

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.67 of 2015

Arising Out of PS.Case No. -53 Year- 2013 Thana -KUNDWACHAINPUR District-
EASTCHAMPARAN(MOTIHARI)

- =====
1. Anaitullah, son of Sk. Nek Mohammad
 2. Tabrej Alam, son of Sk. Mukhtar
 3. Sk. Aliyas @ Sk. Iliyash, sonof Sk. Subahan
 4. Ansarul Haque
 5. Mahaboob Alam

Both sons of Sk. Fahim

6. Sk. Bhikhari, son of Sk. Salamat
7. Mumtaz Alam @ Lalu, son of Sk. Iliyas
8. Jikarullah, son of Sk. Sitar
9. Musir Alam @ Muser Alam, son of Sk. Rauph

All residents of Village Hasanpur, PS Kundwa, Chainpur, District East
Champaran

.... Petitioners

Versus

The State of Bihar

.... Opposite Party

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Appearance :

For the Petitioners : M/s. Binay Kant Mani Tripathi,A K Mishra
Advocates

For the State : Dr. Mayanand Jha, APP.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 07-09-2015

In the present application filed under Section 482 of the
Code of Criminal Procedure, the petitioners seek quashing of the
order dated 18.9.2014 passed by the learned 3rd Additional District
and Sessions Judge, Motihari, in Sessions Trial No. 505 of 2014,

whereby the application of the petitioners filed under Section 228 Cr.P.C. for remitting the case back to the court of Magistrate as no offence under section 307 of the Indian Penal Code was made out, has been rejected.

The prosecution case as alleged in the FIR is that with consent of the parties, measurement of the land was being done on 6.6.2013 by the informant and information in this regard was given by the informant to the petitioners. However, the petitioners again called the *Amin* on 8.6.2013 and wanted re-measurement of the disputed land. On coming to know about the same, when the informant went there, the petitioners started abusing him and on protest, the petitioners assaulted him with *lathi*, *danda*, as a result of which he sustained severe injuries on his head and other parts of the body. On the basis of the aforesaid allegation, Kundwa Chainpur PS Case No. 53 of 2013 dated 8.6.2013 was registered under Sections 147, 148, 149, 341, 323 and 324 of the Indian Penal Code. On completion of the investigation, the Police submitted charge-sheet against the petitioners under Sections 147, 148, 341, 323, 334, 307 and 504 IPC vide Charge-Sheet No.65/13 dated 12.7.2013. The learned Magistrate took cognizance of the offence and after complying with the provisions of Section 207 Cr.P.C., he committed the case to the court of Sessions for trial.

It is submitted by learned counsel for the petitioners that at the stage of framing of charge an application under Section 228 Cr.P.C. was filed on behalf of the petitioners before the trial court in which it was contended that ingredients of the offence punishable under Section 307 IPC are not attracted to the facts of the present case and, as such, the matter may be remitted back to the court of Magistrate after framing charge in accordance with the provision

prescribed under Section 228 Cr.P.C. However, the said prayer of the petitioners was rejected by the court below vide impugned order dated 18.9.2014.

It is contended that the impugned order dated 18.9.2014 is not in accordance with law. The accused persons, who were 9 in number, were armed with *lathi*, *danda*, as per the prosecution case, at the time of occurrence. There is no allegation in the FIR that they intended to kill the informant of the case. In course of investigation, the informant has tried to improve the case of the prosecution by saying that he had sustained injuries caused by *daab* (a sharp cutting weapon), on his head. The story of *daab* has been introduced for the first time during investigation. He contends that the injury report issued by the doctor would make it evident that the informant had sustained only three injuries, which are as follows –

- (i) Incised wound on skull on posterior part of skull of size 2" x 1/4" skin deep;
- (ii) Abrasion on surface of right arm measuring 3" x 1";
- and
- (iii) Multiple bruises, 25 in number, varying in size from 2" to 6" x 1" broad each on back mainly on right side.

He has submitted that the doctor who examined the informant found all the injuries to be simple in nature.

Learned counsel for the State has contested the matter. He has submitted that there is no illegality in the order passed by the court below. He has submitted that for constituting the offence punishable under Section 307 IPC, an injury caused to the injured is immaterial. It is the intention of the accused which would be the most relevant factor in order to determine whether or not an offence

committed by an accused would attract ingredients of Section 307 IPC. In the present case, the accused persons have caused altogether 27 injuries on the person of the informant and hence it cannot be said that they did not intend to kill the informant.

I have heard respective counsel for the parties and perused the record including the case diary. Apparently a case was registered for the offences which were triable by a court of Magistrate. However, after completing investigation, charge-sheet was submitted under Section 307 IPC also. It is well settled that to constitute an offence under this Section, it has to be seen whether the act irrespective of result was done with an intention or knowledge and under the circumstances as mentioned therein and not the consequences of the actual act done for the purpose of carrying out that intention. The intention may be inferred from the nature of injury, if any, and other circumstances. Some relevant facts that constitute an offence under Section 307 IPC are as follows –

- (a) Nature of weapon used;
- (b) The place where injuries were inflicted;
- (c) Nature of injuries caused; and
- (d) Opportunity available to the accused.

In the present case, it would be evident that the accused persons were 9 in number. They were armed with dangerous weapons, like *lathi*, *danda*, *daab*, etc. The informant sustained injuries like bruises and abrasion. All the injuries, except one on the head were on non-vital parts of the body, such as arm and back. All the injuries were simple in nature. In my view, if a large number of accused having dangerous weapons in their hands have inflicted minor injuries, and that too on non-vital parts of the body, then by no stretch of imagination, it can be inferred that the ingredients of

Section 307 IPC are attracted.

In that view of the matter, I set aside the impugned order dated 18.9.2014 passed by the learned 3rd Additional District & Sessions Judge, Motihari, in Sessions Trial No. 505 of 2014. The learned 3rd Additional District & Sessions Judge, Motihari is directed to frame charge against the accused in the light of the provision prescribed under Section 228(1)(a) Cr.P.C. keeping into mind the observations made hereinabove and remit the matter back to the court of Magistrate for trial.

(Ashwani Kumar Singh, J)

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