

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.1062 of 2017

Arising Out of PS.Case No. -38 Year- 2005 Thana -ATRI District- GAYA

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Munni Prasad Yadav @ Muni Prasad Yadav, S/o Late Ram Sharan Yadav,
Resident of Village- Vhithra, P.S.- Atri, P.O.- Ghariya, District- Gaya.

.... Appellant/s

Versus

1. The State of Bihar.
2. Ram Chandra Yadav, S/o Late Ramprasad Yadav.
3. Ashok Kumar Yadav, S/o Ramchandra Yadav.
4. Sanjay Yadav, S/o Nandkishore Yadav.
5. Lalan Yadav, S/o Bachchu Yadav.
6. Yogendra Yadav, S/o Bachchu Yadav.
7. Charittar Yadav, S/o Late Karu Yadav, All are Resident of Village- Vhithra,
P.S.- Atri, District- Gaya.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Dharendra Kumar Sinha, Advocate.
For the Respondent nos.2 to 7 : Mr. Anjani Kumar Jha, Advocate.
For the State : Ms. Sashibala Verma, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)

Date: 23-01-2018

1. Heard learned counsel for the appellant, learned Additional Public Prosecutor for the State as well as learned counsel appearing for the private respondents and perused the record.

2. This appeal has been preferred by appellant, Munni Prasad Yadav @ Muni Prasad Yadav, who was informant in Atri P.S. Case No. 38 of 2005 and is aggrieved by the



impugned Judgment of acquittal dated 25.07.2016 passed in Sessions Trial No. 77 of 2007/ 457 of 2011 arising out of Atri P.S. Case No. 38 of 2005 by the Additional Sessions Judge-IV, Gaya, who acquitted the respondent nos. 2 to 7 of the charges framed against them.

3. It would appear from perusal of the record that above stated Atri P.S. Case No. 38 of 2005 was lodged on the Fradbeyan of appellant for commission of murder of one Sanjay Yadav. After investigation, the chare sheet was submitted for the offence punishable under Sections 302 and other minor Sections of the Indian Penal Code against the respondent nos. 2 to 7 and others. Respondent nos. 2 to 7 were put on trial and charges were framed in two phases. The charge against five respondents was framed on 29.03.2007 whereas charge against respondent no. 5, Lalan Yadav, was framed on 03.06.2009, as his trial has been separated from the trial of remaining respondents. However, the trial of respondent no. 5, Lalan Yadav, was amalgamated with the trial of remaining respondents and summons, warrant of arrest etc. were issued to prosecution witnesses. The learned trial Judge also sent several D.O. letters to Superintendent of Police, Gaya, for procuring the attendance of prosecution witness, but all went in vain. Subsequently, the learned trial court closed the



prosecution evidence on 20.06.2016 and recorded the statement of respondent nos. 2 to 7 under Section 313 of the Cr.P.C. and acquitted the respondent nos. 2 to 7 under section 232 of the Criminal Procedure Code.

4. Learned counsel appearing for the appellant assailed the impugned Judgment of acquittal submitting that neither any notice nor any summon was ever served the appellant as well as other witnesses and apart from this, the concerned Officer-In-Charge had also not sent any execution report of warrant of arrest, because there is nothing on the record to show that the informant as well as witnesses had knowledge about the stage of the above stated Sessions Trial. He further submits that, moreover, it was the incumbent duty of the learned trial Judge to procure the presence of prosecution witness, even, under Section 311 of the Criminal Procedure Code, because the case was of serious nature, as one person was murdered, but the learned trial Judge, in very casual manner, acquitted the respondent nos. 2 to 7 under Section 232 of the Criminal Procedure Code.

5. On the other hand, learned counsel appearing for the respondent nos. 2 to 7, supported the impugned Judgment of acquittal arguing that the charges were framed against respondent nos. 2 to 7 in the year 2007 as well as in the year



2009 and more than nine years were given to prosecution to produce evidence, but prosecution miserably failed to produce the evidence before the trial court and in the aforesaid circumstances, the trial Judge had no option except to close the prosecution evidence and pass the Judgment under Section 232 of the Criminal Procedure Code.

Learned counsel for the respondent nos. 2 to 7 further submitted that the appellant (informant) has no locus standi to file this appeal, because the appellant (informant) does not come within the purview of victim, as defined under Section 2(wa) and according to proviso of Section 272 of the Criminal Procedure Code, only victim can carry an appeal against the Judgment of conviction or acquittal.

He further submitted that admittedly, there was case and counter case between the parties in the same court and the appellant as well as his witness had been attending in the counter case on each and every date, but they, intentionally, avoided to appear in the present case and, therefore, it cannot be said that the informant as well as other witnesses had no knowledge about the pendency and the stage of Sessions Trial No. 77 of 2007/ 457 of 2011.

6. Learned Additional Public Prosecutor appearing



for the State seconded the contention advanced on behalf of the private respondents.

7. Having heard the contentions of both the parties and we went through the records. It is the case of the prosecution before the trial court that on 14.05.2005 while he along with others was digging his field, the private respondents and others having armed with rifle, gun etc. came there and made indiscriminate firing and F.I.R. named accused, Sheo Shankar Yadav, who is reported to have already died, had opened fire from his double barrel gun causing death of deceased, Sanjay Yadav. Furthermore, it is also the case of prosecution that the F.I.R. named accused including the private respondents also fired upon the appellant (informant), but, somehow, the informant saved. It would appear from perusal of the above stated prosecution case that the appellant (informant) comes under the definition of victim because, allegedly, respondent nos. 2 to 5 and other accused had opened fire on him also and, therefore, in our view, the appellant (informant) has right to file this appeal under the proviso of Section 372 of the Code of Criminal Procedure. Moreover, the leave to file this appeal has already been granted to the appellant (respondent).

8. No doubt, the charges were framed in the year



2007 and 2009 and processes including the summons and warrant of arrest were issued to prosecution witnesses, but there is nothing on the record that any process was ever served upon the prosecution witnesses. It further appears that the learned trial Judge without ascertaining the notices issued to the witness, issued warrant of arrest against the prosecution witnesses. The learned trial Judge ought to have ascertained the service report before issuance of warrant of arrest. Moreover, we also find that the learned trial Judge did not take pen to summon the prosecution witness under Section 311 of the Criminal Procedure Code, even if prosecution failed to produce the witnesses in course of trial. Therefore, we are of the view that the impugned Judgment of acquittal passed by the court below cannot be sustained in the eye of law.

9. On the basis of the aforesaid discussions, Judgment of acquittal dated 25.07.2016 passed in Sessions Trial No. 77 of 2007/ 457 of 2011 is, hereby, set aside and the matter is remitted back to the trial Judge with a direction to proceed with the trial afresh and conclude the trial of respondent nos. 2 to 7 within six months from the date of receipt/production of a copy of this order. The appellant (informant) shall produce his witness and shall get examine himself before the trial court within two



months, failing which, the trial Judge shall be at liberty to close the prosecution case.

10. In the aforesaid manner, this criminal appeal stands disposed of on admission stage. The Lower Court Records be returned to the concerned court immediately.

(Hemant Kumar Srivastava, J)

Bhardwaj/-

(Rajendra Kumar Mishra, J)

AFR/NAFR	
CAV DATE	
Uploading Date	30.01.2018
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