

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.990 of 2010

Against the judgment dated 29.06.2010 passed by Additional Sessions Judge-IV, Bettiah in Sessions Trial No.280 of 2009, arising out of Sikta P.S. Case No.8 of 2008 .

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Sk. Rafique, son of late Sk. Ameen, resident of village- Sirisiya, P.S. Sikta, District- West Champaran.

.... Appellant/s

Versus

1. The State of Bihar
2. Sk. Bundeli S/o late Sk. Moharram
3. Sk. Murtaza S/o Sk. Ish Mohammad
4. Sattar Ansari S/o Jainul Ansari
5. Sk. Bagad S/o Late Sk. Moharram
6. Sk. Reyaz S/o Sk. Murtaza
7. Sk. Laddu S/o Sk. Murtaza
8. Sk. Hasan S/o Sk. Bundeli
9. Sk. Hussain S/o Sk. Bundeli

All are residents of village- Sirisiya, P.S. Sikta, District-West Champaran.

.... Respondent/s

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Appearance :

For the Appellant : Mr. Aditya Nath Jha, Advocate

For the Respondent no.1 : Mr. Abhimanyu Sharma, A.P.P.

For the Respondents 2 to 9 : Mr. Bashishta Narain Mishra, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 05-02-2015

This Criminal Appeal provides an instance of an utter failure of the system or the extent to which the criminal justice system has been misused, if not managed.

The respondents 2 to 9 herein, were tried in Sessions Trial No.280 of 2009 by the Court of Additional Sessions Judge-4, West Champaran at Bettiah, for the

offences punishable under Sections 147, 323, 324/34, 307/34, 302/34 and 504/34 of the Indian Penal Code. The allegation was that the respondents 2 to 9 caused the murder of Abdul Hafeez on 16.02.2008 at 9 A.M. at Village Sirisiya, P.S. Sikta, District-West Champaran. The complaint in this behalf was submitted by the appellant herein, who is the brother of the deceased. The F.I.R was registered. Formalities, such as causing inquest and conducting the postmortem, were completed. After investigation, a charge-sheet was filed against the respondents 2 to 9 alleging offences referable to Sections mentioned above.

The respondents 2 to 9 pleaded not guilty. Therefore, the case was taken up for trial.

On behalf of the prosecution, six witnesses, including four private, were examined and all of them are said to have been hostile. Through a brief and cryptic judgment dated 29.06.2010, the trial court acquitted the respondents 2 to 9. Therefore, this appeal against acquittal is filed under Section 372 of the Code of Criminal Procedure, by the complainant.

One of the grounds raised by the appellant is that P.Ws 1 to 3 who were examined as witnesses in the Court, were not the persons with those names, and the

respondents 2 to 9, with the help of the Public Prosecutor have impersonated them.

When the appeal was listed for admission, a Division of this Court comprising of Hon'ble Mr. Justice Shiva Kirti Singh, as his Lordship then was, and Hon'ble Mr. Justice Gopal Prasad, passed an order dated 15.03.2011 expressing surprise over the manner in which the trial Court dealt with the case. The Bench left open to the appellant to submit a complaint before the trial Court for the alleged impersonation of P.Ws 1, 2 and 3. It was also directed that the enquiry under Section 340 of the Code of Criminal Procedure shall be completed within three months.

The appellant has made a complaint and the same was enquired into by the Additional Sessions Judge-3, West Champaran. A report dated 12.01.2015 is filed. We have perused the report and permitted the learned counsel for the respondents 2 to 9 also to read it. The report discloses that the persons, named as P.Ws 1 to 4, in the judgment in Sessions Trial No.280/2009 were examined in the enquiry and all of them have stated that they did not depose as witnesses in the case at all.

We heard learned counsel for the appellant, learned Public Prosecutor for the 1st respondent and learned

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counsel for the respondents 2 to 9.



It is indeed shocking that the trial Court did not ensure that at least, the complainant is examined as a witness. The various facts mentioned in the grounds of appeal virtually stood un-rebutted. The entire trial was undertaken in a hasty, if not, a clandestine manner. We take exception to the manner in which the Public Prosecutor conducted the case. He did not even verify as to whether the witnesses, who are proposed to be examined by him, are the same persons as named in the charge-sheet or from the list supplied to the Court. The concerned investigating officer would certainly have role in the acts of impersonation. The learned Additional Sessions Judge-4 ought to have been careful in this behalf unless, he too was aware of the misdeeds. We desist from making further observation, lest the fresh trial, which we are proposing to direct, gets affected.

We, therefore, allow the appeal and set aside the judgment dated 29.06.2010 passed by Additional Sessions Judge-IV, West Champaran, Bettiah in Sessions Trial No.280 of 2009. The matter is remanded for fresh trial and disposal. The learned District and Sessions Judge, West Champaran, Bettiah shall allot the case to a Judge, other

than the one who tried it earlier.

After remand, the case shall be listed before the Court as directed above, on 23rd February, 2015. On that date, the respondents 2 to 9 shall appear before the Court. Out of them, respondent 2 i.e. Sk. Bundeli, who was in prison as undertrial, shall surrender before the Superintendent of the concerned Jail. Respondents 3 to 9 shall be required to execute fresh bonds. The fresh trial shall be completed within a period of four months.

The District Magistrate shall ensure that a different Public Prosecutor is entrusted with the trial of the matter.

Registry shall ensure that the entire record is sent to the concerned Court.

(L. Narasimha Reddy, CJ)

(Vikash Jain, J)

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