

Dinendra Kumar Vs. State of Bihar and anr

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Court : Patna

Decided On : Aug-30-2013

Appellant : Dinendra Kumar

Respondent : State of Bihar and anr

Judgement :

IN THE HIGH COURT OF JUDICATURE AT PATNA Criminal Appeal (SJ) No.727
of 2010

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Dinendra Kumar, Son of Late Chamaklal Singh, resident of Village- Doulatpur, P.S.- Bath, District- Bhagalpur. At present resident of Jai Bihar Colony, P.S.- Ziro Mile (Industrial Area), District- Bhagalpur. Appellant/s Versus 1. The State of Bihar.

2. Tinku Kumar, Son of Ashok Mandal, resident of Village- Daulatpur, P.S.- Bath (Sultanganj), District- Bhagalpur.

3. Roushan Kumar, Son of Adiklal Mandal, resident of Village- Doulatpur, P.S.- Bath, District- Bhagalpur. Respondent/s

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Appearance : For the Appellant/s : Mr. Ranjan Kumar Jha, Advocate For the Respondent/s : Mr. Hari Krishna Prasad, Advocate For the State : Mr. S.A. Ahmad, Additional Public Prosecutor

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CORAM: HONOURABLE MR. JUSTICE AKHILESH CHANDRA ORAL

JUDGMENT

Date:

30. 08-2013 Heard the learned counsels appearing on behalf the parties.

2. This is an appeal preferred against the order of acquittal of respondents under Section 232 of the Code of Criminal Procedure passed on 09th February, 2010 by Sri J.N. Jha, learned 3rd Additional District Judge, Bhagalpur in Sessions Trial No. 192 of 2009, Trial No. 157 of 2009 arising out of Industrial Area P.S. Case Patna High Court CR. APP (SJ) No.727 of 2010 dt.30-08-2013 2/7 No. 0089 of 2008 instituted under Sections 363 and 365 of the Indian Penal Code.

3. Admittedly, on the Fardbeyan of the informant relating to kidnapping of his five years old son the aforesaid case was instituted against respondent no. 2 and his associates. Subsequently, on recovery of the child and after completion of the investigation the charge-sheet was submitted against both the respondents and the case was committed to the court of Session from where initially the record was transferred to the file of Sri J.N. Jha, the then Additional Sessions Judge, Fast Track Court No. - V, Bhagalpur, where, on 19.03.2009 trial commenced and summons against the witnesses through Superintendent of Police, Bhagalpur was ordered to be issued, but nothing could be done. Subsequently, on 07.04.2009, there was a direction to office to comply the previous order and, simultaneously, the Public Prosecutor has also directed to produce the witnesses at his own level. Thereafter, as it appears the Presiding Officer was promoted as regular Additional Judge and designated as 3rd Additional District Judge, consequently, the file was transferred and received in the court presided over by some person, but with different designation.

4. Here also on 29.04.2009 same direction was given to office which was followed on 12.05.2009, 27.05.2009, 08.06.2009, Patna High Court CR. APP (SJ) No.727 of 2010 dt.30-08-2013 3/7 22.06.2009 and 01.07.2009. Thereafter, on 17.07.2009, the matter was adjourned for 29.08.2009, but some how or the other, in absence of the accused persons record was placed on 29.07.2009 and 20.08.2009

whereon no witness was also present. Thereafter, the matter was adjourned for 10.09.2009 and when both the accused persons were brought from custody, in absence of any witness or service report etc., the case was adjourned for 08.10.2009, 27.10.2009, 10.11.2009, 25.11.2009 and 10.12.2009, but on all such dates neither the accused persons were brought from custody nor any witness was produced. However, there appears one service report against two of the witnesses indicating they have received the summons but refused to acknowledge. On the next adjourned date i.e. 24.12.2009, the Presiding Officer was on leave and the accused persons were produced without any witness, but again on the adjourned date i.e. 04.01.2010 neither the accused persons were produced nor the witnesses, but ordered to issue D.O. letters fixing 18.01.2010, but as it appears from the margin of the order-sheet, it is said to be issued on 09.01.2009 (09.01.2010), but due to absence of the witnesses on the date fixed, the matter was adjourned for 04.02.2010 and taking into consideration non-production of the witnesses, the prosecution evidence was closed on 04.02.2010 and the statements under Section 313 of the Code of Criminal Procedure of Patna High Court CR. APP (SJ) No.727 of 2010 dt.30-08-2013 4/7 both the accused persons were recorded and after hearing the matter was adjourned for judgment on 09.02.2010, wherein, by a simple order under Section 232 of the Code of Criminal Procedure, the accused persons were ordered to be acquitted, which gives rise to instant appeal.

5. The learned counsel appearing on behalf of informant- appellant has only grievance that in spite of seriousness of the offence no proper step giving reasonable time was taken by the trial court or by the Public Prosecutor ensuring appearance of the witnesses listed in the charge-sheet including the informant. On the other hand, the contention of learned counsel appearing on behalf of the respondents is that the prosecution side had due knowledge but purposely withheld themselves to come in dock just to get the accused persons harassed and even list of prosecution witnesses was not furnished as required under Section 226 of the Code of Criminal Procedure. The Additional Public Prosecutor after going through the records accepts the submissions made on behalf of the appellant.

6. The facts and circumstances stated above clearly indicates that the Additional Public Prosecutor has not properly complied with the provisions as contemplated under Section 226 of the Code of Criminal Procedure, which reads as such:-

226. Opening case for prosecution.- When the accused appears or is brought before the Patna High Court CR. APP (SJ) No.727 of 2010 dt.30-08-2013 5/7 Court in pursuance of a commitment of the case under section 209, the prosecutor shall open his case by describing the charge brought against the accused and stating by what evidence he proposes to prove the guilt of the accused. (Underlined by me).

7. But at the same time, in absence of any such separate list of the witnesses as per prevailing practice the trial court ordered issuance of summons against the witnesses cited in the charge-sheet. In the instant case including the informant and Investigating Officer only four witnesses have been cited in the charge-sheet. The trial court at no point of time considered the expected time to consume in due service of the processes issued against the witnesses rather, it appears, he kept in mind only not to remand the accused persons in custody facing trial for more than fourteen days, which was required during Magisterial trial, but not for Sessions trial and perhaps this was the reason behind giving short adjournments during which it was difficult to duly execute the processes, if any, issued and the trial court, apparently, proceed not only in haste, but also carelessly and negligently, may be due to inexperience, did what it must not have been.

8. The way, the trial proceeded, prosecution case was pre-maturely closed, consequently, impugned order under Section 232 Patna High Court CR. APP (SJ) No.727 of 2010 dt.30-08-2013 6/7 of the Code of Criminal Procedure passed, it is not at all sustainable. Accordingly, the order/judgment dated 09th February, 2010 passed by Sri J.N. Jha, learned 3rd Additional District Judge, Bhagalpur in Sessions Trial No. 192 of 2009, Trial No. 157 of 2009 arising out of Industrial Area P.S. Case No. 0089 of 2008, is set-aside and the appeal is hereby allowed. The matter is being remitted to the court below for fresh hearing and order in accordance with law after getting the prosecution witnesses examined etc.

9. However, taking into consideration the principle of law that no one should suffer due to any wrong or latches committed by the court or its officers, the respondent nos. 2 and 3 here are directed to be physically present before the court below and though were in custody before acquittal under Section 232 of the Code of Criminal Procedure, but shall not be taken into custody only in the event of their surrender before the court below on or before 27 th September, 2013 rather they shall be released on bail on furnishing bail bonds of Rs. 10,000/- (Rs. Ten Thousand) each with two sureties of the like amount each to the satisfaction of learned 3rd Additional District Judge, Bhagalpur, in Sessions Trial No. 192 of 2009, Trial No. 157 of 2009 arising out of Industrial Area P.S. Case No. 0089 of 2008, subject to condition to remain physically present before the court below on each and every date till disposal of the case and in case Patna High Court CR. APP (SJ) No.727 of 2010 dt.30-08-2013 7/7 of failure on two consecutive dates without giving any reasonable explanation, the privilege granted shall be deemed to be cancelled.

10. Further, it is made clear that the informant-appellant shall on the date fixed by the trial court after surrender of the respondents (accused) produce all the public witnesses on the dates fixed, even, if the trial court chooses to proceed on day to day basis and, in the event, the prosecution don not cooperate, the trial court shall take them to task with firm hands. The trial court is further directed to preferably dispose of the case within three months from the date of appearance of the respondents. The Registry is directed to ensure transmission of the lower court records to the court below through Special Messenger at once at the cost of the appellant and further directed to do all the needful at the earliest enabling the informant-appellant to deposit the expenditures. (Akhilesh Chandra, J) Praveen-II/-

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