

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No. 239 of 2018

Arising Out of P.S. Case No.-321 Year-2015 Thana- NOORSARAI District- Nalanda

1. Shiv Narayan Prasad @ Shiv Narayan Mahto, Son of Late Murlidhar @ Maulvi Mahto.
2. Chotti Kumari @ Rekha Kumari, Daughter of Shiv Narayan Prasad @ Shiv Narayan Mahto.
3. Abha Kumari @ Muniya Kumari @ Kumari Abha, Daughter of Shiv Narayan Prasad @ Shiv Narayan Mahto.
4. Guddi Kumari @ Kumari Prabha, Daughter of Shiv Narayan Prasad @ Shiv Narayan Mahto, All are resident of Village- Daruara, P.S.- Noor Sarai, District- Nalanda.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Parmeshwar Vishwakarma and Mr. Bishwa Kumar, Advocates
For the State	:	Mr. Jharkhandi Upadhyay, APP

**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH**

ORAL JUDGMENT

Date : 25-10-2019

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

2. The petitioners have moved the Court under Sections
397 and 401 of the Code of Criminal Procedure, 1973 (hereinafter
referred to as the 'Code'), against the order dated 20.09.2017
passed by the District and Sessions Judge, Nalanda at Biharsharif
by which the petition filed by them under Section 228 of the Code



for discharge under Section 307 of the Indian Penal Code has been rejected.

3. The petitioners are accused in Noorsarai PS Case No. 321 of 2015 dated 17.11.2015, instituted under Sections 341/ 323/ 337/ 338/ 307/ 504/34 of the Indian Penal Code. The allegation is that the petitioners came to the house of the informant and started abusing and on being asked not to do so, they had assaulted with *lathi, danda* and brickbats. The allegation is that the assault was with the intention to kill the informant and her other family members. Upon investigation, charge sheet was submitted by the police under all the aforesaid sections and cognizance has also been taken against the petitioners. Being aggrieved with cognizance having taken against them under Section 307 of the Indian Penal Code, the petitioners filed petition for discharge, which has been rejected by the impugned order.

4. Learned counsel for the petitioners submitted that the petitioner no. 1 had lodged Noorsarai PS Case No. 320 of 2015, on the basis of statement recorded at Patna Medical College and Hospital, under Sections 341/ 323/ 337/ 338/ 307/ 504/34 of the Indian Penal Code. It was submitted that the said case besides being prior to the present case, related to the same incident. Learned counsel submitted that though four persons are said to



have been injured, as per allegation in the present case, but all the injuries are simple in nature whereas, on the side of the petitioners as per the earlier FIR, grave injuries have also been recorded. Learned counsel submitted that even by the statement of the witnesses during investigation, it has only come that the incident occurred due to abuse by the petitioners and the objection to the same by the informant. Learned counsel submitted that the same, even if it is accepted for the sake of argument to be true, clearly demonstrates that whatever happened was at best, on the spur of the moment, without there being any predetermination on the part of the petitioners, much less, to cause death on the side of the informant. Learned counsel submitted that the police in a routine manner has instituted the case also under Section 307 of the Indian Penal Code against the petitioners in the present case, only to balance out the case of the petitioners which was earlier in time in which Section 307 of the Indian Penal Code is clearly made out, based on the injury reports. Learned counsel submitted that in the entire investigation, no evidence has come in the statement of the witnesses to indicate that the petitioners had acted with the intention that such act would lead to death of the victim. Learned counsel submitted that this is the basic ingredient for bringing a charge under Section 307 of the Indian Penal Code, which relates



to attempt to murder, that whoever does any act with such intention or knowledge that such act could cause death, would be guilty of murder.

5. Learned APP, from the police papers, including the case diary and the injury reports, admitted that the reports disclose only minor injuries and further from the statement of the witnesses, it cannot be said that the petitioners had acted with intention or knowledge that their act would cause death.

6. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that against the petitioners, charge under Section 307 of the Indian Penal Code is not justified. The law, as settled by the statute as well as the Courts is clear. The first requirement for any charge against any person is that the offence which he is alleged to have committed must have been done with the intention to commit such crime. Secondly, since Section 307 of the Indian Penal Code stipulates that the act of the accused must indicate that there was a specific intention with the knowledge that the same would result in death of the other party and in the present case, admittedly, the clash erupted, as alleged by the petitioners themselves, due to abuse by the informant party, which was objected to, it cannot be said that the petitioners had assembled there with the intention to



kill. Even otherwise, mere allegation that the assault was by *lathi*, *danda* and brickbats shows that there was no intention to kill anybody, as coming with only *lathi* and *danda* and using the brickbats lying at the place, would not satisfy the requirement of having intention to cause death, for which the petitioners, if at all they had such desire would have come armed with more dangerous weapons.

7. At this juncture, the Court would clarify that it does not mean that even if a person is assaulted with *lathi* and *danda*, he cannot be charged under Section 307 of the Indian Penal Code. He can be charged provided the witnesses and the circumstances and the injury discloses that the blows were brutally inflicted on sensitive parts of the body and were repeated. From the injury reports, it does not transpire that there was repeated blows which resulted in serious injuries, which could be viewed as life threatening. Moreover, there being a counter case in which the injuries inflicted on the side of the petitioners are grave, also points out to the fact that there could not have been premeditation, as the reason given in the other case is that the informant of the present case had objected to the cow of the petitioners drinking from water which was kept for *Chhath* Pooja. Thus, even looking at it from that point of view, when the dispute arose on a trivial



issue and both sides having assaulted each other, the same clearly was only by way of taking out their anger and acting as a deterrent, but not with the intention or with the knowledge that their overt act would result in death of anybody.

8. For reasons aforesaid, the application is allowed. The order of cognizance against the petitioners stands modified by deleting Section 307 of the Indian Penal Code.

9. The Court below shall ensure that the matter is now heard by the competent Court in view of Section 307 of the Indian Penal Code having been deleted from the sections under which cognizance has been taken.

(Ahsanuddin Amanullah, J.)

P. Kumar

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