

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.153 of 2022

Arising Out of PS. Case No.-13 Year-2006 Thana- LAKHISARAI District- Lakhisarai

Baidyanath Singh @ Shyam Nandan Sharma, Son of Late Devki Nandan Singh, Resident of Wallipur, Police Station - Pipara, District - Lakhisarai.

... .. Appellant

Versus

1. The State of Bihar
2. Devi Singh, Son of Sahdeo Singh, Resident of Village - Rehua, Police Station - Wallipur, District - Lakhisarai.

... .. Respondents

Appearance :

For the Appellant	:	Mr. Mukesh Kumar, Advocate Mr. Bijay Kumar Pandey, Advocate
For the Resp No.2	:	Mr. Satyendra Narayan Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 22-02-2024

Heard learned counsel for the appellant and learned
counsel for the respondent No.2.

2. The appellant in this case is aggrieved by and
dissatisfied with the order under Section 232 of the Code of
Criminal Procedure (in short 'CrPC') acquitting the accused-
Respondent No.2 passed on 17.12.2019 by learned Fast Track
Court-II, Lakhisarai in Sessions Trial No. 56/2013 arising out of
Lakhisarai P.S. Case No. 13 of 2006.



Prosecution Story

3. As per the prosecution story, on 04.01.2006 at 3:00 P.M. while the informant was doing agricultural work in his field, his son Vayu Nandan Sharma @ Jhapsu came there and after some time, Bablu Singh and Devi Singh (respondent no. 2) also came there and said that Gongu Pehalwan is calling the son of the informant, thereafter, all of them talked for some time at the bank of river and from there, when Bablu Singh and Devi Singh said lets go home then the son of the informant went with them. When the son of the informant did not return till 8:00 P.M., then the informant along with Shiv Kumar went to Mudbariya to search his son where he got to know from people that his son had been killed in Rehua. It is alleged that all the accused persons, namely, (1) Arun Singh, (2)Vijay Singh, (3)Arvind Singh, (4)Shailesh Singh, (5)Shiv Kumar, Mukesh, (6) Ashok Singh, (7) Ram Gopal Singh, (8) Sanjeev Singh, Bablu Singh, (9) Devi Singh, (10) Gongu Singh killed the son of the informant and concealed the dead body. It is also alleged that the main cause of murder is land dispute between the parties.

Submissions on behalf of the Appellant

4. Learned counsel for the appellant submits that after investigation, police submitted chargesheet on 10.03.2007 against



accused Devi Singh and others vide chargesheet No. 92 of 2007 under Section 364/34 of the Indian Penal Code (in short 'IPC'). Cognizance of the offences was taken and the accused persons were supplied with the police papers whereafter the case was committed to the court of Sessions. On 08.04.2015, charges were framed against the accused under Sections 364/34 and 302/34 IPC.

5. Learned counsel submits that altogether nine prosecution witnesses were to be examined in this case. The trial was bifurcated because the other accused were evading their appearance. The Respondent No. 2 was tried in Sessions Trial No. 189A/2010.

6. The grievance of the appellant is that he being the informant of this case was never summoned to appear in course of trial. He was rotting in jail during the period when the trial of this case was going on. On 25.10.2019, a petition as contained in Annexure '6' to the present appeal was filed in the learned trial court. The learned trial court was informed that the informant-appellant is in jail in connection with Sessions Trial No. 88/2019 and he wants to record his evidence in this case. It is submitted that despite the said petition having been filed, the learned trial court did not pass any order thereof. In fact on 25.10.2019, the learned Presiding Officer of the court was on leave.



7. Learned counsel further submits that on perusal of the orders passed by the learned trial court from time to time, it would appear that in this case, learned APP was not acting sincerely and the efforts were not being made to produce the prosecution witnesses. Learned trial court vide order dated 24.06.2019 directed for issuance of bailable warrant against all the prosecution witnesses but no service report of the execution of bailable warrant could be made available to the court. On 18.07.2019, the learned trial court directed for issuance of non-bailable warrant and also directed the office to write a D/O letter to Superintendent of Police, Lakhisarai but neither the non-bailable warrant issued by the court could be executed nor any response to the D/O letter was received from the office of the Superintendent of Police, Lakhisarai.

8. Learned counsel further submits that on 04.12.2019, the Presiding Officer was on leave. On the said date also there was no response received from Superintendent of Police, Lakhisarai. The matter was adjourned to 12.12.2019. On 12.12.2019, the learned court recorded that there is no service report of the D/O letter. The case was fixed on 17.12.2019 for evidence.

9. It is submitted that on 17.12.2019, the learned trial court has acquitted the accused on the ground that there is no



evidence. Learned counsel submits that the learned trial court did not ensure that the non-bailable warrant and the D/O letter issued by the court are duly executed. It is submitted that the manner in which the learned trial court acquitted the accused persons by holding that it is a case of no evidence, it does not confirm the requirements of a fair trial. It is, thus, submitted that the impugned order dated 17.12.2019 is bad in law and is liable to be set aside.

Submissions on behalf of Respondent No. 2

10. Mr. Satyendra Narayan Singh, learned counsel for Respondent No.2 has opposed this appeal. It is submitted that in this case, the charge was framed as back as on 08.04.2015 but during the period of four and half years approximately only one witness could be examined on behalf of the prosecution. Learned counsel submits that despite all efforts taken by the learned trial court when the prosecution did not produce any witness, the court had no option but to pass an order under Section 232 CrPC.

Consideration

11. We have heard learned counsel for the parties and perused the records. The records would show that this case was coming for evidence when vide Administrative Order No. 44 (Misc.)/2019 dated 02.05.2019, the records were transferred to the Fast Track Court-II, Lakhisarai. The learned trial court issued



bailable warrant against all the prosecution witnesses, there was, however, no service report of the bailable warrant. The learned trial court thereafter issued non-bailable warrant and D/O letter to Superintendent of Police, Lakhisarai but even the non-bailable warrant could not be executed. There was no service report of the D/O letter.

12. In these circumstances, in the opinion of this Court, the learned trial court was required to ensure that the service report of D/O letter be obtained on the records and then the Superintendent of Police could have been called upon to show cause as to why the non-bailable warrants issued against the witnesses have not been executed. The court was competent to issue summon to such person/officer through whom the D/O letter or the non-bailable warrant of arrest were to be executed.

13. To this Court, it appears that the learned trial court has completely abdicated its power to call for the service report and the service report/execution report from the concerned Officer/Police Officer and in a hurry, passed the order impugned in this appeal on the very date on which the case was fixed for evidence.

14. In our considered opinion, the impugned order suffers from non-observance of the procedures established by law,



it has been passed in haste on the same date on which the case was fixed for evidence, hence, it is not sustainable in law. The impugned order is, therefore, set aside. The matter is remitted to the learned trial court for proceeding afresh from the stage where it was left. The Public Prosecutor/APP and the Superintendent of Police, Lakhisarai shall ensure that the witnesses against whom non-bailable warrants were issued by the learned trial court are duly produced on the date fixed in the matter.

15. The respondent no. 2 shall appear in the court below on 11th March, 2024. If he was on bail, then he would be allowed to continue on bail on the same bail bond.

16. Let the trial court’s record be sent to the concerned court within one week from today.

(Rajeev Ranjan Prasad, J)

(Shailendra Singh, J)

maynaz/sushma-

AFR/NAFR	
CAV DATE	
Uploading Date	22.02.2024
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