

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL REVISION NO. 513 OF 2016

1. Sanjay Vishvakarma S/o Ramjanam, aged about 35 years
2. Girja Vishvakarma S/o Ramjanam, aged about 25 years
3. Ashok S/o Ramjanam, aged about 20 years
4. Ramjanam S/o Late Jaigovind, aged about 65 years
All R/o Village Chhatarpur, Khairwara, Choki- Vijay Nagar, Police
Station- Ramanujganj, District- Balrampur (C.G.)

... Applicants

Versus

State of Chhattisgarh, through Police Station- Ramanujganj, District-
Balrampur (C.G.)

... Non-applicant

For Applicants	:	Ms. Madhunisha Singh, Advocate.
For Respondent-State	:	Mr. O.P. Sahu, Govt. Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

05/09/2016

1. The present revision petition has been preferred by the Applicants assailing the order dated 2.5.2016 passed by the Special Sessions Judge, Ambikapur, District Surguja in Special Sessions Trial No. 64 of 2015, whereby the charge has been framed against the Applicants for offence punishable under Sections 323/34 (four times) and 307/34 (two times) of IPC as well as under Section 3(2)(v) (two times) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities Act), 1989.
2. Learned Counsel for the Applicants assailing the said charge framed against the Applicants submits that it is a case where the Court below has wrongly framed the charge under Section 307 of IPC against the Applicants.
3. According to her, it is a case where the Applicants were working in the field when the Complainant party being the aggressors came to the field and took a fight with the Applicants and in exercise of their right of

private defence they had retaliated and in the course of which six persons received injuries.

4. It is also the case of the Applicants that the injuries sustained by the six persons were all simple in nature as is evident from the MLC of each of them and therefore the offence under Section 307 of IPC could not have been made out against them.

5. Learned Counsel for the Applicants further submits that it is a case where the injuries sustained by the Applicants were also from that of bamboo stick and not from *gandasa* and therefore also since deadly weapons have not been used, the offence under Section 307 of IPC has been wrongly implicated upon the Applicants.

6. Learned Counsel for the State however opposing the revision petition submits that the recovery of *gandasa*, which is a weapon made out by iron rod with wooden handle fixed to it, was recovered from Applicant No.1, Sanjay Vishvakarma and from the other accused Applicants bamboo stick was recovered.

7. Learned State Counsel further submitted that all these Applicants together had committed crime and in the course six persons were injured and four of the persons admittedly had received simple injuries but two persons namely, Meharaj and Baijnath, is said to have received injuries on the vital part of their body and it was for this reason that the offence under Section 307 of IPC has been framed against the Applicants. Therefore, the same does not warrant any interference and the present Criminal Misc. Petition deserves to be rejected.

8. Having considered the rival contentions put forth on behalf of either side and on perusal of the injury reports of the six injured persons particularly that of Meharaj and Baijnath who had received injuries on the neck, cheek and on the upper part of their body, further admittedly the

injuries sustained were that of bamboo stick and could also have been caused with the aid of *gandasa* and therefore it cannot be said that *prima facie* there is no evidence against the Applicants.

9. Whatever contentions that have been put forth by the Counsel for the Applicants so far as their right of private defence and so far as nature of injuries sustained by the Applicants and also the fact that the weapons used in the causing of the injuries, are all the matter of defence and which could only be thrashed out in the course of evidence.

10. So far as the offence under Section 307 of IPC is concerned even in the event if the offence is not made out under Section 307 of IPC, the Courts have all the rights to convert the said offence to that of a lesser offence which would be made out at the time of the final adjudication of the case.

11. As far as the contentions of the Counsel for the Applicants that there was also a counter-case and also the fact that there were injuries sustained by the Complainant party, that also are all matter of fact which would be adjudicated upon by the Trial Court after the trial is concluded. These facts cannot be looked into at the stage where there is a *prima facie* material available for framing of charge.

12. So far as framing of charge is concerned all that is required is that whether there is sufficient material available in the case diary with which the charge has been framed, which in the instant case this Court has no hesitation that *prima facie* material is available in the charge-sheet for the same.

13. In view of the above facts and circumstances, the revision petition deserves to be and is accordingly dismissed. No costs.

Sd/-
(P. Sam Koshy)
Judge