

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

CRR No.1447 of 2023

Date of decision: 7^h November, 2023

Deepak & another

... Petitioners

Versus

State of Haryana & another

... Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Vinod Ghai, Senior Advocate with
Mr. BNS Marok, Advocate for the petitioners.

Mr. Rajiv Sidhu, Dy. Advocate General, Haryana
for the respondent/State.

Mr. Prashant S. Chauhan, Advocate for respondent No.2.

MANJARI NEHRU KAUL, J.

1. The petitioners by way of the instant revision petition have impugned the order dated 19.05.2023 passed by the Court of learned Sessions Judge, Rewari, vide which charges were framed against them under Section 302 IPC read with Section 34 of the IPC in case bearing FIR No.287 dated 05.12.2022 under Sections 302/34 IPC registered at Police Station Rampura, District Rewari.

2. Learned senior counsel for the petitioners inter alia contends that the trial Court committed a grave error in framing charges against the petitioners under Section 302 of the IPC. It has been argued that this error is evident from the fact that there was no material on record even

remotely suggestive of the deceased having been murdered, much less by the petitioners.

3. It has been further argued that before framing of charges under Section 302 of the IPC, the trial Court should have at least appreciated that there was some substantial evidence on record to support the charge of murder against the petitioners. On the contrary, the occurrence in question, leading to the death of Karan Singh (hereinafter referred to as, 'the deceased'), appeared on the face of it, to be a road-side accident, which found due corroboration by the medical evidence, including the post-mortem report annexed as Annexure P-2, wherein it was categorically stated by the doctor that the cause of death was on account of injuries sustained in a road-side accident.

4. Learned senior counsel has pointed out that the initial First Information Report (FIR) was filed on the statement of the complainant (brother of the deceased), who was not even an eye witness to the occurrence in question. The statement of the complainant indicated that he had received information from "other sources" that the deceased had left in the company of the petitioners. Another statement recorded under Section 161 Cr.P.C. of witness named Mohan alias Reenu stated that the petitioners and the deceased had come to his Dhaba, and had been consuming liquor, and thereafter, had had an argument. Petitioner No.1 tried to calm them down, and thereafter, all three of them, including the deceased, left together on the same motorcycle.

5. It has been stressed by the learned senior counsel that the post-mortem report did not reflect any injury whatsoever, on the body of the deceased, and even at the time of the lodging of the FIR, no malafides were attributed to the petitioners; not only this, even in the statement of Mohan alias Reenu, no mala fides had been attributed to either of the petitioners.

6. The learned senior counsel has argued that the case against the petitioners is primarily based on their own disclosure statements, which has very weak evidentiary value. Notably, the initial disclosure statement of petitioner No.1 stated that the petitioner No.2 and the deceased had been quarreling with each other, when petitioner No.2 and the deceased fell on the road and the deceased was run over by a passing vehicle. Subsequently, a second disclosure statement by petitioner No.1 was made wherein he stated that he pushed both petitioner No.2 and the deceased apart to prevent them from quarreling with each other, resulting in the unfortunate accident. It has been vehemently argued by the learned senior counsel that the case of the prosecution, even based on these two disclosure statements, in the worst case scenario, would show that petitioner No.1 in order to prevent the deceased and petitioner No.2 from fighting with each other had tried to intervene and pacify them, however, in the process, the deceased fell on the road and was then run over by the passing vehicle.

7. It has been asserted that even on the basis of these disclosure statements, it was discernible that there is no evidence to support the

necessary ingredients for a charge under Section 302 IPC as there is no material on record indicative of the petitioners' intent to cause the death of the deceased, or still further, that he would have had any knowledge that their actions would lead to such a consequence/death.

8. Furthermore, it has been argued by the learned senior counsel that while framing charges, the Court must consider the material on record, and prima facie, this case appears to be one of accidental death, consistent with the post-mortem report. With no eye-witnesses to the incident and a case resting solely on the circumstantial evidence, there is no motive attributed to the petitioners for causing death of the deceased.

9. Learned senior counsel for the petitioners, while referring to the final report filed under Section 173 Cr.P.C., has urged that even therein the police had recommended for charges only under Section 304 (Part II) of the IPC. Therefore, the impugned order wherein charges have been framed under Section 302 of the IPC, deserved to be set aside. It has been lastly urged that the argument that an accused facing a more severe charge could be convicted for a lesser offence, would be contrary to the principles of fair trial.

10. Per contra, learned State counsel as well as learned counsel appearing on behalf of the complainant, have vehemently opposed the submissions made by the learned senior counsel for the petitioners, by asserting that the complainant had specifically named the petitioners as accused in the FIR, which was registered under Section 302/34 of the IPC. It has been vehemently asserted by the learned counsel for the

respondents that the complainant had obtained information from his sources revealing that the deceased had departed in the company of the petitioners on 04.12.2022 at about 5:00 p.m. Furthermore, the statement of Mohan alias Reenu recorded under Section 161 Cr.P.C. clearly revealed that shortly before the death of the deceased, he was seen in the company of the petitioners. Furthermore, as per the disclosure statement made by petitioner No.1, he had pushed the deceased on the road, resulting in a passing vehicle running over him. It has also been submitted that the plea of petitioners that they had no intention to cause the death of the deceased, constitutes their defence and can be evaluated only during the trial as at the time of framing of charges, only a prima face case is to be considered, and the defence of the accused cannot be gone into at that stage. It has further been contended that there is no legal bar against charging the petitioners under Section 302 of the IPC; in fact the Cr.P.C. provides for a person to be convicted for a lesser offence, if the elements of the crime, for which an accused is charged with, is not proven during trial.

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

12. The purpose of framing charges is to inform the accused and to allow them to prepare their defence against the case of the prosecution. At the time of framing of charges, only a prima facie case needs to be considered. The scope of framing charges is restricted to determining if there are reasonable grounds to presume the involvement of the accused

in the alleged offences. It would be relevant to refer to the observations made by the Hon'ble Supreme Court in '**State of Maharashtra vs. Som Nath Thapa**' AIR 1996 SC 1744, wherein it has been held as under:

"31. In Antualy's case, Bhagwati, CJ., opined, after noting the difference in the language of the three pairs of section, that despite the difference there is no scope for doubt that at the stage at which the Court is required to consider the question of framing of charge, the test of "prime facie" case has to be applied. According to Shri Jethmalani, a prima facie case can be said to have been made out when the evidence, unless rebutted, would make the accused liable to conviction. In our view, better and clearer statement of law would be that if there is ground for presuming that the accused has committed the offence, a court can justifiably say that a prima facie case against him exists, and so, frame charge against him for committing that offence.

32. Let us note the meaning of the word "presume". In Black's Law Dictionary it has been defined to mean "to believe or accept upon probable evidence". (Emphasis ours). In Shorter Oxford English Dictionary it has been mentioned that in law "presume" means "to take as proved until evidence to the contrary is forthcoming, Stroud's Legal Dictionary has quoted in this context a certain judgment according to which "A presumption is a probable consequence drawn from facts (either certain, or proved by direct testimony) as to the truth of a fact alleged". (Emphasis supplied). In Law Lexicon by P. Ramanath Aiyer the same quotation finds place at page 1007 of 1987 edition.

33. The aforesaid shows that if on the basis of materials on record, a court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently, if the Court were to think that the accused might have committed the offence it can frame the charge, though for conviction the conclusion is required to be that the accused has committed the offence. It is apparent that at the stage of framing of charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as true at that stage.”

13. A reading of the aforementioned observations of the Hon'ble Supreme Court shows that the Apex Court has emphasized that although a Court is not obligated to conduct an extensive enquiry during the framing of charges, it is nonetheless, obliged to thoroughly assess all the evidence and documents gathered by the Investigating Agency. This evaluation is essential for the trial Court to confirm the presence of the necessary ingredients required to constitute the offences alleged.

14. Coming to the instant case, the following facts emerge from the material collected by the Investigating Agency:

- (i) Firstly, there is no eye witness to the occurrence in question. Even the complainant, while filing the FIR, did not claim to have witnessed the incident, or assert that the petitioners had inflicted injuries on the deceased. Furthermore, the statement of Mohan alias Reenu recorded under Section 161 Cr.P.C. is

also to the same effect as he also did not claim to have witnessed the incident in question.

- (ii) The involvement of the petitioners in the occurrence only became evident through their respective disclosure statements, particularly in the second statement provided by petitioner No.2. However, the account of the petitioners of the incident being an accident, prima facie finds support from the post mortem report. This report indicates that the deceased was brought to the hospital as a case of unknown road-side accident, with the cause of death attributed to ante mortem injuries. Notably, the post-mortem report does not mention any injuries caused by a weapon, rather it is completely silent qua the same, and the complainant did not allege even remotely regarding the deceased having been harmed by a weapon. Additionally, the post-mortem report notes the presence of an alcohol like smell, when the body cavities were open during the autopsy.
- (iii) It is not disputed that the accused and the deceased were last seen together. However, in the absence of any other incriminating evidence against the petitioners, even if their disclosure statements are considered, they can, at best, be seen as providing a prima facie case for an offence falling under Section 304 (Part II) of the IPC.

15. As a sequel to the above discussion and material on record, it appears that the learned trial Court failed to consider the material collected by the Investigating Agency, in the right perspective, while framing charges against the petitioners. In the peculiar facts and circumstances of the case, the impugned order dated 19.05.2023 is set aside and the matter is remanded back to the trial Court to consider the matter afresh in the light of the observations made by this Court. In case any new evidence surfaces during trial before the judgment of the case is pronounced by the trial Court, the Court retains the power to modify or add charges under the provisions of Section 216 Cr.P.C.

16. Allowed.

(MANJARI NEHRU KAUL)
JUDGE

November 7 2023
rps

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