

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.582 of 2021

Arising Out of PS. Case No.-32 Year-2015 Thana- SIWAN CITY District- Siwan

Rabindra Yadav, Son of Jay Ram Yadav, Resident of Village - Siswan Kodar,
P.S.- G.B Nagar, District- Siwan, Bihar

... .. Appellant

Versus

1. The State of Bihar
2. Mohan Yadav, Son of Late Vishwnath Yadav, Resident of Village - Siswan Kodar, P.S.- G.B Nagar, District- Siwan, Bihar
3. Balindra Yadav, Son of Late Vishwanath Yadav Resident of Village - Siswan Kodar, P.S.- G.B Nagar, District- Siwan, Bihar
4. Mahesh Yadav, Son of Late Vishwanath Yadav Resident of Village - Siswan Kodar, P.S.- G.B Nagar, District- Siwan, Bihar

... .. Respondents

Appearance :

For the Appellant	:	Mr. Prashant Kumar, Advocate Mr. Netan Chouhan, Advocate
For the State	:	Ms. Shashi Bala Verma, Addl PP
For the Resp Nos 2 to 4	:	Mr. Yogesh Chandra Verma, Senior Advocate Mr. Ajay Kumar Pandey, Advocate

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

Date : 06-08-2024

Heard Mr. Prashant Kumar, learned counsel for the appellant, Mr. Y. C. Verma, learned Senior Counsel assisted by Mr. Ajay Kumar Pandey, learned counsel for the Respondent Nos. 2 to 4 and Ms. Shashi Bala Verma, learned Additional Public Prosecutor for the State.

2. The present appeal has been preferred by the informant who is aggrieved by and dissatisfied with the judgment

dated 16.09.2019 (in short 'impugned judgment') passed by learned Additional Sessions Judge-IV, Siwan (hereinafter referred to as the 'learned trial court') in Sessions Trial No. 516 of 2017 arising out of Siwan G.B. Nagar P.S. Case No. 32 of 2015. By the impugned judgment, the learned trial court has been pleased to acquit the accused persons of the charges under Section 341, 323, 324, 307, 379, 504 and 506/34 of the Indian Penal Code (in short 'IPC').

Brief Facts of the Case

3. The prosecution case is based on the written report dated 01.12.2015 submitted by Ravindra Yadav wherein he has alleged as under:-

The informant has alleged that on 01.12.2015 at about 03:00 pm in the evening, he was at his chimney when (1) Mohan Yadav, (2) Balindra Yadav, (3) Mahesh Yadav (Respondent Nos. 2 to 4 respectively) came and started abusing him. Mohan Yadav (Respondent No. 2) told the co-accused persons to kill the appellant as he has been trying to capture his land. Balindra Yadav (Respondent No. 3) and Mahesh Yadav (Respondent No. 4) assaulted the informant with knife on his neck but when he tried to save himself, it hit near his left ear and the informant got injured and fell down. Mohan Yadav snatched Rs.20-25 thousand from the

informant's pocket which he had earned by selling bricks. The accused persons also threatened the informant that if he goes to the police station, they will kill him. One Rajesh Yadav and Sukhlal Prasad got the informant treated in the hospital.

4. On the basis of the said written report, Siwan J.B. Nagar P.S. Case No. 32 of 2015 dated 01.12.2015 was registered for the offences punishable under Sections 341, 323, 324, 307, 379, 504, 506 and 34 IPC.

5. After investigation, police submitted a chargesheet. The learned Chief Judicial Magistrate, Siwan having found the *prima-facie* case on the basis of the said chargesheet, took cognizance of the offences. Finding that the offences alleged are triable by the Court of Sessions, the learned Chief Judicial Magistrate committed the records to the Court of Sessions for trial.

6. In the trial court, charges were explained to the accused who denied the charges and claimed to be tried whereupon charges were framed against them vide order dated 28.03.2018.

Submissions on behalf of the Appellant

7. Learned counsel for the appellant submits that after framing of charge as the trial began, the learned trial court was requested to issue summons to the witnesses. Learned counsel

submits that on 30.01.2019, an application was filed on behalf of the prosecution for issuance of summons to the witnesses. It is stated that in the margin portion of the order dated 28.03.2018, the Office Clerk has recorded “सम्पन्न निर्गत (4)” which means summons were issued to four witnesses only. Learned counsel submits that in the margin portion of the order dated 05.06.2018, it is recorded that service reports of summons are attached, therefore, it may be taken that the summons were served upon the four witnesses. In the chargesheet, however, there are altogether nine witnesses including the official witnesses, therefore, on the face of it, it is evident that summons were not issued to all the prosecution witnesses.

8. Learned counsel submits that when no witness appeared to depose, the prosecution filed an application on 30.01.2019 requesting the learned trial court to issue warrant against the witnesses. The learned trial court directed for issuance of bailable warrant against the prosecution witnesses but from the records, this Court will not find any endorsement of the Office that bailable warrants were issued to the prosecution witnesses. Learned counsel submits that even in the trial court's records which are available to this Court, there is nothing to show that bailable warrants were issued to the prosecution witnesses.

9. Learned counsel has then taken us to the order dated 29.05.2019 wherein the learned trial court directed for issuance of non-bailable warrants against the non-official prosecution witnesses. In the margin portion of the ordersheet, it is recorded that Office Clerk should issue non-bailable warrant against the witnesses. It is submitted that those non-bailable warrants were returned by the police station saying that the persons against whom non-bailable warrants have been issued are absconding being afraid of the warrants. It is submitted that once the non-bailable warrants against non-official witnesses were returned by the police station, no further step was taken by the learned trial court to compel the appearance of non-official witnesses. The fact remains that neither any summons nor any bailable or non-bailable warrants were issued to some of the non-official witnesses and then to the official witnesses.

10. Learned counsel submits that from the materials on the record, it is evident that the learned trial court has not followed the mandate of Section 230 of the Code of Criminal Procedure (in short 'Cr.P.C') wherein it is provided that on the application of the prosecution, the trial Judge shall issue any process for compelling the attendance of any witness or the production of any document or other things.

11. Learned counsel has relied upon the judgment of the Hon'ble Supreme Court in the case of **Bablu Kumar and Ors. Vs. State of Bihar and Ors.** reported in **(2015) 8 SCC 787**. It is submitted that the case of **Bablu Kumar** (supra) had travelled to the Hon'ble Supreme Court from a judgment of this very Court and the Hon'ble Supreme Court has in its judgment deliberated upon the role of the prosecution and the duty of the Court within the requisite paradigm of fair trial.

12. Learned counsel submits that the Hon'ble Supreme Court has referred to series of judgments in which emphasis has been given on a fair and impartial trial. Some of the judgments which have been referred to by the Hon'ble Supreme Court in the case of **Bablu Kumar** (supra) are the judgments in the case of **Manu Sharma Vs. State (NCT of Delhi)** reported in **(2010) 6 SCC 1** and **Rattiram Vs. State of M.P.** reported in **(2012) 4 SCC 516**. It is submitted that in this case, the informant has been denied an opportunity of fair trial and grave injustice has been caused to him and the learned trial court has not taken pain to even verify from the records as to whether summons have really been issued to all the witnesses or not.

Submissions on behalf of the Respondent Nos. 2 to 4

13. On the other hand, Mr. Y. C. Verma, learned Senior Counsel for the Respondent Nos. 2 to 4 submits that normally Right to Appeal is provided to the State, therefore, the informant should not be allowed to usurp the said right of the State. Learned Senior Counsel has gone on to the extent of submitting that once the non-bailable warrants were returned unexecuted against some of the witnesses who were absconding, there was no reason for the learned trial court to issue process under Sections 82 and 83 Cr.P.C. against them.

Submission on behalf of the State

14. Ms. Shashi Bala Verma, learned Additional PP for the State having gone through the trial court's records does not controvert that the records would show issuance of summons at initial stage to only four witnesses and then non-bailable warrants to the non-official witnesses. Learned Additional PP, in fact, admits that so far as the other witnesses are concerned, they were never summoned.

Consideration

15. Having heard learned counsel for the parties and learned Additional PP for the State as also upon perusal of the records of the learned trial court, we find that what have been

placed before us by the learned counsel for the appellant are correct. On record, we found one copy of the summons issued to Ravindra Yadav, Sukhlal Prasad, Gautam Prasad and Manoj Prasad. Thus, it shows issuance of summons to only four prosecution witnesses. The office of the learned Judge has, therefore, rightly recorded in the margin portion that summons have been issued to four.

16. We have also noticed that despite order of the learned trial court to issue bailable warrant of arrest against the prosecution witnesses, no bailable warrant of arrest was issued. Lastly, the learned court directed for issuance of non-bailable warrant against the non-official witnesses only. This is evident from the order dated 29.05.2019.

17. In the kind of materials noticed by us, we have no iota of doubt that in this case, the learned trial court has not taken pain to verify from the records as to whether all the prosecution witnesses have been duly served with the summons. Though, the learned trial court issued non-bailable warrants against non-official witnesses but on return of those non-bailable warrants, no further action was taken in accordance with law to procure the attendance of the witnesses. The submission of learned Senior Counsel for the Respondent Nos. 2 to 4 that the power under Sections 82 and 83

Cr.P.C. are to be exercised only against the accused persons and not against the witnesses are devoid of merit and the same is liable to be rejected.

18. Although learned Senior Counsel for the Respondent Nos. 2 to 4 has placed before us the judgment of the Hon'ble Supreme Court in the case of **Babu Sahebagouda Rudragoudar and Others Vs. State of Karnataka** reported in **2024 SCC OnLine SC 561** but on the face of it, we find that this judgment would not be applicable in the present case as the issues involved in this case are quite different and distinct from those which were before the Hon'ble Supreme Court in the case of **Babu Sahebagouda Rudragoudar** (supra). We, rather, find that the judgment in the case of **Bablu Kumar** (supra) is directly on the point which has been argued before us.

19. This Court is of the opinion that what have been held by the Hon'ble Supreme Court in the case of **Bablu Kumar** (supra) in paragraphs '13', '14', '15' and '18' would be covering the issues involved in this case, hence, those are being quoted hereunder for a ready reference:-

“**13.** In *Sunil Kumar Pal v. Phota Sheikh*⁷, the Court while commenting on the unusual procedure adopted by the trial court, opined that: (SCC p. 538, para 9)
“9. ... We have no doubt that under these circumstances the trial could not be regarded as fair

7. (1984) 4 SCC 533 : 1985 SCC (Cri) 18

and just so far as the prosecution was concerned. The entire course of events shows that the conduct of the trial was heavily loaded in favour of Respondents 1 to 9. The trial must in the circumstances be held to be vitiated and the acquittal of Respondents 1 to 9 as a result of such trial must be set aside. It is imperative that in order that people may not lose faith in the administration of criminal justice, no one should be allowed to subvert the legal process. No citizen should go away with the feeling that he could not get justice from the court because the other side was socially, economically or politically powerful and could manipulate the legal process. That would be subversive of the rule of law.”

14. In *Bansi Lal v. Laxman Singh*⁸, on the question of limited revisional jurisdiction under Section 401 CrPC and the duty of the Court, a two-Judge Bench opined that such a power has to be exercised only in exceptional cases when there is a glaring defect in the procedure or there is a manifest error on point of law and there has consequently been flagrant miscarriage of justice. A mere circumstance that finding of fact recorded by the trial court which may be in the opinion of the High Court is erroneous or incorrect, would not justify setting aside the order of acquittal and directing a retrial of the accused.

15. In *Satyajit Banerjee v. State of W.B.*⁹, it has been opined that (SCC p. 121, para 26) direction for retrial should not be made in all or every case where acquittal of the accused is for want of adequate or reliable evidence. It is only when an extraordinary situation with regard to the first trial is found so as to treat it as a farce or a “mock trial”, direction for retrial would be justified. The same principle has been reiterated in *Mary Pappa Jebamani v. Ganesan*¹⁰.

18. In *Rattiram v. State of M.P.*¹³ a three-Judge Bench has ruled thus : (SCC p. 534, para 39)

“39. ... Fundamentally, a fair and impartial trial has a sacrosanct purpose. It has a demonstrable object that the accused should not be prejudiced. A fair trial is

8. (1986) 3 SCC 444 : 1986 SCC (Cri) 342

9. (2005) 1 SCC 115 : 2005 SCC (Cri) 276

10. (2014) 14 SCC 477 : (2015) 1 SCC (Cri) 414 : (2013) 15 Scale 154

13. (2012) 4 SCC 516 : (2012) 2 SCC (Cri) 481

required to be conducted in such a manner which would totally ostracise injustice, prejudice, dishonesty and favouritism.”
And again : (SCC p. 542, para 62)
“62. ... Decidedly, there has to be a fair trial and no miscarriage of justice and under no circumstances, prejudice should be caused to the accused but, a pregnant one, every procedural lapse or every interdict that has been acceded to and not objected at the appropriate stage would not get the trial dented or make it unfair. Treating it to be unfair would amount to an undesirable state of pink of perfection in procedure. An absolute apple-pie order in carrying out the adjective law, would only be sound and fury signifying nothing.”

20. In ultimate analysis, we find that the impugned judgment of acquittal recorded by the learned trial court is perverse and is liable to be set aside. We, accordingly, set aside the impugned judgment and direct the learned trial court to proceed with the trial afresh in accordance with law from the stage of prosecution evidence.

21. This appeal is allowed.

(Rajeev Ranjan Prasad, J)

(Shailendra Singh, J)

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