

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.228 of 2020**

Arising Out of PS. Case No.-135 Year-1994 Thana- SAHPUR District- Bhojpur

SHAMBHU CHOUDHARY @ SHAMBHU NATH CHOUDHARY Son of Shivbrat Chaoudhary @ Sheo Barat Chaudhary Resident of Village - Hirakhi Pipra, P.S.- Shahpur, Distt - Bhojpur.

... .. Appellant

Versus

1. The State of Bihar
2. Prabhunath Yadav @ Raghunath Ahir Son of Sheo Kumar Yadav Resident of Village - Hirakhi Pipra, P.S.- Shahpur, Distt - Bhojpur.
3. Deonath Bind Son of Late Ramgahan Bind Resident of Village - Hirakhi Pipra, P.S.- Shahpur, Distt - Bhojpur.
4. Dharam Bind Son of Late Kailash Bind Resident of Village - Hirakhi Pipra, P.S.- Shahpur, Distt - Bhojpur.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Arun Kumar Singh, Advocate
For the Respondent/s : .Dr. Mayanand Jha, APP

**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
and
HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)**

Date : 31-08-2021

Heard Mr. Arun Kumar Singh, learned counsel
for the appellant and Dr. Mayanand Jha, learned counsel for the
State.

2. By filing the instant appeal under the proviso
to Section 372 of the Code of Criminal Procedure, the appellant
has challenged the judgement dated 16.11.2019 passed in



Sessions Trial No. 55 of 2003 by the learned Presiding Officer, Fast Track Court – II, Bhojpur at Ara whereby and whereunder the respondent nos. 2 to 4 have been acquitted of the charges framed against them for the offences punishable under Sections 324, 326, 341, 307 and 452 read with Section 34 of the Indian Penal Code.

3. Learned counsel for the appellant submitted that the respondent nos. 2 to 4 were summoned under Section 319 of the Code of Criminal Procedure. He contended that in the main trial, altogether 9 witnesses were examined on behalf of the prosecution, out of whom P.W.1 to P.W.6 had fully supported the prosecution case. However, during trial, the Medical Officer, who had examined the victim and the Investigating Officer were not examined. Since they are official witnesses, for their failure to turn up before the court during trial, the case of the appellant ought not to have adversely affected. Lastly, he contended that the judgement of acquittal has been recorded by the Trial Court erroneously without appreciating the fact that no summon were ever served upon the appellant.

4. On the other hand, learned counsel appearing for the State submitted that from the record, it would appear that



the FIR was registered in the year 1994 and the case was committed to the court of session in January, 2003. The Respondent nos. 2 to 4 were not sent up for trial. The trial had proceeded against only Deolal Bind. In his trial, after examination of 9 witnesses, respondent nos. 2 to 4 were summoned by the Trial Court, as additional accused, in exercise of power conferred under Section 319 of the Code of Criminal Procedure. He contended that after appearance of the respondent nos. 2 to 4, the trial court issued summons and processes, in order to ensure appearance of the prosecution witnesses, but none of the witness was examined on behalf of the prosecution. He contended that after exhausting all the processes, the Trial Court closed the prosecution case and in absence of any evidence on record acquitted the respondent nos. 2 to 4 and discharged them from the liabilities of their bail bonds. He contended that there is no illegality in the order passed by the Court below.

5. We have heard learned counsel for the parties and carefully perused the records. The FIR relates to occurrence that had taken place in the month of January, 1994. It is based on the fardbeyan of the appellant Shambhu Choudhary @ Shambhunath Choudhury, which was recorded by the SHO,



Shahpur Police Station at Referral Hospital, Shahpur on 5th of November, 1994. In his fardbeyan, he had stated that on 4th of November, 1994 at about 1.30 AM., when he along with his father Shiv Barat @ Sheo Barat Choudhary was sleeping in front of his house in Palani, he woke up on hearing some sound. He saw that Raghunath Ahir and Deonath Bind, having Daab in their hands, were repeatedly assaulting his father while Deolal Bind and Dharam Bind were catching hold of his legs. He raised alarm and saw cut injury on the neck of his father. He also saw injuries on different parts of his body. On his alarm, villagers rushed there whereafter the accused persons fled away. He stated that about a year ago Deonath Bind and Raghunath Ahir had taken away Masoor crop from his khalihan to which they had objected and the accused persons threatened them of dire consequences.

6. On the basis of the fardbeyan of the informant, Shahpur P.S. Case No. 135 of 1994 was registered. On Completion of investigation, the police submitted charge sheet only against Deolal Bind.

7. On perusal of the chargesheet, learned Chief Judicial Magistrate, Bhojpur at Ara took cognizance of the offences and summoned Deolal Bind to face trial.



8. After completing the mandatory requirements of Section 207 of the Cr. P.C., the case of Deolal Bind was committed to the court of sessions vide order dated 18.01.2003. In due course, the sessions court framed charges against the accused Deolal Bind.

9. In course of trial, 9 witnesses were examined on behalf of the prosecution. They are Smt. Shivrati Devi (PW1), Mst. Laxminia (PW2), Vijay Kumar Choudhary (PW3), Ramashankar Choudhary (PW4), Shambhu Choudhary (PW5), Shivbrat Choudhary (PW6), Dindyal Choudhary (PW7), Raman Choudhary (PW8 and Uma Shankar Choudhary (PW9). After examination of the aforesaid 9 witnesses, a petition was filed on behalf of the prosecution for summoning respondent nos. 2 to 4 as additional accused.

10. Vide order dated 23.12.2005, respondent nos. 2 to 4 were summoned to face trial. They appeared before the trial court and charges were framed against them to which they pleaded not guilty.

11. Accordingly, a *de novo* trial commenced as the witnesses were examined earlier in absence of the respondent nos. 2 to 4 . In spite of the processes having been issued against the witnesses in the *de novo* trial, none of them



turned up to support the prosecution case. The trial court has recorded in the impugned judgement that after issuance of summons to the witnesses all efforts were taken to ensure their appearance but no prosecution witness turned up to depose before the Court.

12. Though a submission has been made on behalf of the appellant that summons were never served to the witnesses, the order sheet of the court below has not been annexed with the memo of appeal to support the contention that summons were not served.

13. Even otherwise, we are of the view that the prosecution witnesses were aware of the proceedings going on before the trial court. They had already entered into appearance and deposed before the court before summoning of the respondent nos. 2 to 4 under Section 319 of the Cr.P.C.

14. In that view of the matter, they ought to have been vigilant about the on going proceedings before the court. The trial could not have been kept pending for an infinite period awaiting for the witnesses.

15. In that view of the matter, we are of the opinion that no illegality can be found with the judgment of acquittal passed by the trial Court.



16. We see no merit in this appeal. It is dismissed accordingly.

(Ashwani Kumar Singh, J)

(Arvind Srivastava, J)

Jagdish/-

AFR/NAFR	NAFR
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