

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.700 of 2018

1. Abhishek Singh, S/o R.P. Singh, aged about 28 years, R/o LIG-43, MP Nagar, Korba, District Korba, Chhattisgarh
2. Nilima Singh, D/o Rajendra Pratap Singh, aged about 57 years, R/o LIG-43, MP Nagar, Korba, District Korba, Chhattisgarh
3. Rajendra Pratap Singh, S/o Mata Pratap Singh, aged about 61 years, R/o LIG-43, MP Nagar, Korba, District Korba, Chhattisgarh

---- Applicants

versus

State of Chhattisgarh through Chowki Rampur, P.S. Kotwali, Korba, District Korba, Chhattisgarh

--- Respondent

For Applicants	:	Shri Kishore Bhaduri, Shri Pawan Kesharwani and Shri Pankaj Singh, Advocates
For Respondent/State	:	Shri Bhaskar Payashi, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

Order on Board

13.11.2018

1. The instant revision is listed for hearing on admission. With the consent of Learned Counsel appearing for the parties, the revision is heard finally.
2. The revision has been preferred against the order dated 2.5.2018 passed by the Sessions Judge, Korba in Sessions Trial No.58 of 2016 (Case No.59 of 2016), whereby the Sessions Judge has framed additional/alternative charge under Section 302 read with Section 34 of the Indian Penal Code against the present Applicants.
3. Facts, in brief, are that marriage of Ankita (deceased) was solemnised with Applicant No.1, Abhishek Singh on 30.1.2015.

Applicant No.2, Nilima Singh is mother-in-law and Applicant No.3, Rajendra Pratap Singh is father-in-law of the deceased. It is alleged that Applicant No.1 was having an affair with one Nikita Shrivastava prior to his marriage with deceased Ankita and that relationship continued even after his marriage. On 16.3.2016, Ankita died at her matrimonial house in a suspicious condition due to hanging. Morgue has been recorded. During morgue inquiry, statements of witnesses have been recorded and on the basis of morgue inquiry report, First Information Report has been registered for the offence punishable under Section 306 of the Indian Penal Code only against Applicant No.1. On completion of investigation, a charge-sheet has been filed against all the present Applicants for offence punishable under Sections 306, 304B, 498A read with Section 34 of the Indian Penal Code. Vide order dated 24.4.2018, the Sessions Judge has framed charges against the present Applicants under Sections 498A, 304B in the alternative under Section 306 of the Indian Penal Code. Thereafter, vide the impugned order dated 2.5.2018, the Sessions Judge, relying on **(2010) 15 SCC 116 (Rajbir alias Raju v. State of Haryana)**, has framed additional/alternative charge under Section 302 read with Section 34 of the Indian Penal Code against all the present Applicants. Hence, this revision.

4. Learned Counsel appearing for the Applicants submits that looking to the entire charge-sheet, the documents annexed thereto and the case diary statements, no ingredient of Section 302 of the Indian Penal Code appears to be attracted to the case of the Applicants. In the post mortem report of the deceased also, it is categorically opined by the doctor that the nature of death is suicidal. But,

despite that, an additional/alternative charge under Section 302 read with Section 34 of the Indian Penal Code has been framed by the Sessions Judge. He further submits that there is no evidence, either direct or circumstantial, to *prima facie* support the charge under Section 302 read with Section 34 of the Indian Penal Code against any of the Applicants. Reliance has been placed on **(2013) 7 SCC 256 [Jasvinder Saini v. State (Government of NCT of Delhi)]**.

5. Learned Counsel appearing for the Respondent/State supports the impugned order and submits that on due consideration of the evidence available on record the Sessions Judge has rightly framed the additional/alternative charge under Section 302 read with Section 34 of the Indian Penal Code.
6. I have heard Learned Counsel appearing for the parties and perused the material available with due care.
7. In **Rajbir case** (supra), the Supreme Court has observed thus:

“7. We further direct all the trial courts in India to ordinarily add Section 302 to the charge of Section 304-B, so that death sentences can be imposed in such heinous and barbaric crimes against women. Copy of this order be sent to the Registrars General/Registrars of all High Courts, which will circulate it to all trial courts.”

8. In **Jasvinder Saini case** (supra), while discussing **Rajbir case** (supra), it has been further observed by the Supreme Court as under:

“15. It is common ground that a charge under Section 304-B 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 304-B also there is a death involved. The question whether it is murder punishable under Section 302 IPC or a dowry death punishable under Section 304-B 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 304-B 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 IPPC without adverting to the evidence adduced in the case and simply on the basis of the direction issued in *Rajbir v. State of Haryana*, (2010) 15 SCC 116. The High Court no doubt made a half-hearted attempt to justify the framing of the charge independent of the directions in *Rajbir 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.

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*, (2004) 5 SCC 347 where this Court has recognised 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". (SCC p. 350, para 10)"

9. In the light of above, in the case in hand, on examination of the evidence adduced by the prosecution, I find that initially the First Information Report has been registered for the offence punishable under Section 306 of the Indian Penal Code only against Applicant No.1. On completion of the investigation, a charge-sheet has been filed against all the present Applicants for offence punishable under Sections 306, 304B, 498A read with Section 34 of the Indian Penal Code. Vide order dated 24.4.2018, the Sessions Judge has framed charges against the present Applicants under Sections 498A, 304B in the alternative under Section 306 of the Indian Penal Code. Thereafter, vide the impugned order dated 2.5.2018, the Sessions Judge, relying on **Rajbir case** (supra), has framed the additional/alternative charge under Section 302 read with Section 34 of the Indian Penal Code against all the present Applicants. On examination of the case in hand in the light of **Jasvinder Saini case** (supra), it is clear that though some abrasions were found on elbow and leg of the dead body of Ankita, the doctor who conducted post mortem examination on the dead body has categorically opined that the death was suicidal. There is nothing on record on the basis of which *prima facie* it is established that the offence under Section 302 of the Indian Penal Code was committed. Merely on the ground that some abrasions were found on the elbow and leg of the deceased, the Trial Court has framed the additional/alternative charge under Section 302 of the Indian Penal Code under suspicion, but from the evidence on record

prima facie charge under Section 302 of the Indian Penal Code does not lie. It seems that the additional/alternative charge under Section 302 read with Section 34 of the Indian Penal Code has been framed simply on the basis of observations made in **Rajbir case** (supra) without adverting to the evidence available on record.

10. In the premises of aforestated, the impugned order dated 2.5.2018 passed by the Sessions Judge framing the additional/alternative charge under Section 302 read with Section 34 of the Indian Penal Code against the Applicants is set aside. Rest of the charges framed against them shall remain intact. The instant revision is allowed to the extent indicated above.
11. A copy of this order be sent to the Sessions Judge/Trial Court forthwith for information and necessary compliance.

Sd/-

(Arvind Singh Chandel)
Judge