

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.135 of 2018

Arising Out of PS. Case No.-76 Year-2005 Thana- LAUKHA District- Madhubani

Md. Basir (Chaukidar No. 7/7), S/o Bholai Miya, Resident of Village-
Bishanpur, P.S.- Laukaha (Lalminiya), District- Madhubani.
... .. Appellants

Versus

1. The State of Bihar.
2. Durga Devi, W/o Gangadhar Yadav.
3. Phulo Devi, W/o Bidyanand Yadav.
4. Shyama Devi, W/o Kisun Yadav. All Respondent No. 2 to 4, Resident of
Village- Bishanpur, P.S. Laukaha (Lalminiya), District- Madhubani.

... .. Respondents

Appearance :

For the Appellant/s	:	Mr. Hriday Narayan Harshit
For the Respondent	:	Mr. Gagan Deo Yadav
For the State	:	Mr. Satya Narayan Prasad

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

(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA)

6 25-09-2018 Heard learned counsel for the appellant, learned
counsel appearing for respondent Nos. 2, 3 and 4 as well as
learned Addl. Public Prosecutor for the State on the point of
admission and on I.A. No. 339 of 2018.

I.A. No. 339 of 2018 has been filed under Section
378(3) of the Code of Criminal Procedure for grant of leave to
file this appeal. The applicant/appellant is informant and
injured of the case and, therefore, he has *locus standi* to file this
appeal, accordingly, I.A. No. 339 of 2018 stands allowed and



applicant/appellant is permitted to pursue this criminal appeal.

This criminal appeal has been preferred against the impugned order dated 18.10.2017 passed by the learned Sessions Judge, Madhubani in Sessions Trial No. 18 of 2012 (1741 of 2013) by which and whereunder, he acquitted the respondent Nos. 2, 3 and 4 under Section 232 of the Cr.P.C. from the charges framed against them for the offences punishable under Sections 147/149, 148/149, 341/149, 323/149, 324/149, 326/149, 353/149, 224/149, 225/149 and 302/149 of the I.P.C.

A perusal of the impugned order dated 18.10.2017 goes to show that the charges against the respondent Nos. 2, 3 and 4 were framed on 25.11.2014 and, thereafter, the prosecution case was closed on 09.10.2017, but not a single prosecution witness was examined on behalf of the prosecution. Furthermore, it would appear from the perusal of the record that the learned trial Court issued summonses, bailable warrants as well as non-bailable warrants of arrest against the prosecution witnesses and Dasti Summonses were handed over to concerned Public Prosecutor, but in spite of that the prosecution witnesses did not appear. However, the



perusal of lower Court's record, further, goes to show that neither service report nor execution report was ever receipt in court below and, therefore, it is obvious that without receipt of service report of summonses as well as execution report of warrants issued against the prosecution witnesses, the learned trial Court closed the prosecution case.

Learned counsel appearing for the appellant submits that, as a matter of fact, the prosecution witnesses could not get any information regarding pendency of trial of the respondent Nos. 2, 3 and 4. He also informed that the other co-accused faced the trial, separately, and they were convicted by the trial Court.

On the other hand, learned counsel appearing for respondent Nos. 2, 3 and 4 supported the impugned order arguing that all the processes were issued against the prosecution witnesses and not only this but Dasti Summonses were also handed over to concerned Public Prosecutor. He further submitted that sufficient opportunity was given to prosecution to produce witnesses, but prosecution could not succeed to avail the opportunity and lastly, the learned trial Court closed the prosecution case and passed the impugned order under Section 232 of Cr.P.C.



Having heard the contentions of both parties, we went through the record. Admittedly, neither any service of summonses nor any execution report on witnesses was receipt in trial Court and, therefore, it is obvious that there was no service report or execution report before the trial Court at the time of closer of prosecution witnesses. Non-receipt of service report as well as execution report speaks that the prosecution witnesses had no knowledge about pendency of the sessions trial and, therefore, in our view, the learned trial Court committed error in closing the prosecution case without receipt of execution report as well as service report and, therefore, in the aforesaid circumstances, the impugned order cannot sustained in the eye of law. Accordingly this appeal is allowed and impugned order dated 18.10.2017 is, hereby, set aside. The Sessions Trial No. 18 of 2012 is sent back to the trial Court with direction to trial Court to conduct retrial and, furthermore, dispose of the aforesaid session trial within four months from the date of receipt of this order as well as lower Court record in accordance with law. The appellant shall produce his witnesses before the trial Court within three months from the receipt of this order as well as receipt of lower Court record. It is made clear that if appellant fails to



produce his witnesses within the above stated period, the trial Court shall be at liberty to close the prosecution case, as the informant (Appellant) has already got knowledge of pendency stage of Sessions Trial case No. 18 of 2012.

In the aforesaid manner, this appeal stands disposed of.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

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