

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.622 OF 2016

Vyankatesh Mirekenpli)...Applicant

V/s.

State OF Maharashtra)...Respondent

Mr. Tanveer Khan, Advocate for the Applicant.

Mr. S.V.Gavand, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 24th JANUARY 2017.

P.C. :

By this Revision Application, the Revision Applicant/Original accused is challenging the order dated 21.9.2016 thereby holding that there is sufficient material on record so as to add charge for the offence punishable under Section 302 of IPC.

2 Heard learned advocate appearing for the revision applicant-accused. He argued that the charge for the offence punishable under Section 306 of IPC and that of one punishable under Section 302 of IPC are two different charges and as decided

by the Hon'ble Apex Court in the matter of **R.Rachaiah v. Home Secretary, Bangalore** reported in **2016 DGLS(SC) 620**, both these charges cannot stand together. The learned advocate placed reliance on paragraph 12 of this ruling. He further argued that even evidence of P.W.1 is not yet finished but by recording evidence of P.W.2, the trial Court has directed framing of charges for the offences punishable under Section 302 of IPC. He further argued that there is no material on record to frame that charge and the learned trial Court ought to have examined all witnesses prior to framing of charge for the offence punishable under Section 302 of IPC.

3 The learned APP contended that from chief examination of P.W.1 Sharda-mother of the deceased, the learned trial Court found that it is necessary to frame charge for the offence punishable under Section 302 of IPC and then after recording evidence of autopsy surgeon, the application moved by the prosecutor for framing the charge for the offence punishable under Section 302 of IPC came to be allowed. In submission of the learned APP, the impugned order is neither suffering from

procedural defect nor amounts to patent illegality.

4 I have carefully considered rival submissions and also perused the record made available.

5 On the basis of report lodged by PW.1-Sharda Nair on 21.6.2012, Crime No.85 of 2012 came to be registered for the offences punishable under Sections 498A and 306 of IPC. Deceased Shainy is daughter of the informant. It is seen that after framing of charge for the offence punishable under Sections 498A and 306 of IPC, the trial commenced. During the course of recording of evidence of PW.1-Sharda Nair, the Prosecutor appearing in the trial moved an application under Section 216 of the Cr.P.C. for framing of the additional charge for the offence punishable under Section 302 of IPC against accused persons. It is seen that said application was opposed by contending that there is no medical evidence on record to infer offence punishable under Section 302 of IPC. Thereafter, evidence of autopsy surgeon Dr. Ajay A. Tawre (PW.2) came to be recorded. Then after considering the entire material on record and particularly, ante-mortem injuries found on the person of the deceased, the learned trial

Court came to conclusion that there is prima-facie case for the offence punishable under Section 302 of IPC. As the learned trial Court found that there is ground for presuming that accused persons have committed offence punishable under Section 302 of IPC, it directed framing of charge for the offence punishable under Section 302 of IPC.

6 On framing of the charge for the offence punishable under Section 302 of IPC, the learned trial Court will definitely recall witnesses who are already examined but it is seen that even P.W.1 is not yet cross-examined. Thus, cross-examination of P.W.1 will certainly take place after framing of charge and it hardly needs to be stated that accused persons will certainly have an opportunity to cross-examine the P.W.1 even in respect of the charge under Section 302 of IPC. If required accused persons can also file an application for recalling autopsy surgeon P.W.2-Dr. Ajay Tawre in view of provisions of Section 217 of Cr.P.C. The revision applicant need not contemplate at this stage that he will not be permitted to recall prosecution witnesses in the event of framing of charge for the offence punishable under Section 302 of IPC.

7 In the light of this discussion, it is not seen that the learned trial Court has committed any manifest error on the point of law resulting in miscarriage of justice nor he had committed any procedural error in the matter. Revision Petition as such is devoid of merits and is, therefore, dismissed.

(A. M. BADAR, J.)