

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRR-429 of 2021(O&M)
Decided on : 06.04.2021

TAHIR HUSSAIN

. . . Petitioner(s)

Versus

STATE OF HARYANA AND ANOTHER

. . . Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

PRESENT: Mr. Ankur Lal, Advocate
for the petitioner.

MANJARI NEHRU KAUL, J. (Oral)

A challenge has been made in the instant revision petition to the impugned order dated 12.03.2021 passed by Learned Additional Sessions Judge, Nuh, wherein charges were framed only under Sections 304-B, 406, 498-A IPC against the respondent-accused. Learned counsel submits that as there were specific allegations levelled against the respondent-accused of subjecting the deceased (who was a pharmacist) to mental and physical harassment coupled with the fact that she had died due to ingestion of poison, they should have also been charged under Section 302 IPC. Learned counsel further submits that the circumstances on record pointed to forcible administration of poison to the deceased and hence the trial Court erred in not appreciating the surrounding circumstances and charging the respondent-accused accordingly under Section 302 IPC. In support of his submissions, learned counsel has placed reliance upon **Rajbir @ Raju & Anr. Vs. State of Haryana, (2010) 15 SCC 116** and **Vijay Pal Singh & Ors. Vs. State of Uttrakhand** in Criminal Appeal No.37 of 2011.

Learned counsel while referring to Rajbir (supra) submitted that

the Hon'ble Supreme Court had categorically stated therein that a charge under Section 302 IPC should always be added along with Section 304-B IPC.

I have heard the learned counsel and perused the material on record.

At the outset, it would be pertinent to notice that at the stage of framing of charges, the trial Court is to only confine itself to the evidence collected by the investigating agency with the sole purpose to assess if a prima facie case is made out or not.

Adverting to the case in hand, a perusal of contents of the FIR itself reveals that the complainant had raised only a suspicion qua the deceased having been poisoned to death which was also reiterated while addressing this Court.

In **Jaswinder Saini Vs. State(Government of NCT Delhi)** in Criminal Appeal No.819 of 2013 [arising out of SLP(Crl.) No.8738 of 2011], the Hon'ble Supreme Court while noticing the directions given in Rajbir (supra) held that those directions were not to be followed mechanically rather they had to be followed after giving due regard to the nature and appreciation of the evidence so collected by the investigating agency in each individual case.

Thus, the reliance placed upon Rajbir (supra) would not come to the rescue of the petitioner as the Hon'ble Supreme Court had passed directions for framing of a charge under Section 302 IPC after taking into consideration the facts and circumstances of that particular case which prima facie indicated a gruesome murder inasmuch as the cause of death had been opined to be due to smothering and throttling, in addition to the

injuries which indicated that the head of the deceased had been repeatedly struck.

Further, it may be relevant to point out that Section 216 of the Cr.P.C., confers jurisdiction on the trial Court to add and/or alter any charge which may have been framed earlier, at any stage of the trial but before the pronouncement of the judgment and final order. In other words, if during trial any such new evidence comes on record, the trial Court concerned is fully competent under Section 216 Cr.P.C., to add and/or alter any such charge as it may deem fit.

Hence in the circumstances, it goes without saying that as the trial progresses and if any such evidence emerges which in the opinion of the trial Court, prima facie hints at the commission of murder, the trial Court would be well within its power to not only alter the charge but also add the relevant charges under the Indian Penal Code as has also been held by the Hon'ble Supreme Court in Anant Prakash Sinha Vs. State of Haryana (2016) 6 SSC 105. In short, the acid test would be based on the material, which may come to light during the course of the trial.

As a sequel to the above, this Court does not find any perversity, much less, illegality in the impugned order which would warrant any interference.

The petition stands dismissed.

(MANJARI NEHRU KAUL)
JUDGE

April 06, 2021

S.Sharma(syr)

Whether speaking/reasoned: *Yes/No*
Whether Reportable: *Yes/No*