

(2007) 10 PAT CK 0013

In the Patna High Court

Case No : Criminal Revision No. 311 of 2004

Md. Shahadat Hussain

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 08-10-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 232
Penal Code, 1860 (IPC) — Section 149, 302, 34

Citation : (2008) 1 PLJR 728

Hon'ble Judges : Chandra Mohan Prasad, J

Bench : Single Bench

Advocate : anjan Kumar Jha, for the Appellant; S.N. Prasad for the State and Mr. Gopal Pd. Rao for the O.Ps., for the Respondent

Judgement

Chandra Mohan Prasad, J.—This revision is against the order dated 14.4.2004 as passed by Md. Jaffar, 4th Additional Sessions Judge, Bhagalpur under Sessions Trial No. 166/02/Tr. No. 225/03 whereby the accused/O.P. Nos. 2 to 7 have been acquitted on the ground that prosecution did not produce any witness for proving the case of prosecution. It is relevant to mention here that the F.I.R. of the case was lodged on 21.6.2000 on the statement of Informant Shahadat Hussain, the son of the deceased Md. Jahir. The main allegation under the F.I.R. was that on the orders of accused Sk. Khalil, accused Phulketsar @ Soni, Shasiha Jha @ Sejam caught hold of the deceased and accused Md. Jamal, Md. Haidar and Sk. Salil who were carrying dagger assaulted the deceased on his abdomen with dagger as a result of which the deceased fell down in injured condition died at the spot.

2. It appears that after submission of charge-sheet the case was committed on 5.3.2002. The trial court framed charge vide order dated 2.7.2003. In the order-sheet dated 2.7.2003 of the trial court specific Section under which charge was framed has not been mentioned and the place for mentioning the Section is blank. But perusal of the form of charge shows that charge was framed u/s

302/34 of the Indian Penal Code and explained to the accused. It further appears that after framing of the charge on 2.7.2003 the next date was fixed on 23.7.2003. The learned counsel for the petitioner submitted that the bail prayer of the accused Md. Haidar and Md. Jamal were rejected by the High Court and the other accused were on bail. It appears that after framing charge on 2.7.2003 the next date was fixed on 23.7.2003 for producing witnesses and the summon to the witnesses was issued on 26.7.2003 and thereafter, on the next date i.e. 11.8.2003 presiding Officer was on leave. On the next date i.e. 21.8.2003 the Presiding Officer was again on leave. However, in the margin of the order-sheet it is mentioned that service report of the summon had been attached in record. But during hearing the learned counsel for the petitioner has pointed out that there is no service report on record. Learned counsel for the Opposite Parties was also not able to point out any service report on the record. Thus, it appears that in fact there is no service report on record though it has been mentioned in the margin in the order-sheet that service report on the summon of witnesses was attached on record.

3. The endorsement of the office clerk as mentioned in the margin of the order-sheet of the trial court further shows that fresh summon on witnesses were issued on 1.9.2003. Thereafter, the next date fixed for evidence was 16.9.2003 but on that date no witness was in attendance hence the next date was again fixed on 22.9.2003. Thereafter, again the next adjournment was on 1.11.2003. Further endorsement of the office clerk in the margin in the order-sheet is that fresh summons were issued on 23.9.2003. The next adjournment was allowed on 5.11.2003 but on that date the P.O. was on leave. Thereafter, the next adjournment was fixed on 15.11.2003 but on that date the P.O. (Presiding Officer) was again on leave and on the next date of the adjournment i.e. 5.2.2003 the P.O. again remained on leave. Thereafter, it appears that from the trial court's records that on specific adjournment dated i.e. 22.12.2003, 7.1.2004 and 14.2.2004 the P.O. was continuously on leave. Thus, it does not appeal to reasons as to why such several adjournments of short periods for producing the witnesses were given when the P.O. was continuously on leave and examination of witnesses could not have been made during the period.

4. It further appears that on the next date of the adjournment i.e. 19.2.2004 witness was not in attendance hence fresh summon was issued on 21.2.2004 as it would appear from the endorsement of the office clerk in the margin of the order-sheet. Again on the next date. i.e. 9.3.2004 since witness was not in attendance bailable warrant was ordered to be issued and the same was issued on 12.3.2004 fixing the next date of the adjournment on 19.3.2004 but on that date also the P.O. was on current duty leave.

5. On the next date of adjournment i.e. 29.3.2004 it appears that any witness was not in attendance but the learned A.P.P. had filed a petition and the trial court without mentioning anything about prayer as made in the petition or passing any order over it simply, ordered to keep the petition on record and on

the next date i.e. on 14.4.2004 the trial court again mentions that A.P.P. had filed a petition on that date but without mentioning anything about contents of the petition or the prayer made therein closed the case of prosecution on the ground that prosecution did not produce any witness and after closing of the case of prosecution passed an order of acquittal on the same date on the ground that any witness was not produced by prosecution, hence, charges were held not proved and the accused were acquitted.

6. The learned counsel for the petitioner argued that in this case the record shows issuance of summons to the witnesses three times and at one place there is also an endorsement of the office clerk that service report of summon was attached in the record but in fact there is no service report on record. It was also argued that summons were not at all served on witnesses and they were not in know of the trial taken up. The learned counsel even went on arguing that mentioning about the service report on the record has been made by the office falsely with a purpose to show the service of summon whereas in fact no summon was served on witness. In absence of any service report on record. I feel there is substance in the submission of the petitioner's counsel. The learned counsel for the petitioner also argued that in this case bailable warrant has also been shown to be issued by the Court but the trial court did not wait for the service report of the warrant issued on the witnesses and closed the case of prosecution in a most cavalry manner. The learned counsel for the petitioner also submitted that this was a case u/s 302 of the Indian Penal Code and charge was framed on 2.7.2003 and thereafter within a short period of 8-9 months the trial was concluded without serving any kind of process for service of summons or warrants on the witnesses. It was also submitted that on several dates continuously the Presiding Officer of the Court was himself on leave hence prosecution could not have examined any witnesses on these dates. The learned counsel for the Opposite Parties submitted that in this case the informant had appeared before the trial court by filing Vakalatnama and he was in know of the pendency of the trial but he did not examine himself nor produced any other witnesses. In reply to this, the learned counsel for the petitioner replied that in this case the learned A.P.P. had filed a petition on 29.3.2004 for correction in the charge. During hearing my attention was drawn to the petition as filed by the learned A.P.P. before the trial court and in that petition the learned A.P.P. has mentioned that accused Sk. Khalil had ordered to kill hence framing of charge u/s 302/149 of the Indian Penal Code and that accused Md. Jamal and Md. Haidar had given dagger blow on the stomach of the deceased as a result of which the deceased had died at the spot, hence framing of charge u/s 302 against them was prayed by the learned A.P.P.

7. During hearing the learned counsel for the Opposite Parties argued that as provided u/s 232 of the Cr.P.C. the learned A.P.P. has not prayed for issuance of summons on the witnesses. But on perusal of the record it appears that the trial court had issued summon on its own but it also appears that the trial court did not care for looking into the matter of the service of the summons and bailable

warrant on the witnesses.

8. The learned counsel for the petitioner submitted that in this case the trial court had not considered the matter properly and a charge u/s 302/34 had been framed in a casual manner, therefore, the learned A.P.P. had filed a petition for correcting the charge before producing any witnesses. Therefore, the learned A.P.P. by filing the petition had prayed for correcting the charge as prayed in the petition and since the matter of correction of charge was pending witnesses were not produced.

9. From the order dated 29.3.2004 of the trial court it appears that learned A.P.P. had filed a petition for correcting the charge and the trial court mentioned in the order about filing of such petition but no order was passed on it and the petition was simply ordered to be kept on record. It is also mentioned in the order dated 29.3.2004 that after filing of the petition by learned A.P.P. the trial court had directed the accused for filing rejoinder to A.P.P.'s petition but on the next date i.e. 14.4.2004 no rejoinder was filed by the accused nor the petition filed by learned A.P.P. was given any consideration and the trial court overlooked the petition. The prayer made by the learned A.P.P. was a substantial one and it was necessary for the Court to give consideration and finding over it. But instead of doing so, the Court passed an order of closing of the case of prosecution which in my opinion was not justified and proper at that stage specially considering the facts and circumstances of the case and the manner in which several adjournments of very short period were given during those period also when the Presiding Officer was on leave and during which period evidence of witnesses could not have been recorded. It also appears that the learned trial court did not care for considering service of the summons on the witnesses and substantial prayer as made by the learned A.P.P. in his petition was also not given any consideration and the trial was hurried or I have no hesitation in saying further that it was hushed up by the trial court.

10. In such view of the matters, I find it a fit case where the order of the trial court as passed in such cavalry manner is fit to be set aside and further trial be ordered. Accordingly, impugned order of acquittal as passed by the trial court is hereby set aside and the case will stand remanded to the trial court and the trial court will proceed from that very stage at which the prosecution case was closed and the judgment of acquittal was pronounced. While considering the manner in which the case was disposed of by the trial court I am pained to hold that the learned Sessions Judge will see that the further trial is conducted by an officer other than Md. Jaffar who had conducted the previous trial and passed the impugned order. In the result, this revision is allowed.