

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.684 of 2010

Arising Out of PS.Case No. -67 Year- 2004 Thana –Fullidumer District- BANKA

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Manoj Yadav son of late Doman Yadav resident of Vill-Rikhia Rajdah, P.S-
Katoria, Dist-Banka

.... Appellant

Versus

The State Of Bihar

.... Respondent

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Appearance :

For the Appellant : Shri Rakesh Kumar Sinha, Advocate

For the Respondent : 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 appellant was charged under Sections 302 of the Indian Penal Code, 27 of the Arms Act and 3 and 4 of the Explosive Substances Act by the learned Presiding Officer, Fast Track Court-I, Banka for being put on trial in Sessions Trial No.961 of 2008/Trial No.227 of 2010. The charges were framed on 24.01.2009 and all on a sudden on 08.02.2010 P.W.1 Ashok Kumar Yadav, P.W.2 Yogendra Yadav, P.W.3 Vijay Kumar Yadav, P.W.4 Sudamiya Devi (the informant of the case) and P.W.5 S.I. Ram Sakal Das who had initially investigated the case, were produced for their evidence.



P.W.1 Ashok Kumar Yadav, P.W.2 Yogendra Yadav as also P.W.3 Vijay Kumar Yadav were witnesses who had been attracted to the scene of occurrence on hearing the sound of gunshot and explosion of bombs as appears from their evidence. On their arrival P.W.4 was found by them weeping and wailing near the dead body of her daughter Dukhani Devi (deceased). P.W.4 stated to P.Ws.1, 2 and 3 that it was this appellant Manoj Yadav along with others who had come and the appellant had fired a shot and had exploded a bomb to kill the deceased Dukhani Devi who had been married to this appellant a few years back. P.Ws. 1 and 2, as per the deposition sheets of the two witnesses, were declined to be cross-examined by the accused or someone appearing on his behalf. However, P.W.3 Vijay Kumar Yadav, who was a witness of the same character as that of P.Ws.1 and 2, was cross-examined on behalf of the appellant. Likewise, P.W.4 Sudamiya Devi, the informant of the case was also cross-examined on behalf of the appellant and was discharged.

When it came to cross-examining the Investigating Officer, S.I. Ram Sakal Das, the Court appears recording as under in paragraph-7 of the deposition sheet:-

“The lawyer of the accused does not turn up for cross-examining the witness. The accused is asked as to whether he wants to cross-examine the witness himself. The accused declines. Hence the witness is now discharged.”

2. P.W.6 Dr. Md. Mustafa Ansari who had held postmortem

examination on the dead body of the deceased had been produced by the prosecution on 06.03.2010, i.e., after about a month of discharge of P.W.5 and he also appears cross-examined on behalf of the accused. Likewise, P.W.7 S.I. Dev Narayan Ram who had taken over the investigation from P.W.5, was examination-in-chief and cross-examined on behalf of the accused and was discharged.

3. As appears from the record, the defence had filed a petition on 09.02.2010 itself requesting the trial Court to recall P.Ws.1 and 2 as also P.W.5, the Investigating Officer for cross-examination as the above witnesses had not been cross-examined by the counsel. That petition was never taken up for hearing and what did the Court do was that without disposing of that petition dated 09.02.2010, he closed the prosecution witnesses and, thereafter, proceeded to hear arguments. It appears from order dated 15.04.2010 passed by the learned trial Judge that during the final arguments on behalf of the accused, the learned counsel for the appellant submitted that the petition filed on 09.02.2010 under Section 231 Cr.P.C. for recalling the witnesses P.Ws.1 to 5 for further cross-examination be allowed and those witnesses be recalled for further cross-examination. The learned trial Judge passed a detailed and long order and what he finally held was that the accused had “declined to cross-examine P.Ws.1 and 2 as these two witnesses were hearsay witnesses. Thereafter he turned up to cross-examine the remaining witnesses,



i.e., P.Ws.3 and 4 for the reasons best known to him and it was the accused himself who chose to cross-examine these witnesses and in that effort, he cross-examined P.W.3 as well as P.W.4 and again his lawyer did not turn up for cross-examining P.W.5 and the accused himself declined cross-examination of P.W.5.” It further appears recorded by the learned trial Judge in his order dated 15.04.2010 that a new lawyer had been engaged by the appellant and he had cross-examined witnesses who were produced after P.W.5.

4. As regards the finding of the learned trial Judge that the learned counsel appearing on behalf of the accused had not turned up to cross-examine P.Ws.1 and 2 because they were hearsay and thereafter he had turned up to cross-examine the remaining witnesses P.Ws.3 to 5, we are surprised to note that P.W.3 was also a hearsay witness and if the counsel had chosen not to cross-examine hearsay witnesses, then why should P.W. 3 was cross-examined as well. There does not appear from the record that P.Ws.3 and 4 had been cross-examined by the accused himself rather the deposition sheets of those two witnesses indicate that they had been cross-examined by someone on behalf of the accused; necessarily pointing out that a counsel had appeared before the court below to cross-examine P.W.s 3 and 4. What we find further is that a counsel had appeared on 09.02.2010 to file a petition containing full reasons as to why P.Ws.1 to 5 should be recalled for further cross-examination by the defence.

The order sheet dated 09.02.2010 also indicates that such a petition was filed and that was ordered to be kept on record without any order being passed on that.

5. On perusal of order dated 15.04.2010 and the connected records, i.e., the deposition sheets of the witnesses, what we find is that the learned trial Judge was not properly recording the facts as regards the non-cross-examination of P.Ws. 1, 2 and 5 and cross-examination of P.Ws. 3 and 4. We are not only alarmed but are worried also that if a Judge who had tried an accused who was in custody and who is illiterate as appears from the records, makes such wrong and incorrect observations in order to denying the right to fair trial to an accused then we are not away from a perilous judicial system.

6. The learned trial Judge appears taking resort to an order passed by this Court in Cr. Misc. No. 22943 of 2009 in which a direction had been issued by a Bench of this Court to conclude the trial in three months and the Joint Registrar, Monitoring Cell (FTC) of this Court had been entrusted to ensure the conclusion of it within three months. We cannot make any comment on the direction issued by this Court, but we do feel that the learned trial Judge who delivered the judgment in such a neck breaking speed was acting against the settled norms of carrying out a criminal trial under the façade of the order passed in the above noted Criminal Miscellaneous petition. Fair



trial is a guaranteed constitutional right and it is the part and parcel of the scheme of administering criminal justice. If a Judge becomes unfair, then who shall come to rescue an incarcerating accused who does not know even to write his name as appears from the records of the case, i.e., various remand orders and Section-313 Cr.P.C. statement of the accused available at page 30 of the lower court records. We are of the opinion that justice has suffered and the learned trial Judge had virtually proceeded ex-parte in a criminal trial as regards the examination of some of the witnesses. He had not only proceeded ex- parte rather he had chosen to be arbitrary in proceeding as such. While two witnesses were declined being cross-examined by the Judge, he was making a wrong record that P.W. 3 had been cross-examined by the accused who was also falling in the same category of hearsay witnesses, like, P.Ws. 1 and 2. As we have discussed just now from the very record made by the learned trial Judge and the connected deposition sheets and orders, the trial has been taken through after denying a fair trial to the accused and, as such, the judgment stands vitiated.

7. In the result, the appeal succeeds and the same is allowed by setting aside the judgment of conviction and order of sentence passed upon the appellant Manoj Yadav.

8. Let the learned trial court re-trial the appellant. For the above purposes, the trial court shall recall all the witnesses for further

cross-examination by the appellant through his lawyer of his choice. If the appellant does not have any choice as regards the lawyer, then the Presiding Officer himself shall appoint a competent counsel to defend himself, the cost of which shall be borne out by the State Exchequer through the District Legal Services Authority.

9. Let a copy of this order be transmitted along with the entire lower court records to the learned District and Sessions Judge, Banka who shall ensure the trial of the case was held expeditiously by a competent court of appropriate jurisdiction as per the direction of this Court.

10. Let the Registry of the Court obtain an explanation from the Judge who had passed the order dated 15.04.2010 and judgment dated 21.04.2010 within 15 days from today for being placed along with a copy of this order before the Hon'ble Inspecting Judge of Banka Judgeship for holding enquiry into the conduct of the Judge.

(Dharnidhar Jha, J)

(Ahsanuddin Amanullah, J)

B.Kr./-Anjani.

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