

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRR No. 1052 of 2018**Order reserved on : 05/08/2019Order Delivered on : 24/10/2019

1. Dropati Bai, W/o Tikamchand Sahu, aged about 30 years, R/o village Barbaspur, Police Station Runchirai, District – Balod (C.G.)
2. Lileshwari Bai, W/o Daniram Sahu, aged about 25 years R/o village Sivnikala, Police Station Kurud, District Dhamtari (C.G.)
3. Kunti Bai, W/o Guruprakash Sahu, aged about 23 years, R/o village Koliyari, Police Station Bhakhara, District Dhamtari (C.G.)

----Applicants**Versus**

- State of Chhattisgarh, Through : The Police Station, Arjuni, District Dhamtari (C.G.)

---- Respondent

For Applicants	:	Shri Rajat Agrawal, Advocate.
For Respondent/State	:	Shri R.S. Baghel, Dy. A.G.

Hon'ble Smt. Justice Rajani Dubey**C A V Order****24/10/2019**

1. This criminal revision is directed against the order dated 03.08.2018 passed by the Additional Sessions Judge, Dhamtari, in Sessions Trial No.21/2018, whereby the learned Additional Sessions Judge framed charges against applicants under Section 304(B) alternatively Section 302 IPC.

02. Brief facts of the case are that on 28.04.2016, marriage of deceased Pinky Sahu was solemnized with accused Mithlesh Sahu and they were residing happily. On and around 14.01.2018, the deceased was tortured on account of demand of dowry by accused Mithlesh Sahu and his family members as a result of which she consumed poisonous substance and died. Based on this, on 15.02.2018, FIR was lodged against the applicants and accused persons. After completion of investigation, charge sheet was filed under Section 304/34 IPC against the applicants and accused persons. The learned trial Court, after hearing the argument before charge, framed charges against the applicants and other accused persons under Section 304 alternatively Section 302 IPC. Hence, this revision.

03. Learned counsel for the applicants submits that the applicants herein who are sister-in-law of deceased Pinky Sahu, wife of their brother Mithilesh Sahu, have filed this revision on the ground that the applicants do not cover and involve on the same facts and circumstances of the case and continuance of prosecution will only be an abuse of the process of law, which will ultimately result into the acquittal of the applicants. He further submits that the ingredients of Section 302 and 304 IPC are not available in the charge sheet and, looking to the overall facts and circumstances of the case, no case is made out against these applicants. He also submits that the applicants are married sister of husband of

the deceased, they were residing separately, hence, there is no occasion to involve them in the alleged offence. No crime has been committed by the applicants and there is even no material on record against the applicant. Therefore, the applicants are liable to be discharged from the offence under Section 304(B) alternatively section 302 IPC. In support of his submission, he placed reliance on the decision of Supreme Court in the matter of **Jasvinder Saini and Others Vs. State (Government of NCT of Delhi)**¹.

04. Learned counsel for State supported the impugned order passed by the trial Court.

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

06. In the case in hand, the marriage of deceased Pinky with co-accused Mithlesh Sahu was performed in the year 2016, thereafter, the deceased started residing in her matrimonial house. It has been alleged that deceased was being subjected to cruelty on trivial issue as also for demand of dowry, as a result of which she consumed poisonous substance and died on 14.01.2018. It is clear from final report that co-accused namely Mithlesh Sahu, Dayalu Ram Sahu and Rameshwari Bai are the resident of Sakin, Piparchedi, Thana Arjuni, District Dhamtari, whereas Dropati Bai (A-1), Lileshwari Bai (A-2) and Kunti Bai (A-3) herein are the resident of village Barbaspur, District Balod, village Sivnikala, District Dhamtari

¹ (2013) 7 SCC 256

and village Koliyari, District Dhamtari respectively. Though, A-2 and A-3 are the resident of District Dhamtari but they are not the habitant of matrimonial house of the deceased, they are married and residing in their respective matrimonial houses.

07. As regards framing of charge under Section 304-B IPC is concerned, Section 304-B of IPC is reproduced as under:-

304-B. Dowry Death.-- (1) Where the death of a woman is caused by any burns or bodily injuries or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called 'dowry death', and such husband or relative shall be deemed to have caused her death.

08. 'Cruelty by husband or relatives of husband has been defined under Section 498-A of IPC. This Court deem it appropriate to reproduce section 498-A IPC, which read as under:-

498-A. Husband or relative of husband of a woman subjecting her to cruelty. - *Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.*

Explanation. - *For the purpose of this section, "cruelty" means -*

- (a) *any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or*
- (b) *harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand*

09. All the witnesses, in their statements recorded under Section 161 Cr.P.C., have stated that mother-in-law, father-in-law and husband of deceased Pinky had tortured her on trivial issues. That apart, witness Pilu Ram Sahu, Bina Bai, Narayan Sahu and other witnesses from Piperchhedi have stated that on the date of incident, the deceased was not in a position to speak. It has also not come in the evidence of the witnesses that at the time of incident or soon before the death of deceased, the present applicants were present at the spot. The learned trial Court, relying upon the statements of the witnesses recorded under Section 161 Cr.P.C, prima-facie found involvement of the present applicants and framed charges against them under Section 304(B) alternatively section 302 IPC.

10. The Hon'ble Supreme Court in the matter of **Jasvinder**

(supra) has dealt with the issue of court's power to alter charge, para 11 thereof, be read as under:-

***“11.** A plain reading of the above would show that the court's power to alter or add any charge is unrestrained provided such addition and/or alteration is made before the judgment is pronounced. Subsections (2) to (5) of Section 216 deal with the procedure to be followed once the court decides to alter or add any charge. Section 217 of the Code deals with the recall of witnesses when the charge is altered or added by the court after commencement of the trial. There can, in the light of the above, be no doubt about the competence of the court to add or alter a charge at any time before the judgment. The circumstances in which such addition or alteration may be made are not, however, stipulated in Section 216. It is all the same trite that the question of any such addition or alternation would generally arise either because the court finds the charge already framed to be defective for any reason or because such addition is considered necessary after the commencement of the trial having regard to the evidence that may come before the court.*

11. In cases where woman commits suicide when she was being tortured or subjected to cruelty for demand of dowry or for some other reasons related thereto, it has become tendency to implicate all the family members of husband in the crime irrespective of the fact that they have played active role in the incident or not. In this case also, from the evidence of witnesses, it appears that the present applicants have also

been implicated in the crime. There appears contradictions in the statements of the witnesses. As already discussed above that the present applicants are not the habitant of the house of deceased, it has not been established that at the time of incident or soon before the death they were present at the spot, the deceased was not in a position to speak and their direct involvement in the alleged incident is not free from doubt.

12. Thus, considering the aforesaid facts and circumstances of the case, and further considering case law in the matter of **Jasvinder** (supra), the impugned order cannot be sustained in the eye of law.

13. In the result, the criminal revision is allowed and the impugned order dated 03.08.2018 passed by the Additional Sessions Judge, Dhamtari is set aside and the applicants are discharged from charges under Section 304-B IPC alternatively section 302 IPC.

Sd/-

(Rajani Dubey)
JUDGE

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