
(1998) 08 BOM CK 0044
In the Bombay High Court
Case No : Criminal Appeal No. 18 of 1998

Deepak Hadfadkar

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 10-08-1998

Acts Referred:

Constitution of India, 1950 — Article 21
Criminal Procedure Code, 1973 (CrPC) — Section 222
Penal Code, 1860 (IPC) — Section 306, 309

Citation : (1999) 5 BomCR 443

Hon'ble Judges : R.M.S. Khandeparkar, J

Bench : Single Bench

Advocate : Menino Teles, for the Appellant; A.P. Lawande, Public Prosecutor, for the Respondent

Judgement

R.M.S. Khandeparkar, J.—At the outset of the hearing, Shri A.P. Lawande, the learned Public Prosecutor has fairly admitted that the learned Additional Sessions Judge has convicted the appellant u/s 306 of Indian Penal Code as well as section 309 of the I.P.C. without there being any charge framed against the appellant in respect of offence punishable u/s 309 I.P.C. Drawing my attention to para 41 of the impugned judgment of the trial Court in that regard, the learned Public Prosecutor submitted that the learned Additional Sessions Judge erred in relying upon section 222 of Criminal Procedure Code while holding that the offence punishable u/s 309 of I.P.C. is a minor offence as compared to the offence punishable u/s 306 of I.P.C. The finding has been arrived at totally ignoring the facts and circumstances of the case. He further submitted that at the time when initially the charge was framed against the appellant section 309 of I.P.C. was not on the Statute Book in view of the decision of the Apex Court in the matter of P. Rathinam/Nagbhusan Patnaik Vs. Union of India and another, . However, subsequently the said decision being overruled by the larger Bench of the Apex Court in the matter of Smt. Gian Kaur Vs. State of Punjab, , it was necessary for the trial Court to frame the necessary charge against the appellant u/s 309 of

I.P.C. before holding him guilty of the offence punishable under the said section. He further submitted that in the facts and circumstances of the case, therefore, it is necessary to remand the matter to the Sessions Court with a direction to frame the charge u/s 309 of I.P.C. and to give fresh opportunity to the parties to lead evidence in the matter and to decide the entire case afresh.

2. The contention raised by the learned Public Prosecutor has been candidly conceded by Shri Menino Teles, the learned Advocate appearing for the appellant. He further submitted that it was the case of the appellant himself before the learned Additional Sessions Judge that he should be given fair opportunity to contest the charge u/s 309 of I.P.C. before taking any decision in the matter and the learned Additional Sessions Judge erred in ignoring such plea on the part of the accused and holding him guilty without giving him fair opportunity to contest the same.

3. Upon hearing the learned Advocates and on perusal of the impugned judgment and particularly para 41 thereof, it is clear that the learned Additional Sessions Judge being fully conscious of the fact that the accused was not charged of the offence punishable u/s 309 of I.P.C. held that in terms of section 222 Cr.P.C. if the facts are proved for major offence for which the accused has not been charged, then he can be convicted even for the minor offence although a charge for such minor offence has not been formally framed. Undisputedly, the charge in the instant case was framed on 18th November, 1994. On the said day, the law laid down by the Apex Court in P. Rathinam Nagbhusan Patnaik's case (supra), was in full force and, therefore, no fault can be found with the concerned Court in not framing the charge u/s 309 I.P.C. against the appellant on the day the charge u/s 306 of I.P.C. was framed against him. Moreover, there after, the larger Bench of the Apex Court overruled the decision in the said Patnaik's case and while deciding the matter in Smt. Gian Kaur's case (supra) held that section 309 of I.P.C. was not hit by Article 21 or Article 14 of the Constitution of India and , therefore, is perfectly valid. In view of this changed circumstances and the ruling of the Apex Court the matter of Smt. Gian Kaur's case (supra), considering the fact that the investigation papers prima facie disclose commission of the offence punishable u/s 309 of I.P.C. by the appellant/ accused, it was necessary for the learned Additional Sessions Judge to frame the charge u/s 309 of I.P.C. before the accused was held guilty of offence punishable under the said section.

4. In my considered opinion and as rightly submitted by the learned Public Prosecutor, the learned Additional Sessions Judge was not right in holding that in terms of section 222 Cr. P.C. there was no need to frame a separate charge u/s 309 I.P.C. against the appellant. The accusation against the appellant is that he had abetted the suicide by the deceased Sidharthi and had himself attempted to commit suicide. The two offences are distinct and separate from each other and it cannot be said that every particular act which constitutes the offence u/s 306 can also constitute an offence punishable u/s 309 I.P.C. in the facts and

circumstances of this case. Being so, there was no occasion for the learned Additional Sessions Judge by applying the principle behind section 222 Cr.P.C. to hold that it was not required to frame separate charge u/s 309 I.P.C. before convicting the appellant for the offence punishable under the said section.

5. In this view of the matter, the impugned order and judgment cannot be sustained and is liable to be quashed on this limited point of conviction of the appellant u/s 309 I.P.C. without framing the charge in respect thereof. There is clear case of failure of justice on account of omission on the part of the Additional Sessions Judge to frame the charge regarding offence punishable u/s 309 I.P.C. against the accused and convicting him under the said section.

6. The impugned Judgment and Order cannot be sustained on account of failure of justice resulting from the omission to frame the charge u/s 309 I.P.C. before convicting the accused under the said section. It is, therefore, necessary to remand the matter to the learned Additional Sessions Judge with the direction to frame proper charge u/s 309 I.P.C. against the accused and to re-commence the trial after framing of such charge and to give fresh opportunity to both the parties to lead evidence in relation to the said charge and thereafter to dispose the matter considering the overall evidence on record in respect of both the charges, i.e. the evidence already recorded as well as the evidence that may be recorded on this remand and after hearing the parties. The Sessions Court shall allow the parties to lead evidence only in relation to the charge u/s 309 I.P.C. against the appellant though the judgment shall be in respect of both the charges under sections 306 and 309 I.P.C. after hearing the parties on the entire records before it.

7. The appeal is accordingly allowed and the impugned judgment and order is set aside. The case is hereby remanded to the Sessions Court for framing appropriate charge u/s 309 of I.P.C. against the appellant and to re-commence the trial in relation to the said charge and after giving opportunity of being heard to both the parties, to dispose of the matter afresh in relation to the offence punishable under both the sections namely 306 and 309 of I.P.C. Order accordingly. Records and proceedings along with the muddemal property be returned to the Sessions Court.

8. Appeal allowed. Matter remanded.