

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.435 of 2017

Arising Out of PS. Case No.-52 Year-2003 Thana- THAKRAHA District- West Champaran

Jhapas Ansari, son of Jhalim Ansari, resident of village-Bharpataiya, P.S. Thakuraha (Bitaha O.P), District-West Champaran, Bihar, At present Kokilpatti, Kushi Nagar, Dudhai, Uttar Pradesh.

... .. Appellant

Versus

The State Of Bihar & Ors

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Ajay Kumar Singh, Adv. Mr. Rajnish Ranjan, Adv. Mr. Shashak Shekhar Sinha, Adv.
For the Respondents	:	Mr. Baxi S.R.P. Sinha, Sr. Adv.
For the State	:	Mr. Shivesh Chandra Mishra

CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

And

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)

Date : 19-04-2018

Heard learned counsel for the appellant, learned counsel appearing for respondents No. 2 to 8 as well as learned Addl. Public Prosecutor for the State.

This Criminal Appeal (DB) has been preferred by appellant Jhapas Ansari, who happens to be son of informant as well as deceased, against Judgment of acquittal dated 17.11.2016 passed by Addl. Sessions Judge-I, Bagaha, West Champaran in Sessions Trial No. 602 of 2006 by which and whereunder, he acquitted the respondents No. 2 to 8 of the



charges framed against them for the offences punishable under Section 302 and 201/34 of Indian Penal Code on the ground that except the informant, namely, Taimila Khatoon, prosecution failed to examine the remaining prosecution witnesses and the informant Taimila Khatoon was, too, not produced for cross-examination.

Learned counsel appearing for appellant submits that the learned trial Court did not give proper opportunity to the prosecution to examine its witnesses and, as a matter of fact, the learned court below in very hectic manner closed the prosecution case and passed the impugned Judgment under Section 232 of the Cr.P.C. He further submits that, as a matter of fact, P.W.1 Taimila Khatoon (Informant) was examined before the trial Court, but her cross-examination was deferred on the prayer of defence as the learned counsel of defence had prayed before the trial Court regarding non-availability of the case diary and the learned trial Court adjourned the case. However, the case diary was never produced before the trial Court, but the learned trial Court, ignoring the aforesaid fact without expunging the evidence of P.W.1 Taimila Khatoon, closed the entire prosecution case and passed the impugned judgment under Section 232 of the Cr.P.C.



On the other hand, learned counsel appearing for respondents No. 2 to 8 supported the impugned judgment dated 17.11.2016 arguing that, admittedly, the case was lodged in the year 2003 and the charges were framed much earlier. He further submits that after framing of charge, several opportunities were given to the prosecution to produce its witnesses, but all went in vain. He further submits that the learned trial Court issued processes, including non-bailable warrant of arrest, against the prosecution witnesses, but even then the prosecution witnesses did not turn up to depose before the court below. He further submits that, admittedly, informant (P.W.1) was examined before the court below, but, as a matter of fact, due to non-availability of the case diary her cross-examination could not be done and the matter was adjourned for her cross-examination, but after that she never appeared before the court below for her cross-examination and after giving much opportunity to P.W.1, the learned trial Court closed the prosecution case and passed the impugned judgment.

Having heard the contentions of both the parties, we went through the record, we find that P.W.1 (Informant) was examined in part by the prosecution and her cross-examination was deferred on the prayer of the defence and, thereafter, the



learned trial Court wrote letters to Superintendent of Police for sending carbon copy of the case diary. However, the concerned Police officers did not sent the carbon copy of the case diary and without waiting the receipt of carbon copy of the case diary and without expunging the Examination-in-Chief of P.W.1 all of a sudden, the learned trial Court closed the prosecution case and passed the impugned judgment under Section 232 of the Cr.P.C., which is not in accordance with law. In our view, the learned trial Court committed illegality in closing the prosecution case without expunging the evidence of P.W.1 and without giving proper opportunity to prosecution to produce its other witnesses and, therefore, in our view the impugned judgment cannot sustain in the eye of law.

On the basis of the aforesaid discussions, this Criminal Appeal (DB) is allowed. Accordingly, impugned judgment dated 17.11.2016 passed in Sessions Trial No. 602 of 2006 is, hereby, set aside with direction to the learned trial Court to retry the case from the stage of cross-examination of P.W.1 and give sufficient opportunities to the prosecution to adduce its remaining witnesses and, thereafter, pass afresh Judgment in the aforesaid Sessions Trial No. 602 of 2006 within six months from the date of receipt/production of this judgment. Since the



son of informant is present, it is expected that the prosecution shall produce its witnesses before the trial Court as early as possible and moreover, the concerned Superintend of Police shall produce the carbon copy of case diary of Thakraha P.S. Case No. 52 of 2003 before the Sessions Trial Court without any delay.

Let a copy of this Judgment be sent to Superintend of Police, Bagaha, West Champaran for needful.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

Manish/-

AFR/NAFR	NAFR
CAV DATE	N.A.
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