

CRR 2996 of 2024

Jabbar Ali Mallick
Vs.
State of West Bengal & Ors.

Mr. Anirban Dutta
Mrs. Priyanka Mukherjee
Ms. Shiba Das

... ... for the petitioner

Mr. Debashish Roy, Ld. P.P.
Mr. Arijit Ganguly
Mr. Koushik Kundu

... ... for the State

1. In spite of service none appears on behalf of the private respondents.
2. The learned counsel for the petitioner has submitted that he came to know about the framing of charge only on 13.05.2024. The charge-sheet was filed against the concerned accused persons under Section 341/323/325/504/506/302/34 of the IPC. By order dated 14.06.2023 the learned Trial Judge has framed charge under Section 341/325/506/304/34 of the IPC on the basis of a petition filed by the learned Public Prosecutor-in-charge. As per the said order dated 14.06.2023 it is divulged that the learned Public Prosecutor-in-Charge has submitted before the learned Trial Judge that there were ingredients of Section 304 IPC instead of Section 302 IPC. The learned Public Prosecutor has prayed for framing of charge accordingly. On the basis of such submission, the learned Trial Judge has framed charges under Section 341/325/506/304/34 of IPC without recording any

reason as to why proposed charge under Section 302/34 IPC has been omitted. This order was passed on 14.06.2023 and the petitioner being the son of the deceased was able to appear before the learned Trial Judge on 13.05.2024 and after appearance he came to know about the fact that the learned Trial Judge has framed charge against the accused under Section 341/325/506/304/34 of the IPC instead of Section 302 IPC. Subsequently, within 90 days of his knowledge he has filed the instant revisional application praying for setting aside the order dated 14.06.2023.

3. Mr. Dutta, learned counsel has also drawn the attention of this Court to the copy of charge-sheet showing the gravity of the injuries sustained by the father of the petitioner on the relevant date. He has also drawn the attention of this Court to the observation of the Doctor, who conducted post-mortem examination on the body of the deceased. He has also referred to the conclusion of the Investigating Officer. The learned counsel has also submitted that till date no witness has been examined due to initiation of this proceeding before the Hon'ble High Court.
4. The learned Public Prosecutor, Mr. Roy, has vehemently opposed the submission of the learned counsel for the petitioner. The learned Public Prosecutor has submitted that as soon as the summons has been received by the petitioner as a witness the limitation will start. In other

word he wants to impress upon this Court that the petitioner came to know about the framing of charge under the relevant sections as soon as he received the summons. In this regard, the learned counsel has drawn the attention of this Court to the copy of the summons dated 06.04.2024 received by the petitioner. According to him the instant petition has been filed after a long delay. On that score alone this petition should be rejected.

5. However, the learned Public Prosecutor has also drawn the attention to the petition of complaint which was filed by the deceased under Section 156(3) Cr.P.C. during his lifetime after appearing before the learned Additional Chief Judicial Magistrate, Chandannagar. The learned counsel of the State has categorically submitted that from the contents of the said complaint it goes to show that this should be a case under Section 304 IPC instead of a case under Section 302 IPC. The observation in the post-mortem report made by a doctor cannot be a sacrosanct one and, therefore, after considering the totality of the materials-on-record, the learned Trial Judge has rightly framed the charge under Section 341/325/506/304/34 IPC against the accused persons. The order dated 14.06.2023 may be cryptic but the materials-on-record including the petition of complaint of the deceased which was made by him during his lifetime clearly shows that this is a case under Section 304 IPC and not a case under Section 302 IPC.

6. After considering the materials-on-record it appears to me that when the charge-sheet as well as post-mortem report of the doctor clearly depict the injuries and further, when the doctor opines that the death was due to the effects of ante mortem injuries, the learned Trial Judge should have recorded the reasons specifically as to what prompted him to frame the charge under Section 304 IPC instead of 302 IPC along with other Sections. The order dated 14.06.2023 does not prima facie show that the learned Trial Judge has applied his mind since he did not record the reasons for framing charge under Section 341/325/506/304/34 IPC instead of Section 302/34 IPC along with other Sections. As this Court is unable to assess the reasons for framing of charges under the above Sections as stated above, I think that the petitioner has certain merits in filing the instant revisional application. I further hold that the petitioner's effective date of knowledge is on 13.05.2024 and hence, this application is not barred by limitation.
7. Accordingly, the order dated 14.06.2023 and all other subsequent orders passed by the learned Additional Sessions Judge, Fast Track Court, Chandernagore in SC31 of 2022 (ST 3/June/23) are hereby set aside. The learned Trial Judge is directed to reconsider the framing of charge after taking into consideration all the materials-on-record and to pass appropriate order in presence of all the parties including the de facto

complainant. Let this exercise be done within one month from the date of receipt of this order.

8. Let a copy of this order be sent down to the learned Additional Sessions Judge, Fast Track Court, Chandernagore for compliance.
9. With the above direction CRR 2996 of 2024 is thus disposed of.
10. Urgent Photostat certified copy of this order may be supplied to the parties expeditiously, if applied for.

(Apurba Sinha Ray, J.)