

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.26168 of 2013

Arising Out of PS.Case No. -184 Year- 2005 Thana -TURKAULIYA District-
EASTCHAMPARAN(MOTIHARI)

- =====
1. Gauri Shankar Pandey S/O Late Sitaram Pandey Resident Of Village- Shankar Saraiya, P.S- Turkauliya, District- East Champaran.
 2. Prem Shankar Pandey S/O Late Kamal Pandey Resident Of Village- Shankar Saraiya, P.S- Turkauliya, District- East Champaran.
 3. Sanjeet Pandey S/O Gauri Shankar Pandey Resident Of Village- Shankar Saraiya, P.S- Turkauliya, District- East Champaran.
 4. Jhunu Pandey S/O Prem Shankar Pandey Resident Of Village- Shankar Saraiya, P.S- Turkauliya, District- East Champaran.

.... Petitioner/s

Versus

1. The State Of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Vijay Shankar Srivastava, -Advocate

For the Opposite Party/s : Mr. Md. Arif (APP)

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

2 20-06-2016 Heard learned counsel for the petitioners as well as
learned APP.

Petitioners have assailed order dated 12.03.2013
passed by 4th Additional District & Sessions Judge, East
Champaran, Motihari in Sessions Trial No. 889/2006 whereby and
whereunder prayer made on behalf of petitioners under Section
228(1) of the Cr.P.C. has been rejected.

It has fairly been submitted on behalf of petitioners that
though under Annexure-2, it has not been raised at the end of
petitioners that even considering the prosecution case in its
entirety, did not satisfy the ingredients of Section 307 of the IPC



because of the fact that the allegation whatever attributed was not with an intention or knowledge to commit murder of prosecution party. In absence thereof, the simple incident of assault by means of sharp cutting weapon or blunt weapon will attract other Section of penal code whereupon the trial was not at all exclusively triable by the court of sessions which, the learned lower court also failed to acknowledge.

Learned APP opposed the prayer and submitted that the manner wherein petitioners/accused persons brandished *Farsa* and *lathi* causing injuries to so many persons is indicative of the fact that they have assaulted the prosecution party with an intention to commit murder and for that, the learned lower court rightly rejected the prayer.

Gone through the order impugned. From the order, it is apparent that learned lower court had done much exercise over dealing with the submissions made on behalf of petitioners over Medical Board. The learned lower court should have taken into consideration the manner of occurrence whereupon should have inferred whether there should be applicability of Section 307 IPC or other relevant provisions of Indian Penal Code which, if applied, ousted the jurisdiction of court of sessions.

Accordingly, the order impugned is set aside. Petition is

allowed.

The matter is remitted back to the learned lower court to proceed afresh over the issue taking into account the material available on the record.

(Aditya Kumar Trivedi, J)

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