

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.658 of 2024

Arising Out of PS. Case No.-225 Year-2023 Thana- CHHATAPUR District- Supaul

Jagarnath Sah, Son of Lakshman Sah, Resident of Village - Bhatabari, Ward No.5, Post Office - Chhatapur, Police Station - Chhatapur, District - Supaul

... .. Petitioner/s

Versus

1. The State of Bihar
2. Baijnath Sah, Son of Lakshman Sah Resident of Village - Bhatabari, Ward No.5, Post Office - Chhatapur, Police Station - Chhatapur, District - Supaul

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Shashi Sharma, Advocate
For the Respondent/s	:	Mr.Md. Shakir Ahmad, APP
For the O.P. No. 2	:	Mr.Kuldeep Kumar, Advocate Mr.Dhiresk Kumar Dhiraj, Advocate

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

8 05-05-2025 The instant revision is directed against an order dated 2nd of May, 2024 passed by the learned ACJM-V Court, Supaul in Chhatapur P.S. Case No. 225 of 2023 whereby and whereunder the learned Magistrate took cognizance of offence against the petitioner and two other accused persons under Sections 341, 323, 308, 302, 315, 316, 504 and 506 of the IPC.

2. In the instant revision, one of the accused, namely, Jagarnath Sah has assailed the order of cognizance on the following grounds:-

According to the FIR, the alleged incident took place on 28th of June, 2023, at about 8:00 A.M. over land dispute and it was alleged by the informant that on the date and time of



occurrence, when he was sitting in front of the entrance door of his house, the petitioner, along with other accused persons being armed with Lathi, Iron Rod and other deadly weapons, came to him and directed him to leave the house and his landed property immediately, failing which he, along with his family members, would be assaulted and killed. When the *de facto* complainant expressed his inability to leave his house and stated that he became the owner of the house by way of an amicable partition, the accused persons started assaulting him. Seeing this, the wife of the informant, namely, Bina Devi, daughter-Kanchan Devi and son-Pankaj Kumar intervened, but they were also assaulted severely. Especially, Kanchan Devi was assaulted by pulling her hair, as a result of which she fell down on the ground. The accused persons also locked her in a room. The said complaint was filed in the local police station on 30th of June, 2023 and Chhatapur P.S. Case No. 225 of 2023 was registered on 1st of July, 2023. On 6th of July, 2023, for the first time, Kanchan Devi was taken to hospital for medical treatment as she was pregnant for eight months. Kanchan Devi complained that she could not feel movement of the baby in her womb for the last one day. After medical treatment, it was found that the baby in her womb died and immediately the medical officer removed



the dead baby from her womb by cesarean section. The said Kanchan Devi was admitted to the hospital and on 10th of July, 2023, she died due to septicemia. This fact was confirmed by the autopsy surgeon after conducting the post-mortem.

3. It is submitted by the learned Advocate on behalf of the petitioner that there is no allegation that the victim, Kanchan Devi, received any injury on her abdominal part during the alleged incident on 28th of June, 2023. There is also no evidence that the baby in her womb died due to such injury. The victim noticed no movement of the baby in her womb after 7 days of the occurrence. Therefore, there is no direct link between the alleged incident and the death of the baby of Kanchan Devi in her womb and subsequently her death in the hospital on 10th of July, 2023. The autopsy surgeon did not find any injury except one blunt injury on the elbow of Kanchan Devi during the post-mortem examination. The said injury did not cause the death of Kanchan Devi. Therefore, the learned Magistrate committed illegality and material irregularity in taking cognizance of offence against the petitioner under Sections 308, 302, 315 and 316 of the IPC.

4. It is also submitted by the learned Advocate for the petitioner that when a case is instituted under Section 308 of the



IPC on the allegation that the accused persons committed an attempt to cause culpable homicide, such case cannot be converted to a case under Section 302 of the IPC.

5. The learned Advocate on behalf of the informant as well as the learned APP has raised objection against the prayer made by the petitioner.

6. The learned APP has also referred to a counter affidavit filed on behalf of the Superintendent of Police, Supaul, where it is stated that the Investigating Officer, on proper and careful investigation, submitted charge-sheet against the accused persons on the basis of which the learned ACJM, Supaul, took cognizance of offence. The said order cannot be set aside at this stage.

7. In the course of the argument, the learned Advocate on behalf of the State has delivered an order passed by Co-Ordinate Bench of this Court in Cr. WJC No. 1695 of 2024 dated 24th of April, 2025, whereby and whereunder this Court dismissed the writ petition filed by a co-accused, namely, Manju Devi, praying for quashment of the order of cognizance under Section 307 of the IPC. The Writ Court dismissed the writ petition with liberty to the petitioner to raise all the grounds at the stage of framing of charge and if such an application is filed,



the same shall be considered by the Trial Judge in view of the law laid down by the Hon'ble Supreme Court in the case of ***Kanchan Kumar v. State of Bihar*** reported in **2022 9 SCC 577**.

8. At the time of taking cognizance of the police report, the duty of the learned Magistrate is to see as to whether there is sufficient ground for further proceedings against the accused persons. The materials placed with the charge-sheet inspired the learned Magistrate to take cognizance under Sections 308, 302, 315 and 316 of the IPC against the petitioner. The question as to whether there is sufficient material in the case diary in support of the said allegation can only be decided by the learned Trial Judge at the time of consideration of charge if the petitioner files an application under Section 250 of the BNSS praying for discharge.

9. At this stage, this Court cannot look into the objections raised by the learned Advocate for the petitioner for assailing the order of cognizance.

10. Therefore, the instant criminal revision is dismissed with liberty to the petitioner to file appropriate application at the time of consideration of charge, if so advised and the learned Trial Judge shall consider the same on merit and on the basis of the materials in the case diary.



11. With the above order, the instant criminal revision
is dismissed on contest.

(Bibek Chaudhuri, J)

uttam/-

U			
---	--	--	--

