

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

**CRR-1881-2016 (O&M)
Date of Decision : 03.08.2018**

Karan Singh

...Petitioner

Versus

State of Haryana

... Respondent

CORAM : HON'BLE MR. JUSTICE P.B.BAJANTHRI

Present : Mr. S.K.Yadav, Advocate for the petitioner.

Mr. Munish Sharma, AAG, Haryana.

P.B.BAJANTHRI, J. (ORAL)

In the instant petition, petitioner has challenged the order/charge-sheet dated 15.02.2016 vide Annexures P4 and P5 respectively in FIR No. 143 dated 09.07.2015 for the offence under Section 302 read with Section 34 IPC.

2. Learned counsel for the petitioner submitted that there was altercation between the petitioner and the deceased. Allegations are that deceased was beaten with sticks and he died on the same day. Learned counsel for the petitioner submitted that cause of death of the deceased is due to heart attack as is evident from the medical record. It was also submitted that only one injury was caused as is recorded by the Doctor and opined as follows:-

“4. That as per post mortem report deceased has received only one injury i.e. reddish abrasion of size 2 cm x 1 cm (each) joint close to each other on right forearm middle part and doctor had

opined regarding cause of death i.e. in our opinion cause of death in this case will be given after receiving chemical and histopathological report of the visra.”

3. It was further submitted that as per chemical examiner's report it is not due to poison. An extract of the chemical examiner's report reads as under:-

“ -contents of all the above exhibits gave negative test for common poisons and ethyl alcohol.”

4. Having regard to the above facts and circumstances Sessions Court has exceeded its jurisdiction while framing of charge that petitioner alleged to have committed offence under Section 302 read with Section 34 IPC.

5. Per contra learned counsel for the respondent fairly submitted that framing of charge under Section 302 IPC is not made out having regard to the nature of injury and cause of death. At the same time, he submitted that matter be remanded for the purpose of examining the factual aspect so as to consider under Section 304-II IPC.

6. Heard learned counsel for the parties.

7. Having regard to the nature of injury and cause of death of the deceased read with medical opinion as well as chemical examination it is crystal clear that Section 302 IPC is not attracted so as to implicate the petitioner for the offence under Section 302 IPC. Thus, sessions Court has erred in not taking note of the one injury, doctor's opinion and further chemical examiner's report. In view of these facts and circumstances, orders dated 15.02.2016 vide Annexures P4 and P5 respectively are set aside.

8. Learned State counsel has submitted that matter is required to

be examined with reference to Section 304-II IPC. It is to be noted that though allegation is that accused have attacked the deceased with the sticks however, only one injury has been caused which is extracted above. Perusal of the nature of injury it is not serious injury. That apart, medical report is that deceased died due to heart attack. In view of these facts and circumstances, question of remanding matter to consider Section 304 -II is not fair.

9. Accordingly, petition stands allowed.

03.08.2018
pooja saini

(P.B.BAJANTHRI)
JUDGE

Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No