

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Criminal Miscellaneous (Petition) No. 2492/2024
URN: CRLMP / 5246U / 2024

Vasudev Singh S/o Shri Ramcharan, R/o Village Kirarpur, Police Station, Saipau, District Dholpur.

-----Petitioner

Versus

1. State Of Rajasthan, Through P.P.
2. Rajkumar @ Raju S/o Shri Roshan Lal, Village Kirarpur, Police Station, Saipau, District Dholpur.
3. Surendra @ Nabla S/o Shri Roshan Lal, Village Kirarpur, Police Station, Saipau, District Dholpur.
4. Sanjay Kumar S/o Shri Roshan Lal, Village Kirarpur, Police Station, Saipau, District Dholpur.
5. Gourav Singh S/o Shri Surendra @ Nabla, Village Kirarpur, Police Station, Saipau, District Dholpur.
6. Bhanu S/o Shri Raju, Village Kirarpur, Police Station Saipau, District Dholpur.
7. Sagar S/o Raju, Village Kirarpur, Police Station Saipau, District Dholpur.
8. Sourabh S/o Surendra @ Nabla, Village Kirarpur, Police Station Saipau, District Dholpur.
9. Lavkhush S/o Sanjay, Village Kirarpur, Police Station Saipau, District Dholpur.
10. Ankit S/o Sanjay, Village Kirarpur, Police Station Saipau, District Dholpur.
11. Kanha S/o Hari Singh, R/o Saimra Police Station, Saipau, District Dholpur.

-----Respondents

For Petitioner(s)	:	Mr. Manoj Kumar Avasthi
For Respondent(s)	:	Mr. Gaurav Gupta, Asstt.GA with Mr. Shubham Sain Mr. Rajneesh Gupta with Ms. Chanchal

JUSTICE ANOOP KUMAR DHAND**Order****09/07/2026**

1. By way of filing the instant criminal misc. petition, a challenge has been led to the impugned order dated 24.08.2023 passed by the Judicial Magistrate No.3, Dholpur in Criminal Case No.501/2023, by which the application submitted by the complainant-petitioner, under Section 190 Cr.P.C. for taking cognizance against the accused-respondents for the offence punishable under Section 302 IPC, has been rejected.
2. Aggrieved by the aforesaid order, a revision petition was submitted by the complainant-petitioner, however, the same was rejected by the learned Sessions Judge, Dholpur vide impugned order dated 13.03.2024.
3. Feeling aggrieved and dissatisfied by both the aforesaid impugned orders, passed by both the Courts below, the complainant-petitioner has approached this Court by way of filing the instant petition.
4. Learned counsel for the complainant-petitioner submits that as per the allegations levelled in the FIR No.72/2022, registered at the Police Station Saipau, District Dholpur as well as the statements of the witnesses so recorded, the alleged incident occurred on 17.03.2022 and the specific allegations have been levelled against the accused persons to the effect that the accused-Rajkumar @ Raju and Sourabh caught hold the Deceased-Sovren and the accused Surendra @ Nabla inflicted a kick blow on testicles of the deceased-Sovren. Counsel submits that on account of the injuries sustained on his testicles, the

deceased-Sovren suffered cardiac arrest and passed away. Counsel submits that at the time of conducting post-mortem of the deceased-Sovren, viscera from various parts of the deceased-Sovren body was taken, however, viscera from his testicle was not taken, hence, the report submitted by the Department of Pathology, SMS Medical College, Jaipur is not specific and accurate. Counsel submits that causing injuries to the testicles is dangerous to human life, and if such injuries result in cardiac arrest leading to the death of the injured person, then the offence under Section 302 IPC is certainly made out. Counsel submits that at the stage of taking cognizance, only *prima facie* case is required to be seen in order to establish whether the accused had the intention and knowledge of death at the time of causing the injuries to the deceased. Counsel submits that sufficient evidence is available on the record to proceed against the accused persons for the offence under Section 302 IPC, hence, the orders impugned passed by the Courts below are not sustainable in the eyes of law and are liable to be quashed and set-aside.

5. In support of his contentions, counsel has placed reliance upon the judgment passed by the Hon'ble Apex Court in the case of **State of Karnataka vs. Shivalingaiah Alias Handigidda** reported in **1988 AIR SC 115**; **State of Gujarat vs. Bai Fatima and Another** reported in **1975 AIR SC 1478**; and **State of Karnataka vs. Mohamed Nazeer Alian Babu** reported in **2003 AIR SC 999**.

6. Per contra, learned counsel appearing on behalf of the accused-respondents opposed the arguments raised by counsel for the complainant-petitioner and submitted that the deceased-

Sovren has not sustained any external injury on any part of his body. Counsel submits that the deceased-Sovren was a heart patient and he died because of the natural causes on account of the cardiac arrest suffered by him. Counsel submits that even as per the report furnished by the Department of Pathology, SMS Medical College, Jaipur, it was mentioned therein that 'Histopathological Findings are suggestive of Chronic Ischemic Heart Disease'. Hence, under these circumstances, by no stretch of imagination, it can be believed that the deceased-Sovren has died because of unnatural causes. Counsel further submits that as per the aforesaid report, 'Right and Left coronary arteries - shows changes of marked atherosclerosis with calcification and narrowing of vessels lumen'. Counsel further submits that as per the statements of the independent witnesses, the deceased-Sovren was not present on the spot when the alleged incident, as per the FIR, occurred with rest of the injured persons. Counsel also submits that for the injuries sustained by the other injured persons, charge-sheet has been submitted against the accused persons under Sections 143, 323, 341, 504 and 34 IPC. Counsel submits that even the Investigating Officer has given a categorical finding at the time of submitting the conclusion report before the Court concerned that the deceased-Sovren was not present on the spot when the alleged incident, as per the FIR, has occurred with other injured persons. Hence, under these circumstances, no offence under Section 302 IPC is made out against the accused respondents and the instant petition is liable to be rejected.

7. Heard and considered the submissions made at the Bar and perused the material available on the record.

8. Perusal of the record indicates that for the incident dated 17.03.2022, an FIR No.73/2022 was registered at the Police Station Saipau, District Dholpur, wherein allegations have been levelled against the accused persons that they inflicted injuries on the injured persons including the deceased-Sovren, who passed away on the way to the hospital.

9. This fact is not in dispute that during the course of investigation, when the post mortem of the deceased-Sovren was conducted, no external injury was found on the body of the deceased, but in order to ascertain the cause of death, viscera from various parts of his body i.e. Lung, Liver, Spleen, Kidney and Heart were taken and sent to the Forensic Science Laboratory. This fact is also not in dispute that the allegations have been specifically levelled against one of the accused, i.e. Surendra @ Nabla, that he inflicted a kick blow in the pelvic region of the deceased causing injuries to his testicles. Some of the witnesses have corroborated the aforesaid allegations in their statements recorded under Section 161 Cr.P.C. When the matter was inquired and investigated by the Investigating Officer, it was found that the deceased-Sovren Singh was not present on the spot, where the alleged incident has occurred and that is why charge-sheet for the offences under Sections 323, 341, 504 read with Section 34 IPC has been submitted against the accused-respondents for causing injuries to the other injured persons. At this stage, an application under Section 190 Cr.P.C. was submitted by the complainant-petitioner before the Trial Court for taking cognizance against the accused-respondents for the offence under Section 302 IPC.

10. Two types of evidence are available on the record with the charge-sheet; wherein one set of evidence indicates that injuries were inflicted on the testicles of the deceased-Sovren; and the other set of evidence is that the deceased was not present on the spot when the alleged incident has occurred with the other injured persons, caused by the accused persons.

11. Looking to the fact that the Trial Court is proceeding against the accused respondents for the offence under Sections 323, 341, 504 read with Section 34 IPC, this Court is of the considered opinion to let the statements of the material injured eyewitnesses as well as the Doctor, who examined the deceased and prepared the post mortem report of the deceased, be recorded before the Trial Court and in case, any evidence comes on the record supporting the averments made by the complainant-petitioner's, then the complainant-petitioner would be at liberty to move an appropriate application under Section 216 Cr.P.C. for alteration of charge. In case, on the basis of the evidence, it is found that the charge is required to be altered to an offence exclusively triable by the Sessions Court, then the Magistrate would commit the case to the Sessions Court under Section 323 Cr.P.C.

12. The Trial Court is directed to decide the said application, if submitted, strictly in accordance with law on the basis of the evidence available on the record.

13. With the aforesaid observations, the instant criminal misc. petition stands disposed of. The stay application and all pending applications, if any, also stand disposed of.

14. Before parting with the order, it is made clear that this Court has not expressed any opinion on the merits of the case as to

whether the offences alleged are made out or not. The Trial Court would pass appropriate orders at appropriate stage of the trial on the basis of the evidence available on the record without being influenced by any of the observations made by this Court herein.

(ANOOP KUMAR DHAND),J

KuD/20