

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.874 of 2017

Arising Out of PS. Case No.-128 Year-2004 Thana- SHEOSAGAR District- Rohtas

Uday Pratap Singh, son of Late Parwateshwar Kumar Singh, Resident of village – Jehanabad (Kudra), Babu Mohalla, Post office and Police Station – Kudra, District – Kaimur (Bhabua)

... .. Appellant/s

Versus

1. The State Of Bihar
2. Rudra Pratap Singh @ Bablu Singh, son of Prabal Pratap Singh, resident of village – Kudra, Police Station – Sheo Sagar, District -Rohtas
3. Krishna Kumar Singh, son of Late Saryu Prasad Singh, resident of village – Kudra , Police Station- Sheo Sagar, District – Rohtas

... .. Respondent/s

Appearance :

For the Appellant/s : Sri Arun Kumar Singh

For the Respondent/s : A.P.P.

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
and
HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

5 01-11-2017 Heard Sri Arun Kumar Singh, learned counsel for the appellant and learned Additional Public Prosecutor.

The present Appeal has been filed under section 372 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “Cr.P.C.”) against judgment of acquittal passed under Section 232 of the Cr.P.C. along with limitation petition vide I.A. No. 2017 of 2017 and also petition for grant of leave to appeal vide I.A. No. 2016 of 2017. In filing Appeal as stated in the limitation petition 144 days delay has occurred. The appellant



in the case is the father of the deceased.

Learned counsel for the appellant tried to persuade the court that though in the case charges were framed on 18.03.2013, no appropriate step was taken by the prosecution for securing attendance of witnesses. He submits that the appellant / father of the victim was ignorant of the fact as to whether he was ever summoned or not, and as such, it has been argued that without examining any witnesses the impugned order has been passed under Section 232 of the Cr.P.C. and respondent no. 2 and 3 have been acquitted.

On perusal of the materials available on record, it is evident that an accident had taken place on 26.09.2004 near a petrol pump in village - Ghorghat on G.T. Road and in the accident it was noticed that one Maruti Car had dashed a Marshal Ambulance from back side and thereafter, two occupants of the Maruti Car fled away and in the said accident one person died. The police officials after noticing the same, got recorded fardbyan and as such, an F.I.R. vide Sheo Sagar P.S. Case No. 128 of 2004 was registered for offences under Sections 279 and 304(A) of the Indian Penal Code, 1860 (hereinafter referred to as the "I.P.C."). However, during investigation it appears that offences were found as under



Section 302 / 201 /120B, 279/34 of the I.P.C., and thereafter charge -sheet was submitted against the two respondents. After submission of charge- sheet under Section 302 /201 /120B /279 and 34 of the I.P.C., on 04.08.2005 cognizance of offences was taken and case was committed to the court of Sessions and thereafter, it was numbered as Sessions Trial No. 223 of 2006. Though the case was committed in the year 2006 itself, but to the reasons best known to the prosecution no appropriate step was taken to get the charges framed at the earliest. However, after much belated stage, on 18.03.2013 charge under section 302 , 201 of the I.P.C. was framed against respondent no. 2/ Rudra Pratap Singh and charge under section 201 /302/ 34 of the I.P.C. was framed against respondent no. 3/ Krishna Kumar Singh. From the materials available on record it is evident that after framing of charges all remedies were exhausted for securing attendance of witnesses, but the prosecution failed to produce even a single witness, and as such, by order dated 21.07.2016 prosecution evidence was closed and thereafter, statement under section 313 of the Cr.P.C. of accused persons was got recorded in which they claimed innocence and finally, by the impugned order i.e. the order dated 9.11.2016 exercising power under section 232 of the Cr.P.C. the learned



trial judge has acquitted both the respondents from charge under Section 201/ 302/ 34 of the I.P.C. Though learned counsel for the appellant has taken the plea that the appellant was not having any information regarding commencement of trial or issuance of any processes and the learned trial judge erroneously closed the case, however, the court is of the opinion that if for the time being it is accepted that the appellant was not noticed, but fact remains that prosecution evidence was closed on 21.07.2016 and impugned order was passed on 09.11.2016. If the appellant was interested to pursue the matter, in that event, before judgment of acquittal, he would have filed petition before the court below for re-opening of the case, but nothing has been indicated by the appellant either in the petition or at the time of argument as to whether he took any such step or not, rather on examination of the Memo of Appeal it is evident that the appellant was well aware about issuance of processes by the court below. It would be better to incorporate ground no. III, which has been taken in the Memo of Appeal, as follows:-

“(III) For that it would also be evident from the order – sheet of the Sessions Trial No. 223 / 2006 that while framing charge on 18.03.2013 the learned Trial Court directed to issue



summons to the charge-sheet witnesses and vide order dated 25.04.2016 the learned Trial Court directed to issue Non Bailable warrant against the charge – sheet witnesses, then only summons and Non Bailable warrant have been issued on 13.05.2016. On 21.06.2016 the learned Trial Court after issuance of summons and Non Bailable warrant on same day i.e. on 13.05.2016 passed an order to put up the matter on 21.07.2016 to adduce evidence giving last indulgence. Not only this but the learned Trial Court without waiting the compliance report of summons and Non Bailable warrant issued on 13.05.2016 , closed the prosecution evidence on the date fixed i.e. on 21.07.2016. On 21.07.2016 itself the statements of the accused (Respondent Nos. 2 and 3) have been recorded and on an application filed by them the defence evidence has also been closed and the case was fixed for argument fixing the date i.e. on 18.08.2016”.

In view of the facts and circumstances particularly the fact that hardly it was a case of death in accident as well as no serious step taken by the appellant before the court below, the court is of the opinion that no purpose would be served in either allowing the limitation petition or to allow the leave petition. Even after perusal of the limitation petition, the court is



satisfied that no plausible explanation has been given for condoning delay. Accordingly, limitation petition i.e. I.A. No. 2017 of 2017 as well as petition for grant of leave to appeal i.e. I.A. No. 2016 of 2017 both stand dismissed, and consequently, the Appeal against acquittal too stands dismissed.

(Rakesh Kumar, J)

(Mohit Kumar Shah, J)

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