

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.1300 of 2015

Arising Out of PS.Case No. -37 Year- 2010 Thana -BHAIRABASHTHAN District- MADHUBANI

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1. Ram Nandan Mukhiya Son of Gopi Mukhiya
 2. Mamta Devi W/o Ram Nandan Mukhiya, Both are resident of Village- Kathia Simarwar, PS. Bhairavasthan, Distt. Madhubani

.... Petitioner/s

Versus

1. The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Bimal Kumar (Adv.)
Mr. Jagdish Prasad Singh (Adv.)
For the State : Mr. Jharkhandi Upadhyay (A.P.P.)

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date: 22-09-2015

Heard learned counsel for the petitioners and learned
counsel for the State.

2. By way of filing the present application under Section 482 of the Code of Criminal Procedure, the petitioners seek quashing of the order dated 21.11.2014 passed in Session Trial No. 500 of 2012 arising out of Bhairvasthan P.S. Case No. 37 of 2010 passed by the learned 5th Additional Sessions Judge, Madhubani whereby, the application filed on behalf of the petitioners under Section 228 (1)(a) of the Code of Criminal Procedure has been rejected.

3. The petitioners have been made accused in Bhairavasthan P.S. Case No. 37 of 2010 dated 09.05.2010 registered



under Sections 341, 323, 324, 307, 504 read with 34 of the Indian Penal Code (for short 'IPC'). The F.I.R. was registered on the basis of a written report submitted by one Shyam Mukhiya. It has been stated in the written report that on 08.05.2010 petitioners were uprooting the bricks laid along with the road whereupon the informant forbade them which caused annoyance to the petitioners. It is further stated that on protest having been made by the informant, petitioner no. 1, Ram Nandan Mukhiya started abusing him. He went to his house and came out with a farsa and assaulted on the head of the informant as a result of which he sustained serious injury and fell down. In the mean time, petitioner no. 2 Mamta Devi being armed with Khanti and assaulted him on his elbow. When one Yogendra Mukhiya tried to intervene in order to rescue them, one Gopi Mukhiya and one Bouye Lal Mukhiya assaulted him with Lathi as a result of which he also sustained injury and fell down and thereafter all the four accused persons assaulted them with fists and legs. It is further stated that upon hulla, several people of locality came at the place of occurrence and thereafter, all the accused persons fled away.

4. The police investigated the case and on completion of investigation, chargesheet was submitted in the Court by the Investigating Officer of the case under Sections 341, 323, 307 and 504 read with 34 of the Indian Penal Code against the petitioners pursuant



to which the learned Magistrate took cognizance of the offence and summoned the petitioners and after their appearance, the case was committed to the court of Sessions for trial. At the stage of framing of charge, an application under Section 228 (1) (a) was filed on behalf of the petitioners on the ground that the allegations made in the F.I.R. and the materials collected in course of investigation do not attract the ingredients of offence punishable under Section 307 IPC. After hearing the parties, the trial court has rejected the application vide order dated 21.11.2014 and fixed the case for framing of charge.

5. Learned counsel for the petitioners submits that the ingredients of the offence alleged under Section 307 IPC are completely wanting in the present case. He submits that from the injury reports of the two injured namely Shyam Mukhiya and Yogendra Mukhiya, it would be evident that there was no intention on the part of the petitioners to cause death. He submits that both of them have sustained simple and superficial injuries. According to him even witnesses examined in course of investigation have not stated that the petitioners intended to kill the two injured.

6. On the other hand, learned counsel for the State submits that at the stage of framing of charge, the court would not examine the evidence meticulously. It has to consider whether on the basis of materials available on record, charges can be framed against

the accused or not. He submits that the accused had assaulted Shyam Mukhiya and Yogendra Mukhiya with *farsa, lathi and Khanti* and the injury reports issued by the doctor who examined them would corroborate the oral allegations made by the informant. Hence, ingredients of the offence under Section 307 IPC are clearly attracted in the present case.

7. I have heard learned counsel for the parties, perused the materials available on record and the case diary.

8. The doctor who has examined the informant Shyam Mukhiya and Yogendra Mukhia has issued the injury reports of the two injured on 9th of May, 2010. He noticed only one injury on the person of Shyam Mukhiya, which is as under:

“ Lacerated wound on scalp 2” x ½” .”

9. Similarly, the doctor could notice only one injury on the person of Yogendra Mukhiya, which is as under:

“bruise on left elbow 1” x ½” .”

10. The doctor has opined that the injuries found on the person of the two injured were simple in nature.

11. Apparently, the allegations made in the F.I.R. seem to be exaggerated. Though there is allegation that the petitioners being armed with *farsa, lathi and khanti* assaulted upon the informant Shyam Mahto, the doctor who examined him could find only one

simple and superficial injury on his head. Similarly, though, there is allegation against accused Gopi Mukhiya and Bouye Lal Mukhiya to have indiscriminately assaulted with Lathi on Yogendra Mukhiya but the doctor could notice only one simple and superficial injury on his elbow.

12. I have also perused the statements of witnesses recorded under Section 161(3) Cr.P.C. in Paragraph Nos. 10, 11, 12, 14 and 15 of the case diary noticed by the trial Court in its order dated 9.5.2000. I find that they have not stated that the petitioners ever intended to kill the two injured of the present case.

13. It is true that in order to constitute an offence under Section 307 IPC, it is not essential that bodily injury capable of causing death should have been inflicted. It is sufficient if the act, irrespective of the result, was done with an intention of knowledge or under circumstances indicated in Section 307 IPC. In order to find out whether or not an offence alleged would attract the ingredients of Section 307 IPC following facts would be relevant:

- (i) Nature of weapon used;
- (ii) The place where injuries were inflicted;
- (iii) Nature of injury caused; and
- (iv) Opportunity available to the accused.

14. In the present case, it would be evident that the

accused persons were armed with weapons like *lathi*, *farsa* and *khanti*. They had sufficient opportunity to repeat the assault if they intended to kill the two injured of the case, but only one simple and superficial injury was caused to each of the injured. If the accused having dangerous weapon inflicts a minor injury and there is no repetition of blow having ample opportunity, in my opinion, the ingredients of offence under Section 307 IPC would not be attracted.

15. In that view of the matter, the impugned order passed by the court below cannot be sustained. Accordingly, the order dated 21.11.2014 passed by the learned Additional Sessions Judge 5th, Madhubani in Session Trial No. 500 of 2012 is set aside.

16. The learned Trial Judge is directed to frame the charges against the accused persons under the other sections of the IPC which all are triable by the Court of Magistrate and transfer the case for trial to the Court of Magistrate.

17. The application stands allowed.

(Ashwani Kumar Singh, J.)

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