

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Appeal (DB) No.315 of 2018**

Arising Out of PS. Case No.-37 Year-2016 Thana- GOPALPUR District- Bhagalpur

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Sukesh Kumar Yadav @ Sukesh Kumar @ Sukesh Yadav, Son of Kanik Lal Yadav, Resident of Village- Bari Makandpur, P.S. Gopalpur, District- Bhagalpur.

... .. Appellant.

Versus

1. The State of Bihar.
  2. Naresh Poddar, Son of Late Raghunandan Poddar.
  3. Manoj Yadav, Son of Late Umesh Yadav.
  4. Rupesh Kumar, Son of Late Umesh Yadav.
- All are resident of village- Bari Makandpur, P.S. Gopalpur, District- Bhagalpur.

... .. Respondents.

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with

**Criminal Miscellaneous No. 15968 of 2018**

Arising Out of PS. Case No.-37 Year-2016 Thana- GOPALPUR District- Bhagalpur

=====

Sukesh Kumar @ Sukesh Yadav, S/o Kanik Lal Yadav, R/o Village- Badi Makandpur, P.S.- Gopalpur, District- Bhagalpur.

... .. Petitioner.

Versus

The State of Bihar

... .. Opposite Party.

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**Appearance :**

(In Criminal Appeal (DB) No. 315 of 2018)

|                              |   |                                                                                                        |
|------------------------------|---|--------------------------------------------------------------------------------------------------------|
| For the Appellant            | : | Mr. Ajay Thakur, Advocate.<br>Mr. Ranjan Kumar Jha, Advocate.<br>Mr. Mritunjai Kumar Mishra, Advocate. |
| For the Respondent No.2      | : | Mr. Subodh Kumar Jha, Advocate.<br>Mr. Amrendra Kumar, Advocate.                                       |
| For the Respondent Nos.3 & 4 | : | Mr. Alok Kumar, Advocate.<br>Mr. Raghwendra Pratap Singh, Advocate.                                    |
| For the State                | : | Mr. Mayanand Jha, A.P.P.                                                                               |

(In Criminal Miscellaneous No. 15968 of 2018):

|                    |   |                                 |
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| For the Petitioner | : | Mr. Ranjan Kumar Jha, Advocate. |
| For the State      | : | Mr. Md. Ansarul Haque, A.P.P.   |

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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 : 04-09-2018**

Heard Mr. Ranjan Kumar Jha, learned counsel



appearing for the appellant as well as Mr. Subodh Kumar Jha and Mr. Alok Kumar, learned counsel appearing for the private respondents. Also, heard Mr. Mayanand Jha, learned Additional Public Prosecutor for the State.

2. The appellant is the informant of Gopalpur P.S. Case No.37 of 2016 and has challenged the Judgment of acquittal dated 21.02.2018 passed by the learned 1<sup>st</sup> Additional Sessions Judge, Naugachia, in Sessions Trial No.518/16/3/17 by which and whereunder the learned 1<sup>st</sup> Additional Sessions Judge, Naugachia, acquitted the private respondents from the charges framed against them for the offences punishable under Sections 147, 148, 341, 307, 302 and 149 of the Indian Penal Code and Section 27 of the Arms Act.

3. Learned counsel appearing for the appellant submits that the learned trial court closed the prosecution case on 06.12.2017 without giving proper opportunity to the prosecution to prove the post-mortem report by examining the concerned doctor. He further submits that the learned trial court, while acquitting the private respondents, took notice of this fact that the post-mortem report was not exhibited, nor the doctor, who held the post-mortem was examined and, as a matter of fact, the learned trial court passed the entire Judgment



of acquittal on the above stated so-called lacuna of the prosecution case. He further submits that, as a matter of fact, the concerned APP filed a petition on 23.11.2017, informing the trial court that the post-mortem on the dead body of deceased was conducted by one Dr. Arun Kumar Sinha, and, accordingly, the concerned Additional Public Prosecutor prayed before the trial court to summon the above stated doctor. He further submits that on the prayer of concerned APP, the learned trial court vide order dated 23.11.2017, directed the office to issue summon to Dr. Arun Kumar Sinha but before compliance of order dated 23.11.2017, on 06.12.2017, the concerned APP gave oral information to the trial court that the post-mortem report bears initial signature and it is not clear, who had made his initial signature on the post-mortem report. He further submits that on the aforesaid oral information of the APP, the learned trial court called for a report from the office and having got the report of the office, closed the prosecution case on the ground that the summon to the doctor could not be issued as the prosecution could not succeed to disclose the name of the doctor, who had conducted the post-mortem examination on the dead body of the deceased. Learned counsel appearing for the appellant further submits that the appellant not only filed a



petition before the Sessions Judge, Bhagalpur, but also, filed a petition before the trial court on 05.02.2018, mentioning therein that he had to file Miscellaneous Case before this Court against the closure of the prosecution case. He submits that in spite of the aforesaid information and pendency of the petition before the Sessions Judge, Bhagalpur, the learned trial court proceeded with the trial and passed the Judgment of acquittal on 21.02.2018. He further submits that, as a matter of fact, the learned trial court was in haste in passing the Judgment of acquittal and he did not give sufficient opportunity to the prosecution to give the name of the concerned doctor, who held the post-mortem examination on the dead body of the deceased and, therefore, the impugned Judgment cannot sustain in the eye of law.

4. On the other hand, learned counsel appearing for the private respondents submits that the charge against the private respondents was framed on 11.08.2016 and sufficient opportunity was given to the prosecution to examine the prosecution witnesses but the prosecution was not clear, who had held the post-mortem examination on the dead body of the deceased and the concerned APP fairly accepted before the trial court that he was not able to ascertain the name of the concerned



doctor, who did the post-mortem examination on the dead body of the deceased. He further submits that the name of the concerned doctor had also not been disclosed in the charge-sheet and, therefore, in the aforesaid circumstance, the learned trial court had no option except to close the prosecution case and, accordingly, the learned trial court closed the prosecution case and pronounced the impugned Judgment of acquittal on the basis of the materials, available on the record.

5. Admittedly, the appellant filed Criminal Misc. No.15968 of 2018 on 19.03.2018 against the order dated 06.12.2017, by which the learned trial court had closed the prosecution case.

6. Having heard the contentions of both the parties, we went through the Lower Court Records as well as the impugned Judgment.

7. We find that one of the grounds taken by the trial court in passing the impugned Judgment of acquittal is non-examination of the doctor, who held the post-mortem examination on the dead body of the deceased. Furthermore, we find that on 23.11.2017, a petition was filed before the trial court mentioning therein that the post-mortem of the deceased was conducted by Dr. Arun Kumar Sinha and, accordingly, it was



prayed that the summon be issued to the aforesaid doctor. However, on the next appointed date, the concerned APP orally informed to the court that the post-mortem report bears initial signature and, therefore, it is not clear, who had signed the post-mortem report. We further find that the learned trial court without giving any opportunity to the prosecution to ascertain the name of the doctor, who did the post-mortem examination on the dead body of the deceased, closed the prosecution case on 06.12.2017 itself and proceeded with the case. Furthermore, we find that on 13.12.2017, an information regarding the pendency of the petition bearing No.77 of 2017 before the Sessions Judge, Bhagalpur, was given but, even then, the learned trial court did not recuse himself from the proceeding. However, again on 05.02.2018, appellant filed a petition before the trial court, mentioning therein that he had to go to the High Court against the closure of the prosecution case and sought time to take step before the High Court against the closure of the prosecution case but the learned trial court did not give time to the informant and on the very next date, i.e., on 06.02.2018, completed the argument and pronounced the Judgment of acquittal on 21.02.2018.

8. It has been argued by the learned counsel



appearing for the private respondents that it was duty of the prosecution to produce the doctor and to get the post-mortem report exhibited but the prosecution failed to do so and, therefore, after pronouncement of the Judgment, the prosecution could not say that the sufficient opportunity to adduce the evidence was not given to the prosecution.

**9.** However, we are not, at all, convinced with the aforesaid submission of the learned counsel appearing for the private respondents. In our view, even if it is assumed that the prosecution failed to examine the doctor and to get the post-mortem report exhibited, then also, it was pious duty of the learned trial court to summon the doctor by exercising its power vested under Section 311 of the Code of Criminal Procedure because Section 311 of the Code of Criminal Procedure gives ample power to the court to examine any witness for just and proper decision of the case.

**10.** In the present case, the learned trial court did not exercise its power vested under Section 311 of the Code of Criminal Procedure, which resulted into miscarriage of justice. Furthermore, we would like to mention here that even if the prosecution had not provided the name of the doctor, who had held the post-mortem examination of the deceased, then also it



was incumbent duty of the trial court to ascertain the name of the concerned doctor by seeking a report from the concerned hospital, where the post-mortem of the deceased was done. Therefore, in the aforesaid circumstance, we are of the view that the impugned Judgment of acquittal cannot sustain in the eye of law.

**11.** Accordingly, the appeal is allowed and the impugned Judgment of acquittal dated 21.02.2018 passed by the learned 1<sup>st</sup> Additional Sessions Judge, Naugachia, in Sessions Trial No.518/16/3/17 is, hereby, set aside and the matter is remitted to the trial court with a direction to the trial court to take steps for ascertaining the name of the concerned doctor, who did the post-mortem examination on the dead body of the deceased by seeking a report from the concerned hospital about the name of the concerned doctor and after receiving the aforesaid report, the learned trial court shall proceed with the trial in accordance with law and shall complete the trial within four months from the date of receipt of report of the concerned hospital.

**12.** It goes without saying that if the concerned hospital discloses the name of the concerned doctor, the learned trial court shall summon the aforesaid doctor and examine him



in accordance with law within the above stated period.

**13.** The private respondents are directed to surrender before the trial court within six weeks and execute the bail bonds of Rs.10,000/-(Rupees Ten Thousand) each with two sureties of the like amount each to the satisfaction of the trial court and if they do so, the learned trial court shall release them on bail.

**14.** Since this Court has already granted opportunity to the prosecution to examine the doctor, Criminal Misc. No.15968 of 2018 stands disposed of accordingly.

**(Hemant Kumar Srivastava, J)**

**( Rajendra Kumar Mishra, J)**

**Pradeep Srivastava/-**

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