

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.3442 of 2022

Arising Out of PS. Case No.-427 Year-2019 Thana- BUDDHACOLONY District- Patna

XXXXXXXXX Son of XXXXXXXX Minor, Under the Guardianship of his father, Resident of Village-Maaganpur, P.S.-Bhagwanpur, District-Vaishali. At present residing at Samta Colony, Behind of Bazar Samiti, Near Pokhari, P.S.-Town, District-Vaishali.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Rakesh Dubey, Adv.

For the Respondent/s : Ms. Abha Singh, APP

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL ORDER

11 29-01-2024

1. Heard learned counsel for the parties.

2. This appeal has been preferred against the order dated 17.06.2022 passed by the learned Court of Special Judge, Children Court-cum-ADJ-I, at Patna in connection with Special (child) Case No. 02 of 2022 (JJB Case No. 357/2021) arising out of Buddha Colony P.S. Case No. 427 of 2019 registered for the offence(s) punishable under Section(s) 363, 365 and 506 of the Indian Penal Code and thereafter, chargesheet has been submitted under Sections 363, 366, 376 and 506 read with Section 34 of IPC, whereby the appellant's prayer made under Section 231(2) of Code of Criminal Procedure (in short Cr.P.C.) to recall the prosecution witnesses nos. 1, 2 and 3 for further cross-examination and defer the cross-examination of P.W. 7



(I.O.) till further cross-examination of P.Ws. No. 1, 2 and 3, has been rejected by the trial court, from which being aggrieved and dissatisfied, the instant appeal has been filed under Section 101(5) of Juvenile Justice Act.

3. The main submissions advanced by learned counsel for the appellant are that the appellant is facing trial in connection with Buddha Colony P.S. Case No. 427 of 2019 before the Children Court-cum-A.D.J.-I at Patna and in his case, the most important witnesses of the prosecution are the victim and her parents who have been examined and cross-examined as P.Ws. No. 1, 2 and 3 and thereafter, three other prosecution witnesses P.Ws. No. 4, 5 and 6 have also been examined and cross-examined and the prosecution's case is running for the examination of P.W. 7 (I.O.) and during cross-examination of the said witness, the defence put the questions before the investigating officer regarding the previous statements of the material witnesses of the prosecution which were recorded under Section 161 of Cr.P.C. but the appellant's counsel was not permitted to put the said questions and accordingly, the appellant was deprived of his valuable right and furthermore, the appellant's counsel bonafidely did not cross-examine P.Ws. No. 1, 2 and 3 regarding their statements recorded under Section



161 of Cr.P.C. which seriously prejudiced the appellant as the attention of the said witnesses could not be drawn to their earlier statements made by them before the investigating officer and on account of bonafide mistake or negligence on the part of the appellant's counsel, the valuable right available to the appellant under Section 145 of the Indian Evidence Act could not have been availed by the appellant and furthermore, for eliciting the real truth, the attention of P.Ws. No. 1, 2 and 3 to their earlier statements is very necessary as there are many contradictions in between their testimony deposed by them before the trial court and the statements given by them before the police and to meet the ends of justice, further cross-examination of the said witnesses is necessary otherwise an irreparable loss would cause to the appellant.

4. Learned APP for the State has opposed the prayer of the appellant and submitted that the prosecution witnesses P.Ws. No. 1, 2 and 3 were cross-examined in detail by the appellant's counsel and the appellant should not be permitted to fill up the lacuna in his case and the learned trial court has rightly rejected the appellant's prayer.

5. Heard both the sides and perused the order impugned and the deposition of P.Ws. No. 1, 2 and 3 and also



perused the case diary. Though the appellant's counsel cross-examined the said prosecution witnesses but admittedly, no attention of the said prosecution witnesses was drawn to their earlier statements and on account of appellant's counsel's negligence, the appellant has been deprived of his valuable right given to him under Section 145 of the Indian Evidence Act and moreover, for the ends of justice as well as to arrive at a right conclusion, the attention of the said prosecution witnesses should be drawn to their earlier statements so that the actual truth in the allegation may come into light and the appellant has a legal right as per the provision of Section 145 of the Indian Evidence Act to cross-examine the prosecution witnesses by drawing their attention to their previous statements for the purpose to contradict them. Though the above mentioned prosecution witnesses will have to come again before the trial court for further cross-examination if the appellant's prayer is allowed but for the same, the said witnesses can be compensated by giving them cost of their expenses. Accordingly, this Court finds substance in the appellant's prayer and the order impugned does not appear to be proper hence the **appeal stands allowed and the order impugned is hereby set aside.**

6. The learned trial court is directed to call upon the



prosecution witnesses P.Ws. No. 1, 2 and 3 for further cross-examination by the appellant but only in respect of drawing the attention of the said witnesses to their earlier statements recorded by them during investigation and the appellant shall deposit Rs. 1000/- (rupees one thousand only) for each witness to compensate him/her for meeting his/her expenses which will be incurred by him/her in attending the trial court and after completion of further cross-examination of the said prosecution witnesses, the appellant shall be permitted to complete the cross-examination of the investigating officer by putting the questions which are relevant in the light of the facts which will come out in further cross-examination of the prosecution witnesses 1, 2 and 3.

(Shailendra Singh, J)

annu/-

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

