

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1198 of 2017

Arising Out of PS. Case No.-51 Year-2002 Thana- KONCH District- Gaya

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Dinanath Das S/o Late Ram Bilash Das (Ravidas) R/o Village- Bathani Tola,
Azad Bigha, P.S.- Konch, District- Gaya.

... .. Appellant

Versus

1. The State of Bihar.
2. Ram Pravesh Das S/o Bhudhan Ravidas, R/o vill - Bathani Tola, Azad Bigha, P.S.- Konch, Distt.- Gaya
3. Suresh Das S/o Karu Ravidas R/o vill - Bathani Tola, Azad Bigha, P.S.- Konch, Distt.- Gaya
4. Jattu Das S/o Karu Ravidas R/o vill - Bathani Tola, Azad Bigha, P.S.- Konch, Distt.- Gaya
5. Bachu Paswan S/o Bishu Paswan R/o vill - Bathani Tola, Azad Bigha, P.S.- Konch, Distt.- Gaya
6. Brij Mohan Paswan S/o Rameshwar Paswan R/o vill - Bathani Tola, Azad Bigha, P.S.- Konch, Distt.- Gaya
7. Nageshwar Paswan S/o Musafir Paswan R/o vill - Bathani Tola, Azad Bigha, P.S.- Konch, Distt.- Gaya
8. Suresh Paswan S/o Gaya Paswan R/o vill - Bathani Tola, Azad Bigha, P.S.- Konch, Distt.- Gaya
9. Ganauri Paswan S/o Chandra Paswan All R/o Village- Bathani Tola, Azad Bigha, P.S.- Konch, District- Gaya.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Sanjay Kumar Sharma, Advocate
For the Respondent/s : Mr. Sri Ajay Mishra, APP

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and

HONOURABLE MR. JUSTICE PRAVEEN KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE PRAVEEN KUMAR)

Date : 22-01-2026

Heard learned counsel for the appellant, learned
Additional Public Prosecutor for the State and learned counsel
for the respondent Nos. 2 to 9.



2. The present criminal appeal has been preferred against the judgment of acquittal dated 27.05.2017 passed by the learned Additional District & Sessions Judge-II, Gaya in Session Trial No. 435 of 2014/ 524 of 2003 (S.J.) arising out of Konch P.S. Case No. 51 of 2002, whereby the learned trial court has been pleased to acquit respondent Nos. 2 to 9 of the charges having framed against them for the offences punishable under Section 302/149 and 307/149 of the Indian Penal Code.

Prosecution Case.

3. The prosecution is based upon the *fardbeyan* of Ramlakhan Das (P.W.-7) which came to be recorded by S.I. of police, namely, A.P. Mondal, Officer In- Charge of Konch police station on 06.06.2002 at 21:00 hours at A.N.M.M.C.H., Gaya in which it has been alleged that on the land situated in north of his house as claimed belonged to his Bhabhi, wife of Rambilash Das, a wall was being forcibly constructed by the accused persons with the help of co-villagers. They wanted to put thatched roof (Chhappar) over there. Upon protest being made, they did not adhere to his protest. It is further alleged that Parmeshwar Paswan and Lalita Devi exhorted to kill the informant and others. It is further alleged that 15 persons upon said exhortation indiscriminately assaulted the informant,



Ramlakhan Das and his brother Ram Bilash Ravidas, Jawahar Ravidas and Dwarka Das by lathi, Bhala and Garasha resultantly they caused injuries. Upon intervention of other co-villagers and local Mukhiya, Jitendra Yadav, the accused persons fled away. Local Mukhiya somehow made an arrangement to send the injured persons to hospital but in the way, the informant's brother namely, Rambilash Ravidas succumbed to his injuries. The injured persons were treated in the hospital and the postmortem of the deceased, Rambilas Ravidas came to be performed by the doctor.

4. On the basis of the aforesaid fardbeyan of Ram Lakhan Das (P.W.-7), Konch P.S. Case No. 51 of 2002 came to be registered against respondent Nos. 2 to 9 and others for the offence punishable under Section 302/149 and 307/149 of the Indian Penal Code. After registration of the F.I.R., the police started investigation and upon conclusion of investigation, submitted charge-sheet against the accused persons named in the F.I.R. including respondent Nos. 2 to 9. Upon submission of charge-sheet, the learned Magistrate took cognizance of the offences under Sections 147, 148, 149, 323, 324, 307 and 302 of the I.P.C. and the respondent Nos. 2 to 9 and one Jawahar Ravidas (since deceased) were summoned to face trial. Since the



case was exclusively triable by the learned Sessions Court, the same was committed to the court of Sessions. The charges were explained to the respondent Nos. 2 to 9 and one Jawahar Ravidas (since deceased) on 27.04.2005 who denied the charges and claimed to be tried. The learned trial court framed charges under Sections 302/149 and 307/149 of the I.P.C.

5. During course of trial, one accused, namely, Jawahar Ravidas died and as such, proceeding against him was dropped and hence, respondent Nos. 2 to 9 were sent up for trial in this case.

6. The prosecution in order to prove its charges examined altogether eight (8) witnesses. The list of the prosecution witnesses is mentioned hereunder in tabular form:

P.W-1	Abhinandan Prasad (Formal witness)
P.W-2	Muni Devi
P.W-3	Dhrig Raj
P.W-4	Rajmani Kumari
P.W-5	Hira Lal Das
P.W-6	Sugeshwari Devi
P.W-7	Ram Lakhan Das
P.W-8	Krishna Chaudhary (formal witness)

7. The statements of accused were recorded under Section 313 Cr.P.C., they pleaded innocence. No evidence either oral or documentary has been adduced on behalf of the defence.



Finding of the Trial court.

8. Learned trial court having examined the evidences available on the record came to a conclusion that besides non-examination of oral, official and non official witnesses, the prosecution has also suppressed the documentary evidences such as F.I.R., injury report of so-called injured and the postmortem report of the deceased. Learned trial court has formed an opinion that the prosecution has completely failed to establish and prove about the persons and their weapon who caused injury upon them. In the opinion of the trial court, the failure of the prosecution to examine the doctor who examined the injured witnesses and failed to place on record the injury reports either formally or legally without any explanation would prove fatal to the prosecution. The trial court has recorded that to prove the place of occurrence, it was essential to examine the investigating officer but the prosecution has failed to examine the I.O. as such the place of occurrence has remained unproved. It is further recorded that due to non-examination of investigating officer and his non presence has seriously been prejudiced as the evidences of the prosecution witnesses are full of contradiction and



development and their attention has been drawn but could not be confronted by the I.O. as per Section 145 (2) of the Evidence Act. Taking note of this aspect of the matter, the trial court has acquitted the accused persons, namely, respondent Nos. 2 to 9 in this appeal.

Grounds of Appeal

9. At the outset, the learned counsel for the appellant draws the attention of this Court to paragraph -8 of the impugned judgment, which is reproduced hereinbelow;

“Several time given to prosecution to produce the rest witnesses as well as I.O. & doctor, but prosecution has already failed to produce witnesses as well as doctors.”

10. Referring to paragraph-8 of the impugned judgment and taking us to the records of the case, learned counsel for the appellant submitted that the learned trial Court had issued summons to the investigating officer and the doctor so as to ensure their appearance in the court as witnesses on behalf of the prosecution but from perusal of the records, it does not appear that summons were actually issued to these witnesses. He further submitted that no procedure as prescribed under Sections 62, 63, 64, 65 and 66 of the Cr.P.C. has been followed so as to come to a conclusion to satisfy itself that the



procedure to compel the witness to come and depose in the court has been followed. Without following such procedure, the evidence of the prosecution was ordered to be closed vide order dated 08.09.2016. The prosecution thereafter filed a petition under Section 311 of the Cr.P.C. on 16.09.2016 which came to be allowed on 09.12.2016 with a direction to the prosecution that if on the two consecutive dates, the prosecution witnesses are not examined, the same would be closed. The learned trial Court thereafter closed the evidence of the prosecution which is apparent from order dated 16.01.2017 and the statement of the accused under Section 313 of the Cr.P.C. came to be recorded on 31.01.2017.

11. Learned counsel for the appellant further submits that the learned trial court has materially erred in appreciating the evidence available on the record and passed the impugned judgment in a very haste manner. The learned trial court ought to have exhausted all possible procedures available in law in order to secure at least the examination of the official witnesses like investigation officer and the doctor, who are material witnesses, in order to prove the case of prosecution.

12. On the other hand, learned counsel for the respondent No. 2 to 9 submitted that enough opportunity was



given to the prosecution to adduce their evidence but the official witnesses did not turn up even after issuance of summons by the trial Court and even they failed to adduce evidence on two consecutive dates after the petition of the prosecution under Section 311 Cr.P.C. was allowed by the learned trial Court. It has further been submitted that in absence of non-examination of material official witnesses, who are investigation officer and the doctor, the trial court rightly came to the conclusion that the prosecution has failed to prove the charges beyond all reasonable doubt and passed the judgment of acquittal of the respondent Nos. 2 to 9 herein. It is also submitted that if two views are possible then this Court in its appellate jurisdiction need not interfere with the judgment of acquittal. It is submitted that in the facts and circumstances of the case, the learned trial court has rightly acquitted the accused persons.

Considerations

13. We have heard learned counsel for the parties and perused the trial court records. Perusal of paragraph-'8' of the impugned judgment and the materials available on record as also the orders passed by the learned trial court in this regard would clearly go to show that the learned trial court acted in haste without appreciating that it was the duty of the court as



well to take all appropriate steps to secure attendance of the prosecution witnesses. The case relates to offences punishable under Sections 302/149 and 307/149 of the Indian Penal Code. The onus was on the prosecution to prove the allegation of assault resulting into death of one person and the injuries sustained by several persons. The injured witnesses were the sterling witnesses in this case. The examination of doctor, Autopsy Surgeon and the investigating officer was of paramount importance. Although the postmortem report and injury report were on record, but the same could not be proved in absence of examination of Autopsy Surgeon as well as the doctor, who examined the injured and the absence of investigating officer who investigated the case has further deprived the court from getting quality evidence on the record. In absence of evidence of investigating officer, the *fardbeyan* also could not be proved.

14. The learned trial Court after summoning the doctor as well as investigating officer ought to have followed the provisions of law as mandated in Sections 62, 64, 65 and 66 of the Cr.P.C. and thereafter if the trial court would have been satisfied by the fact that the summons have been duly served but the witnesses are evading, not complying with the summons, the court would have taken further steps to secure the attendance of



these witnesses. The court could have resorted to issuance of warrant includingailable and non-ailable one against the witnesses followed by the proceedings under Sections 82 and 83 of the Cr.P.C. Further also recourse could have been taken under Section 88 of the Cr.P.C.

15. On perusal of the records, we find that there is no service report of summons and the learned trial court has not satisfied itself with the service of summons on the witnesses. It is really surprising to note that without following the provisions of law as discussed above, the learned trial Court chose to close the evidence, which is not justifiable in the present facts and circumstances of the case, especially, when there are clinching evidence on record to establish that a person has been done to death and some of the witnesses were injured in the said occurrence. The injured witnesses were the most important witnesses. Likewise, the examination of doctor who medically examined the injured persons was necessary in order to prevent the miscarriage of justice. The injury report would only testify that they were injured persons and they were victim of the occurrence itself, their injury reports although being on record could not be accepted/proved in absence of examination of the doctor. Likewise, the non-examination of Autopsy Surgeon



would also go to show that although the postmortem report was on record, but in the absence of examination of Autopsy Surgeon, the same could not be exhibited. Non-examination of the investigating officer has also resulted into non- proving of the place of occurrence and the evidence of the non-examination of the investigation officer would also lead to the statement of the witnesses in their examination under Section 161 Cr.P.C. to be a credible evidence.

16. The cardinal rule of criminal jurisprudence is that the justice should not only be done but it seems to have been done.

17. We further find that the learned trial Court did not appreciate the material witnesses available on record and acted in a very haste manner especially, when it is apparent from the record that the prosecution evidence was closed on 08.09.2016 followed by a petition under Section 311 of the Cr.P.C. which came to be allowed on 09.12.2016 and the learned trial Court directed for examination of the said witnesses only within two consecutive dates. The public prosecutor failed to produce the official witnesses whereafter the learned trial court instead of taking appropriate steps to secure their attendance chose to close the prosecution evidence. The prosecution evidence again came



to be closed on 16.01.2017 followed by recording of statements under Section 313 of the Cr.PC. on 30.01.2017.

18. The trial Court was duty bound to ensure that at least official witnesses in a case under Section 302 and Section 307 of the Indian Penal Code were examined in the case even after the trial Court allowed the petition under Section 311 Cr.P.C. as filed by the prosecution. The learned trial Court would have ensured that the examination of the official witnesses and other charge-sheet witnesses ought to have been examined in the interest of justice and also following the cardinal principles of criminal law that natural justice be done to both the parties.

19. In the case of **Harendra Rai Vs. State of Bihar and Ors.** reported in **(2023) 13 SCC 563**, the Hon'ble Supreme Court has discussed the similar issue in detail, particularly in paragraphs 66 and 67, which are being reproduced hereunder for a ready reference;

“66. Before dealing and discussing the evidence led in the trial court, relevant facts relating to the manner in which the trial has been conducted, deliberate lapses on the part of the Public Prosecutor in leading the prosecution witness, lapses on the part of the trial court in not exercising the powers vested in it to ensure a fair and just trial, the facts mentioned in the reports of the Inspecting Judge and also the findings recorded by the High Court in the



Division Bench, need to be mentioned.

Lapses on the part of the prosecution conducting the trial and that on the part of the investigating agency

67. Briefly the lapses are summarised as under:

67.1. No explanation was given for not producing the scribe of the FIR. In case the scribe was not available for some reason then someone else from the police station could have been produced to prove the hand writing and signature of the scribe.

67.2. The investigating officer not produced by the prosecution, is again a clear and deliberate lapse.

67.3. Non-production of other prosecution witnesses of preparing the recovery/seizure list, inquest report, carrying the dead body to the hospital, and absence of any effort to prove other formal aspects of the investigation clearly indicate malice and deliberate lapse on the part of the prosecution.

67.4. The conduct of the Public Prosecution in filing affidavits in evidence of the witnesses of fact despite directions of the High Court and further examining witnesses under Section 311 CrPC to strengthen the case of defence reflects the tainted role of the Public Prosecutor.”

20. In the aforesaid discussion, this Court is of the opinion that the judgment of acquittal in this case has been passed in haste and without following the due procedures and settled principles of law and, therefore, deserves to be set aside.

21. Having given anxious and deepest consideration to the facts and circumstances of the case, we deem it proper to



remand the matter back to the learned trial Court so as to ensure the examination of official witnesses, who are doctor and Investigation Officer of the case and they are material and competent witness for just decision of the case. The doctor, being one, who has conducted postmortem of the deceased as well as the doctor who has examined the injured persons.

22. This Court, accordingly, sets aside the impugned judgment of acquittal dated 27.05.2017 passed by the learned Additional District & Sessions Judge-II, Gaya in Sessions Trial No. 435 of 2014/524 of 2003 (S.J.) arising out of Konch P.S. Case No. 51 of 2002 and remand the matter to the learned trial Court so as to examine the aforesaid official witnesses by giving opportunity to the prosecution.

23. Respondent Nos. 2 to 9 are, hereby, directed to surrender in the learned trial Court within a period of 4 (four) weeks from the date of uploading of this judgment. Since the respondent Nos. 2 to 9 were on bail during trial, the learned trial court shall allow them to continue on bail on such terms & conditions as deem fit and proper. Needless to say that if the respondent Nos. 2 to 9 do not surrender before the learned trial Court within the stipulated period, the learned trial court shall take all coercive steps in order to secure their appearance in the



Court.

24. The trial court is directed to take all possible steps to secure presence of the prosecution witnesses in accordance with law. The Senior Superintendent of Police, Gaya shall ensure presence of the police officers, who are charge-sheet witnesses of this case on the next assigned dates in the trial court.

25. Needless to say that the defence be also given ample opportunity to cross-examine those witnesses.

26. Let a copy of this judgment and the trial court's record be sent down to the trial court immediately.

(Rajeev Ranjan Prasad, J)

(Praveen Kumar, J)

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AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

