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2025.PHHC:053808



**IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH**

**CRR-1099-2025  
DECIDED ON: 28.04.2025**

**GOURAV ALIAS GORA**

**.....PETITIONER**

**VERSUS**

**STATE OF HARYANA**

**.....RESPONDENT**

**CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

Present: Mr. Anshuman Dalal, Advocate  
for the petitioner.

Mr. Chetan Sharma, DAG Haryana

**SANDEEP MOUDGIL, J (ORAL)**

1. The present revision petition has been preferred against the impugned order dated 23.01.2025 passed by the learned Sessions Judge, Sonapat, vide which charges were amended against the petitioner.
2. Mr. Dalal would confine his argument challenging the framing of charge under Section 377 of IPC and do not assail the framing of charge for the offence under Sections 302, 346 and 202 of IPC, 1860.
3. To adjudicate as to whether framing of charge under Section 377 of IPC penable in law, the factual aspects as well as the relevant evidence would be tested on the strength of version narrated in the FIR, which reads as under:-

*“Sir, facts of the case are that on 27.07.2022 Head Constable Ravinder alongwith Constable Vikas 176/SPT was present at the gate of Police Station Kharkhoda, when the complainant of the case Deepak son of Vijender resident of Gari Sisana District Sonipat came present and presented a written complaint, whose contents are To, SHO, P.S. Kharkhoda, Sir, it is stated that I Deepak son of Bijender, am resident of village Garhi Sisana, District Sonipat. We are two brothers. My elder brother Mukesh aged 32 years) had left home on 25.07.2022 at 08:00 p.m. in the night and has not returned till now. Our entire family have searched for my brother. My brother's mobile no.9306606207 is also switched off since then. I have a doubt that my brother has been hidden by someone for profit. My brother Mukesh be searched for. Appearance- Wheatish complexion, round face, well-built body, slight limpness in right foot, height 6 feet 1 inch, aged 32 years, wearing blue lower and green shirt, wearing slippers in foot. On which abovesaid FIR u/s 346 was registered and firstly investigation was conducted by HC Ravinder PS Kharkhoda during investigation on recovery of dead body of missing person Mukesh in waterlogged fields of Village Gari Sisana on 27.07.2022 itself. FSL team was called to the spot. After inspection of spot, post mortem of dead body of deceased Mukesh was got conducted at Government Hospital Sonipat and one bottle water was filled from the spot sealed with Seal RK and was taken in to police possession as evidence through memo. Complainant Deepak abovesaid presented mobile phone of deceased touch screen make moto black color having blue color on it. The same was sealed with Seal RK and taken into police possession through memo. The deadbody, after postmortem, was handed over to heirs for last rights. Case property was deposited in malkhana of police station. Thereafter, investigation was conducted by SI Krishan Singh, CIA Kharkhoda. during investigation accused Gaurav @ Gora was apprehended and interrogated in front*

*of complainant Deepak and statement u/s 161 Cr. P.C. was recorded of Deepak. That in the present case after having enough evidence for arrest accused Gaurav @ Gora son of Jai Bhagwan resident of Village Atail District Rohtak was arrested as per law on 08.08.2022 and special report of the present case was sent to senior officials. Creta Car No. HR-95-3192 white color used in the occurrence was taken into police possession through memo as evidence. Car Creta was entered in malkhana police station. On 09.08.2022, accused Gaurav @ Gora abovesaid got recorded his disclosure statement. From the facts of the case and interrogation of the accused, Section 304/202 IPC was added in the case. The accused was taken for one day police remand from the court. The place of occurrence was got demarcated as per disclosure and accused got recovered one mobile phone make One Plus black color having sim No. 9050008013 and second phone make Oppo white color having sim no. 9991998322 alongwith original RC of Car HR-95-3192 from his residential house at Village Atail District Rohtak, which were taken into police possession through memo. Both the recovered phones were sealed with seal KS by making separate parcels. Site plan of recovery was prepared. Case property was entered in malkhana and statement of witnesses was recorded. On 10.08.2022, complainant Deepak produced a pendrive make captain 8GB silver color alongwith one certificate under Section 65B Evidence Act. Pendrive was taken into police possession through memo as evidence and statement of witnesses were recorded. On 10.08.2022 accused was produced before the Court and sent to judicial jail Sonipat. CDR of mobile numbers of deceased Mukesh and accused Gaurav @ Gora was procured. After that the file of the case was received in CIA-I Sonipat for further investigation, which was conducted by SI Somdutt. During investigation, on 02.09.2022, Viscera was deposited in FSL Madhuban through RC No. 22/FSL Madhuban 2209024815. On 05.09.2022, total three phones, two of accused Gaurav and one of*

*deceased Mukesh were deposited in CFSL Panchkula through RC 187 dated 05.09.22 CSFL No. 221CF733. On 07.10.2022, in the present case, scaled site plan of the spot was got prepared by Halga Patwari and to clarify the facts of the case, enquiry / investigation was got done through Smt. Nikita Khattar, IPS, Addi. SP Sonipat by going to the spot. CAF, CDR and Certificate u/s 65B Evidence Act of Mobile Phones of accused Gaurav and deceased Mukesh during the time of occurrence was procured. Report of case property sent to FSL Madhuban and report of mobile phones from CFSL Cyber Lab Panchkula Haryana is pending. On receipt of reports, the same shall be deposited in the Court. Creta Car has been given on Superdari as per order of the Hon ble Court. On having enough evidence on the file report u/s 173 Cr.P.C. is being presented against accused Gaurav @ Gora in the Court. Cognizance be taken by summoning the witnesses.”*

**Contentions raised on behalf of the petitioner:-**

4. Learned counsel for the petitioner vehemently argues that there is no material in the challan, nor was any investigation conducted with respect to the alleged offence under Section 377 of IPC for which charges have now been framed against the petitioner.

5. In support of his contention, he relies upon the FSL report dated 29.11.2024 (Annexure P-12), the relevant portion of which reads as under:

**“Description of parcel(s) and condition of seal(s)**

Received two sealed parcels, the seals were intact and as per forwarding details.

**Description of article(s) contained in parcel(s)**

Barcode No.	Parcel No.	No. & Seal impression	Description of parcel(s) Exhibit(s)
PS:47835-	6	1-AG	A sealed blood

241113-214365 FSL: 47835-24114-3312229			vial with affixed barcode bearing number 47835-241114-3312229 stated to contain blood sample of accused containing 6 blood sample marked as Item No.6.
PS:47835-241113-214362 FSL:47835-241114-3312230	7	1-SK	A sealed clothe parcel labelled as 22/FSLMBN/2209024815; Bio 866/22 with affixed bar code 47835-241114-3312230 stated to be deceased containing a yellow envelop which contained. 7A) Two pieces of cut, dirty dark blue colored torned pants; marked as item No.7A 7B) Two pieces of cut, dirty dark blue colored torned underwear; marked as Item No.7B

**Laboratory examination**

6. DNA was extracted from item Nos. 6, 7A & 7B and subjected to Autosomal STR analysis by using VeriFiler Plus Kit. The result thus obtained indicates:

1. Item No. 6 yielded amplification of male reference DNA.
2. Item No. 7A & 7B yielded amplification of DNA whose genotype is estimated to be male i.e. XY.
3. On genetic analysis and comparison, the allelic pattern of DNA profile obtained from item no. 6 does not match with the allelic pattern of DNA profile obtained from item nos. 7A & 7B.

**Opinion**

The Autosomal STR analysis indicates that, the DNA profile obtained from source of item no. 6 (blood sample stated to be of accused is not matching with the DNA profile obtained from source of item Nos. 7A & 7B (stated to be deceased).

7. Mr. Dalal has drawn attention of this Court from the above said report that in particular referred to the laboratory examination stating that item No.6 yielded amplification of male reference DNA, whereas item No.7A and 7B yielded amplification of DNA whose genotype is estimated to be male i.e, XY. It is categoric stand of the petitioner that the allelic pattern of DNA profile obtained from item No.6 does not match with the allelic pattern of DNA profile obtained from item Nos.7A and 7B.

8. Mr. Dalal would also assert that the deceased went missing on 25.07.2022 at around 8 PM but the FIR was got registered after a delay of more than two days on 27.07.2022 at around 11.10 PM and immediately thereafter the

body was recovered by the police from the fields of village Garhi Sissana itself at 12 PM on 27.07.2022 itself. The autopsy is also conducted thereafter as is evident from the post mortem report at Annexure P-3 and on completion of investigation subsequent thereto the final report was presented against the petitioner under Section 304, 346 and 202 of IPC i.e., on record at Annexure P-2 but no iota of any reference was made to such offence alleged to have been committed which would warrant framing of charge under Section 377 of IPC.

9. Learned counsel for the petitioner further contends that the post mortem report Annexure P-3 itself shows that the deceased was heavily intoxicated which indicates that there was a possibility of him accidentally falling into rain water logged fields and died due to inhalation of water and mud. Moreover, there is no direct evidence linking the petitioner to the offence as the case rests on weak and unreliable extra judicial confession including statement of one Rajesh who has been declared hostile. The only role attributed to the petitioner is of pushing the deceased out of the car, which cannot attract the offence under Section 302 of IPC. Further there is no medical evidence or postmortem report finding substantiating the offence under Section 377 of IPC creating a shadow of doubt on the story of the prosecution.

**On behalf of the State/respondent**

10. Mr. Chetan Sharma, learned Deputy Advocate General, Haryana, appearing having served with an advance copy of the petition would candidly states that investigation was initially conducted but the case was not examined on the fact that as to whether Act of Sodomy had taken place or not, since there was no allegation to that effect was made at the time of registration of FIR. When

questioned by this Court, Mr. Sharma admits that even at the time of presenting the final report under Section 173 Cr.P.C., the offence under Section 377 was not found to have been made out, since it was neither alleged nor examined by the Investigating Officer. He further states that semen samples were collected during the post-mortem examination of the deceased, which were subsequently analyzed, and it is on that basis the trial Court added the charge under Section 377 IPC. Beyond this submission, no other argument has been advanced before this Court.

### **Analysis**

11. This Court has carefully considered the submissions advanced by learned counsel for the petitioner as well as the State, and has examined the material placed on record in its entirety. The petition before this Court challenges the framing of charge under Section 377 IPC against the petitioner, while as submitted by the counsel for the petitioner, the charges framed under Sections 302, 346 and 202 IPC are left unassailed. For the reasons stated hereunder, the Court finds it necessary to intervene in respect of the added charge under Section 377 IPC.

12. It is immediately apparent that the FIR dated 27.07.2022 contains no allegation suggestive of an unnatural sexual act or carnal intercourse against the order of nature. The FIR pertains exclusively to the disappearance of the deceased, subsequent recovery of his dead body, and suspicion of foul play, which led to registration of offences under Sections 346 and 302 IPC. It is a settled principle of criminal jurisprudence that while the Court at the stage of framing charge is not required to undertake a detailed examination of evidence, there must nevertheless be some foundational allegation or material indicative of the offence sought to be

charged. In the complete absence of any such allegation, the framing of charge under Section 377 IPC is legally unsustainable.

13. This Court takes note of the fact that the final report under Section 173 Cr.P.C., filed after a detailed investigation, also makes no reference to the offence under Section 377 IPC. The Investigating Officer, having examined all material evidence, did not find any basis for invoking this charge. While the trial Court is not bound by the charge sheet, it cannot, in a mechanical and arbitrary manner, add a grave charge without any supporting material. Guidance may be drawn from the Supreme Court judgement in “*Union of India v. Prafulla Kumar Samal, (1979) 3 SCC 4*”, wherein it was held as below:

*“The words 'not sufficient ground for proceeding against the accused' clearly show that the Judge is not a mere post office to frame the charge at the behest of the prosecution, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. In assessing this fact, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really his function after the trial starts.”*

14. Moreover, attention may be drawn to the Forensic Science Laboratory (FSL) report dated 29.11.2024 (Annexure P-12), which holds decisive forensic value. As highlighted in the petitioner's contentions, the FSL report specifically states that DNA extracted from Item No.6 (blood sample of the accused) yielded a male reference DNA profile, whereas DNA extracted from Item Nos. 7A and 7B (clothing and underwear of the deceased) yielded male DNA (XY) that does not match with the DNA of the accused. The Court observes that this conclusive scientific evidence directly negates any physical link between the petitioner and

the alleged sexual act. The trial court while ignoring this exculpatory material has constituted a grave error of law.

15. This Court cannot ignore the fact that the trial Court appears to have been unduly influenced by observations made by the coordinate bench of this court during the bail proceedings as provided in Annexure P-9, however, it is trite law that observations in the context of bail have no bearing on the question of merits of the case including framing of charges and thus, the trial Court should not have based its opinion on any such prior observations and should have independently assessed whether prima facie material existed to justify the framing of charge.

16. A careful examination of the statutory ingredients of Section 377 IPC demonstrates that no element is satisfied in this case. The essential ingredients of the offence under Section 377 IPC are:

- (i) commission of carnal intercourse,
- (ii) the act being “against the order of nature,”
- (iii) lack of consent or coercion, and
- (iv) the accused having the mens rea to commit such an act. In the present case, there is no allegation of penetration or unnatural sexual act in the FIR, no corroborative medical evidence substantiating any such act wherein the petitioner was involved, and the DNA profiles conclusively clarify no link between the petitioner and the samples of semen deceased as per the FSL report, thus, the medical evidence instead of lending support to the prosecution story has shaken the credibility of the prosecution version.

17. In addition, medical jurisprudence recognizes the possibility of involuntary seminal discharge post-mortem, which cannot be overlooked by this court and the same cannot be construed as evidence of unnatural sexual activity.

18. It is therefore evident that none of the statutory ingredients of Section 377 IPC are satisfied. There is no foundation to infer carnal intercourse, no evidence of an act “against the order of nature,” no coercion, and no mens rea. The trial Court’s action in mechanically adding Section 377 IPC, in disregard of the forensic evidence highlighted by the petitioner, is legally unsustainable and vitiates the proceedings.

19. In light of the foregoing, this Court is of the considered opinion that the framing of charge under Section 377 IPC is wholly unjustified and reflects a lack of judicial application of mind.

20. Accordingly, the petition is therefore partly allowed. Framing of charges qua Section 377 is hereby quashed qua the petitioner, while the charges under Sections 302, 346 and 202 IPC shall remain unaffected. The trial shall proceed in accordance with law.

(SANDEEP MOUDGIL)  
JUDGE

28.04.2025

*Meenu*

*Whether speaking/reasoned* :Yes/No

*Whether reportable* :Yes/No