

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.106 of 2014

Arising Out of PS.Case No. -26 Year- 2005 Thana -GURARU District- GAYA

=====

Mundrika Singh son of Late Udit Singh, Resident of Village- Mahuaian,
P.S- Guraju, District- Gaya.

.... Appellant/s

Versus

1. The State of Bihar
2. Om Prakash Singh @ Bura Singh son of Late Santau Singh
3. Umesh Singh son of Late Mahabal Singh
4. Ranjeet Singh son of Umesh Singh
5. Vishwajeet Singh son of Umesh Singh
6. Mundrka Singh son of Late Sahabail Singh

All are resident of village- Mahuaian, P.S- Gurasu, District- Gaya.

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Sunil Kumar Yadav, Advocate

For the State : Mr. Z. Hoda, A.P.P.

For the respondent nos.2 to 6 : Mr. Krishna Singh, Sr. Advocate

=====

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL ORDER

17 13-01-2015 This appeal filed under the proviso to section 372 of the Code of Criminal Procedure is directed against the order dated 14th June, 2011 passed by the learned Additional District and Sessions Judge, F.T.C.-III, Gaya in Sessions Trial No.662 of 2009 arising out of Gararu P.S. Case No.26 of 2005 whereby and where under the respondent nos.2 to 6 have been acquitted of the charges framed against them under section 395 of the Indian Penal Code.

2. Learned counsel for the appellant submits that the

order impugned is bad in law as well as on facts. According to him, the appellant had never ever received any summons from the court and the court below erred in acquitting the accused persons in exercise of powers conferred under section 232 of the Code of Criminal Procedure.

3. The appellant is informant of the aforesaid case which was instituted on 10th June, 2005 under section 395 of the Indian Penal Code against the private respondents. On conclusion of investigation investigating officer has submitted charge sheet on 31st August, 2007. On perusal of the police report submitted under section 173(2) of the Code of Criminal Procedure, the learned Chief Judicial Magistrate, Gaya took cognizance of the offence on 20th August, 2008 and after complying with the requirements mandated under section 207 of the Code of Criminal Procedure the case was committed to the court of sessions for trial on 8th May, 2009. The trial court framed charges against the accused persons on 17th December, 2009 and since then the matter was adjourned from one date to another for producing evidence on behalf of the prosecution. The prosecution failed to produce any witness in the court on the following dates :-

04.02.2010, 09.03.2010, 05.04.2010, 24.04.2010, 25.05.2010, 17.06.2010, 14.07.2010, 11.08.2010, 08.09.2010, 25.10.2010, 11.12.2010, 01.12.2010, 06.01.2010 and 16.02.2011.



4. On 16.02.2011, the trial Judge issued non-bailable warrant of arrest against the informant and adjourned the matter for 20th March, 2011. On 20th March, 2011 also no witness turned up on behalf of the prosecution and thereafter the matter was adjourned for 20th April, 2011. Even on 20th April, 2011, no witness turned up on behalf of the prosecution and hence, the case was adjourned for 24th May, 2011. On 24th May, 2011, as a matter of last chance to the prosecution, the trial court adjourned the case for 1st June, 2011. On 1st June, 2011 also, no witness appeared on behalf of the prosecution and, thus, the court below closed the prosecution case and recorded the statement of the accused persons under section 313 of the Code of Criminal Procedure. On 14th June, 2011, in absence of any evidence on record, the court below recorded the order of acquittal under section 232 of the Code of Criminal Procedure.

5. It is apparent from records that the trial court took all steps in order to secure attendance of the witnesses. However, all attempts made by the trial court proved futile.

6. Admittedly, there was no evidence at all for convicting the accused persons. The object of section 232 of the Code of Criminal Procedure is to expedite the conclusion of the trial and at the same time avoid unnecessary harassment to the accused and to avoid waste of public time.

7. As recorded hereinabove, the case was pending before the trial court since 2005. The charges were framed against the accused persons on 17th December, 2009. It was incumbent upon the prosecution to produce its witnesses in course of trial within reasonable time. The accused persons were attending the court on each and every date either in person or through their advocate. There is no delay or laches on the part of the accused. Under the circumstances, the trial court was left with no option but to acquit the accused under section 232 of the Code of Criminal Procedure.

8. In that view of the matter, I find no merit in the present appeal. Accordingly, the appeal is dismissed.

(Ashwani Kumar Singh, J)

Md.S./-

U		T	
---	--	---	--