

2023:PHHC:057430
CRR-1056 of 2023

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In the High Court of Punjab and Haryana at Chandigarh

109-1

CRR-1056 of 2023

Date of Decision: 24.04.2023

Vikash

---Petitioner

versus

State of Haryana and others

---Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. R.A.Sheoran, Advocate
for the petitioner

Ms. Dimple Jain, AAG, Haryana

JAGMOHAN BANSAL, J. (ORAL)

1. The petitioner, through the instant petition under Section 401 Cr.P.C. is seeking setting aside of order dated 21.2.2023 whereby Additional Sessions Judge, Charkhi Dadri has dismissed application under Section 216 Cr.P.C. of the petitioner seeking addition of charge under Section 302 IPC.

2. The brief facts of the case are that on the complaint of petitioner, FIR No. 127 dated 14.6.2020 came to be registered under Section 306 IPC at Police Station, City, District Charkhi Dadri. The police after completing investigation filed its report under Section 173 Cr.P.C. alleging commission of offence punishable under Section 306 IPC. The petitioner moved an application under Section 216 Cr.P.C.

seeking modification/addition of charge under Section 302 IPC. The application of the petitioner came up for consideration before Additional Sessions Judge, Charkhi Dadri who vide impugned order dated 21.2.2023 has dismissed the application.

3. Learned counsel for the petitioner inter alia contends that deceased was murdered by the respondent and his family members, thus, charge needs to be framed under Section 302 IPC apart from charge framed under Section 306 IPC. Charge under Section 302 IPC may be framed as alternative or additional charge.

4. I have heard arguments of learned counsel for the petitioner and perused the record.

5. The relevant extract of the impugned order reads as:-

7. It is own case of the applicant/complainant that his sister was forced to commit suicide. He has nowhere alleged in the application that he had suspicion that her sister was murdered by her in-laws. Moreover, in the Crime Scene report, it is mentioned that door of the room, where deceased Pooja had committed suicide was bolted from inside and it was broke opened by the family members. The red-black dot print Saree was found lying on the double bed, which was stated to be used in hanging and a loop of approx. width 9" was observed in one of the

above said piece of the Saree. It is further mentioned in the report that eyes and lips of the deceased were partially opened and froth was observed inside the nose and mouth of the deceased besides ligature mark on the neck. Similar observation is made in the postmortem report of deceased, wherein, it is mentioned that ligature marks were oblique, which are more prominent on front of the neck than sides and ligature marks are directed upwards. It is also mentioned that there is dried, dribbling of saliva from right angle of mouth, scanty dried white coloured secretion seen from left nostril. The cause of death is opined as asphyxia due to constructive force around the neck. No external injury is observed on any part of the body of the deceased, which rules out assault prior to hanging. Thus, postmortem report and Crime Scene report prima facie supports that the deceased had committed suicide. Besides it, opinion of the doctor was also taken during investigation. As per opinion of the doctor the cause of death is due to asphyxia due to constructive force

around the neck which was antemortem hanging and sufficient to cause death in normal course of nature.

8. *Thus, at this stage, there is absolutely no evidence to prima facie show that accused had committed murder of deceased Pooja, rather material available on record suggest that she has committed suicide. Hence, offence under Section 302 of IPC is not attracted. Thus, no case is made out to alter charge under Section 302 IPC. Finding no merit in the application, the same is dismissed, Papers be tagged with man case file.”*

6. From the perusal of findings recorded by trial court, it is quite evident that case of the petitioner since inception was that his sister had committed suicide. There was no allegation of murder. FIR was registered under Section 306 IPC. Thereafter challan was presented under Section 306 IPC. The petitioner at this stage wants to implicate respondent in the commission of offence punishable under Section 302 IPC. In the absence of any evidence especially of external injury on the body of deceased which rules out assault prior to hanging, no ground at this stage is made out to alter charge under Section 302 IPC or make charge under Section 306 IPC in alternative with charge under Section 302 IPC.

7. The trial court is quite competent to amend the charge or convict the accused if at any stage it is found that deceased was murdered and it was not a case of suicide. The findings recorded by the trial court are cogent and based upon record which need no interference. The scope of revision is very limited and this Court is not supposed to make roving enquiry.

8. In view of the above, this Court finds no infirmity or illegality in the impugned order warranting interference.

9, Dismissed.

(JAGMOHAN BANSAL)
JUDGE

24.4.2023

paramjit

Whether speaking/reasoned : Yes

Whether reportable : Yes/No