

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.134 of 2021

Arising Out of PS. Case No.-59 Year-2012 Thana- GORAU District- Vaishali

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1. Manoj Bhagat S/O Kapildev Bhagat R/O Village Chandpura Kala Dharampur Sewakram, P.S-Goraul, District-Vaishali.
 2. Shyam Kishore Bhagat S/O Devendra Bhagat R/O Village Chandpura Kala Dharampur Sewakram, P.S-Goraul, District-Vaishali.

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Yugal Kishore, Advocate

Ms.Rupa Kumari, Advocate

For the Respondent/s : Mr.Narendra Kumar Singh, aPP

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

4 09-02-2024 In G.R. No. 1033 of 2012, the accused persons/petitioners faced trial under the charge of Sections 323, 341, 326, and 114 of the Indian Penal Code. During trial, prosecution examined four witnesses. Out of the said four witnesses, P.W.1 and P.W. 2 were declared hostile and P.W. 3 and P.W. 4 proved to be not eyewitnesses to the occurrence. In spite of the issuance of summons, witness warrant, other witnesses, including the informant, did not come forward. So, the learned Additional Chief Judicial Magistrate, Xth Court at Vaishali, by his order, dated 31st of May 2018, recorded an order of acquittal in favour of the accused persons/petitioners.

2. The State of Bihar filed an appeal against the



aforesaid case before the learned Additional Sessions Judge, IXth Court at Hajipur. The said appeal was disposed of on 28th of November, 2020, directing the learned Additional Chief Judicial Magistrate, Xth Court at Vaishali, to permit the prosecution to produce the informant and other witnesses including the Medical Officer and decide the case afresh on the basis of their evidence.

3. The petitioners have challenged the said order passed on 28th of November, 2020, in Cr. Appeal No. 6 of 2019 on the ground that the alleged incident took place in the year 2012. The petitioners are facing trial for last 12 years. In spite of repeated opportunity being given, the witnesses on behalf of the prosecution were not examined, therefore, the petitioners were acquitted. Now, direction upon the Trial Court to examine the witnesses amounts to further hearing of the case afresh. Therefore, the said order is bad in law.

4. Having heard the learned Advocate for the petitioners and on perusal of the impugned order, this Court is of the view that the accused persons/petitioners cannot take advantage of inaction on the part of the prosecution or its witnesses. It is the duty of the prosecution to produce the witnesses in the Trial Court. If the prosecution fails, the accused



persons cannot, as of right, claim an order of acquittal.

5. In view of such circumstances, I do not find any illegality in the impugned order when an opportunity was given to the prosecution to produce the witnesses, directing the trial Court to examine them and then to decide the case.

6. In view of the above discussion, the instant Revision is dismissed.

7. However, the prosecution is specifically directed to produce all the witnesses and examine them positively within four (4) months from the date of communication of this order, failing which the learned Additional Chief Judicial Magistrate is at liberty to pass necessary order in accordance with law.

(Bibek Chaudhuri, J)

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