

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.436 of 2019

Arising Out of PS. Case No.-78 Year-2014 Thana- PANCHRUKHI District- Siwan

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1. PARAS SINGH Son of Shivabalak Prasad, Resident of Village- Kurmi Tola (Tarwara), P.S.- G.B.Nagar, District- Siwan.
 2. Pradeep Kumar @ Pradeep Singh Son of Paras Singh Resident of Village- Kurmi Tola (Tarwara), P.S.- G.B.Nagar, District- Siwan.
 3. Pratap Kumar @ Pratap Singh Son of Paras Singh, Resident of Village- Kurmi Tola (Tarwara), P.S.- G.B.Nagar, District- Siwan.
 4. Brijesh Singh @ Vrijesh Kumar Singh, Son of Amla Singh, Resident of Village- Alawal Tola Chauki Hasan (Tarwara), P.S.- G.B.Nagar, District- Siwan.
 5. Radheshyam Singh @ Radheshyam Son of Vashisath Singh Resident of Village- Chauki Hasan (Tarwara), P.S.- G.B.Nagar, District- Siwan.

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. Binda Singh Son of Late Sukhal Singh, Resident of Village- Tarwara, P.S.- G.B. Nagar , District- Siwan.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Prashant Kumar, Advocate Mr. Shashank Shekhar Dubey, Advocate
For the Respondent/s	:	Mr. Jai Narain Thakur, APP

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

3 29-01-2024 In connection with Pachrukhi P.S. Case No. 78 of 2014 corresponding to Sessions Trial No. 32 of 2018, the learned Additional District Judge, 5th Court at Siwan by an order dated 19th February, 2019 framed charge against the accused persons/petitioners under Sections 147/148/323/324/307/506/504/379/34 of the Indian Penal Code. The accused persons/petitioners have preferred the instant Revision alleging



inter alia that charge under Section 324 and 307 of the Indian Penal Code was wrongly framed against the petitioners and they should be discharged from the said two heads of charge.

2. It is submitted by the learned Advocate for the petitioners that prosecution case in brief is that on 17th March, 2014 at about 4:00 PM when the complainant was celebrating holi festival with his family members in front of his house, accused Ritu Raj Singh, Brajesh Singh and Radheshyam Singh came to the adjacent house of Paras Singh in a bolero car. After 10 minutes, Paras Singh with his son Pratap Singh and Pradeep Singh along with the above named persons came to the house of the complainant and started abusing them and assaulting them. During the incident, they brought hockey sticks from the house of Paras Singh and started beating the complainant and his family members with hockey sticks. Accused Ritu Raj Singh struck a blow with the help of a hockey stick on the head of the complainant's younger son and caused grievous injury to him, as a result of which, he became unconscious and failed down. The injured persons were medically treated. Over the said complaint, the above mentioned case was registered, and on completion of investigation, chargesheet was filed. It is also submitted by the learned Advocate for the petitioners that the



trial court failed to consider that Section 324 prescribes punishment for voluntarily causing her by dangerous weapons or means. According to him, even assuming that the younger son of the complainant received injury on the parietal region of his head by a blow of hockey, the said injury was stated to be simple in nature by the trial court. Section 324 is the penal provision for causing voluntary hurt by means of any instrument of shooting, stabbing or cutting or any instrument which, used as a weapon is likely to cause death. It is also submitted by the learned Advocate for the petitioners that hockey sticks cannot be used as a weapon which is likely to cause death of a person. It is also submitted by the learned Advocate for the petitioners that the trial court failed to consider that there was no material to frame charge against the accused persons under Section 307 of the Indian Penal Code.

3. Having heard the learned Advocate for the petitioners that and on careful perusal of the impugned order, this court recourses that in order to frame charge under Section 307 of the Indian Penal Code, it is not essential that a badly injury capable of causing death should have been inflicted and attained in order to be criminal need not be the penultimate act of death.

4. It is sufficient in law, if there is present and



intent coupled with some overact in execution thereof, such act being proximate to the crime intended, and if, the attempt has gone so far that it would have been complaint but for the extraneous intervention which frustrated its consumption.

5. In other words, in order to frame charge under Section 307 of the Indian Penal Code, it is the duty of the trial court to see all ingredients of offence under Section 299 of the Indian Penal Code, except culpable homicide or murder. In the F.I.R. as delineated in the impugned order, it is ascertained that the defacto complainant did not make any statement to the effect that with the intend to cause murder of his younger son, the accused, namely Ritu Raj Singh gave a blow with the help of a hockey stick on his head.

6. In the absence of such prima facie material, no charge under Section 307 of the Indian Penal Code can be framed. Therefore, the learned trial Judge was wrong in framing charge under Section 307 of the Indian Penal Code. With regard to the charge under Section 324 of the Indian Penal Code, this court is of the view that a hockey stick can be used as a weapon of offence with the help of which fatal blow may be inflicted causing even death of a person. It is a matter of consideration which can only be decided in course of evidence as to whether



hockey stick was used to cause simple hard or fatal injury, therefore, I am not in a position to accept argument advanced by the learned Advocate for the petitioners that the trial court committed an error in framing charge under Section 324 of the Indian Penal Code.

7. For the reasons stated aforesaid, I have already held that the trial court erred in law in framing charge under Section 307 of the Indian Penal Code, accordingly, the case pending before the trial court is not a sessions trial case and the learned trial Judge is directed to remit back the case for trial to the jurisdictional court of the learned Magistrate.

(Bibek Chaudhuri, J)

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