
(2011) 11 PAT CK 0058

In the Patna High Court

Case No : Criminal Revision No. 601 of 2002

Shyam Bihari Singh

APPELLANT

Vs

The State of Bihar and Ram Dhari Singh

RESPONDENT

Date of Decision : 18-11-2011

Acts Referred:

Arms Act, 1959 — Section 27
Penal Code, 1860 (IPC) — Section 307, 324

Citation : (2011) 11 PAT CK 0058

Hon'ble Judges : Amaresh Kumar Lal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Amaresh Kumar Lal, J.—The informant - petitioner has preferred this revision application against the judgment and order dated 1.5.2002 passed by the learned Additional Sessions Judge, FTC III, Buxar in Sessions Trial No. 36 of 1995 arising out of G. R. No. 598 of 1993, Buxar (Mufassil) P.S. Case No. 73 of 1993 under Sections 324, 307 I.P.C. and 27 of the Arms Act by which the accused has been acquitted.

2. The prosecution case, in brief, is that in the night of 26/27.5.1993 at about 10 P.M. he was sleeping on the roof of his house with the members of his family after taking meal. In the Midnight he woke up after hearing some murmuring and on asking as to was there a firing was done which did not hit anyone. The informant saw in the flash of the torch light that it was co-villager Ramdhari Singh who was again aiming at him. Thereafter, he lied down on the one side of the floor before second firing which hit on his ant Kaushalya Devi, cousin sister Neelam Kumari, sister Nirmala Kumari, the nephew Sonu Singh and one Khark Bahadur Singh got fire shot injuries. On raising alarm co-villagers assembled. Chaukidar also came there. All the injured were taken to the hospital for treatment.

3. On the fard beyan of the petitioner- informant Buxar (Mufassil) P.S. Case No.

73 of 1993 was instituted against the accused Ramdhari Singh. After investigation charge-sheet was submitted, cognizance was taken and the case was committed to the court of session. On 1.2.2000 charges were framed against the accused for the offence punishable under Sections 324, 307 I.P.C. and 27 of the Arms Act and an order was passed to issue summons to the prosecution witnesses. After trial the accused was acquitted.

4. The main contention of learned counsel for the petitioner is that although order was passed for issuing summons and warrant against witnesses but no notice was served upon the petitioner who is one of the victims nor any injured have been examined in this case. They have also not been served any notice for the offence and only formal witnesses P.W. 1, P.W. 2 and P.W. 3 have been examined. He has further submitted that there is no material on record to show that the summons have been issued of any witness or there is execution of warrant of arrest. He has further submitted that the Investigating Officer has not been examined nor he was present during trial as it appears from the record of Sessions trial. The I.O. must have been present during the trial. In support of his contention, he has relied upon a decision in the case of Shailendra Kumar vs. the State of Bihar & Ors., reported in 2002 SCC (Cri.) 230.

5. Learned counsel for accused-opposite party no. 2 has submitted that the informant had the knowledge about the summon of informant and other witnesses of the trial but they did not appear for their evidence. The prosecution has examined three witnesses and after considering their evidence the accused has been acquitted.

6. After hearing learned counsel for both the parties and on perusal of lower court records, it appears that the charge has been framed against the sole accused on 1st February 2000 and an order has been passed for issuance of summons against the witnesses. It appears that the summon has been issued against the witnesses on 19.7.2000 and without getting the service report warrant of arrest has been issued against the witnesses. P.W. 1 Lalan Singh has been examined and cross-examined on 27.9.2001 and P.W. 2 Fiju Singh, P.W. 3 Krishna Prasad Sharma has been examined and cross-examined on 8.3.2002. All these witnesses are formal in nature. Thereafter, learned APP was directed to produce the witnesses at his own instance. It further appears that without any service of summons and the execution report of warrant, the learned trial court has closed the prosecution witness on 1.5.2002, the prosecution evidence has been closed, the statement of the accused has been recorded, argument has been heard on behalf of both the parties and the judgment has been delivered on the same date. It appears that the learned trial court has not taken effective steps for the examination of witnesses including the informant and the victims of the occurrence who are the ears and eyes of the court. It is settled principle of law that the Court cannot be silent spectator in dispensing with justice. It is also the duty of the Court to see that the witnesses are produced in the Court.

7. Considering the facts and circumstances and in the interest of justice, in my

opinion, the impugned order is not fit to be sustained. The impugned order is set aside. The matter is remitted to the trial court for making further trial in the case after taking effective measures for examination of the witnesses.

8. In the result, this application is allowed.