

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No.87 of 2017**

1. Neelkanth Yadav, aged about 25 years, son of Shri Sukheet Ram
2. Shyam Kunwar Yadav, aged about 55 years, wife of Shri Sukheet Ram,
3. Sukheet Ram, aged about 60 years, son of Late Shri Shobha Ram
4. Ku. Neelam Yadav, aged about 26 years, daughter of Shri Sukhit Ram

All are resident of Thelkadih Police Station- Khairagarh,
Distt.Rajnandgaon (CG)

---- Petitioners

Versus

State of Chhattisgarh, through the District Magistrate,
Rajnandgaon (CG)

---- Respondent

For Petitioners	:	Mr.P.K.C.Tiwari Senior Advocate with Mr.Virendra Verma, Advocate
For Respondent	:	Mr.P.K.Bhaduri, G.A. with Mr.Aditya Sharma, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

16/02/2017

1. The petitioners have been charge-sheeted for commission of offence under Section 304B/34 of the IPC and they are facing trial in the jurisdictional criminal Court. The trial Court by its impugned order dated 21.12.2016 framed the charges against the petitioners under Section 304B/34 of the IPC and in alternative, also framed the charge under

Section 302/34 of the IPC. Calling in question the legality, validity and correctness of the aforesaid order framing charge, this criminal revision has been filed by the petitioners herein.

2. Mr.P.K.C.Tiwari, learned Senior Counsel with Mr.Virendra Verma, learned counsel for the petitioners, would submit as under:-

(i) That, if the material produced along with the charge-sheet is taken as it is, no offence under Section 304B/34 of the IPC is made out for framing of charge against the petitioners.

(ii) That, framing of alternative charge is absolutely illegal as the trial Court has framed the charge without there being any charge-sheet and without there being any evidence to frame the alternative charge and it appears that the trial Court on the basis of judgment of the Supreme Court in the matter of **Rajbir @ Raju And Anr. Vs. State of Haryana**¹ framed the charges against the petitioners which has been explained subsequently by the Supreme Court in the matter of **Jasvinder Saini Vs.State (Govt. of NCT of Delhi)**², therefore, the impugned order deserves to be set aside.

1 AIR 2011 SC 568

2 AIR 2014 SC 841

3. On the other hand, Mr.P.K.Bhaduri, learned Government Advocate with Mr.Aditya Sharma, learned Panel Lawyer, appearing for the respondent/State, would submit that the trial Court has rightly framed the charge and order need no interference.
4. I have heard learned counsel appearing for the parties, considered their rival submissions made herein and also gone through the documents appended with the criminal revision with utmost circumspection.
5. The order is in two parts. By the impugned order, the trial Court has framed the charge for offence under Section 304B/34 of the IPC and in alternative thereafter framed the charge under Section 302/34 of the IPC.
6. First I would take up the question of framing of charge under Section 304B/34 of the IPC. The law with regard to interference in the order framing charge is well settled. At the stage of framing of charge, the Court has to consider the material with a view to find out if there is ground for presuming that an accused had committed offence and not for the purpose of arriving at a conclusion that it is not likely to lead a conviction. (See : **Amit Kapoor Vs. Ramesh Chander and another**³ and **Dinesh Tiwari Vs. State of Uttar Pradesh and another**⁴).

3 (2012) 9 SCC 460

4 (2014) 13 SCC 137

7. Applying the principle of law laid down by the Supreme Court in **Amit Kapoor and Dinesh Tiwari** (supra) to the facts of the case, it would appear that the trial Court has reached to the *prima-facie* conclusion that it is a case where there is material available on the record for presuming that the petitioners have committed the offence and thereby framed the charges for aforesaid offence, as such, I do not find any jurisdictional error or illegality requiring interference in the order framing charge so far as Section 304B/34 of the IPC is concerned in the light of material available and principle of law laid down in **Amit Kapoor and Dinesh Tiwari** (supra).
8. This would take me to the next submission that framing of alternative charge under Section 302/34 of the IPC is absolutely unnecessary as there is no charge framed against the petitioners by the jurisdictional police.
9. It is true that the State has submitted the charge-sheet against the petitioners only for offence under Section 304B/34 of the IPC, dying declaration of the deceased has been recorded on 21.4.2016 at 1.45 p.m., petitioner No.1 has also suffered injuries and his statement has also been recorded.
10. The Supreme Court in the matter of **Rajbir @ Raju** (supra) has directed all trial Courts to ordinarily add Section 302 to charge of Section 304B so that death sentence can be

imposed in heinous and barbaric crimes against women.

11. Subsequently, the Supreme Court in the matter of **Jasvinder Saini** (supra) after having noticed **Rajbir @ Raju's** case (supra), came to categorical conclusion as under:-

“13. Be that as it may the common thread running through both the orders is that this Court had in Rajbir’s 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. 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's 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's 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.

14. 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 : (AIR 2004 SC 2078 : 2004 AIR SCW 2063) 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. Reference may also be made to the decisions of this Court in *Ishwarchand Amichand Govadia and Ors. v. State of Maharashtra and Anr.* (2006) 10 SCC 322 : (2006 AIR SCW 5532) and the decision of the Calcutta High Court in *Rajendra Singh Sethia v. State and Ors.* 1989 Cri.L.J. 255 and that delivered by the Allahabad High Court in *Shiv Nandan and Ors. v. State of U.P.* 2005 Cri. L.J 3047 which too are to the same effect. In any such fresh exercise which the trial Court may undertake, it shall remain uninfluenced by the observations made by the High Court on merits of the case including those touching the

probative value of the autopsy surgeon's opinion."

12. Thus, the judgment of the Supreme Court in **Rajbir @ Raju** (supra) has been considered by the Supreme Court in **Jasvinder Saini** (supra) and it has clearly been held that while framing an additional charge of Section 302 of the IPC, the trial Court has to look into the material collected by the prosecution to frame charges as ingredients of offence under Section 302 IPC and 304B IPC are quite different and remanded back the matter to consider afresh to the trial Court. The aforesaid judgment squarely applies to the facts of the case. The part of the impugned order for framing charges under Section 302/34 of the IPC is hereby set aside. The matter is remanded back to the trial Court to consider the matter afresh so far as the question of framing of charge under Section 302/34 of the IPC is concerned against the petitioners keeping in view the observation made by the Supreme Court in para 13 and 14 of **Jasvinder Saini** (supra), quoted above and pass the order accordingly.
13. The criminal revision is partly allowed to the extent indicated hereinabove.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-