

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.25922 of 2013

Arising Out of PS.Case No. -41 Year- 2008 Thana -TURKAULIYA District-
EASTCHAMPARAN(MOTIHARI)

=====

Banarsi Bhagat @ Banarsi Prasad, S/O Late Ramjee Bhagat, Resident Of Chailaha
Tola, Amwa, Police Station Banjariya, District East Champaran.

.... Petitioner

Versus

The State of Bihar

.... Opposite Party

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Appearance :

For the Petitioner : Mr.

For the Opposite Party : Mr.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 19-05-2016

Heard learned counsel for the petitioner as well as
learned A.P.P. for the State.

Petitioner, who is an accused in Sessions Trial no.
230/09 arising out of Turkaulia Banjariya PS case no. 41/08, has
challenged the order dated 07.03.2013 passed by the 4th Additional
Sessions Judge, East Champaran at Motihari under Section 228 of the
Cr.P.C.

Two fold arguments have been raised on behalf of
petitioner. The first one is that from Annexure-2, FIR having been
registered at the end of petitioner divulges recording of the statement
on 22.03.2008 at about 11 am showing the time of occurrence on the
same day at about 8 am, and with the aid of aforesaid event, it has



been submitted that while the petitioner/informant was at hospital being treated for the injuries inflicted at the end of prosecution party, the prosecution party on 22.3.2008 at about 5 pm, taking the police in his collusion got this case instituted. So, submitted that in the aforesaid facts and circumstances of the case, the prosecution version happens to be discredited, improbable, unreliable whereupon accused should have been discharged.

In an alternative, it has also been submitted that though there happens to be allegation attributed against the petitioner to have inflicted *dabia* (sharp cutting weapon) injury over the injured/ informant but, the injuries are not at all sufficient to draw an interference that blow was given with an intention to kill as well as in likewise manner, with a knowledge that the assault having been inflicted will ultimately result in death of the deceased. Therefore, in respect of injuries having inflicted over the person of injured as opined by the doctor, there would not be application of Section 307 of the IPC and so, the learned lower court should have properly considered and appreciated applicability of Section 228(1)(a) of the CrPC.

Refusing to accept the plea on that very score by the learned lower court by the order impugned, happens to be bad and so, is fit to be set aside.



The learned APP refuted the submission and stated that the nature of injury is not at all considerable for the purpose of attracting Section 307 of the I.P.C. In the background of the fact that two kinds of punishment have been prescribed therein. The first one, when no injury has been caused extending R.I. for 10 years and secondly, when hurt is caused extending imprisonment of life. Therefore, as the Section attracts presence of hurt not the injury and further hurt is found defined under Section 319 of the I.P.C. which also did not specify the nature of the injury. So, the prayer of the petitioner is found not at all legally entertainable.

Without making meticulous examination, forbidden for the present purpose it has to be seen whether the act committed by an accused on its face attracts applicability of particular Section for the purpose of being prosecuted in the trial. Apart from the fact that in terms of Section 216 Cr.P.C. there happens to be provision for amendment of charge till judgment is pronounced, for the purpose of framing of charge, it is apparent that strong suspicion has been found sufficient. Here, so far present position is concerned, there happens to be definite assertion that petitioner, while being armed with *dabia*, a sharp cutting weapon inflicted repeated blow causing injury over vital part of body and this repetition of blow is a theme to be considered whether such repetition was with an intention or knowledge to do

away with the life of the injured and that too, for the present purpose as indicated above has to be seen in cursory manner.

That being so, the instant petition *sans* merit and is accordingly rejected.

(Aditya Kumar Trivedi, J.)

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