

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.475 of 2016

Arising Out of PS. Case No.-176 Year-2012 Thana- SULTANGANJ District- Patna

Harinandan Singh son of Late Kunj Lal Singh Resident of Tikiya Toli, Chai Tola, P.S.- Sultanganj, District- Patna.

... .. Petitioner

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Prakash Chandra Agrawal, Adv.

For the Respondent/s : Mr. Anil Kumar, APP

For Opposite Party nos. 2 & 3 : Mr. Praveen Kumar Singh, Adv.

CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

8 08-07-2019

This revision application has been filed for setting aside the judgment dated 14.03.2016 passed by Additional District & Sessions Judge -VI, Patna City in Sessions Trial No. 700 of 2014 (arising out of Sultanganj P.S. Case No. 176 of 2012), by which, he has acquitted opposite party nos. 2 and 3 and also for a direction to remand the matter back to the learned lower court to re-hear the matter for passing an appropriate order/judgment.

Facts of the case is that an F.I.R. bearing Sultanganj P.S. Case No. 176 of 2012 has been registered under Sections 307/34 of the Indian Penal Code, Section 3/4 of the Explosive Substance Act and Section 27 of the Arms Act. Later on sections 302/120B of the Indian Penal Code was also added after death of the injured.



Prosecution case is that on 28.11.2012 at about 7 P.M., the son of the petitioner namely, Dinesh Kumar @ Bambam went out for shaving to a locally situated salon and after half an hour, the petitioner was informed about his son have sustained injury from explosion as well as by heated iron, on which, the petitioner rushed to the place of occurrence and found his son seriously injured. Thereafter, he took his son to PMCH for treatment, where he succumbed to his injuries during course of his treatment.

In this case, after submission of chargesheet, cognizance has been taken and the case was committed tot he court of sessions and ultimately the sessions trial was transferred to the Court of Anand Bihari Srivastava, learned 6th Additional Sessions Judge, Patna City for trial and disposal of the case. During trial, altogether five witnesses have been examined, who are PW1- Dharmendra Kumar Singh, was one of the Investigating Officers, PW2 – Sawant Suman was the first investigating officer of Sultanganj P.S. Case No. 176/12, PW3 – Ranjeet Sharma @ Ranjeet Kumar, the owner of the salon, PW4 – Ram Babu Mahto and PW5 – Harinandan Singh (informant). In this case, it appears that the doctor has not been examined.

Learned trial court after conclusion of trial opined that



the chain of circumstances is missing so as to prove the guilt of accused and further in view of the evidence of witnesses, none of them appears to be an eye witness of the occurrence nor they have supported the case of prosecution and in that situation, the case of prosecution is not free from reasonable doubt, hence, the accused deserve the benefit of doubt and, thus, acquitted the accused (opposite party nos. 2 and 3).

Aggrieved by the aforesaid judgment, the petitioner has preferred the present revision application on the ground that the prosecution has not taken any steps for examination of doctor in this case and further the confessional statement of the accused persons as well as the contents of the charge-sheet has not properly been appreciated by the trial court and further the trial court has also failed to consider that the accused persons were carrying the criminal antecedents.

Heard learned APP as well as learned counsel appearing on behalf of opposite party nos. 2 and 3 have opposed the present application and submitted that there is no illegality or error in the impugned Judgment as the prosecution witnesses had not supported the case of prosecution, the accused i.e. PW2 and PW3 had rightly been acquitted.

Having heard both sides, from perusal of the record, it



appears that PW1 is the second Investigating Officer in this case and he has taken over the investigation of this case from PW2 – Sawant Suman, who was the first investigating Officer of the case. This witness has stated about some criminal antecedents of the accused including opposite party nos. 2 and 3 and also about the process under Sections 82 and 83 of the Cr.P.C. PW2 is the first investigating Officer of this case, who handed over the investigation of the case to PW2 after lodging F.I.R. He has examined the place of occurrence and recorded the statement of the witnesses and seized the articles also. PW3 is the owner of the salon, who has stated in his evidence that he heard that Dinesh Kumar @ Bambam had received injury and apart from that he had not stated anything and he also did not identify the accused persons in the dock. PW4 has stated in his evidence that he heard about the marpit, in which Bambam received injury. Later on he came to know that Bambam died. This witness has also stated that he did not know as to who killed Bambam and he had not identified the accused person in the dock. PW5, who is the informant and father of the deceased had stated in his evidence that he came to know about the occurrence, in which, his son Bambam had received injuries and went at the place of occurrence, where he found his son in



unconscious condition lying in a pool of blood and he took his son to PMCH for treatment, where, he died on 01.12.2012. This witness identified Ext. 2 (F.I.R.) and apart from that, this witness had not stated anything even in his cross-examination to disclose that involvement of opposite party nos. 2 and 3.

From perusal of the entire evidence, it appears that there is absolutely no evidence either circumstantial or direct against the accused persons (opposite party nos. 2 and 3). So far grounds taken by the petitioner that criminal antecedents of the accused persons as well as the finding of the Investigating Officer in Charge-sheet have not been considered by the trial court is concerned, it is well established that materials collected during investigation and kept in case diary, cannot be considered by the Trial Court either for conviction or acquittal of any accused, as they are not substantive evidence and so far criminal antecedent is concerned that can be considered only while passing the order of sentence and only when the accused has already been convicted. So far ground that doctor has not been examined is concerned, in view of the fact that there is no direct or indirect evidence available on record as none of the prosecution witnesses have supported the case of prosecution, in such a situation, non examination of doctor is not of much



importance as it will not make any difference in impugned judgment.

Considering the entire discussions made above, I do not find any illegality or impropriety in the impugned judgment dated 14.03.2016 passed by Additional District & Sessions Judge -VI, Patna City in Sessions Trial No. 700 of 2014 (arising out of Sultanganj P.S. Case No. 176 of 2012).

As such, I find no merit in the present application and the same is, accordingly, dismissed.

(Vinod Kumar Sinha, J)

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