof, but on conclusion of investigation, the charge-sheet has been filed for offences punishable under Sections 304 as well as 304A of the IPC read with Section 34 thereof.

5 The case of the prosecution, as reflected from version of Sambhaji Patil as well as eye witnesses Nizamuddin Shaikh, Murari Sharma, Gulzarilal Yadav etc. is to the following effect :

M/s.Intergold Gems Private Limited, Santacruz, Mumbai, had taken a shop bearing House No.375 situated at Narayanpeth, Laxmi Chambers, Pune, on lease. Contract of interior decoration of that shop was given to revision petitioner no.1/accused Yuvraj Kanther. Revision petitioner no.2 Nimesh Shah was working as Store Operation Manager. It is the case of prosecution that contract for effecting the work of decorating the shop came to be signed by revision petitioner no.2 Nimesh Shah on behalf of the company. He was looking after the work which was being executed through employees of revision petitioner no.1 Yuvraj Kanther.

6 Eye witness account given by several witnesses regarding the incident is to the effect that on 27th September 2013, at about 9.00 p.m., the work of decoration of front side of the shop was being undertaken by Salauddin Shaikh (since deceased) and Arun Sharma (since deceased). Both these employees namely Salauddin Shaikh and Arun Sharma were provided with an iron ladder and they were working on the sign board which was approximately 12 feet high from the ground level. When they were working on the sign board of the shop, all of a sudden they were stuck with electric current. They both fell down and were declared dead on arrival at Pune hospital and Research Center.

7 Charge-sheet shows that deceased Salauddin Shaikh and Arun Sharma were not provided with rubber boot, helmet or safety belt in order to prevent their fall from the iron ladder. When they were working on the sign board of the shop, it was expected of a prudent person to have provided them with a wooden scaffolding instead of an iron ladder. Considering the fact

that they were doing the work in the front portion of the shop where live electric current was available, if one applies yardstick of a prudent person, it was incumbent on the part of the contractor as well as the principal employer to provide atleast rubber shoes and wooden scaffolding to the employees in order to prevent some untoward incident. Rash act or negligence is a breach of duty or lack of proper care in doing something. It is want of attention and doing of something which a prudent man would not do.

8 Section 299 of the IPC defines culpable homicide. This definition covers causing of death with a knowledge that the accused is likely, by such act, to cause death. Knowledge of causing culpable homicide, at this prima facie stage, can certainly be attributable to both the principal employer as well as the contractor, in the wake of the fact that though their employees were dealing with electricity, they were neither provided with safety belt, rubber boot or wooden scaffolding in order to prevent any untoward incident. The case in hand, as such, draws strong

suspicion against both revision petitioners, coupled with prima facie material in the form of statement of eye witnesses in respect of the incident in question. As such, it cannot be said that there are no sufficient grounds to proceed against both revision petitioners for offences alleged against them.

9 In this view of the matter, no case for interference in the impugned order is made out.

10 The revision petition, as such, is dismissed.

11 Needless to mention that observations recorded by this court are prima facie in nature and shall not have any bearing on the trial.

(A. M. BADAR, J.)