

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR No. 631 of 2014 (O&M)

Date of decision : January 15, 2015

Sukhwinder Singh,

..... Petitioner

v.

State of Punjab,

..... Respondent

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. IPS Doabia, Advocate
for the petitioner.

Mr. APS Gill, AAG Punjab

Mr. DS Kahlon, Advocate
for the complainant.

- 1. Whether Reporters of Local Newspapers may be allowed to see the judgment ?**
- 2. To be referred to the Reporters or not ?**
- 3. Whether the judgment should be reported in the Digest ?**

Ajay Tewari, J (Oral)

This petition has been filed against the order dated 31.01.2014, vide which additional charge under Section 302 of the IPC has been directed to be framed against the present petitioner.

As per the allegations, the petitioner took the deceased along with him and later-on the complainant (mother) got a telephonic call that the deceased was in hospital and when she went there, she found her dead. As per the post-mortem report, she died of aluminum phosphide poison. The petitioner was charged under Section 306 of the IPC. During the trial, by

the impugned order, charge under Section 302 of the IPC has been additionally framed against the petitioner.

Counsel for the petitioner has argued that as per the post-mortem report, there are no marks of injuries of struggle and it is well known that aluminum phosphide cannot be administered by stealth. As per him, once the possibility of administering of poison by stealth or by force is eliminated, the only remaining possibility is that the deceased digested the poison voluntarily and, therefore, charge under Section 306 of the IPC may be maintainable but the mere statement of the mother who had not even seen the occurrence to the effect that the petitioner had administered the poison to her daughter cannot justify amendment of the charge. Even otherwise, Sections 302 and 306 of the IPC are diametrically opposed.

The facts, as narrated above, have not been disputed either by counsel for the complainant or by counsel for the State of Punjab. Their only argument is that framing of charge is not determinative and the Court would ultimately give a finding on what is proved on record.

In my considered opinion, however, the argument of counsel for the petitioner cannot be ignored. The fact that aluminum phosphide cannot be administered by stealth has been judicially recognized, as has been held by the Hon'ble Supreme Court in Jaipal v. State of Haryana, AIR 2002 SC 3447, wherein it was held as follows :-

“ 19.....Aluminium phosphide is available in the form of chalky white tablets. When these tablets are taken out of the sealed container, they come in contact with atmospheric moisture and the chemical reaction takes place liberating phosphene gas (PH₃) which is the active ingredient of ALP. This gas is highly toxic and effectively kills all insects and thus preserves the stored grains. When these tablets are swallowed, the chemical

reaction is accelerated by the presence of hydrochloric acid in the stomach and within minutes phosphine gas dissipates and spreads into the whole body. The gas is highly toxic and damages almost every organ but maximal damage is caused to heart and lungs. Sudden cardiovascular collapse is the hallmark of acute poisoning. Patients come with fast thready or impalpable arterial pulses, unrecordable or low blood pressure and icy cold skin. Somehow these patients remain conscious till the end and continue to pass urine despite unrecorded blood pressure. Vomiting is prominent feature associated with epigastric burning sensation. The patients will be smelling foul (garlic like) from their mouth and vomits. Many of them will die within a few hours. Those who survive for some time will show elevated juglar venous pressure, may develop tender hepatomegaly and still later Adult Respiratory Distress Syndrome (ARDS), renal shut down and in a very few cases toxic hepatic jaundice. The active ingredient of ALP is phosphine gas which causes extensive tissue damage. A spot clinical diagnosis is possible in majority of cases of ALP poisoning. However, ALP on account of its very pungent smell (which can drive out all inmates from house if left open) cannot be taken accidentally.”

The absence of any mark of injury or struggle obviate the possibility that it was administered by force. Even though framing of charge is not determinative, yet the Court is required to apply its mind atleast prima facie to the material appearing against the accused before framing charge. In the circumstances, mechanical framing of charge on the statement of a person who is not even a witness cannot be sustained. Resultantly, this petition is allowed and the order framing additional charge under Section 302 of the IPC is set aside.

(AJAY TEWARI)
JUDGE

January 15, 2015
'kk'