

Neutral Citation No. - 2024:AHC:155740

**HIGH COURT OF JUDICATURE AT ALLAHABAD**

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**A.F.R**

**Judgement Reserved on 11.09.2024**

**Judgement Delivered on 24.09.2024**

**Court No. - 79**

**Case :- APPLICATION U/S 482 No. - 5811 of 2019**

**Applicant :- Mayank Gautam**

**Opposite Party :- State of U.P. and Another**

**Counsel for Applicant :- Amit Daga**

**Counsel for Opposite Party :- G.A.,Yogendra Pal Singh**

**Hon'ble Anish Kumar Gupta,J.**

1. Heard Sri Amit Daga, learned counsel assisted by Sri Akash Mishra, learned counsel for the applicant, Sri Yogendra Pal Singh, learned counsel appearing for the opposite party no.2 and Sri Sunil Kumar Kushwaha, learned A.G.A. for the State.

2. The instant application under Section 482 Cr.P.C. has been filed seeking quashing of the order dated 15.01.2019 in Session Trial No. 1239 of 2017 (State of U.P. vs. Mayank Gautam) under Sections (in short, 'u/S') 498-A, 304-B, 323, 302 of the India Penal Code (hereinafter referred to as, 'I.P.C.') and 3/4 of Dowry Prohibition Act, 1961 (hereinafter referred to as, 'the D.P. Act'), arising out of Case Crime No. 1711 of 2016, Police Station- Nai Mandi, District- Muzaffaragar, pending in the court of learned Additional Sessions Judge (F.T.C. No.-3), Muzaffarnagar.

3. The brief facts of the instant case are that on 20.07.2016, an F.I.R. was lodged by the opposite party no.2/Jalaj Sharma being Case Crime No. 287 of 2016, alleging herein that the sister (Shailey) of the opposite party no.2 was married to the applicant no.1/Mayank Gautam, as per the Hindu customs and

rituals on 02.03.2016 and various gifts were given during the marriage and a total sum of Rs. 9,00,000/- was spent by the family of the opposite party no.2 in the marriage of his sister. Since after the marriage, the applicant and the other family members of the applicant started harassing and assaulting the sister of the opposite party no.2 and initially on 05.03.2016, she was badly beaten up and locked inside the room on 05.03.2016. Initially, the sister of the opposite party no.2 did not disclose the aforesaid incident. On 08.04.2016, the sister of the opposite party no.2 again went to her matrimonial house. Again, the behaviour of the family members of the applicant herein was not good towards the sister of the opposite party no.2 and they told her that her brother has not spent the enough amount of money in the marriage and subsequently it was informed by the sister of the opposite party no.2 that these persons used to demand a further sum of Rs. 2,00,000/- from her and when the demand was not fulfilled they used to torture and assault her.

**4.** On 16.07.2016 at about 8:37 A.M., from the Mobile No. 9412888897 to Mobile No. 9711407603, a video was sent which depicted that the applicant and the other family members tortured and assaulted the sister of the opposite party no.2 and she had become unconscious due to such torture, and this video was sent to create panic among the opposite party no.2 and his family members. After receiving the said video the opposite party no.2 alongwith other family members went to the house of the applicant. When they reached the in-laws place of the sister of the opposite party no.2, they found the injury marks on the body of the sister of the opposite party no.2 and she was lying unconscious in the room. The in-laws, namely Archana Gautam, Manmohan Gautam and the applicant herein were also present there. When the opposite party no.2 and others reached there the applicant and other family members told them that if they will not pay an amount of Rs. 2,00,000/-, she will be beaten up like this and when only they bring Rs.2,00,000/- only then they bring her there. Thereupon, the opposite party no.2 has taken his sister from the in-laws place and admitted her at Sharda Hospital, Greater Noida, who was very serious condition. She was brought by the opposite party no.2 on the clothes, which were worn by the sister of

the opposite party no.2 and all stridhan and jewellery etc., were kept by the applicant and his family members. On the aforesaid averments, the F.I.R. was lodged.

5. Subsequent thereto, during treatment the sister of the opposite party no.2 had died on 12.08.2016, which was intimated by the opposite party no.2. After such intimation of death of the sister of the opposite party no.2 the Inquest Report was prepared and thereupon the dead body was sent for postmortem. As per the Inquest Report, in the opinion of the punch witnesses, the death of the deceased was caused as the deceased went into coma, due to the injuries sustained on her body. Thereafter, the postmortem was conducted and as per the postmortem the following injuries were sustained by the deceased, which reads as under:

***"Anti Mortem Injury-***

- 1. Contusion 3 x 10 cm left ulna joint*
- 2. Contusion 1 x 1 cm from leg 3.5 cm.....*
- 3. Contusion 4 x 3 cm probated sore or back of Rt. heal*
- 4. Contusion 3 x 3 cm probated over back of left heal"*

6. As per the postmortem report the cause of death could not be ascertained, hence, viscera was preserved. During the investigation the statements of witnesses were recorded and thereupon the investigation of the case was handed over to the Circle Officer (CO), after adding Section 304B I.P.C. in the said F.I.R. Thereupon, the statements of various witnesses including the opposite party no.2 were recorded wherein categorical allegations were made with regard to the demand of dowry, torture and harassment of the sister of the opposite party no.2 by the applicant and his family members.

7. The witnesses, namely Jalaj Sharma, Devendra Kumar Sharma and Madan Gopal, have supported the allegations of demand of dowry and torture committed by the applicant and his family members on the deceased for the demand of dowry. The viscera, which was preserved, was sent for Forensic Science Laboratory, Ghaziabad, for examination and from the examination, no poisoning was found on the viscera, as per the report of Forensic Science Laboratory dated 15.12.2016. The other witnesses were

also examined during the investigation by the Circle Officer such as Hitesh Kumar, Sunil Kumar Sharma, Mahesh Chandra Sharma, Smt. Kavitra Tyagi and Yashpal Chaudhary, who have denied the allegations of demand of dowry, torture and harassment by the applicant and his family members to the sister of the opposite party no 2, however, none of them have stated any reason for the deceased being unconscious in the house of the applicant herein.

**8.** During the investigation the statement of Dr. Dinesh Srivastava of Sharda Hospital, Greater Noida was also recorded. As per the statement of the doctor, the opposite party no.2 has admitted the deceased on 17.07.2016 at 1:04 P.M. The deceased was in unconscious position and there was no movement in the body. At the time of admission her sugar level was 24 and BP was 90/60. The doctor further stated that after controlling the blood sugar level and after getting her stomach clean the Magnetic Resonance Imaging (MRI) was conducted. As per the MRI report, such condition of patient would be due to deficiency of blood and oxygen. As per the MRI report, the condition of the patient could have been due to *Hyporia* or *Hypo Glycaemia*. Therefore, it was told that the patient was suffering from either Hypoxic-Ischemic brain injury, which could be caused due to deficiency of oxygen and sugar at any age. The deficiency can be caused due to not eating food for sufficiently a long period of time and the deficiency of oxygen would occur due to deficiency of blood sugar or deficiency of supply of blood to the brain during any treatment. Therefore, Dr. Dinesh Srivastava has concluded that the deceased had died due to not eating for sufficiently long time, thereby, the deficiency of sugar as well as the deficiency of blood was there. The mother of the deceased has also supported the allegations of demand of dowry by the applicant herein and it was further stated that despite being serious condition of the deceased the applicant had not admitted her in any hospital due to which her condition had worsen.

**9.** In view of the aforesaid investigation conducted by the IO, on 18.08.2017 the charge-sheet was filed against the applicant only, exonerating the other family members of the applicant, for the offence u/S 498A, 323, 304B I.P.C. and Sections 3/4 of the D.P. Act. In the charge-sheet it has been concluded

by the IO that the applicant herein had demanded the additional dowry from the deceased and when the demand was not fulfilled, the deceased was kept hungry, whereby her BP and sugar level came down and due to which she also suffered the deficiency of oxygen and blood in her body due to which she had died, for which principally the applicant herein was held responsible.

**10.** After submission of the charge-sheet, the applicant herein had moved a Discharge Application on 11.01.2019 u/S 227 Cr.P.C., which was rejected by the trial court vide order dated 15.11.2019, having found no case for discharge and has proceeded to frame charges against the applicant herein u/S 498A, 304B, 323 I.P.C. with an additional charge u/S 302 I.P.C. and Sections 3/4 of the D.P. Act. Against the rejection of the Discharge Application the instant application has been filed by the applicant herein.

**11.** Learned counsel for the applicant submits that since the death of the deceased was caused due to her medical condition, whereby she was suffering from the deficiency of blood as well as oxygen and was diagnosed at the Sharda Hospital as Hypoxic Ischemic Encephalopathy brain injury and she was admitted in the hospital on 17.07.2016 and she was discharge on 23.07.2016. After explaining her conditions, subsequently thereto she has died on 12.08.2016. He further stated that the disease Hypoxic Ischemic Encephalopathy brain injury could be caused to any person of any age.

**12.** Relying upon the literature of *Access Medicine from McGraw-Hill*, learned counsel for the applicant contends that Hypoxic Ischemic Encephalopathy occurs from lack of delivery of oxygen to the brain because of hypotension or respiratory failure. Causes include myocardial infarction, cardiac arrest, shock, asphyxiation, paralysis of respiration and carbon monoxide or cyanide poisoning. In some circumstances, hypoxia may predominate. Carbon monoxide and cyanide poisoning are termed histotoxic hypoxia since they cause a direct impairment of the respiratory chain.

**13.** In view thereof, learned counsel for the applicant submits that since the deceased was suffering from the Hypoxic Ischemic Encephalopathy disease, which is primarily cause due to lack of supply of oxygen and deficiency in

the blood level, therefore, the cause of death was her medical condition not any act done by the applicant herein.

**14.** Further relying upon the injuries sustained as have been found on the body of the deceased in the postmortem, learned counsel for the applicant submits that the first two injuries are the injuries caused due to drip injected in the body of the deceased during the treatment and the other two injuries are the back sore, which had occurred due to the continued treatment of the deceased. While she was unconscious for about 25 days, therefore, none of the injuries can be attributed to the applicant herein.

**15.** In support of his submissions learned counsel for the applicant has relied upon the judgements of the Apex Court in ***Rajiv Thapar v. Madan Lal Kapoor: (2013) 3 SCC 330***, ***Baljeet Singh v. State of Haryana: (2004) 3 SCC 122*** and ***Tarsem Singh v. State of Punjab: (2008) 16 SCC 155*** and contends that since the death of the deceased was caused due to her medical condition and it was a natural death during her treatment, therefore, provisions of Section 304B I.P.C. would not attract in the instant case. Learned counsel for the applicant has further submitted that the trial court has erred in framing the charges u/S 304B I.P.C. as well as the additional charge u/S 302 I.P.C.

**16.** Learned counsel for the applicant submits that in the facts of the case, only one charge either u/S 304B I.P.C. or Section 302 I.P.C. can be levelled, however, both cannot be levelled at the same time. In support of his submissions learned counsel for the applicant has relied upon the judgement and order dated 30.05.2024 passed by the Co-ordinate Bench of this Court in ***Rammilan Bunkar vs. State of U.P (Criminal Appeal No. 1667 of 2021)***.

**17. Per Contra**, learned counsel for the opposite party no.2 submits that the marriage of the applicant with the deceased had taken place on 02.03.2016. Immediately, after the marriage on 05.03.2016 the deceased was beaten up and locked in the room for demand of dowry by the applicant. On 08.04.2016 also, when the opposite party no.2 came to take the deceased the applicant had also demanded for dowry. Thereby, the death of deceased has been caused on 12.08.2016 i.e., within 6 months from the date of her

marriage. There is no material on record to show that the deceased was having any previous illness and just after three days of marriage torture and harassment on the part of the applicant herein was started for demand of dowry. She was kept locked in a room after beaten up by the applicant and his family members. The deceased, who was diagnosed with Hypoxic Ischemic Encephalopathy disease, which would be caused by keeping a person hungry for sufficiently long time, whereby the oxygen and blood circulation to the brain stopped and the deceased can become unconscious.

**18.** In the instant case the deceased was found unconscious and when she was admitted to the hospital the disease of Hypoxic Ischemic Encephalopathy was diagnosed, meaning thereby the deceased was kept hungry by the applicant and his family members for sufficiently long time, which had caused deficiency of blood and oxygen in the brain, thereby deceased had become unconscious and no attempt of any treatment was made by the applicant herein. Rather, a video was circulated by the applicant to the opposite party no.2 and his family members and thereupon the opposite party no.2 had taken her to the hospital, where she was treated and diagnosed that she was kept hungry for sufficiently long time by the applicant and immediately after admitting the deceased in the hospital the F.I.R. was lodged by the opposite party no.2 during treatment itself, on 20.07.2016 making out a categorical allegation with regard to the demand of dowry and cruelty committed by the applicant and his family members to the deceased. Therefore, from the allegations as levelled the deceased became unconscious due to the ill treatment committed by the applicant and his family members and despite the best efforts made by the opposite party no.2, the deceased could not be saved. Therefore, the cause of death of the deceased was cruelty and harassment committed by the applicant for demand of dowry before six months of marriage. Therefore, the death of the deceased could not be said to be a natural death and by all means it is an unnatural death caused within six months of marriage, therefore, all the ingredients of Sections 304B, 498A, 323 I.P.C. and Sections 3/4 of the D.P. Act, are attracted against the applicant, for which he has been rightly charge-sheeted by the trial court and the trial court has further rightly rejected the

application for discharge moved by the applicant herein. Therefore, no interference is called for in the instant case by this Court.

**19** Learned A.G.A. also supports the submissions so made by learned counsel for the opposite party no.2 and submits that in the instant case, from the entire material available on record as noted hereinabove, admittedly, the applicant herein was the husband of the deceased and marriage took place on 02.03.2016 and the deceased was found in unconscious condition, in the house of the applicant and there are sufficient material to show that the applicant used to commit cruelty towards the deceased for demand of dowry and from her medical examination and diagnosis, after admitting her to the hospital, it was categorically found that the deceased was not given proper food for sufficiently long time by the applicant, which led to such condition of the deceased, whereby the supply of oxygen and blood to the brain was stopped, she become unconscious and ultimately died despite the best efforts made by the opposite party no.2 to get the appropriate treatment for her. From the aforesaid uncontroverted material a *prima facie* case against the applicant is made out for the offences u/S 498A, 304B, 323 I.P.C. and Section 3/4 of the D.P. Act. Further, the act of the applicant by not providing food to the deceased deliberately and keeping her locked in the room also goes to the extent of constituting the act of murder by the applicant herein. Therefore, the offence u/S 302 I.P.C. is also attracted in the said case, for which the additional charge has already been framed by the trial court. Therefore, there is no illegality in rejection of discharge application as well as framing of charge against the applicant in the instant case. Therefore, learned A.G.A submits that the instant application has no merit and is liable to be dismissed

**20.** Having heard the rival submissions made by learned counsels for the parties, this Court has carefully gone through the record of the case.

**21.** Section 304B I.P.C., reads as under:

*"304B. Dowry death.-(1) Where the death of a woman is caused by any burns or bodily injury 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.

*Explanation.-For the purposes of this sub-section, "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).*

*(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life."*

22. To attract the offence u/S 304B I.P.C., the following are required to be established:

- i) the death is an unnatural death;
- ii) Such death is caused within seven years of marriage;
- iii) there are materials to show that she was subjected to cruelty by her husband or any relative of her husband soon before her death; or
- iv) such cruelty is committed for any demand of dowry.

23. In the instant case, admittedly, the deceased had died within seven years of marriage and there are sufficient allegations that she was subjected to cruelty soon before her death, for demand of dowry.

24. In **Baljeet Singh (Supra)**, the Apex Court has held as under:

*"10. The explanation to the said section says that the word "dowry death" shall have the same meaning as in Section 304-B IPC which means such death should be otherwise than in normal circumstances and within seven years of marriage. On a conjoint reading of these sections, it is clear that for drawing a presumption under Section 113-B of the Evidence Act firstly, **there should be death of a woman otherwise than in normal circumstances, within seven years of marriage and the prosecution having shown that soon before her death she was subjected to cruelty or harassment in connection with any demand for dowry by persons accused of having committed the offence. Unless and until these preliminary facts are established by the prosecution, it is not open to the courts to draw a presumption against the accused invoking Section 113-B of the Evidence Act.**"*

*(emphasis supplied)*

25. In **Harjit Singh v. State of Punjab, (2006) 1 SCC 463**, the Apex Court has held as under:

*"16. A legal fiction has been created in the said provision to the effect that **in the event it is established that soon before the death, the deceased was subjected to cruelty or harassment by her husband or any of his relatives; for or in connection with any demand of dowry, such death shall be called 'dowry death', and such husband or relative shall be deemed to have caused her death.**"*

*Noticing the provisions of Section 113-B of the Evidence Act, it was opined:*

“17. From a conjoint reading of Section 304-B of the Penal Code and Section 113-B of the Evidence Act, it will be apparent that a presumption arising thereunder will operate if the prosecution is able to establish the circumstances as set out in Section 304-B of the Penal Code.

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19. In the case of **unnatural death of a married woman as in a case of this nature, the husband could be prosecuted under Sections 302, 304-B and 306 of the Penal Code**. The distinction as regards commission of an offence under one or the other provisions as mentioned hereinbefore came up for consideration before a Division Bench of this Court in **Satvir Singh v. State of Punjab [(2001) 8 SCC 633 : 2002 SCC (Cri) 48]** wherein it was held: (SCC p. 643, paras 21-22)

‘21. Thus, there are three occasions related to dowry. One is before the marriage, second is at the time of marriage and the third is “at any time” after the marriage. The third occasion may appear to be an unending period. But the crucial words are “in connection with the marriage of the said parties”. This means that giving or agreeing to give any property or valuable security on any of the above three stages should have been in connection with the marriage of the parties. There can be many other instances for payment of money or giving property as between the spouses. For example, some customary payments in connection with birth of a child or other ceremonies are prevalent in different societies. Such payments are not enveloped within the ambit of “dowry”. Hence the dowry mentioned in Section 304-B should be any property or valuable security given or agreed to be given in connection with the marriage.

22. It is not enough that harassment or cruelty was caused to the woman with a demand for dowry at some time, if Section 304-B is to be invoked. But it should have happened **“soon before her death”**. **The said phrase, no doubt, is an elastic expression and can refer to a period either immediately before her death or within a few days or even a few weeks before it. But the proximity to her death is the pivot indicated by that expression.** The legislative object in providing such a radius of time by employing the words “soon before her death” is to emphasise **the idea that her death should, in all probabilities, have been the aftermath of such cruelty or harassment. In other words, there should be a perceptible nexus between her death and the dowry-related harassment or cruelty inflicted on her.** If the interval elapsed between the infliction of such harassment or cruelty and her death is wide the court would be in a position to gauge that in all probabilities the harassment or cruelty would not have been the immediate cause of her death. It is hence for the court to decide, on the facts and circumstances of each case, whether the said interval in that particular case was sufficient to snuff its cord from the concept “soon before her death”.’ (Harjit Singh case [(2006) 1 SCC 463 : (2006) 1 SCC (Cri) 417] , SCC pp. 469-70, paras 17 & 19)

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30. The ingredients of Section 306 and Section 304-B IPC are different and distinct. In any event, no evidence has been brought on record to show that there has been any act of omission or commission on the part of the accused, before the death of the deceased to demonstrate that the appellant was responsible for the same. We have noticed hereinbefore that the High Court, for the first time, in its judgment on a hypothesis observed that when her father came to see her, he must have been insulted or felt hurt as she might have been subjected to harassment. Unfortunately, no evidence whatsoever has been brought to our notice to enable us to sustain the said finding and in that view of the matter we are unable to accept the submissions of the learned counsel appearing for the respondent State. (Harjit Singh case [(2006) 1 SCC 463 : (2006) 1 SCC (Cri) 417] , SCC pp. 472-73, para 30)”

(emphasis supplied)

26. In ***Tarsem Singh v. State of Punjab, (2008) 16 SCC 155*** the Apex Court has held as under:

*"The essential ingredients of the said offence are: (i) death of a woman must have been caused by any burns or bodily injury or otherwise than under normal circumstances; (ii) such death must have occurred within seven years of marriage; (iii) soon before her death she was subjected to cruelty or harassment by her husband or relative of her husband; (iv) such cruelty or harassment must be in connection with the demand of dowry; and (v) such cruelty is shown to have been meted out to the woman soon before her death."*

*(emphasis supplied)*

27. Learned counsel for the applicant has heavily contended that such death of the applicant is not an unnatural death but the death was caused due to her medical condition. Admittedly, the deceased was found at the residence of the applicant, in an unconscious condition and when she was taken to the hospital on the same date, the diagnosis revealed that she was suffering from Hypoxic Ischemic Encephalopathy brain injuries, which is primarily caused due to deficiency of oxygen and blood supply to the brain, as Dr. Dinesh Srivastava has categorically admitted that such disease could be caused if the deceased was not provided food for sufficiently long time and there are categorical allegations in the instant case. Just three days after the marriage, she was beaten up and was locked in the room by the applicant for demand of dowry. The deceased was found in an unconscious condition at the house of the applicant herein, which categorically shows that she was not given food intentionally by the applicant for sufficiently long period, due to which the deceased had suffered the aforesaid disease of Hypoxic Ischemic Encephalopathy brain injury due to non supply of oxygen and blood to the brain, having not provided food sufficiently for long period of time, thus, by no stretch of imagination it can be said to be a natural death but it appears to be an unnatural death, deliberately caused by the applicant by not providing the food to the deceased for sufficiently long period of time. Having clear and categorical intention to kill the deceased for non fulfilment of demand of dowry, therefore, all the conditions of Section 304B I.P.C. are fulfilled in the instant case, which goes to the extent of intentionally killing the deceased thereby attracts provisions of Section 302 I.P.C. as well. Since, there are sufficient allegation for demand of dowry, cruelty caused by the applicant

for demand of dowry and the demand of dowry raised by the applicant and the assault committed on the deceased by the applicant, therefore, Sections 302, 498A, 304B, 323 I.P.C. and also Sections 3/4 of the D.P. Act, is categorically attracted in the instant case, for which the charges have been framed against the applicant herein by rejecting the discharge application.

**28.** In *Rajiv Thapar (Supra)*, the Apex Court has laid down the following guidelines for attracting the judicial conscious of the High Court to quash the criminal proceedings while exercising the power u/S 482 Cr.P.C., which reads as under:

*"30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashment raised by an accused by invoking the power vested in the High Court under Section 482 CrPC:*

*30.1.Step one: whether the material relied upon by the accused is sound, reasonable, and indubitable i.e. the material is of sterling and impeccable quality?*

*30.2.Step two: whether the material relied upon by the accused would rule out the assertions contained in the charges levelled against the accused i.e. the material is sufficient to reject and overrule the factual assertions contained in the complaint i.e. the material is such as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false?*

*30.3.Step three: whether the material relied upon by the accused has not been refuted by the prosecution/complainant; and/or the material is such that it cannot be justifiably refuted by the prosecution/complainant?*

*30.4.Step four: whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?*

*30.5. If the answer to all the steps is in the affirmative, the judicial conscience of the High Court should persuade it to quash such criminal proceedings in exercise of power vested in it under Section 482 CrPC. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as proceedings arising therefrom) specially when it is clear that the same would not conclude in the conviction of the accused."*

*(emphasis supplied)*

**29.** The principal of law has been laid down in *Rajiv Thapar (Supra)* to attract the judicial consciousness of the High Court in the considered opinion of this case, none of the conditions as laid down in *Rajiv Thapar (Supra)* are present in the present case. Therefore, this Court does not find any good reason to interfere with the charges framed against the applicant and does not find any illegality in rejection of the discharge application filed

by the applicant herein. So far as the reliance placed by the applicant in the judgement of **Rammilan Bunkar (Supra)**, to contend that the accused can be convicted either u/S 304B I.P.C. or u/S 302 I.P.C., he cannot be convicted for both the offences simultaneously. The question in **Rammilan Bunkar (Supra)** was whether an accused, who is charged u/S 302 I.P.C. could be convicted for the alternative charge u/S 304B I.P.C. without the said offence being specifically put in-charge. This Court has categorically held that since the offence u/S 304B I.P.C., does not be an alternate charge but ought to be the main charge and in such circumstances the charge u/S 302 I.P.C. can be an additional charge. However, it has been further held in the aforesaid judgement by the Division Bench of this Court that though the additional charge Section 302 I.P.C. can be framed, but a person cannot be convicted for both the offences i.e., u/S 304B I.P.C. and also u/S 302 I.P.C., however, there is no bar with regard to framing of additional charge u/S 302 I.P.C.

**30.** Therefore, this Court does not find any illegality in rejection of the discharge application as well as in the charges framed by the trial court in the instant case against the applicant. Accordingly, the instant application is devoid of merits and the same is accordingly **dismissed**.

**Order Date :-** 24.09.2024

Shubham Arya

**(Anish Kumar Gupta, J.)**