

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.357 of 2014

Arising Out of PS.Case No. -287 Year- 2010 Thana -null District- SASARAM (ROHTAS)

1. The State Of Bihar

.... Petitioner/s

Versus

1. Jhamlal @ Shyam Lal @ Faiyaz Alam Son of Khurshid Alam R/o Village-Bharandua, P.S. Chenari, District-Rohtas
2. Sri Naresh Paswan @ Ram Naresh Ram sonof late Ram Das Paswan, resident of village Bharandua, P.s. Chenari, District Rohtas

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Dilip Kumar Sinha, APP

For the Respondent/s : Mr.

CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

ORAL JUDGMENT

Date: 21-09-2015

The State seeks revision of the order of acquittal dated 17.4.2013 passed by the Juvenile Justice Board, Rohtas at Sasaram in J.J.B. case No.287 of 2010 (G.R. No.1340 of 2008 arising out of Chenari P.S. case No.67 of 2008) on the ground that it was not given sufficient opportunity to adduce evidence during trial.

Even though this Court is convinced that the State should have filed an appeal under Section 52 of the Juvenile Justice (Care and Protection of Children) Act, 2000 but in order to prevent further delay in the matter this Court is proceeding to dispose off the application.

From the records of the case, it appears that the Opposite



Party No.1 was named in the First Information Report as one of the accused persons for kidnapping of the daughter of the Informant. Subsequently she also made a charge of rape at the hands of two other co-accused, not the Opposite Party No.1. It also appears that on 16.11.2011 charges were framed and on 18.2.2012 three witnesses were produced on behalf of the prosecution. Subsequently Juvenile Justice Board granted the prosecution time periodically till 10.4.2012 for production of witnesses and in absence of the same it closed the evidence. On 12.4.2012 the statement of the accused was recorded under Section 313 Cr.P.C. and on 18.4.2012 arguments were heard. On the same day an application was filed on behalf of the prosecution under Section 311 Cr.P.C. which was allowed and time was granted for the next two days till 28.4.2012 for evidence. In the meanwhile the Opposite Party No.1 moved the Sessions Judge in revision against the order, which was dismissed by an order dated 20.3.2013. The Sessions Judge directed the parties to appear in the court below on 9.4.2013, on which date itself the records of the case were received before the Juvenile Justice Board, it fixed 17.4.2013 as last chance but since no witness was available he delivered the judgment.

The Counsel for the Petitioner submits that first of all the Opposite Party No.1 was declared a juvenile on mere appearance without holding any enquiry. Further there were serious allegations

against him of being one of the members in committing gang rape. In such circumstances, it would be a miscarriage of justice if the prosecution is not permitted to produce his witnesses.

On the other hand, the Counsel for the Opposite Party No.1 submits that ample opportunity had been given by the Juvenile Justice Board for adducing the evidence and it is only when prosecution failed to discharge its duty the case was closed. In such circumstances, the order of acquittal should not be lightly interfered with.

I find from the order of acquittal of the Juvenile Justice Board that he considered the P.W.1, P.W.2 and P.W.3, who did not support the case of the prosecution and were declared hostile and however, neither the Informant nor the alleged victim were examined. The prosecution is ready to produce the witnesses within the next six weeks.

In view of such, I would be inclined to hold that to prevent miscarriage of justice the prosecution be granted a short time for adducing evidence. Hence, the order of acquittal dated 17.4.2013 passed by the Juvenile Justice Board, Rohtas at Sasaram in J.J.B. case No.287 of 2010 (G.R. No.1340 of 2008 arising out of Chenari P.S. case No.67 of 2008) is set aside and the matter is remanded to the Court below.

It is observed that if the prosecution fails to produce its witnesses within the next six weeks from the date of receipt of this order, the Juvenile Justice Board shall grant no further indulgence.

The application stands disposed of with the aforesaid observations.

(Anjana Prakash, J)

Narendra/-

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