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HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 178 of 2017

- Y. K. Solomon @ Yang Keng Lungto Faham Solomon S/o Y.K. Sangma Aged About 38 Years R/o Ningthaupam Senapati, Manipur. **--- Petitioner**

Versus

- State of Chhattisgarh through Station House Officer, Police Station Ambikapur, District- Surguja, Chhattisgarh. **--- Respondent**

For the applicant : Mr. Amarnath Pandey, Advocate
For the State : Mr. Anupam Dubey, Dy. G.A.

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

18.08.2017

1. This revision is against the order dated 07.11.2016 passed by the learned Second Additional Sessions Judge, Ambikapur, District Sarguja (C.G) whereby the charges have been framed against the petitioner u/ss 294, 506-B & 302 read with section 34 of IPC.
2. According to the prosecution, the applicant is working as Inspector, Central Reserve Police Force and on 01.07.2015, he had come for attending anti naxal training at village Parsa and the said training was scheduled for 7 weeks. On the date of incident, they came out to Ambikapur from the training center on getting out-pass and while purchasing fruits at a fruit shop, the incident took place. It is alleged that on being pointed out by deceased Sanjay Singh that co-accused Rajendra Singh one of the CRPF personnel kept liquor bottle in his pocket, the applicant and co-accused

Rajendra Singh became enraged and started assaulting the deceased with leg boots and struck him on the ground and thereafter left him at the place while the deceased was injured. The deceased was admitted to hospital and ultimately on 11.10.2015 the deceased died. After filing of charge sheet, the learned court below framed the charges u/ss 294, 506-II, 302/34 of IPC.

3. Learned counsel for the applicant submits that in the facts of this case the offence u/s 302 IPC is not made out, it will fall u/s 302 Part II of general exception of Section 300 IPC. It is further contended that the date of incident is of 02.08.2015 and initially the deceased was admitted to the hospital at Ambikapur and thereafter at *Banaras* and ultimately he was discharged on his own request. Therefore, the deceased himself has invited the grim situation. It is further submitted that apart from the head injury, the deceased was also suffering from liver problems which was the reason for cause of death and the circumstances in which the incident happened, there was no *mensrea* on the part of the applicant to cause the death, therefore, the charges should be suitably amended.

4. Per contra, learned State Counsel opposes the submission.

5. The copy of the charge sheet which is filed along-with the petition would show that the FIR was lodged on 08.08.2015 by Sanjay Singh (the deceased) for an incident happened on 02.08. 2015 wherein it is stated that the applicant along-with co-accused Rajendra Singh while passing through the road in a drunken condition came to a fruit shop for purchasing fruits. At that time co-accused Rajendra Singh

was carrying liquor bottle in his pant pocket. Deceased Sanjay Singh has pointed out that why the liquor was kept, on which one of the accused i.e., Rajendra Singh got enraged and both the applicant and co-accused started assaulting the deceased by boots and struck him on the ground. The deceased fell down on the floor and sustained grievous injuries on the head and other parts because of the assault made by the applicant and other accused by way of boot kicks. Subsequently he was admitted to the hospital and died on 11.10.2015. As per the postmortem report, the cause of death was due to head injury and also multiple pathology problem which would have contributed because of complication of head injury.

6. The statement of Sanjay, the deceased, is also on record. He stated that when he reached to Shiv Fruit vendor, where 3 CRPF personnel were purchasing the fruits. He observed that one of the CRPF personnel was carrying liquor bottle in his pocket. On being asked by the deceased that liquor was kept in the pocket, one of the CRPF personnel raised dispute whereas the other accused i.e., the applicant and co-accused got enraged and abused him and threw him on the floor and started beating by kicks of boot worn by them and also extended threat to his life. The same fact is also supported by other witnesses.

7. The scope of interference and exercise of jurisdiction under Section 397 of Cr.P.C. was reiterated by their Lordship in case of ***State of Rajasthan v. Fatehkaran Mehdu***, reported in ***AIR 2017 SC 796***. It is stated that at the stage of framing of a charge, the Court is concerned not with the

proof of the allegation rather it has to focus on the material and form an opinion whether there is strong suspicion that the accused has committed an offence, which if put to trial, could prove his guilt. The framing of charge is not a stage, at which stage final test of guilt is to be applied.

8. Further considering the statement of deceased Sanjay Singh wherein he has stated that while he was being kicked by boots threat was also extended to kill him by life. Therefore, whether the mensrea was present at the time of incident is to be adjudged during the course of trial. Further as per section 105 of the Evidence Act, the burden of proof that the case of accused comes within the exception of IPC can be arrived at after the entire evidence is led on this behalf. At this stage it will be premature to hold that the case would fall under the exception of section 300 IPC. I do not find any merit in this revision and accordingly it is dismissed.

Sd/-

GOUTAM BHADURI
JUDGE

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