

Order below Exh.47
(Dated 28/07/2015)

Read application and say filed by learned defence counsel. Heard both sides and perused record. This application is filed for addition of Section 307 of Indian Penal Code against all accused. Informant filed this application with contention that all six accused entered into the house and one accused No.6 Kunal gave sword blow on the head of Harichand Murli Sonwal. The other accused were armed with sticks and they also gave stick blows to Harichand Murli Sonwal, informant and Rahul Bhiku Sonwal. Therefore, there was clear cut intention on the part of accused to kill Harichand Murli Sonwal. After investigation, I.O. deliberately filed charge-sheet only u/s. 147, 148, 149, 326, 452, 506 of Indian Penal Code and Section 4/25 of Indian Arms Act. It is submitted that Investigation Officer deliberately did not file charge-sheet u/s. 307 of Indian Penal Code against all the accused. It is also submitted that this Court wrongly framed charge u/s. 147, 148, 149, 324, 326, 452 of Indian Penal Code by overlooking Section 307 of IPC. Therefore, informant filed this application and prayed for addition of Section u/s 307 of IPC in charge at Exh.58.

Learned defence counsel Shri N.R.More filed his say to this application and strongly opposed this application with contention that application is filed to delay trial and as there is counter case pending against informant, just to harass accused this application is filed. It is also submitted that charge already framed at Exh. 58 after going through the charge-sheet and therefore, this Court has no jurisdiction to add charge u/s. 307 of IPC. Consequently, defence counsel prayed for rejection of application. After hearing both sides and going through the charge Exh.58 framed by my learned Predecessor and statements of witnesses recorded u/s. 161 of The Code of Criminal Procedure by I.O. I found that there are allegation of single blow of sword by accused No.6 Kunal inflicted on head of Harichand Murli Sonwal. Therefore, it is difficult to accept the contention of informant that all accused infurtherance of their common intention attempted to kill Harichand Murli Sonwal. In case of Ashok N. Chaudhari -v- State of Maharashtra, 2001(2) B.Cr.C. 319, it is held that accused did not gave successive blows and when there was no protest on the part of victim, accused certainly would have given multiple blows if there had been intention on their part of kill victim. Therefore, Section 307 of IPC does not attract. In present case also only accused No.6 inflicted single sword blow from back side on head of injured Harichand Murli Sonwal. No doubt injury was grievous but just inflecting one blow by sword does not attract Section 307 of IPC. Therefore, the ratio laid down in cited case squarely applies to the case in hand. Consequently, this application deserves to be rejected. Therefore, this application is being devoid of merit stands rejected. No order as to costs. Trial proceed further for disposal as per law.

Dated :- 28/07/2015

(A.N.Pathan)
Judicial Magistrate, F.C.,Digras