

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Sr.No.215

CRR No.1706 of 2018
Reserved on:05.09.2018
Pronounced on:10.09.2018

Monika Bawa

....petitioner

Versus

State of Punjab & Ors.

.....respondents

CORAM: HON'BLE MR.JUSTICE ARVIND SINGH SANGWAN

Present: Mr.Rajiv Kataria, Advocate
for the petitioner

Mr.Sidakmeet Sandhu, AAG Punjab

Mr.Veneet Sharma, Advocate
for respondents No.2 and 3

ARVIND SINGH SANGWAN, J. :

Prayer in this revision petition is to set aside the order dated 19.04.2018 passed by Additional Sessions Judge, Amritsar, vide which the trial Court has framed the charge under Section 304 IPC instead of Section 302 IPC.

This petition was ordered to be listed with CRM-M No.21729 of 2018 and CRM-M No.1775 of 2018, filed by accused Raj Kumar @ Raja, and Rajnish Kumar @ Bobby, praying for anticipatory bail and regular bail as well as CRR No.810 of 2018 filed by another accused Pawan Kumar @ Pamma, praying for grant of default bail under Section 167 (2) of the Code of Criminal Procedure. The arguments in all the cases were heard together

on behalf of the petitioner/complainant as well as the accused persons i.e.respondents No.2 and 3. The aforesaid petitions are also decided together by passing a separate order of even date.

It would be appropriate to note down the brief facts of the case as reproduced in the FIR as under:

“MHC. P.S. Cantonment. Today I ASI along with HC Harjit Singh 2233, in connection with patrolling and looking for bad elements were present at Balmik Chowk that an information was received that there is a fight going on at the Sarai Putlighar and reach at the spot quickly, on which I ASI along with colleagues reached near the Sarai of Sadhu Ram near Putlighar, where Karaj Singh son of Puran Singh, resident of village Boparai was affixing an iron gate on his shop and Sunil Kumar @ Sonu and Sanjiv Kumar sons of Prem Kumar, Bobby Juice Bar and Raj Kumar @ Raja resident of Sewa Nagar were stopping him from doing so on which I ASI stopped both parties from fighting and asked them to show the concerned documents regarding this property, on which Karaj Singh produced the documents regarding the ownership of the property before me and Sanjiv Kumar and Sunil Kumar did not produce any documents, but they kept arguing and I said that in case you have any stay order etc., stay order or any order of the Court, then show and I stopped the work, on which Raj Kumar @ Raja, Sanjiv Kumar and Sunil Kumar did not produce any document or order before me and called their other friends and Surinder Chaudhari and his son Pawan Kumar came with their other friends and started raising a commotion and I ASI stopped them from doing so and since the situation was aggravating, the officer Incharge, Police Station was apprised regarding coming to the spot and the

Head Munshi Police Station was asked to send more force. On which, PCR Motorcycle, Ertiga Vehicle and more force from the police station came to the spot and Surinder Chaudhari and his friends opened the adjoining shop of Bobby Juice Bar and brought empty bottles and brick bats from the street and started throwing them towards the labour and artisans and the police party and I ASI with the help of other colleagues tried to stop them and Surinder Chaudhari in loud voice said throw brick bats towards the police party so that they should run away from the spot. On this the son of Surinder Chaudhari i.e. Pawan Kumar gave a brick bat blow held in his hand directly towards Rajesh Kumar 13/ASR with an intention to kill him on his head and he suddenly fell down on the ground and they kept throwing bottles and brick bats and one of the accomplices of Surinder Chaudhari fired in the air, due to which there was confusion at the spot and Surinder Chaudhari and his son Pawan Kumar along with his friends ran away from the spot. I ASI with the help of colleagues took the injured Constable Rajesh Kumar on the Ertiga immediately to Parkash Hospital for treatment where the doctor said he was serious and referred him to Amandeep Hospital and Constable Rajesh Kumar is presently under treatment at Amandeep Hospital. In this manner, by fighting Surinder Chaudhari, Pawan Kumar, Raj Kumar @ Raja, Sunil Kumar, Sanjiv Kumar have obstructed the police on duty and have caused injury to a police employee with an intention to kill and have faught with the Karaj Singh party from which offences under Section 307, 353, 186, 148, 149 IPC and 25/27/54/59 of the Arms Act are made out and ruqqa is being sent through PHG Amarjit Singh 9722 to the Police Station. Case be registered and number be informed. The Officer Incharge, Police Station has reached wireless

and special reports be issued and sent to the Illaqa Magistrate and Senior Officer. I am busy on the spot in investigation. Sd/-Balbir Singh P.S. Cantonment, dated 17.06.2017. Today in the area of Road. At 4.30 P.M.”

Learned counsel for the petitioner has argued that the FIR was initially registered under Section 307 IPC as accused Pawan Kumar @ Pamma had thrown a brickbat with intention to kill Constable Rajesh Kumar, which hit on his head, due to which he fell down and thereafter, the accused kept throwing the brickbats and bottles towards the police party and one of the accomplices of Surinder Chaudhary even fired a shot in the air due to which there was a panic at the spot and accused persons fled away from the spot. Counsel for the petitioner has further argued that Constable Rajesh Kumar remained under treatment for about three months and ultimately succumbed to injuries and offence under Section 302 IPC was added during the investigation and on conclusion of the investigation, the police official submitted the challan under Section 302 IPC.

Learned counsel for the petitioner has further argued that from the perusal of the FIR as well as from the statement of ASI Balbir Singh-complainant, it is apparent that when the police party reached at the spot, Surinder Chaudhary, raised a *lalkara* that by throwing brickbats on the police party, the police persons be made to run away from the spot and on such exhortion accused Pawan Kumar with a clear intention to kill, had thrown the brickbat on the head of Constable Rajesh Kumar, who was part of the police party present at the spot. Counsel for the petitioner has thus argued that the intention of the accused persons to commit the offence was clear as it has come from the statement of ASI Balbir Singh that when he

reached at the spot, there was a dispute between Karaj Singh and Sanjiv Kumar and efforts regarding affixing of gate and altercation was going on between them and therefore, this witness has asked for additional police Force. Counsel further argued that from the FIR itself, it is clear that since accused Surinder Chaudhary and Pawan Kumar were creating nuisance despite police asking them to stop and when the situation became out of control, he informed the SHO to come at the spot and also directed the MHC of the police station to send additional Force along with police vehicles at the spot. Thereafter Surinder Chaudhary and his companions brought empty bottles from the juice bar, which they had already kept and they started throwing brickbats and the bottles on the labourers and the police party. When ASI and other officials tried to stop them, it is only at this stage, Surinder Chaudhary exhorted a *lalkara* which resulted in throwing a brickbat by Pawan Kumar on the head of the Constable Rajesh Kumar. Counsel for the petitioner has thus argued that it is not a case of sudden fight, rather, the accused persons with a pre-meditative motive had come at the spot with brickbats and empty bottles and when the police party i.e.ASI and deceased Constable Rajesh Kumar reached at the spot, the accused persons started creating nuisance and thereafter, he sent information to the SHO to send additional Force. Counsel for the petitioner has thus argued that there was sufficient time in between and the injury was caused to Constable Rajesh Kumar by the accused persons who had pre-meditated the motive, which could not be taken as a sudden fight without pre-meditation. Therefore, framing of charge under Section 304 IPC instead of Section 302 IPC is not justified.

Learned counsel for the petitioner has further submitted that the trial Court, while framing the charge under Section 304 IPC has erroneously taken the aid of Explanation 4 of Section 300 IPC to observe that it is immaterial, in a given case which party offers the provocation or commits the first assault.

Counsel for the petitioner has submitted that the trial Court has erroneously held that since there is a single line in the statement of the complainant, that on the instigation of Surinder Kumar Chaudhary, his son Pawan Kumar gave a brickbat blow towards Constable Rajesh Kumar with intention to kill and this single line statement of complainant ASI does not cover the necessary information as required under the provisions of Section 300(1) IPC. It is thus prayed that once the police has submitted the report under Section 173 Cr.P.C. under Section 302 IPC, the trial Court erred in framing the charge under Section 304 IPC, as, at the stage of framing of the charge, the Court cannot make observations with regard to the statements of the prosecution witnesses recorded by the police, thereby, affecting the merits of the case and the Court is required only to record satisfaction that prima facie offence under a given Section of IPC is made out from the FIR and the report under Section 173 Cr.P.C.

Learned counsel for the petitioner lastly argued that the Court has to conclude finally only after recording the evidence of the prosecution whether the offence under Section 302 IPC is made out or under Section 304 IPC is made out or even if no offence is made out.

In reply, learned counsel appearing for the accused have submitted that the trial Court has passed a well reasoned order considering

the allegations in the FIR and holding that as per the provisions of Section 300(4) IPC, it was a case of sudden fight in which Pawan Kumar had allegedly hit brickbat on Constable Rajesh Kumar and no other person was injured. It is also argued that since there was no previous enmity between the accused persons and the Constable Rajesh Kumar, therefore, there was no pre-meditation or pre plan to cause the injury.

It would be appropriate to reproduce the finding recorded by the trial Court in this regard.

“In the present case, there is a single line in the statement of complainant “that on the instigation of Surinder Kumar Chaudhary, his son Pawan Kumar gave a brick bat towards C.Rajesh Kumar with intention to kill.” From above said single line, prosecution has argued that there was an intention to kill deceased C.Rajesh Kumar. This court disagree with contention of prosecution as merely if a phrase is mentioned that Pawan Kumar gave a brick bat with intention to kill do not cover the necessary intention as required under provision of Section 300(1) IPC. Since, it is relied upon by the prosecution that a dispute had occurred at Sadhu Ram Di Sran, Putlighar and upon receiving information police party came at the spot and when situation worsened the more police force was called at the spot and before arrival of more police force accused Surinder Chaudhary and Pawan Kumar had already come at the spot along with their accomplices and deceased Rajesh Kumar was member of police party who came later on. It is not the case of prosecution that deceased Rajesh Kumar had any animosity with present accused. Since, accused Pawan Kumar has not given another brick bat to any other police officials less C.Rajesh Kumar, it cannot be inferred that

Pawan Kumar acted in a cruel or in an unusual manner. Further, injury received by deceased Constable Rajesh Kumar was outcome of a sudden fight that erupted at the spot and there was no pre-meditation to give injury or to kill any member of police party."

After hearing learned counsel for the parties, I find merit in the present petition in the light of the guidelines of Hon'ble Supreme Court discussed below.

It has been held by the Hon'ble Supreme Court in the case of ***Amit Kapoor vs. Ramesh Chander and another, 2012 (4) RCR (Criminal) 377***, as under:

11. *At the initial stage of framing of a charge, the court is concerned not with proof but with a strong suspicion that the accused has committed an offence, which, if put to trial, could prove him guilty. All that the court has to see is that the material on record and the facts would be compatible with the innocence of the accused or not. The final test of guilt is not to be applied at that stage. We may refer to the well settled law laid down by this Court in the case of State of Bihar v. Ramesh Singh (1977) 4 SCC 39:*

"4. Under Section 226 of the Code while opening the case for the prosecution the Prosecutor has got to describe the charge against the accused and state by what evidence he proposes to prove the guilt of the accused. Thereafter comes at the initial stage the duty of the Court to consider the record of the case and the documents submitted therewith and to hear the submissions of the accused and the prosecution in that behalf. The Judge has to pass thereafter an order either under Section 227 or Section 228 of the Code. If "the Judge considers that there is no sufficient ground

for proceeding against the accused, he shall discharge the accused and record his reasons for so doing", as enjoined by Section 227. If, on the other hand, "the Judge is of opinion that there is ground for presuming that the accused has committed an offence which- ...

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused", as provided in Section 228. Reading the two provisions together in juxtaposition, as they have got to be, it would be clear that at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the Prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under Section 227 or Section 228 of the Code. At that stage the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against

the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the Court should proceed with the trial or not. If the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial. An exhaustive list of the circumstances to indicate as to what will lead to one conclusion or the other is neither possible nor advisable. We may just illustrate the difference of the law by one more example. If the scales of pan as to the guilt or innocence of the accused are something like even, at the conclusion of the trial, then, on the theory of benefit of doubt the case is to end in his acquittal. But if, on the other hand, it is so at the initial stage of making an order under Section 227 or Section 228, then in such a situation ordinarily and generally the order which will have to be made will be one under Section 228 and not under Section 227."

12. *The jurisdiction of the Court under Section 397 can be exercised so as to examine the correctness, legality or propriety of an order passed by the trial court or the inferior court, as the case may be. Though the section does not specifically use the expression 'prevent abuse of process of any court or otherwise to secure the ends of justice', the jurisdiction under Section 397 is a very limited one. The legality, propriety or correctness of an order passed by a*

court is the very foundation of exercise of jurisdiction under Section 397 but ultimately it also requires justice to be done. The jurisdiction could be exercised where there is palpable error, non-compliance with the provisions of law, the decision is completely erroneous or where the judicial discretion is exercised arbitrarily. On the other hand, Section 482 is based upon the maxim quando lex liquid alicuiconcedit, conceder videtur id quo res ipsa esse non protest, i.e., when the law gives anything to anyone, it also gives all those things without which the thing itself would be unavoidable. The Section confers very wide power on the Court to do justice and to ensure that the process of the Court is not permitted to be abused.

In the case of ***R.S.Mishra vs. State of Orissa and others, 2011***

(1) RCR (Criminal) 872, it is held by Hon'ble Supreme Court that if the charge in a particular case is diluted and the accused is not discharged, reason should be recorded disclosing the consideration of the material on record.

It is also held by Hon'ble Supreme Court in the case of ***P.Vijayan vs. State of Kerala and another, 2010(1) RCR (Criminal) 826***, that at the stage of framing of the charges, the probative value of the material on record cannot be gone into and the material brought on record by the prosecution has to be accepted as true. The operative part of the judgment reads as under:

10) *If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the Trial Judge will be empowered to discharge the accused and at this stage he is not to see whether the trial will end in conviction or acquittal. Further, the words "not sufficient*

ground for proceeding against the accused" clearly show that the Judge is not a mere Post Office to frame the charge at the behest of the prosecution, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. In assessing this fact, it is not necessary for the Court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really the function of the Court, after the trial starts. At the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. In other words, the sufficiency of ground would take within its fold the nature of the evidence recorded by the police or the documents produced before the Court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him.

11) *The scope of Section 227 of the Code was considered by this Court in the case of State of Bihar vs. Ramesh Singh (1977) 4 SCC 39, wherein this Court observed as follows:-*

"... ... Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be

guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the Court should proceed with the trial or not. If the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial. "

12. *This Court has thus held that whereas strong suspicion may not take the place of the proof at the trial stage, yet it may be sufficient for the satisfaction of the Trial Judge in order to frame a charge against the accused. 12) In a subsequent decision i.e. in Union of India vs. Prafulla Kumar Samal, (1979) 3 SCC 4, this Court after adverting to the conditions enumerated in Section 227 of the Code and other decisions of this Court, enunciated the following principles:-*

"(1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will

be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced court cannot act merely as a Post Office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."

13) *The scope and ambit of Section 227 was again considered in Niranjana Singh K.S. Punjabi vs. Jitendra Bhimraj Bijaya, (1990) 4 SCC 76, in para 6, this Court held that:*

"Can he marshal the evidence found on the record of the case and in the documents placed before him as he would do on the conclusion of the evidence adduced by the prosecution after the charge is framed? It is obvious that since he is at the stage of deciding whether or not there exists sufficient grounds for framing the charge, his enquiry must necessarily be limited to deciding if the facts emerging from the record and documents constitute the offence with which the accused is charged. At that stage he may sift the evidence for that limited purpose but he is not required to marshal the evidence with a view to separating the grain from the chaff. All that he is called upon to consider is whether there is sufficient ground to frame the charge and for this limited purpose he must weigh the material on record as well as the documents relied on by the prosecution. In the State of Bihar v. Ramesh Singh this Court

observed that at the initial stage of the framing of a charge if there is a strong suspicion-evidence which leads the court to think that there is ground for presuming that the accused has committed an offence then it is not open to the court to say that there is no sufficient ground for proceeding against the accused. If the evidence which the prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged by cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial. In Union of India v. Prafulla Kumar Samal this Court after considering the scope of Section 227 observed that the words 'no sufficient ground for proceeding against the accused' clearly show that the Judge is not merely a post office to frame charge at the behest of the prosecution but he has to exercise his judicial mind to the facts of the case in order to determine that a case for trial has been made out by the prosecution. In assessing this fact it is not necessary for the court to enter into the pros and cons of the matter or into weighing and balancing of evidence and probabilities but he may evaluate the material to find out if the facts emerging therefrom taken at their face value establish the ingredients constituting the said offence."

14) *In a recent decision, in the case of Soma Chakravarty vs. State through CBI, (2007) 5 SCC 403, this Court has held that the settled legal position is that if on the basis of material on record the Court could form an opinion that the accused might have committed offence it can frame the charge, though for conviction the conclusion is required*

to be proved beyond reasonable doubt that the accused has committed the offence. At the time of framing of the charges the probative value of the material on record cannot be gone into, and the material brought on record by the prosecution has to be accepted as true. Before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible. Whether, in fact, the accused committed the offence, can only be decided in the trial. Charge may although be directed to be framed when there exists a strong suspicion but it is also trite that the Court must come to a prima facie finding that there exist some materials therefor. Suspicion alone, without anything more, cannot form the basis therefor or held to be sufficient for framing charge.

It is also held by the Hon'ble Supreme Court in ***Sonu Gupta vs. Deepak Gupta and others, 2015(2) RCR (Criminal) 32***, that at the stage of framing of charge, the sufficiency of materials for the purpose of conviction is not the requirement when there are materials raising strong suspicion against an accused, the Court is justified in framing the charge.

It is further held by the Hon'ble Supreme Court in ***State of Orissa and another vs. Saroj Kumar Sahoo, 2006(1) RCR (Criminal) 324***, that at the stage of framing of the charge, the Court has only to record its prima facie satisfaction about existence of sufficient grounds and for that limited purpose, the Court can evaluate the material and documents on record but it can not appreciate the evidence and the Court is not required to appreciate the evidence to conclude whether the material produced are sufficient or not for convicting the accused. The operative part of the judgment reads thus:

15. *It is to be noted that the investigation was not complete and at that stage it was impermissible for the High Court to look into materials, the acceptability of which is essentially a matter for trial. While exercising jurisdiction under Section 482 of the Cr.P.C., it is not permissible for the Court to act as if it was a trial Court. Even when charge is framed at that stage, the Court has to only prima facie be satisfied about existence of sufficient ground for proceeding against the accused. For that limited purpose, the Court can evaluate material and documents on records but it cannot appreciate evidence. The Court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused. In Chand Dhawan (Smt.) v. Jawahar Lal and Ors., [1992] 3 SCC 317, it was observed that when the materials relied upon by a party are required to be proved, no inference can be drawn on the basis of those materials to conclude the complaint to be unacceptable. The Court should not act on annexures to the petitions under Section 482 of the Cr.P.C., which cannot be termed as evidence without being tested and proved.*

In view of the observations of the Hon'ble Supreme Court referred to above, on bare perusal of the FIR, it is apparent that the complainant ASI along with his co-official had reached at the place of occurrence, when he received an information that a fight is going on between the two groups. On reaching the spot, he found that one Karaj Singh was affixing an iron gate on his shop, whereas the accused party was stopping him from doing so and despite the fact he tried to pacify them, another set of accused reached at the spot and started raising a commotion and apprehending that the situation is aggravating, the complainant ASI informed the in charge of the police station to reach at the spot with

additional police Force. Upon this, accused Surinder Chaudhary and others opened the adjoining shop, which was a juice bar and brought empty bottles stored there and also brought brickbats from the street and started throwing towards labourers, artisans and the police party to scatter them away and when the police party tried to stop them, then accused Surinder Chaudhary in a loud voice raised a *lalkara* that other accused should throw brickbats towards the police party so that they may run away from the spot and upon such exhortion his son Pawan Kumar gave a brickbat blow which he was holding in his hand directly towards Constable Rajesh Kumar, who was a part of the police team and it hit on his head and he fell down. Subsequently, he died after a prolonged treatment. Therefore, the finding recorded by the trial Court in picking three lines of the FIR i.e. “that on the instigation of Surinder Kumar Chaudhary, his son Pawan Kumar gave a brickbat blow towards Constable Rajesh Kumar with intention to kill”, to hold that there was no pre-meditation on the part of the accused persons to commit an offence, is not the proper appreciation of the well settled principles of law that at the time of framing of the charge, the Court is not to appreciate the evidence. The Court has to prima facie record that a strong suspicion is made out against the accused for framing the charge and, thus, the trial Court has erred in recording a finding that since there was no pre-meditation on the part of the accused persons, therefore, the charge under Section 304 IPC is made out, is erroneous, as the Court was required to frame the charge under Section 302 IPC or in the alternative under Section 304 IPC, as even the police has submitted the report under Section 173 Cr.P.C.under Section 302 IPC.

In view of the judgment of the Hon'ble Supreme Court discussed above, the present FIR had been registered at the instance of an eye witness and allegations are supported by the medical evidence. Therefore, prima facie, a case to frame charge under Section 302 IPC is made out and the reasons given by the trial Court for not framing the charge under Section 302 IPC are not tenable. No explanation is given why a charge under Section 304 IPC was preferred instead of Section 302 IPC, as material on record reveal a higher offence and it was expected from the trial Court to frame the charge for more grievous offence and not to dilute the same.

In view of the above, the impugned order dated 19.04.2018 passed by the Additional Sessions Judge, Amritsar is set aside and the matter is remanded back to the trial Court to pass a fresh order to frame the charge in view of the guidelines of Hon'ble Supreme Court.

(ARVIND SINGH SANGWAN)
JUDGE

10.09.2018

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Whether speaking/reasoned
Whether reportable-

Yes/No.
Yes/No