

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.485 of 2017

Arising Out of PS. Case No.-80 Year-1987 Thana- CHAKIA District- East Champaran

Md. Kalimullah, Son of late Sk. Abdul Haque, Resident of Village- Siswa,
P.S. Kalyanpur, District- East Champaran.

... .. Appellant/s

Versus

1. The State of Bihar.
2. SK. Ahmad, Son of late Sk. Mainuddin,
3. Sk. Shaukat,
4. Sk. Rahmat, Both Sons of late Sk. Hadees, All Resident of Village- Siswa,
P.S. Kalaynpur, District- East Champaran.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Md. Anisur Rahman, Advocate.

For the Respondent/s : Mr. Shashi Bala Verma, APP

**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA**

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR

MISHRA

ORAL JUDGMENT

**(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA)**

Date : 13-04-2018

1. Heard learned counsel for the appellant as well as
learned Additional Public Prosecutor for the State.

2. This criminal appeal has been preferred against the
order of acquittal dated 19.09.2016 passed by the learned 12th
Additional Sessions Judge, Motihari, in Sessions Trial No. 53 of
1993, by which and whereunder, he acquitted the respondent nos.
2 to 4 under Section 232 of the Code of Criminal Procedure.

3. From perusal of the impugned order, we find that
the charges against the respondent nos. 2 to 4 were framed on
04.08.1999 and several opportunities were given to prosecution



witnesses to depose before the trial court, but all went in vain. Furthermore, we find that the learned trial court has almost exhausted all the process to procure the attendance of prosecution witnesses, but prosecution witnesses did not turn up. As a result whereof, the learned trial court closed the prosecution evidence on 11.12.2014. The learned trial court recorded the statement of respondent nos. 2, 3 and 4 under Section 313 of the Cr.P.C. and fixed the case for argument on 23.04.2016 and a petition under Section 311 of the Cr.P.C. was filed on behalf of the appellant through private counsel for recalling the evidence of prosecution, which was allowed with condition to produce the witnesses within one month and thereafter, on 02.05.2016 prosecution filed attendance of one witness, but on the request of Additional Public Prosecutor, the witness could not be examined, as learned Additional Public Prosecutor was not in possession of the case diary. The letter was issued to Superintendent of Police for sending the carbon copy of case diary and after that several adjournments were given, but prosecution did not take any step and thereafter, again the learned trial court closed the prosecution case on 25.04.2016.

4. Learned counsel appearing for the appellant submits that the appellant was ready to produce witnesses, but due to non-



availability of the case diary the witnesses could not be examined and, therefore, it is obvious that there was no fault of the appellant.

5. We are not at all convinced with the aforesaid submission of the learned counsel for the appellant, because the trial court had granted time to prosecution to produce his witnesses under Section 311 of the Cr.P.C. within stipulated period, but prosecution failed to produce the witnesses within the said period. Moreover, it is obvious that the Sessions Trial No. 53 of 1993 was pending since the year 1993 and even after lapse of more than 15 years, the prosecution could not succeed to produce its evidence and, therefore, we do not find any illegality, irregularity or perversity into the impugned order of acquittal. Accordingly, this criminal appeal stands dismissed at admission stage itself.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

Bhardwaj/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	
Transmission Date	

