

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.1148 of 2016

Arising Out of PS. Case No.-165 Year-2005 Thana- SHIVSAGAR District- Rohtas

Ghurphekan Ram, son of Late Vishwanath Ram, village – Berukahi P.S. - Shivsagar, District - Rohtas

... .. Appellant/s

Versus

1. The State Of Bihar
 2. Ashok Tiwary, son of Late Kailash Tiwary
 3. Lalan Tiwary, son of Late Kailash Tiwary
 4. Dina Tiwary @ Dina Nath Tiwary, son of Bikrama Tiwary
 5. Madan Tiwary, son of Markandey Tiwary
 6. Guddu Tiwary @ Vikash Tiwary, son of Madan Tiwary
 7. Paras Tiwary, son of Vikrama Tiwary
 8. Kamala Tiwary, son of Late Shyam Narayan Tiwary
 9. Pintu Tiwary, son of Paras Tiwary
 10. Ajay Tiwary, son of Jhorkhandey Tiwary
 11. Manoj Tiwary, son of Late Kameshwar Tiwary
 12. Pintu Tiwary, son of Lalan Tiwary
 13. Sanjay Tiwary, son of Lalan Tiwary [memo of appeal stood rejected against respondent no. 13 vide Hon'ble Court's order dated 01.05.2017]
- all resident of village – Bekurahi, P.S. - Shivsagar, District – Rohtas

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Ravi Shankar Sahay, Adv. Sri Navin Kumar Jha, Adv.
For the Respondent/s	:	Sri Abhimanyu Sharma, A.P.P. Sri Kanhaiya Prasad Singh, Sr. Adv. Sri Birendra Kumar Singh, Adv.

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

(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

10 29-08-2017 Heard Sri Ravi Shankar Sahay, learned counsel, assisted by Sri Navin Kumar Jha, learned counsel for the appellant, Sri Abhimanyu Sharma, learned Additional Public Prosecutor as well as Sri Kanhaiya Prasad Singh, learned senior counsel,



assisted by Sri Birendra Kumar Singh, learned counsel, who has appeared on behalf of the respondent no. 2 to 12.

The present Appeal has been preferred under Section 372 of the Code of Criminal Procedure , 1973 (hereinafter referred to as the “Cr.P.C.”) along with leave petition i.e. I.A. No. 1846 of 2017 filed under Section 378(3) of Cr.P.C. against an order dated 16.8.2016 passed under Section 232 of the Cr.P.C. by the learned Additional Sessions Judge -IV, Rohtas at Sasaram in Sessions Trial No. 289 of 2008 / 4236 of 2013. By the said order the learned trial judge has discharged all the accused persons, who have been arrayed as respondent no. 2 to 12 in the present appeal.

Short fact of the case is that on 18.12.2005 at about 9.15 A.M. S.I. of Police Sri Rajiv Kumar, Officer-in- charge of Sheosagar Police Station recorded fardbyan of Sri Bhagwan Paswan in the village -Berukahi. In the fardbyan the informant stated that accused persons were digging a Government ‘chat’ land regarding which litigation was already going on. Thereafter, the informant along with other villagers tried to prevent the accused persons from proceeding with the work, however , the accused persons did not stop and on obstruction being raised by the informant’s side, they started assaulting the



informant's side. Besides assaulting father of informant brutally, the appellant, his sons and his wife were also brutally assaulted in the said occurrence. Due to such injury father of the informant died and as such, a formal F.I.R. vide Sheosagar P.S. Case No. 165 of 2005 was registered for offence under Sections 147/ 148/ 149/ 341/ 323/324/ 307/ 302/ 504 / 120(B) of the Indian Penal Code, 1860 (hereinafter referred to as the "IPC") and Section 27 of the Arms Act. In the occurrence one of the accused had also opened fire. After registering F.I.R. Police investigated the case. The dead body of the deceased was sent for post-mortem and after collecting post-mortem examination report and other evidences, Police found the case true against all the respondents and thereafter, charge-sheet was submitted. After submission of charge-sheet, the learned Chief Judicial Magistrate took cognizance of offence. After complying the provisions under Section 207 of the Cr.P.C. the case was committed to the court of Sessions and finally charges were framed against all the respondents on 27.10.2010 for offence under section 147/148/149/341/ 323/325/ 302/504/120(B)/307 of the IPC. Though charge-sheet was submitted immediately after investigation in the year 2007, on perusal of the record it appears that one way or the other



accused persons tried to defer the commencement of trial. However, finally charges could be framed on 27.10.2010. After framing of the charge the case proceeded and finally all the accused persons, who are respondent no. 2 to 12 in the Appeal were discharged by the learned Additional Sessions Judge – IV , Rohtas at Sasaram while exercising power under Section 232 of the Cr.P.C. The appellant, who was also a victim, aggrieved with the discharge order, approached this Court by filing the present Appeal. In the present Appeal by order dated 15.12.2016 lower court record was summoned, which was received . After perusal of the record by the order dated 24.01.2017 a division bench of this Court directed for issuance of notice to respondents and thereafter, respondent no. 2 to 12 have appeared through their counsel.

Learned counsel for the appellant by way of referring to the lower court record submits that completely in perfunctory manner the learned trial judge has proceeded with the case. He submits that even the learned Public Prosecutor time without number had filed petitions for issuance of warrant of arrest for securing attendance of witnesses, the order sheet suggests that no appropriate step was taken. He has firstly argued that trial was earlier before the learned Additional Sessions Judge- II and



subsequently, on 20.08.2014 the record of this case was received in the court of learned 4th Additional Sessions Judge, Rohtas, Sasaram. He submits that after receipt of record in the court of 4th Additional Sessions Judge it appears that the accused persons persuaded the Court without examination of any of the witnesses to close the case and the learned trial judge also accepting the prayer of the accused persons had passed the order without dealing with any evidence or facts of the case. He submits that it is true that till the date of order of discharge not even a single witness was examined, but fact remains that the learned Additional Sessions Judge - IV while passing order had not even bothered to discuss any of the facts of the case for e.g. what was the allegation, who had received injury, who was done to death. No fact has been incorporated and in few lines he has passed the order for discharge.

Sri Kanhaiya Prasad Singh, learned senior counsel appearing on behalf of the respondent no. 2 to 12 has opposed the prayer of appellant. However, after noticing the entire record, he fairly has argued that proper opportunity was not given to the prosecution.

Besides hearing learned counsel for the parties, we have also perused the materials available on record.



Before proceeding, it would be appropriate to incorporate the order ,which is under challenge as follows:-

“16.8.16: All accused are present. On call both parties turned -up. Heard both parties. Put up after lunch for order.

Sd/-

ADJ – 4.

After lunch

16.8.16: Record put up for order. In this case, prosecution has not been able to produce and examine even a single witness. In this case charges against accused was framed on 17.10.10 and from that date case record was running for prosecution. Evidence, summons and other compelling processes were issued and sufficient time was given T.R. prosecution, but prosecution has not been able to produce and examine even a single witness. Hence on record, there is no evidence in support of the charges framed against accused. Accordingly all accused are acquitted u/s 323, 147, 341, 302/149, 148, 307 I.P.C. by virtue of section 232 Cr.P.C. Sureties are discharged. Let the case record be deposited in R.R. after stipulated time”

On perusal of the order sheet it is evident that even on 18.07.2016 the learned Public Prosecutor had prayed for issuance of warrant of arrest for securing attendance of witnesses , but in a haste manner the learned trial judge on the same date closed the evidence and directed to list the case on the next date for passing order under Section 232 of the Cr.P.C. Finally , on 16.08.2016 it appears that before lunch he passed two line order that he had heard both the parties and



after lunch he had passed the impugned order. It is also made clear that before passing order the learned trial judge had also recorded statement of accused persons under Section 313 of the Cr.P.C. Order -sheet further suggests that on number of occasions repeatedly learned Public Prosecutor had prayed for issuance of warrant of arrest. Record suggests that even letter was sent to the Superintendent Of Police , Rohtas however, even the Superintendent Of Police, Rohtas, Sasaram appears to have not taken any sincere effort for taking step to produce the witnesses. Considering the fact that the order on its face is illegal, same is liable to be set aside.

Accordingly , leave petition i.e. I.A. No. 1846 of 2017 is allowed and the order dated 16.8.2016 passed learned 4th Additional Sessions Judge, Rohtas at Sasaram in Sessions Trial No. 289 of 2008/ 4236 of 2013 is hereby set aside and the matter is remitted back to the court below with direction to the trial court to proceed with the case in accordance with law. The trial court as well as prosecution is directed to take all steps for securing attendance of witnesses. The Superintendent Of Police , Rohtas at Sasaram is directed to produce witnesses as and when required by the trial court .

Let a copy of this order be sent to the Superintendent Of



Police, Rohtas at Sasaram for its compliance in its letter and spirit.

The appeal is allowed.

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

(Rakesh Kumar, J)

(Mohit Kumar Shah, J)

praful/-

U		T	
---	--	---	--

