

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.171 of 2016

Arising Out of PS.Case No. -207 Year- 1998 Thana -FATUHA District- PATNA

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1. Sushila Devi, wife of Late Bhagwan Singh, Resident of Mohalla- Raipura,
Kewlatal, P.S.- Fatuha, District- Patna.

.... Appellant/s

Versus

1. The State of Bihar
2. Manoj Kumar Singh, son of Ram Prasad Singh, resident of village- Dariyapur
Naya Tola, P.S.- Fatuha, District- Patna.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Rohit Kumar, Advocate
Mr. Jitendra Narain Sinha, Advocate
For the Respondent/s : Mr. D. K. Sinha, APP

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CORAM: HONOURABLE THE CHIEF JUSTICE

&

HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 04-10-2016

This appeal is directed against the judgment and order, dated 21.07.2015, passed by the 2nd Additional District and Sessions Judge, Patna City, in Sessions Trial No.309 of 2000/Trial No.120 of 2014, which arose out of Fatuha PS case No 207 of 1998, whereby the learned trial Court has acquitted the sole accused (i.e., respondent No.2 herein) of the charges under Section 302 of the Indian Penal Code (in short IPC) read with Section 34 IPC and Section 27 of the Arms Act, 1959, and set him at liberty.

2. Assailing the judgment aforementioned, the present appeal has been preferred, primarily, on the ground

that the learned trial Court has not examined the material witnesses before closing the prosecution's evidence and that the judgment has been pronounced in haste without affording adequate opportunity to the prosecution to bring its other listed witnesses and, therefore, the judgment of acquittal needs to be interfered with.

3. We have heard Mr. Rohit Kumar, learned Counsel, appearing on behalf of the appellant, and Mr. D. K. Sinha, learned Additional Public Prosecutor, appearing on behalf of the State.

4. Background Fact: The incident took place in the year 1998, i.e. about 18 years ago. The charges were framed, under Section 302 IPC read with Section 34 IPC and under Section 27 Arms Act, 1959, in the year 2009. As the accused pleaded not guilty to the charges so framed, the case came to be fixed for evidence. Thereafter, the case dragged on at the stage of prosecution's evidence for as long as six (6) years. During this period of six (6) years, as is evident from the judgment, under appeal, prosecution could bring only 3 (three) witnesses, including the appellant, to the witness box. Other witnesses did not turn up and the appellant also did not take any initiative to assist the prosecution and help in the production of the other listed prosecution witnesses at the trial.



5. At this stage, it would not be inappropriate to refer to Sections 230 and 231 of the Code of Criminal Procedure. A conjoint reading of these statutory provisions leaves no room for doubt that it is, primarily, the duty of the prosecution to bring its witnesses and trial Court has limited responsibility inasmuch as it is required to issue process for compelling the attendance of any witness or the production of any document or other thing if an application, praying for issuance of such process, is made by the prosecution. The duty to produce the witnesses at the trial is, thus, of the prosecution inasmuch as the statute mandates that court is required to take all such evidence as may be produced in support of the prosecution.

6. In the above background, when we re-visit the impugned judgment, what attracts our attention, most prominently, is that the prosecution witnesses including the informant and the appellant examined have not been able to identify the accused person, whilst under examination.

7. What transpires from the record is that, according to the prosecution, on 19.12.1998 the occurrence took place on the National Highway 30, it was dark at the time of incident and even PW3, who, as per prosecution's version, had been the first person to reach the place of occurrence, was unable to identify the assailant.

8. In P. Ramchandra Rao Vs. State of Karnataka, reported in (2002) 4 SCC 578, it has been held by the Supreme Court that an accused undergoes great mental agony, expense and strain, when he is proceeded against in a criminal law and this factor, coupled with delay, may result in impairing the capability and ability of such an accused to defend himself. It was perhaps, because of these reasons that persuaded the Apex Court to hold the right to speedy trial as a manifestation of fair, just and reasonable procedure enshrined in Article 21 of the Constitution. Speedy trial, so observed the Supreme Court, would encompass within its sweep all its stages including investigation, enquiry, trial, appeal, revision and that speedy trial, encompass within its sweep, everything commencing with an accusation and ending with the final verdict, the two being respectively the *terminus a quo* and *terminus ad quen* i.e. the journey, which an accused must necessarily undertake once faced with an implication. While holding that it is not judicially permissible to draw or prescribe an outer limit for conclusion of a criminal proceeding, the seven Judge Bench of the Supreme Court concluded by observing that the criminal Courts should exercise their available powers, such as, those under Sections 309, 311 and 258 of the Code Criminal Procedure to effectuate the right to speedy trial. Justice Lahoti, as he was then,

writing for the majority, held as under :

"A watchful and diligent trial Judge could prove to be a better protector of such rights than any guidelines. In appropriate cases, jurisdiction of the High Court under Section 482 of the Code of Criminal Procedure and Articles 226 and 227 of the Constitution can be invoked seeking appropriate relief or suitable directions."

9. In the light of the above authoritative pronouncement of the Supreme Court, when we revert to the facts of the present case, we notice that according to the prosecution's case, on 19.12.1998, when the informant, Mahendra Paswan, which on patrolling duty, reached near a factory, he heard the sound of firing and when he proceeded to the place, where firing was taken place, he found a person lying near the road with bleeding from his head. According to the first informant, a crowd had collected at the place of occurrence and one of the persons from the crowd disclosed to him (the informant) that the person, lying dead, was one Bhagwan Singh, son of Chandra Prasad Yadav, who had been killed by unknown miscreants by means of fire-arms.

10. Based on the information, so lodged, in writing, Fatuha Police Station Case No.207 of 1998, under Sections 302/34 of the Indian Penal Code and Section 27 of

the Arms Act, 1959, was registered.

11. Upon completion of investigation, *charge sheet* was laid against the accused-respondent under the penal provisions aforementioned and *cognizance*, having been taken for the offences aforementioned on 03.08.1999, the case was committed to the Court of Session as far back as on 09.12.1999. The charges came to be framed against the sole accused on 18.03.2009.

12. Altogether three witnesses were examined. While PW 2 did not support the prosecution's case and was declared hostile, PW 3 clearly stated in his deposition that he had not seen the person, who opened fire. Though PW 1, as the first informant, has proved his *fard beyan* (Exhibit-1), which has been treated as the First Information Report, he is, admittedly, not an eyewitness.

13. We find that prosecution and that includes the appellant herein failed to bring the other witnesses despite more than ample opportunity having been provided. The evidence on record lead to no other conclusion, but the acquittal of the accused person.

14. We, therefore, hold that order, closing the prosecution's evidence, was correct and the judgment of acquittal and order of acquittal, under appeal, call for no

interference.

15. The appeal is, thus, devoid of merit and is, therefore, not admitted and shall accordingly stand dismissed.

(I. A. Ansari, CJ)

(Dr. Ravi Ranjan, J)

J.Alam/-

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