

# IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.Revision No.80 of 2009.

Judgment reserved on: 28.10.2009

Date of decision: 30.10.2009.

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Ravi Kumar Chawla

.....Petitioner

Vs.

State of H.P.

.... Respondent

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***Coram***

The Hon'ble Mr. Justice Kuldeep Singh, Judge.

***Whether approved for reporting?*** No

For the petitioner : Mr. N.K. Gupta, Advocate.

For the Respondent : Mr. Anshul Bansal, Addl. Advocate  
General with Mr. R.P. Singh,  
Assistant Advocate General.

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**Kuldeep Singh, Judge.**

This revision petition has been directed against the order dated 8.6.1009 passed by learned Addl. Sessions Judge, Fast Track Court, Chamba in S.T. No.18/2009, ordering framing of charge against the petitioner under Section 302 read with Section 34 IPC.

2. On behalf of the petitioner, it has been submitted that the prosecution case against the petitioner is that on 10.8.2008 the petitioner and three more persons were gambling and when deceased Vijay Kumar had won some money, altercation took place. The accused threw deceased Vijay Kumar on a table, who suffered

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***Whether the reporters of the local papers may be allowed to see the Judgment?***Yes

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head injury. Vijay Kumar was taken to Regional Hospital, Chamba where he died. The petitioner was arrested but was released on bail on 17.9.2008. The prosecution had filed challan under Section 302 read with Section 34 IPC. It has been submitted that on the basis of material collected by the Investigating Agency no case under Section 302 read with Section 34 IPC is made out against the petitioner. It has been submitted that at the most case under Section 304 read with Section 34 IPC on the basis of allegations is made out against the petitioner but the learned Addl. Sessions Judge, Fast Tract Court; Chamba has erred in ordering framing of charge against the petitioner under Section 302 read with Section 34 IPC.

**3.** The learned Addl. Advocate General has opposed the petition on the grounds that all the accused persons with common intention had caused bodily injury to Vijay Kumar by throwing him on the table made of iron and wood which subsequently caused death of Vijay Kumar. It has been submitted that accused persons had sufficient knowledge, if a person is thrown on hard object like table, there is every possibility that death may be caused. The learned Addl. Advocate General has submitted that no fault can be found with the impugned order.

**4.** Heard and perused the record. I have gone through the postmortem report of the deceased wherein the doctor has given the final opinion that the deceased had died due to head injury. I have also gone through the statement of Ashok Kumar under Section 154 Cr.P.C. who is the brother of deceased Vijay Kumar wherein he has

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stated that Ravi Chawla on 10.8.2009 at about 6 AM told him that at about 2 AM in the night he, Vijay Kumar, Daljeet alias Bunti, Saleem Ali quarreled when Vijay Kumar won in gambling and Vijay Kumar was thrown on the table as a result of which he sustained head injury. The statement of Ashok Kumar is based upon the facts narrated by petitioner himself to Ashok Kumar complainant.

**5.** At the time of framing of the charge, it is to be seen, whether a prima facie case is made out for framing the charge. The case is not to be seen from the angle that accused is entitled to acquittal. The prosecution case against the petitioner and other accused is that accused gave beatings to the deceased Vijay Kumar with common intention when he won some money in the gambling.

**6.** The charge has been framed under Section 302 read with Section 34 IPC. On behalf of the petitioner it has been submitted that as per the prosecution case only charge under Section 304 read with Section 34 IPC is made out against the petitioner. No prejudice has been caused to petitioner by framing charge under Section 302 read with Section 34 IPC. The petitioner during trial shall get every opportunity to contend that no case is made out against him what to talk of case under Section 302 read with Section 34 or Section 304 read with Section 34 IPC. No error of jurisdiction has been pointed out. There is no merit in the petition, which is accordingly dismissed.

**7.** The parties through their counsel are directed to appear before learned Addl. Sessions Judge, Fast Track Court, Chamba on

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23.11.2009. The registry is directed to send the record of the trial Court immediately so as to reach before the date fixed.

**( Kuldip Singh )**  
**Judge.**

**October 30, 2009**  
**(sks)**