

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

CRR-2828-2017

Date of decision-12.09.2017

Aman Garg

...Petitioner

Vs.

State of Haryana and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. J.S.Mahal, Advocate for
Ms. Amandeep Sibia, Advocate for the petitioner.

JITENDRA CHAUHAN, J. (Oral)

This revision has been filed for setting aside the impugned order dated 06.07.2017, passed by learned Additional Sessions Judge(Exclusive Court for heinous crimes against women) Kurukshetra vide which charges under Section 304-B read with Section 120-B of Indian Penal Code (in short IPC) were ordered to be framed against respondent Nos.2 to 4 in case FIR No.130 dated 31.03.2016 registered under Section 304-B IPC at Police Station Pehowa, District Kurukshetra.

Contends that learned trial Court ought to have framed the charges under Sections 302 and 406 of the IPC. He cites **Rajbir @ Raju Vs. State of Haryana, 2011 (5) R.C.R.(Criminal) 137** to contend that trial Court was required to frame charges under Section 302 as well. He further submits that there are specific allegations of entrustment of dowry articles to the respondent Nos.2 to 4 and as such the charge under Section 406 IPC also ought to have been framed against respondent Nos.2 to 4.

Heard.

In Jasvinder Saini and others Vs. State (Govt. of NCT of

Delhi), 2013 (3) SCC (Criminal) 295 in para 13, it was held as under:-

“Be that as it may the common thread running through both the orders is that this Court had in Rajbir's case directed the addition of a charge under Section 302 Indian Penal Code 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 deducted from the order of this Court. It is common ground that a charge under Section 304-B Indian Penal Code is not a substitute for a charge of murder punishable under Section 302. As in the case of murder in every case under Section 304-B also there is a death involved. The dowry death punishable under Section 304-B Indian Penal Code 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 Indian Penal Code the trial Court can and indeed ought to frame a charge of murder punishable under Section 302 Indian Penal Code, 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 304-B is 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 Indian Penal Code without adverting to the evidence adduced in the case and simply on the basis of the direction issued in Rajbir's case. The High Court no doubt made a half hearted attempt to justify the farming of the charge independent of the directions in Rajbir's case, 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."

In view of the ratio of law laid down in the aforesaid authority, learned trial Court has rightly not framed charges under Section 302 IPC since the death had taken place at the parental home of the deceased. The trial Court has rightly not framed the charges under Section 406 as well against respondent Nos.2 to 4 for want of entrustment of dowry articles. Thus, the impugned order does not suffer from any illegality or perversity and as such, does not warrant any interference.

Dismissed.

September 12, 2017

vanita/atulsethi

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned :

Yes

No

Whether Reportable :

Yes

No