



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Criminal Revision Application No. 146 of 2023

Rahul Sureshrao Harde.
Aged about 38 years,
Occ : Private, R/o Aaradhana
Nagar Mayurpeth, Kharabi
Ring Road, Tq . And
District: Nagpur.

... Applicant

- VERSUS -

The State of Maharashtra .
Through P.S.O.
PS.Sakkaradra, Tq. And
District : Nagpur

... Non-applicant

Mr. Anil S. Mardikar, Senior Advocate a/w Mr. D. P. Singh, Advocate for
the applicant
Mrs. M. H. Deshmukh, APP for the State/non-applicant

CORAM : ANIL L. PANSARE J.

DATED : 12-10-2023

ORAL JUDGMENT

Rule. Rule made returnable forthwith. With consent, the
revision is heard finally.

2. The challenge is to the order dated 29-4-2023 passed by
learned Additional Sessions Judge, Nagpur below Exhibit 34 in
Sessions Case No. 137/2016 framing charge under Sections 304 and
325 read with Section 34 of the Indian Penal Code (IPC) against the
applicant Rahul Sureshrao Harde and another accused.

3. Two persons have been charge-sheeted for the offences punishable under Sections 302, 307, 325, 34 of the IPC. The crime has been registered on 20-11-2015 vide Crime No. 311/2015. The allegations against the accused persons are that they have mercilessly beaten one Ravi Naik. There occurred quarrel between Ravi Naik and applicant Rahul on account of payment of Rs. 5,000/-.

4. The incident occurred on 16-11-2015. Ravi had been to the office of Rahul to get Rs. 5000/-, which according to Ravi, was his salary. Ravi was confined in the office and was beaten by fists and blows on his legs, ear and head. Other accused Sneha joined accused Rahul in beating. Ravi suffered fracture injury to his leg and also some injuries on his face, ear and nose. Somehow, he escaped himself and while running out, he slipped and fell down from third floor. This is how Ravi had lodged report on 20-11-2015.

5. Learned Senior Counsel Mr. A. S. Mardikar has, apart from drawing my attention to the aforesaid report, drawn my attention to the dying declaration of the victim Ravi. Ravi has stated that he was beaten so mercilessly and had he not jumped from the third floor, he would have been murdered by the accused persons.

6. The learned Senior Counsel has rightly argued that even if the case of prosecution is accepted to be true, what transpires is that Ravi has either slipped and fell down or he himself jumped from third floor. In either case, the ingredients of Section 304 of the IPC will not be attracted. Section 304 of IPC reads thus :

“304. Punishment for culpable homicide not amounting to murder. - *Whoever commits culpable homicide not amounting to murder, shall be punished with [imprisonment for life], or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death ;*

or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.”

7. It is nobody's case that accused persons are responsible for his death or have caused his death or had an intention to cause his death to blame them of committing offence of culpable homicide. The statement of victim itself indicates that he himself has either slipped or jumped from third floor. The charge to the extent of 304 of the IPC, therefore, cannot be said to be made out. The Sessions Court has made a serious error in assessing the material placed before it. The order to that effect requires corrections. Hence, following order.

ORDER

- (i) Revision application is partly allowed.
- (ii) Charge under Section 304 of the Indian Penal Code framed against applicant Rahul Sureshrao Harde is quashed and set aside. Rest of the order dated 29-4-2023 shall remain intact.
- (iii) The application is disposed of in above terms.

(Anil L. Pansare, J.)

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