

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.24 of 2018

1. Vishal Agrawal, S/o Ashok Agarwal, aged 31 years, R/o Ward No.16, Mangal Bhawan Complex, Ashutosh Textiles, Main Road, Raurkela, P.S. Uditnagar, District Sundergarh, Odisha, Present Address House No.98, Krishna Nagar Colony, Tilda, P.S. Nevra, District Raipur, Chhattisgarh
2. Ashok Kumar Agarwal, S/o Vishwanath Agarwal, aged 57 years,
3. Smt. Kusum Lata Agarwal, W/o Ashok Agarwal, aged 45 years,

Both Applicants No.2 and 3 R/o Near Ashutosh Textiles, Kachehri Rd, Raurkela (M), District Sundergarh, Odisha

---- Applicants

versus

State of Chhattisgarh through Station House Officer, Tilda, Nevra, District Raipur, Chhattisgarh

--- Respondent

For Applicants	:	Shri B.P. Singh, Advocate
For State/Respondent	:	Shri Neeraj Kumar Sharma, Deputy Government Advocate

Hon'ble Shri Justice Arvind Singh Chandel

Order on Board

9.1.2018

1. The revision is listed for hearing on admission. With the consent of Learned Counsel appearing for the parties, the matter is heard finally.
2. The instant revision has been preferred being aggrieved by the order dated 9.11.2017 passed by the 1st Additional Sessions Judge, Raipur in Sessions Trial No.204 of 2017 framing charges against the accused/Applicants under Sections 498A, 304B, 304B/149 or Section 302, 302/149 of the Indian Penal Code and Section 4 of the Dowry Prohibition Act.
3. Facts of the case, in brief, are that marriage of Lalita Agrawal (deceased) and the accused/Applicant No.1, Vishal Agrawal solemnised on 27.6.2012. Applicants No.2 and 3 are father-in-law

and mother-in-law of the deceased, respectively. Applicant No.1 was employed in Century Cement Factory at Tilda and was residing with his wife Lalita Agrawal (deceased) and their daughter at Tilda. Applicants No.2 and 3 are residing in District Sundergarh, State of Odisha. On 9.6.2017, Lalita Agrawal (deceased) committed suicide by consuming poisonous substance in the rented quarter of Applicant No.1 at Tilda. Applicant No.1 informed about the incident to the parents of the deceased and thereafter morgue was lodged. Post mortem examination was conducted on the dead body. The matter was further reported by the parents of the deceased. After investigation, a charge-sheet was filed under Sections 498A and 304B read with Section 34 of the Indian Penal Code and Section 4 of the Dowry Prohibition Act. Vide the impugned order dated 9.11.2017, the Learned Additional Sessions Judge framed charges against the accused/Applicants as mentioned in the second paragraph of this order.

4. It has been argued by Learned Counsel appearing for the Applicants that looking to the entire charge-sheet, the documents annexed thereto and the case diary statements of the witnesses, no ingredient of Section 302 of the Indian Penal Code appears to be attracted to the case of the Applicants. Even then, charges under Sections 302, 302/149 of the Indian Penal Code have alternatively been framed in a casual manner. Applicants No.2 and 3 are residing at District Sundergarh, State of Odisha and at the time of incident, they were not present at Tilda, i.e., the place of incident and, therefore, there is no nexus of Applicants No.2 and 3 with the incident. Therefore, no charges under Sections 302 and 302/149 of the Indian Penal Code are made out and, therefore, the

said charges may be set aside.

5. Per contra, Learned Counsel appearing for the State supported the impugned order.
6. I have heard Learned Counsel appearing for the parties and perused the material available on the record of the criminal revision with utmost circumspection.
7. In **(2010) 15 SCC 116 (Rajbir alias Raju v. State of Haryana)**, 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 **(2013) 7 SCC 256 [(Jasvinder Saini v. State (Government of NCT of Delhi)]**, 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 case in hand, it is apparent from the record that the charge-sheet was filed not only for the offences punishable under Sections 498A and 304B read with Section 34 of the Indian Penal Code but also under Section 4 of the Dowry Prohibition Act. From perusal of the material available, it is also clear that at the time of incident Applicants No.2 and 3 were not present at Tilda. They are

residents of State of Odisha. Though the death of Lalita Agrawal is suspicious yet there is nothing on record to show that she had been murdered. From the evidence collected by the prosecution, *prima facie*, no ground is established for framing of charges under Sections 302 and 302/149 of the Indian Penal Code. It seems that the Trial Court framed the charges under Sections 302 and 302/149 of the Indian Penal Code additionally without adverting to the evidence adduced in the case simply on the basis of the direction issued in **Rajbir case** (supra).

10. In the premises of aforestated, the revision is allowed in part. The impugned order framing charges under Sections 302, 302/149 of the Indian Penal Code against the accused/Applicants is set aside. Rest of the charges framed against the accused/Applicants shall remain intact.
11. A copy of this order be sent to the Trial Court forthwith for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
JUDGE