

22.02.2024
Serial no. 28
[G.S.D]

CRR 9 of 2023

With
CRAN 1 of 2023

In the matter of : Renu Khatun

... .. Petitioner

<i>Mr. Debashis Banerjee</i>	
<i>Mr. Rakesh Jana</i>	<i>... for the petitioner</i>
<i>Mr. Madhusudan Sur</i>	
<i>Mr. Dipankar Paramanick</i>	<i>... for the State</i>
<i>Md. Sabir Ahmed</i>	
<i>Mr. Suman Biswas</i>	<i>... for the o.p. no.6</i>
<i>Mr. Kaustav Bagchi</i>	
<i>Mr. Debayan Ghosh</i>	
<i>Ms. Priti Kar</i>	<i>... for the o.p. no.7</i>

The present revisional application has been preferred challenging the order dated 26.9.2022 passed by the Id. Addl. Dist. &Sessions Judge, 2nd Court, Katwa, Purba Bardhaman in Sessions Case No. 123 of 2022 arising out of Ketugram P.S. Case No. 262 of 2022 dt. 5.6.2022.

Ld. Advocate for the petitioner submits that the petitioner is aggrieved by the observations of the Id. Sessions Court to the effect that no ingredient of the offence punishable under section 307 of the IPC has been made out but has restricted his submissions to the factum that since there was a grievous injury by a sharp cutting weapon and the petitioner have to undergo amputation of forearm, Section 326 of the IPC is attracted which is Magistrate

triable offence and, as such, the records of the case be sent back to the Id. ACJM, Katwa for disposal.

The attention of the court was drawn to the statement under section 164 of the cr.p.c. as well as the injury report along with the other medical documents.

Ld. Advocate for the State has produced the case diary and draws the attention of the court to the statement of the victim under section 164 of the cr.p.c. as well as the medical documents appearing therein.

Mr. Ahmed, Id. Advocate appearing on behalf of the o.p. nos. 5 and 6 submits that the observations made by the Id. Sessions Judge in the impugned order do not call for any interference as there was no intention on the part of the o.p. nos. 5 and 6 or the accused persons together to kill or attempt to kill the victim.

Additionally, it is submitted that it was the accused/o.p. and the associates who had taken the complainant/victim for treatment.

According to the Id. Advocate representing the opposite party no. 5 and 6, no offence under section 307 has been made out as the criminal intention or the overtacts which are required for constituting such offence is absent in the instant case and the Id. Sessions Court rightly observed that there may be a grievous injury which has resulted in

the act and action of the o.p. but no case for attempt to murder has been made out.

Ld. Advocate for the o.p. no.2 submits that the injuries complained of were not sufficient for resulting in death and, as such, the order under challenge do not call for any interference.

Mr. Bagchi, Id. Advocate appearing for the o.p. no.7, submits that since the medical report reflects that no injury was inflicted on the vital part of the body which, at all, could have resulted in death, the finding of the Sessions Court in respect of no offence being made out under section 307 of the IPC do not call for any interference and, as such, the revisional application may be dismissed.

I have heard the submissions of the Id. Advocate appearing for the petitioner, the accused/o.p. as well as the Id. Advocate appearing on behalf of the State. On perusal of the case diary, I find that there were specific observations by the doctor regarding the manner in which the injury was inflicted.

Further, the victim herself in her statement under section 164 of the cr.p.c. gave a narration of the manner in which she was brought to her matrimonial home and the conduct of the husband who was not sleeping on the relevant point of time in the night and thereafter the victim being smothered being pressurized by a pillow along with a

sharp cutting weapon being used for inflicting injury upon the victim/petitioner.

Having regard to the design which has been followed from the inception, it would be premature, at this stage of consideration of charges to hold that no offence under section 307 of the IPC have been made out and it would be unwise to restrict the case only to the nature of the injury, by describing the same only as grievous.

Having considered the totality of the circumstances particularly the ocular evidence which is the statement of the injured along with the medical report, I am of the view that the order dated 26th September, 2022 cannot be sustained in the eye of law and, accordingly, the same is set aside.

With the aforesaid observations, CRR 9 of 2023 is allowed.

Accordingly, CRAN 1 of 2023 is disposed of.

Pending application, if any, is also disposed of.

If the case records have been sent to the Id. ACJM, Katwa, the same be transmitted forthwith to the Id. Addl. Sessions Judge, 2nd Court, Katwa, who will frame charges and proceed with the trial of the case.

The accused/o.p. obviously would be at liberty to take up the issues canvassed in the revisional application in course of the trial and the subsequent proceedings.

The observations made above are restricted only for the purpose of deciding the case at the stage of consideration of charges and the Id. Trial court will not be bound by such observations at the end of the trial of the case. The final outcome be decided independently by the Id. Trial court.

Parties to act on a server copy of this order duly collected from the official website of the Hon'ble High Court, Calcutta.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.

(Tirthankar Ghosh, J.)