

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

CRR No.244 of 2020 (O&M)
Date of decision: 19th January, 2023

Amrik Singh & others

... Petitioners

Versus

State of Punjab & another

... Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Vivek Salathia, Advocate for the petitioners.

Mr. Sanish Girdhar, Assistant Advocate General, Punjab
for the respondent/State.

Mr. Gagandeep S. Bajwa, Advocate
for the private respondent.

MANJARI NEHRU KAUL, J.

The petitioners are impugning order dated 18.12.2019 passed by the learned trial Court vide which the charges under Sections 302/342/380/457 IPC read with Section 149 IPC and in the alternative under Section 306 IPC were framed

Before proceedings further, it would be relevant to give a brief gist of the case as set up by the prosecution.

Allegedly, on 20.11.2015 at about 11:00 p.m. petitioner no.3 namely Rajbir Kaur alias Rajdeep Kaur had a fight with her husband i.e. deceased Captain Singh, who was visiting his home on leave. Petitioner No.3 made a phone call to petitioners No.1, 2 and 4 i.e. her father, brother and uncle respectively as well as to her cousin

Vicky. Soon thereafter, the petitioners along with some unknown persons entered the house of the complainant party and started giving them beatings. All the family members of deceased Captain Singh including complainant were pushed into a room and locked from outside. Deceased Captain Singh was, however, pulled out and taken outside where he was physically assaulted by the petitioners. Deceased Captain Singh kept on crying for help, however, nobody came to the spot, on hearing his cries. The following morning at 5:00 a.m. when the brother-in-law of the complainant namely Major Singh came and opened the door of the room where the complainant party was locked, they all went looking for Captain Singh who was found lying dead on the ground. The complainant party alleged that he had been strangled with his turban. Soon thereafter, the FIR in question was registered and investigation carried out. Since the complainant was not satisfied with the investigation carried out, a petition bearing CRM-M No.1874 of 2016 was filed before this Court praying for a fair and impartial investigation and for arrest of the accused persons. Investigation of the case thereafter, was ordered to be conducted by a senior Police official on the complaint of respondent No.2. However, after investigation, police ruled out the commission of offence under Section 302 IPC and instead, final report under Section 173 Cr.P.C. was presented by the investigating agency before the learned Illaqa Magistrate for commission of offence under Section 306/34 IPC. On

07.07.2018, charges under Section 306/34 IPC were framed by the learned trial Court (Annexure P-5). The trial thereafter commenced and two prosecution witnesses were examined. In the meantime, the complainant i.e. respondent No.2 filed a private complaint under Sections 302/34/457/380/148/149 IPC before the learned Illaqa Magistrate, Ajnala (Annexure P-6). Pursuant thereto, the Illaqa Magistrate summoned the petitioners in the complaint case to face trial under Sections 302/34/457/380/148/149 IPC vide order (Annexure P-7). The petitioners challenged their summoning under Sections 302/34/457/380/148/149 IPC, however, their revision petition was dismissed by the learned Sessions Judge, Amritsar vide order dated 18.12.2019 (Annexure P-8). After the committal of the complaint case, the learned trial Court on the basis of material on record framed charges under Sections 302/34/457/380/148/149 IPC and in the alternative for offence under Section 306 IPC.

Learned counsel for the petitioners has vehemently argued that the trial Court gravely erred in framing alternative charges under Section 302 and 306 IPC as both these offences are distinct in nature and diametrically opposite to each other. Learned counsel submits that the defense of the petitioners would be gravely prejudiced if the prosecution on one hand alleges that the petitioners/accused had committed murder and in the same breath alleges that they had abetted the suicide of the deceased.

Learned counsel while drawing the attention of this court to the Post Mortem Report (“PMR” for short) of the deceased (P-3) submits that the trial Court while reframing the charges failed to appreciate that there was a categorical finding of the doctor who conducted post mortem upon the deceased that the death was caused due to asphyxia on account of ante-mortem hanging and thus, the offence, if any, committed could have been only under Section 306 IPC.

Learned counsel still further has vehemently argued that no doubt the trial Court has powers to amend charges at any time during the trial, however, it could have been done only if some fresh evidence had come to the fore during trial. Learned counsel has urged that the evidence which had been collected by the investigating agency during investigation, did not even remotely indicate that the death of the deceased Captain Singh was homicidal in nature, therefore, there was no occasion for the trial court to amend the charges vide the impugned order.

Per contra, learned counsel for the respondent No.2/complainant has vehemently opposed the submissions made by the counsel opposite by contending that the FIR in question was a prompt FIR wherein it had been categorically alleged that the deceased had been pulled out, taken to another room and physically assaulted by the petitioners and thereafter, done to death by them. Learned counsel

while drawing the attention of this Court to the contents of the FIR, submits that right from the word “go” the allegations levelled were of the deceased having been murdered after being physically assaulted by the petitioners. Learned counsel has contended that the family members of the deceased including respondent No.2 had been locked inside a room by the petitioners, hence, they were unable to come out and rush to the rescue of the deceased. It was only on the following morning when their relative, Major Singh came and opened the door of their room, they came out and found the deceased lying on the floor with his turban around his neck. Learned counsel has vehemently asserted that the trial Court was perfectly justified in framing charges under Sections 302/342/380/457 IPC read with Section 149 IPC because seeing from any angle it was a case of murder and murder alone.

Learned counsel for the respondent No.2 has drawn the attention of this Court to the injuries on the person of the deceased Captain Singh as reflected in the PMR (P-3), which stands reproduced hereinbelow:

Sr. No.	Injuries	Marked	Injury number
1.	There is present a ligature mark which is reddish brown abraded bruise and grooved measuring 14 into 0.4 cm over the front and left side of neck in upper part. The lower end starts at front of neck above the level of thyroid cartilage 5.8 cm below the chin going horizontally towards the left side of neck upto the angle of mandible and slightly curving obliquely just behind the angle of mandible. On dissection of skin of ligature mark is rough leathery to touch. Subcutaneous tissue under the ligature mark is pale and leathery to touch strap muscles of the neck congested and bruised with multiple hematomas in them. Lymph nodes above and below the ligature mark are congested.	Yes	1

2.	There is present a swelling 4 into 8 cm on the right side of eye and temporal bone fosse.	Yes	2
3.	There is present a bruise 4 into 2 cm over the left lower limb 23 cm below the shin of tibia.	Yes	3

Learned counsel has argued that it was clearly a case of homicidal hanging as the deceased was brutally assaulted and then hanged to death by the petitioners which is evident from the presence of multiple hematomas around the neck, swelling on the right side of eye and temporal bone fosse and another injury on the arm. He has further submitted that had it been a case of suicide, the deceased would have been found hanging and not lying on the floor with the Parna (turban) around his neck. Learned counsel has still further contended that the investigating agency had been conniving with the accused/petitioners right from the time the crime was reported and the malafides were writ large in the wake of shoddy investigation carried out by them. Learned counsel thus, argued that not only was it a case of murder but even a bare reading of the allegations levelled in the FIR did not even remotely make it out to be a case of abetment of suicide.

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

Before proceeding further, it would be relevant to reiterate that the object behind charge is to give a clear, unambiguous and precise notice of nature of accusation that the accused is called upon to meet during trial. Therefore, the essential purpose of charge is to warn an accused of the case he is to answer so that he can prepare his defense

accordingly. However, an accused cannot have a fair trial when the material facts sought to be proved against him are not properly and clearly explained to him as in such an eventuality he would be deprived of a full and fair chance to defend himself.

Section 221 Cr.P.C., which is reproduced hereinbelow, deals with cases where there is some doubt as to what offence has been committed by the accused:-

“221. Where it is doubtful what offence has been committed.

(1) If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once; or he may be charged in the alternative with having committed some one of the said offences.

(2) If in such a case the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of sub-section (1), he may be convicted of the offence which he is shown to have committed, although he was not charged with it.”

A careful reading of the above reproduced provision leaves no manner of doubt that if there is certainty about the facts which can be proved, but at the same time there is uncertainty as to what offence would be constituted on those facts, then alternative charges can be

framed by the trial Court. However, if there is uncertainty/confusion about the facts themselves, then framing of alternative charges would not be permissible. Moreover, it would also not be out of context to observe that an alternative charge can be framed only in respect of cognate offences and the provisions of Section 221 Cr.P.C. would not be applicable in cases of distinct offences.

Adverting to the case in hand, the trial Court vide impugned order has framed charges under Sections 302/342/380/457 IPC read with Section 149 IPC and in the alternative for an offence under Section 306 IPC which without doubt indicates uncertainty and confusion of facts. Both offences under Sections 302 and 306 IPC are mutually exclusive as the ingredients to attract the mischief of both these offences are different. In a case under Section 302 IPC, the basic constituent is homicidal death whereas in a case under Section 306 IPC, it is suicidal death and its abetment. Hence, the prosecution cannot be permitted to sail in two boats and take contradictory stands as it would definitely prejudice the defense of the accused. The petitioners/accused would be at a loss as to whether he would have to prepare his defense with respect to the charge under Section 302 IPC or Section 306 IPC, which would in turn deprive them of a full and fair chance to defend themselves.

Accordingly, in view of the facts and circumstances as enumerated hereinabove, this Court deems it fit to set aside the

impugned order dated 18.12.2019 vide which the charges under Sections 302/342/380/457 IPC read with Section 149 IPC and in the alternative under Section 306 IPC were framed. The matter is remitted back to the learned trial Court with directions to frame the charges afresh after taking into consideration all the material on record in its entirety.

The revision petition stands disposed of accordingly.

Since the main revision petition has been decided, the application(s), if any, pending in the case in hand also stand disposed of.

Nothing contained hereinabove shall be construed to be an expression of opinion on the merits of the case.

(MANJARI NEHRU KAUL)
JUDGE

January 19, 2023
rps

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