

2023:PHHC:060428

**In the High Court for the States of Punjab and Haryana at
Chandigarh**

CRR-1947-2022 (O&M)

Date of Decision: April 21, 2023

Chhinda Singh

.... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present: Mr. Navjot Singh, Advocate,
for the petitioner.

Ms. Ruchika Sabherwal, DAG, Punjab.

Vivek Puri, J.

1. The petitioner has assailed the order dated 09.08.2022 passed by the Court of Sessions, Fazilka vide which charge under Sections 304 and 427 of the Indian Penal Code (for short 'IPC') has been framed against the petitioner.

2. Briefly, the FIR has been registered on the basis of the statement of Prem Parkash alleging that on 26.04.2022, the petitioner was driving an oil tanker at a high speed and by making cuts in a zig zag manner. The petitioner intentionally struck the tanker with scooter being driven by Surinder Kumar, the son of the complainant. Besides, Naveen Kumar and Pooja Rani were also travelling on the scooter. It resulted in the death of all the three occupants of the scooter.

3. Learned counsel for the petitioner contends that there is no allegation to the effect that the petitioner was under the influence of

liquor and at the most, it is a case of rash and negligent driving. Consequently, the offence under Section 304A IPC is made out. Moreover, the charge as framed by the learned trial Court indicates that the allegations against the petitioner are with regard to rash and negligent driving and consequently, it cannot be said that the offence under Section 304 IPC is made out.

4. At the very outset, it may be mentioned here that at the stage of framing of charge, the Court has to consider the material with a view to find out if there is a ground for presuming that the accused has committed the offence. The charge can be framed even on the basis of strong suspicion, if the same is supported with material on record.

5. Merely because the material on record does not indicate that the petitioner was not under the influence of liquor, it cannot be termed to be a circumstance to conclude that the occurrence was not a result of intentional act on his part or the knowledge with regard to the consequences of the act cannot be attributed to him. There is a categorical and specific version of the complainant to the effect that the petitioner was driving the oil tanker at a high speed, without blowing any horn, in a zig zag manner and intentionally struck with the scooter, which resulted in the death of all the three occupants of the scooter. In such circumstances, prima facie, it appears to be a case of extreme negligence and rashness. In **2005(4) RCR (Criminal) 673, P&H (DB), Court on its own motion vs. State of Punjab and others**, it has been observed as following:-

“14. xxxx We, therefore, issue a direction to Courts subordinate to this Court to ensure that in cases of

extreme negligence and rashness and only where the evidence and circumstances so warrant, a charge under Section 304 or 302 of the Indian Penal Code adequate to the circumstances of the case be framed along with an alternative charge under Section 304A of the Code.”

6. It has been pointed out that the contents of the charge sheet as formulated by the learned trial Court indicates that the allegations have been spelt out with regard to rash and negligent act, but the charge has been framed under Section 304 IPC. In this regard, it may be mentioned here that the charge as framed by the learned trial Court may not be properly worded, but as per the provisions of Section 216 of the Code of Criminal Procedure (for short ‘Cr.P.C.’), the charge can be amended at any stage of trial. It is no doubt true that the accused is entitled to know with certainty and accuracy, the exact nature of charge against him, but the error in the charge, if any, can be corrected by invoking the provisions of Section 216 Cr.P.C. The defect in framing of the charge, *per se*, may not vitiate the trial.

7. The perusal of the material on record indicates that prima facie the allegations as put forth against the petitioner are indicative of a case of extreme negligence and rashness while driving the oil tanker and it has resulted in the death of three persons. Consequently, it cannot be concluded that the charge under Section 304 IPC is not made out. However, the charge as framed by the learned trial Court appears to be not properly worded and furthermore, the alternative charge under Section 304A IPC has not been framed.

8. Such an error can be corrected by invoking the provisions of Section 216 Cr.P.C.

9. In these set of circumstances, the present petition is dismissed. However, the learned trial Court is advised to look into the alteration/amendment of the charge as per the provisions of Section 216 Cr.P.C. in view of the observations recorded herein above.

April 21, 2023
vkd

(Vivek Puri)
Judge

Whether reasonable/speaking	:	Yes/No
Whether reportable	:	Yes/No