

Brajesh Kumar Vs. Bhupendra Singh @ Upendra and ors.

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Court : Patna

Decided On : Jun-30-1999

Judge : Narayan Roy, J.

Appeal No. : Cr. Rev. No. 522 of 1993

Appellant : Brajesh Kumar

Respondent : Bhupendra Singh @ Upendra and ors.

Disposition : Application Allowed

Judgement :

Narayan Roy, J.

1. Heard Mr. devendra Kumar Sinha, learned Counsel appearing on behalf of the petitioner and Mr. Ram Kumar Sharma, learned Counsel appearing on behalf of the opposite parties.
2. This revision application is directed against the judgment of acquittal under Section 232 of the Code of Criminal Procedure (hereinafter referred to as 'the Code') dated 13-5-1993 whereby and whereunder the opposite parties have been acquitted.
3. It appears that members of the opposite party were sent up for trial for an offence under Sections 302/34 and 307 of the Indian Penal Code and Section 27

of the Arms Act. It further appears that charges were framed on 17-8-90 and summonses were issued against the prosecution witnesses and thereafter warrants of arrest were also issued against them and since the prosecution witnesses did not turn up for evidence, the case was closed and judgment of acquittal was pronounced by the Court in exercise of its power under Section 232 of the Code.

4. Learned Counsel appearing on behalf of the petitioner submitted that the learned trial Court without exhausting the procedures laid down under the Code passed the judgment impugned. Learned Counsel further submitted that there is nothing on record to show that summonses or warrants of arrest issued against the prosecution witnesses were ever served or service return was available on record showing service of summons/warrants of arrest upon the prosecution witnesses. Learned Counsel, therefore, submitted that the judgment impugned is wholly without jurisdiction and is not sustainable in law. In support of this proposition, learned Counsel appearing on behalf of the petitioner relied upon the cases of *Mi. Yasin and Ors. v. The State* AIR 1954 Patna 437 and *Shiv Charan Yadav v. State of Bihar and Ors.* 1989 Cri. L.J. 1675.

5. Learned Counsel appearing on behalf of the opposite parties, on the other hand, submitted that it would be manifest from the impugned judgment itself that the learned trial Court had issued summonses and also warrants of arrest against the prosecution witnesses and thus, the learned Court had exhausted the procedure laid down under the Code. Learned Counsel for the opposite parties has made reference to the cases of *Shyama Devi v. Babban Singh* 1992 (1) BLJ 563 and *State v. Mangli Lal Ram* 1974 BLJR 578.

6. I have perused the impugned judgment. It appears that after framing of the charges on 17-8-90, the learned trial Court directed for issuance of summons and also warrants of arrest against the prosecution witnesses and since no prosecution witness turned up, the judgment of acquittal was passed. From the records of the case, it does not appear that summon/warrant of arrest was ever served upon the prosecution witnesses.

7. Section 230 of the Code empowers the learned trial Court to issue any process for compelling the attendance of any witness upon an application filed by the Prosecution. Section 231 of the Code empowers the Court to take all such evidence, as may be produced in support of the prosecution on the date so fixed. Section 232 of the Code also vests power

upon the learned Judge to pass a judgment of acquittal after taking the evidence for the prosecution, examining the accused and hearing the prosecution and the defence on the point and if the learned Judge considers that there is no evidence that the accused committed any offence.

8. In the case at hand, it appears that the learned trial Court without taking evidence of the prosecution witnesses has passed the judgment impugned merely because the prosecution witnesses did not turn up for evidence.

9. It is settled that the order of acquittal as envisaged under Section 232 of the Code is permissible when all the procedures laid down under the Code have been exhausted. In other words, it can be said that the learned trial Court having been satisfied that despite service of summons or warrants of arrest, the witnesses did not turn up, then he may proceed to pronounce the judgment of acquittal as envisaged under Section 232 of the Code. There is nothing on record to show that the procedures laid down under the Code was fully complied with. In this connection, reference can be made to the cases of *Md. Yasin and Ors. v. The State* and *Shiv Charan Yadav v. State of Bihar and Ors.* (supra).

10. Now coming to the submissions of the learned Counsel appearing on behalf of the opposite parties, it appears to me that the trial Court without exhausting the procedures available under the Code and specially as envisaged under Section 230 of the Code proceeded to pronounce the judgment of acquittal. The cases as referred to by the learned Counsel in support of his submissions that it is primary duty of the prosecution to produce witnesses or point out before the Court for securing the attendance of the prosecution witnesses, in my opinion, do not apply in the facts and circumstances of this case. In the cases referred to above, this Court has repeatedly held that even after service of summons or warrant of arrest the prosecution witnesses do not turn up, the Court may proceed to pronounce

judgment of acquittal. Here, the case is just reverse where there is nothing on record to satisfy the Court that summonses/warrants of arrest were ever served upon the prosecution witnesses.

11. Lastly, learned Counsel appearing on behalf of the opposite parties submitted that the petitioner has no locus to maintain this revision application against the judgment of acquittal. It is true that ordinarily private party has no locus to maintain a revision against the judgment of acquittal but at the same time, it is also settled that it is open to the High Court in revision to set aside an order of acquittal even at the instance of private party, though State may not have thought it fit for appeal, but these jurisdictions should be exercised by the High Court only in exceptional cases, when there is some glaring defect in the procedure or there is manifest error on the point of law causing flagrant miscarriage of justice. In this connection, reference can be made to the case of *Kishan Swaroop v. Government of NCT of Delhi* : 1998 CriLJ1409 .

12. For the reasons and discussions aforesaid, it must be held in this case that there is some glaring defect in the procedure and there is manifest error on the point of law as well which will lead to the flagrant miscarriage of justice as the learned trial Court has failed to exercise his power as vested in him inasmuch as that the judgment of acquittal has been passed without fully complying the provisions of Section 230 of the Code. The impugned judgment of acquittal, therefore, is not maintainable and it must be held to be without jurisdiction.

13. In the result, I allow this application and set aside the impugned judgment and the matter is remitted back to the Court below for re-trial in accordance with law.