

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

CRIMINAL APPLICATION NO. 551 OF 2017

1. Prashant Kisanrao Korhale @ Sonawane
2. Babita Kisanrao Korhale
3. Pradeep Kisanrao Korhale
4. Pankaja Prashant Aute ...Applicants

Versus

The State of Maharashtra ...Respondents

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Mr.Aniket U. Nikam a/w Mr.Aashish Satpute a/w Mr.Amit Icham a/w
Mr.Piyush Toshnival i/by Mr.Vivek Arote, Advocate for the Applicants.

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

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CORAM : PRAKASH D. NAIK, J.
DATE : 22nd JULY, 2022

PER COURT:

1. The Applicants are arraigned as accused in C.R. No.45 of 2017 registered with Daund Police Station, Pune for offences under Sections 498-A, 306, 323, 504, 506 r/w Section 34 of Indian Penal Code (for short 'IPC'). On completing investigation, charge-sheet is filed.

2. The case of the prosecution is that, the marriage of complainant's daughter was performed with applicant No.1 on 30.12.2010. The husband of deceased and his relatives caused harassment to the deceased. She committed suicide by pouring

kerosene on her on 15.03.2012. First Information Report was registered on 16.03.2012. The applicant No.1 is the husband; applicant No.2 is mother of applicant No.1; applicant No.3 is brother of applicant no.1 and applicant No.4 is the relative.

3. Charge was framed vide order dated 08.04.2013 for offences under Sections 306 & 498-A r/w Section 34 of IPC. On 08.03.2017 prosecution filed application Exhibit 59 for framing additional charge under Section 304-B of IPC. The accused opposed the application by filing reply. The learned Additional Sessions Judge, Baramati, vide order dated 13.04.2017 allowed the said application.

4. The applicants are aggrieved by the aforesaid order dated 13.04.2017 and preferred this application under Section 482 of Cr.PC. challenging the said order.

5. Learned Advocate for the applicants submitted that the impugned order is bad in law. The additional charge is based on surmises and conjecture. The learned Judge has failed to give any reasons in support of impugned order. The elements of Section 304-B are not attracted to the facts of the present case. Charge was framed on 08.04.2013 sans Section 304-B of IPC. The application for additional charge was made belatedly. To establish the charge under Section 304-B of IPC, the prosecution is required to show

that, soon before the death, the victim was subjected to cruelty or harassment for dowry. Reliance is placed on the decision of the Supreme Court in the case of *Kamesh Panjiyar alias Kamlesh Panjiyar Vs. State of Bihar*¹.

6. Learned A.P.P supported the additional charge. It is submitted that, the prosecution would prove the charge during trial. There is evidence on record to invoke Section 304-B of IPC. The material which forms part of charge-sheet will be tested during trial. At this stage, the additional charge cannot be set aside.

7. The marriage between the deceased Rekha and the applicant No.1 was solemnized on 30.12.2010. She committed suicide on 15.03.2012. Thus, the incident of suicide had occurred within a span of two years from the date of marriage. The First Information Report and the statements of witnesses referred to the fact that the victim was tortured by the accused. She committed suicide by pouring kerosene on her person in the house. The accused were demanding money from the victim to be brought by her from parents for purchasing agricultural land. There was physical and mental torture. Although, vide order dated 08.04.2013, charge was framed under Sections 306 & 498-A, r/w Section 34 of IPC, the prosecution preferred an application for framing additional charge

¹ (2005) 2 SCC 388

under Section 304-B. There is evidence on record to show that the victim died on 15.03.2012 due to burn injuries as she poured kerosene on her person and set herself on fire at the house of accused. The incident had occurred within Seven years of her marriage. While framing charge vide order dated 08.04.2013, it was observed that the deceased committed suicide by pouring kerosene on her person and setting herself on fire in the residential house of accused No.1 and that the accused were threatening and teasing the victim that her parents did not give money to purchase agricultural land and hence she was physically and mentally tortured. Thus, even while framing the charge, the trial Court has noted that there was harassment on the issue of demanding money for purchasing agricultural land. The learned Additional Sessions Judge, Baramati vide order dated 13.04.2017 allowed the application for framing additional charge by assigning detailed reasons. There is no infirmity in the impugned order dated 13.04.2017. Prima facie case is made out for framing additional charge. In the case of *Kamesh Panjiyar alias Kamlesh Panjiyar Vs. State of Bihar* (supra) relied upon by the learned counsel for applicants it was observed that, Section 304-B of IPC deals with dowry death. The provisions of said Section is, where the death of victim is caused by any burns or bodily injury or occurs otherwise

then under normal circumstances within Seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relatives of her husband for, or in connection with, any demand for dowry. Section 113-B of the Evidence Act refers to presumption as to dowry death. It was observed that, joint reading of Section 113-B of the Evidence Act and Section 304-B of IPC shows that, there must be material to show that, soon before her death, the victim subjected to cruelty or harassment. The prosecution has to rule out the possibility of natural or accidental death so as to bring it within the purview of 'death occurring otherwise than in normal circumstances'. The prosecution is obliged to show that, soon before the occurrence there was cruelty or harassment. It is pertinent to note that, in the present case the victim has poured kerosene on her body and set herself on fire. The incident had occurred within two years from the date of marriage. The FIR and the statements of witnesses refers to the harassment caused on account of not providing money for purchasing agricultural land. The aforesaid decision was dealing with requirements to constitute the offence under Section 304-B wherein the accused was convicted. The material on record is sufficient to frame charge under Section 304-B of IPC in addition to the previous charges

framed by the trial Court. Hence, no case is made out to interfere in the impugned order.

ORDER

Criminal Application No.551 of 2017 is rejected.

(PRAKASH D. NAIK, J.)