

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.695 of 2023

Arising Out of PS. Case No.-6 Year-2010 Thana- KATHAIYA District- Muzaffarpur

Kishori Mahto, Son Of Ram Ayodhya Mahto, Resident Of Village- Sri
Rampur, P.S. Kathaiya, District- Muzaffarpur

... .. Appellant/s

Versus

1. The State of Bihar
2. Bindeshwari Lal Shah, Son of Buntty Lal Shah, Resident of Village- Sri
Rampur, Police Station- Kathaiya, District- Muzaffarpur

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr.Sanjay Kumar, Advocate Mr. Raj Shekhar, Advocate
For the State	:	Mr.Bipin Kumar, Addl.P.P.
For the Respondent No.2:		Mr.Amitesh Jha, Advocate Mr.Mukund Mohan Jha, Advocate

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

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

13 29-08-2024 Heard learned counsel for the appellant, learned
counsel for the private respondent no.2 and Mr. Bipin Kumar,
learned Additional Public Prosecutor for the State.

2. This appeal has been preferred for setting aside the
judgment dated 08.10.2021 passed by the learned 12th
Additional Sessions Judge, Muzaffarpur in Session Trial No.543
of 2018 arising out of Kathaiya P.S. Case No.6 of 2010 dated
14.02.2010 registered for the offence punishable under Section
302/34 of the Indian Penal Code whereby and whereunder the
learned trial court has been pleased to acquit the accused-

respondent no.2 of the charge under Section 302 of the Indian Penal Code on the ground of lack of evidence.

3. The prosecution case is based on the Fardbeyan of the informant recorded on 14.02.2010 in the evening at 6.30 PM stating that today at 1.00 PM his neighbour Bindeshwar Shah was indulged in quarrel among the brothers and in that course Bhavo of Bindeshwari Shah came running to his house for concealing herself. At his door, the informant's Bhavo Lalita Devi was sitting having his daughter aged about one year in her lap. Bindeshwari Shah came at his door having lathi for assaulting his Bhavo and hurled lathi on informant's Bhavo saying that why she allowed her to enter in the house. The said blow of lathi hit on the head of informant's daughter Anjali resulting his daughter started struggling and became unconscious and after some time she lost her breath. This occurrence was done by Bindeshwari Shah on the order of Kanni Lal Shah. After death of informant's daughter, Bindeshwari Shah and his four brothers fled away. His father Kanni Lal Shah was catching hold of by the villagers. The informant alleged that Bindeshwari Shah was always indulged in quarreling with his brothers and on protest he used to give threat for assault and for that reason and knowingly gave lathi

blow on her Bhavo Lalita Devi which also hit on the head of his daughter which resulted into her death.

4. It appears that on the basis of said fardbeyan, the Kathaiya P.S. Case No. 06 of 2010 dated 14.02.2010 was registered for the offence punishable under Section 302/34 of Indian Penal Code.

5. After the investigation, police submitted a charge-sheet against all the accused persons under Section 302/34 of the Indian Penal code. Cognizance was taken on 30.01.2011 and thereafter finding that the offences alleged are triable by the court of session, the records were committed to the court of Session where the charges were framed against all the accused on 04.01.2020 under Section 302/34 of the Indian Penal Code.

6. Learned counsel for the appellant has taken this Court through the records of the learned trial Court and submits that immediately after framing of charge the COVID-19 pandemic period begun with effect from 24.03.2020. A few days before the said COVID-19 period, in a bail application being Cr.Misc. No. 24808 of 2019, a learned single Judge of this Court directed the learned trial Court to conclude the trial by 14.09.2020. Keeping in mind this direction of the Hon'ble High Court, the learned trial Court directed the Superintendent of

Police, Muzaffarpur to ensure the presence of the witnesses in the court on the date fixed. This order was passed on 18.03.2020 but, as stated above, after start of Corona period with effect from 24.03.2020, the matter could not proceed and from the order passed on various dates thereafter, it would appear that neither the accused was present nor any witness was produced. During this period, by virtue of the order of the High Court in administrative side, the learned trial courts were running in a limited mode and only urgent matters in criminal side were being taken up through virtual mode. It is for this reason that no progress could be made in trial.

7. It is stated that during this period of COVID-19 first wave and second wave only some formal orders were passed directing the office to issue summons to the non-official witnesses and issue reminder to Police authorities including the Director General of Police. In this connection, the order dated 31.03.2021 has been placed before this Court to show that being conscious of the direction of this Court to dispose off the matter, the learned trial Court directed it's office to send a letter to Director General of Police, Bihar to ensure presence of the witnesses but such reminders could not yield any significant result. In the order dated 12.04.2021, it is categorically recorded

that the accused in prison could not be produced due to COVID-19 situation. Thereafter, the accused was produced through virtual mode and the court has recorded in it's order dated 15.07.2021 that the proceeding of the court is being conducted in virtual mode. This situation continued and the various orders passed on the different dates in the month of September, 2021 would also show that the accused was presented through virtual mode but no witness was produced. During all these period, there was no service report showing service of summon upon the witnesses. The letter sent to the D.G.P., District Magistrate and the S.S.P. remained unresponded. Despite all these position appearing from the records, the learned trial Court has recorded in it's order dated 20.09.2021 that sufficient opportunities have been given to the prosecution to bring the witnesses but the prosecution has not brought its witnesses, therefore, the prosecution is being given last opportunity to produce witness on the next date. On the next date i.e. 30.09.2021, the learned trial court took note of the direction of this Court and on finding that despite letters written to the police authorities and issuance of summons,ailable warrant and non-ailable warrant the witnesses have not been produced, the court decided to close the evidence. Thereafter, 313 Cr.P.C. statement was recorded on

01.10.2021, hearing was held on 05.10.2021 and the accused persons were acquitted of the charge on 08.10.2021.

8. Learned counsel submits that apparently the learned trial Court was acting in haste perhaps taking note of the directions of this Court to conclude the trial but in the whole process, the learned trial court could not appreciate the subsequent circumstances which prevailed due to unprecedented COVID-19 pandemic. The worldwide lock-down during the pandemic period had stalled the regular work all over the world and India was no exception to it. The learned trial court could have very well sent a report to the High Court seeking extension of time or could have made the High Court aware of the reasons for not concluding the trial within the expected period. The learned trial court had nothing on the record to satisfy itself that the summons, bailable warrant and non-bailable warrants which were issued against the witnesses have been executed, there was no report of the D.G.P., D.M. and the S.S.P. showing execution of those processes, in the circumstances, the trial Court was not justified in closing the prosecution evidence. This, according to the appellant, has resulted in injustice and the concept of fair trial which is embodied under Article 21 of the Constitution of India has been sacrificed.

9. On the other hand, learned counsel for the private respondent No. 2 has opposed this appeal. Learned counsel for the private respondent has, at one stage, taken a stand on instruction that the appellant was aware of the on-going trial but after going through the records of the learned trial Court, learned counsel for respondent No. 2 accepts at the bar that the trial court's records are not showing that the appellant was aware of the on-going trial and that any summon was served upon him informing him about the dated fixed in the matter.

10. Having heard learned counsel for the parties as also learned Additional P.P. for the State and upon perusal of the records, this Court finds substance in the submissions of learned counsel for the appellant. The order-sheets of the learned trial court clearly demonstrate that the learned trial Court was proceeding to close the matter as early as possible in view of the direction of this Court in Cr. Misc. No. 24808/2019 and Cr.Misc.No.20574 of 2020. In Cr.Misc.No. 24808/2019, vide order dated 16.03.2020, this Court had directed the S.S.P., Muzaffarpur to ensure the presence of the witnesses in the court but even this direction was not being carried out. The records nowhere shows that any summon, bailable warrant or non-bailable warrant was served and executed upon the prosecution

witnesses. The court was running in a limited mode during the pandemic period and under these circumstances, in our considered opinion when there was no material on the record to satisfy itself by the learned trial court that summons have been duly served upon the witnesses, the prosecution evidence could not have been closed. It is well said that the justice hurried is justice buried. We are of the view that the victim of the case has not been given appropriate opportunity to appear and adduce evidences.

11. In the circumstances, we set aside the impugned judgment. The matter is remanded to the learned trial court. The trial Court shall proceed from the stage of issuance of summons to the witnesses. The Public Prosecutor and all other stake holders shall ensure execution of summons/warrant/process as the case may be. The appellant shall put his appearance in the trial Court.

12. This appeal is allowed.

13. Let the records of the trial Court be sent back immediately with a copy of the judgment of this Court.

(Rajeev Ranjan Prasad, J)

(Shailendra Singh, J)

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