

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.70 of 2017

Arising Out of PS. Case No.-8 Year-2003 Thana- PIRO District- Bhojpur

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Bharat Ram, son of Late Moti Ram, Resident of village – Bambhwar , P.S. -
Piro, district – Bhojpur

... .. Appellant/s

Versus

1. The State Of Bihar
2. Panchu Singh, son of Late Verma Singh
3. Sanjay Singh , son of Late Ramashray Singh
4. Gorakh Singh, son of Late Ramashray Singh
5. Suresh Singh, son of Late Verma Singh
All R/o village – Bambhwar , P.S. - Piro, District – Bhojpur

... .. Respondent/s

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Appearance :

For the Appellant/s : Sri Parma Nand Singh
For the Respondent/s : Sri Rajeev Ranjan

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

and

HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

12 27-11-2017 Heard Sri Parma Nand Singh, learned counsel for the

appellant, Sri Shivesh Chandra Mishra, learned Additional

Public Prosecutor as well as Sri Rajeev Ranjan, learned counsel,

who has appeared on behalf of respondent no. 2 to 5.

The present Appeal has been preferred under Section 372
of the Code of Criminal Procedure, 1973 (hereinafter referred
to as “Cr.P.C.”) by the victim- appellant / Bharat Ram against
judgment of acquittal dated 30.06.2016 passed by Sri Rajesh
Kumar - III, learned 6th Additional District and Sessions Judge,
Bhojpur at Ara (hereinafter referred to as “trial judge”). By the



said judgment the learned trial judge has acquitted the private respondents from charges under Section 302/307 of the Indian Penal Code, 1860 (hereinafter referred to as the “I.P.C.”), however, the learned trial judge has convicted the private respondents under Section 341, 323 of the I.P.C. and released them under the provisions of Probation of Offenders Act, 1958.

Short fact of the case is that on 19.01.2003 fardbyan of one Jeeut Ram was recorded in Government Hospital, Piro (Bhojpur) wherein he alleged that on a trivial issue relating to dispute of land the private respondents had assaulted him. It was specifically stated that accused persons had given “Garasa” blow on the head of informant whereafter bleeding started. In the said occurrence when Hari Ram [brother of the informant] and female inmate tried to intervene, they were also assaulted. Besides informant, females and Hari Ram, the appellant /Bharat Ram was also assaulted in the occurrence. Subsequently, Hari Ram died due to injuries which were caused in the occurrence. Initially, a F.I.R. was lodged for offence under Section 341, 323, 324, 307/34 of the I.P.C., however, subsequently after death of Hari Ram; Section 302 of the I.P.C. was added. After investigation charge-sheet was submitted and the case was committed to the court of Sessions. Thereafter, on



3.7.2004 charges were framed for offences under Sections 341, 323, 324, 307, 302/34 of the I.P.C. During trial since the accused persons denied charges and claimed to face trial, the prosecution to prove its case examined altogether four witnesses. They supported the prosecution case, however considering the fact that during trial neither the investigating officer nor the doctor who conducted post-mortem examination were examined, nor even the post-mortem examination report was brought on record, the learned trial judge acquitted the private respondents from charge under Section 302/307 of the I.P.C., however the learned trial judge on the basis of evidence of four prosecution witnesses held them guilty for offence under Section 341, 323 of the I.P.C. The learned trial judge in view of the provisions contained in the Probation Of Offenders Act, 1958 released the respondents. The same judgment has been assailed by the victim/appellant. During trial, the learned trial judge has noticed that even the informant/ Jeeut Ram has not turned to be examined as prosecution witness and on the aforesaid ground they were acquitted from the major charges.

Sri Parma Nand Singh, learned counsel for the victim / appellant submits that it was a glaring example of connivance of prosecution with the accused persons and this was the reason



that prosecution did not take appropriate step for getting the evidence of doctor as well as investigating officer on record and also they did not bring on record the post -mortem examination report. He submits that in a haste manner the prosecution closed its case and thereafter, such erroneous judgment has been passed by the learned trial judge. He submits that even if for the time being it is assumed that the prosecutor or prosecution was not taking appropriate step, it was duty on the part of the learned trial judge to take proper steps for securing attendance of the witnesses, that too, important witnesses like the investigating officer and the doctor. Accordingly, it has been argued that the learned trial judge has committed perversity and the judgment requires interference after grant of leave, for which a petition has been filed vide I.A. (Criminal) No. 1341 of 2017. In filing Appeal some delay has also occurred, and as such, the appellant besides filing leave petition has also filed a limitation petition vide I.A. No. 124 of 2017. We have perused the application, which has been filed for condoning delay. Initially, in this case, due to inadvertence the appellant had filed an S.L.A. vide S.L.A. No. 46 of 2016, however, subsequently, same was corrected and converted as limitation petition vide I.A. No. 124 of 2017. The reason for delayed filing has



appropriately been explained, and as such, we are satisfied with the reasons for delay and accordingly, delay in filing the Appeal stands condoned and limitation petition is allowed.

Learned counsel for the appellant has also argued that after the occurrence in the year 2003 itself the informant died, and as such, there was no reason for examination of the informant in the present case, but the learned trial judge while acquitting them (private respondent) has also noticed that prosecution has not produced informant for his evidence.

Sri Rajeev Ranjan, learned counsel for the private respondents submits that the private respondents were not liable to be held guilty for offence under Section 341, 323 of the I.P.C. since all the witnesses who were examined on behalf of the prosecution were close relative of the informant.

Besides hearing learned counsel for the parties, we have also perused the materials available on record. In this case by order dated 27.07.2017 while directing for issuance of notice to private respondents, this court had summoned the record of Sessions Trial No. 19 of 2004 [arising out of Piro P.S. Case No. 08 of 2003, G.R. No. 119 of 2003] from the court of Sri Rajesh Kumar -III, learned VIth Additional District and Sessions Judge, Bhojpur at Ara and lower court record has already been



received.

Besides hearing learned counsel for the parties, we have examined the lower court record. After going through the record it appears that prosecution has not taken any sincere effort for examination of the investigating officer as well as the doctor who conducted post-mortem examination. The record suggests that only once summon was directed to be issued for securing their attendance, but without obtaining report regarding service of notice, the prosecution preferred for closure of the prosecution evidence and evidence was closed. Since it was a case under section 302 of the I.P.C. and on the dead body of the injured who died, post-mortem examination was held, it was responsibility of the prosecution as well as the learned trial judge to take effort to bring the post-mortem examination report on record. The Court is of the considered opinion that non-taking appropriate step for examining the investigating officer and the doctor who conducted post-mortem examination as well as non sincere effort taken by the prosecution and the learned trial judge for bringing on record the post-mortem examination report certainly constitutes perversity. Accordingly considering the fact that learned trial judge in acquitting the private respondents for offence under Section 302/307 of the



I.P.C. has committed perversity it is necessary to interfere with the impugned judgment. Though the private respondents have been convicted under Section 341, 323 of the I.P.C. the judgment impugned requires interference, and as such, the judgment to the extent of acquittal of private respondents from the offence under Section 302 / 307 of the I.P.C. is required to be set aside and the case is necessary to be directed to be remitted back to the court below with a direction to take all efforts to secure attendance of the investigating officer as well as the doctor who conducted post-mortem examination. In view of the facts and circumstances, we are satisfied that it is a fit case for allowing leave petition. Accordingly, I.A (Criminal) No. 1341 of 2017 is allowed. Consequently, the judgment of acquittal of private respondents for offence under Section 302/307 of the I.P.C. is hereby set aside and the matter is remitted back to the court below. At the same time the order of the trial court passed under the provision of Probation of Offenders Act in respect of sentence of private respondents is also set aside. The learned trial court as well as prosecution are required to bring on record the post-mortem examination report in respect of deceased -Hari Ram. The prosecution evidence shall be deemed to commence immediately after



receipt of lower court record in the court below. Thereafter, all the formalities may be taken so that trial may come to its logical end without unnecessary delay.

The Appeal is allowed.

Office is directed to remit back the lower court record forthwith.

(Rakesh Kumar, J)

(Mohit Kumar Shah, J)

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