



2026:AHC:100608

AFR

RESERVED ON 08.04.2026

DELIVERED ON 04.05.2026

**HIGH COURT OF JUDICATURE AT ALLAHABAD**

**APPLICATION U/S 528 BNSS No. - 11808 of 2026**

Arun Kumar

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite  
Party(s)

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Counsel for Applicant(s)	:	Sanjeev Kumar Pandey
Counsel for Opposite Party(s)	:	G.A.

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**Court No. - 78**

**HON'BLE NAND PRABHA SHUKLA, J.**

1. Heard Sri Sanjeev Kumar Pandey, learned counsel for the applicant, learned AGA for the State and perused the record.

2. The present application under section 528 BNSS has been filed with a prayer to set aside the order dated 10.02.2026 passed by learned Additional Sessions Judge, FTC-Ist, (Offence Against Women) Mathura in S.T. No. 41 of 2017 under sections 498A, 304B IPC and 3/4 D.P. Act, Case Crime No. 1073 of 2015, Police Station Vrindavan, District Mathura.

3. Briefly stated, Shri Krishan Sharma, the opposite party no.2, lodged an FIR bearing Case Crime No. 1073 of 2015 under Sections 498-A, 304-B IPC and 3/4 D.P. Act at Police Station Vrindavan, District Mathura against the applicant and 3 others alleging that the marriage of his daughter Km. Kshama was solemnized with the applicant, Arun Sharma on 19.02.2011 wherein cash of Rs. 3 lacs and various articles were given but the in-laws demanded additional dowry of Rs. 5 lacs cash and a four wheeler. Due to non-fulfillment of dowry demand, the daughter of opposite party no.2 was killed on 04.11.2015 at 2.00 P.M. at her matrimonial home. After thorough investigation, the applicant was charge-sheeted under sections 498A, 304B IPC and 3/4 D.P. Act.

According to the autopsy report dated 05.11.2015, no *ante mortem* injuries were found as the cause of death could not be ascertained, the viscera was preserved.

4. The learned Chief Judicial Magistrate, Mathura took cognizance on 08.02.2016 and the matter was committed to the Court of Sessions and the charges were framed against the applicant on 05.07.2018 under sections 498A, 304-B IPC and 3/4 D.P. Act. During the trial proceedings, total eight prosecution witnesses have been examined and the statement of the accused/applicant was recorded under section 313 Cr.P.C on 09.07.2025 and the date was fixed for final arguments. The viscera of the deceased was preserved on 04.11.2015 and was sent for chemical examination to the Forensic Science Laboratory, Agra on 17.12.2015 and was chemically examined on 22.12.2016.

5. In the meantime, taking a somersault, the ADGC (Crl.) moved an Application No. 82 Kha dated 05.12.2025 for taking viscera report on record and to frame an alternate charge under Section 302 IPC. The objection was invited on the said application wherein the applicant filed the objection dated 13.01.2026 and the application was allowed vide impugned order dated 10.02.2026, passed by learned Addl. Session Judge/Fast Track Court I (Atrocities against Women) Mathura by taking viscera report dated 22.12.2016 on record, and fixed the date for framing of the alternate charge under section 302 IPC.

6. Learned counsel for the applicant submits that the order dated 10.02.2026 is arbitrary and illegal and is not sustainable in the eyes of law. It has further been argued that the learned Trial Court had committed gross illegality by taking viscera report dated 22.12.2016 on record at the stage of final argument i.e. after closing of eight prosecution witnesses and recording the statement of accused-applicant under section 313 Cr.P.C. and the same could not be taken on record at such a belated stage.

7. It has further been argued that the viscera report dated 22.12.2016 has been placed before the Trial Court on 05.12.2025 with an inordinate delay of ten years without any plausible explanation given by the prosecution. No opportunity of cross-examination was given to the applicant, therefore, the same cannot be read in evidence or made part of the prosecution evidence by the Trial Court concerned. The findings recorded

by the learned Additional Sessions Judge for taking viscera report dated 17.12.2025 on record is based on surmises and conjectures. The matter is fixed for final argument after completion of the prosecution evidence as well as after recording the statement of the accused under section 313 Cr.P.C. The alternate charge under section 302 Cr.P.C cannot be framed at this stage as no opportunity has been given to the appellant to raise their defence. There is no material on record for the framing of alternate charge under section 302 IPC and is an abuse of the process of the court.

8. Learned Counsel for the applicant has relied upon the Judgement rendered by Hon'ble Apex Court in ***Jasvinder Saini and Others v. State (Govt of NCT of Delhi) 2013 LawSuit(SC) 559*** wherein it has been observed 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 302IPC 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 304B 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 304B 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 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 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'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."*

9. Thus, the aforesaid Judgement does not categorically excludes the framing of alternate charge u/s 302 IPC especially when the evidence is otherwise and does not support the applicant's contention.

10. The Hon'ble Apex Court in **Dr. Nallapareddy Sridhar Reddy v. The State of Andhra Pradesh** affirming Jasvinder Saini (*supra*) has held that:

*"19. In Jasvinder Saini v. State (Govt of NCT of Delhi), this Court dealt with the question whether the Trial Court was justified in adding a charge under Section 302 of the IPC against the accused persons who were charged under Section 304B Justice T S Thakur (as he then was) speaking for the Court, held thus:*

*"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. Sub-sections (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." (Emphasis supplied)*

*20. From the above line of precedents, it is clear that Section 216 provides the court an exclusive and wide-ranging power to change or alter any charge. The use of the words **"at any time before judgment is pronounced"** in Sub-Section (1) empowers the court to exercise its powers of altering or adding charges even after the completion of evidence, arguments and reserving of the judgment. The alteration or addition of a charge may be done if in the opinion of the court there 15 (2013) 7 SCC 256 was an omission in the framing of charge or if upon prima facie examination of the material brought on record, it leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the alleged offence. The test to be adopted by the court while deciding upon an addition or alteration of a charge is that the material brought on record needs to have a direct link or nexus with the ingredients of the alleged offence. Addition of a charge merely commences the trial for the additional charges, whereupon, based on the evidence, it is to be determined whether the accused may be convicted for the additional charges. The court must exercise its powers under Section 216 judiciously and ensure that no prejudice is caused to the accused and that he is allowed to have a fair trial. The only constraint on the court's power is the prejudice likely to be caused to the accused by the addition or alteration of charges. Sub-Section (4) accordingly prescribes the approach to be adopted by the courts where prejudice may be caused."*

11. From the perusal of the records, it transpires that the post-mortem report reveals that no ante-mortem injuries were found, hence, cause of death could not be ascertained and the viscera was preserved in 2015. The

said report was ready in the year 2016 but the investigating officer did not bring the same on record. As the viscera preserved was examined in time, the poison was detected which is a material evidence to be taken into account for just decision of the case.

12. Considering the fact, that the viscera report dated 22.12.2016 indicates that the organophosphorus insecticide poison was found, therefore, it is a material evidence which needs to be taken into account for reaching the just conclusion.

13. In view of the law as discussed above, there is no illegality in the order impugned.

14. No interference is required.

15. The present application is, accordingly, dismissed.

**(Nand Prabha Shukla,J.)**

**May 4, 2026**

Puspendra