

Form J(1)

**IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri**

CRR 2687 of 2022

**Ashish Chakraborty
Vs.
State of West Bengal and Anr.**

Mr. Rajdeep Mazumder,
Mr. Moyukh Mukherjee
Mr. Abhrojyoti Das
Mr. Abir Ranjan Neogi
Mr. Regean Lama
Mr. Pritam Roy
Ms. Arushi Rathore
Ms. Shyanti Podder
Mr. Abhijit Singh
Ms. Radhika Agarwal
Mr. Sarthak Mondal
....for the petitioner

Item No.49

Heard & Judgment on: 01.09.2022

Bibek Chaudhuri, J.

The petitioner being the accused in connection with Sessions Trial No.06(04) of 2022 arising out of Sessions Case No.215 of 2021 has filed the instant criminal revision praying for quashing of the charge sheet being Charge Sheet No.1851 of 2020 dated 21st October, 2020 under Sections 498A/302/304B/34 of the Indian Penal Code.

It is submitted by Mr. Mazumder, learned advocate for the petitioner that the learned Additional Sessions Judge, Fast Track Court at Baruipur framed charge against the accused /petitioner in the above mentioned case on 18th April, 2022 under Sections 498A/304B/302 of the Indian Penal Code. A charge simultaneously under Section 302 and Section 304B of the Indian Penal Code cannot be framed. The question as to whether the victim was murdered by the accused and thereby liable to be charged for an offence punishable under Section 302 of the Indian Penal Code or a dowry death punishable under Section 304B of the Indian Penal Code depends upon the fact situation and the evidence in the case. If there is material direct or circumstantial, to prima facie support a charge under Section

302 of the Indian Penal Code, 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 alternative charge of dowry death punishable under Section 304B 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 mechanically for it framed an additional charge under Section 302 IPC without adverting to the evidence collected by the Investigating Officer during trial. In support of his contention Mr. Mazumder refers to a decision of the Hon'ble Supreme Court in **Jasvinder Saini and others versus State (Government of NCT of Delhi)** reported in **(2013) 7 SCC 256**.

In **Jasvinder Saini** (supra) the issue that came up for consideration before the Hon'ble Supreme Court is as to whether the decision in **Rajbir versus State of Haryana** reported in **(2010) 15 SCC 116** was meant to be followed mechanically

and without due regard to the nature of the evidence available in the case. The Supreme Court in **Rajbir's** case held that in a case where a charge alleging dowry death is framed, a charge under Section 302 of the Indian Penal Code can also be framed if the evidence otherwise permits. No other meaning can be deduced from the order of the Hon'ble Supreme Court.

In **Jasvinder Saini's** case it is held by the Hon'ble Supreme Court that when an accused faces trial under the charge of Section 302 of the Indian Penal Code and during trial the main charge of murder is not proved against the accused, the Court can look into the evidence to determine whether an alternative charge of dowry death punishable under Section 304B is established.

Thus, it is clear that the Court can frame charge under Section 304B of the Indian Penal Code and alternatively under Section 302 of the Indian Penal Code. The Court cannot frame charge simultaneously under Section 304B of the Indian Penal Code and Section 302 of the Indian Penal Code.

In view of the above discussion, this Court is of the considered view that the learned trial Judge committed irregularity in framing the charge. The brief fact of the case

recorded in the charge sheet states that marriage of the accused/petitioner was solemnized with the deceased in the year 2019. She was subjected to physical and mental torture after her marriage. On 4th August, 2020 she was physically tortured by her husband and on 7th August, 2020 when the complainant went to her matrimonial home, he found the victim hanging from a ceiling fan.

On perusal of the brief fact of the case mentioned in the charge sheet it is prima facie found that the victim died within one year of her marriage. There is also prima facie material that soon before her death the deceased was subjected to cruelty and harassment in connection with demand of dowry. There is also prima facie material that the death of the deceased was caused otherwise than under normal circumstances. Therefore, the trial Court ought to have framed charge under Sections 498A/304B of the Indian Penal Code. If the materials on record permits, the learned trial Judge can frame alternative charge under Section 302 of the Indian Penal Code. Thus, simultaneously charge under Sections 304B and 302 of the Indian Penal Code cannot be framed against the accused.

For the reasons, stated hereinabove, the instant revision is disposed of setting aside the order of framing of charge by the learned Additional Sessions Judge, Fast Track Court at Baruipur dated 18th April, 2022.

The learned trial Judge is directed to frame charge under Sections 498A/304B of the Indian Penal Code against the accused.

If the materials on record prima facie establishes ingredients of offence under Section 302 of the Indian Penal Code, she is at liberty to formulate an alternative charge under Section 302 of the Indian Penal Code.

With the above observation, the instant criminal revision is disposed of.

(Bibek Chaudhuri, J.)