

**(2016) 01 PAT CK 0014**

**In the Patna High Court**

**Case No :** Criminal Miscellaneous No. 33417 of 2015 (Arising Out of PS.Case No. 46 of 2013)

Shambhu Sharan Prasad Sinha and other

APPELLANT

Vs

State of Bihar

RESPONDENT

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**Date of Decision :** 20-01-2016

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 228(1)(a)  
Penal Code, 1860 (IPC) — Section 307

**Citation :** (2016) 2 ECrC 34

**Hon'ble Judges :** Ashwani Kumar Singh, J.

**Bench :** Single Bench

**Advocate :** Arbind Kumar Sharma, Saroj Mumar Sharma, Advocates, for the Appellant; Kumar Ranjit Ranjan, APP, for the Respondent

**Final Decision :** Allowed

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## Judgement

Ashwani Kumar Singh, J. (Oral) - Heard learned counsel for the petitioner, learned counsel for the State and learned counsel for the informant.

2. By way of the present application preferred under Section 482 of the Code of Criminal Procedure (For short Cr.P.C.), the petitioner seeks quashing of the order dated 20.5.2015 passed in Sessions Trial No. 251 of 2014, arising out of Phulwaria P.S. Case No. 46 of 2013, by the learned Chief Judicial Magistrate-cum-Assistant Sessions Judge, Begusarai, whereby, he has dismissed the application filed under Section 228(1)(a) of the Cr.P.C.

3. One Niranjana Prasad Sinha submitted a written report to the Officer-in-Charge of Phulwaria Police Station on 26.03.2013 alleging therein that on the same day at about 9.20 a.m., while some labourers were working at his house, the petitioner being armed with Pagharia (a sharp cutting weapon), his son Amit Kumar Sinha being armed with an iron rod and his wife Kiran Sinha being armed with a thick piece of wooden stick attacked upon him causing several injuries and on hue and cry being raised by him some neighbours and labourers

came to his rescue and upon their intervention the accused persons stopped assault upon him. It is also alleged that the accused Amit Kumar Sinha took away Rs. 500/- from the pocket of the informant.

4. On the basis of the aforesaid allegation Phulwaria P.S. Case No. 46 of 2013 was registered under Sections 341, 323, 324, 307, 504, 506 and 379/34 of the Indian Penal Code (IPC). The police investigated the case and submitted report under Section 173 of the Cr.P.C. against the petitioner under Sections 448, 341, 323, 324, 504 and 506/34 of the IPC pursuant to which cognizance of the offence was taken and the case was committed to the court of sessions for trial.

5. At the stage of framing of charge, an application under Section 228(1)(a) Cr.P.C. was filed on behalf of the accused persons on the ground that apart from Section 307 of the IPC all other offence are triable by a court of Magistrate and in the background of the facts alleged in the FIR coupled with the materials collected during course of investigation, ingredients of the offence punishable under Section 307 of the IPC are not attracted in the present case. However, after hearing the parties, the learned Chief Judicial Magistrate, Begusarai, dismissed the aforesaid application vide order dated 20.5.2015. The aforesaid order dated 20.5.2015 is under challenge in the present case.

6. Learned counsel for the petitioner has contended that though there is allegation in the FIR that the petitioner and two others being variously armed with Pagharia, iron rod and thick wooden piece indiscriminately assaulted upon the informant, the doctor, who examined the informant could notice only one incised wound measuring 2" x 2" skin deep below right eye on the person of the informant. The Medical Officer of the PHC, Teghra, who had examined the informant, has opined that the sole injury found on the person of the informant was simple in nature. It has been further contended that though there is allegation that there was an attempt to kill the informant, the same is not corroborated by the medical evidence on record. There is nothing on the record to show that the petitioner in any manner intended to kill the informant. It has also been contended that the petitioner is the own brother of the informant and other accused persons are his son and wife. There is an ongoing land dispute between the parties and admittedly on the date of occurrence a minor scuffle had taken place in which the informant has sustained only one simple and superficial injury.

7. On the other hand, learned counsel for the informant has vehemently opposed the application filed on behalf of the petitioner. It has been contended by him that to constitute an offence punishable under Section 307 of the IPC, the injury is immaterial. It is only the intention of the accused at the time of committing occurrence which would be relevant to determine whether or not offence punishable under Section 307 of the IPC is made out. He has submitted that the weapon used in the crime was having potential to kill a person. The petitioner had inflicted the blow with an intention to kill, but luckily the informant managed to save himself from the onslaught made by the petitioner and in that view of the

matter simply because a simple injury caused to the informant, it cannot be said that there was no intention on the part of the accused persons to kill the informant.

8. I have heard respective counsel for the parties and perused the materials available on the record.

9. The responsibility of framing charge under the appropriate provision of law is of the Court. It is, therefore, required that at the stage of framing of charge, the Court must apply its judicial mind to consider the question under which provision of law charge is to be framed.

10. Section 228(1)(a) of the Cr.P.C. mandates that if after considering the materials available on the record the court is of the opinion that there is ground for presuming that the 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 to any other Magistrate.

11. In the present case, the only question to be determined is as to whether there was material before the court below to frame charge under Section 307 of IPC.

12. Section 307 of the IPC so far as it is relevant, reads as under:

"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 herein above mentioned."

13. It would be evident from the plain reading of Section 307 of the IPC that the important thing to be borne in mind in determining the question whether an offence under Section 307 IPC is made out or not is the intention or knowledge and not the injury. Without there being intention or knowledge, there can be no offence under Section 307 of the IPC. The intention, however, has to be inferred from the attending facts and circumstances of the case. The relevant facts which would be necessary for inferring intention are as under:

- (i) Nature of weapon used;
- (ii) The place where injuries were inflicted;
- (iii) Nature of injuries caused;
- (iv) Opportunity available to the accused."

14. In the present case, in view of the allegations discussed herein above, it would be apparent that the accused persons are alleged to have been armed

with weapon like Pagharia, iron rod and thick wooden piece. The informant of the case was alone and was unarmed. Had there been any intention to kill the informant the accused persons must have inflicted several injuries upon him. However, the medical report would indicate that there was only one injury on the person of the informant, which too was simple in nature.

15. Considering the allegations made in the FIR and the materials collected during investigation as mentioned in the case diary, it cannot be said that the accused persons intended to kill the informant. In that view of the matter, I am of the opinion that the ingredients of the offence punishable under Section 307 of the IPC are wanting in the present case.

16. Keeping in mind the discussions made, herein above, the impugned order dated 20.05.2015, passed in Sessions Trial No. 251 of 2014, cannot be sustained. Accordingly, the same is set aside. The learned Chief Judicial Magistrate-cum-Assistant Sessions Judge, Begusarai, is directed to frame charges under appropriate provision and transfer the matter to the court of the Magistrate for trial in terms of Section 228(1)(a) of the Cr.P.C.

17. With the aforesaid observations, the application is allowed.