

(2011) 05 P&H CK 0118

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No's. M-4093 of 2009 and 26445 of 2010 (O and M)

Narinder Kumar Vij and Others

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 26-05-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 304, 323

Citation : (2011) 05 P&H CK 0118

Hon'ble Judges : Ritu Bahri, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ritu Bahri, J.—The Petitioner has sought quashing of order dated 13.01.2009 vide which the charge has been framed against the Petitioners (Annexure P4) and the order of charge sheet dated 13.01.2009 (Annexure P5), vide which the Petitioners have been facing trial u/s 304.

2. The dispute arose between the Petitioners Narinder Vij and Naveen Vij, Vijay Kumar, Sudesh Rani, all residents of Gali No. 3, Krishna Gali, Dhariwal and the complainant. The accused armed with Datar, Sota entered in the house of the complainant and when Vijay Kumar raised lalkara and Narinder Vij gave datar blow upon Kumal, which hit on his left arm on the elbow and the other person started giving brick blows to the complainant and his family members. Thereafter, Narinder Vij gave a push to the complainant mother Sewawanti by which she fell down and she died at the spot. Sandeep Kumar took Kunal to Civil Hosptial, Gurdaspur. The motive behind this attack was that the complainant and his family members had filed a case in the Court against the Petitioners and they wanted to get this case withdrawn. The F.I.R was registered on the statement of the complainant.

3. Learned Counsel for the Petitioner has argued that Sewawanti (deceased) was an elderly women and was suffering from heart disease. So, she died because of

heart failure which is a natural death and no case of any injury inflicted by him. Counsel for the Petitioners has further argued that as per F.I.R and the eye witnesses, she (Sewawanti) was merely pushed by Narinder Vij and she fell down and died because of heart failure. So this case does fall within the ambit of Section 323 IPC and not u/s 304 IPC. He has referred to Post Mortem Report (Annexure P1). which reads as under:

No apparent external injuries marks present on the body.--On examination of Heart-Heart is enlarged in size and yellow coloured fat present in abundance on heart. On dissection of heart-there was a pale yellow opaque patch 5 cm X4 cm in size of infract over enfecalateral wall of left ventricle corresponding left anterior descending artery having a big clot, clotted blood present in left artrium on dissection of major vessels-althermanous plaque is present in the wall of major vessels leading to nassowina of the lumen

4. Thereafter, the doctor gave the opinion in the post mortem report as follows:

In my opinion at this stage, the cause of death will be given after the report of chemical examiner, Punjab, Khara, All the injuries are ante-mortem in nature.

5. Learned Counsel for the Petitioner has further argued that while framing the charge, Additional Sessions Judge has over ruled the Post Mortem Report which depicted that the deceased had enlarged heart and yellow coloured fat was present in abundance on heart, which shows she was suffering from heart disease. The Petitioner has been wrongly put to charge u/s 304 IPC.

6. Mr. Raghbir Chaudhary, Sr. DAG Punjab has argued that after framing of charges, three prosecution witnesses remains to be examined. He has further argued that at this stage, no ground is made out to quash the order framing the charges against the Petitioners. Learned State counsel has further stated that Petitioners can take all these pleas in defence. There is no dispute that Narender Kumar Vij gave push to deceased by which she fell down and she got a shock and died at the spot.

7. Heard learned Counsel for the parties.

8. The order dated 13.1.2009 does not suffer from any illegality and infirmity. At the time of framing of charge, only the prima facie case has to be seen whether the evidence on the file will lead to conviction or not has not be examined in detail at the time of framing of charge. In the present case, all the accused had gone to the house of the complainant and fought with the house hold members. During this fight, Narender Kumar Vij gave a push to Sewawanti (deceased) and she fell down and died. There is no dispute on this factual aspect of the occurrence.

9. Accordingly, criminal misc is dismissed.