

(2014) 04 BOM CK 0149

In the Bombay High Court

Case No : Criminal Writ Petition No. 227 of 2014

Kailash, Vithal and Indubai

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 16-04-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 221
Penal Code, 1860 (IPC) — Section 106, 302, 304B, 306, 34

Citation : (2014) 04 BOM CK 0149

Hon'ble Judges : A.I.S. Cheema, J

Bench : Single Bench

Advocate : A.R. Devakate, Advocate for the Appellant; V.D. Godbharle, A.P.P, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

A.I.S. Cheema, J.—Rule. Rule made returnable forthwith. Heard finally with the consent of both the sides. Heard counsel for the petitioner and learned A.P.P. Perused the record as well as charge sheet which has been filed.

2. The petitioner No. 1 is the husband of deceased Manjusha and petitioner No. 2 and 3 are the parents-in-law. The marriage was performed on 14.3.2009. It is alleged that, Manjusha committed suicide by consuming poison on 16.1.2011. Father of Manjusha filed F.I.R. regarding ill-treatment and that due to the ill-treatment, Manjusha committed suicide. The police filed charge sheet u/s 304B, 498A read with Section 34 of the Indian Penal Code. The Sessions Judge passed following order below Exhibit 1 in Sessions Case No. 38/2013.

The charge sheet is filed for offences punishable u/s. 304B and 498A read with 34 of the Indian Penal Code. The deceased was wife of accused No. 1 Kailash Vitthal Awale and she died unnatural death, within seven years of her marriage. In view of the directions of Apex Court, additional charge for offence punishable u/s. 302 r.w. 34 of IPC is necessary to be framed. There is prima facie evidence to frame charge, hence charge framed for offences punishable u/s. 302, 498A of

Indian Penal Code.

Aggrieved by the above order, the present petition has been filed.

3. Learned counsel for petitioners submitted that, the Sessions Court mechanically applied Section 302 of Indian Penal Code relying on directions of the Hon''ble Supreme Court. The Sessions Court has relied on the case of *Ranjbir Vs. State of Haryana*, reported in (2010) 15 SCC 116. According to the learned counsel, this judgment of the Hon''ble Supreme Court has been subsequently explained in the matter of *Jasvinder Saini and Others Vs. State (Govt. of NCT of Delhi)*, . The learned counsel submitted that, application of Section 302 of Indian Penal Code would depend on the facts of the case and the Court will have to apply its mind whether Section 302 of Indian Penal Code is made out and mechanical application of Section 302 of Indian Penal Code is not permissible. Learned counsel submitted that, at the most Section 306, 304B and 498A read with Section 34 of the Indian Penal Code could be applied, but not Section 302 of the Indian Penal Code.

4. Learned A.P.P. submitted that, Sections 306, 304B, 498A read with Section 34 of the Indian Penal Code are applicable.

5. Going through the charge sheet as available on record, the case which appears from the record is that the victim Manjusha (who is referred in the inquest panchanama and post mortem by the name of Manisha-which the learned A.P.P. says, is writing mistake), died due to poisoning while at the matrimonial home. The marriage was solemnized on 14.3.2009. Counsel referred to statement of one Shardabai that the deceased had expressed that due to cruelty which was being meted out to her, she did not feel like living. Charge Sheet prima facie shows that victim has expired due to poison while at the matrimonial home, when she was living with the petitioners. The acts attributable to the accused in present matter are of such a nature that at present it is doubtful which of the offences, the facts which can be proved, will constitute. Poison could have reached the stomach of the victim because it was administered to her or it could have reached due to abetment to commit suicide. In the set of facts, it could be a case of Section 302 or alternatively Section 306 of the Indian Penal Code. Charge could be in the alternative keeping in view Section 221 of the Criminal Procedure Code. The accused persons can at appropriate stage discharge their liability keeping in view Section 106 of the Evidence Act. The Sessions Court has not merely relied on the directions of the Apex Court in the matter of *Ranjbir*, but has observed that there is prima facie evidence to frame charge and hence charge is framed for offence under Sections 302, 304B and 498A of the Indian Penal Code. I find no reason to interfere in this order.

6. For the above reasons, the present Writ Petition is disposed of. The challenge to adding of charge u/s 302 of the Indian Penal Code fails. The Additional Sessions Judge, while framing charge u/s 302 of Indian Penal Code, to further consider framing alternative charge u/s 306 of Indian Penal Code, keeping in

view observations made above. Criminal Writ Petition is disposed of accordingly.