



IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRR-250-2021(O&M)
Reserved on : 21.01.2025
Pronounced on: 14.02.2025

PAWAN

..... Petitioner

VERSUS

STATE OF HARYANA AND ANOTHER

..... Respondents

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present: Mr. Keshav Pratap Singh, Advocate
for the petitioner.

Mr. Anmol Malik, DAG, Haryana.

Mr. Manoj Chauhan, Advocate and
Mr. Pankaj Chauhan, Advocate for
complainant/respondent No.2.

KIRTI SINGH, J.

Prayer in the present petition is to set aside the impugned order dated 05.02.2021 passed by learned Additional Sessions Judge, Rohtak, whereby the charge against the petitioner was framed under Section 302 of IPC.

2. Succinctly put, the factual matrix of the instant case is that the complainant's sister married the petitioner in February 2012 and one male child was born out of the wedlock. The petitioner was interested in securing the matrimonial alliance of the victim's cousin for his cousin brother Saurabh. However, since the idea was not reciprocated by the complainant's family, the victim was subjected to harassment and beatings, which was the alleged reason that compelled her to commit suicide by hanging herself.



Subsequently, an FIR was got lodged on 17.04.2020 against the petitioner, Saurabh, and also against Jaibir and Sushila (parents of Saurabh); but in the final report presented under section 173 CrPC, only the petitioner was challaned under section 306 IPC. However, the trial Court proceeded to frame charges against the accused under section 302 of the IPC, aggrieved by which, the present petition has been preferred.

3. Learned Counsel for the petitioner vehemently contends that the trial Court has gravely erred in charging the accused for murder, since it is clearly stated in the post mortem report dated 17.04.2020 (Annexure P5) that the cause of death is ante mortem in nature, caused by hanging and not strangulation. More so, as per the PMR as also medical jurisprudence, bluish colour of the injuries indicates that the same are a few hours to 3 days old, hence proving that there was no nexus between the said injuries and the death of the accused. Further it is submitted that the complainant, who owed the deceased Rs. 50,000/-, along with his family was pressurising victim to transfer her share of property in the name of her two brothers, and that it was these circumstances which drove her to commit suicide. Even an application to investigate these averments was moved by the petitioner under section 173 (8) CrPC, but the same was dismissed vide order dated 02.09.2020 (Annexure P4). Thus, considering all these submissions, the petitioner deserves to be discharged under section 302 and acquitted of all charges.

4. *Per contra*, learned counsel for the respondent No. 2 submits that a *prima facie* case of murder is made out against the petitioner. The presence of injuries on the body of the deceased indicate that she had been subjected to beatings prior to her death and the petitioner, a medical assistant at a lab in Rohtak, was aware of the impact these could have. Therefore the



trial Court has rightly charged the accused under section 302 and not 306 of the IPC.

5. Learned state Counsel submits that the victim died in her matrimonial home and the body was removed from the hook of the ceiling fan before the arrival of the police. Even there were injuries suffered by the deceased prior to her death. The ingredients of section 302, *prima facie*, stand fulfilled in this case, and thus the petitioner has rightly been charged under the provision of Section 302 instead of Section 306 IPC.

6. Heard.

7. At the outset, it would be pertinent to discuss the provisions pertaining to framing of charges, and discharge of an accused, which read thus:

“227. Discharge.—*If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.*”

“228. Framing of charge.—*(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which—*

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, or any other Judicial Magistrate of the First Class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the First Class, on such date as he deems fit, and thereupon such Magistrate shall try the offence in accordance with the procedure for the trial of warrant - cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of sub-section (1), the charge shall be read and explained to the accused, and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.”



8. It is settled law that at the time of framing charges, the Court must sift the chaff from grain, and weigh the evidence to determine whether or not a *prima facie* case is established against the accused. Trite to say that such an exercise need not be conducted meticulously. The material placed as evidence must be examined only to satisfy whether a case is made out for the accused to stand trial. Subsequently, if after considering the broad possibilities of the case, a grave suspicion regarding the commission of an offence arises, the Court is well within its power to frame charges against the accused.

9. Reverting to the case at hand, admittedly, as per the disclosure statement of the petitioner dated 17.04.2020 (Annexure P-2), the victim was being harassed to perform the marriage of her cousin with the petitioner's cousin, which led her to commit suicide. However, after analyzing the evidence present before it, the trial Court proceeded to charge the accused under section 302 IPC. The considerations which weighed before it were the presence of unexplained injuries present on the person of the deceased before her death, which she suffered at her matrimonial home, and the fact that her body had been taken off the hook of the ceiling fan even before the arrival of the police.

10. The Hon'ble Supreme Court in **Sajjan Kumar Vs.CBI**, (2010) 9 SCC 368, enlisted the principles which must be kept in mind when addressing the question of charges against the accused.

“21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:

(i) The Judge while considering the question of framing the charges under Section 227CrPC has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

(ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the



court will be fully justified in framing a charge and proceeding with the trial.

(iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.”

11. In **Ghulam Hassan Beigh Vs. Mohd. Maqbool Magrey**, (2022) 12 SCC 657, the High Court had upheld the order of the trial Court whereby it had discharged the accused from the offence of murder, and framed charge under section 304 IPC, by solely relying on the PMR which stated the cause of death as being “cardio respiratory failure.” The same was set aside by the Hon’ble Supreme Court while observing thus:

“30. The post-mortem report, by itself, does not constitute substantive evidence. Whether the “cardio respiratory failure” had any nexus with the incident in question would have to be determined on the basis of the oral evidence of the eyewitnesses as well as the medical officer concerned i.e. the expert witness who may be examined by the prosecution as one of its witnesses.

31. To put it in other words, whether the cause of death has any nexus with the alleged assault on the deceased by the accused persons could have been determined only after the recording of oral evidence of the eyewitnesses and the expert witness along with the other substantive evidence on record. The post-mortem report of the doctor is his previous statement based on his examination of the dead body. It is not substantive evidence. The doctor's statement in court is alone the substantive evidence.



The post-mortem report can be used only to corroborate his statement under Section 157, or to refresh his memory under Section 159, or to contradict his statement in the witness box under Section 145 of the Evidence Act, 1872. A medical witness called in as an expert to assist the court is not a witness of fact and the evidence given by the medical officer is really of an advisory character given on the basis of the symptoms found on examination. The expert witness is expected to put before the court all materials inclusive of the data which induced him to come to the conclusion and enlighten the court on the technical aspect of the case by explaining the terms of science so that the court although, not an expert may form its own judgment on those materials after giving due regard to the expert's opinion because once the expert's opinion is accepted, it is not the opinion of the medical officer but of the court.

xx

xx

xx

33. Whether the case falls under Section 302 or 304 Part II IPC could have been decided by the trial court only after the evaluation of the entire oral evidence that may be led by the prosecution as well as by the defence, if any, comes on record. Ultimately, upon appreciation of the entire evidence on record at the end of the trial, the trial court may take one view or the other i.e. whether it is a case of murder or case of culpable homicide. But at the stage of framing of the charge, the trial court could not have reached to such a conclusion merely relying upon the post-mortem report on record. The High Court also overlooked such fundamental infirmity in the order passed by the trial court and proceeded to affirm the same.

34. We may now proceed to consider the issue on hand from a different angle. It is a settled position of law that in a criminal trial, the prosecution can lead evidence only in accordance with the charge framed by the trial court. Where a higher charge is not framed for which there is evidence, the accused is entitled to assume that he is called upon to defend himself only with regard to the lesser offence for which he has been charged. It is not necessary then for him to meet evidence relating to the offences with which he has not been charged. He is merely to answer the charge as framed. The Code does not require him to meet all evidence led by the prosecution. He has only to rebut evidence bearing on the charge. The prosecution case is necessarily limited by the charge. It forms the foundation of the trial which starts with it and the accused can justifiably concentrate on meeting the subject-matter of the charge against him. He need not cross-examine witnesses with regard to offences he is not charged with nor need he give any evidence in defence in respect of such charges.

35. Once the trial court decides to discharge an accused person from the offence punishable under Section 302IPC and proceeds to frame the lesser charge for the offence punishable under Section 304 Part II IPC, the prosecution thereafter would not be in a position to lead any evidence beyond the charge as framed. To put it otherwise, the prosecution will be thereafter compelled to proceed as if it has now to establish only the case of culpable homicide and not murder. On the other hand, even if the trial court proceeds to frame charge under Section 302IPC in accordance with the case put up by the prosecution still it would be open for the accused to persuade the Court at the end of the trial that the case falls only within the ambit of culpable homicide punishable under Section 304IPC. In such circumstances, in the facts of the present case, it would be more prudent to permit the prosecution to lead appropriate evidence whatever it is worth in accordance with its original case as put up in the charge-sheet. Such approach of the trial court at times may prove to be more rationale and prudent.”



12. In the present case, reliance is being placed on the PMR to contend that it is a case of death by suicide, since the cause of death is mentioned as ante-mortem hanging, and thus the charge of murder is not sustainable.

13. The trial Court charged the petitioner under section 302 by passing a well reasoned and speaking order. At the same time, that does not deprive him of the opportunity to prove his innocence before the Court during the course of the trial. However, if the charge had been framed under section 306, the prosecution would be bound to contend the case for the lower charge.

14. One of the cornerstones of criminal justice system is to provide a fair opportunity to either side for conducting the trial. Since there is no illegality or infirmity in the order passed by the trial Court, it would be apposite, at this stage, to let the trial run its course without interference, lest it might prejudice the case of the prosecution.

15. As a corollary of the aforesaid, the present petition stands dismissed.

16. Pending application(s), if any, also stands disposed of accordingly.

(KIRTI SINGH)
JUDGE

14.02.2025

Kavita

Whether speaking / reasoned	Yes/No
Whether Reportable	Yes/No