

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CR.R. No. 436 of 2017

Kuldeep, S/o. Kapil Narsingh, aged about 32 years, R/o. Gujrati Para, Police Station – Kotwali, District – Raigarh (C.G.)

---- Applicant

Versus

State of Chhattisgarh, through : the Station House Officer, Police Station – Kotwali, Raigarh, District – Raigarh (C.G.)

---- Respondent

For Applicant	: Mr. U.K.S. Chandel, Advocate
For Respondent/State	: Mr. S.R.J. Jaiswal, Panel Lawyer

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

28/04/2017

1. Challenge in this revision petition is to the order dated 16.03.2017 and charge framed in Sessions Trial No.28/2017, by the learned Fifth Additional Sessions Judge, Raigarh (C.G.), whereby charges have been framed against the applicant U/s. 148, 294, 506-B, 323, 307/149 of Indian Penal Code.
2. Learned counsel for the applicant would submit that on trivial issue, the dispute started and the assault is only by hand and fist and there was no intention to kill and therefore, in the background of this case, the charges framed under Section 307 of I.P.C. is not made out as only tenderness was reported by the doctor and only by catching hold of neck, the case U/s. 307 would not make out and the case is of under Section 323 of I.P.C. and there was no intention to commit the offence.

3. Perused the copy of the charge-sheet, which is placed on record and also the statement of Pratish Singh wherein he has stated that by discharging crackers, the incident started. Thereafter, the applicant along with other came there and they are holding club in their hands and firstly they abused and subsequently, stated that he should be killed and extended threat, thereafter, one of them Lallu @ Ajit caught hold of him and threw him and started pressing his neck having known the fact that other person Banti Tiwari, Nikhil Singh and others is came there and saved him. It is stated that had there been no intervention, the victim would have been killed. Perusal of the statement of Ashish Sahu also shows that the applicant along with others have stated that they killed the victim by life and thereafter, assault was made.
4. At this stage the Court can not ignore the statement of witnesses, wherein they have stated that the applicant and the other accused jointly uttered that the victim should be killed. By taking into ancillary facts, it can not be inferred at this stage what was playing in the mind of the applicant it is to be inferred the word which is stated by them at the time of incident.
5. The scope of interference and exercise of jurisdiction under Section 397 of Cr.P.C. was again reiterated by their Lordship in case of ***State of Rajasthan Vs. Fatehkaran Mehdu***¹. It is stated that framing of 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

1 AIR 2017 SC 796

charge is not a stage, at which stage final test of guilt is to be applied. Considering the statement by the victim, the Court can not draw inference that there was no intention to kill.

6. Therefore, taking into account the argument, which has been advanced by the learned counsel for the applicant, can not be accepted as the Court has to see only prima-facie where there is ground to presume that the accused had committed the offence or not.
7. Reading the contents of FIR would go to show that strong suspicion about existence of facts constituting offence is made out at this stage.
8. Therefore, in view of the forgoing discussion I am not inclined to interfere with the order of framing of charge at this stage. Accordingly, the criminal revision is dismissed. It is made clear that the Court has not expressed any opinion on merits about admissibility or to draw inference of any accusation and interpretation of statement or evidence.

Sd/-
(Goutam Bhaduri)
Judge