

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRR No. 1014 of 2019**Order reserved on : 18/09/2019Order Delivered on : 16/12/2019

- Manoj Kumar Rajwade S/o Dashru, aged about 32 years, R/o Narmadapara, Chikhladih, Gandhinagar, District Surguja (C.G.)

----Applicant**Versus**

- State of Chhattisgarh Through : Arakshi Kendra-Gandhinagar, Chikhladih, District Surguja (C.G.)

---- Respondent

For Applicant	:	Shri Dev Ashish Biswas, Advocate
For Respondent/State:		Ms. Akshara Amit, P.L.

Hon'ble Smt. Justice Rajani Dubey**C A V Order****16/12/2019**

01. The applicant has preferred the instant revision against the order dated 22.06.2019 passed by the Additional Sessions Judge (F.T.C.), Ambikapur, District Surguja (C.G.), in Sessions Trial No.103/2018, whereby the Court below has framed charges against the applicant under Sections 366, 376, 506 Part-II, 306 IPC alternatively Sections 302 and 201 IPC.

02. The prosecution story, in brief, is that a written report was made by complainant Lalua Ram and Dhanpet Yadav,

father and sister of the deceased respectively, alleging therein that prior to two years Manoj Rajwade, the present applicant, had sexually harassed the deceased. Further case is that on 15.06.2016, some altercation had taken place between the deceased and the applicant before sister of the deceased in which the applicant was forcing the deceased to meet him and continue to have physical relation with him else he would spoil her life and he won't let her to get married. Thereafter, on 16.06.2016, the condition of the deceased got serious, she was admitted in Mission Hospital, Ambikapur, where she died during the course of treatment. It is also alleged that the applicant has committed murder of the deceased by administering poison and one mobile phone having SIM No.8516053575 allegedly belonging to the applicant was also found with deceased. Based on this report, Crime No.0177/2018 was registered and after completion of investigation, charge sheet was filed and the learned trial Court framed charges under Sections 366, 376, 506 Part-II, 306 IPC alternatively Sections 302 and 201 IPC. Hence, the present criminal revision by the applicant.

03. Learned counsel for the applicant submits that the charge under Section 306 IPC framed by the trial Court is false and fabricated as the complainants have made complaint after a delay of about two years, and from perusal of entire charge sheet, no allegation of abetment of suicide is present, therefore, the charge is liable to be set aside. He further

submits that there is no directed evidence against the applicant to show that he has committed murder of the deceased and caused disappearance of evidence of offence as such the charges framed under Sections 302 and 201 IPC is baseless and the same is liable to be set aside. He also submits that the incident is of the year 2016 and in the initial merged statement, there is no allegation against the applicant and the FIR was registered on 23.05.2018, which makes it highly doubtful and clearly shows that the complaint is fabricated. The complainants were sleeping for over a period of two years and even didn't bother to file any complaint for this long period. It is next submitted that charge under Sections 366, 376, 506 Part-II IPC has also been framed which are false and baseless as there is no material evidence or statement of the deceased regarding the alleged offence. In support of his argument, he placed reliance on the decisions of Hon'ble Supreme Court in the matter of **Sanju @ Sanjay Singh Sengar Vs. State of M.P.** reported in **(2002) 5 SCC 371**, **Ramesh Kumar Vs. State of Chhattisgarh** reported in **(2001) 9 SCC 618**, **M. Mohan Vs. State of Tr.Dy.Suptd. of Police** reported in **(2011) 3 SCC 626** and order dated **11.09.2014** of this High Court passed in **Cr.R.No.136/2014 (Amit Gandhi Vs. State of C.G.)** and **Cr.R.No.199/2014 (Jhaggar @ Ramnaresh Vs. State of C.G.)**.

04. Learned counsel for State supported the impugned order passed by the trial Court. He submits that the Court below

having considered the material on record prima-facie found involvement of the applicant and framed charges against him.

05. Heard learned counsel for the parties and perused the material on record.

06. While considering the issue of framing of charge, in **Sajjan Kumar V. C.B.I.**¹, Hon'ble the Apex Court held that *"at the time of framing of charges, the Court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible. If on the basis of the material on record, the Court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence. At the time of framing of charges, the Court is not expected to go deep into the matter and hold that the materials would not warrant conviction. The Court is required to evaluate the material on record at the stage of Sections 227 or 239 of the Code, as the case may be".* Hon'ble the Supreme Court in the matter of **Om Wati (Smt) and Another V. State, Through Delhi Admn. And Others**², has held in para 10 as under:-

"10. A three-Judge Bench of this Court in Supdt. & Remembrancer of Legal Affairs, W.B. V. Anil Kumar Bhunja [(1979), 4 SCC 274] reminded the courts that at the initial stage of framing of charges, the prosecution evidence does not commence. The court

1 (2010) 9 SCC 368

2 (2001) 4 SCC 333

has, therefore, to consider the question of framing the charges on general considerations of the material placed before it by the investigating agency. At this stage, the truth, veracity and effect of the judgment which the prosecution proposes to adduce are not to be meticulously judged. The standard of test, proof and judgment which is to be applied finally before finding an accused guilty or otherwise is not exactly to be applied at the stage of framing the charge. Even on the basis of strong suspicion founded on materials before it, the court can form a presumptive opinion regarding the existence of factual ingredients constituting the offence alleged and in that event be justified in framing the charges against the accused in respect of the commission of the offence alleged to have been committed by them. Relying upon its earlier judgments in Ramesh Singh and Anil Kumar Bhunja cases this Court again in Satish Mehra v. Delhi Admn. [(1996) 9 SCC 766] reiterated ; (SCC pp.769-70, para 9).

“9. Considerations which should weigh with the Sessions Court at this stage have been well designed by Parliament through Section 227 of the Code of Criminal Procedure (for short 'the Code') which reads thus:

'227. Discharge- If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.'

Section 228 contemplates the stage after the case survives the stage envisaged in the former section. When the court is of opinion that there is ground to presume that the accused has committed an offence the procedure laid down therein has to be adopted. When those two sections are put in juxtaposition with each other the test to be adopted becomes discernible: Is there sufficient ground for proceeding against the accused? It is axiomatic that the standard of proof normally adhered to at the final stage is not to be applied at the stage where the scope of consideration is where there is 'sufficient ground for proceeding'."

07. Again, Hon'ble the Supreme Court has held in the matter of **Munna Devi Vs. State of Rajasthan and Another**³ that *"revisional powers cannot be exercised in a routine and casual manner. Recourse to such powers for quashing the charges can be taken only if there is a legal bar against the continuance of the criminal proceedings or the framing of charge or where no offence is being made out against the accused considering the entire facts stated in the FIR. In revision, the High Court cannot appreciate the evidence in the manner the trial court and the appellate court are required to do. On facts, it was premature for the High Court to have exercised its revisional powers. Trial court to conduct trial and dispose of the matter on merits"*.

08. In the case in hand, from the inquest report and merger intimation, it is clear that deceased Ku. Sampet Yadav died on

3 (2001) 9 SCC 631

16.06.2016 and the complaint was filed by the complainants on 23.05.2018 i.e. after almost two years from the date of incident. In the written complaint, it has been alleged that on 15.06.2016 some altercation took place between the applicant and deceased in which the applicant was compelling the deceased to maintain physical relation with him else he would spoil her life and also threatened the deceased that he won't let her to get married, thereafter, on 16.06.2016, in absence of family members, the condition of deceased deteriorated and she was admitted in Mission Hospital, Ambikapur, where she breath her last. It has also been alleged that the applicant committed murder of the deceased by administering poison and one mobile phone of the deceased was also found in her house. Dhanpet Yadav, sister of the deceased, has also reiterated the same thing in her statement. According to FSL report, Chlorophyrihos (Organophosphorous) pesticide was also found in viscera of the deceased and, according to postmortem report, the deceased died due to poisoning. The deceased died on 16.06.2016 is proximate to the altercation which took place between the applicant and deceased on 15.06.2016. The utterance by the complainants and sister of the deceased that applicant compelled the deceased to have sex with him, he would spoil her life and won't let her to get married, prima-facie, shows his involvement and the same is sufficient to frame charges under Sections 366, 376, 506 Part-II and 306 IPC. This Court does not find any illegality or

infirmity in the same.

09. As regards framing of charge under Section 302 and 201 IPC, it has come on record, in particular the written complaint, that in absence of family members of the deceased the condition of the deceased deteriorated. Except motive there is nothing like memorandum, seizure or last seen to show prima-facie involvement of the applicant. Only on the suspicion that the applicant has committed murder of the deceased as his mobile phone was found in the house of the deceased, the charge under Sections 302 and 201 has been framed against the applicant. It is pertinent to mention here that the applicant had performed marriage with the deceased and this fact also finds place in written complaint lodged by the father of the deceased. Though the facts involved in the case and the evidence on record give rise to the suspicion about the involvement of the applicant in the crime in question, in a series of cases it has been held by the Apex Court that howsoever strong the needle of suspicion moves, it cannot take the place of the evidence. One such judgment of the Apex Court dealing with this fact is **Commissioner of Police, Delhi & Others V. Jai Bhagwan**⁴. In my opinion there is no evidence and material available on record wherefrom an inference of the applicant having committed the murder may necessarily be drawn.

10. Learned counsel for the applicant has emphatically

4 2011 (6) SCC 376

argued that there is delay of about 2 years in lodging the FIR, therefore, the order of the trial Court is not sustainable, this Court must make it clear that at the stage of framing of charges, the Court will not weigh the evidence. The stage for appreciating the evidence for the purpose of arriving at a conclusion as to whether the prosecution was able to bring home the charge against the accused or not would arise only after all the evidences are brought on records at the trial.

11. The Court at the stage of framing charge exercises a limited jurisdiction. It would only have to see as to whether prima-facie case has been made out. Whether a case of probable conviction for commission of an offence has been made out on the basis of the materials found during investigation should be the concern of the Court. It, at the stage, would not delve deep into the matter for the purpose of appreciation of evidence. It would ordinarily not consider as to whether the accused would be able to establish his defence, if any.

12. In view of the aforesaid discussion and in view of judgments of Hon'ble the Apex Court in the matters of **Sajjan Kumar** (Supra), **Om Wati** (Supra), **Munna Devi** (supra) and **Commissioner of Police** (supra), the revision is partly allowed. The impugned order so far as it relates to framing of charges under Sections 366, 376, 506 Part-II and 306 IPC, is hereby maintained. The impugned order in respect of framing of charges under Sections 302 and 201 IPC is set aside.

13. The revision is thus partly allowed.

Sd/-

(Rajani Dubey)
JUDGE

Pekde