

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CR.R. No. 1513 of 2019

1. Mukesh Kumar Patel, S/o. Uderam Patel, Aged About 43 Years,
 2. Ajay Patel, S/o. Uderam Patel, Aged About 30 Years,
- Both are R/o. Bramhanpara, Ward No. 23, Dongargarh, P.S. and Tahsil Dongargarh, District Rajnandgaon, Chhattisgarh.

---- Applicants

Versus

State of Chhattisgarh, Through : Police Station Dongargarh, District Rajnandgaon, Chhattisgarh.

-----Respondent

For Applicant : Mr. Vishnu Koshta & Mr. Shobhit Koshta,
Advocates

For Respondent : Mr. Priyanshu Gupta, Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

27/01/2020

1. This criminal revision has been brought challenging the order of framing charge dated 21.11.2019, passed by the learned Additional Sessions Judge, Dongargarh, District – Rajnandgaon (C.G.) in Sessions Trial No.14/2019 for the offence under Section 302 of the Indian Penal Code.
2. It is submitted by the learned counsel for the applicant that the applicant is being prosecuted by the respondent in Crime No.485 of 2019, which is registered as Sessions Case No.14 of 2019, before the Additional Sessions Judge, Dongargarh, District – Rajnandgaon (C.G.). Charge-sheet has been filed for commission of offence

under Section 294, 323, 506, 34 & 302 of the Indian Penal Code. Infact there is no material present in the whole charge-sheet to show that the applicants have committed any offence of murder. The incident had been this that on 13.09.2019, these applicants on account of some dispute, firstly abused the deceased - Sandeep Yadav and then by threatening him to cause his death, assaulted him with rope used for tying animals and hands and fists causing simple injuries to him. Sandeep Yadav was taken to hospital for medical examination and during the course of treatment he died.

3. It is further submitted that in the medical examination report, the doctor has opined that no external injury was found on the body of Sandeep Yadav. However, he has taken note of complaint of severe chest pain to the deceased. After the death of the deceased, postmortem was conducted on 14.09.2019 and again in the postmortem report, there is no mention of any external injury over his body. Therefore, there is no evidence of any assault made upon him. The doctor conducting postmortem has very clearly opined that the cause of death of the deceased was sudden cardio respiratory failure due to shock. Therefore, it is a case of natural death of the deceased for which, the act of the applicants assaulting him and causing simple hurt can not be made responsible.
4. It is also submitted that the statement of the witnesses that have been recorded in the investigation mentioned about the *Marpit* that was done by the applicants to the deceased at the time of incident with rope and with hands & fists. Therefore, this evidence is not enough to make out a prima-facie case that the applicants were

responsible for the death of the deceased. Hence, the framing of charge against the applicants is erroneous and illegal. Reliance has been placed on the judgment of High Court of M.P. in case of ***Rajjak Qureshi Vs. The State of Madhya Pradesh***, reported in ***2013 SCC OnLine MP 1930***, in which the Single Bench of the Court has held that in the facts of the case do not constitute the commission of offence under Section 302 of the Indian Penal Code. Framing of charge under Section 302 of I.P.C. shall be illegal. Hence, it is prayed that revision petition be allowed and the applicants be discharged from the charges under Section 302 of the Indian Penal Code.

5. State counsel opposes the petition and the submission made in this respect. It is submitted that there is enough evidence present in the charge-sheet to make out that the applicants were the persons, who are responsible for the death of the deceased. As the death of the deceased occurred immediately after the incident that took place, in which, the applicants had assaulted the deceased. Hence, prima-facie case is made out for framing charge against the applicants. Therefore, the revision petition be dismissed.
6. I have heard the learned counsel for the parties and perused the documents placed on record.
7. On perusal of the documents of charge-sheet that have been filed along with the petition, it is found that eye-witness of the spot have made statement regarding the incident, that the applicants assaulted the deceased with rope and also used hands & fists upon his body. There is no statement of any of the witnesses that any

visible injury was caused to the deceased Sandeep Yadav. After the information to the police on the same day, the deceased was examined by the doctor of C.H.C., Dongargarh, who has very clearly mentioned in the report, that there is no external injury on the body of the deceased. Further the deceased was admitted in the hospital because he was complaining of severe chest pain and subsequently the deceased died in the hospital during the course of treatment. On perusal of the postmortem report, it is found that again the doctor conducting autopsy has remarked that there is no external injury or mark over the body of the deceased. There is no other significant finding recorded except that clots of blood were found inside the heart of the deceased. Viscera was reserved for further investigation. The examining doctor opined very clearly that cause of death was sudden cardio respiratory failure. Therefore, doctor has not opined that the death of the deceased was homicidal in nature.

8. On perusal of the whole material present in the charge-sheet, I am of this view that neither there is any evidence to show that the applicants have caused any fatal injuries to the deceased and neither there is evidence present to show that death of the deceased had been homicidal in nature. The finding of the doctor is this that the death of the deceased had been due to sudden cardio respiratory failure, which is a cause, which occurs naturally and it can not be connected with the assault that was made on the deceased sometime before his death by the applicants. Apart from that, the applicants had not used any dangerous weapon to assault

the deceased. They have used only rope, hands and fists on the basis of which it can be regarded that the applicants have intention only to cause simple injuries to the deceased. Therefore, whatever i.e. present in the charge-sheet, does not connect the death of the deceased with the incident that has taken place, in which the applicants had acted by way of abusing threatening and assaulting the deceased for causing simple injuries to him. Hence, on the basis of this discussion made hereinabove, this Court is of the view that there is no prima-facie case for framing charge under Section 302 of the Indian Penal Code against the applicants. Hence, the order of framing charge under Section 302 of the Indian Penal Code against the applicants by the trial Court appears to be erroneous and illegal, which is required to be interfered with.

9. Accordingly, the revision petition is allowed. The impugned order of framing charge dated 21.11.2019, passed by the learned Additional Sessions Judge, Dongargarh, District – Rajnandgaon (C.G.) in Sessions Trial No.14/2019 for the offence under Section 302 of the Indian Penal Code is set-aside. However, the applicants shall be tried for the remaining offences for which they have been charged by the Court having jurisdiction. Learned Sessions Judge shall take appropriate steps for sending the case to the appropriate Court.
10. Accordingly, the petition is disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge