

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL MISCELLANEOUS No. 9546 of 2016**

Arising Out of PS. Case No.-44 Year-2013 Thana- SAHODARA District- West Champaran

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1. Ramjee Mukhiya, son of Late Bishun Mukhiya,  
2. Dharamvir Mukhiya and  
3. Mahavir Mukhiya, both sons of Ramjee Mukhiya, all resident of village-  
Mahayogin, P.S. Sahodara, District-West Champaran.

... .. Petitioners

Versus

The State Of Bihar

... .. Opposite Party

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**Appearance :**

For the Petitioners : Mr. Sanjeev Kumar Shrivastava, Advocate  
For the Opposite Party : Mr. Binod Kr. -2, APP

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**CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR**  
**ORAL ORDER**

3      13-12-2019                      Heard learned counsel for the petitioners as well as  
learned Additional Public Prosecutor for the State.

2. Petitioners are accused in Sahodara P.S.Case No.44  
of 2013 registered under Sections 147, 148, 149, 341, 323, 324,  
307, 379 and 504 of the Indian Penal Code.

3. After submission of chargesheet under Section 173  
Cr.P.C., the Magistrate took cognizance accordingly and  
committed the case to the Court of Sessions for trial which was  
registered as Sessions Trial No.405 of 2015. The trial was  
pending before the learned Additional Sessions Judge-III,  
Bettiah. The petitioners filed a petition stating therein that no  
case exclusively triable by a Court of Sessions is made out,  
hence, charges for the other offences than 307 of the Indian



Penal Code be framed and the matter be remitted back for trial to the court of learned CJM, Bettiah in exercise of power under Sections 228(1)(a) of the Cr.P.C.

4. By the impugned order dated 15.01.2016, the trial Judge has refused the prayer of the petitioners.

5. At the time of hearing of this application, learned counsel for the petitioners raised the same grounds which were raised before the learned trial Judge and considered in the impugned order.

6. According to FIR, all the FIR named accused persons including the petitioners, for land dispute, variously armed came and started assault against the informant and others. All were exhorting each other to commit murder. Petitioner Dharamvir Mukhiya caused injury with *tangi* at the head of the informant which resulted in injury and bleeding. Petitioner Mahavir Mukhiya assaulted with *garasi* causing cut injury at the right leg of the informant. Petitioner Ramjee Mukhiya assaulted with *lathi* and others also allegedly assaulted with *lathi* etc and committed theft as well.

7. Learned counsel for the petitioners submits that the doctor has found simple injury at the scalp of the informant. There is no allegation of repetition of blow. Therefore, offence



under Section 307 of the Indian Penal Code is apparently not made out. Learned counsel for the petitioners further submits that the doctor found that the injuries were caused eight hours prior to the time of occurrence as alleged by the prosecution. There is no other witness to support the case and claim of the informant.

8. Section 307 of the Indian Penal Code reads as follows:-

“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 -----”

9. Apparently, the act of the petitioner in causing injury with a weapon of cutting at the head, *prima facie* shows that the person, who had caused injury at the head, had knowledge that his act might cause death. Therefore, in my view, it cannot be said that *prima facie* offence under Section 307 of the Indian Penal Code is not made out. The law is well settled that if several persons are involved in the same crime, all shall be tried jointly by the highest Court where trial would be maintainable. Non support of the prosecution case by other witnesses is a matter of appreciation of evidence which is permissible only at the stage of trial because the law is well



settled that conviction can be based on the basis of evidence if single witness is wholly reliable. Likewise, the finding of the doctor that injury was caused eight hours before then the time of occurrence alleged would be considered at the appropriate stage of the trial to come to the conclusion that which is reliable; the ocular evidence or the doctor and what would be evidentiary value of the ocular and medical evidence. At this stage, the same cannot be looked into.

**10.** Therefore, I do not find any infirmity with the impugned order,

**11.** In the result, this application stands dismissed.

**(Birendra Kumar, J)**

B.Kr./-

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