
(2012) 08 JH CK 0028

In the Jharkhand High Court

Case No : Criminal Revision No. 642 of 2012

Bachha Singh @ Bachcha Singh and Ramadhir Singh

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 22-08-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (2012) 4 JLJR 504

Hon'ble Judges : Harish Chandra Mishra, J

Bench : Single Bench

Advocate : Mukesh Bihari Lal, for the Appellant;

Final Decision : Allowed

Judgement

H.C. Mishra

1. Heard learned counsel for the petitioners and learned counsel for the State. Petitioners are aggrieved by the order dated 24.7.2012 passed in Sessions Trial No. 7 of 2000 by the learned Additional Sessions Judge - VII, Dhanbad, whereby, the defence evidence was closed by the Trial Court below, stating that sufficient opportunity was given to the defence for adducing evidence, but the defence did not avail the same and did not examine even a single witness so far and the prayer for granting time for adducing defence evidence was made only in order to linger the case for indefinite period and that there were directions from the High Court as well as the Supreme Court to expedite the trial.

2. From perusal of the impugned order, it appears that petitioners are facing the trial in S.T. No. 7 of 2000 for the offence u/s 302 and other Sections of the I.P.C., arising out of Katras P.S. Case No. 232 of 1998 / G.R. No. 2463 of 1998. It further appears from the impugned order that the charge was framed in this case on 23.4.2004 itself and the prosecution took about eight years time in examining all the prosecution witnesses and the prosecution evidence was ultimately closed on 22.5.2012. Subsequently, the statements of the accused persons were

recorded on 15.6.2012 and 14 days time was given by the Court below to the defence for adducing the evidence, posting the case on 29.6.2012. On 29.6.2012, the defence filed petition for time to adduce evidence, which was allowed and further 11 days time was granted by fixing the next date on 11.7.2012. On 11.7.2012, there was All India strike of lawyers and as such the next day was fixed on 23.7.2012 for defence evidence. It was submitted in the Court below that in the mean time, the petitioners' elder brother's wife had expired on 14.7.2012 and the accused persons had gone to their native village for her last rituals. which was to be held on 26.7.2012 and accordingly, a prayer was made for time on 23.7.2012, upon which the date was fixed for 24.7.2012. On 24.7.2012 when further time was prayed for, the Court below rejected the application of the petitioners and closed the defence evidence by the impugned order holding that the prayer for further time for adducing defence evidence was made only in order to linger the case for indefinite period and that there were directions from the High Court as well as the Supreme Court to expedite the trial.

3. Learned counsel for the petitioners has submitted that petitioners were not granted sufficient opportunity for adducing the evidence, in as much as, about eight years was taken for examining the prosecution witnesses in the case, as the charge was framed on 23.4.2004 and prosecution evidence was closed on 22.5.2012. The defence was granted only about 38 days time for examining the defence evidence and the defence evidence was closed in spite of the fact that on the date of closing the defence evidence, the accused persons were not present as they had gone to their native place for performing last rituals of their elder brother's wife and even on that count, the time was not allowed to the petitioners. Learned counsel for the petitioners has submitted that defence of the petitioners shall be highly prejudiced as the Court below had denied to give sufficient opportunity to the defence to adduce the evidence. Learned counsel accordingly, submitted that the impugned order passed by the Court below cannot be sustained in the eyes of law.

4. Learned counsel for the State on the other hand opposed the prayer.

5. Having heard learned counsels for both the sides and upon going through the impugned order, as also being conscious of the fact that there are directions from the High Court as well as the Supreme Court to expedite the trial, I am of the considered view that the Court below has shown undue hurry in closing the defence evidence of the petitioners, in as much as, from the impugned order itself it is apparent that the last rituals of the elder brother's wife was to be performed on 26.7.2012 and time was prayed for adducing the defence evidence, but the defence evidence was closed on 24.7.2012 itself. It is also apparent that on the earlier date i.e. 11.7.2012, the case had to be adjourned due to unavoidable reason of the All India strike of lawyers. Thus, it appears that the petitioners were granted only 14 days time on 15.6.2012 and 11 days further time on 29.6.2012, during which, the evidence could not be adduced by the defence. As such, I am of the considered view that the accused petitioners are

entitled to a reasonable time for adducing the defence evidence in the case.

6. At this stage, learned counsel for the petitioners submitted that the defence has to examine only six witnesses in the case. In that view of the matter, as also taking into consideration the fact that there are directions of the High Court and the Supreme Court to expedite the trial, the Court below is directed to give opportunity to the accused petitioners to examine their witnesses in defence, preferably on day to day basis and in any event, all the six witnesses shall be examined by the defence positively within a period of one month, for which the learned counsel for the petitioners readily agreed.

7. Accordingly, the impugned order dated 24.7.2012 passed by learned Additional Sessions Judge - VII, Dhanbad. in Sessions Trial No. 7 of 2000, is hereby set-aside and the Trial Court below is directed to give the opportunity to the defence to adduce the evidence in the aforementioned terms. This application is accordingly, allowed with the directions as above. Let the order be communicated through FAX to the Court concerned at the cost of the petitioners.