

IN THE HIGH COURT OF JUDICATURE AT PATNA
Govt. Appeal (DB) No.28 of 2016

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The State of Bihar

.... Appellant/s

Versus

1. Kamala Thakur Son of Sukhelu Thakur, Resident of Village- Chotka diya, P.S. Krishna Brahm, District- Buxar.
 2. Jyoti Prakash Rai, son of Kamlesh Rai,
 3. Munna Rai son of Jhalari Rai @ Narain Rai,
- Respondent no.2 and 3 are resident of Village- Barka - Diyaman, P.S.- Krishna Brahm, District- Buxar.

.... Respondents

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Appearance :

For the Appellant/s : Mr. Parmeshwar Mehta, A.P.P.
For the Respondent/s : Mr. Ajay Thakur, Adv.
Mr. Md. Imteyaz Ahmad, Adv.
Mr. Arvind Kumar Pradhan, Adv.
Mr. Siddharth Harsh, Adv.

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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)

7 03-07-2017 Heard Sri Parmeshwar Mehta, learned Addl. Public

Prosecutor and learned counsels, who have appeared on behalf of

respondent nos. 1 to 3.

2. The present Government Appeal has been preferred against the Judgment of acquittal dated 30.06.2015 passed by Sri Ravishankar Tiwari, , learned Addl. Sessions Judge- 1st, Buxar in Sessions Trial No.234/01, arising out of Krishna Brahm P.S. Case No.81/2000. By the said Judgment, respondent nos. 1 to 3 have been acquitted from the charges under Section



302/34 of the Indian Penal Code. The Judgment under appeal was passed on 30th June, 2015.

3. The present appeal has been filed along with Interlocutory Application i.e. I.A. (Crl.) 2154 of 2016 under Section 5 of the Limitation Act for condoning delay. In filing the appeal, delay of about 1 year 23 days has occurred.

4. In this case, a reply has also been filed on behalf of respondent no.1 to limitation petition. In reply, it has been asserted that while filing appeal, day to day delay is required to be explained. However, in the limitation petition, only vague statement has been made regarding delay in filing the appeal.

5. Sri Parmeshwar Mehta, learned Addl. Public Prosecutor submits that it is a Government Appeal and due to procedure for obtaining permission in the department, some delay has occurred, which was not intentional and, as such, the appeal may not be dismissed on the ground of delay itself, whereas learned counsels for the respondents have argued that even on merit also, there is nothing. Accordingly the appeal is required to be rejected.

6. It was submitted by learned counsel for the respondents that the prosecution had miserably failed to prove its case and, as such, learned trial Judge has acquitted all accused



persons. It has been argued that from the prosecution case, it is evident that in between students of two villages, a trivial dispute arose and occurrence had taken place. It has also been argued that though most of the witnesses, who had claimed to be eye witness to the occurrence and relatives of the victim, have stated that after the deceased received injury they had not gone to the hospital along with victim. It has further been argued that in the F.I.R. only one accused was named, but subsequently the case was developed. Learned counsel for the respondents further submit that the Investigating Officer during investigation had seized Register of the school and got signature of the witnesses to prove case. Thereafter, the principal of the school had made complaint regarding forceful obtaining signature on the attendance Register and this was the reason that during trial the attendance Register was not placed.

7. Be that as it may, without going into merit of the case, since the appeal has been preferred after 1 year 23 days, the Court perused the petition, which has been filed for condoning delay in filing the appeal. In the limitation petition, besides vague statement, no reasonable explanation has been given regarding delay in filing the appeal. Learned Addl. Public Prosecutor has tried to explain delay by referring to paragraph nos. 4 to 10 of the



limitation petition, which are quoted herein below:

“4. That it is submitted that on 29.7.15 the learned A.P.P. Buxar filed a petition for recommendation and opinion before the District Magistrate, Buxar.

5. That thereafter the learned District Magistrate Buxar after perusal of the Memo of Appeal which has been sent by A.P.P. Buxar. The learned D.M. gave his opinion on 17.8.15 the order has been passed for sending the concerned file before Law Secretary of Law Department, Bihar, Patna.

6. That besides that the law secretary after perusal, verification and examination gave his opinion on 3.9.15.

7. That thereafter the Law Secretary of Law Department Bihar, Patna sent the concerned file to Advocate General, Bihar, High Court, Patna which has been received in the office of Advocate General High Court, Patna on 22.12.2015.

8. That thereafter the Advocate General, Bihar High Court endorsed the file to me on 22.12.15 which has been received to me on 24.12.15.

9. That besides that the FAX Message has been given to D.M. Buxar 25.12.2015 for authorization of competent authority for taking necessary action.

10. That thereafter D.M. Buxar authorized competent authority and the competent authority sworn an affidavit on 28.10.2016.”

8. On perusal of limitation petition, it is evident



that in limitation petition

day to day delay has not been explained, but in vague manner the petition has been filed without giving any proper reason for delay in filing the appeal.

9. Accordingly, limitation petition i.e.I.A. no. 2154 of 2016 is dismissed and simultaneously the appeal against acquittal stands dismissed.

(Rakesh Kumar, J)

(Mohit Kumar Shah, J)

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