

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.100 of 2015

Arising Out of PS.Case No. -38 Year- 2002 Thana -LALIT NARAYAN UNIVERSITY District- -

Shiv Kumar Mahto, Son of Late Lakhan Mahto, Resident of Village - Azamnagar,
Waterbage Bridge, Police Station - University, District - Darbhanga.

.... Appellant

Versus

1. The State of Bihar
2. Shatrughan Mahto @ Saheb Mahto, Son of Late Mahabir Mahto
3. Ram Bilash mahto Son of Late Mahabir Mahto, Both are resident of Mohalla -
Bela, Police Station - University, District - Darbhanga.
4. Bhikhari Jha, Son of Dinesh Jha, Resident of Mohalla - Sundarpur Chhoti
Pokhar, Police Station - University, District - Darbhanga.

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Girish Chandra Jha
For the State : Mr. A Sharma, APP
For the Respondents 2 to 4 : Mr. Pankaj Kumar Das

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 04-03-2015

This appeal is filed against the order of acquittal passed by the court of Adhoc Additional Sessions Judge-4, Darbhanga, in Sessions Trial No. 387 of 2011. The complainant in the case is the appellant.

The respondents herein, three accused, were put to trial on the allegation of committing the murder of one Lakhan Mahto, father of the appellant herein, on 20th March 2002. The Lalit Narayan Mithila University Campus Police Station registered Case No. 38 of 2002 and the same was taken up for trial as Sessions Trial No.387 of 2011. The grievance of the appellant is that not a single witness was examined in the case and the trial court hastily proceeded to dispose

of the case leading to acquittal.

On 4.2.2015 the matter was listed before us. After going through the record, we expressed our displeasure about the manner in which the trial court disposed of the case and had called for a report from the learned Additional Sessions Judge-4, Darbhanga. The report dated 9.2.2015 has since been received.

Heard Sri Girish Chandra Jha, learned counsel for the appellant, and Sri A Sharma, learned A.P.P.

Sri Pankaj Kumar Das, learned counsel appears for the respondents-accused.

It has already been mentioned that the trial court acquitted the respondents without recording any evidence whatever. A perusal of the report submitted by the learned trial judge discloses that on 14.5.2012 summons were issued to all the witnesses. However, the schedule for conducting the trial was not fixed at that time. It was only in April 2014 that warrants of arrest non-bailable were issued against the private witnesses and five months thereafter similar warrants were issued against the official witnesses. Neither the docket nor the report submitted by the learned trial judge suggests that warrants have been executed. It is only when the warrants are executed and the witnesses do not turn up, then there would have been justification for the trial court to proceed to determine the matter without any evidence whatever. In the circumstances of the case, we are of the view that the order passed by the learned trial court cannot be sustained in law.

We, therefore, allow this appeal and set aside the order dated 16.9.2014 passed by the learned trial court in Sessions Trial No. 387 of 2011 under the provisions of Section 386(a) of the Code of Criminal Procedure, 1973 and direct the trial court to put the accused

into trial since no trial as such held at all. We fix two months time from the date of receipt / production of a copy of this order for the Public Prosecutor to produce the witnesses before the trial court for examination.

The respondents shall remain on bail and their position would depend upon the outcome of the nature of disposal that may be given by the trial court to the case.

(L. Narasimha Reddy,CJ)

(Vikash Jain, J)

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