

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.M-8451 of 2017

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Date of decision:28.02.2019

Vinod Kumar

...Petitioner

v.

State of Punjab and others

...Respondents

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Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. J.S. Bedi, Senior Advocate with Mr. Sonpreet S. Brar,
Advocate for the petitioner.

Ms. Monika Jalota, Deputy Advocate General, Punjab for the
respondent-State.

Mr. Sunil Chadha, Senior Advocate with Mr. Saurav Kanojia,
Advocate for respondents No.2 and 3.

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Inderjit Singh, J.

This petition has been filed under Section 482 read with Section 397 Cr.P.C. for setting aside the impugned order dated 13.12.2016 (Annexure-P.1) passed by learned Additional Sessions Judge, Ludhiana, whereby the learned Court declined to alter the charges and a further prayer that the order framing of charges dated 18.2.2008 (Annexure-P.2) may be ordered to be altered to the extent that the charge under Section 304 IPC should be substituted with that under Section 302 IPC, under the facts and circumstances of the case on the basis of statements of PWs recorded till date.

Notice of motion was issued in this case.

Ms. Monika Jalota, learned Deputy Advocate General, Punjab

has appeared on behalf of the respondent-State and Mr. Sunil Chadha, learned Senior Advocate with Mr. Saurav Kanojia, learned Advocate has appeared for respondents No.2 and 3 and contested this petition.

I have heard learned senior counsel for the parties and learned State counsel and have gone through the record.

From the record, I find that in the present case, the charges were framed for the offences under Sections 304 read with Section 34 IPC and 324 read with Section 34 IPC vide order dated 18.2.2008.

A petition under Section 482 Cr.P.C. for quashing of the FIR had been filed for directing the Director, Central Bureau of Investigation to re-investigate the case and also alleged in that petition that the challan presented for the offence under Section 304 read with Section 34 IPC has been filed by diluting the prosecution case to favour the private respondents though there was sufficient material on the file, which clearly depicts that Vicky Hans (deceased) was killed in a deep rooted conspiracy by respondents No.5 to 8 to settle their old grudge. A further prayer was made to direct respondent No.4 to also investigate the circumstances under which the offence has been diluted and also to set aside the order dated 3.6.2008 passed by the learned Additional Sessions Judge, Ludhiana, whereby the application for alteration of charges to Section 302, 34/148 and 149 IPC has been dismissed and a direction was sought to the learned Additional Sessions Judge, Ludhiana to frame charges in accordance with the evidence available. This Court held that the learned trial Court has observed that no circumstances had changed since the charge was framed and in case there is

any change in circumstances, the petitioner may seek amendment of the

charge. Further evidence was produced and again an application was filed under Section 216 Cr.P.C. before the learned trial Court for amendment of the charge. The learned Additional Sessions Judge, Ludhiana vide order dated 13.12.2016 dismissed the application by holding that the present case is at the fag end of the trial. The prosecution has examined all the witnesses and statements of accused were recorded under Section 313 Cr.P.C. and the case is at the stage of defence evidence and testimony of two defence witnesses has been recorded. It has also been stated in the order that PW-1 Vinod Kumar and PW-9 Rocky Bains deposed on oath before the Court on the similar lines which they have recorded in their respective statements before the Police. So, no circumstances have been changed after recording the statements of PW-1 Vinod Kumar and PW-9 Rocky Bains on oath before the Court. PW-7 Dr. Geeta has also deposed on oath as per the post-mortem report which she had submitted to the Police attached with the report under Section 173 Cr.P.C. It was held by the learned Additional Sessions Judge that no circumstances have been changed since the charge was framed and after recording the testimony of prosecution witnesses. The charge had been framed on 18.2.2008 and the circumstances of the case had not changed after completion of the prosecution evidence. The learned trial Court held that as no ground is made out to amend the charge at this stage and dismissed the application. Aggrieved from this order, the present petition has been filed.

After going through the record and hearing learned senior counsel for the parties as well as learned State counsel, I find that first of all, it is settled law that charge can be amended at any stage of the trial.

Therefore, the fact that the case is fixed for defence evidence is no ground to dismiss the application. Secondly, the learned trial Court has not discussed the facts of the case and the evidence produced before it and it was not considered on merit as to whether charge under Section 304 or 302 IPC is *prima facie* made out. Therefore, in this way, the learned Additional Sessions Judge while dismissing the application has not given any reasoning. The general observations made by the trial Court that after framing of the charge there are no changed circumstances and the witnesses have deposed as per their Police statements is no ground to hold that offence under Section 302 IPC is not made out. The right course for the learned trial Court was to discuss the evidence produced before it and then to find out whether charge-sheet should be amended or not. If these observations are taken as it is then it will amount that the Court has no power to frame the charges. The FIR was registered by the Police under Section 302 IPC and after investigation challan was presented under Section 304 IPC and dismissed the first application for amendment of charge by holding that there were no changed circumstances as no evidence has been led. Now the evidence has been produced and the learned trial Court has dismissed the application also that the witnesses have deposed as per their statements before the Police and there are no changed circumstances. The reasoning given by the learned trial Court are not as per law.

PW-7 Dr. Geeta has appeared as a witness and has deposed the injuries suffered by Vicky Hans (since deceased) in the post-mortem report as under:-

“1. An elliptical incised wound in size 3/4 inch x 1/2 inch

present on right thigh 2 inch above the right knee on front side.

On exploration the wound track after piercing muscle and facia going superior medially upto bone. Clotted blood present along with track.

2. Two parallel abraded contusions 2 x 1/2 inch and 2-1/2 inch x 1/2 inch and 1/2 inch apart on superior lateral aspect of right thigh.

3. Multiple abraded contusions varying from 1-1/2 inch x 1/2 inch to 3 inch x 1/2 inch five in number with diffused swelling on right hypochondrium region. On exploration, liver ruptured antero laterally & abdominal cavity contain blood.”

She also deposed that the cause of death in this case in her opinion was due to haemorrhage and shock as a result of multiple injuries and injuries to the vital organs that is liver which is sufficient to cause death in an ordinary course of nature. All the injuries were ante-mortem in nature and sufficient to cause death in an ordinary course of nature jointly. Probable time between injury and death was immediate which means that due to the injuries given by the accused to the vital organs Vicky Hans had died immediately. The statements of the PWs have also been placed on record. The eye witnesses have also deposed regarding the injuries given by Nikku Bharti, who was armed with a dagger gave a dagger blow on Vicky Hans which hit on his right thigh. Sonu Bharti gave a danda blow on the person of Vicky, which hit on his right leg. Then Vicky fell down on the railway track. All the accused caused injuries in his abdomen with Dandas and kick blows.

[6]

Keeping in view the evidence produced on the record, there are sufficient grounds to amend charge under Section 302 IPC.

Learned counsel for the petitioner submitted that the challan was presented under Section 304 IPC only that the injuries were caused in his defence etc. The fact regarding his self defence is to be proved by the accused by leading defence evidence. No prejudice is going to be caused to the accused, in any way, if the charge is amended to Section 302 IPC. The Court has the ample powers that if on merit after appreciating the evidence the Court feels that the accused are guilty of lesser offence they can be convicted for lesser offence.

In view of the above discussion, I find that the order passed by the learned Additional Sessions Judge is not as per law and the same is set aside. The application for amendment of charge is allowed accordingly. The learned trial Court is directed to amend the charge from Section 304 IPC to 302 IPC along with other charges i.e. under Section 304 IPC etc.

Therefore, finding merit in this petition, the same is allowed.

February 28, 2019.

**(Inderjit Singh)
Judge**

hsp

NOTE:	Whether speaking/reasoned:	Yes
	Whether reportable:	No