

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No.1414 of 2018**

Padma Mishra, W/o Pramod Kumar Mishra, aged about 34 years, R/o Village Bhaismuda, P.S. Urga, District Korba, Chhattisgarh, presently R/o Qtr. No.334/1, R.P.F. Colony, Railway Station, Raipur, District Raipur, Chhattisgarh

---- Applicant

versus

State of Chhattisgarh through the District Magistrate, District Korba, Chhattisgarh

--- Respondent

For Applicant	:	Shri Abhijeet Mishra, Advocate
For Respondent	:	Smt. Smita Ghai, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

Order on Board

26.2.2019

1. With the consent of Learned Counsel appearing for the parties, the matter is heard finally.
2. This revision has been preferred against the order dated 22.9.2018 passed by the Special Judge under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act (henceforth 'the Act'), Korba in S.T. No.66 of 2018, whereby the Special Judge has framed charges against the Applicant for offence punishable under Section 302 of the Indian Penal Code in the alternative under Sections 304B and 498A of the Indian Penal Code.
3. Facts of the case, in brief, are that the Applicant is *nanad* (sister-in-law) of deceased Nishi Pandey. Marriage of the deceased was solemnised with co-accused Pradeep Pandey on 12.12.2013. Allegedly, after 4-6 months of their marriage, Pradeep Pandey and his other family members started harassing the deceased and demanded air-conditioner, cash etc. Allegations against the Applicant are that she was residing at Raipur and used to visit

Korba at the matrimonial house of the deceased from time to time and torture her for demand of dowry and other reasons. 3 days prior to the incident, co-accused persons, i.e., father-in-law and mother-in-law of the deceased had taken the 3 years old daughter of the deceased with them. Due to that, the deceased was under depression. On 26.2.2018, allegedly, she committed suicide by hanging herself at Korba at her matrimonial house. On 27.2.2018, a complaint was made by brother of the deceased against the accused persons. On the basis of the said complaint, offence was registered under Sections 304B, 306, 498A, 34 of the Indian Penal Code. On completion of the investigation, a charge-sheet for offence punishable under Sections 304B, 306, 498A, 34 of the Indian Penal Code was filed before the Court of Chief Judicial Magistrate, Korba from where the case was committed to the Court of Session at Korba. The Special Judge, Korba, vide the impugned order dated 22.9.2018, framed the charges under Section 302 of the Indian Penal Code in the alternative under Sections 304B and 498A of the Indian Penal Code.

4. Learned Counsel appearing for the Applicant submits that there is no material available on the basis of which offence under Section 302 of the Indian Penal Code could be made out against the Applicant. Therefore, the charge under Section 302 of the Indian Penal Code framed by the Special Judge against the Applicant is without there being any material available against her. He further submits that the complaint and charge-sheet show that ambiguous allegations have been made against the Applicant. There is no evidence available that soon before her death, the deceased had been tortured by the Applicant for demand of dowry. Only casual statements have been made by the witnesses. Therefore, there is

no *prima facie* evidence available in the charge-sheet to frame any charge against the Applicant. There is sufficient evidence available to show that the Applicant is residing at Raipur. There is no evidence available to show that on the date of incident the Applicant was present at Korba. He further submits that there is no allegation against the Applicant that on the date of incident the Applicant actively participated in the crime in question. From the charge-sheet itself, it appears that the deceased was under depression for the reason that her 3 years old daughter had been taken by her in-laws to their native village. It is quite natural that the grand parents have more affection with their grand children. In flow of their affection, they would have taken their grand daughter with them. Thus, the allegation of torture is also *prima facie* not established.

5. Learned Counsel appearing for the State opposes the above arguments and supports the impugned order.
6. I have heard Learned Counsel appearing for the parties and perused the material available with due care.
7. From perusal of the entire charge-sheet, I find that there is no material available on the basis of which *prima facie* it could be inferred that the deceased was murdered by the Applicant or the Applicant was involved in commission of murder of the deceased. From perusal of the statements of the witnesses recorded under Section 161 of the Code of Criminal Procedure, *prima facie* it appears that the deceased was subjected to cruelty for demand of dowry by the co-accused persons as well as by the Applicant. From the statements of the witnesses, *prima facie* it also appears that soon before her death the deceased was subjected to cruelty

for the said demand of dowry.

8. While dealing with the said issue in **(2013) 7 SCC 256 [Jasvinder Saini v. State (Government of NCT of Delhi)]**, the Supreme Court observed thus:

“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 IPC 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.”

9. In the light of above observation of the Supreme Court, if I examine the evidence available in the present case, it is clear that there is nothing available on the basis of which a charge under Section 302 of the Indian Penal Code could be framed against the Applicant.

Rather, the material available goes to show that charges under Sections 304-B and 498-A of the Indian Penal Code can only be framed against the Applicant.

- 10.** Consequently, the revision is allowed in part to the extent indicated above. The Applicant is discharged from the charge framed under Section 302 of the Indian Penal Code. The charges framed against her under Sections 304-B and 498-A of the Indian Penal Code shall remain intact.

Sd/-
(Arvind Singh Chandel)
Judge