

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.593 of 2015

Arising Out of PS.Case No. -40 Year- 2013 Thana -KAUAKOL District- NAWADA

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Akhilesh Singh son of Late Shyamdeo Singh, resident of village- Charaul, P.S. Rupao, District Nawada

.... Petitioner

Versus

1. The State of Bihar
2. Gayatri Devi, wife of Janardan Singh, resident of village- Charaul, P.S. Rupao, District Nawada

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Deepak Kumar, Advocate
For the Opposite Party/s : Mr. Jharkhandi Upadhyay, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 06-10-2015

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

2. The present application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 22.10.2014, passed by the learned Ad hoc Additional Sessions Judge-II, Nawada in Sessions Trial No. 238 of 2014/81 of 2014, arising out of Kawakole P.S. Case No. 40 of 2013, whereby the learned trial Judge has rejected the application filed on behalf of the petitioner under Section 228 (1) (a) of the Code of Criminal Procedure (for short 'Cr.P.C.').

3. The short facts of the case, as set out in the fardbeyan



of opposite party no. 2, Gayatri Devi, recorded on 30th March, 2013 at 17:25 hours is that on 29.03.2013 at 7 P.M. while she was sitting in her house along with other family members petitioner along with Pramod Singh, Arun Singh, Saroj Singh and Dharmendra Kumar came there and started abusing her. On being objected, all are said to have told her that her son is earning huge money in brick-kiln business and thus demanded Rs. 20,000/-. On being refused, the petitioner is said to have assaulted over her head by means of Garasa due to which injury was caused and Pramod Singh is said to have caught hold of her neck with an intention to kill her. Thereafter, all the accused are said to have assaulted the informant by means of lathi, danda etc.

4. The motive behind the occurrence as disclosed in the fardbeyan is that the son of the informant as well as the accused persons are in the same business. It is further alleged that while her daughter-in-law tried to save her then all are said to have snatched gold chain from her neck.

5. On the basis of aforesaid fardbeyan, a formal First Information Report was drawn up on 2nd April, 2013 and the present case was registered under Sections 147, 148, 341, 323, 324, 379, 307 and 385 I.P.C.

6. After examination of the witnesses and the materials

available on record, the Police found the case to be true only under Sections 323, 341 and 502/34 I.P.C. against all the accused persons including the petitioner and accordingly chargesheet was submitted in the Court of the Chief Judicial Magistrate, Nawada.

7. Taking into consideration, the materials available on record, the learned Chief Judicial Magistrate, Nawada differed with the Police report and took cognizance of the offence inter-alia under Section 307 I.P.C. In view of the fact that Section 307 I.P.C. is exclusively triable by the court of Sessions, the case was committed to the court of Sessions for trial.

8. At the stage of framing of charge, an application was filed on behalf of the petitioner for discharge on the ground that even if the entire materials collected during course of investigation are taken to be true, no offence punishable under Section 307 I.P.C. is made out. However, after hearing the parties, the learned Ad hoc Additional Sessions Judge-II, Nawada rejected the application filed on behalf of the petitioner vide order dated 22.10.2014 which is under challenge before this Court in the present application.

9. It is contended that even if the entire allegations made in the First Information Report are taken to be true at its face value no offence under Section 307 of the Indian Penal Code (for short 'I.P.C.') would be made out. It has been further submitted that

even during investigation witnesses have not supported the allegation that the petitioner ever intended to kill the informant of the case. Referring to Para 9 of the case diary, it has been submitted that the husband of the informant, namely, Janardan Singh has contended in his statement recorded under Section 161(3) Cr.P.C. that his wife was assaulted by the petitioner and others with fists and legs.

10. After going through the case diary, learned counsel for the State concedes that the husband of the informant has stated in his statement under Section 161(3) Cr.P.C. that the accused persons had assaulted his wife with fists, slaps and legs. He further submits that the other witnesses examined during the investigation have stated that there was free fight between the parties in which the informant had sustained injuries. The Doctor, who had examined the informant on 30th March, 2013 had found the injuries to be simple in nature caused by hard and blunt substance.

11. I have heard Mr. Gopal Prasad Roy, learned counsel for the petitioner and Mr. Jharkhandi Upadhyay, learned Additional Public Prosecutor for the State.

12. The short point for consideration in the present application is whether or not the allegations made in the First Information Report and the materials collected in course of investigation would constitute an offence punishable under Section

307 I.P.C. Section 307 I.P.C. reads as under:-

“307. **Attempt to murder.-** Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, and if hurt is caused to any person by act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned.”

13. From a bare perusal of the provision prescribed under Section 307 I.P.C., it would be evident that to constitute an offence under Section 307 I.P.C., the intention or knowledge must be such as is necessary to constitute murder. Without this, there can be no prosecution for the offence under Section 307 I.P.C.

14. In the case of *State of Maharashtra v. Kashirao and Ors. reported in (2003) 10 SCC 434*, the Supreme Court opined that in order to constitute an offence under Section 307 IPC following ingredients would be necessary:-

- “(i) that the death of a human being was attempted;
- (ii) that such death was attempted to be caused by, or in consequence of the act of the

accused; and

- (iii) that such act was done with the intention of causing death; or that it was done with the intention of causing such bodily injury as: (a) the accused knew to be likely to cause death; or (b) was sufficient in the ordinary course of nature to cause death, or that the accused attempted to cause death by doing an act known to him to be so imminently dangerous that it must in all probability cause (a) death, or (b) such bodily injury as is likely to cause death, the accused having no excuse for incurring the risk of causing such death or injury.”

15. The intention or knowledge has to be deduced or inferred from the facts. Some relevant facts are as follows:-

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

16. If the accused having a dangerous weapon inflicts a minor injury, then the ingredient of Section 307 of the Indian Penal Code cannot be held to be attracted. In the present case, it is found that though altogether five persons being variously armed with

Garasa, lathi and danda are alleged to have assaulted the informant indiscriminately, the Doctor, who examined the informant found only two simple and superficial injuries on her person, which are as under:-

“1. Lacerated wound on right parietal region

1 ½” x ¼” scalp deep.

2. Lacerated wound on right leg on the

person of the informant at 1”x ½” x ¼”.”

17. Considering the materials available on record, in my opinion, ingredients necessary to constitute an offence under Section 307 of the Indian Penal Code are wanting in the present case. In that view of the matter, the impugned order dated 22.10.2014, passed by the learned Ad hoc Additional Sessions Judge-II, Nawada in Sessions Trial No. 238 of 2014/81 of 2014, arising out of Kawakole P.S. Case No. 40 of 2013, is set aside. Learned Ad hoc Additional Sessions Judge-II, Nawada is directed to frame charges for the other offences against the accused persons and thereafter, transfer the case for trial to the Court of jurisdictional Magistrate.

18. The application stands allowed.

(Ashwani Kumar Singh, J)

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