

(2018) 07 J&K CK 0016

In the Jammu And Kashmir High Court

Case No : Criminal Revision No.54 Of 2017, Mps No. 01, 02 Of 2018

Rajeev Sharma And Ors. @APPELLANT@Hash State Of Jammu & Kashmir

Date of Decision : 03-07-2018

Acts Referred:

Jammu and Kashmir State Ranbir Penal Code, 1989 — Section 34, 302
Code of Criminal Procedure 1973, — Section 2(c), 161, 164A, 174, 175, 268, 269, 561A

Citation : (2018) 07 J&K CK 0016

Hon'ble Judges : Sanjay Kumar Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

1. In the instant Criminal Revision, the petitioners have assailed the validity of order dated 10.11.2017^Â passed by the learned 1stAdditional

Sessions Judge, Jammu, by virtue of which, they have been charged for commission of offences punishable under Section 302/34 RPC.^Â

2. Petitioners have filed the instant criminal revision on the following grounds:-^Â

(a) That the impugned challan as well as the order impugned is totally illegal and contra to the provisions of law, therefore the same deserve to

be quashed.^Â

(b) That the core and vital issue which requires judicial scrutiny and determination in the instant petition is with respect of order impugned

dated 10.11.2017 by virtue of which impugned charges under Section 302/34 RPC have been framed against the petitioners. Charge as

defined under Section 2(c) of Cr.P.C, means precise formulation of specific accusation against a person who is entitled to know its nature at

the earlier stage, therefore, the importance and significance of charge is a verify sacrosanct judicial fiction and in a criminal trial charge is the

foundation of the entire challan. This being the legal position, it is expected from the Ld. Trial Court to take utmost care is not only properly framing the charges but also the evidence available in respect of the matter put in the charge. The basic architecture of law is that when a charge is actually framed, the Court concerned must be equipped with at the least prima facie material to show that the person, who is sought to be charged, is guilty of an offence alleged against him. In the instant case, during the investigation it came to fore that the deceased was alleged to have been given beatings by the petitioners to which he succumbed to the injuries suffered by him. On the contrary, the post-mortem report has not corroborated the story of the prosecution in as much as in the FSL/Postmortem report given by Department of Forensic Medicine and Toxicology it has come on record that the death of the deceased is due to Aluminum Phosphide Poisoning and percentage of Ethyl Alcohol that 0.3% v/v and not because of the beating and assault. That clearly demolishes the basic foundation of the prosecution case. The postmortem FSL report clearly and unequivocally rules out the cause of death as alleged in the criminal challan and reiterated by the witnesses. Contrary to the version of prosecution, as the FSL/Post mortem report the cause of death is due to Aluminum Phosphide and percentage of Ethyl Alcohol was 0.3% v/v. This crucial and significant contradiction in the prosecution version and the medical evidence though specifically and categorically pleaded before the Ld. Trial Court has been completely overlooked and brushed aside. It is a settled proposition of law that any admissible evidence of sterling worth more particularly admissible in evidence cannot altogether be ignored at the stage of framing of the charges against the accused persons. The injuries as such noted in the post-mortem report are not sufficient enough to cause death in ordinary course of nature. On this vital ground neither the impugned nor the order impugned is legally sustainable, therefore, the same deserve to be quashed.

(c) That as per the prosecution version the petitioners are alleged to have committed the murder of the deceased by beating him with fists and blows which version of the prosecution has not been supported by the medical evidence as according to post mortem report, the deceased

has died due to aluminum phosphide. Further the perusal of the charge sheet as well as statement of witnesses recorded under section 161

and 164-A Cr.P.C. It appears that prima facie the commission of offence under Section 302/34 RPC is not made out against the petitioners

and they cannot be charged for the said offence and were liable to be discharged. However, the learned Trial Court while considering this

vital issue and without properly evaluating the charge sheet as well as the statement of the witnesses in reference to the medical evidence,

has passed the order impugned whereby the petitioners have been charged for commission of offence punishable under Section 302/34

RPC. On this ground also, the impugned order dated 10.11.2017 is not legally sustainable and is liable to be quashed.

(d) From the perusal of the allegations, as alleged against the petitioners in the challan, no offence much less offences as alleged against the

petitioners are made out. Whatever the evidence which has been made basis for registration of FIR against the petitioners and the

presentation of criminal challan against them does not in any manner suggest involvement of the petitioners in the crime. Even there is no

concrete finding and opinion from FSL with respect to death of the deceased due to beating and assault allegedly made by the petitioners. In

absence of any concrete and cogent evidence against the petitioners, the entire proceedings conducted against the petitioners are totally illegal

and contrary to the provisions of law. This crucial aspect of the matter has not been considered, both by the police as well as by the learned

Trial Court. On this ground also, the allegations alleged against the petitioners by the prosecution and believed by the learned Trial Court are

prima facie wrong, false and far-far away from truth, therefore, the petitioners are required to be exonerated of the charges.

(e) The learned Trial Court has failed to appreciate that none of the ingredients of Section 302/34 RPC as invoked against the petitioners are

not coming forth in reference to the allegations alleged against them. The petitioners have been roped into just for the purpose of victimizing

and harassing them when it is quite evident from the perusal of the entire challan that there is no specific role attributable to any of the

petitioner in the entire occurrence.

(f) That the Ld. Trial Court has further ignored another crucial fact that there is no evidence muchless prima-facie evidence, which even

remotely suggest that it is the petitioners who have inflicted injuries on the deceased. This goes to the root of the case to suggest that the

prosecution of the petitioners in the instant case is without any evidence and proof and they have been victimized for reasons best known to

the prosecution.

(g) The impugned challan is the outcome of the FIR which is highly motivated which was registered by the respondent. The entire story

projected in the FIR is totally false, frivolous and highly vexations and is based upon circumstantial evidence.

(h) That if the allegations as contained in the impugned challan are taken on their face value, it prima facie comes out that the petitioners have

been roped into the false and frivolous case without there being any evidence documentary or otherwise which warrants criminal prosecution

of the petitioners.

(i) The respondent has failed to appreciate that none of the ingredients of section 302 RPC are fulfilled or present in the instant case as

against the petitioners, therefore, the approach of the respondent in registering FIR and carrying out investigation in the matter and framing of

charges by the learned Trial Court against the petitioners is highly defective and contrary to provisions of law. On this ground also, the

impugned challan as well as order impugned deserves to be quashed.

(j) The Ld.Trial Court below has taken cognizance of the challan against the petitioners without properly evaluating the evidence on record. It

is respectfully submitted that if the evidence brought on record by the prosecution and even accepted in its entirety, no case much less the

offence punishable under Section 302 RPC is made out against the petitioners.

(k) That the criminal challan presented against the petitioners and the cognizance of the same taken by the Ld. Trial Court and framing

charges against the petitioner amounts to abuse of process of law.

(l) That the challan presented by the prosecution as against the petitioners contain fully of discrepancies and do not at all make out any case

much less a prima facie case for commission of offence punishable under Section 302/34 RPC as alleged against the petitioners in the said

challan.

(m) That a mere reading of the challan presented by the prosecution clearly reveals that no offence much less the offences as alleged against

the petitioners has been attar acted at all.

(n) That viewed from any angle, the pendency of the criminal Challan against the petitioners before the trial Court is an abuse of the process of

law and if the same is not checked and turned down by his Honâ??ble Court by exercising its inherent jurisdiction under Section 561-A

Cr.P.C the same will cause miscarriage of justice and the petitioner shall suffer an irreparable loss and injury which cannot be compensated in

future by any means.Â Â Â

(o) That further, the prosecution case contains inherent defects and deficiency and does not even remotely connect the petitioners with the

commission of crime. Therefore, the proceedings pending in the challan aforementioned against the petitioners are required to be quashed.Â

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3. I have heard learned counsel for petitioners as also for opposite side at length. I have also gone through the law on the subject.Â

4. The facts, as are emerged from the study of the file under consideration are that on 08.11.2006 at 6.30 AM information was received

through PCR Jammu to P/S Kanachak Jammu that one person, namely, Ram Krishan alias Guchu S/o Orem Chand R/O Prem Chand R/o

Floura Nagbani, Jammu was brought to Jammu for treatment and has been declared dead by the doctors and the dead body of the deceased

has been kept at GMC Mortuary Room. The death of the said deceased was found under suspicious circumstances. On this, proceedings

under Section 174 Cr. P.C were initiated and the entry of same was duly reflected in Roznamcha of 8.11.2016 vide report No. 47. After the

suspicion raised by the deceasedâ??s parents, a board of Doctors was constituted and the postmortem of the deceased was conducted by

the board. During post-mortem of the deceased, all the proceedings were video graphed and photographed through the photographers of crime

Branch. After postmortem, the dead body of the deceased was handed over to family members. Statement of the witnesses recorded under

Section 175 Cr.P.C.Â Â

5. From the statement of the witnesses, it was found that the deceased-Ram Krishan went to attend a marriage party of one Sudama, in the evening of 07.11.2016 with accused persons, namely, Vikas Sharma, Sunil Sharma and Rajesh Kumar and one Amit Kumar (P.W) and consumed alcohol on the way and thereafter went to a Bar. Accused-Rajeev Sharma and Vinod also met them at the Bar and there too all of them consumed alcohol except Amit Sharma, who left the bar with his uncle. After consuming alcohol, scuffle took place between the deceased and the accused-Rajeev Sharma. During the investigation, it was further found that accused Rajeev Sharma was having enmity with Ved Pal (elder brother of the deceased) over some business and also accused, namely, Vinod Kumar having enmity with the deceased because deceased was having affair with accused Vinod's daughter. It was found that said-Rajeev Sharma and Vinod Kumar along with other accused persons named above, after conspiring with each other, had taken the deceased in their cars towards Thathi and at 11.55 PM stopped their both the cars at some lonely place at Thathi Road and after taking the deceased out of the car, accused Rajeev Sharma in connivance with other accused attacked the deceased on his neck with some blunt object with full force and injured him and thereafter, all the accused attacked the deceased with fist and blows.

6. Since the occurrence took place under the jurisdiction of P/S Kanachak as such after the proceeding under Section 174 Cr. P.C, FIR was lodged for offence u/s 302/109 RPC and the accused were taken into custody by the police on 12.11.2016 and during investigation it was found that accused have killed the deceased because of previous enmity with the brother of the deceased. It was further found that deceased was keeping bad eye on the daughter of the accused-Vinod Kumar and due to which earlier also accused-Vinod Kumar and accused-Rajesh Sharma thrashed the deceased and also warned him but he did not mend his attitude.

7. During the investigation, it was found that the deceased was also poisoned by the accused persons and the same was duly proved during the PostMortem of the deceased and in Post-Mortem injuries on the neck and chest of the deceased were also found on the dead body. It

was also found from the investigation that deceased was in company of these accused persons right from 6.30 P.M till he died in the

hospital, as is evident from the statement of the prosecution witness, namely, Ved Pal recorded u/s 164-A Cr.P.C, statement of P.W Amit

Sharma recorded u/s 161 Cr.P.C.

8. After completion of investigation challan has been produced and court below on 10.11.2017 has charge sheeted all the accused 302/34 RPC

on the grounds that there is ample of evidence to proceed against the accused in this regard.

9. In order to appreciate the contentions of the parties, it may be noticed that Section 268 and 269 of Cr.P.C. relate to the trial of cases before

the courts of Sessions. It is to be seen whether prima facie case has been made out for framing charge or not. It is apt to quote sections 268

and 269 of Cr.P.C as under: -

Section 268 Discharges:

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 no sufficient ground for proceedings against the accused, he shall discharge

the accused and record his reasons for so doing.

Section 269 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 Sessions, he may frame charge against the accused and by order, transfer the case to the Chief

Judicial Magistrate or any Judicial Magistrate competent to try the case, and thereupon the Chief Judicial Magistrate or any Judicial

Magistrate to whom a case may have been transferred shall try the offence in accordance with the procedure provided for the trial or warrant

cases instituted on 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.â??

10. A conjoint reading of Sections 268 and 269 of Cr.P.C.,â? would reveal that upon consideration of the record of the case and documents

submitted, if judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused and if after

such consideration and hearing, judge is of the opinion that there is ground for presumingâ? that accused has committed offence, he may

frame charges against the accused or transfer the case to CJM or Judicial Magistrate if he is of the opinion that offence made out against the

accused is triable by a Magistrate.

11. Atâ? the initial stage if there is strong suspicion which leads the Court to thinkâ? that there is ground for presuming that the accused has

committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused.â? The Judge

while considering the question of framing the charges under section 269 of the Code 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.â?

12. In present case, from the bare reading of statements of PW Ved Pal, brother of deceased, recorded u/s 164-A Cr.P.C.,â? PW Pritam

Chand, father of deceased, recorded u/s 161 Cr.P.C. and one PW Amit Sharma recorded u/s 161 Cr.P.C., it is evident that deceased was last

seen with accused as he was taken by accused persons from home to marriage party of one Sudama and remained in company of accused

persons; even deceased was brought back to home by accused persons in drunk condition from marriage party.â? During this intervening

period, deceased received injuries and was made to administer poison, so at this stage, there is sufficient material to presume that accused

have committed crimes as alleged by the prosecution.â?

13. The case is totally dependent upon circumstantial evidence; in such case all the circumstances/facts collected during investigation have to

form a unsnapped chain, which goes to form guilt of accused. After careful going through the evidence collected during investigation, it is

evident that there is ample of evidence for presuming that the accused persons have committed an offence u/s 302/34 RPC, as alleged by

prosecution. The ground taken that post mortem report which is based upon FSL report clearly reveals that deceased died due to poison, but

no investigation in this regard has been conducted, so case of prosecution becomes doubtful, is not tenable at this stage. Because at the time

of framing charge court has to conduct test whether there was sufficient ground for proceeding and not whether there was sufficient ground

for conviction, and even though the person charged of an offence might have a defence, the matter had to be left to be decided by the court

conducting trial especially in heinous offences.

14. In view of above discussion, I do not find any infirmity of law and facts in the order of court below. This petition is dismissed. Record

be sent back immediately.