

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.126 of 2018

Arising Out of P.S. Case No.-36 Year-2008 Thana- JAMALPUR District- Darbhanga

1. Rajeshwar Singh, Son of Late Bahadur Singh.
2. Awadhesh Singh Son of Rajeshwar Singh.
3. Mintu Singh Son of Rajeshwar Singh. All Resident of Village- Kothram, P.S.- Jamalpur (Bargawan O.P.), District- Darbhanga.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Shyam Kishor Singh Son of Late Jageshwar Singh, Resident of Village- Kothram, P.S.- Jamalpur, District- Darbhanga.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr.
For the Opposite Party/s	:	Mr.

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH

ORAL JUDGMENT

Date : 05-08-2019

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

2. Despite service of notice on the opposite party no. 2, nobody appeared when the matter was taken up and heard.

3. The petitioners have moved the Court under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Code') for quashing the judgment and order dated 08.12.2017 passed in Sessions Trial No. 353 of 2012/ Reg. No. 720 of 2014, by which the 5th Additional Sessions Judge, Darbhanga has dismissed the application filed by the petitioners



under Section 228(1) of the Code for discharging them under Section 307 of the Indian Penal Code.

4. The petitioners are accused in Jamalpur PS Case No. 36 of 2008 dated 04.12.2008, filed by the opposite party no. 2 under Sections 341, 323, 324 and 504/34 of the Indian Penal Code on the basis of *Sanha* lodged on 01.11.2008, which was converted into an FIR on 04.12.2008.

5. The allegation against the petitioners is of general and omnibus assault by *lathi* and *danda*.

6. Learned counsel for the petitioners submitted that though after investigation, the police has submitted charge sheet under Sections 448, 341, 323, 324, 307 and 504/34 of the Indian Penal Code and the cognizance was also taken under the aforesaid sections, they filed petition under Section 228(1) of the Code praying that charge be framed against them only under Sections 323, 324 and 504/34 of the Indian Penal Code. The same was rejected and the Court has proceeded to frame charge under all sections under which cognizance was taken.

7. Learned counsel submitted that they are aggrieved only with framing of charge under Section 307 of the Indian Penal Code which is totally unjustified in the facts and circumstances of the present case. It was submitted that the allegation is general and



omnibus and the incident even as per the FIR took place on the spur of the moment between the two sides due to land dispute. It was further submitted that even the allegation is of general assault by *lathi* and *danda* and the injury report discloses simply injuries. It was submitted that for making out offence under Section 307 of the Indian Penal Code, the foremost requirement of law is that the blow should be given with the intention and with the knowledge that such blow would lead to death of the person on whom it is inflicted. It was submitted that in the present case, there was no intention as the incident occurred on the spur of the moment and that too with the intention, at best, only to cause some bodily harm as the blows were given by *lathi* and *danda*. Learned counsel submitted that neither there is specific allegation with regard to assault on any vital part of the body nor the report discloses any such injury.

8. Learned APP, on the basis of the case diary submitted that though the informant suffered one wound on the right side of the forehead but the doctor has opined that the same is simple in nature.

9. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that the petitioners undergoing trial under Section 307 of the



Indian Penal Code is not justified. As Section 307 of the Indian Penal Code carries stringent punishment, trial under such section has to be based on there existing at least some justifiable material. Criminal jurisprudence requires that behind any act for which a person is charged or punished, the first and foremost mandatory requirement is *mens rea*. In the present case, from the allegation itself and the conduct of the petitioners, as alleged by the informant, the incident took place on the spur of the moment and the blows were by *lathi* and *danda*. This coupled with the fact that had there being any real intention to kill the informant, three persons were enough to ensure that death was caused of the person who was attacked.

10. In the present case, even the doctor in his report has opined that the injuries were simple and there was only one wound on the head, that too, simple in nature. The Court finds that the basic ingredients of charging a person under Section 307 i.e., of the blow being inflicted with the intention and knowledge that it could result in death, is not reflected from such conduct.

11. For reasons aforesaid, the application stands disposed off with interfering in the order of charge which stands modified and restricted to Sections 448, 341, 323, 324, 504/34 of the Indian Penal Code.



12. Accordingly, the matter be tried by the Court of the Magistrate where it shall be transferred for proceeding with the trial, in accordance with law.

13. The documents/papers received from the Court below be returned forthwith.

(Ahsanuddin Amanullah, J.)

P. Kumar

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