

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL REVISION APPLICATION NO.75 OF 2019

Kiran Prakash Yewale & anr.

... Applicants

Vs.

The State of Maharashtra

... Respondent

Mr.S.H. Nimbalkar for the Applicants

Mr.A.R. Patil, APP, for the Respondent – State

CORAM: Mrs.MRIDULA BHATKAR, J.

DATED: FEBRUARY 22, 2019

P.C.:

1. In this revision application, the order dated 16.1.2019 thereby rejecting the application to set aside the order of 'no cross' passed by the learned Additional Sessions Judge, Pune, is challenged.

2. The applicants are prosecuted and facing trial under sections 302 and 498A of the Indian Penal Code. The accused are on bail. The examination-in-chief of the complainant is over on 24.1.2017. On that day, the advocate for the accused was absent and after repeatedly calling him, 'no cross' order was passed.

3. On perusal of the order under challenge, it is found that the learned Sessions Judge has given the details as to how the matter proceeded meticulously. It appears that for seeking adjournment for cross-examination thrice, costs were saddled on the accused and the same were paid. Thus, finally, on 19.3.2018, PW1 was present. However, the advocate for the accused again filed application for adjournment and on considering the conduct of the advocate for the accused, the application was rejected and no cross order was passed. It appears that during the course of arguments, the learned advocate for the accused relied on a number of rulings, however, the learned trial Judge has rightly distinguished all the rulings as the facts of the case in hand are different. I do not find any reason to set aside the order except on the ground that the applicant/accused is facing trial for murder under section 302 of the Indian Penal Code wherein capital punishment can be given. It is the duty of the Court to see that the trial before the Court is fair and especially when the accused is facing charges where the capital punishment can be given and each and every opportunity is to be provided to the accused to defend him. In the present case, I am of the view that it was the

duty of the advocate on record to cross-examine the witness. The accused was represented by the advocate and during the trial, he is entirely in the hands of the advocate. Thus, the accused cannot be deprived of opportunity and right to have a fair trial and, therefore, the impugned order is set aside, however, on condition of payment of costs which shall be paid by the concerned advocate on record, who did not remain present for the cross-examination, from his own account to the witness i.e., PW1. Accordingly, the revision application is allowed on the following terms:

- i) The impugned order dated 16.1.2019 is set aside, subject to payment of costs of Rs.10,000/- to be paid by the advocate for the applicant from his account to PW1 on or before 2.3.2019.
- ii) The parties shall remain present before the trial Court on 28.2.2019 as the matter is posted for trial on 2.3.2019.
- iii) The prosecution shall keep the complainant present on 2.3.2019 so that he will be available for cross-examination on 2.3.2019. The learned Advocate for the accused shall

endeavour to conclude his cross-examination on the same day and if not, it can spill over to 4th March, 2019 and concluded accordingly.

4. Revision application is disposed of accordingly.

(MRIDULA BHATKAR, J.)