

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.542 of 2018

Arising Out of PS. Case No.-96 Year-1988 Thana- BIHPUR District- Bhagalpur

Md. Shahbaj son of Md. Iliyas resident of village – Belaha, P. S.- Bihpur
(Bhawanipur), District – Bhagalpur.

... .. Appellant

Versus

1. The State of Bihar
2. Md. Masleuddin Son of Salauddin Miya, Resident of Village-Nagarpar,P.S-Bhabanipur,District-Bhagalpur
3. Subodh Singh Son of Ram Avtar Singh Resident of Village-Nagarpar,P.S-Bhabanipur,District-Bhagalpur
4. Lal Bahadur Singh Son of Nitya Nand Singh Resident of Village-Nagarpar,P.S-Bhabanipur,District-Bhagalpur
5. Md. Jabbar Son of Gaffur Mian, Resident of Village-Nagarpar,P.S-Bhabanipur,District-Bhagalpur
6. Binod Bhagat Son of Bhuvaneshwar Bhagat Resident of Village-Nagarpar,P.S-Bhabanipur,District-Bhagalpur
7. Abhay Kumar Singh @ Nunu Singh Son of Birendra Singh Resident of Village-Nagarpar,P.S-Bhabanipur,District-Bhagalpur
8. Ajay Kumar Singh @Cheddi Singh Son of Birendra Singh Resident of Village-Nagarpar,P.S-Bhabanipur,District-Bhagalpur
9. Bhikho Paswan Son of Naresh Paswan Resident of Village-Nagarpar,P.S-Bhabanipur,District-Bhagalpur
10. Jiyauddin@ Boudha Miyan Son of Md. Salauddin Resident of Village-Nagarpar,P.S-Bhabanipur,District-Bhagalpur
11. Md. Tasir Son of Late Ismile Khan Resident of Village-Nagarpar,P.S-Bhabanipur,District-Bhagalpur

... .. Respondents

Appearance :

For the Appellant/s : Mr. Dhananjay Kumar Pandey, Adv.
For the Respondent/s : Mr. Shashi Bala Verma, APP

CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)

8 06-05-2019 Heard learned counsel appearing for the appellant as



well as learned Additional Public Prosecutor for State on the point of admission as well as on I. A. No. 1984 of 2018 which has been filed under Section 378(3) of Cr.P.C for grant of leave to prefer this criminal appeal against the impugned judgment of acquittal. The appellant comes under the definition of victim and, therefore, he has statutory right to prefer the criminal appeal against impugned judgment of acquittal, accordingly, I. A. No. 1984 of 2018 stands disposed of.

This appeal has been preferred against judgment of acquittal dated 26.02.2018 passed by learned 1st Additional Sessions Judge, Naugachia in Sessions Trial No. 560 of 2005 by which and whereunder, he acquitted the respondent nos. 2 to 11 from the charge framed against them under Section 302 and other minor sections of the Indian Penal Code.

The grievance of the appellant is that neither any notice nor any process was served upon him and, as a result whereof, he could not get knowledge of progress of Sessions Trial No. 560 of 2005 and the learned trial court without getting any service report upon the appellant as well as other material prosecution witness, closed the prosecution case. He, further, submitted that on 17.02.2018, a petition under Section 311 of the Cr.P.C was filed mentioning therein that the appellant and



other witnesses want to depose in the case but the learned trial court rejected the aforesaid petition on 23.02.2018 and pronounced the judgment on 26.02.2018 without giving any opportunity to appellant to challenge the order dated 23.02.2018.

The perusal of impugned judgment goes to show that the occurrence took place in the year 1988 and the case of the respondent nos. 2 to 11 was committed to the court of sessions in the year 2005. Furthermore, the impugned judgment goes to show that the trial of the respondent nos. 2 to 11 remained pending for near about 13 years but in spite of the above stated period, prosecution could not succeed to conclude its case. Furthermore, the impugned judgment goes to show that only four prosecution witnesses were examined by the prosecution in course of trial and out of aforesaid prosecution witnesses, PW-4 happens to be full brother of the appellant. The aforesaid fact clearly indicates that the appellant as well as his other family members were aware of pendency of Sessions Trial No. 560 of 5002 and they willingly/willfully and deliberately delayed the trial by not appearing before the trial court to depose in favour of the prosecution and when the trial court closed the prosecution case, the appellant filed a petition under Section 311



of the Cr.P.C. Therefore, in our view, the learned trial court rightly rejected the petition filed under Section 311 of the Cr.P.C and rightly acquitted the respondent nos. 2 to 11.

We are of the view that there is no need to interfere into the impugned judgment of acquittal.

Accordingly, this criminal appeal stands dismissed on admission stage itself.

(Hemant Kumar Srivastava, J)

(Partha Sarthy, J)

Rajeev Kumar/-

U		T	
---	--	---	--

