

(2006) 08 JH CK 0005
In the Jharkhand High Court
Case No : Cr.Rev. No. 1087 of 2005

Sri Ram Sah and Others

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 02-08-2006

Acts Referred:

Criminal Law (Amendment) Act, 1932 — Section 17
Criminal Procedure Code, 1973 (CrPC) — Section 323
Penal Code, 1860 (IPC) — Section 147, 148, 149, 307, 322

Citation : (2006) 4 JCR 644

Hon'ble Judges : Dilip kumar sinha, J

Bench : Single Bench

Advocate : P.P.N. Roy, Neeraj Kishore and Niraj Kumar, for the Appellant;
Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

D.K. Sinha, J.—This Cr. Revision application has been preferred by the petitioners herein for setting aside the order impugned dated

23.9.2005 passed by Sri. Gopal Pandey Judicial Magistrate, Ist Class Godda in G.R. No. 109 of 1997 corresponding to T.R. No. 1074 of 2005

whereby and whereunder Section 307/149 of the Indian Penal Code was added on the petition of the informant u/s 323 of the Code of Criminal

Procedure for commitment to the court of Sessions.

2. The brief fact of the case as it stands narrated in the statement of the informant, Jai Kant Shukla before the police at Referral Hospital, Thakur

Gangro is that when his son Pappu Shukla was sleeping on the Verandah in the night intervening 20/21-2-1997, at about 10 p.m. as many as 17

named accused persons, alleged to be the members of the extremists organization, self styled as the "group of Shanti Pal" kidnapped Pappu

Shukla. At that time the informant was sleeping at some distance on a different Chowki who out of fear hide himself. His son was taken out side

the village and was brutally assaulted by various arms, as a result of which he sustained injuries on his head, right cheek, both hands as well as legs.

He was thrown by them in the field assuming that he was dead. After escape of the extremists, the informant raised alarm and with the help of the

villagers he removed his injured son Pappu Shukla to Gangro Hospital where he was treated. The accused persons belonged to his village who

were engaged in extremist activities and for such reason none of the villagers used to oppose them. They had formed a group in the name and style

of Shanit Pal group as the members of the C.P.I. and in his name the occurrence was given effect to. Disclosing the genesis, the informant narrated

that the said extremists used to obtain 25% of the sale proceeds of the fish collected from two ponds of the village, on the assurance that the same

would be invested for the development of the village and on 19.2.1997 at about 7 P.M. the victim son of the informant had convened a meeting to

ask the villagers as to what development work had been done by the extremists from the money realized by them. He further stated that in

retaliation the accused persons had given effect to the occurrence by kidnapping his son with the intention to commit his murder. The condition of

his son was so critical that he could not be able either to sign or to put his signature and hence he delivered his statement before the police and the

case was instituted under Sections 147, 148, 149, 452, 342, 326 and 322 of the Indian Penal Code and u/s 17 of the Criminal Law Amendment

Act against 17 named accused and several unknown. The police submitted charge sheet and cognizance of the offence was taken under Sections

147, 148, 149 452, 324, 342, 326 and 322 of the Indian Penal Code and u/s 17 of the C.L.A. Act as is evident from the impugned order dated

23.2. 1995.

3. Against the cognizance order as aforesaid the informant had preferred Cr.Misc. No. 24045 of 1999 before the Patna High Court challenging

the said order which was disposed of with the observation that after examination of the witnesses in the court below the informant may file a

petition for the commitment of the said case.

4. It is evident from the impugned order that after framing of charge against the

accused-petitioners, as many as 17 witnesses were produced and examined on behalf of the prosecution and it was submitted on behalf of the informant in the court below that all the witnesses were consistent that Pappu Shukla was kidnapped by the accused persons after breaking open the doors of the house while he was sleeping on the Verandah and was brutally assaulted with lethal weapons like spear, Sanga and sword etc. and was thrown in the field assuming that he was dead. The injury report indicated which was proved and marked as Ext.1 that Pappu Shukla had sustained five grievous injuries on his head. Many lethal weapons like spear and sword were recovered from the possession of accused Ram Sah and Ramesh Mandal which were seized and seizure lists were prepared. From the perusal of the impugned order it is evident that the learned court below after examining the materials on record including the case diary, the statement of the witnesses on oath as well as the seizure lists and after giving opportunity to the defence counsel to place the defence and also upon perusal of the order passed by the Patna High Court in Cr.Misc. No. 24045 of 1999 on 8.2.2000 allowed the petition of the informant filed u/s 323 of the Code of Criminal Procedure by a detailed order, included the offence u/s 307/149 of the Indian Penal Code in the charge against the petitioners and fixed the case for commitment before the Sessions Court.

5. The learned Counsel for the petitioners submitted that the learned court below while allowing the petition filed on behalf of the informant u/s 323 of the Code of Criminal Procedure failed to take into consideration that injuries found on the person of Pappu Shukla were not on his vital organs.

Similarly no vital organ of Pappu Shukla was found cut and as such offence u/s 307 of the Indian Penal Code was not attracted, though the injuries were nine in number but only injuries No. 2, 3 and 7 were found to be grievous in nature and that the injuries were not as such to cause his death in usual course of nature.

6. The learned A.P.P. opposed the contention of the learned Counsel for the petitioners and submitted that prima-facie offence was made out u/s 307/149 of the Indian Penal Code and therefore, there is no illegality or irregularity in the order impugned so as to interfere with under the Cr.

Revision.

7. I have gone through the materials on the record including the certified copy of the evidence of the prosecution witnesses recorded in the court

and the statement of Dr. Tarun Mishra in court which he deposed that nine injuries including incised wounds on the different parts of the body of

victim including on his head and other vital organs were found. Some of the injuries were reported to be grievous in nature and the fracture was

found in the first meta carpal bone. It is evident that P.W.7 Doctor Tarun Mishra though had not examined the victim but he proved the injury

report prepared by Doctor Kameshwar Mandal who had examined of victim.

8. Having gone through the impugned order I do not find any illegality or (sic) therein so as to intervene therein by way of criminal revision

application. There being no merit this petition is dismissed.