

(2007) 01 P&H CK 0032
In the Punjab And Haryana At Chandigarh
Case No : Criminal Revision No. 1816 of 2006

Rajnish Sharma

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 12-01-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 216
Penal Code, 1860 (IPC) — Section 304B, 306, 34

Citation : (2007) 2 RCR(Criminal) 4

Hon'ble Judges : Mahesh Grover, J

Bench : Single Bench

Advocate : Kiran Bala, for the Appellant; S.K. Hooda, D.A.G., Haryana For Respondent No. 1 and Mr. H.S. Gill, Advocate For Respondent Nos. 2 to 4, for the Respondent

Final Decision : Allowed

Judgement

Mahesh Grover, J.—This revision petition is directed against the order dated 21.8.2006 passed by Additional Sessions Judge, Fast Track Court, Ambala vide which the prayer of the Petitioner for alteration/addition of the charge in terms of Section 216 of the Code of Criminal Procedure, 1973 has been declined. On 18.4.2006, Ramita is stated to have died at her matrimonial home after five years of her marriage to one Dalvinder Kumar. The post-mortem report revealed the following injuries on the person of the deceased:

Injuries

1. A lacerated wound triangular in shape on left side of forehead, 3 x 1.5 x 2 cm Muscle deep, clotted blood present.
2. A complete ligature mark is present around the neck above the cricoid cartilage, broad anteriorly (2 cm) narrow posteriorly towards the rope of neck. The ligature mark is pinkish brown in colour. On subcutaneous exams, petechial haemorrhages are present, Muscle fibers are torn and blood vessels engorged.

2. The Petitioner had represented to the police immediately after the death of Ramita that his sister had been murdered. The police instead of inquiring into the veracity of the allegations made by the Petitioner went on to put up a challan under Sections 306/34 IPC against the accused persons namely Dalvinder Kumar, Raj Kishan and Savitri Devi. During the course of trial, statement of the Petitioner was recorded in which he reiterated the allegations that his sister had been murdered and it was not a case u/s 306/34 IPC. The Petitioner thereafter, moved an application u/s 216 Code of Criminal Procedure praying for alteration/addition to the charge which was declined, resulting in filing of the present petition.

3. It was contended by the learned Counsel for the Petitioner that the powers u/s 216 of the Code of Criminal Procedure can be exercised by the Court at any time before the pronouncement of judgment. It is further contended that the post-mortem report clearly indicates that death was caused due to the injuries caused by the accused persons.

4. The aforementioned contentions were refuted by the learned Counsel for the Respondent who stated that in the opinion of the doctor, death was due to asphyxia which could have been as a result of the suicidal action of the deceased.

5. I have heard learned Counsel for the parties and perused the paper book.

6. Concededly, the unnatural death took place within seven years of the marriage which invites a strong presumption against the accused persons coupled with the fact that there was lacerated wound on the left side of forehead. The opinion of the doctor in the post-mortem report shows that the death could have been homicidal as well.

7. Prima facie the death being homicidal cannot be ruled out for the reasons afore-stated. Besides the powers of the Court u/s 216 Code of Criminal Procedure is unambiguous. The Court has the power to examine in the light of the entire facts before it to add or alter the charge during the course of trial. The settled proposition of law is that new charge can be added or the existing charge can be altered if there is sufficient material before the court, either in the shape of allegations in the complaint/FIR or as evidence before it to justify such an order under the aforesaid provision of law.

8. While dealing with the application u/s 216, the learned trial Court lost sight of the fact that there was a strong presumption of law against the accused persons since the death had taken place within 7 years of marriage. In the wake of this, the onus to prove the innocence shifts on the accused, as he has to rebut the presumption by cogent evidence. For the prosecution and the courts, it is sufficient to attract a charge u/s 304-B IPC. Besides the medical evidence on record could not conclusively rule out any foul play, and implication of the accused u/s 304-B IPC. Charge has to be framed on the possibilities that an offence was committed. Conclusive evidence is not a pre-requisite for the said purpose.

9. For the reasons stated above, present petition is allowed and it is directed that the charge u/s 304-B be added and the accused persons be tried for the afore-stated charges as well.