

(2015) 02 PAT CK 0082

In the Patna High Court

Case No : Criminal Appeal (DB) No. 990 of 2010

Rafique

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 05-02-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 340, 372
Penal Code, 1860 (IPC) — Section 147, 302, 307, 323, 324

Citation : (2015) 2 PLJR 311

Hon'ble Judges : L. Narasimha Reddy, C.J.;Vikash Jain, J

Bench : Division Bench

Advocate : Aditya Nath Jha, for the Appellant; Abimanyu Sharma, Advocates for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, C.J.

1. This Criminal Appeal provides an instance of an utter failure of the system or the extent to which the criminal justice system has been misused, if not managed. The respondents 2 to 9 herein, were tried in Sessions Trial No. 280 of 2009 by the Court of Additional Sessions Judge-4, West Champaran at Bettiah, for the offences punishable under Sections 147, 323, 324/34, 307/34, 302/34 and 504/34 of the Indian Penal Code. The allegation was that the respondents 2 to 9 caused the murder of Abdul Hafeez on 16.2.2008 at 9 A.M. at Village-Sirisiya, P.S.-Sikta, District-West Champaran. The complaint in this behalf was submitted by the appellant herein, who is the brother of the deceased. The F.I.R. was registered. Formalities, such as causing inquest and conducting the post mortem, were completed. After investigation, a charge-sheet was filed against the respondents 2 to 9 alleging offences referable to Sections mentioned above.

2. The respondents 2 to 9 pleaded not guilty. Therefore, the case was taken up for trial.

3. On behalf of the prosecution, six witnesses, including four private, were examined and all of them are said to have been hostile. Through a brief and cryptic judgment dated 29.6.2010, the trial court acquitted the respondents 2 to 9. Therefore, this appeal against acquittal is filed under Section 372 of the Code of Criminal Procedure, by the complainant.

4. One of the grounds raised by the appellant is that P.Ws. 1 to 3 who were examined as witnesses in the Court, were not the persons with those names, and the respondents 2 to 9, with the help of the Public Prosecutor have impersonated them.

5. When the appeal was listed for admission, a Division of this Court comprising of Hon"ble Mr. Justice Shiva Kirti Singh, as his Lordship then was, and Hon"ble Mr. Justice Gopal Prasad, passed an order dated 15.3.2011 expressing surprise over the manner in which the trial Court dealt with the case. The Bench left open to the appellant to submit a complaint before the trial Court for the alleged impersonation of P.Ws 1, 2 and 3. It was also directed that the enquiry under Section 340 of the Code of Criminal Procedure shall be completed within three months.

6. The appellant has made a complaint and the same was enquired into by the Additional Sessions Judge-3, West Champaran. A report dated 12.1.2015 is filed. We have perused the report and permitted the learned counsel for the respondents 2 to 9 also to read it. The report discloses that the persons, named as P.Ws 1 to 4, in the judgment in Sessions Trial No. 280/2009 were examined in the enquiry and all of them have stated that they did not depose as witnesses in the case at all.

7. We heard learned counsel for the appellant, learned Public Prosecutor for the 1st respondent and learned counsel for the respondents 2 to 9.

8. It is indeed shocking that the trial Court did not ensure that at least, the complainant is examined as a witness. The various facts mentioned in the grounds of appeal virtually stood un rebutted. The entire trial was undertaken in a hasty, if not, a clandestine manner. We take exception to the manner in which the Public Prosecutor conducted the case. He did not even verify as to whether the witnesses, who are proposed to be examined by him, are the same persons as named in the charge-sheet or from the list supplied to the Court. The concerned Investigating Officer would certainly have role in the acts of impersonation. The learned Additional Sessions Judge-4 ought to have been careful in this behalf unless, he too was aware of the misdeeds. We desist from making further observation, lest the fresh trial, which we are proposing to direct, gets affected.

9. We, therefore, allow the appeal and set aside the judgment dated 29.6.2010 passed by Additional Sessions Judge-IV, West Champaran, Bettiah in Sessions Trial No. 280 of 2009. The matter is remanded for fresh trial and disposal. The learned District and Sessions Judge, West Champaran, Bettiah shall allot the case

to a Judge, other than the one who tried it earlier.

10. After remand, the case shall be listed before the Court as directed above, on 23rd February, 2015. On that date, the respondents 2 to 9 shall appear before the Court. Out of them, respondent 2 i.e. Sk. Bundeli, who was in prison as undertrial, shall surrender before the Superintendent of the concerned Jail. Respondents 3 to 9 shall be required to execute fresh bonds. The fresh trial shall be completed within a period of four months.

11. The District Magistrate shall ensure that a different Public Prosecutor is entrusted with the trial of the matter. Registry shall ensure that the entire record is sent to the concerned Court.