

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

CRIMINAL REVISION APPLICATION NO. 384 OF 2022

Gurudas Balasaheb Raut And Ors. ...Applicants

Versus

The State Of Maharashtra ...Respondent

....

Mr. Abhishek R. Avachat a/w Adv. S.H. Deshpande, Advocate for the Applicants.

Mr. Tapan Tatthe, Advocate for Respondent No2.

Mr. Y. Y. Dabke, APP for Respondent-State.

CORAM : PRAKASH D. NAIK, J.
DATE : 10th JULY, 2023.

P.C.:

1. The Applicants are challenging Order dated 16th August, 2022 passed by Learned Additional Sessions Judge, Pune in Sessions Case No.356 of 2015. On the Application of original complainant through prosecution for alteration/addition of charge vide Section 216 of Cr.PC.

2. The Applicants are Accused in C.R. No.421 of 2014 registered with Loni Kalbhor Police Station Pune for offences under Sections 306, 498-A, s323, 504, 506 r/w 34 of Indian Penal Code (for short 'IPC').

3. The First Information Report (for short 'FIR') was

registered at the instance of Respondent No.2 on 12th November, 2014. It was alleged that the victim Sonal was married to Accused No.1 on 6th May, 2007. Gold and gift articles were provided during the marriage for a period of four to five months she was stated well. The Accused visited the house of victim's parents. They were treated with respect. The Accused were illtreating the victim as finger ring was not provided on first Diwali to Accused No.1. After one year daughter was born to victim and Accused No.1 out of the wedlock. There was demand of money from the victim. She was assaulted. She was harassed. The victim had informed her parents about illtreatment. Due to the torture by Accused, she committed suicide by jumping into the well on 12th November, 2014. Investigation was conducted. Charge-sheet was filed for offences under Sections 306, 498-A, 323, 504, 506 r/w 34 of IPC.

4. Charge was framed and trial has commenced. Evidence of medical officer has recorded as PW-1 on 6th December, 2017. The original complainant moved an Application under Section 216 of Cr.PC. for addition/alteration of charge under Section 302 of IPC.

5. The learned Sessions Judge vide Order dated 16th August, 2022, directed that charge under Section 302 of IPC be added. The Accused were directed to remain present on the next date for

answering the charge.

6. Learned Advocate for the Applicants submitted that charge under Section 302 of IPC is not tenable in law. The case proceeded on the basis that victim had committed suicide. The trial Court has retained the charge under Section 306 of IPC and direction addition of charge under Section 302 of IPC. Both the charges are contradictory to each other. Both the charges cannot go together. There is not material to add charge under Section 302 of IPC. Statement of Trupti Raut was recorded pursuant to further investigation. Her statement is silent about the charge of murder. The Police were informed regarding the death of victim by Accused No.1. The postmortem report and forensic analysis does not indicate any foul play. The trial Court was swayed by testimony of medical officer. The said witness deposed that for dead body to float on the surface of water, it takes about 8 to 12 hours. On that basis no evidence inference could have been drawn against the Accused. The trial Court has ignored the cause of death. The complainant has no *locus* to prefer an Application under Section 216 of Cr.P.C. Application under Section 216 of Cr.P.C. cannot be allowed mechanically. There has to be material to alter the charge.

7. Learned Advocate for the Applicants has relied upon the

following decisions :

- i. Santosh Kudtarkar V/s. State Represent by the PP Panaji, Goa and Another¹*
- ii. Sabirabano Yusuf Sayyad and Another V/s. State of Maharashtra²*

8. Learned Advocate for Respondent No.2 and learned APP submitted that there is no infirmity in the impugned Order. No prejudice is caused to the Accused. The defence will have opportunity to defend themselves. Prosecution must be given an opportunity to prove the charges by adducing evidence. The medical officer has stated that body of the victim was floating in the well and it takes 8 to 12 hours to float the body. Thus, the question of committing suicide does not arise. It is case of murder. The Accused was responsible for murdering the victim thrown in the well.

9. The FIR proceeds on the basis that the victim was illtreated by the Accused and the victim has committed suicide by jumping into the well. Immediately after the incident the FIR was lodged under Section 306 of IPC and other offences. During the

1 2016 SCC OnLine Bom 2300

2 2021 SCC OnLine Bom 4138

investigation, statements of various persons were recorded. All the statements of witnesses are leading the prosecution towards the suicide by the victim. FIR was recorded on 12th November, 2014. Statement of Khandu Sonkamble was recorded on 12th November, 2014. He stated that during the search of the victim Nagesh Lohar found that body of the victim was floating in the well. The said fact was confirmed by the witness and others. This fact was informed to the Police. Statement of Trupti Raut was recorded during further investigation on 9th January, 2016. the said statement also does not indicate that it is a case of murder. Charge was framed under Sections 306 r/w 34 of IPC, 323 r/w 34 of IPC, 504 r/w 34 of IPC and 506 r/w 34 of IPC vide Order dated 9th December, 2015.

10. The prosecution examined Dr. Rahul Chandrakant Kataria on 6th December, 2017. According to him, he was attached to Sasoon Hospital. He conducted postmortem. He referred to injury sustained by the victim. He stated that if a person fall in the water and dies the dead body would be floating on the surface of water after 8 to 12 hours. He was cross-examined. In the cross-examination it is stated that the head injury in column 19 is possible if a person fall in the well on a sharp stone. The injuries possible if the head of a person come in contact with iron angle.

11. The cause of death referred to in the postmortem report clearly mentions that there is evidence of head injury and it is a case of asphyxia due to drowning. The report rules out the case of murder. The trial Court is swayed by the version of PW-1 that the dead body who float on the surface of water after 8 to 12 hours. The trial Court has observed that charge was framed on 9th December, 2015. Thereafter, further investigation was conducted and supplementary report was filed. Statement of Trupti Raut was recorded under Section 161 of Cr.PC. and opinion of forensic medicine was sought. The High Court while disposing of Writ Petition No. 2205 of 2016, had observed that any stage the trial Court find that charges required to be alter, or any further steps are required to be taken according to Cr.PC. The trial Court on the available material or evidence relied has liberty resort to appropriate provisions. The trial Court found that if the report of forensic expert and statement of Trupti Raut and evidence of doctor is taken into consideration. There is sufficient material to add addition charge for the offence punishable under Section 302 of IPC.

12. There is no debate that charge can be altered in accordance with Section 201 of Cr.PC. However, there has to be

material/evidence to alter the charge. Person to framing of charge there is no new material to add the charge under Section 302 of IPC. Statement of Trupti Raut recorded during the further investigation on 9th January, 2016 referred to by the trial Court does not give any circumstance that it was a case of murder. She has stated that on the contrary her conclusion is that the victim has committed suicide by jumping into the well. The witness has stated that on 12th November, 2014, she woke up at 5:00 a.m., the victim also woke up. Thereafter, she was standing near the bumb. Since the child was crying, the witness went into the house and came out. However, victim was not found at the spot. She disappeared. It is the submission of Respondent No.2 that the victim was alive at 5:00 a.m. and thereafter, she was found dead in the well. It takes about 8 to 12 hours to float the body in the event the person dies in the well and therefore, there is possibility that she has been murder. Imagination cannot be taken to such an extent to prosecute the Accused for serious offence. All through out its a case of the prosecution that the victim has committed suicide. On stray observations of the medical officer the Accused cannot be convicted for an offence under Section 302 of IPC. The opinion of casue of death clearly stipulates the reason for the death of the victim. Considering these circumstances, the trial Court ought not to have

alter the charge.

ORDER

- i. Revision Application No.384 of 2022 is allowed and disposed off;
- ii. Impugned Order dated 16th August, 2022 passed below Exhibit-34 in Sessions Case No.359 of 2015 by Additional Sessions Judge, Pune is quashed and set aside.

(PRAKASH D. NAIK, J.)