

CRR-1551-2019 [1]

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-1551-2019
Reserved on 25.04.2024
Date of decision: 28.05.2024

Sanjeet ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Argued by: Mr. D.S. Matya, Advocate for the petitioner.

Mr. Vishal Kashyap, DAG, Haryana.

Mr. Keshav Partap Singh, Advocate and
Mr. Mr. Ankit Chaudhary, Advocate for the complainant.

KARAMJIT SINGH, J. (ORAL)

1. This revision petition has been filed by the petitioner/accused-Sanjeet seeking setting aside of charge-sheet dated 03.06.2019 vide which the Court of Additional Sessions Judge, Gurugram framed charge under Section 304(ii) IPC and in alternative charge under Section 302 IPC against the petitioner.
2. The counsel for the petitioner has contended that even if version of complainant is taken as correct at its face value, then also no offence under Section 304(II) IPC is made out against the petitioner. That as per version recorded in FIR, a person driving vehicle No. HR-76-D-3213 while driving the same in a rash and negligent manner caused accident with Ram Kishan and then fled away from their along with his vehicle and later on Ram Kishan died on account of the injuries sustained by him in the

CRR-1551-2019

[2]

aforesaid Motor Vehicle Accident. The counsel for the petitioner has further submitted that the police registered FIR against the aforesaid unknown driver under Section 304-A and 279 IPC. That subsequently, petitioner was falsely nominated as accused by the police. It has been further contended that after completion of investigation, the police challaned the petitioner under Section 304 (II) IPC, under the influence of complainant. It has been further contended that there is nothing on the record to *prima facie* establish that it was petitioner who caused accident in question and thus, no offence under Section 304A IPC muchless offence under Section 304 (II) IPC is made out against the petitioner. It has been further contended that the prosecution never pleaded that it was a case of murder and covered under Section 302 IPC, as is evident from order dated 03.06.2019 passed by the learned trial Court directing to frame charge under Section 304 (II) IPC. It has been further contended that the learned trial Court wrongly framed charge under Section 304 (II) IPC and in alternative charge under Section 302 IPC. It has been further contended that it was no one's case that the deceased was murdered by the driver of the vehicle in question. The counsel for the petitioner has further contended that the impugned order dated 03.06.2019 being unsustainable, deserves to be set aside and the petitioner be discharged.

3. The counsel appearing on behalf of the complainant has submitted that the trial Court rightly framed charge under Section 304 (II) IPC and in alternative under Section 302 IPC against the petitioner and that there is no illegality or perversity in the same, as the intention of the petitioner who was driving the offending car was very clear to kill Ram

CRR-1551-2019

[3]

Kishan by hitting and crushing him under his car. It has been further contended that the petitioner having full knowledge, intentionally hit his car against the deceased who was sitting on a side of the road and petitioner dragged him to a certain distance and only thereafter, petitioner sped away along with his car. The counsel for the complainant has further contended that prior to aforesaid incident, petitioner visited shop of the deceased on 01.06.2018 and demanded money and at that time, petitioner abused son of the deceased and left the shop after giving him threats and thus, was nursing grudge against the deceased and other members of his family.

4. The State counsel also supported the arguments raised by the counsel for the complainant.

5. I have considered the submissions made by counsel for the parties.

6. Brief facts of the case are that first informant Ishwar Singh son of Nanak Ram got recorded his statement with the police, that on 03.06.2018 at about 5:05 AM, he and other persons including Ram Kishan were sitting on a side of the road after completing yoga exercises. In the meantime, Eco car No.HR-76-D-3213 driven by unknown person at very high speed, directly hit Ram Kishan and dragged him to a distance about 10 meters and then the said unknown driver sped away from there. Ram Kishan suffered multiple injuries and his son was informed about the said incident and then injured Ram Kishan was taken to hospital where he died while undergoing treatment. Police registered FIR against the aforesaid unknown driver under Sections 304A and 279 IPC. The investigating officer conducted the inquest proceedings and after post mortem examination, dead

CRR-1551-2019

[4]

body was handed over to the family members of deceased. On 06.06.2018, Raj Kumar son of deceased gave an application to the police wherein he disclosed that petitioner Sanjeet was driver of the offending vehicle and he also disclosed to the police that on 01.06.2018, petitioner Sanjeet came to their shop and was under the influence of liquor and demanded money and at that time his younger brother Kamal who was present in the shop refused to give any money to the petitioner and then the petitioner left the shop after extending threats to Kamal to teach him a lesson. Thereafter, supplementary statement of Kamal son of deceased dated 25.08.2018 was recorded along with that of Sumer. In the meantime, the offending car which was registered in name of Hoshiar Singh father of the petitioner was surrendered by the owner and it was taken into possession by police on 07.06.2018. During investigation, the petitioner was apprehended and released on bail. On completion of investigation, police presented challan against the petitioner under Section 304 (II) IPC.

7. After hearing the counsel for the parties, the trial Court passed impugned order dated 03.06.2019 directing to frame charge under Section 304 (II) IPC against the petitioner. However, the trial Court framed charge under Section 304 (II) IPC and in alternate under Section 302 IPC against the petitioner vide separate order of even date.

8. FIR in this case was registered under Section 304A and 279 IPC while police submitted its final report under Section 304 (II) IPC and trial Court in alternative framed charge under Section 302 IPC. It will be appropriate to deal with the aforesaid punitive provisions, which reads as follows:-



“304A. Causing death by negligence.—

Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Section 304. Punishment for culpable homicide not amounting to murder.

Whoever commits culpable homicide not amounting to murder, shall be punished with ¹ [imprisonment for life], or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death;

or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

Section 300. Murder.—

Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or—
(Secondly)— If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or—

(Thirdly)— If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or—

(Fourthly)— If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.”

The Hon’ble Supreme Court in ***Naresh Giri Vs. State of MP***

2008 (1) SCC 791 held that Section 304A IPC applies to cases where there is no intention to cause death and no knowledge that the act done, in all probabilities, will cause death. Negligence and rashness are essential elements under Section 304A.

Section 304 (II) IPC provides for punitive action if act of culpable homicide is done with the knowledge that it is likely to cause death, but without any intention to cause death or to cause such bodily injury as is likely to cause death.

Culpable homicide amounts to murder if the fatal act is done with intention of causing death or such bodily injury as the offender knows to be likely to cause death of the person to whom the said injury is caused.

9. It is not clear as to under what circumstances, the learned trial Court framed charge under Section 302 IPC, when no such separate order regarding framing of charge under said Section was passed by the trial Court and the order which was passed was only with regard to framing of charge under Section 304 (II) IPC. Further, FIR was lodged under Section 304A while challan was submitted by police under Section 304 (II) IPC and furthermore, it was not the case of Public Prosecutor that *prima facie* offence under Section 302 IPC is made out against the petitioner. So, there is a ambiguity in the impugned order to the extent stated above and further, no reason is given by the trial court as to why alternative charge under Section 302 IPC was framed by it against the petitioner. In the given circumstances, the impugned order whereby charge under Section 302 IPC is framed against the present petitioner is not sustainable.

10. In the instant case, from the perusal of the FIR, *prima facie* it appears to be a case under Section 304A but as there are also allegations that the driver of vehicle after causing accident dragged the victim to a distance of 10 meters, in alternative *prima facie* case under Section 304 (II) IPC is also made out on the basis of facts and circumstances under which the incident had taken place. However, there is no disagreement with proposition that at the stage of framing of charges, only a *prima facie* case is to be seen and the probative value of evidence is not to be looked into. The test to determine a *prima facie* case would naturally depend upon the facts of each case.

11. Admittedly, in the present case, the entire prosecution evidence

CRR-1551-2019

[7]

is recorded and further petitioner is also examined under Section 313 Cr.P.C. In the given circumstances, it is to be seen that if charges are altered at this belated stage, is there any need to conduct the trial afresh.

12. Section 216 Cr.P.C. governs alteration of charge and the said provision reads as follows:-

“216. Court may alter charge.

(1)Any Court may alter or add to any charge at any time before judgment is pronounced.

(2)Every such alteration or addition shall be read and explained to the accused.

(3)If the alteration or addition to a charge is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the accused in his defence or the prosecutor in the conduct of the case, the Court may, in its discretion, after such alteration or addition has been made, proceed with the trial as if the altered or added charge has been the original charge.

(4)If the alteration or addition is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused or the prosecutor as aforesaid, the Court may, either direct a new trial or adjourn the trial for such period as may be necessary.

(5)If the offence stated in the altered or added charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction has been already obtained for a prosecution on the same facts as those on which the altered or added charge is founded.”

13. A plain reading of the above would show that the Court’s power to alter or add any charge is wide ranging provided such addition or alternation is made before the judgment is pronounced. However, the Court has to exercise its power under Section 216 Cr.P.C judiciously and ensure that no prejudice is caused to the accused by the addition or alternation of charges and that he is allowed to have a fair trial. Section 217 Cr.P.C. deals with recall of witnesses when the charge is altered or added by the Court after commencement of the trial. Further, as per Section 464 Cr.P.C, in the case of an omission to frame a charge, it will not be fatal if no failure of

CRR-1551-2019

[8]

justice is occasioned due to such an error.

14. Reverting back to the facts of the case, it appears that after hearing counsel for both the parties, the learned trial Court passed separate detailed order dated 03.06.2019 directing that *prima facie* offence under Section 304 (II) IPC is made out and petitioner be charged accordingly. However, from the perusal of the charges of accusation which were served to the petitioner, it is evident that the petitioner was charged under Section 304 (II) IPC and in alternate he was also charged under Section 302 IPC and no charge was framed by the trial Court under Section 304A IPC.

15. It is settled position of law that if the accused is charged with a major offence and the said charge is not proved, the accused may be convicted of the minor offence, though he was not charged with it. In this context, reference be made to ***Prabhakaran Vs. State of Kerala 2009 (1) SCC (Cri) 873*** wherein the accused was charged under Section 302 IPC but was convicted under Section 304 (II) IPC by the learned trial Court, appeal filed by the accused was dismissed by High Court and in further appeal preferred by the accused, the Hon'ble Supreme Court altered the conviction of accused to that under Section 304A IPC. So, it could be easily inferred that offence punishable under Section 304A IPC is to be considered as minor offence in comparison to offence punishable under Section 302 IPC or under Section 304 (II) IPC in context of provision of Section 222 Cr.P.C. Thus, in the present case if petitioner is again charged under Section 302/304(II)/304A IPC, there will be no need for the trial Court to conduct a *denovo* trial by examining all the prosecution witnesses afresh.

16. In light of the above discussion, the present petition is hereby

CRR-1551-2019 [9]

partly allowed and impugned order dated 03.06.2019 to the extent whereby charge under Section 302 IPC is framed against the petitioner in alternative is set aside, with direction to the learned trial Court to rehear the parties and then to form its opinion as to whether offence under Section 302 IPC or under Section 304A IPC is *prima facie* made out against the present petitioner in alternate/addition to offence under Section 304 (II) IPC. The parties are directed to appear before the trial Court on the date already fixed in the trial.

17. The observations made herein above are not to be construed as an expression of opinion on the merits of the case and the learned trial Court is to proceed ahead in the trial in accordance with law and should not be influenced by the observations made herein above.

28.05.2024
Yogesh

(KARAMJIT SINGH)
JUDGE

Whether speaking/reasoned:-	Yes/No
Whether reportable:-	Yes/No