

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.117 of 2017

Arising Out of PS. Case No.-176 Year-2004 Thana- JAYRAMPUR District- Sheikhpura

1. Satish Kumar @ Satish Singh, Son of Ram Bilash Singh,
 2. Ram Bilash Singh, Son of gajo Singh,
 3. Jagtaran Devi, Wife of Ram Bilash Singh,
 4. Nickky Devi, Wife of Satish Singh @ Satish Kumar, All Resident of village-Meghipur, P.S.- Pakriwarawan, Distt.- Nawada, Presently residing at Meghipur Niwas, Chourasia Colony, New Area, Nawada.
 5. Manju Devi, daughter of Ram Bilash Singh and Wife of Mannu Singh, Resident of Village-Anti, P.S.-Kadirganj, District-Nawada
- Petitioner/s

Versus

The State of Bihar Through The Principal Secretary, Home Dept., Bihar,
Patna

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Sidhendra Narayan Singh, Advocate
For the Respondent/s : Mr. Manish Kumar, GP-4

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL ORDER

4 29-08-2018 The petitioners are the accused persons of Barbigha (Jairampur Mor) P.S. Case No. 176 of 2004 which has been instituted for the offences under Sections 498-A, 302, 201/34 of the I.P.C., who are facing trial in Sessions Trial No. 709 of 2006. They are aggrieved by the order of the learned trial court dated 07.12.2016, whereby the prosecution case has been closed without the examination of the doctor, the IO and the driver of the ambulance, on which the deceased had been taken to the hospital.

The petitioners have prayed for setting aside of the aforesaid order as also for a direction to the prosecuting agency that they bring such witnesses to the



witness box so that the trial judge finds it convenient to deliver a holistic judgement in this case.

A perusal of records reveal that the Public Prosecutor, conducting the case, made an application before the trial court for closing the prosecution case as the concerned prosecution witnesses were not interested in coming to the Court and that all efforts of the prosecutor had come a cropper. The aforesaid prayer was allowed by the trial court.

The learned counsel for the petitioner has submitted that the deceased was taken to the hospital, namely, Government Sadar Hospital, Nawada, from where she was referred to PMCH. The deceased was carried in a hospital ambulance, as she had suffered a massive heart-attack. On the way, the deceased died. The doctor had certified that her death was because of cardiac arrest. The aforesaid statement of the doctor, and other relevant materials were collected by the Investigating Officer, who had recorded such statements in the case-diary. Finding no evidence against the accused persons / petitioners, even in the supervision, the petitioners were not sent up for trial. However, differing with the police report, cognizance was taken against them and they are being tried for the aforesaid offences.



A prosecutor cannot ask for closing of the prosecution case on the ground that witnesses are not interested in deposing. However, it is for the prosecution to choose as to which witnesses shall be brought to the witness box to prove the case of prosecution.

It appears to be rather surprising that the IO and the doctor of this case have not been examined.

Had the situation been that these witnesses were not forthcoming for some reasons or the other, the trial court would have exercised all coercive process for compelling their witnesses.

However, in view of the prosecution making request for closing the prosecution case, it would be difficult to find fault with the order passed by the learned trial court in closing the evidence.

Considering the background of the case, it is directed that if the petitioners / accused persons request the court for issuance of summons to the aforesaid official witnesses, namely, the IO, the doctor, who had examined the deceased and certified that she had died of heart attack and the driver of the ambulance of the hospital, on which the deceased was carried to the PMCH, then necessary orders shall be passed by the Trial Court for compelling their attendance in terms of Section 233 (3) of the Code of Criminal Procedure. The



trial court shall also consider the desirability of examining the aforesaid persons as Court witnesses.

A judge, trying a case, is not only to act as a toothless umpire, but has to resort to robust judging. The trial judge is to find out the truth and cross-examination is one of the engines of eliciting truth.

In the present case, if the prosecution has chosen not to bring relevant witnesses to the witness box, then for unraveling the correctness of the prosecution version, the defence would be entitled to have them summoned and examined as a defence witnesses. Needless to state that the Court also has the power to examine such witnesses as Court witnesses.

In the facts of this case, the examination of the aforesaid witnesses appears to be essential.

Thus, the trial court is directed that in case such a prayer is made by the defence, it shall ensure the appearance of the aforesaid official witnesses, either as defence witnesses or as court witnesses.

With the aforesaid observation / direction, the writ petition stands disposed off.

(Ashutosh Kumar, J)

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