

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.1497 of 2017

Arising Out of PS. Case No.-13 Year-2004 Thana- NAYAGAON District- Begusarai

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{Against the Judgment of acquittal dated 06.07.2015 passed in Sessions Trial
No.515 of 2006 by the Adhoc Additional Sessions Judge-II, Begusarai}.

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Mukesh Singh @ Mukesh Kumar Singh, S/o Ram Karan Singh, R/o Village-
Akbarpur Puranidih, P.S.- Nayagaon (Shamho), District- Begusarai.

... .. Appellant.

Versus

1. The State of Bihar.
2. Mithilesh Singh, S/o Late Rameshwar Singh.
3. Sanjeev Singh, S/o Krishnandan Singh.
4. Raushan Kumar, S/o Sato Singh.
5. Ravindra Singh, S/o Sato Singh.
6. Randhir Kumar, S/o Late Parmanand Singh.
7. Sunil Singh, S/o Awadhesh Singh.
8. Sudhir Singh, S/o Awadhesh Singh.
9. Shaligram Singh, S/o Late Bashuki Singh.
10. Anil Singh, S/o Late Bashuki Singh.
11. Kamal Singh, S/o Bashuki Singh.
12. Ramanandan Singh, S/o Late Bashuki Singh (abated vide Court's Order dated
25.06.2018).
13. Manoj Singh, S/o Ramanand Singh.
14. Ranjit Singh, S/o Ramnandan Singh.

All R/o Village- Akbarpur, Puranidih, P.S.- Nayagaon (Shamho), District-
Begusarai.

... .. Respondents.

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Appearance :

For the Appellant	:	Mr.
For the State	:	Mr.
For the Respondent Nos. 2 to 14 except Respondent No.12	:	Mr.

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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 : 18-07-2018

Supplementary affidavit has been filed on behalf of



the appellant.

2. Heard learned counsel for the appellant, learned counsel appearing for the respondent nos.2 to 14 except respondent no.12 and also heard learned Additional Public Prosecutor for the State.

3. This appeal has been preferred against the Judgment dated 06.07.2015 passed by the Adhoc Additional Sessions Judge-II, Begusarai, in Sessions Trial No.515 of 2006, by which and whereunder he acquitted the respondent nos.2 to 14 of the charges framed against them for the offences punishable under Sections 302, 149, 148 and 379 of the Indian Penal Code and Section 27(1) of the Arms Act.

4. Learned counsel appearing for the appellant challenged the impugned Judgment of acquittal, arguing that neither any notice nor any other process was ever served upon the appellant for giving the evidence in the above stated case. He further submitted that the learned trial court closed the prosecution case on 13.10.2014 though a time petition had been filed on behalf of the prosecution for adjournment of the case but the learned trial court wrongly mentioned in the order dated 13.10.2014 that a prayer for closure of the prosecution case was made on behalf of the prosecution. He further submitted that,



as a matter of fact, the informant and other material prosecution witnesses could not depose in the above stated case on account of non service of any process upon them.

5. On the other hand, learned counsel appearing for the respondent nos.2 to 14 except respondent no.12 submits that the learned trial court framed the charge in the year 2009 and almost five years was given to the prosecution to adduce the evidence and not only this, the learned trial court issued non-bailable warrant of arrest and also wrote letters to the Superintendent of Police and the D.I.G. for the procurement of the prosecution witnesses but all went in vain and the informant intentionally did not appear before the trial court to give the evidence as the informant wanted to linger the aforesaid sessions case. He further pointed out that a petition under Section 311 of the Code of Criminal Procedure was filed by the Additional Public Prosecutor, praying therein to examine the informant and others but the aforesaid petition was dismissed by the learned trial court on 13.03.2015 against which the informant came before this Court in Revision and, therefore, the aforesaid fact clearly goes to show that the informant was aware about the progress of Sessions Trial No.515 of 2006.

6. Having heard the contentions of both the



parties, we went through the record along with the Lower Court Records.

7. From perusal of the Lower Court Records, we do not find any execution report of warrant of arrest issued against the informant and other prosecution witnesses nor there is anything on the record to show that the process, issued by the learned trial court, was ever served upon the informant and other prosecution witnesses.

8. No doubt, the learned trial court issued non-bailable warrant of arrest against the prosecution witnesses including the informant but as we have already stated above that the execution report of the aforesaid warrant of arrest was never received in the court below. Furthermore, it is obvious from the Lower Court Records that the prosecution case was closed on 13.10.2014 and on the very next date, i.e., 14.10.2014, the learned Additional Public Prosecutor filed a petition under Section 311 of the Code of Criminal Procedure for examination of the prosecution witnesses and, therefore, the aforesaid fact corroborates this fact that no prayer for closure of the prosecution case was made on behalf of the prosecution on 13.10.2014, particularly, in the circumstance, when time petition had been filed on behalf of the prosecution on the same day.



9. It is admitted fact that petition filed under Section 311 of the Code of Criminal Procedure was rejected by the trial court vide order dated 13.03.2015 against which the informant preferred Revision Petition before this Court but even if the aforesaid fact is taken into consideration, then also, admittedly, the petition under Section 311 of the Code of Criminal Procedure was filed after closure of the prosecution case and, therefore, in the aforesaid circumstances, it cannot be said that on the date of the closure of the prosecution case, the informant was aware of this fact that his presence for recording his evidence was required before the trial court. Therefore, in the aforesaid circumstance, we have no option except to set aside the impugned judgment of acquittal and remit the matter to the court below with direction to trial court to give proper opportunity to the prosecution for adducing the evidence and pass a fresh Judgment after recording the evidence of prosecution and defence, if the defence needs to adduce any evidence.

10. On the basis of the aforesaid discussions, this criminal appeal is allowed on the admission stage itself and, accordingly, the impugned Judgment dated 06.07.2015 of acquittal passed by the Adhoc Additional Sessions Judge-II,



Begusarai, in Sessions Trial No.515 of 2006, is, hereby, set aside and the matter is remitted back to the court below with the above stated directions.

11. However, it is made clear that the prosecution shall examine remaining witnesses within two months from the date of receipt of record in the court below and the learned trial court shall dispose of the above stated Sessions Trial No.515 of 2006 within four months from the date of receipt of Lower Court Records.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

Pradeep Srivastava/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	20.07.2018.
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