

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.611 of 2010

Arising out of PS.Case No.-174 Year-2003 Thana-Nawada Town District-NAWADA

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Ram Lal Chauhan, Son of Dwarika Chauhan, Resident of Village Maya Bigha, P.S.
Nawadah Town, District Nawada.

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant : Shri Vikram Deo Singh, Advocate
Shri Sanjay Kumar Sinha, Advocate
Shri Pankaj Kumar Sinha, Advocate

For the State : Sushri Shashi Bala Verma, APP

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CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA

and

HONOURABLE SHRI JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA)

Date: 06-07-2015

The present appeal was heard by us. During the course of the hearing, what transpired was that in spite of almost all the witnesses consistently stating that the genesis of the occurrence was that the appellant was not permitted to participate in playing cards with the solitary exception of Rukmini Devi (PW8), the two learned judges who had the occasion of hearing the trial in one part or the other and who recorded the statement of the appellant on 17.09.2007 and 16.11.2009 under Section 313 Cr.P.C. had fallen in the same error of framing the question no.1 of the record of 313 statement of the appellant appearing at pages 65 and 66 of the paper book similarly. As per that question it was not the refusal of the informant to allow the appellant to participate in playing cards rather



the genesis of the occurrence was that when Uday Chauhan (not examined) along with Madho Chauhan (PW4) were going by a bicycle, the appellant had stopped the cycle by holding its handle and had started to assault the two after abusing them and when Rukmini Devi (PW8) had intervened to forbid the appellant to do it but this appellant and the deceased Kailash Chauhan also intervened in the quarrel, this appellant is said to have gone to his house to fetch a *khanti* to give a blow to his head. Except Rukmini Devi (PW8) and Alakhdeo Chauhan (PW3) all witnesses had been consistent in stating the same story as regards the genesis of occurrence. It is a question of appreciating evidence as to whether PW3, Alakhdeo Chauhan's evidence could be admissible or not because we are not expressing our opinion on the merits of the evidence and as such, on the merit of the present appeal. We are only going by the error which appears quite substantial as regards the wrong compliance of Section 313 Cr.P.C. We do not want to go into the question of reading the evidence of PW3 or not reading it. In view of the judgment which we are passing presently, we leave it to the conscience of the trial court again to decide the issue if it is raised before it.

2. After having gone through the record, what we found was that it is a blatant wrong compliance with the provisions of Section 313 Cr.P.C. The learned judges appear not having gone through the evidence of the witnesses personally and also appear not



having drafted the questionnaire themselves under Section 313 Cr.P.C. It is true that a discretion had been left to the presiding judges of trial courts to take the assistance of the public prosecutor or the defence counsel in framing of questions under Section 313 Cr.P.C. as appears from sub-section (5) of that provision, but that does not give a latitude to any judge to skip his own judicial business by acting mechanically or with a closed mind to be guided only by others conscience. The court has to put questions to the accused in order to eliciting his explanations on circumstances which may appear against him from evidence. Thus, it is the primary judicial responsibility of the Presiding Officer of a court to ensure the proper framing of the questions which could be put to the accused persons for eliciting his explanations to the circumstances appearing against him. Framing a wrong question or putting the same to an accused could have catastrophic effect on the final result of a trial. That appears obtaining here because the majority of the witnesses having given a different genesis of occurrence which was stated in the FIR also the learned judges were acting in blatant non-application of their judicial minds to frame a question which could in our opinion ought not have been done.

3. We as such, allow the appeal and set aside the judgment of conviction and order of sentence passed upon the appellant and remand the matter back for retrial to Fast Track Court

No. III, Nawada or any court successor to that court which had disposed of Sessions Trial No. 30 of 2004/33 of 2004 by judgment dated 29.03.2010.

4. Send back the records in its entirety to the trial court along with the copy of the judgment which shall frame the questions after considering the evidence himself and then put it to the appellant under Section 313 Cr.P.C. and record the statement again. If the appellant is languishing in any other jail, it shall be ensured that he shall be produced before the trial court. After the trial court had recorded the statement of the appellant afresh under Section 313 Cr.P.C., it shall hear the arguments of the parties and shall proceed to deliver the judgment again. No further evidence shall be taken by the court below. At any rate and by all means, the trial must be concluded by the 13th of October, 2015. In case there is no successor court to Fast Track Court No. III, Nawada then, it shall be at the discretion of the District Judge to make over the trial for the limited purposes as directed by us to any court of competent jurisdiction.

5. The appeal is disposed of in the aforesaid terms.

(Dharnidhar Jha, J.)

(Ahsanuddin Amanullah, J.)

Sanjay/P.Kumar/NAFR

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