

In the chargesheet filed by the investigating officer, charges were framed only under Section 304 of the Indian Penal Code, 1860¹ against the accused persons. The appellant, Ayyub Ali, had filed an application before the Additional Sessions Judge, praying that the charges should be framed under Section 302 read with Section 34 of the IPC instead. In his application, the appellant, Ayyub Ali, submitted that the deceased, Ziyahur/Ziyahul/Ziaul Rahman, was hit with sticks/rods and baseball bats, and at least 6 injuries were suffered on soft parts of the body, including the head. The appellant, Ayyub Ali, also submitted that the deceased, Ziyahur/Ziyahul/Ziaul Rahman, had suffered dural hematoma on left side of the head and the parietal and frontal bone was fractured, and that these antemortem injuries had resulted in death.

While the postmortem report records the presence of dural hematoma, it does not mention that the parietal and frontal bone was fractured.

On the question of the place of occurrence, there is no doubt or debate.

We find it surprising that the chargesheet was filed invoking only Section 304 of the IPC, and that at the stage of framing of the charge, the trial court also framed the charge only under Section 304 of the IPC. The trial court made a cursory observation that though the deceased had suffered 14 injuries, they were not

¹ "IPC", for short.

inflicted by a sharp-edged weapon or firearm but by sticks, etc., and therefore, there is no *prima facie* basis for framing a charge under Section 302 read with Section 34 of the IPC.

While examining the aspects that the Court must take into consideration while framing charge(s), in *Ghulam Hassan Beigh v. Mohd. Maqbool Magrey & Ors.*,² this Court observed that the Court undoubtedly has the power to sift through and weigh the evidence for the limited purpose of finding out whether or not a *prima facie* case is made out. When the materials placed before the Court disclose a grave suspicion, which is not properly explained, the Court would be justified in framing a charge and proceeding with the trial. Specifically dealing with the question as to whether a charge should be framed under Section 304 or Section 302 of the IPC, it was observed as under: -

“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

² (2022) 12 SCC 657.

fundamental infirmity in the order passed by the trial court and proceeded to affirm the same.”

In this case, on the basis of the facts noted above, we find that the charge should have been framed under Section 302 and not under Section 304 of the IPC, as was erroneously done by the trial court and subsequently affirmed by the High Court.

The impugned judgments of the High Court and the trial court are accordingly set aside, and the appeal is allowed in the aforesaid terms.

Fresh charge will be framed under Section 302 read with Section 34 of the IPC, and the trial will proceed accordingly.

We, however, clarify that the observations made in the present order will not be read as observations and findings on the merits of the case. The trial will proceed in accordance with law and the decision of the trial court would be on the evidence led and the materials placed before it.

Keeping in view the nature of the allegations and the manner in which the trial has proceeded, we direct the State of Uttar Pradesh to appoint a Special Prosecutor to conduct the trial, after consultation with the appellant, Ayyub Ali, the father of the deceased. The said exercise will be completed within a period of six weeks from the date a copy of this order is served on the Chief

Secretary, State of Uttar Pradesh. A compliance report to the aforesaid effect will be filed in this Court.

It will be open to the private respondents, that is, respondent Nos. 2 to 5, to move an application for grant of bail before the trial Court in view of the amended charge. The said application for bail will be considered on its own merits within a period of three weeks from the date of filing. Till the application is decided, respondent Nos. 2 to 5 need not be taken into custody.

Pending application(s), if any, shall stand disposed of.

.....CJI
(SANJIV KHANNA)

.....J.
(SANJAY KUMAR)

NEW DELHI;
APRIL 17, 2025.