

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.670 of 2018

In
Criminal Appeal (SJ) No.1223 of 2018

Arising Out of PS. Case No.-185 Year-2012 Thana- BIRPUR District- Supaul

Mahendra Sah, Son of Sri Rameshwar Sah, resident of village-Tulsi Patti,
Sahu tola, P.S. Balua Bazar, District-Supaul.

... .. Appellant

Versus

1. The State of Bihar,
2. Rupesh Kumar Sah, Son of Parmanand Sah, resident of village-Khajuri,
Parmanandpur, P.S. Sri Nagar, District-Madhepura.
3. Nirmala Devi, Wife of Bidya Nand Sah, resident of village-Tulsi Patti,
Sahu Tola, P.S. Balua Bazar, District-Supaul.

... .. Respondents

Appearance :

For the Appellant/s	:	Mr. Amrit Abhijat, Advocate, Mr. Upendra Yadav, Advocate,
For the Respondent	:	Mr. Arun, Advocate,
For the State	:	Mr. Abhimanuyu Sharma, APP

**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA**
and
HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA
ORAL ORDER

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

7 05-11-2018 Heard learned counsel for the appellant, learned

Addl. Public Prosecutor for the State as well as learned counsel
appearing for respondents No. 2 and 3 on the point of admission
as well as on I.A. No. 1654 of 2018, which has been filed on
behalf of the appellant seeking leave to file this criminal appeal.
The appellant is full brother of injured and he comes under the
definition of victim. Although, the injured has not preferred this
appeal, but taking note of this fact that the appellant is full
brother of injured, in our view, the appellant has *locus standi* to



file this criminal appeal. Accordingly, I.A. No. 1654 of 2018 is allowed and disposed of in the aforesaid manner.

This criminal appeal has been preferred against the Judgment of acquittal dated 30.01.2018 passed by learned Addl. Sessions Judge, F.T.C-II, Supaul in Sessions Trial No. 206 of 2013, by which and whereunder, he acquitted the respondent Nos. 2 and 3 of the charges framed against them for the offences punishable under Sections 324 and 307/34 of the Indian Penal Code and Section 27 of the Arms Act.

Learned counsel of the appellant challenged the impugned Judgment of acquittal pointing out that the learned trial Court failed to appreciate the evidences available on the record in its right prospective and disbelieved the testimony of injured on flimsy ground, particularly, in the circumstance when the injured supported the prosecution case in course of trial. He also points out that, moreover, the learned trial Court did not wait for service report of summons issued against the Doctor, as a result of which, the prosecution could not succeed to get examine the Doctor and taking note of the aforesaid fact, the learned trial Court acquitted the respondent Nos. 2 to 3.

On the other hand, learned counsel appearing for respondent Nos. 2 and 3 supports the impugned Judgment of



acquittal pointing out that Sessions Trial No. 206 of 2013 was pending for evidence since 2014 and the learned court below closed the prosecution evidence on 11.12.2017 after giving proper opportunity to prosecution to adduce its evidence, but prosecution failed to avail the aforesaid opportunity resulting the closure of the prosecution case and, therefore, the learned trial Court rightly closed the prosecution case. He further submits that so far as remaining prosecution witnesses are concerned, the prosecution witnesses made contradictory statements in course of their trial and taking notice of the aforesaid fact, the learned trial Court passed a well thought Judgment, which does not need any interference by this Appellate Court.

Having heard the contentions of both parties, we went through the lower Court's record. From perusal of the lower Court's record, we find that, for the first time, on 19.08.2017, the learned trial Court ordered to issue summons against the Doctor and the aforesaid order of the learned trial Court was complied by the office on 13.09.2017. Therefore, it is obvious that the learned trial Court took pain to issue summons to Doctor, but, admittedly, the service report of aforesaid summons was not received to trial Court and, subsequently, on 11.12.2017



without getting any service report of the summons issued to Doctor, the learned trial Court closed the prosecution case.

Section 230 of the Criminal Procedure Code gives power to trial Court for issuance of processes and compelling the attendance of any witness, if the prayer is made on behalf of the prosecution. In the present case, it appears that on the prayer of prosecution, the learned trial Court issued summons to Doctor, but without getting the service report of summons issued to concerned Doctor closed the prosecution case, which is not in accordance with law. There is nothing on the entire order-sheet of the learned trial court to show that any coercive step was taken by the trial Court to compel the concerned Doctor to appear before the Court and depose in the aforesaid case. Therefore, in our view, the learned trial Court committed error in closing the prosecution case and the Sessions Trial No. 206 of 2013 needs to be remitted to the trial Court for retrial.

On the basis of the aforesaid discussions, this criminal appeal is allowed and impugned Judgment dated 30.01.2018 is, hereby, set aside. The Sessions Trial No. 206 of 2013 is sent back to the trial Court with direction to trial Court to procure the attendance of concerned Doctor for his evidence and after recording the evidence of concerned



Doctor, rehear the parties afresh and pass Judgment in accordance with law and, furthermore, dispose of the aforesaid session trial within six months from the date of receipt of this order as well as lower Court record in accordance with law. It goes without saying that the learned Court shall be at liberty to take coercive steps against the concerned Doctor in accordance with law, if he fails to appear before the Court to give his evidence in the present case.

In the aforesaid manner, this appeal stands disposed of.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

manish/-

U		T	
---	--	---	--

