

IN THE HIGH COURT OF JUDICATURE AT PATNA

Govt. Appeal (DB) No.64 of 1994

Arising Out of PS.Case No. -null Year- null Thana -null District- MADHUBANI

The State of Bihar

.... Appellant/s

Versus

Kuldip Yadav, son of Saryug Yadav of Village Bhatrandha, P.S. Chailar, District Madhepura

.... Respondent/s

Appearance :

For the Appellant/s : Mr. A.K. Sinha, APP

For the Respondent/s : None.

CORAM: HONOURABLE MR. JUSTICE V.N. SINHA

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE V.N. SINHA)

Date: 10-07-2015

Heard learned counsel for the appellant-State. None appears for the sole respondent though he has been served with the notice of this Government Appeal.

2. By filing this appeal State has assailed judgment dated 16.05.1994, passed by Ist Additional Sessions Judge, Madhepura, in Sessions Case No. 54/91 acquitting the sole respondent of the charge under Section 396 of the Penal Code.

3. It is submitted on behalf of the State that the trial court without examining any witness in the present trial acquitted the sole respondent on the basis of the evidence adduced in the connected trial, as in the said trial also neither the post mortem, injury report nor the Test Identification Chart were exhibited, proved. Seven witnesses

examined in the said trial also did not prove the prosecution case and in appreciation of the fact that neither the oral evidence nor the documentary evidence could prove the charge levelled against the accused persons in the connected trial, the accused persons of the connected trial were acquitted.

4. In the present case, trial court made attempt to secure presence of the witnesses but when they did not appear the court relying on the evidence recorded in the connected trial acquitted the sole accused against whom initially charge-sheet was not submitted and the investigation was kept pending during the pendency of the earlier trial. After disposal of the earlier trial charge-sheet against the sole accused herein was submitted. In the present trial attempt was made to secure presence of the witnesses but they did not appear. The court below, however, placing reliance on the evidence adduced in the earlier trial acquitted the sole accused of the present case. The evidence adduced in the earlier trial could not have been used in the present trial as the present accused was not appearing along with the accused of the said trial and the evidence recorded in his absence could not have been used in the present trial.

5. In spite of placing reliance on the evidence adduced in the earlier trial, the trial court should have proceeded under Section 232 Cr.P.C. Notwithstanding the aforesaid illegality,

the fact remains that the occurrence took place on 10.09.1989, after filing of the charge-sheet case was committed to the Court of Sessions in the year 1991 and if the witnesses were not available then, they may not be available now, after passage of more than 23 years, in the circumstances, we have no option but to dismiss the appeal, which is dismissed.

(V.N. Sinha, J.)

(Nilu Agrawal, J.)

Rajesh/-

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