

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

CRIMINAL WRIT PETITION NO. 3554 OF 2018

1. Shalan Nagnath Pandhare
Age 48 Years, Occ. Agri.
2. Akash Nagnath Pandhare
Age 28 Years, Occ. Agri.
3. Vikas Nagnath Pandhare
Age 25 Years, Occ. Agri.
All R/at. Adobawasti, Tannu
Tal. Indapur, Dist. Dist. Pune. ...Petitioners

Versus

The State Of Maharashtra ...Respondent

**WITH
CRIMINAL APPLICATION (APPW) NO.338 OF 2018
IN
CRIMINAL WRIT PETITION NO. 3554 OF 2018**

Mahadeo Krishna Kolekar ...Applicant

IN THE MATTER BETWEEN :-

Shalan Nagnath Pandhare And Ors. ...Petitioners

Versus

The State Of Maharashtra ...Respondent

...

Mr. Kuldeep Patil i/by Mr. Prashant S. Hagare, Advocate for the Petitioners.

Mr. B. A. Lawate, Advocate for the applicant in Criminal Application No.338 of 2018.

Mr. S. R. Agarkar, APP for the Respondent – State.

CORAM	:	PRAKASH D. NAIK, J.
DATE OF RESERVING JUDGMENT	:	30th SEPTEMBER, 2022
DATE OF LISTING FOR CLARIFICATION/HEARING	:	7th JUNE, 2023 & 14th JUNE 2023
DATE OF PRONOUNCING JUDGMENT	:	28th JULY, 2023

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JUDGMENT :

1. The petitioners are accused in C.R. No.130 of 2011 registered with Indapur Police Station, District: Pune, for offences under Sections 302, 498-A, 120-B, read with Section 34 of Indian Penal Code (for short "IPC"). On completing investigation, charge-sheet was filed and the case was committed to the Court of Sessions and the proceedings are pending before the Sessions Court at Baramati in Sessions Case No.21 of 2012.

2. The case of the prosecution is as under :-

The first informant is the maternal uncle of the victim Ashwini Pandhare. The marriage of victim and the accused No.2 Akash was solemnized on 24.06.2010. Akash was working in army. After marriage, the victim was ill treated by the accused. The accused No.1 is mother-in-law and the accused No.3 is brother-in-law of the victim. On 02.05.2011, the husband of victim gave a call to the complainant and informed him that, he wants divorce from his wife. On 03.05.2011, information was received that, the victim Ashwini has died. The complainant and others visited the matrimonial home of the victim. She was found in supine position. It was also noticed that the rope was hanging to the angle of the room. The victim was dead. There was injury near her chin. Police visited the house. Body was

sent for the post-mortem. The doctor had opined that, on account of compression of neck, the victim has died. Body was cremated. Complaint was lodged with the police and First Information Report (for short 'FIR') was registered on 04.05.2011 under Sections 302, 498-A, 120-B read with Section 34 of IPC. On completing investigation, charge-sheet was filed.

3. Charge was framed by order dated 01.08.2013 for offences under Section 498-A r/w Section 34 of IPC, Section 302 r/w Section 34 of IPC, Section 109 r/w Section 302 of IPC, Section 201 r/w Section 34 of IPC and Section 120-B of IPC.

4. PW-1 Dattatray Hanumant Mohite is the neighbour of victim and his examination-in-chief and cross examination was recorded on 06.07.2017. PW-2 Jitendra Tanaji Jadhav is also the neighbour of the victim. His examination-in-chief and cross examination was recorded on 17.07.2017. PW-3 Mahadeo Krishna Kolekar is the maternal uncle of the victim and the first informant. His evidence was recorded on 19.08.2017. PW-4 Dr. Abhijit Raghunathrao Phadnis is the Medical Officer, who conducted the post-mortem of the deceased. He was examined on 13.09.2017. PW-5 Sangram Shrimant Mane-Deshmukh is the middleman for arranging the marriage. The evidence of this witness was recorded on 05.10.2017. PW-6 Pandurang Kisan Pise is the relative of

deceased. His examination-in-chief was recorded on 09.11.2017 and cross examination was recorded on 30.11.2017. PW-7 Tanaji Chandrakant Jagdale is the panch witness for spot panchanama. PW-8 Vilas Babasaheb Dhaigude was posted at Indapur Police Station as P.S.I. He conducted investigation. His evidence was recorded on 06.01.2018. Evidence close pursis was filed by the prosecution on 11.01.2018. Case was adjourned for recording statement of accused under Section 313 of Cr.PC.

5. On 20.03.2018, the trial Court framed purported additional charge as follows :-

“ **ADDITIONAL CHARGE** ”

I A.S. Avate, Additional Sessions Judge, Baramati, do hereby charge you accused.

- 1] *Sau. Shalan Nagnath Pandhare*
Age 52 Years, Occ. Agriculture.
- 2] *Akash Nagnath Pandhare*
Age 32 Years, Occ. Agriculture.
- 3] *Vikas Nagnath Pandhare*
Age 30 Years, Occ. Agriculture.
All R/at. Adobawasti, Tannu
Tal. Indapur, Dist. Dist. Pune.

as follows.

That the wife of accused No.2 Ashwini committed suicide in the night of 02/05/2011 at your house at village Adoba Vasti, Tannu Tal:Indapur and you all the accused have abated the commission of such suicide and thereby committed an offence punishable under Section 306 of the Indian Penal Code and within my cognizance.

AND I hereby direct that you be tried on the aforesaid charge by me.”

6. The learned Additional Sessions Judge passed separate order dated 20.03.2018 which is as follows :-

“ Today this Court has framed additional charge below Ex.17. Both the sides are at liberty to adduce evidence on the additional charge.”

7. The additional charge was framed under Section 306 of IPC. The trial Court can suo-moto frame the additional charge.

8. PW-1 Dattatray Hanumant Mohite is the neighbour of the accused. He heard shouts from the house of the accused on 03.05.2011 and when he visited the house, he saw that the body of victim was lying on a bed. In the cross examination he stated that, he heard from the villagers that the victim had committed suicide.

9. PW-2 Jitendra Tanaji Jadhav has deposed that, he went to the house of the accused. The body of victim was hanged to the roof of the house by nylon rope. When he went to the house of the victim for second time, her body was lying on Diwan in supine position. In the cross examination he stated that, when he went to the house of the accused for the first time, the room in which the body of victim was hanging, was closed from the inside. He saw the body of victim was hanging from the window of the house. Villagers were gathered and they were saying that the victim had committed suicide.

10. PW-3 Mahadeo Krishna Kolekar stated that, he saw the dead body of the victim in supine. The neck of the dead body had marks of strangulation. Injuries were seen behind the ear and below the chin. Post-mortem was conducted. Doctor told him that, death was caused due to strangulation. When he reached there, the accused were not present. In the cross examination he stated that, when they went to the house of the accused, that time 10 to 15 persons were present. He inquired about the cause of death of the victim. He denied that, those persons informed him that the victim has committed suicide by hanging. He also denied that, he received message that the victim has committed suicide by hanging. He denied the suggestion that the victim has committed suicide due to loneliness.

11. PW-4 Dr. Abhijit Ragunathrao Phadnis has deposed that, he conducted post-mortem examination of the victim. He found ligature marks at the neck situated at the level of thyroid cartilage. It was horizontal and encircled the neck completely. Ligature marks were huge in size. Thyroid cartilage was fractured. According him, death of victim was homicidal. In the cross examination he stated that, in Column No.17 of the post-mortem report he has stated that, ligature marks were present on the body. Strangulation was by ligature. There is similarity in cause of death

by hanging and by strangulation. He denied that, if the victim has committed suicide, then ligature marks as shown in Para No.17 of the post-mortem report may occur.

12. PW-5 Sangram Shrimant Mane-Deshmukh has stated that on 03.05.2011, he went to the house of the accused. The body of the victim was kept on bed. He denied the suggestion that, due to suicide by the victim, the area was under tension.

13. PW-6 Pandurang Kisan Pise has stated that, he came to know that the victim was murdered by strangulation. It was pointed out to him that, in the statement before the police he stated that, from the conversation of relatives present at the place of incident he learnt that the victim has committed suicide.

14. Learned Advocate appearing for Petitioner submitted that, the charge under Sections 302 and 306 of IPC are distinct. Both the charges cannot be framed as alternative or additional charge. The trial proceeded for offence under Section 302 of IPC and 498-A IPC. After recording the entire evidence and closure pursis filed by the prosecution, the learned Sessions Judge ought not to have framed the charge under Section 306 of IPC. In the facts of this case, the Court cannot be exercised powers under Section 226 of Cr.PC.. The accused had killed the deceased. Now the different complexion cannot be given to the case by framing charge under

Section 306 of IPC. Framing of additional charge would amount to failure of justice by prejudicing the defence of the accused. The Court has to ensure that the alteration or addition of charge has not caused prejudice to the accused and though the power is wide and extensive it must be exercised judiciously.

15. Learned Advocate for the Petitioner has relied upon following decisions :-

- i) *Sabirabano Yusuf Sayyad and Anr. Vs. The State of Maharashtra* passed by this Court in Criminal Application (APL) No.125 of 2020 vide Judgment dated 24.11.2021.
- ii) *Jasvinder Sanini and Others Vs. State (Government of NCT of Delhi)*¹.
- iii) *Shamnsaheb M. Multtani Vs. State of Karnataka*².
- iv) *Virendra Kumar Vs. State of U.P.*³.
- v) *Bimla Devi and Another Vs. State of Jammu and Kashmir*⁴.
- vi) *Prasoon Gupta & Ors. Vs. State of U.P.*⁵.
- vii) *Harjit Singh Vs. State of Punjab*⁶.

16. Learned A.P.P. submitted that, there is no infirmity in the order framing additional charge by the trial Court. No prejudice will be caused to the accused. By framing the additional charge, the Court has cautioned the accused that they can meet the said charge and both the sides are given liberty to adduce evidence on

1 (2013) 7 SCC 256

2 (2001) 2 SCC 577

3 (2007) SCC 211

4 (2009) 6 SCC 629.

5 2010 SCC OnLine All 1887.

6 (2006) 1 SCC 463.

the additional charge. Even if the charge is not framed under Section 306 of IPC, the trial Court is empowered to convict the accused for offence under Section 306 of IPC, even if he is charged under Section 302 of IPC. In the present case, the trial Court has realized that, a fair opportunity should be given to the prosecution as well as the defence and framed the charge under Section 306 of IPC. Although the charges under Sections 302 & 306 are distinct in the present case, the charge for both the offences can be framed. The accused were also charged for offence under Section 498-A of IPC, the ingredients which to constitute offence of abetment to commit suicide are brought on record through evidence of witnesses while charging them for cruelty under Section 498-A of IPC. In fact in the present case the defence of the accused is that the victim has committed suicide. Thus, the trial Court is also empowered to convict the accused under Section 306 of IPC in exercise of powers under Section 222 of Cr.PC. The Court is also empowered to frame the charge in the event it is not clear as to which offence is committed by the accused for all the offences.

17. Learned A.P.P. has relied upon the following decisions :-

i) *Kisan & Ors. Vs. State of Maharashtra*⁷.

ii) *Dalbir Singh Vs. State of U.P.*⁸.

⁷ 2007 CRI. L.J. 130

⁸ (2004) 5 SCC 334

iii) *Rekha Vs. State of U.P.*⁹.

iv) *Rafiq Ahmad alias Rafi Vs. State of Uttar Pradesh*¹⁰.

18. Undisputedly, the charge was framed vide order dated 01.08.2013 under Sections 498A r/w Section 34 of IPC; Section 302 r/w 34 of IPC; Section 109 r/w Section 302 of IPC; Section 201 r/w Section 34 of IPC and Section 120-B IPC. The prosecution case is that the victim was found hanging to a rope in the room of the residence. Some injuries were noticed on her person. Some of the witnesses have stated that, when they visited the house of the accused, the victim was lying on the bed in supine condition.

19. The case proceeded for the aforesaid offences. From the cross examination conducted by the accused it is apparent that their defence is that the victim has committed suicide. Apparently the victim was found dead in the house and death was due to strangulation. The accused are also tried for offence under Section 498-A of IPC right from inception. The prosecution has laid evidence in that regard. It is the case of the prosecution that the victim was ill treated by the accused. The ingredients to support the charge under Section 306 of IPC are already apparent from the evidence of the witnesses. Thus, the question is whether the accused had abetted suicide. It is a settled law that, if the evidence

⁹ AIR ONLINE 2021 ALL 369

¹⁰ (2001) 8 SCC 300

on record support the charge under Section 306 of IPC irrespective of the fact that the accused were not charged for the said offences, they can be convicted for the same even in a situation where the charge under Section 302 of IPC was framed.

20. Learned Advocate for Intervenor supported the impugned order. He submitted that, there is no legal infirmity in the said order.

21. In the case of *Dalbir Singh Vs. State of U.P* (supra) the accused was charged for offence under Section 302 of IPC for having committed the murder of his wife and two daughters. He was also charged under Section 304-B of IPC and Section 498-A of IPC for subjecting his wife to cruelty. The accused was convicted for offence under Section 302 of IPC and Section 498-A of IPC. He was acquitted for offence under Section 304-B of IPC. In the appeal, the High Court came to the conclusion that the charge under Section 302 was not made out and acquitted him for the said offence. However the accused was held guilty under Section 306 of IPC for having abetted commission of suicide by victim. However, in view of fact that no charge under Section 306 of IPC was framed against the accused, the High Court relying upon the decision of the Supreme Court in the case of *Sangaraboina Sreenu Vs. State of*

*A.P.*¹¹ held that the accused could not be convicted for the said offence. The High Court noticed that a contrary view had been taken in an earlier decision in the case of *Lakhjit Singh Vs. State of Punjab*¹² but choose to rely upon the latter decision. The Supreme Court took note of both the said decisions and on analysing the evidence, dealt with the question whether in a given case it is possible to convict the accused under Section 306 of IPC if the charge for the said offence has not been framed against him. In Paragraph Nos. 12, 13 & 14 of the said decision it is observed as follows :

“ 12. The main question which requires consideration is whether in a given case is it possible to convict the accused under Section 306 IPC if a charge for the said offence has not been framed against him. In Lakhjit Singh & Anr. v. State of Punjab (supra) the accused were charged under Section 302 IPC and were convicted and sentenced for the said offence both by the trial Court and also by the High Court. This Court in appeal came to the conclusion that the charge under Section 302 IPC was not established. The Court then examined the question whether the accused could be convicted under Section 306 IPC and in that connection considered the effect of non- framing of charge for the said offence. It was held that having regard to the evidence adduced by the prosecution, the cross-examination of the witnesses as well as the answers given under Section 313 Cr.P.C. it was established that the accused had enough notice of the allegations which could form the basis for conviction under Section 306 IPC. The relevant para of the observation made in para 9 of the report reads as under:

" The learned counsel, however, submits that since the charge was for the offence punishable under Section 302 Indian Penal Code, the accused were not put to notice to meet a charge also made against them under Section 306 IPC and, therefore, they are prejudiced by not framing a charge under Section 306 Indian Penal Code and; therefore, presumption under Section 113-A of Indian Evidence Act cannot be drawn and consequently a

11 1997 (5) SCC 348

12 1994 SCC (Cri.)235

conviction under Section 306 cannot be awarded. We are unable to agree. The facts and circumstances of the case have been put forward against the accused under Section 313 Cr. P.C. and when there was a demand for dowry it cannot be said that the accused are prejudiced because the cross-examination of the witnesses, as well as the answers given under Section 313 of the Cr. P.C. would show that they had enough of notice of the allegations which attract Section 306 Indian Penal Code also."

13. *In Sangaraboina Sreenu v. State of A.P. (supra) the judgment is a very short one of just two paragraphs. In the first paragraph it is mentioned that the trial Court convicted the accused under Section 302 IPC on the charge that he poured kerosene on the body of his wife and set her on fire but the High Court set aside the said conviction and convicted the accused under Section 306 IPC. Paragraph 2 of the judgment which contains the whole reasoning for allowing the appeal reads as under :*

"This appeal must succeed for the simple reason that having acquitted the appellant of the charge under Section 302 IPC which was the only charge framed against him the High Court could not have convicted him of the offence under Section 306 IPC. It is true that Section 222 Cr.P.C. entitles a court to convict a person of an offence which is minor in comparison to the one for which he is tried but Section 306 IPC cannot be said to be a minor offence in relation to an offence under Section 302 IPC within the meaning of Section 222 Cr. P.C. for the two offences are of distinct and different categories. While the basic constituent of an offence under Section 302 IPC is homicidal death, those of Section 306 IPC are suicidal death and abetment thereof."

14. *Here the Court proceeded to examine the question that if the accused has been charged under Section 302 IPC and the said charge is not established by evidence, would it be possible to convict him under Section 306 IPC having regard to Section 222 Cr.P.C. Sub-section(1) of Section 222 lays down that when a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence, though he was not charged with it. Sub-section (2) of the same Section lays down that when a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence, although he is not charged with it. Section 222 Cr.P.C. is in the nature of a general provision which empowers the Court to convict for a minor offence even though charge has been framed for a major offence. Illustrations (a) and (b) to the said Section also make*

the position clear. However, there is a separate chapter in the Code of Criminal Procedure, namely Chapter XXXV which deals with Irregular Proceedings and their effect. This chapter enumerates various kinds of irregularities which have the effect of either vitiating or not vitiating the proceedings. Section 464 of the Code deals with the effect of omission to frame, or absence of, or error in, charge. Sub-section (1) of this Section provides that no finding, sentence or order by a Court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charges, unless, in the opinion of the Court of appeal, confirmation or revision, a failure of justice has in fact been occasioned thereby. This clearly shows that any error, omission or irregularity in the charge including any misjoinder of charges shall not result in invalidating the conviction or order of a competent Court unless the appellate or revisional Court comes to the conclusion that a failure of justice has in fact been occasioned thereby. In Lakhjit Singh (supra) though Section 464 Cr.P.C. has not been specifically referred to but the Court altered the conviction from 302 to 306 IPC having regard to the principles underlying in the said Section. In Sangaraboina Sreenu (supra) the Court completely ignored to consider the provisions of Section 464 Cr.P.C. and keeping in view Section 222 Cr.P.C. alone, the conviction of the appellant therein under Section 306 IPC was set aside.”

22. The Court summarized the conclusion by observing that in view of Section 464 of Cr.P.C. it is possible for the appellate or revisional Court to convict the accused for the offence for which no charge was framed unless the Court is of the opinion that the failure of justice would in fact occasion. In order to judge whether the failure has been occasioned, it will be relevant to examine whether the accused was aware of the basic ingredients of the offence for which he is being convicted and whether the main facts sought to be established against him were explained to him clearly and whether he got fair chance to defend himself. It was also held

that the decision in the case of *Sangaraboina Sreenu Vs. State of A.P* (supra) was not correctly decided as it purports to lay down as a principle of law that where the accused is charged under Section 302 of IPC, he cannot be convicted for the offence under Section 306 of IPC.

23. In the case of *Kisan & Ors. Vs. State of Maharashtra* (supra) this Court has referred the decision in the case of *Dalbir Singh Vs. State of U.P* (supra) and observed that, whether the accused is charged under Sections 498-A and 302 of IPC framing of alternative charge for abetment of suicide is permissible, basic ingredients of offence under Section 306 of IPC are hidden in charge under Section 498-A. Conviction under Section 306 of IPC would not result in failure of justice even if the accused was tried only under Section 302 and 498-A of IPC.

24. Thus, the aforesaid decision makes it clear that, assuming that the accused were charged under Sections 498-A and 302 of IPC and not under Section 306 IPC, they could be convicted for offence under Section 306 of IPC. In the present case the charge has been added under Section 306 of IPC. Section 216 of Cr.P.C. empowers alteration of charge at any stage before the trial is concluded by judgment. In the case of *Kisan & Ors. Vs. State of Maharashtra* (supra) it is held that, the charge under Section 306

of IPC could be framed as an alternative charge to Sections 498-A and 302 of IPC.

25. In the case of *Jasvinder Sanini and Others Vs. State (Government of NCT of Delhi)* (supra) relied upon by the learned counsel for the Petitioner it was held that, there is unrestricted power to add or alter any charge whenever Court finds that defective charge has been made or addition of new charge becomes necessary after commencement of trial, but such addition or alteration has to be made before pronouncement of judgment.

26. In the case of *Shamnsaheb M. Multtani Vs. State of Karnataka* (supra) it is held that, conviction under Section 304-B of IPC without affording an opportunity to accused to enter on his defence and disprove the presumption under Section 113-B of Evidence Act would result in failure of justice. Hence, conviction under Section 304-B cannot be recorded in absence of charge thereunder. The accused to be put on notice and to be allowed to enter his defence against the charge under Section 304-B of IPC. It is also observed that, Sections 221 and 222 of the Code are the two provisions dealing with the power of criminal court to convict the accused of an offence which is not included in the charge. This issue would not arise in the present case since the accused are now charged for an additional charge under Section 306 of IPC.

27. In the case of *Virendra Kumar Vs. State of U.P.* (supra) it was observed that the material relating to torture, harassment and demand of dowry were specifically brought to the notice of the accused in the trial. Even in the absence of presumption under Section 113-A of the Evidence Act, prosecution version was specific to the extent that the victim was being taunted by the accused for not bringing adequate dowry. Hence, even in the absence of specific charge under Section 306 of IPC, the accused could not be convicted for the said offence.

28. In the case of *Bimla Devi and Another Vs. State of Jammu and Kashmir* (supra) the apex Court has referred to the decisions in the case of *Sangaraboina Sreenu Vs. State of A.P* (supra), *Lakhjit Singh Vs. State of Punjab* (supra), *Shamnsaheb M. Multtani Vs. State of Karnataka* (supra). It is pertinent to note that the decision of the Supreme Court in the case of *Dalbir Singh Vs. State of U.P* (supra) was not considered. It was held that, in a situation if the trial Court finds that the prosecution has failed to make out the case under Section 302 of IPC but the offence under Section 304-B has been made out, the Court can call upon the accused to enter on his defence in respect of the said offence without affording such opportunity to the accused. Conviction under Section 304-B of IPC would lead to miscarriage of justice. In fact applying the said

principle it has to be noted that, in the present case the trial Court has took precautionary measure before the judgment is delivered by framing the additional charge under Section 306 of IPC. Thus, no infirmity can be traced in the additional charge framed by the trial Court.

ORDER

- i) Criminal Writ Petition No.3554 of 2018 is rejected.
- ii) Criminal Application No.338 of 2018 is disposed off.

(PRAKASH D. NAIK, J.)