

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.354 of 2024

Arising Out of PS. Case No.-95 Year-2018 Thana- SINDHIYA District- Samastipur

1. Md. Ajijul Hak SON OF LATE MD. JAN Resident of Mauja Vari tole, Sanhaka, P.S- Singhia, District- Samastipur, Bihar
2. Md Phul Hasan SON OF Moti Rahman Resident of Mauja Vari Rajmani, Biraul, P.S- Biraul, District- Samastipur
3. Md Gulab SON OF Md. Ajijul Hak Resident of Mauja vari Tole, Sanhaka, P.S- Singhia, District- Samastipur
4. Md Mumtaj @ Mumtaj Alam SON OF Md. Ajijul Hak Resident of Mauja vari Tole, Sanhaka, P.S- Singhia, District- Samastipur
5. Md Moti Rahman son of Late Md. Jan Marhum Resident of Mauja Vari Rajmani, Biraul, P.S- Biraul, District- Darbhanga
6. Md Bahab@ Ahab SON OF Md. Ajijul Hak Resident of Mauja vari Tole, Sanhaka, P.S- Singhia, District- Samastipur
7. Md Naushad SON OF Md. Ajijul Hak Resident of Mauja vari Tole, Sanhaka, P.S- Singhia, District- Samastipur

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Subhash Kumar Mishra, Advocate
For the Respondent/s	:	Mr. Chandra Sen Prasad Singh, APP

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

3 06-05-2025 The petitioners are accused persons in Session Trial No.320 of 2022, arising out of Singhi P.S. Case No.95 of 2018 in which after investigation, police submitted charge sheet against the petitioner under Section 341, 323, 324, 307, 447, 379 and 504 of the Indian Penal Code.

2. The case was committed to the Court of learned Additional District and Sessions Judge-II, Rosera in the district



of Samastipur. The accused persons filed a petition under Section 228 of the Cr.P.C. praying for their discharge on the ground that during investigation the prima-facie case for the offences complained of, has not been made out.

3. The learned Additional District and Sessions Judge-II, Rosera, Samastipur by his impugned order dated 13.03.2024 rejected the application under Section 228 of the Cr.P.C. filed by the petitioners and fixed a date for consideration of charge.

4. It is submitted by the learned Advocate for the petitioners that as per the informant's version contained in Fardbeyan the alleged incident took place on 18.07.2018, when he was sitting in front of the entrance door of his house and his elder son was prepared for going to Delhi, where he used to work, all the accused persons armed with Lathi, iron rod, farsa etc. trace-passed into the house of the informant, the informant tried to resist them but the accused persons assaulted him and his son with the intention to kill them. They also took away the mobile phone and a sum of Rs.2500/- from the possession of the informant.

5. It is submitted by the learned Advocate on behalf of the petitioners that the informant lodged the F.I.R. on 02.08.2018, after a lapse of about 15 days of the incident. There



is no explanation of delay in lodging F.I.R. at a belated stage.

6. It is also submitted by the learned Advocate on behalf of the petitioner that a long standing dispute over land is going on between the parties. On the date of occurrence, the informant and his sons severely assaulted the accused persons, as a result of which, one of the accused was admitted to hospital while in course his medical treatment as an indoor patient in the hospital he submitted a fardbeyan on 02.07.2018. Thus, the petitioners made a complaint against the informant and his family members prior to the institution of Singhia P.S. Case No.95 of 2018. There is also no ingredient of offence under Section 307 I.P.C., so at-least the charge under Section 307 of the I.P.C. may be dropped by this Court.

7. Learned Advocate on behalf of the State has seriously raised objection against the prayer made by the learned Advocate for the petitioners. It is submitted by him that the Investigating Officer collected sufficient evidence in support of the allegation under Section 307 of the I.P.C., when the ingredients of offence under Section 307 I.P.C. was prima-facie found to be proved, charge sheet has been filed. At the stage of consideration of charge, the Trial Court cannot look into the evidence of the prosecution witnesses.



8. On the other hand, Trial Court will confined on the materials in case diary. The case diary reveals the statement of the witnesses where ingredients of offence under Section 307 of the I.P.C. is prima-facie found and therefore, the learned Trial Judge refused the prayer for discharging the accused persons at the time of consideration of charge.

9. Having heard the learned counsel for the petitioners and the State.

10. This Court finds that indisputably, there are case and counter case instituted by both the parties over the incident that took place on 18.07.2018.

11. Learned Advocate for the petitioners submits that the informant initially assaulted one of the accused persons with the help of *Lathi* and as a retaliation, the accused persons assaulted the informant and his sons.

12. Existence of case and counter case, prima-facie proves that there was some criminal act committed by both the parties on 18.07.2018. The learned Trial Judge decided to frame charge against the accused persons under Sections 341, 323, 324, 307, 447, 379 and 504 of the I.P.C. on perusal of the materials in case diary. This Court is not in a position to hold at this stage that the Trial Court proceeded to frame charge under



Section 307 of the I.P.C. against the accused persons in the absence of any ingredient of offence under Section 307 of the I.P.C.

13. In support of his contention, the learned Advocate for the petitioner refers to an unreported decision of this Court passed in Criminal Revision No.239 of 2018 on 25.10.2019. In the said unreported decision, a Coordinate Bench of this Court dropped Section 307 of the I.P.C. from the charge sheet on the ground that there is no prima-facie evidence to the effect that the accused persons assaulted the victim with the intention and knowledge that such act would cause death of the informant.

14. In the instant case, no such case was made out by the petitioners.

15. For the reasons stated above, this Court is of the view that the instant criminal revision is devoid of any merit and accordingly, the instant criminal revision is dismissed.

(Bibek Chaudhuri, J)

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