

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 1035 of 2019

Rakesh Ratrey S/o Seta Ram Rathrey Aged About 39 Years R/o Jute Mill, Labour Colony, Raigarh, District Raigarh, Chhattisgarh.

---- Applicant

Versus

State Of Chhattisgarh Through Station House Officer, Police Station Tamnar, District Raigarh, Chhattisgarh.

---- Respondent

For Applicant	: Shri Ashutosh Mishra, Advocate.
For Respondent/ State	: Shri Arijit Tiwari, P.L.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

27-02-2020

Heard.

1. This revision petition has been brought challenging the order framing charge dated 24.4.2019 by the Learned Special Judge, Raigarh in Special Case No. 38 of 2018, by which the charges have been framed against the applicant under Section 307, 323, 294, 506B, 147, 148 and 149 of the IPC and Sections 3(1)(r), 3(1)(s) and 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.
2. It is submitted by counsel for the applicant that the applicant has been falsely implicated in this case. His name has not been entered in the First Information Report and also the statement of the witnesses does not disclose regarding any specific act of the applicant. It was after 8 to 10 months from the date of incident, the name of the applicant has appeared for the first time in the memorandum statement given by the co-accused persons, which again shows development and concoction in

the case. There is nothing in the evidence present or in the charge-sheet to show that the applicant has in any manner participated in the commission of offences for which he has been charged. It is also submitted that there had been no reason to frame charge under Section 307 of the IPC because none of the victims have suffered any grievous or fatal injury. Hence, it is prayed that the order framing charge be set aside and if the Court is not convinced to set aside all the charges, in that case the charge under Section 307 of the IPC may be set aside.

3. Learned State counsel opposes the submissions made in this respect. It is submitted that the FIR itself is not an encyclopedia of the case. Some facts were revealed at the time of lodging FIR and the name of this applicant appeared during the course of investigation, showing his participation and commission of all the offences. Therefore, *prima facie* there is evidence present showing that the applicant has participated in the commission of the offences including the charge under Section 307 of the IPC. It is further submitted that the doctor had opined that the injury may have become fatal if it had not been treated immediately. Hence, it shows that the framing of charge under Section 307 of the IPC is not an error committed by the Court below. Therefore, the revision and the prayer be dismissed.
4. Heard counsel for both the parties and perused the documents present on record.
5. Although the FIR does not reflect the name of the applicant but in the statement of the witnesses, the name of the applicant has appeared with prominence, that he had been one of the participant in the commission of various offences. Therefore, there being presence of statement of the witnesses and the case of the applicant cannot be singled-out at present. The veracity of the statement of the witnesses

can be just only at the stage of final judgment of the trial. The delay, omission, contradiction etc cannot be taken into consideration at the stage of framing of charge. Even a strong suspicion is enough for framing of charge and there is a reason to hold on. On the basis of *prima facie* evidence present, the applicant is liable to be charged and prosecuted.

6. Regarding the framing of charge under Section 307 of the IPC, the submissions made by the applicant/ counsel needs consideration. It is true that according to the medical report present in the charge-sheet, none of the victims have suffered any grievous injury or it can be regarded as fatal. Now turning to the statement given by the witnesses, it would be seen that the incident had been that the complainant party was harvesting the field due to which the applicant and other co-accused persons objected and the assault by the applicant's party begun.
7. From the statement of the witnesses, it cannot be gathered that the applicant and others had intention to cause death to any of the victims. The witnesses have grievance that the applicant and others did marpeet with them. Therefore, the evidence regarding the intention as it is defined under Section 300 of the IPC is found to be absent in this case. The opinion of the doctor that if the victims have not been treated immediately then they may have suffered death is just an opinion and the opinion is needed to be corroborated with the other facts. Therefore, I am of this view that the framing of charge under Section 307 of the IPC does not appear to be proper, correct and legal. Hence, this revision petition is allowed with modification that the charge framed against the applicant under Section 307 of the IPC is set aside. However, the charges framed against the applicant under other provisions of IPC and

under SC/ ST Atrocities Act are upheld.

8. Accordingly, this revision petition is disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Nimmi