

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.286 of 2018

Arising Out of PS.Case No. -11 Year- 2014 Thana -DHOLBAJJA District- BHAGALPUR

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Lila Devi @ Lalita Devi

.... Appellant/s

Versus

The State of Bihar & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Sunil Kumar Singh

For the State : Mr. Ajay Mishra

For the informant : Mr. Amar Nath Singh

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)

05 10.09.2018 1. Heard learned counsel appearing for the appellant, learned counsel for private respondent nos.2 to 13 and learned Addl. Public Prosecutor for the State on the point of admission and on I.A. no. 820/2018 as well as I.A. no. 821/2018.

2. I.A. no. 821/2018 has been filed under section 5 of the Limitation Act for condonation of delay in filing this criminal appeal. The delay in filing this criminal appeal is, hereby, condoned on the ground mentioned in I.A. no. 821/2018 and accordingly, I.A. no. 821/2018 stands disposed of.

3. I.A. no. 820/2018 has been filed on behalf of the appellant who happens to be wife of one of the deceased under



section 378(3) Cr.P.C for leave of this court to file this criminal appeal. Leave to entertain this appeal is granted and accordingly, I.A. no. 820/2018 stands disposed of.

4. Appellant is aggrieved by the judgment of acquittal dated 20.11.2017 passed by the learned Addl. Sessions Judge I, Naugachia in Sessions trial no. 859/2014/ Trial no.558/2016 by which and whereunder he acquitted private respondent nos.2 to 13 from the charges framed against them.

5. Learned counsel appearing for the appellant submits that in course of trial, prosecution filed a petition for issuance of process to the Investigating officer and doctor and on the prayer of the prosecution, trial court issued non-bailable warrant of arrest against the Investigating officer and doctor and without awaiting for execution report, closed the prosecution case without recording the deposition of the Investigating officer and doctor and subsequently, learned trial court acquitted respondent nos.2 to 13 on the ground of non-examination of the Investigating officer and doctor as well as other grounds.

6. On the other hand, learned counsel for private respondent nos.2 to 13 submits that the prosecution case was closed with consent of the concerned Addl. Public Prosecutor which is evident from perusal of order dated 18.10.2017 passed by



the learned trial court and, therefore, it can not be said that the learned trial court arbitrarily closed the prosecution case.

7. Learned Addl. Public Prosecutor, having gone through the record, points out that the learned trial court ordered to issue summons against the Investigating officer and doctor vide order dated 17.8.2017 and subsequently, on the prayer of conducting of Addl. Public Prosecutor non-bailable warrant was ordered to be issued but subsequently, conducting Addl. Public Prosecutor gave his consent for closer of prosecution case and accordingly, learned trial court on 18.10.2017 closed the prosecution case.

8. Having heard the contentions of all the parties, we went through the record. From perusal of the lower court record, we find that on 17.8.2017 learned trial court ordered for issuance of summons to the Investigating officer and doctor but office of the learned trial court did not comply with the aforesaid order of the learned trial court till 14.9.2017. However, on 14.9.2017 prosecution filed a petition for issuance of non-bailable warrant of arrest against the Investigating officer and doctor and the learned trial court vide order dated 14.9.2017 directed the office for compliance of order dated 17.8.2017 and accordingly, on 16.9.2017 office of the learned trial court issued summons to the Investigating officer and doctor but service report was not



received to the trial court and on 18.10.2017 with the consent of conducting Addl. Public Prosecutor, prosecution case was closed. Therefore, it is obvious from perusal of the order sheet of the learned trial court that learned trial court did not issue non-bailable warrant of arrest against the concerned Investigating officer and doctor nor took any pain to ascertain the attendance of the Investigating officer and doctor for recording their evidence.

9. No doubt, on 18.10.2017 the concerned Addl. Public Prosecutor gave his consent for closer of the prosecution case but in our view, the aforesaid consent of Addl. Public Prosecutor does not absolve the trial court from conducting his legal duty and in our view, learned trial court was bound to take steps to ascertain the attendance of the Investigating officer and doctor so that their evidence could be recorded but learned trial court failed to take steps for procurement of the attendance of the Investigating officer and doctor which resulted into miscarriage of justice and, in our view, the impugned judgment of acquittal can not sustain in the eye of law.

10. On the basis of the aforesaid discussions, the impugned judgment of acquittal dated 20.11.2017 is, hereby, set aside. Sessions trial no. 859/2014 is remanded to the court of the learned Addl. Sessions Judge I, Naugachia with direction to the



trial court to take steps for recording the evidence of the Investigating officer and doctor and pass afresh judgment in accordance with law within six months from the date of receipt of the lower court record.

11. So far as private respondent nos.2 to 13 are concerned, they shall appear before the learned trial court within six weeks and shall execute bail bond of Rs. 10,000/- with two sureties of the like amount each to the satisfaction of the learned trial court within the above stated period and if they do so, learned trial court shall release them on bail till final disposal of Sessions trial no. 859/2014.

12. In the aforesaid manner, this criminal appeal stands disposed of on admission stage itself.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

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