

IN THE COURT OF DISTRICT & SESSIONS JUDGE, SAHARSA

S.T. 220/19

ORDER-SHEET

17.03.2020 All the five accused persons namely (1) Md. Jahangir, (2) Md. Sagir, (3) Md. Saddique, (4) Hamida Bibi and (5) Md. Shahid are in attendance.

2. Attendance of Learned P.P. is filed on behalf of the prosecution.

3. Both the parties have been heard on the petition dated 17-01-2020 filed under Section 228 (1)(a) Cr.P.C. on behalf of accused persons namely (1) Md. Jahangir, (2) Md. Sagir, (3) Md. Saddique, (4) Hamida Bibi and (5) Md. Shahid and the record is fixed for order today.

4. The case of the prosecution as per fardbeyan of informant Md. Hasan which was recorded in Sadar Hospital Saharsa on 30.11.2018 at about 07:30 A.M., in brief, is that on 28.11.2018 at about 01:00 P.M. when wife of younger brother of the informant namely Rukhsar Bibi was sleeping in her house alone then one of the accused namely Md. Jahangir entered into her house and tried to make physical relationship with her and when she raised alarm then nephew of the informant namely Md. Qayum and wife of elder brother of informant Hazrat Bibi came there then they saw that accused Md. Jahangir was pushing clothes in the mouth of Rukhsar Bibi and trying to ravish her. Further case of the prosecution is that the informant and his nephew caught the accused Md. Jahangir and also people from the vicinity congregated there. It has further stated that father of the accused Md. Jahangir namely Md. Sagir also came there and he started shouting. Thereafter, family members of accused Md. Jahangir namely Md. Siddique, Md. Shafique, Hamida Bibi, Md. Shahid, Md. Anwarul and Md. Sajim came there armed with iron rod, Farsa and started abusing and assaulting the informant side. Further allegation is that the accused Md. Sagir, Md. Siddique and Md. Shahid indiscriminately assaulted Rukhsar Bibi on her back, belly and head with intention to kill her and blood started oozing out from wounds. Further case is that when the informant tried to save her then the accused Md. Sagir gave blow on his head with iron rod and again another blow on his palm of left hand. Further allegation is that the accused persons also took out golden chain out of the neck of his nephew and also gave a farsa blow on left ear of his nephew. It has further stated that the accused persons committed loot inside his house and took away other things.

5. On the basis of fardbeyan of the informant Bangaon P.S. Case

Cont/-

S.T. 220/19

17.03.2020

No.129/2018 was registered for offences under Sections 147, 149, 341, 323, 324, 354(B), 504 and 506 IPC against the accused persons namely (1) Md. Jahangir, (2) Md. Shagir, (3) Md. Siddique, (4) Md. Shafique, (5) Hamida Bibi, (6) Md. Shahid, (7) Md. Anwarul and (8) Md. Sajim and after investigation the police submitted charge-sheet in this case against accused persons namely (1) Md. Jahangir, (2) Md. Sagir, (3) Md. Saddique, (4) Hamida Bibi and (5) Md. Shahid for the offence under sections 147, 149, 341, 323, 325, 307, 354(B), 504 and 506 IPC. Cognizance was taken by learned court below vide order dated 28.05.2019 and case was committed to the court of sessions vide order dated 14.11.2019.

6. It has been urged on behalf of the accused persons that no case under section 307 IPC is made out against the accused persons and at best only offences under Sections 147, 149, 341, 323, 325, 354(B), 504 and 506 IPC are made out. It has been further urged that there is case and counter-case of the same date of occurrence and accused persons have also filed Bangaon P.S. Case No.128/2018 against the informant side for the offence under Sections 147, 149, 341, 323, 324, 379, 354(B), 504 and 506 IPC. It has further been submitted that there is no intention of committing murder rather all the injuries on the persons of victim are simple in nature caused by hard and blunt substance and there is no injury by any lethal weapon. The evidence on record simply shows that the accused and informant side had some altercation over some issues and in the heat of moment both sides went violent and caused hurt to each other and there are some injured persons also from the accused sides. It has further submitted that there is no material to establish the offence under sections 307 IPC. In support of their contention the petitioners have referred case law of the Hon'ble Apex Court 2019(1) PCCR 80 Champa Lal Dhakar Vs Naval Singh Rajput. At last it has been prayed that no case under Section 307 IPC is made out from the materials on record therefore, the case may be transferred to the court of learned CJM, Saharsa for trial under Section 228(1)(a) Cr.P.C.

7. Learned P.P. for the State has vehemently opposed the prayer of the petitioners and submitted that all the accused persons variously armed with deadly weapons like iron rod and Farsa entered into the house of the informant and assaulted several persons and there are multiple injuries on the persons of the injured and some of the injuries are grievous in nature on the vital part of the body. Moreover, the witnesses in the case diary have fully supported the case of the prosecution which

Cont/-

S.T. 220/19

17.03.2020

makes out prima-facie case for the offence under section 307 IPC hence the petition of the petitioner is not maintainable and deserves to be rejected and hence, the same may be rejected. .

8. Having heard learned counsel for both the sides I have perused the record also. On consideration of the materials available on record, the injury report alongwith case diary and the evidences of the witnesses in Paragraph Nos.11, 67, 68, 70 of the case diary I find that there are ample materials on record to frame charge under Section 307 IPC also apart from other offences of the I.P.C. The petition dated 17.01.2020 does not find substance and merit from the materials available on record and deserves to be dismissed. Accordingly the petition dated 17.01.2020 under Section 228 (1)(a) Cr.P.C. filed on behalf of accused persons stand rejected.

9. Let the record be put up on 17.04.2020 for framing of charge against the accused.

Dictated & corrected by me.

Sd/-

Sessions Judge,