

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.382 of 2019

Arising Out of PS. Case No.-44 Year-2006 Thana- BAKHTIARPUR District- Saharsa

Manoj Chaudhary @ Manoj Kumar Chaudhary @ Manoj Kumar, aged about 40 years (Male) Son of Late Madhusudan Chaudhary Resident of Kathghara Punarwas, P.S.- Salkhua, At present R/o Malgodawon Road, Simri Bhakhtiarapur, P.S.- Bakhtiarapur, Distt - Saharsa.

... .. Appellant/s

Versus

1. The State of Bihar Bihar
2. Mano Yadav aged about 60 years (Male), Son of Kokil Yadav Resident of Village - Chanan, P.S.- Salkhua, Distt - Saharsa.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Shiva Shankar Sharma
For the Respondent/s : Mr.Abhimanyu Sharma

CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

and

HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)

Date : 08-11-2019

Heard.

Learned counsel appearing for appellant , learned Additional Public Prosecutor for the State as well as learned counsel appearing for respondent No. 2 on the point of admission and having heard the contentions of all the parties, we think that this appeal can be disposed of on admission stage itself.

The appellant is informant of Bakhtiyarpur P.S. Case No. 44 of 2006, which was lodged against respondent No. 2 and



several other persons for, allegedly, committing murder of two persons. Police after investigation submitted charge-sheet against Naresh Poddar and Yogendra Poddar whereas investigation against some persons including respondent No. 2 was kept pending. The above stated charge-sheeted co-accused Naresh Poddar and Yogendra Poddar were put on trial in Sessions Trial No. 118 of 2007. In the aforesaid Sessions Trial No. 118 of 2007, prosecution produced its witnesses and after full fledged trial, the aforesaid charge-sheeted accused Naresh Poddar and Yogendra Poddar were acquitted of the charges vide order dated 13.7.2010. However, after acquittal of aforesaid accused Naresh Poddar and Yogendra Poddar, police submitted supplementary charge-sheet against respondent No. 2 and some others. The respondent No. 2 was put to trial before Sessions Court in Sessions Trial No. 98/2013/1747/2014 and the respondent No. 2 was charged for the offence punishable under Sections 147, 148, 302, 149, 452 of the Indian Penal Code and 27 of the Arms Act vide order dated 19.3.2013, prosecution was directed to produce its witnesses on 5.4.2013 but on 5.4.2013, prosecution did not produce any evidence resulting adjournment of the aforesaid Sessions Trial No. 98 of 2013 and, accordingly, the next date was fixed on 23.4.2013 for prosecution witnesses.



On 23.4.2013, a petition was filed on behalf of the defence mentioning therein to permit the defence to adopt the evidence recorded in Sessions Trial No. 118 of 2007 and, accordingly, the court permitted the defence to adopt the evidence recorded in Sessions Trial No. 118 of 2007. The prosecution did not raise any objection against the above stated prayer of the defence and also asked the trial court to close prosecution evidence as prosecution did not want to produce any evidence but the learned trial court adjourned the case granting further time to prosecution to adduce the evidence and, accordingly, fixed the case on 24.4.2013 but again on 24.4.2013, prosecution failed to adduce evidence and on the prayer of the prosecution, the learned trial court closed the prosecution case and fixed the case for recording the statement of respondent No. 2 under Section 313 of the Code of Criminal Procedure and, subsequently, on 25.4.2013, the statement of respondent No. 2 under Section 313 of the Code of Criminal Procedure was recorded. However, on 26.4.2013 the concerned Additional Public Prosecutor filed a petition along with attendance of appellant praying therein to recall the order of closure of prosecution case. Apart from this, the appellant also filed a petition before the trial court praying therein to take the evidence of prosecution witness. Learned trial



court having heard the parties on the petition filed on behalf of the informant (appellant) under Section 311 of the Code of Criminal Procedure, allowed the aforesaid petition subject to payment of cost of Rs. 4000/- within the next date of hearing of the case and, accordingly, the learned trial court fixed the next date of hearing as 7.5.2013 but on 7.5.2013, a petition was filed on behalf of the informant mentioning therein that the informant has filed criminal revision before this Court against order dated 30.4.2013 and, accordingly, a prayer was made to adjourn the proceeding of Sessions Trial No. 98/2013. Learned trial court adjourned the hearing of Sessions Trial No. 98 of 2013 till next date. However, the perusal of Lower Court Records goes to show that from time to time hearing of aforesaid Sessions Trial No. 98 of 2013 was adjourned by the trial court on the ground of pendency of criminal revision before this Court but all of a sudden, the learned trial court fixed the case for argument and, subsequently, heard the argument and pronounced the impugned judgment, which is under challenged before this Court.

Learned counsel appearing for appellant submits that the learned trial court did not give proper opportunity to informant (appellant) to adduce evidence and illegally fixed the



case for argument. He, further, submits that the learned trial court adopted a new procedure, which is foreign to criminal procedure code. He submits that the order dated 23.4.2013 goes to show that the learned trial court permitted the defence to rely upon the evidence recorded in Sessions Trial No. 118 of 2007 under Section 33 of the Evidence Act but the learned trial court had no authority to stop the appellant to adduce its evidence and, moreover, once the learned trial court permitted the appellant to adduce evidence, there was no occasion to fix the case for argument.

On the other hand, learned counsel appearing for respondent No. 2 refuted the above stated submissions arguing that the learned trial court permitted the defence to adopt the evidence recorded in Sessions Trial No. 118 of 2007 with consent of prosecution and, moreover, the prosecution case was closed on the prayer of prosecution itself, which is evident from perusal of order dated 24.4.2013 passed by the learned trial court. He, further, submits that apart from this, the appellant was allowed to adduce evidence under Section 311 of the Code of Criminal Procedure vide order dated 30.4.2013 but in spite of that the appellant did not adduce any evidence rather challenged the order dated 30.4.2013 before this Court by filing criminal



revision. He, further, submits that the learned trial court gave several opportunities to appellant to adduce evidence but appellant failed to adduce the evidence before the trial court and the aforesaid facts clearly indicates that the appellant was not interested to produce prosecution witnesses before the trial court rather he was much interested to keep the trial pending. He, further, submitted, as a matter of fact, in Sessions Trial No. 118 of 2007, the appellant was examined as prosecution witness but he did not support the prosecution case rather claimed that he knew nothing about the alleged occurrence and taking note of the aforesaid fact, the learned trial court permitted the defence to adopt the evidence recorded in Sessions Trial No. 118 of 2007 and also closed the prosecution case on the prayer of prosecution itself.

Having heard the contentions of the parties, we went through the record along with Lower Court Records.

The factual positions as discussed above are not in dispute. It is an admitted position that the learned trial court permitted the defence to adopt the evidence recorded in Sessions Trial No. 118 of 2007 taking aid of Section 33 of the Evidence Act but Section 33 of the Evidence Act is not applicable in the present scenario of the case because Section 33



of the Evidence Act permits to take the evidence given by a witness in subsequent proceeding, if the aforesaid witness is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense. However, in this case, it is not the case of defence that the witnesses, who had given evidence in Sessions Trial No. 118 of 2007, were not available and their evidence could not have been recorded in present sessions trail, i.e., Sessions Trial No. 98 of 2013, therefore, in our view, the learned trial court, erroneously, permitted the defence to adopt the evidence recorded in Sessions Trial No. 118 of 2007.

No doubt, the order dated 24.4.2013 goes to show that the prosecution case was closed on the prayer of prosecution but it is admitted position that on 26.4.2013, informant appeared through a private learned counsel and filed petition under Section 311 of the Code of Criminal Procedure, which was allowed by the trial court vide order dated 30.4.2013 with certain conditions and the aforesaid order dated 30.4.2013 was challenged before this Court by filing criminal revision. However, learned trial court himself granted several adjournments awaiting the result of above stated criminal



revision but all of a sudden fixed the case for argument and, thereafter, passed the impugned judgment of acquittal.

In view of the aforesaid, we are of the view that the learned trial has adopted erroneous procedure and also violated the natural justice and, therefore, we are of the view that the impugned judgment of acquittal cannot be sustained in the eye of law and, accordingly, the impugned judgment of acquittal dated 31.1.2019 passed by the Presiding Officer, Fast Track Court, Saharasa in Sessions Trial No. 98/2013/1747/2014 cannot sustain in the eye of law and, accordingly, the above stated impugned judgment is set aside and the case is remitted back to the learned court below with direction to give opportunity to appellant to adduce evidence and after that the learned trial court shall pass a fresh judgment in accordance with law. Furthermore, the learned trial court is directed to dispose of the aforesaid Sessions Trial No. 98/2013/1747/2014 within four months from the date of appearance of respondent No. 2 even by taking the trial on day to day basis. It is also made clear that the learned trial court shall be at liberty to close the prosecution case, if learned trial court finds that the appellant is intentionally delaying the trial. This court expects from the appellant to adduce its witnesses within two months



from the date of appearance of respondent No. 2. Furthermore, respondent No. 2 is directed to surrender before the trial court within six weeks from today and if the respondent No. 2 does so, the learned trial court shall release him on bail fixing amount on its own level till final disposal of above stated Session Trial No. 98/2013/1747/2014.

Let a copy of this judgment be sent to concerned trial court immediately.

(Hemant Kumar Srivastava, J)

(Prabhat Kumar Singh, J)

Spd/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	14.11.2019
Transmission Date	14.11.2019

