

THE HIGH COURT OF TRIPURA
AGARTALA

CRL.REV.P. 31 OF 2015

1. Sri Goutam Deb,
S/O. Lt. Sachindra Deb,
Charganki, P.S. Khowai,
P.O. Khowai, Dist. Khowai,
West Tripura.
2. Smt. Shikha Deb (Roy),
W/O. Sri Dibakar @ Dipankar Roy,
Barabil, P.S. Khowai,
P.O. Khowai, Dist. Khowai,
West Tripura.
3. Sri Dibakar @ Dipankar Roy,
S/O. Lt. Santosh Roy,
Barabil, P.S. Khowai,
P.O. Khowai, Dist. Khowai,
West Tripura.

..... **Revision Petitioners.**

- V e r s u s -

The State of Tripura.

..... **Respondent.**

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the petitioners : Mr. S. Ghosh, Advocate.

For the respondent : Mr. R.C. Debnath, Addl. P.P.

Date of hearing and
delivery of judgment
and order. : 29.06.2015.

Whether fit for reporting : **NO.**

JUDGMENT & ORDER (ORAL)

This revision petition is directed against the order
dated 24-03-2015 passed by the learned Addl. Sessions Judge,

Khowai, West Tripura in case No. S.T.(T-1) 25 of 2014 whereby in addition to the charges framed against the accused-petitioners under Sections 498A and 304B of the Indian Penal Code (IPC), he has also framed additional Charge under Section 302 of IPC.

2. It would be pertinent to mention that this charge has been framed by the learned trial Court only on the basis of the judgment rendered by the Apex Court in ***Rajbir v. State of Haryana, [(2010) 15 SCC 116]***.

3. The main contention of Sri S. Ghosh, learned counsel for the petitioners, is that in the present case there is not a single shred of evidence on record to even remotely indicate that a murder has been committed. He further submits that it is not necessary that in every case where a charge under Section 304B of the I.P.C. is framed an alternative charge under section 302 of I.P.C. must be framed.

4. In the F.I.R. there is an allegation that the accused have killed the deceased. I have gone through the entire charge-sheet as well as the statements of the witnesses recorded under section 161 of Cr.P.C. and even if they are accepted as the gospel truth then only an offence under section 304B of IPC is made out and no offence under section 302 is made out. It is the clear-cut allegation both in the charge-sheet and in the statements of the witnesses recorded by the police under section 161 Cr.P.C. that the deceased committed suicide because she was harassed for demand

of dowry. There is no allegation whatsoever that the deceased was murdered.

5. It appears that the learned trial Court was probably influenced by the judgment of the Apex Court in ***Rajbir v. State of Haryana, [(2010) 15 SCC 116]*** wherein the Apex Court had directed that in a case where the accused were charged with 304B there should also be an alternative charge under Section 302 of IPC. The trial Court appears to be unaware of the later judgment in ***Jasvinder Saini and Others v. State (Government of NCT of Delhi), [(2013) 7 SCC 256]*** as well as the judgment delivered by this Court in ***Crl.Rev.P. 53 of 2014 [Biplab Das and 3 others v. State of Tripura]***.

6. The law laid down in ***Rajbir's case*** (supra) has been considerably diluted in the latest judgment of the Apex Court in ***Jasvinder Saini and Others v. State (Government of NCT of Delhi), [(2013) 7 SCC 256]*** wherein the Apex Court held as follows :

“14. Be that as it may the common thread running through both the orders is that this Court had in Rajbir case (supra) directed the addition of a charge under Section 302 IPC to every case in which the accused are charged with Section 304-B. That was not, in our opinion, the true purport of the order passed by this Court. The direction was not meant to be followed mechanically and without due regard to the nature of the evidence available in the case. All that this Court meant to say was that in a case where a charge alleging dowry death is framed, a charge under Section 302 can also be framed if the evidence otherwise permits. No other meaning could be deduced from the order of this Court.

15. It is common ground that a charge under Section 304B IPC is not a substitute for a charge of murder punishable under Section 302. As in the case of murder in every case under Section 304B also there is a death involved. The question whether it is murder punishable under Section 302 IPC or a dowry death punishable under Section 304B IPC depends upon the fact situation and the evidence in the case. If there is evidence whether direct or circumstantial to prima facie support a charge under Section 302 IPC the trial court can and indeed ought to frame a charge of murder punishable under Section 302 IPC, which would then be the main charge and not an alternative charge as is erroneously assumed in some quarters. If the main charge of murder is not proved against the accused at the trial, the court can look into the evidence to determine whether the alternative charge of dowry death punishable under Section 304B is established. The ingredients constituting the two offences are different, thereby demanding appreciation of evidence from the perspective relevant to such ingredients. The trial Court in that view of the matter acted mechanically for it framed an additional charge under Section 302 IPC without adverting to the evidence adduced in the case and simply on the basis of the direction issued in *Rajbir* case (*supra*). The High Court no doubt made a half hearted attempt to justify the framing of the charge independent of the directions in *Rajbir* case (*supra*), but it would have been more appropriate to remit the matter back to the trial court for fresh orders rather than lending support to it in the manner done by the High Court.

16. In the light of what we have said above, the order passed by the trial court and so also that passed by the High Court are clearly untenable and shall have to be set aside. That would not, however, prevent the trial Court from re-examining the question of framing a charge under Section 302 IPC against the appellant and passing an appropriate order if upon a prima facie appraisal of the evidence adduced before it, the trial court comes to the conclusion that there is any room for doing so. The trial Court would in that regard keep in view the decision of this Court in *Hasanbhai Valibhai Qureshi v. State of Gujarat and Ors.* (2004) 5 SCC 347 where this Court has recognized the principle that in cases where

‘The trial Court [upon] a consideration of broad probabilities of the case based upon total effect of the evidence and documents produced, is satisfied that any addition or alteration of the charge is necessary, it is free to do so’.”

7. In view of the aforesaid law laid down by the Apex Court it is manifestly clear that merely because a charge under Sections 498A and 304B of I.P.C has been framed it does not necessarily mean that an alternative charge under Section 302 I.P.C must be framed.

8. In both cases of murder or suicide death has taken place. Death may be by suicide or by murder. Sometimes when there is evidence indicating both offences, alternative charge can be framed and what the Apex Court held in **Rajbir's** case was that there is nothing which debars the Court from framing an alternative charge. In **Jasvindar's** case the Apex Court has made it clear that a charge under Section 302 I.P.C can also be framed only if the evidence so permits.

9. In the present case, there is no evidence at all indicating that there is commission of any offence of murder. Therefore, this charge could not have been framed at this stage.

10. Accordingly, the petition is allowed and the order framing charge is quashed to the limited extent that the alternative charge of 302 I.P.C is quashed. However, the proceedings under Sections 498A and 304B shall continue.

11. Before parting with this case it is made clear that in view of what has been stated by the Apex Court in **Hasanbhai Valibhai's** case, in **Rajbir's** case as well as in **Jasvindar's** case if

during the Course of trial any material or evidence is brought to the notice of the trial Court indicating that the deceased was murdered then there is nothing which prevents the trial Court from framing a charge under Section 302 I.P.C at that stage of the proceedings.

12. With these observations, the criminal revision petition is disposed of.

CHIEF JUSTICE