

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No. 11105 of 2013

Arising out of P. S. Case No. - 56 Year - 2011 Thana - SIDHWALIA District -

- =====
1. Alagu Sah, S/O Bhikhari Sah, Resident of Village - Surhiya, P.S. - Sidhwalia, District - Gopalganj
 2. Sita Ram Sah, S/O Late Babu Lal Sah, Resident of Village - Surhiya, P.S. - Sidhwalia, District - Gopalganj

.... Petitioners

Versus

1. The State of Bihar

.... Opposite Party

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CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD
ORAL ORDER

3 25-06-2015

Heard.

This is a petition for quashing the order dated 23.01.2013 passed by the learned 4th Additional District Judge, Gopalganj in S. Tr. No. 276 of 2012 arising out of Sidhwalia P.S. Case No. 56 of 2011 rejecting the petition filed by the petitioners under Section 228 of the Cr.P.C. for charging them under lesser offence than Section 307 of the Indian Penal Code as Section 307 of the Indian Penal Code is not made out.

There is a case and counter case. The allegation is of assault by spade causing injury on the face of the brother of the informant. The counter case has been lodged under Section 307 and allied Sections of the Indian Penal Code but subsequently Section 302 of the Indian Penal Code was added. The petition filed under Section 228 of the Cr.P.C. for framing charge under lesser Section than Section 307 of the Indian Penal Code has been rejected.



However, to attract a case for an offence the requirement is to prove that there was intention to kill and the consideration is the weapon used on the part of the body selected and the impact by which the assault made and the nature of injury. However, the injury may be immaterial in some cases if the intention is proved and even if there is no injury the offence under Section 307 of the Indian Penal Code is made out. Moreover, the matrix applied for framing of charge and the matrix applied at the fag end of the trial is quite different. A charge can be framed even on strong suspicion but the conviction at the fag end of trial shall not be recorded on suspicion, how strong the suspicion may be, but conviction can only be recorded on cogent, reliable and unimpeachable evidence which is well settled principles of criminal jurisprudence.

Hence, applying the principle here, the weapon used is spade, the part of the body chosen is alleged to be head though the injury alleged on the face and there is assault from both sides so on these facts at this stage of framing of charge under Section 307 of the Indian Penal Code cannot be said to suffer from any illegality or irregularity as the consideration for framing of charge is on strong suspicion. The other aspect is that if the charge is found under Section 307 of the Indian Penal Code then at subsequent stage if found proved under lesser Section the conviction or acquittal can be

recorded but if charge is framed under lesser Section and at subsequent stage if it is found that ingredient of offence is under Section 307 of the Indian Penal Code then the case has to be again committed or sent and moreover when there is a case and counter case and in one of the cases the offence is under Section 302 of the Indian Penal Code then both the cases are required to be tried by the same Court and hence, I do not find any merit to interfere with the order impugned. Accordingly, this petition is dismissed.

Kundan

(Gopal Prasad, J.)

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