

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.776 of 2016

Arising Out of PS.Case No. -66 Year- 2011 Thana -NAWAKOTHI
District- BEGUSARAI

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Raghvendra Kumar, son of Sri Nawal Kishore Rai, resident of Rajakpur, P.S.
Nawkothi, District - Begusarai

.... Appellant

Versus

1. The State of Bihar,
2. Pappu Sah, son of Ramji Sah,
3. Kallar Sah, son of Sanki Sao,
4. Mohan Sah, son of Kakar Sao,
5. Ramji Sah, son of Kakar Sao,
All are resident of Rajakpur, P.S. Nawkothi, District - Begusarai

.... Respondents

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Appearance :

For the Appellant : Mr. S.K. Lal,
Mr. Pritish Kumar Lal, Advocates
For Respondent Nos.2 to5: Mrs. Y. Madhavi, Advocate

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

And

HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 15-02-2017

We have heard Mr. S.K. Lal, learned counsel on behalf of
the appellant and Mrs. Y. Madhavi, learned counsel appearing for the
private respondent nos. 2 to 5.

2. This is an appeal against acquittal. The trial Court
has primarily acquitted the accused persons on the ground of lack of
evidence. Only two prosecution witnesses were examined and rest of
the prosecution witnesses failed to turn up. The Court noticed in
paragraph-9 of the judgment thus:



“9 The learned Addl. P.P. for State concedes that in spite of taking steps to procure the attendance of material witness being the informant as well as injured Suresh Rai, none of both turned up in court for their evidence.”

3. The Court has further observed in paragraph-10 of the judgment thus:

“ 10. From perusal of the record as well as testimony of P.Ws. 1 and 2 apparently accused persons herein facing trial stand charged on dated 13.12.12 and since thereafter, case remained pending for prosecution evidence and all processes summons, warrants issued to procure the attendance of the informant and injured Suresh Rai and even S.P. Begusarai has also been approached then considering sufficient time given to prosecution and in the interest of justice and speedy trial to accused persons, the prosecution evidence has been closed.

4. Mr. S.K. Lal, learned counsel for the appellant, argued that it is the duty of the Court to ensure that the prosecution witnesses were duly summoned and that they were duly produced for their examination. We regret our inability to agree inasmuch as Section 230 of the Code of Criminal Procedure reads as follows:

“230. Date of prosecution evidence- If the accused refuses to plead, or does not plead, or claims to be tried or is not convicted under Section 229, the Judge shall fix date for the examination of witnesses, and may, **on the application of the prosecution**, issue any process for compelling the attendance of any witness or the production of any document or other thing.”



5. On a plain reading of the section, it is evident that the Legislatures have clearly provided that the Court may, on the application of the prosecution, issue processes accompanying attendance of witnesses. Thus seen, before the Court proceeds to issue processes for appearance of witnesses, there has to be an application by the prosecution for this purpose. It is not for the Court to become a party to litigate and, on its own, solicit evidences for that would be destructive of basic rule of law. If the prosecution does not seek to summon witnesses then absence of witnesses cannot be blamed on the Court or blamed as a failure of the Court to do its duty. The prosecution has to be vigilant on its own because it is the prerogative of the Public Prosecutor to decide as to which witnesses, he has to produce to establish its case. Taking any other view of the matter would be involving the Court as a person interested to establish the prosecution case. That cannot be permitted. The prosecution has to establish its own case.

6. We had specifically requested learned counsel for the appellant to bring on record or show from the record whether at any point of time the P.P/A.P.P. had ever made a request for summoning any witness and there was consequential failure on part of the Court to do so. Frankly, Mr. S.K. Lal concedes that at no point of time, any application in this regard was filed by the P.P./A.P.P. In spite of that, as the order quoted above would show, the Court did take steps but when



the Public Prosecutor himself showed his helplessness in the matter, it is not for the Court to become the prosecuting agency and seek witnesses. We, thus, find no error in the judgment under appeal. If the Court acquitted the accused for lack of evidence, the prosecution must thank itself. This appeal is dismissed.

7. Before closing, we may add that if private respondents find that the Public Prosecutor is not conducting the matter in a proper manner, it is expected to make an application for summoning witnesses. It is for the informants to inform the appointing authority i.e. the local District Magistrate/Collector or the higher authorities about misconduct or misdemeanor so that necessary corrections may be made at the appropriate time.

(Navaniti Prasad Singh, J)

B.T/lbrar

(Vikash Jain, J)

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	23.02.2017
Transmission Date	23.02.2017

