

**IN THE HIGH COURT OF BOMBAY AT GOA**  
**CRIMINAL REVISION APPLICATION NO.14 OF 2019**

Agu Frank Godwin

.... Applicant

V/s

State of Goa

.... Respondent

Shri Tushar Lavhate, Advocate for the Applicant.

Shri S.R. Rivankar, Public Prosecutor for the Respondent.

**Coram:- PRITHVIRAJ K. CHAVAN, J.**

**Date:- 5<sup>th</sup> September, 2019**

**ORAL ORDER :**

The petitioner is one of the accused charge sheeted for an offence punishable under Section 302 read with 34 of IPC. The learned Additional Sessions Judge by the impugned reasoned order dated 07/01/2019, directed a charge to be framed under Section 302 read with 34 of IPC.

2. Heard Shri T. Lavhate, the learned Counsel for the petitioner and Shri S.R. Rivankar, the learned Public Prosecutor for the respondent.

3. Without going into the legality of the impugned order, the learned Public Prosecutor as well as the Counsel for the petitioner are at *ad idem* on the point that this is a fit case which would fall, at the most, under Section 304(ii) of IPC instead of Section 302.

4. In short, it is the contention of the learned Counsel for the petitioner that the accused, victim and the witnesses are Nigerian Nationals. On 24/02/2018 at about 16.15 hours all of them were enjoying beer at Girkarwada, Arambol Pernem. At that time, suddenly in a heat of passion, a quarrel ensued and the deceased was stabbed. There was no question of any prior meeting of mind or common intention on the part of the accused to eliminate the deceased who was their friend. It is, thus, submitted by the learned Counsel for the petitioner that it would not be a case which can be said to be a pre-planned murder of the deceased by the accused.

5. Shri Rivankar, as stated herein above, has not disputed the said fact on the basis of the statements on record.

6. A perusal of the record also reveals that it was probably an

incident which had occurred in a spur of moment, which would, at the most fall within Exception 4 of Section 300 of IPC, which contemplates when culpable homicide is not murder. Exception 4 reads as under :

*“Exception 4 - Culpable homicide is not a murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.”*

7. Consequently, the impugned order dated 07/01/2019 passed by the Additional Sessions Judge, Mapusa stands quashed. The learned Additional Sessions Judge shall frame a charge under Section 304(ii) and, shall proceed expeditiously as per law.

8. The petition stands disposed of in aforesaid terms. The parties to act on the basis of authenticated copy of the order.

**PRITHVIRAJ K. CHAVAN, J.**

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