

245 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-28480-2021
Decided on : 04.03.2022

Chanchala Rani & another

..... Petitioners

Versus

State of Punjab & another

..... Respondents

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. P.S.Ahluwalia, Advocate
for the petitioners.

Mr. Luvinder Sofat, AAG, Punjab.

Mr. M.S.Virdi, Advocate
for respondent No.2.

Manjari Nehru Kaul, J.(Oral)

The petitioners are challenging the order dated 14.11.2019 vide which the trial Court in case FIR No.61 dated 04.06.2019 registered under Sections 304-B read with Section 34 IPC framed alternative charge under Sections 302, 304-B and 34 IPC by placing reliance upon ***Rajbir @ Raju and another vs. State of Haryana, 2011(5) RCR (Crl.) 137.***

Learned counsel for the petitioners *inter alia* contends that the trial Court passed the impugned order in a mechanical manner without as much as appreciating that the Hon'ble Supreme Court in ***Jasvinder Saini and others vs. State (Govt. Of NCT of Delhi)*** in Crl. Appeal No.819 of 2013 (decided on 02.07.2013) had watered down the judgment of Supreme Court rendered in Rajbir's case(supra). He further submits that no doubt, in the charge sheet (Annexure P-3) as well as the statements recorded under Section 161 Cr.PC of some witnesses, the allegations of dowry demand

were levelled coupled with the fact that the deceased had died within seven years of her marriage, however, as per the post-mortem report (Annexure P-4) it stood clearly opined that the cause of death of the deceased was asphyxia due to hanging. Learned counsel further submits that in the absence of any injuries, internal or external, having been found on the person of the deceased, and in the light of findings recorded in the post-mortem report, it was definitely a case of suicidal hanging and not a case of homicidal death, more so, as there was a specific opinion given in the said regard by the doctor, who too had opined that it was definitely not a case of strangulation. In support, learned counsel has invited the attention of this Court to Annexures P-5 and P-6 wherein the doctors had in unequivocal terms deposed that it was not a case of murder wherein the deceased had after murder been hanged because had it been the case, there would have been multiple injuries reflected in on her person, which definitely was not the case in hand. Learned counsel has further submitted that even during investigation the investigating agency had not come across or collected any material from which it could even be remotely inferred that it could be a case of homicidal strangulation and that is precisely why the challan too was presented under Section 304-B IPC and not under Section 302 IPC.

On being put to notice, State assisted by learned counsel for respondent No.2 put in appearance.

Learned State counsel assisted by counsel for respondent No.2 has not disputed the findings recorded in the post-mortem report to the effect that it was a case of asphyxia due to hanging and not strangulation. Learned State counsel has also conceded that the challan was presented under Section 304-B IPC only but an alternative charge under Section 302

IPC was framed on an application moved by the complainant in the light of *Rajbir's case*(supra).

Learned counsel for respondent No.2 has, however, reiterated the allegations levelled against the petitioners in the FIR in question wherein it was stated by him that the deceased was being subjected to mental and physical torture for not getting sufficient dowry as a result of which she was first killed by the petitioners and then hanged from the fan. Learned counsel for the complainant has, thus, submitted that in the circumstances the trial court had rightly framed alternative charges under Section 302 IPC by placing reliance upon *Rajbir's case*(supra).

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

It needs to be reiterated that at the time of framing of charges, the Court is to just appraise the material collected during investigation, and which forms the part of challan with the sole purpose to satisfy itself as to whether a prima facie case is made out or not for attracting the ingredients/mischief of the alleged offences.

It would be apposite to reproduce para 13 of the judgment rendered by the Hon'ble Supreme Court in the case of Jasvinder Saini's case (supra), which is as follows:

“13. Be that as it may the common thread running through both the orders is that this Court had in Rajbir's case (supra) directed the addition of a charge under [Section 302 IPC](#) to every case in which the accused are charged with [Section 304-B](#). That was not, in our opinion, the true purport of the order passed by this Court. The direction was not meant to be followed mechanically and without due regard to the nature of the

evidence available in the case. All that this Court meant to say was that in a case where a charge alleging dowry death is framed, a charge under [Section 302](#) can also be framed if the evidence otherwise permits. No other meaning could be deduced from the order of this Court. 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 304B](#) 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 advertting to the evidence adduced in the case and simply on the basis of the direction issued in Rajbir's case (supra). The High Court no doubt made a half hearted attempt to justify the framing of the charge independent of the directions in Rajbir's case (supra), 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.”

In the light of above, the impugned order dated 14.11.2019 is set aside only qua the alternative charge, which was framed under Section 302 IPC.

The present petition stands disposed of in above terms.

(MANJARI NEHRU KAUL)
JUDGE

04.03.2022

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Whether speaking/reasoned:

Yes/No

Whether reportable :

Yes/No