

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CRM M-3748 of 2015

Date of Decision: October 6, 2015

Tarlochan Singh and others

.....Petitioners

Vs.

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

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Present:- Mr.P.S. Hundal, Sr. Advocate with
Mr. Dinesh Trehan, Advocate
for the petitioners.

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M.M.S. BEDI, J. (ORAL)

Petitioners, are aggrieved by the order dated September 3, 2015 passed by the Additional Sessions Judge, Hoshiarpur directing to frame charges under Section 302, 149, 147, 148 IPC.

Briefly stated the case of the prosecution as registered on the basis of statement of Kuldeep Singh is that on February 22, 2014 at about 5.15 p.m., while the brother of the complainant Propkar Singh was going towards Haveli from his house, the petitioners who were sitting in front of the Haveli assaulted him. Petitioner No.1 Tarlochan Singh raised Lalkara to catch hold

of him as such the other accused Inderjit Singh and Sandeep Singh caught hold of brother of complainant and thrown him down. Petitioner Parupkar Singh @ Para and Gurminder Singh @ Bittu gave kick blows on the private parts and head of the brother of the complainant. Brother of the complainant was tossed and turned. Petitioner Tarlochan Singh further instigated the other accused to kill the brother of the complainant. The motive attributed as per the FIR is that the people of the village wanted to construct the Bus Stand for the facility of the whole village on Panchayat land but this was not acceptable to the accused. After presentation of challan, the trial Court opted to frame charge under Sections 148, 147 and 302 read with Section 149 IPC vide order dated September 3, 2015.

Mr. Hundal, learned senior counsel for the petitioners has vehemently contended that the trial Court has without application of mind framed charges under Section 148 IPC observing that all the accused were armed with deadly weapons which were used and were likely to cause death. He has drawn my attention to the contents of the FIR to contend that there are no allegations of any person being armed. He has further argued that there is no medical evidence available on the record to indicate that petitioners caused any injury which could result in the death of the brother of the complainant.

It is an admitted fact that challan was prepared originally under Section 304 IPC and was forwarded by the concerned APP but later on offence was converted to Section 302 IPC vide DDR No. 12 dated February

28, 2014 after inquiry. The post mortem examination of Propkar Singh, brother of the complainant was conducted by the Board of Doctors and they opined that the cause of death would be given after receipt of chemical examiner report and histopathological report. The matter was referred to the Department of Pathology, Amritsar. The opinion of the Lecturer of Department of Pathology, Government Medical College, Amritsar, is as follows:-

“There was no external mark of injury to external genitalia. On dissection of scrotum, no blood found collected in sac. Both testis sent for histopathological examination to GMC, Amritsar.”

Dr. Ram Krishan Sharma, Lecturer, Department of Pathology, gave the following report:-

“Specimen partially analysed. M/E Myocardium shows Hyper trophy of Myofibers with enlarged nuclei of Myofibers. Testis show normal spermatozoa with marked congestion of the blood vessels.”

Thereafter on reference of matter to the Department of Pathology, the above said Doctor vide his report dated October 27, 2014, gave the following opinion:-

“Although as explained by postmortem conducted by the doctor, there was no external injury on

genitalia, but histopathological examination of the testis shows that there was marked congestion of blood vessels of the testis. So, hit on testis it may cause congestion of testicular blood vessels because normally testicular congestion does not occur.”

On the basis of the above said medical evidence, learned counsel for the petitioners vehemently urged that in the absence of any medical evidence indicating that the petitioners caused any injury or that the deceased Paropkar Singh died on account of any injury attributed to the petitioners, the order of framing charges deserves to be set aside.

Counsel for the petitioners was directed to make available the entire report under Section 173 (2) Cr.P.C. in vernacular. The said report was produced which contains the statements of three eye witnesses, Kuldev Singh, Sohan Singh and Manjit Singh. The medical evidence as mentioned hereinabove is also part of the record. At the time of framing of charges, the trial Court had the entire material before it to find out whether prima facie case of culpable homicide amounting to murder was made out or not.

In the said situation the Court is guided by Section 221 (1) of the Cr.P.C. which reads as under:-

“221. (1) If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with

having committed all or any of such offences, and any number of such charges may be tried at once; or he may be charged in the alternative with having committed some one of the said offences.”

It is also not out of place to mention here that the culpability of the petitioners is to be determined on the basis of appreciation of evidence and trial Court is entitled to acquit accused in case the circumstances so warrant but in a situation where the offence under Section 302 IPC is found to be not made out, it is always open to the trial Court to pass any appropriate order for conviction under lesser offence if the same is proved. Section 221 (2) Cr.P.C. reads as follows:-

- (a) “221 (2) If in such a case the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of sub- section (1), he may be convicted of the offence which he is shown to have committed, although he was not charged with it.”

It will be premature to express any opinion on appreciation of evidence lest it should prejudice the rights of the parties whether offence under Section 302 IPC is made out or it is a case where there was no intention or knowledge of the petitioners or that the offence under Section 304 IPC is only made out. It is a settled principle of law that at the time of

final decision, the culpability is to be determined to find out the appropriate sentence.

So far as the contention of learned counsel for the petitioners that the petitioners have been wrongly charged under Section 148 IPC as none of them was armed with any weapon, it is always open to the petitioners to move an application under Section 216 Cr.P.C. for modification of the charge. The present petition for that reason is premature.

In view of the above circumstances, I do not find any ground to interfere in the order of framing of charges. The petition is dismissed without prejudice to the rights of the petitioners to seek modification of the charge under Section 216 Cr.P.C. and liberty to seek relief of acquittal on the basis of the benefit of doubt or for any lesser offence, as per Section 221 (2) Cr.P.C.

Nothing said in this order will effect the merits of the case, in any manner.

October 6, 2015
sanjay

(M.M.S.BEDI)
JUDGE