
(2002) 04 JH CK 0078

In the Jharkhand High Court

Case No : Criminal Revision No. 110 of 2002

Ram Kumar Sharma and Others

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 24-04-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 227, 397, 401
Penal Code, 1860 (IPC) — Section 302

Citation : (2002) 04 JH CK 0078

Hon'ble Judges : D.N. Prasad, J

Bench : Single Bench

Advocate : R.S. Mazumdar and Atanu Banerjee, for the Appellant; APP, for the Respondent

Final Decision : Dismissed

Judgement

Deoki Nandan Prasad, J.—This is an application u/s 397/401 of the Code of Criminal Procedure against the order dated 5.3.2002, whereby and whereunder the learned Additional Sessions Judge, Fast Court No. 1, Dhanbad rejected the prayer of the petitioners for discharge in connection with S.T. No. 225 of 2001.

2. Prosecution case in brief as stated that one Sudama Ram alleged that on 1.12.2000 at about 8.30 p.m., the petitioners accompanied with others came and by breaking open lock of the old house of the informant they started keeping their belongings in the said house forcibly. It is further alleged that Arun Sharma and Raju Sharma claimed the said house to be their own. It is also alleged that accused persons including the petitioners assaulted Sanjay Kumar Ram with fists and slaps, as a result of which he became unconscious and then he was brought to State Hospital, Taldanga but he was declared dead by the doctor. The FIR was lodged u/s 302/34, IPC. The police investigated into the case and submitted charge-sheet against the accused persons/petitioners.

3. The learned counsel appearing on behalf of the petitioners submitted that the offence u/s 302, IPC, is not made out as there was no intention to commit

murder of Sanjay Kumar as well as there was only allegation about assault with fists and slaps. It is further submitted that as a matter of fact, the petitioners got a decree with regard to the house in question, since the uncle of the petitioners namely Muneshwar Sharma filed a Title Suit No. 40 of 1985 which was decreed and thereafter the petitioners and other family members are in peaceful possession of the said house whereas the informant party being the aggressor made an attempt to enter into the house. It is also submitted that there is a general allegation of assault by fists and slaps and the instant case was initiated out of mala fide intention, which will be evident from C.P. Case No. 908 of 2001 which was registered under Sections 323/417/500/506/379/427, IPC, and the allegation as made out will at best attract for the offence u/s 304, Part II, of the IPC, and as such the Court below committed error in rejecting the prayer of the petitioners.

4. On the other hand, the learned A.P.P. contended before me that there is a specific and direct allegation against all the accused persons including the petitioners for assaulting Sanjay Kumar Ram with an intention to kill him as the deceased was caught and get him throw to the field and thereafter the accused persons assaulted him with leg and fists as well as the injury caused on the vital part of the body, which is sufficient to indicate that the accused persons had intention to kill him and as such Court below rightly rejected the prayer for discharge of the petitioners.

5. From going through the record, it is apparent that there is an allegation against the accused persons that they had caught the deceased and thereafter they got him down on the field and thereafter he was assaulted with leg and fists. The post mortem report indicates about the cause of death due to assault by hard blunt substance causing injury of internal vital part of the body. The injury No. 1 was caused on the forehead.

6. Thus, facts of the case clearly indicates, at this stage, that the petitioners/accused persons had knowledge that the injuries which they were causing may likely to cause the death. Thus, there remains sufficient evidence against the accused persons/petitioners for framing charge and as such I find that the Court below has rightly rejected the prayer of the petitioners.

7. In the result, the order impugned does not require to be interfered and as such the application is dismissed.

8. However, the matter will remain open for consideration at the time of final hearing of the case.