

Andreza

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL REVISION APPLICATION NO. 11 OF 2023

Rulasha Fernandes ... Applicant
Versus
State, Through the Public Prosecutor & anr. ... Respondents

Mr. S. D. Lotlikar, Senior Advocate *with Mr. Terrence Sequeira, Advocate for the Applicant.*

Mr. S. G. Bhobe, Public Prosecutor *for the Respondents-State.*

CORAM: PRAKASH D. NAIK, J
DATED: 24th AUGUST 2023

ORAL ORDER

1. The applicant is prosecuted for an offence punishable under Sections 120-B, 302 and 201 of Indian Penal Code (IPC) vide Sessions Case no. 4/2022 pending before the Court of Sessions at Panaji.

2. First Information Report was registered with Ponda Police Station on 31.10.2021 by one Naresh Prasad, who is the brother of the deceased Harinder Prasad. The prosecution case is that the deceased was having extramarital affair with the lady, namely Cabrina. On the day of incident, the deceased left the house and was subsequently found dead. There is no eye witness to the incident and the entire case is based on circumstantial evidence. Investigation revealed that the deceased was called by Cabrina at her house. Other accused also visited her house. He was made to drink liquor and assaulted by the

accused. He succumbed to the injuries. His dead body was thrown under the bridge. Investigation proceeded. Accused were arrested. The applicant was allegedly occupying the premises where the alleged incident occurred along with the co-accused Cabrina. During the course of investigation, statement of the applicant was recorded under Section 164 of the Criminal Procedure Code, 1973, (Cr.P.C.), wherein she has stated that the incident had occurred in her presence and that she has assisted the co-accused in taking the body near the bridge and thrown it by bringing a two wheeler. She has not admitted her participation in the sense that she was involved in assaulting the deceased. On completing investigation, chargesheet was filed. The applicant preferred application for discharge before the Court of Sessions. The said application was rejected vide order dated 02.03.2023.

3. Learned Senior Advocate Shri Lotlikar, appearing for the applicant, submitted that there is no evidence to show the involvement of the applicant in the crime. There is no eye witness to the incident. No role of assault is attributed to the applicant. Prosecution is relying upon the statement of the applicant recorded under Section 164 of Cr.P.C. Her statement is exculpatory. The applicant has not admitted her participation in the assault. Her statement at the most indicate that she had wiped out the blood stains from the floor at the place of incident and that she had assisted

the co-accused in disposing the body of the deceased. The Investigating Agency, however, has not collected any evidence to show that the applicant was conspirator or has actually participated in assaulting the deceased.

4. Learned Public Prosecutor Mr. Bhobe, submitted that the applicant was occupying the premises along with the co-accused Cabrina. The statement of the applicant recorded under Section 164 of Cr.P.C. indicate her involvement in the crime. She has admitted that she was instrumental in wiping out the blood stains from the scene of offence and that she has assisted in destroying the evidence. He also relied upon the statements of the witnesses to whom the co-accused Sunil Madkaikar had made extra judicial confession. One of the witness has stated that confession made by said accused is that he assaulted deceased along with Cabrina and her cousin sister. Undisputedly, there is no evidence to show that applicant is cousin of accused Cabrina. The other witness has stated that accused Sunil Madkaikar has stated that he along with Cabrina and applicant are involved in crime.

5. Perused the chargesheet and the impugned Order passed by the Sessions Court. Undisputedly, the case is based on circumstantial evidence as there is no eye witness to the incident. Except the statement of the applicant under Section 164 of Cr.P.C., which is

mostly exculpatory in nature, there is no evidence to connect applicant with murder. In the statement under Section 164 of Cr.P.C. recorded during investigation, the applicant has stated that she is not involved in assaulting deceased. She tried to intervene in the assault by other accused. There is no evidence to show involvement of applicant in assaulting deceased. The prosecution case is that the deceased was over possessive about accused Cabrina. The accused Sunil Madkaikar was allegedly in relationship with Cabrina. The deceased was allegedly called by Cabrina at the place of incident. He was made to consume liquor and thereafter he was assaulted. The applicant has no motive and no role in assaulting the deceased. There is no evidence of whatsoever nature to establish *prima facie* the applicant was conspirator in commission of crime. Even to substantiate the charge under Section 201, except the statement of the applicant under Section 164 of Cr.P.C., there is no independent evidence. However, at this stage, it would not be possible to exonerate the applicant from the charge under Section 201 IPC. Some of the witnesses' statement refers to confession by accused Sunil Madkaikar. One of them stated that accused had disclosed name of applicant as participant in crime. The prosecution is relying on statement of applicant under Section 164 of Cr.P.C. The statement do not refer to her involvement in assault. There is no evidence to show applicant's involvement in assault upon deceased. The

prosecution case in fact proceeds on the version of applicant in statement under Section 164 Cr. P.C. that she assisted the co-accused in disposing the body of the deceased and wiping blood stains. The applicant cannot be charged for the offence under Section 120-B and 302 of IPC. At the most, she could be charged for an offence under Section 201 of IPC. Hence, the following Order :

ORDER

- (i) The revision is partly allowed.
 - (ii) The applicant is discharged from the offences under Section 120-B and Section 302 of IPC.
 - (iii) Charge under Section 201 IPC is maintained.
 - (iii) The applicant be tried for the offence under Section 201 of IPC.
 - (iv) The trial Court shall proceed against the applicant for the charge under Section 201 IPC in accordance with law without being influenced by this Order. The observations about charge under Section 201 IPC are prima facie.
6. At this stage, learned Public Prosecutor submits that option of making the applicant as approver or prosecuting her for the principal

offence by invoking Section 319 of Cr.P.C., may be kept open in the event any evidence is found against her.

7. Without making any observations on the merits of the above submission, the prosecution is at liberty to invoke the said options.

8. Criminal Revision Application stands disposed of.

PRAKASH D. NAIK, J

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