

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

**Crl. Revision No. 2807 of 2015 (O&M)
Date of Decision: 17.12.2015.**

Vineet Kumar Ohri and anotherPetitioners

Vs.

State of Punjab and anotherRespondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Paras Talwar, Advocate
for the petitioners.

Mr. R.P.S.Sidhu, AAG, Punjab.

Mr. C.B.Goel, Advocate
for respondent No. 2.

.....

SABINA, J.

Petitioners have filed this petition under Section 401 of the Code of Criminal Procedure, 1973 ('Cr.P.C.' for short) challenging the order dated 14.7.2015 whereby charges were ordered to be framed against the petitioners under Section 498-A, 304-B, 302 of the Indian Penal Code, 1860 ('IPC' for short) on an application moved by the prosecution for amendment of the charge.

Notice of motion was issued to the extent that *prima facie* case for offence punishable under Section 302 IPC was not made out.

Learned counsel for the petitioners has submitted that the prosecution story, as per the FIR, was that the deceased had been administered poison and had been murdered.

However, as per the report of the chemical examiner, no poison

was detected in the visceras of the deceased. The Board of Doctors had given their opinion that cause of death in this case was asphyxia due to hanging which was ante-mortem in nature. Thus, there was no material on record to order the framing of charge against the accused under Section 302 IPC.

Learned State counsel as well as counsel for respondent No. 2, on the other hand, have opposed the petition.

Learned counsel for respondent No. 2 has submitted that from the contents of the FIR as well as the statement of the complainant, recorded during trial, it was evident that the deceased had been murdered as she had failed to meet out the demand of dowry raised by the accused.

Prosecution story, in brief, is that Parul, sister of complainant/respondent No. 2 was married to petitioner No. 1 on 6.2.2006. Complainant had given sufficient dowry at the time of marriage of his sister as per his capacity. However, petitioner No. 1 and his family members started harassing Parul on account of insufficiency of dowry and used to give beatings to her. On 23.10.2011, Parul had told the complainant on phone that her husband, mother-in-law, father-in-law and elder brother of her husband and his wife were demanding a car. Father of the complainant made arrangement for purchasing a car but on 24.10.2011, they received a phone call that Parul had been killed on account of insufficiency of dowry. On 25.10.2011, complainant along with his father saw the dead body of Parul and noticed that there were signs of injury on her neck. It appeared that Parul had been administered some poisonous substances. Vineet Ohri-husband of Parul and his family

members had killed her after giving her some poisonous substance.

After completion of investigation and necessary formalities, challan was presented against the petitioners qua commission of offence punishable under Section 306 IPC. Charge was framed against the petitioners under Section 306 IPC on 23.3.2012. Statement of the complainant was recorded during trial. Thereafter, prosecution moved an application under Section 216 Cr.P.C. for amendment of the charge. It was prayed in the application that charges under Section 302, 304-B, 498-A IPC be also framed against the petitioners. Vide the impugned order dated 14.7.2015, charges were ordered to be framed against the petitioners under Section 302, 304-B, 498-A IPC. Hence, the present petition by the petitioners.

As per the post-mortem report (Annexure P-2), the cause of death was opined to be given after the report of chemical examiner. Annexure P-3 is the report of the chemical examiner. As per the same, no poison was detected in the contents of the viscera of the deceased.

Thereafter, the Board of Doctors gave their opinion on 20.12.2011 as under:-

“After receipt of report from chemical examiner to Punjab Govt. vide No. 3661 Dated 19.12.2011. The cause of death in this case in our opinion is asphyxia due to hanging which is ante mortem in nature and sufficient to cause death in ordinary course of nature.

Duration between injury and death- within few minutes.

Although, in the present case, the case of the complainant/prosecution is that the deceased had been administered poison and murdered but the said stand of the prosecution is not supported by medical evidence. In fact, as per the report of the chemical examiner, no poison was detected in the viscera of the deceased. Thus, the deceased had not died on account of administration of poison to her. As per the opinion of the Board of Doctors, the deceased had died on account of hanging. Hence, from the medical evidence available on record, it cannot be *prima facie* said that the deceased had been murdered by the petitioners. In the facts and circumstances of the present case, the Trial Court, thus, fell in error while ordering the framing of the charge against the petitioners under Section 302 IPC.

Accordingly, this petition is allowed. Impugned charge sheet dated 14.7.2015 to the extent whereby charge was framed against the petitioners under Section 302 IPC, is set aside.

(SABINA)
JUDGE

December 17, 2015
Gurpreet