

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.121 of 2024

Arising Out of PS. Case No.-45 Year-1998 Thana- KHAGARIA District- Khagaria

Asha Devi @ Asha Sah W/O Late Bhajan Sah @ Ajay Sah R/O Village-
Tribhuwan Tola, Ps.- Muffasil, Dist. Khagaria, At Present R/O Mohalla-
Shanti Nagar, Village And Post- Gasi, Ps.- K. Nagar, Dist. Purnea, Bihar- Pin-
854303.

... .. Appellant/s

Versus

1. The State Of Bihar
2. Mahavir Ram S/O Ganesh Ram Village- Jhamta, Ps.- Muffasil, Dist. Khagaria.
3. Mohan Sada S/O Sukdeo Sada Village- Tribhuwan Tola, Ps.- Muffasil, Dist. Khagaria.
4. Shyam Chaudhary S/O Banarsi Chaudhary Village- Jhamta, Ps.- Muffasil, Dist. Khagaria.
5. Rambilash Chaudhary S/O Banarsi Chaudhary Village- Jhamta, Ps.- Muffasil, Dist. Khagaria.
6. Nirdhan Rajak S/O Fagu Rajak Village- Tribhuwan Tola, Ps.- Muffasil, Dist. Khagaria.
7. Bhikhan Ram S/O Dhanik Ram Village- Jhamta, Ps.- Muffasil, Dist. Khagaria.
8. Bhola Sada S/O Late Anup Sada Village- Tribhuwan Tola, Ps.- Muffasil, Dist. Khagaria.
9. Arun Yadav S/O Badri Yadav Village- Budhwa Parari, Ps.- Alauli, Dist. Khagaria.
10. Ram Prakash Sharma S/O Baldeo Sharma Village- Tribhuwan Tola, Ps.- Muffasil, Dist. Khagaria.
11. Ashok Sharma S/O Satya Narayan Sharma Village- Tribhuwan Tola, Ps.- Muffasil, Dist. Khagaria.
12. Sogarath Sharma S/O Bahor Sharma Village- Tribhuwan Tola, Ps.- Muffasil, Dist. Khagaria.
13. Ram Singh Pandit S/O Jageshwar Pandit Village- Tribhuwan Tola, Ps.- Muffasil, Dist. Khagaria.
14. Ramotar Sharma S/O Baldeo Sharma Village- Tribhuwan Tola, Ps.- Muffasil, Dist. Khagaria.
15. Kishori Sharma S/O Ramotar Sharma Village- Tribhuwan Tola, Ps.- Muffasil, Dist. Khagaria.
16. Rambahadur Pandit S/O Jageshwar Pandit Village- Tribhuwan Tola, Ps.- Muffasil, Dist. Khagaria.
17. Balmiki Pandit S/O Jageshwar Pandit Village- Tribhuwan Tola, Ps.- Muffasil, Dist. Khagaria.

- 18. Nageshwar Sharma S/O Ramotar Sharma Village- Tribhuwan Tola, Ps.- Muffasil, Dist. Khagaria.
- 19. Garho Sharma S/O Ram Bahadur Sharma Village- Tribhuwan Tola, Ps.- Muffasil, Dist. Khagaria.

... .. Respondent/s

Appearance :		
For the Appellant/s	:	Mr. Ramakant Shatma, Sr. Adv. Mr. Rakesh Kumar Sharma, Adv.
For the Respondent/s	:	Mr. Baxi S.R.P. Sinha, Sr. Adv. Mr. Randhir Kumar No.1, Advocate
For the State	:	Mr. Satya Narayan Prasad, Addl.P.P.

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

8 29-08-2024 Heard Mr. Ramakant Sharma, learned senior counsel assisted by Mr. Rakesh Kumar Sharma, learned counsel for the appellant and Mr. Baxi S.R.P. Sinha, learned senior counsel assisted by Mr. Randhir Kumar No.1, learned counsel for the respondent nos. 3 to 7, 9 and 11 to 19 as well as Mr. Satyanarayan Prasad, learned Additional P.P. for the State. It has also been informed by learned counsel for the appearing respondents that respondent no. 2, 8 and 10 have died.

2. The present appeal has been preferred for setting aside the judgment dated 23rd of May, 2019 passed by learned Fast Track Court- 1st, Khagaria in Sessions Trial No. 164 of 2011/ Trial No. 711 of 2019 arising out of Khagaria P.S. Case No.45 of 1998, G.R. No.107 of 1998 for the offences punishable under Sections 147, 148, 149, 341, 323, 307 and 364 of the Indian Penal Code and

Section 27 of the Arms Act whereby and whereunder the learned trial court has been pleased to acquit the respondent nos. 2 to 19 of the charges under Sections 147, 302/149 and 364/149 of the Indian Penal Code.

3. Prosecution case based on the fardbayan of the informant-appellant recorded by A.S.I. Khagaria Mufasil P.S. is as under:-

On 28.01.1998 at about 10.00 AM, the informant and her husband proceeded from Mansi Gharari to her village Tribhuwan tola along with her husband's friends Sakaldeo Yadav, Narayan Yadav and three others and at about 2.00 PM they reached to the house then Nageshwar Sharma, Dukharan Sada and Rambaran Sharma told her husband to remain here then both the persons stayed there. After one and half hour Nageshwar Sharma, Dukharan Sada and Rambaran Sharma asked the informant to allow Bhajan Shah to go and she may remain here no one will do anything to Bhajan Shah. By saying this, all proceeded from the house, she also accompanied them for the border of village and asked her husband to inform after reaching Mansi Gharari. At about 4.15 PM in the south of village when reached near the school the named accused persons and seven unknown persons standing there from before having bahala, pistol and gun encircled her husband and put him down after assault. Nageshwar Sharma

fired from country made gun resulting husband's friends fled away due to fear. Informant's husband was kidnapped and taken away towards east. After some times, 3-4 ladies and gents of village came on bridge then she came to her house. She searched her husband but no trace came out. The reason behind the occurrence has been stated to be the case lodged by her husband for the killing of her devar by the accused persons. Her husband was taken away and killed on giving allurements of panchayati for that case.

4. It appears that on the basis of the aforesaid fardbayan, Khagaria P.S. Case No. 45 of 1998 dated 30.01.1998 was registered for the offences punishable under Sections 147, 148, 149, 341, 323, 307 and 364 of Indian Penal Code read with Section 27 of Arms Act. After investigation, police submitted a charge-sheet against altogether 20 persons, out of whom, before framing of charge, two accused, namely, Dukhharan Sada died and Batoran Pandit absconded. Hence, the charges were framed against 18 accused after separating their trial.

5. It further appears from the records that the prosecution cited as many as 12 witnesses in the charge-sheet. Out of 12 charge-sheet witnesses, in course of trial, only 7 witnesses were produced and all of them were tendered by the prosecution. The trial court's records have been placed before this Court and it has been shown to this Court that the learned trial court's records

were pending for a long time for securing appearance of the accused persons. On 15.12.2018, two prosecution witnesses were produced. They were tendered, again on 31.01.2019, two witnesses were produced who were also tendered on behalf of the prosecution. The same story was repeated on 07.02.2019 when three other prosecution witnesses were produced and tendered. It has been shown to this Court that during all these period no step was taken to serve summons upon the informant and other material prosecution witnesses.

6. This Court has been shown from the order-sheets of the learned trial court that the Public Prosecutor did not take any step to file an application for issuance of summons to the prosecution witnesses. After 07.02.2019, the matter was fixed on 07.03.2019 and on the said date, the Presiding Officer of the court was on Casual Leave. The case was thereafter fixed on 11.04.2019. On 11.04.2019, the learned trial court closed the prosecution evidence saying that the prosecution has been given sufficient time to produce the witnesses. In this manner, the informant who is the victim of the case and other material witnesses have been deprived of putting their appearance in course of trial.

7. Learned Senior Counsel for the appellant submits that the manner in which the learned trial court has closed the

prosecution evidence does not speak well about the conduct of the case by the prosecution. The learned trial court seems to have remained a mute spectator and only contributed to the haste closure of the prosecution case. This has resulted in travesty of justice to the victim and her family. This is also in violation of the established procedure of law which would require that the summons/bailable warrant/non-bailable warrant and processes should have been exhausted against the witnesses to secure their presence.

8. On the strength of these submissions, learned senior counsel for the appellant prays for setting aside the impugned judgment and send the matter back to the learned trial Court for conducting the trial after exhausting all lawful procedures for obtaining the presence of the prosecution witnesses.

9. Mr. Baxi S.R.P. Sinha, learned senior counsel for the appearing respondents has opposed the appeal. It is submitted that the appellant was well aware of the pending trial and she should have been vigilant enough to take appropriate steps to represent her and assist the court. It is submitted that the judgment under appeal was passed about five years back and at this stage remitting the matter to the learned trial court would only cause hardships to the accused, some of whom are in old age now.

10. We have heard learned senior counsel for both the

sides and learned Additional P.P. for the State and have carefully perused the records of the learned trial court. We find substance in the submissions of learned senior counsel for the appellant. The records are not showing that the Public Prosecutor took any step to file an application for issuance of summons to the prosecution witnesses. The last witness was produced on 07.02.2019 whereafter the case was fixed on 07.03.2019, on the said date the learned Presiding Officer was on casual leave, therefore, the matter adjourned to 11.04.2019. On this date, the learned trial court closed the prosecution evidence saying that sufficient time has been given to the prosecution to produce the witnesses. We do not agree with this view of the learned trial Court. Apparently, the trial court was acting in haste and in its pursuit to close the matter as early as possible, an exaggerated statement has been made in the order dated 11.04.2019 that sufficient opportunity has been given to the prosecution to produce the witnesses. The records are not showing any effort on the part of learned trial court to obtain appearance of the witnesses. In fact, we called upon learned senior counsel for the appearing private respondents to demonstrate from the records that any step was taken to serve summons upon the prosecution witnesses and that there were service reports of service of summons on the witnesses, nothing has been shown to us to satisfy our conscious that appropriate opportunity of

representation has been given to the victim and her family.

11. In the circumstances, we set aside the impugned judgment. The matter is remitted to the learned trial Court to proceed afresh from the stage where the three prosecution witnesses were tendered on 07.02.2019. It is expected that the learned trial Court shall follow the established procedure of law for obtaining/securing the presence of all the prosecution witnesses.

12. This appeal is allowed.

13. The trial court’s records be sent back immediately with a copy of this judgment.

(Rajeev Ranjan Prasad, J)

(Shailendra Singh, J)

Arvind/Nirajkrs

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