
(2011) 09 PAT CK 0036

In the Patna High Court

Case No : Criminal Revision No. 319 of 2002

Suresh Kumar Sharma

APPELLANT

Vs

The State of Bihar, Rajendra Prasad Agarwal, Gangadhar
Agarwal and Leeladhar Agarwal

RESPONDENT

Date of Decision : 28-09-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 230, 313, 317
Penal Code, 1860 (IPC) — Section 365, 382, 388, 389

Citation : (2011) 09 PAT CK 0036

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 to set aside the order dated 28.01.2002 passed by the learned Judicial Magistrate, Ist Class, Darbhanga in G.R. No. 1711/93, Trial No. 277/02 by which the accused opposite party Nos. 2 to 4 have been acquitted from the charges under Sections 365, 382, 388 and 389 of the Indian Penal Code and also for direction for giving proper opportunity to the prosecution for leading evidence.

2. The prosecution case, in brief, is that the Petitioner deals in sale and purchase of Tea Leaves in his own shop named as S.K. Enterprises at Prince Market, Subhash Chowk, Darbhanga and he used to go to Siliguri for purchasing of Tea Leaf. On 6.09.1993, he boarded in the bus at Darbhanga at about 3.30 P.M. keeping Rs. 40,000/- in the empty bag and put in the dicky of the bus. 3-4 persons sat near him and on their query he stated that he was going to Siliguri to purchase Tea Leaf. In the way, one of them asked him to pay the money failing which he would kill him. On 7.09.1993, the bus reached Siliguri bus stand at about 8-9 A.M. During journey the accused used to serve him tea, water etc. and were threatening to keep quiet. Later on in the bus stand, the informant and other four accused persons came down from the bus, the accused searched his

pocket and took Rs. 60-70/-. Thereafter, they asked to him to purchase the goods. The Petitioner took the empty bag containing Rs. 40,000/- from the dickey of the bus and purchased tea worth Rs. 35,000/- from the Modi Tea Company and Paras Lal Hardwari Lal Shop and when he was coming to the bus stand in the way the aforesaid four persons and two other persons surrounded him with the goods and took him in a building got the goods unloaded and took him in a room and they assaulted him and took Rs. 5000/- from him. They also asked him to call his father with Rs. 1,00,000/-, thereafter, he would be released. After tying him, he was closed in a room and also took away the packets of tea. During ill-treatment with the informant, he could gather the name of those accused as Leeladhar, Rajendra, Gangadhar and Sanjay and two other persons were Bangali and he could not understand his name. On 8.09.1993, all the six persons boarded him in the bus and asked to give Rs. 1,00,000/- failing which the members of his family would be killed. On 9.09.1993, he reached at his house in the night and came to know that his grandfather went to Siliguri in search of him. On telephone, he informed his grandfather about the occurrence. His grandfather could identify that he was kidnapped by the associate of Nakipuriya. On 12.09.1993 at about 10.00 A.M., the grandfather of the informant returned to Darbhanga and thereafter, the informant went to the police station and gave his written information to the police. It has been further alleged that the accused has taken his signature on the blank paper. On this information, Darbhanga (town) P.S. Case No. 139/93 was instituted. After investigation, the charge-sheet was submitted and cognizance was taken against the four accused. Out of them, Sanjay Agrawal was declared absconder and later on his case was separated. As such, the case proceeded against the accused opposite party Rajendra, Gangadhar and Liladhar. After the trial, the accused have been acquitted by the impugned order.

3. The main contention of the learned Counsel for the Petitioner is that No. notice was served upon the Petitioner for giving evidence. The case was fixed for appearance for the accused Sanjay Agrawal, who was neither arrested nor turned up for trial. During that period, the Petitioner had gone to Delhi to look after his business. In the meantime, the accused managed everything and the case of the aforesaid Sanjay Agrawal was separated on 18.07.2000 and the charges were framed against the remaining accused on 20.09.2000. Without any summon or notice, P.W.I appeared in the court, who was examined and declared hostile. Thereafter, a petition was filed by the prosecution to issue summon against the prosecution witnesses who were named in the charge-sheet and the application was allowed and order was passed for issuing summon to the witnesses. On 20.01.2001, No. witness was present and the case was adjourned to 5.02.2001. In the margin column of the order-sheet, it is not clear as to whom the summons were issued. Thereafter, the other three witnesses were examined. P.W.2 was examined on 17.02.2001 and P.W.3 and P.W.4 were examined on 28.02.2001 and they were declared hostile. Thereafter, No. step was taken by the Assistant Public Prosecutor to procure the attendance of the prosecution witnesses including the

informant and the I.O. It has further been mentioned in the order-sheet of the court that on 2.01.2002, the prosecution was given last chance and the case was fixed for evidence on 29.01.2002, but the date has been altered and interpolated and 29.01.2002 has been interpolated as 19.01.2002 and the case was finally disposed of on 28.01.2002. It further appears from the order-sheet that on 19.01.2002; the case of the prosecution was closed and the next date 28.01.2002 was fixed for statement of the accused, but on 28.01.2002 the order was also passed and the accused were acquitted.

4. It has further been submitted that at No. point of time, the Assistant Public Prosecutor I/c of the prosecution did take any initiation for appearance of any of the witnesses including the informant and the I.O. of the case. No. non-bailable warrant has been issued against the prosecution witnesses to procure their presence. The informant had No. information or knowledge that the case is pending for evidence of prosecution witnesses. The learned Magistrate has passed the impugned order in great haste without giving proper opportunity for the examination of the prosecution witnesses.

5. The learned Counsel for the opposite parties has submitted that the accused opposite parties have been appearing in this case for a long time. The co-accused Sanjay Agarwal was not appearing and after finding No. way out the case of the absconding accused was separated vide order dated 18.07.2000. The charges were framed against the accused opposite party on 20.09.2000 and the order was passed for issuance of summons against the witnesses and the summons were issued on 22.01.2001 against the witnesses mentioned in the main case.

6. He has further submitted that on 2.01.2002, the case was adjourned to 19.01.2002, but due to mistake, it was mentioned as 29.01.2002 which has been corrected by making overwriting; and the accused had also filed petition u/s 317 Code of Criminal Procedure before the learned Magistrate on 19.01.2002, which is available on the record. Even after direction of the learned Magistrate, No. prosecution witness was produced on 19.01.2002, as such, the prosecution evidence was closed on 19.01.2002 and the case was adjourned to 28.01.2002 for the statement of the accused u/s 313 Code of Criminal Procedure The statement of the accused was recorded u/s 313 Code of Criminal Procedure on 28.01.2002 and the hearing of the parties was made and after the launch, the judgment in the case was delivered. The prosecution witness had not supported the case, as such, the accused were acquitted. This petition has got No. merit and it should be dismissed.

7. After hearing the learned Counsel for both the parties and on perusal of the record, it appears that the contention of the learned Counsel for the Petitioner is correct. The case was pending for appearance of the co-accused Sanjay Agarwal, but he was not arrested nor did he appear in the case, as such, his case was separated vide order dated 18.07.2000. The case was adjourned to 2.08.2000 for supply of police paper, but it was not supplied on 2.08.2000 and 22.08.2000

and it was supplied on 20.09.2000 and on the same date, the charges were framed against them and the order was passed for issuance of notice to witnesses. P.W.I Govind Das Takriwal was examined on 16.12.2000 and the summons has been issued on the witnesses on 22.01.2001. There is No. service report on the record and the bailable warrant of arrest has been issued, but there is No. report regarding the service of the bailable warrant and No. non-bailable warrant has been issued. It further appears that on 2.01.2002, last chance was given to the prosecution for evidence and the case was adjourned to 29.01.2002, but it appears that after interpolation, it has been made 19.01.2002. On 19.01.2002, there is petition u/s 317 Code of Criminal Procedure filed on behalf of the accused. No. witness was present and the prosecution evidence was closed on 19.01.2002 and it was adjourned to 28.01.2002 for statement of the accused. On 28.01.2002, the statement of the accused has been recorded, thereafter, both the parties have been heard and the case was fixed for judgment after lunch on the same date the judgment was delivered and the accused have been acquitted on the same day.

8. It further appears that there is glaring defect in the procedure u/s 230 Code of Criminal Procedure and also interpolation in the date fixed for evidence. There is also nothing on the record to show that the procedure laid down u/s 230 Code of Criminal Procedure was fully complied with.

9. In this connection, reference may be made to a decision in the case of Brajesh Kumar Vs. Bhupendra Singh @ Upendra and Others, .

10. For the reasons and discussions aforesaid, it is held in this case that there is glaring defect in the procedure and there is manifest error on the point of law as well, which will lead to flagrant miscarriage of justice as the learned trial court has failed to exercise the power as vested in him, inasmuch as, the judgment of acquittal has been passed without fully complying the provision of Section 230 Code of Criminal Procedure The impugned judgment of acquittal is not fit to be sustained. It must be held to be without jurisdiction. The impugned judgment is set aside and the matter is remanded back to the learned trial court for retrial in accordance with law.

11. In the result, this application is allowed.