

Maria S.

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NO.18 OF 2023

Nimisha Gone @ Valsan, through
her next friend and husband
Nilesh Gone **... Applicant**

Versus

State of Goa thr. Public Prosecutor
And Anr. **...Respondents**

Mr Damodar Dhond, Advocate with Mr Vibhav R. Amonkar and Mr Siddhant Shetye, Advocates for the Applicant.

Mr Nikhil Vaze, Additional Public Prosecutor for the State.

CORAM:	PRAKASH D. NAIK, J
DATED :	23rd OCTOBER 2023

ORDER:

1. The applicant is prosecuted for the offences punishable under Section 302 of Indian Penal Code and Section 8 of Goa Children's Act.
2. The prosecution case is that the applicant accused committed murder of her own minor daughter aged 14 months and fled away from the spot. Complaint was lodged by one Amruth Babu on 06.08.2022. The victim was killed by smothering, i.e. by keeping the pillow on her mouth and nose. The accused then went to the Zuari river and jumped in order to commit suicide. She was rescued by the staff who were working

on the construction bridge at Cortalim and handed over to Agacaim Police Station. She was referred for medical examination. On completing investigation, chargesheet was filed.

3. The proceedings were heard by the trial Court on the issue of framing charge. The advocate for the accused contended that the applicant is suffering from mental health issues and has been under treatment and not committed any offence as the act was committed by her being of unsound mind. She may be discharged. Prosecution contended that the offence is very grave. The accused is involved in murdering her 14 months old daughter. The learned Judge vide order dated 30.06.2023 held that Charge under Section 302 of IPC and Section 8 of Goa Children's Act has to be framed against the accused. Reference was made to the fact that the report of the doctor mentions that the accused is diagnosed to have Delusional Disorder which is a type of psychotic disorder, having false beliefs that people are trying to harm her and her mind is being possibly controlled by hypnotism. The accused feels scared and anxious in the absence of her family members and is unable to trust people around her. These false beliefs have decreased in intensity with treatment and she currently has anxiety which is managed with medications. The Doctor has also mentioned that disorder will need long term treatment and in view of the traumatic incident is likely to suffer from ongoing anxiety and adjustments issues. The Court further observed that offence under Section 302 is punishable with death or imprisonment for life. It is also seen from the Doctor's report that the accused was admitted by her

family on 08.08.2022 which is after the date of offence. The incident had occurred on 06.08.2022. Nothing has been produced that the accused had this disorder earlier or that she was taking such treatment for such disorder previously to the date of incident. Considering the gravity of offence and that the very object of the Goa Children's Act 2003 is a special legislation for the protection, promotion and preservation of the best interest of children to give children a safe environment to bloom without being abused and for their development to be nurtured. The plea of insanity/mental health issues which falls under Section 84 of IPC will have to be proved by the accused in her defence. At this stage, there is prima facie case made out against the accused for the offence she has been charged with.

4. Learned advocate for the applicant submitted that the applicant is suffering from mental illness. The chargesheet would demonstrate that the applicant was undergoing treatment at the Institute of Psychiatry & Human Behaviour, Bambolim. The applicant has been facing psychological issues from July 2022. The applicant had consulted Dr. Agarwal, who is a Psychiatrist, on 03.08.2022, who had advised her that she requires further consultation. The medical report indicate that the accused is diagnosed to have Delusional Disorder which is a type of psychotic disorder. The trial Court has requested IPHB to conduct medical examination of the applicant in which the report dated 18.01.2023 was submitted. The applicant has been taking treatment at IPHB. The applicant deserves to be discharged in view of Section 84 of IPC. The applicant was not in a position to understand the consequences of her act and the

applicant cannot be prosecuted for offence under Section 302 of IPC or for the offence under Section 8 of Goa Children's Act. The applicant's case is covered by Section 84 of IPC.

5. Learned Additional Public Prosecutor Mr Vaze submitted that the applicant was charged for murdering her child aged about 14 months by smothering. The offence is of serious nature. Whether the applicant was suffering from insanity at the time of the commission of offence will have to be established by way of defence in the trial. At this stage, the defence of insanity cannot be accepted. At the stage of framing charge, the Court has limitations. The Court is required to see whether prima facie case is made out. There is sufficient evidence to frame charge against the applicant.

6. The prosecution case is that on 06.08.2022 the accused has killed her daughter by smothering with pillow. The postmortem examination over the dead body of the victim was conducted and the doctors certified the cause of death as death due to "Axphyxia as a result of compression of nostrils and mouth vide injury No.1, which was ante mortem and fresh at the time of death". The accused then attempted to commit suicide. After the commission of offence the accused was admitted in IPHB hospital. The applicant has urged the charge be dropped against her as the applicant was suffering from mental illness and her case would be covered by Section 84 of IPC. The accused was examined at IPHB, Bambolim-Goa and the report dated 05.09.2022 which is based on the examination of the accused after the alleged incident show that the accused was

admitted by her family. The accused had agreed to share her information regarding nature of illness, sickness and the nature of symptoms and whether the patient or family members had informed about her past illness. The accused declined to share information regarding certified copies of treatment/documents. The report further mentions that patient is diagnosed to have Delusional Disorder which is a type of psychotic disorder. She has false beliefs that people are trying to harm her and her mind is being possibly controlled by hypnotism. She feels scared and anxious in the absence of her family members. She is unable to trust people around her. These false beliefs have decreased in intensity with treatment and she currently has anxiety which is managed with medications. She had shown significant improvement in her symptoms. Further, the nature of the disorder is such that it will need long term treatment. It also appears that the accused had tried to cause harm to herself by inflicting injuries and attempted to commit suicide.

7. Section 84 of IPC reads as follows:-

`84. Act of a person of unsound mind.- Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.'

8. Analysing the aforesaid provision it is apparent that if a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law would not be an offence. Section 84 of IPC is being covered by Chapter IV which deals with General Exceptions. In a case where exception of

Section 84 under IPC is claimed, Court has to consider whether at the time of commission of offence, accused by reason of unsoundness of mind, was incapable of knowing the nature of the act or that he is doing what is either wrong or contrary to law. The burden of proving the exception of circumstances bring the accused within the purview of Section 84 lies upon the accused under Section 105 of Indian Evidence Act. The documents on record are in relation to the treatment provided to the accused post incident. At this stage it is difficult to give finding that the accused was unable to know the nature of the act or that what she was doing is wrong or contrary to law at the time of commission of the act. There is no infirmity in the impugned order. No case is made out to set aside the order. Hence, the application is required to be rejected.

ORDER

1) The criminal revision application stands rejected and is disposed of.

(PRAKASH D. NAIK, J.)

MARIA SUZANA REBELLO

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