

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.55585 of 2019

Arising Out of PS. Case No.-113 Year-2017 Thana- BANIAPUR District- Saran

1. MANI BHUSHAN OJHA @ LUDOO OJHA @ LADDU OJHA, Son of Birendra Ojha, Resident of Village - Basantpur, P.S. - Baniyapur, Distt. - Saran (Chapra)
2. Rajmati Devi, Wife of Krishna Mahto, Resident of Village - Sautan, P.S. - Baniyapur, Distt. - Saran (Chapra)
3. Shri Prakash Pandey, Son of Vikram Pandey, Resident of Village - Darhibari, P.S. - Baniyapur, Distt. - Saran (Chapra)
4. Shailendra Mishra @ Shalendra Kumar Mishra, Son of Late Satya Nand Mishra, Resident of Village - Chandpur, P.S. - Baniyapur, Distt. - Saran (Chapra)

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Arun Kumar Rai, Advocate

For the Opposite Party/s : Mr. Nitya Nand Tiwary, A.P.P

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 06-09-2019

Heard the parties.

2. By the impugned order dated 01.06.2019 passed in Sessions Trial No. 823 of 2018 arising out of Baniyapur P.S. Case No. 113 of 2017, the learned trial Judge has turned down the prayer of the petitioners to remit back the trial to the Court of learned Chief Judicial Magistrate on the ground that no offence exclusively triable by the Court of Sessions is made out.

3. According to FIR, the informant was sitting at his flour mill on 13.05.2017 at about 03:15 p.m. At the same time, all the petitioners and five unknown person came on motorcycles and they



started firing and damaging the flour mill. Petitioner No. 1 Laddu Ojha assaulted with dagger causing injury at the head of the informant. Thereafter, other started assault against the informant with fists and slaps as well as *Butt* of the pistol. Petitioner No. 3 Prakash Pandey committed theft of gold chain and all the accused persons committed theft of cash from the cash box of the mill.

4. Learned counsel for the petitioners submits that the Doctor has not found any cut injury on the person of the informant, rather lacerated wound at the parietal and frontal region was noticed which was simple in nature. Moreover, no injury was caused to anyone by alleged firing made by the accused persons. Hence, offence under Section 307 of the Indian Penal Code is not made out. The learned court below has turned down the prayer of the petitioner for discharge in a mechanical manner.

5. Illustration (c) to Section 307 of the Indian Penal Code which reads as follows:-

“(c) A, intending to murder Z, buys a gun and loads it. A has not yet committed the offence. A fires the gun at Z. He has committed the offence defined in this section, and, if by such firing he wounds Z, he is liable to the punishment provided by the latter part of [the first paragraph of] this section.”

6. Evidently the act of the accused persons as per their intention or knowledge was completed as soon as they fired attracting the offence under Section 307 of the Indian Penal Code. If



the firing would have caused injury, it would have only be a ground to decide the quantum of punishment.

7. It is a matter of appreciation of evidence during trial whether the prosecution statement that the accused persons had fired is reliable or not for the reason that no sign of firing was noticed at the place of occurrence nor any injury by firearm was caused to anyone.

8. It is again a matter of appreciation of evidence at the appropriate stage of trial whether the informant is reliable that he sustained injury by dagger at his head or the opinion of the Doctor is preferable creating doubt on the statement of the informant. These questions can not be examined at the stage of consideration of application under Section 228 Cr.P.C.

9. Hence, in my view, no case of failure of justice is made out if the impugned order is sustained. Hence, this application is dismissed as devoid of any merit.

(Birendra Kumar, J)

Kundan/-

AFR/NAFR	N.A.
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