

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.280 of 2024

Arising Out of PS. Case No.-26 Year-2019 Thana- GORIAKOTHI District- Siwan

Pushpa Devi Wife of Shree Krishna Nath Dubey Resident of Village- Ageyan,
Ageyan Dubey Tola, P.O.- Agya, P.S.- Goreakothi, Dist.- Siwan, Bihar

... .. Petitioner/s

Versus

- 1. The State of Bihar Patna
- 2. Ankit Dubey son of Shatrughan Dubey Resident of Village- Aagya Dubey Tola, P.S.- Goreakothi, Dist.- Siwan, Bihar
- 3. Mukul Dubey Son of Shatrughan Dubey Resident of Village- Aagya Dubey Tola, P.S.- Goreakothi, Dist.- Siwan, Bihar
- 4. Shatrughan Dubey Son of Shankar Dubey Resident of Village- Aagya Dubey Tola, P.S.- Goreakothi, Dist.- Siwan, Bihar
- 5. Himanchal Dubey Son of Shatrughan Dubey Resident of Village- Aagya Dubey Tola, P.S.- Goreakothi, Dist.- Siwan, Bihar
- 6. Nanhe Dubey Son of Shatrughan Dubey Resident of Village- Aagya Dubey Tola, P.S.- Goreakothi, Dist.- Siwan, Bihar
- 7. Mina Devi Wife of Shatrughan Dubey Resident of Village- Aagya Dubey Tola, P.S.- Goreakothi, Dist.- Siwan, Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Bipin Bihari, Adv.
For the State : Mr. Shyam Kumar Singh, APP
For O.P. No. 2 to 7 : Mr. Ramchandra Singh, Adv.,
Mr. Ashok Kumar Verma, Adv.

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

4 22-04-2025 The petitioner has envoked the revisional jurisdiction of this Court challenging an order dated 29th February, 2024, passed in Sessions Trial No. 241 of 2020, arising out of Goreakothi P.S. Case No. 26 of 2019, upon an application filed on behalf of the accused persons under Sections 227 and 228 of the Cr.P.C., praying for discharge them from the charge-sheeted offence punishable under Section 307 of the I.P.C.



2. The learned Additional Sessions Judge-IX, Siwan discharged the accused persons from the offence under Section 307 of the I.P.C. on the ground that Section 307 of the I.P.C. stipulates that the accused must indicate that there was specific intention with knowledge that same would likely to result in death of the other party. As per the F.I.R., it is apparent that the dispute arose over some trivial issues and whatever happened was at the best on the spur of the moment, without their being pre-determination on the part of the petitioner, much less to cause death on the side of the informant. Thus, the learned Additional sessions Judge-IX, Siwan found that there was no ingredient of offence under Section 307 of the I.P.C. Therefore, he transmitted the case to the court of the learned A.C.J.M.-X, Siwan for framing charge under Sections 341/448/323/504/506/34 of the I.P.C. and Section 27 of the Arms act for trial and disposal.

3. It is the case of the prosecution that over a dispute relating to landed property, the accused persons trespassed into the house of the informant on 6th February, 2019, threatened him to withdraw a case pending against them and assaulted some family members of the informant. Subsequently, under the instruction of one Shatrudhan Dubey, his son namely Ankit



Dubey opened fire. The F.I.R. does not disclose that the informant received gun shot injury on her left cheek, causing fracture of mandible.

4. Learned Advocate on behalf of the petitioner refers to Section 307 of the I.P.C., which runs thus:-

“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. Attempts by life convicts.— When any person offending under this section is under sentence of imprisonment for life, he may, if hurt is caused, be punished with death.”

5. It is urged by the learned Advocate for the petitioner that the first ingredient of offence under Section 307 of the I.P.C. relates to any act committed by the accused with such intention or knowledge, and under such circumstances, that if he by that act cause death, he would be guilty of murder. Thus, the accused must be an intention or knowledge that the



purported act may cause murder of the victim.

6. In other words, in order to establish charge under Section 307 of the I.P.C., all the ingredients under Section 302 of the I.P.C. are required to be proved, except murder. Had the act been caused murder, the accused would have been guilty for committing offence under Section 302 of the I.P.C.

7. Referring to the discharge certificate of the petitioner, it is submitted by the learned Advocate for the petitioner that accused Ankit Dubey opened fire that hit the left mandible of the informant, causing gun shot injury with fracture of mandible. The learned Additional Sessions Judge did not consider or failed to appreciate that face is one of the most vital region of the body and if the gun shot struck on inches above or below the injury, it would have caused death of the informant. The learned Additional Sessions Judge was absolutely wrong to hold that there must be, prima facie, evidence of “intention with knowledge” of the accused while committing such offence. The statute says intention or knowledge.

8. Now comes the question, as to how, intention or knowledge can be proved. At the, prima facie, stage of consideration of charge and even during trial, it is very difficult, if not impossible, to prove intention or knowledge of the



accused by way of direct evidence, because intention and knowledge comes from culpable state of mind and there cannot be a direct evidence of such culpable intention. Intention can be gathered from the surrounding circumstances, from the nature of wound received by the victim, from the manner of assault inflicted by the accused, from the nature of weapon used etc. Knowledge can be presumed from the act of the accused which he attempted to commit, but ultimately failed. In order to prove a charge under Section 307 of the I.P.C., it is even not necessary for the prosecution to show that the victim received any injury. If the prosecution is successful to prove that the victim committed some overtact which, if successful, would have caused murder to the victim, the accused may be held guilty for committing offence under Section 307 of the I.P.C.

9. Learned Advocate on behalf of the accused persons, on the other hand, submits that F.I.R. made by the informant did not contain any such incident of receiving gun shot injury. In this regard, this Court points out that the F.I.R. is not an encyclopedia or a bible. F.I.R. only states the criminal administration of justice in motion. It is not a substantive piece of evidence.

10. Leaving aside the F.I.R., the discharge report of



Smt. Puspa Devi, who was admitted to Patna Medical College and Hospital on 7th February, 2019 and discharged on 27th February, 2019, clearly states that she received gun shot injury with fracture of mandible. In order to treat the informant from fracture, she was operated on 21st February, 2019.

11. Surprisingly enough, the learned Additional Sessions Judge-IX, Siwan, directed the learned A.C.J.M.-X, Siwan to frame charge under Section 27 of the Arms Act, which is an offence of using firearm. Thus, the learned Sessions Judge came to a finding that a firearm was used or a firing was made by a firearm, in course of the alleged incident. However, he did not consider the discharge certificate obtained by the Investigating Officer from Patna Medical College and Hospital. He relied on an injury report prepared by Sadar Hospital, Goreakothi, Siwan.

12. At the time of framing of charge, the court has to see whether the act, irrespective of its result was done with the intention or knowledge and under the circumstances mentioned in the Section.

13. The learned Additional Sessions Judge-IX, Siwan even failed to consider, on the basis of case diary, that when the informant received gun shot injury, causing fracture of



mandible, a charge under Section 326 of the I.P.C. ought to be filed. On the contrary, the learned Additional Sessions Judge directed the learned A.C.J.M., to frame charge under Section 323 of the I.P.C. The impugned order is not only illegal but also perverse. While perusing the impugned order as well as at the time of dictation, I anxiously thought as to whether the learned Additional Sessions Judge has gone through the provisions of Section 307 of the I.P.C. with minute details.

14. In view of the above discussion, I have no other alternative but to hold that the impugned order dated 29th February, 2024 cannot sustained.

15. The revisional application is accordingly allowed.

16. The learned Additional Chief Judicial Magistrate-X, Siwan is directed to transmit the record to the court of learned Additional Sessions Judge-IX, Siwan to frame charge against the accused persons under Section 307 of the I.P.C.

17. With the above order, the instant criminal revision is disposed of.

(Bibek Chaudhuri, J)

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