
(2020) 03 PAT CK 0024

In the Patna High Court

Case No : Criminal Miscellaneous No. 33695 Of 2018

Bhola Singh @ Binay Singh @ Vinay Kr. Singh

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 04-03-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 161, 161(3), 173(2), 207, 209, 226, 227, 228, 228(1)(a), 482

Indian Penal Code, 1860 — Section 34, 307, 323, 341, 379, 504

Citation : (2020) 03 PAT CK 0024

Hon'ble Judges : Ashwani Kumar Singh, J

Bench : Single Bench

Advocate : Vinay Mistry, Nand Kumar

Final Decision : Allowed

Judgement

1. Heard learned counsel for the petitioner and learned counsel for the State, also perused the materials collected in course of investigation from the case-diary.

2. The instant application under Section 482 of the Code of Criminal Procedure (for short "CrPC") has been filed by the petitioner for quashing

the order dated 26.04.2018 passed by the learned Additional Sessions Judge-II, Aurangabad in Session Trial No.187 of 2015/ 221 of 2018 arising out

of Nagar P.S. Case No. 75 of 2013 whereby the application filed by the accused persons including the petitioner under Sections 227 and 288 of the

CrPC for discharge or transferring the case for trial to the court of Chief Judicial Magistrate or any other Judicial Magistrate of first class has been

dismissed.

3. Learned counsel appearing for the petitioner submitted that it would be

evident from the statements of the witnesses recorded under Section 161(3) of the CrPC and the medical opinion of the doctor, who examined the injured informant Chandan Kumar Singh that no case for the offence punishable under Sections 307 of the Indian Penal Code (for short "IPC") is made out. He submitted that so far as other offences are concerned, they are all triable by the court of Magistrate. He contended that without appreciating these materials on record in correct perspective, the learned Additional Sessions Judge-II has dismissed the application filed by the petitioner and two others under Section 228(1)(a) of the CrPC. He argued that the order impugned is bad in law as the same has been passed mechanically and without judicial application of mind.

4. On the other hand, learned counsel appearing for the State submitted that there is allegation against the petitioner that he pulled the trigger of his pistol, but fortunately, the firearm failed to operate. He contended that the said allegation itself is sufficient to attract the ingredients of the offence punishable under Section 307 of the IPC. He has further contended that similar allegation with similar result has been made against co-accused Dolson @ Vinit Kumar Singh. He submitted that there is allegation that co-accused Sanjay Kumar Singh assaulted the informant by means of garasa which caused injury on the head of the informant. He contended that since the accused persons are alleged to have assaulted the informant in furtherance of their common object, no illegality can be found with the order passed by the learned Additional Sessions Judge- II whereby he has rejected the prayer of the petitioner for remitting the case back to the court of Magistrate after framing of charge.

5. The first information report (for short "the FIR") is based on the fardbeyan of one Chandan Kumar Singh, which was recorded by the Sub-Inspector of Police B. N. Ram. The informant has stated in his fardbeyan that in the night, intervening between 17/18.02.2013, Music Orchestra was organized near the bus stand of his village on the occasion of Saraswati Puja by the Saraswati Puja Committee of which he was the organizer. The Orchestra was going on peacefully. However, at about 12.30 in the night, the petitioner came with a pistol and took him outside. He pulled trigger of his pistol but it misfired. Thereafter, Dolson @ Vinit Kumar Singh snatched his golden chain, ring and Rs.25,000/-. Dolson also fired from his pistol

which too misfired. He has further alleged that Sanjay Kumar Singh assaulted him by means of garasa on his head as a result of which he sustained injury and was taken to Sadar Hospital for treatment.

6. On the basis of aforesaid fardbeyan, Town P.S. Case No.75 dated 18.02.2013 was registered under Sections 341, 323, 504, 379 and 307 read with 34 of the IPC against the petitioner Bhola Singh @ Vinay Singh, Vijay Singh, Dolsan @ Vinit Kumar Singh and Sanjay Kumar Singh and investigation was taken up.

7. On completion of investigation, the investigating officer submitted the police report under Section 173(2) of the CrPC vide Charge-Sheet No.140 of 2013 dated 18.02.2013 under Sections 341, 323, 307 and 504/34 of the IPC.

8. It would be evident from the aforesaid charge-sheet that the petitioner, Bhola Singh @ Vinay Kumar Singh, Sanjay Kumar Singh and Vijay Singh, all sons of Ram Swaroop Singh of village-Rambandh were sent up for trial whereas the investigating officer found accusation against Vinit Kumar Singh @ Dolson to be false and he was not sent up for trial.

9. Subsequently, the court of Magistrate took cognizance of the offence against all the four accused persons named in the FIR and summoned them for trial.

10. After complying with the provisions prescribed under Section 207 of the CrPC, the case was committed to the court of sessions for trial. Before the sessions court, a joint application on behalf of all the accused persons was filed under Sections 227 and 228 of the CrPC praying therein either to discharge the accused persons or to remit the case back for trial to the court of Magistrate as no offence exclusively triable by the court of sessions was made out.

11. After hearing the parties, learned Additional Sessions Judge-II, Aurangabad vide impugned order dated 26.04.2018 passed in Session Trial No.187 of 2015/221 of 2018 rejected the application filed on behalf of accused persons including the petitioner.

12. On perusal of the charge-sheet, it would be evident that apart from the informant, Sunil Kumar Singh, Pankaj Kumar, Ravi Ranjan Kumar Singh, Dilip Chandravanshi, Manoj Kumar Singh, Anup Kumar Sinha and B. N. Ram have been made witness to the case.

13. Out of them, Anup Kumar Singh is a doctor posted in Sadar Hospital, Aurangabad, who had issued the injury report and B.N. Ram is the investigating officer of the case.

14. The statements of the charge-sheet witnesses, namely, Sunil Kumar Singh, Pankaj Kumar, Ravi Ranjan Kumar Singh, Dilip Chandravanshi and

Manoj Kumar Singh under Section 161 of the CrPC have been recorded in para-9, 10, 11, 61 and 62 of the case-diary respectively.

15. It would appear from the statement of witness Suni Kumar Singh that in the village, a Music Orchestra was organized on the eve of Saraswati

Puja in which artists were giving their performance and the entire atmosphere was peaceful. However, at about 12.30 in the night intervening between

17/18.02.2013, co-villagers Bhola Singh @ Vinay Singh, Vijay Singh and Sanjay Singh started altercating with the informant Chandan Kumar Singh on

the issue of signing a song on demand from the Singer performing in the Music Orchestra. Both the parties started abusing each other. In the

meantime, accused Sanjay Kumar Singh assaulted with a danda on the head of the informant Chandan Kumar Singh as a result of which he sustained

injury. Immediately, audience of Music Orchestra intervened and peace was restored. Thereafter, Chandan Kumar Singh was taken to Sadar

Hospital, Ara for treatment. He has further stated that later on, he came to know that both the parties have instituted case in the police station against

each other.

16. So far as statements of other witnesses, namely, Pankaj Kumar, Ravi Ranjan Kumar Singh, Dilip Chandravanshi and Manoj Kumar Singh are

concerned, they all have stated that both the parties started fighting on the issue of performance of song in the Music Orchestra. The altercation

turned into quarrel and fight and in the process Bhola Singh, Vijay Singh and Sanjay Singh did some marpit with the informant Chandan Kumar Singh.

None of them has stated about use of either danda or any other weapon in assault upon Chandan Kumar Singh. They all have stated that audience in

the Music Orchestra immediately intervened and brought peace and Chandan Kumar Singh was taken to Sadar Hospital for treatment. They have

also stated that later on, they came to know that both the parties have lodged case against each other in the police station.

17. The doctor who had examined the injured Chandan Kumar Singh has given

his opinion that injured Chandan Kumar Singh had sustained two injuries. Out of which one was lacerated wound on occipital region of the scalp measuring 2½ x 1½ x into bone deep and tenderness on side chest and both the injuries were simple caused by hard and blunt substance.

18. From reading of the statements of witnesses recorded by the investigating officer in course of investigation, the following would transpire:

(a) The accused persons and the informant are resident of village Ramabandh, District Aurangabad.

(b) On the eve of Saraswati Puja, a Music Orchestra was organized near the bus stand of the village.

(c) While the artists of Music Orchestra were performing, the informant and the accused persons wanted the singer to sing song of their choice.

(d) On the above issue, an altercation took place between the informant Chandan Kumar Singh on one side and the accused persons, namely, Bhola

Singh, Vijay Singh on the other side.

(e) In the process, the informant Chandan Kumar Singh sustained some injury over his head for which he was taken to Sadar Hospital.

(f) The co-villagers being audience in the Music Orchestra immediately intervened and brought peace between the parties and the informant was

taken to Sadar Hospital Aurangabad for treatment.

(g) Later on, both the parties registered case against each other in the police station.

19. It would further appear that the story of use of firearm as given in the written report of the informant has not been supported by any witness

examined by the police during investigation. It would further appear that the story of use of garasa by accused Sanjay Kumar Singh as given in the

written report of the informant has also not been supported by any witness examined by the police during investigation.

20. It would also appear that the story of use of danda by the accused Sanjay Kumar Singh for causing injury on the head of the informant Chandan

Kumar Singh has not been supported by any witness including the informant himself.

21. It would also appear that the story of snatching golden chain, ring and Rs.25,000/- from the possession of the informant by the accused persons as

stated by the informant has also not been supported by any witness during

investigation.

22. I further find that apart from the informant, two witnesses, namely, Dilip Chandravanshi and Manoj Kumar Singh have also supported the

allegation that accused Dolson @ Vinit Kumar Singh had also participated in causing marpit to the informant.

23. Thus, from the materials collected during investigation, it would transpire that the accused persons and the informant being co-villagers fought

together during Music Orchestra on a trivial issue of performance by a signer on the song of their own choice and in the process two simple injuries

were caused to the informant on his person.

24. Since there is allegation of assault and certain injuries were caused to the informant, on completion of investigation, the police submitted charge-

sheet under Sections 341, 323, 307 and 504 read with 34 of the Indian Penal Code, the learned Magistrate took cognizance of the offence under which

the charge-sheet was submitted and committed the case to the court of sessions for trial. At the stage of framing of charge, the accused persons

jointly filed an application under Sections 227 and 228 of the CrPC. They made an alternative prayer in their application either to discharge them or to

remit the case back to the court of Magistrate after framing of charge as no offence triable by the court of sessions was made out. Since the said

prayer has been rejected, the instant application has been filed before this Court.

25. Now the issue before this Court is as to whether the trial court was justified in passing the impugned order dismissing the application filed on

behalf of the petitioner.

26. In view of the materials collected in course of investigation, the police itself has not believed upon the story of the informant regarding use of

firearm or snatching of valuables from his possession. The Court has also not taken cognizance of any offence under the Arms Act or under Section

379 of the IPC.

27. I find that so far as offences apart from Section 307 of the Indian Penal Code are concerned, there is ground for proceeding against the accused

and framing of charge.

28. However, the moot issue is whether upon consideration of the record of the case and the documents submitted therewith there is sufficient ground

for proceeding against the accused persons for the offence punishable under Section 307 of the Indian Penal Code.

29. Section 307 of the IPC reads as under -

Section 307. Attempt to murder.-Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act

caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and

shall also be liable to fine; and, if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such

punishment as is hereinbefore mentioned.

30. To constitute an offence under Section 307 of the IPC, three ingredients must be present:-

(a) an intention or knowledge relating to the commission of murder;

(b) the doing of an act towards it; and

(c) the circumstances under which the Act is done.

31. By now, it is well settled that for the purpose of attracting offence under Section 307 of the IPC what is material is the intention or knowledge of

the accused and not the consequence of the actual act done for the purpose of carrying out the intention. The intention or knowledge of the accused

must be such as is necessary to constitute murder. Unless these ingredients being established, there can be no offence of an attempt to murder. The

intention is to be gathered from all attending circumstances and not nature of weapon used, manner in which it is used, the motive of the crime, the

part of the body where the injury is inflicted etc.

32. In *Vasant Vithu Jadhav vs. State of Maharashtra*, [(2004) 9 SCC 31], the Supreme Court observed that to justify a conviction under Section 307

of the IPC, it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may

often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other

circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds.

33. The Supreme Court further observed:

What the Court has to see is whether the act, irrespective of its result,

was done with intention or knowledge and under circumstances

mentioned in this section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled

with some overt act in execution thereof.â??

34. In the instant case, it would be evident from the materials on record that there was no premeditation and preparation. The parties are co-villagers.

They were watching Music Orchestra organized in the village together on the eve of Saraswati Puja in the night intervening between 17/18.02.2013

and altercation took place between them over a trivial issue. The altercation took shape of quarrel and fight and, in the process, two simple injuries

were caused on the person of the informant. The materials collected would suggest that there was no intention to cause death by the accused persons.

35. Section 226 of the CrPC provides that when the accused appears or is brought before the court in pursuance of a commitment of the case under

Section 209, the prosecutor shall open his case by describing the charge brought against the accused and stating by what evidence he proposes to

prove the guilt of the accused.

36. Thus, Section 226 of the CrPC obliges the prosecution to describe the charge brought against the accused and to state by what evidence it would

prove the guilt of the accused.

37. The next provision under Section 227 of the CrPC enables the Court to decide whether there is sufficient ground for proceeding against the

accused and conduct the trial.

38. Section 228(1)(a) of the CrPC provides that if, after such consideration and hearing, the Judge is of the opinion that there is ground for presuming

that accused has committed an offence which is not exclusively triable by the court of sessions, he may, frame a charge against the accused and, by

order, transfer the case for trial to the Chief Judicial Magistrate or any other Judicial Magistrate of the first class and direct the accused to appear

before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon

such Magistrate shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report.

39. Upon consideration of the record of the instant case, it would be evident that there is no material to suggest that the accused persons had any

intention to cause death of the informant. In absence of an evil intent or knowledge coupled with an act which fall sort of the commission of the murder, the Court would not be justified in framing of charge for the offence punishable under Section 307 of the IPC against accused persons.

Apparently, the court below has failed to apply its judicial mind and has mechanically rejected the application filed on behalf of the petitioner.

40. In view of the discussions made above, the impugned order dated 26.04.2018 passed by the learned Additional Sessions Judge-II, Aurangabad in

Session Trial No.187 of 2015/ 221 of 2018 is set aside. The learned Additional Sessions Judge-II, Aurangabad is directed to frame charge against the

accused persons for offences other than Section 307 of the IPC and transfer the case for trial to the Chief Judicial Magistrate or any other Magistrate

of first class fixing a date for appearance of the accused persons before the concerned court, who shall try the offence in accordance with the

procedure for trial on a police report.

41. The application is allowed to the extent indicated hereinabove.