

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.702 of 2021**

Arising Out of PS. Case No.-75 Year-2005 Thana- FATEHPUR District- Gaya

Lildhari Yadav Son of Late Gurusahay Yadav, resident of Village - Dhaneta, also Known as Dhanheta, P.S.- Fatehpur, Distt.- Gaya.

... .. Appellant

Versus

1. The State of Bihar

..... Respondent 1st Set

2. Baiju Yadav @ Vikram Yadav, son of Puna Yadav, resident of Village - Dhaneta also Known of Dhanheta, P.S.- Fatehpur, Dist.- Gaya.

3. Mahesh Yadav son of Puna Yadav, resident of village - Dhaneta also known of Dhanheta, P.S.- Fatehpur, Dist.- Gaya.

4. Lakhan Yadav, son of Puna Yadav, resident of Village - Dhaneta also Known of Dhanheta, P.S.- Fatehpur, Dist.- Gaya.

... .. Respondents

Appearance :

For the Appellant : Mr.Durgesh Nandan, Advocate

For the Respondent-State: Mr.Dilip Kumar Sinha, APP

**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)**

Date : 19-04-2022

I.A. No.01 of 2021

This interlocutory application under Section 5 of the Limitation Act has been filed for condoning the delay of 7 years 4 months and 19 days caused in filing the appeal under the proviso to Section 372 of the Code of Criminal Procedure (for short 'CrPC') against the judgment dated 23.05.2014 passed by the learned *ad hoc* Additional District and Sessions Judge-2nd, Gaya in Sessions Trial No.142 of 2009/176 of 2008 (SJ) arising



out of Fatehpur P.S. Case No.75 of 2005 whereby the respondent nos. 2 to 4 have been acquitted from the charges framed against them under Section 307 read with 34 of the Indian Penal Code and Section 27 of the Arms Act.

2. Mr. Durgesh Nandan, learned counsel for the appellant submitted that the appellant being the informant of Fatehpur P.S. Case No.75 of 2005 was never noticed with regard to the proceedings of the trial on any occasion. He contended that on 20.12.2019, a *puja* was organized in the house of respondent nos.2 to 4 where the appellant and his family members were also invited. The appellant wanted to know the reason as to why *puja* was organized. On query, he came to know that the case which he had instituted against respondent nos.2 to 4 by him had ended into acquittal. Thereafter, he approached an advocate at Gaya who informed him about the factual status of the trial. He told him that the trial had ended into acquittal of respondent nos. 2 to 4 on 23.05.2014.

3. Mr. Durgesh Nandan further contended that the informant requested the learned advocate to obtain certified copy of the judgment for which a requisition was filed on 02.01.2020. The certified copy of the judgment was supplied to him on 12.03.2020. Thereafter, he took legal opinion from the



same lawyer at Gaya. He advised him to challenge the judgment of acquittal before the High Court. He contended that due to outbreak of Covid-19 pandemic in the month of March 2020, the Government of India ordered a nationwide lockdown limiting movement from one place to another as a result of which the appeal could not be filed. Subsequently, on 27.09.2021, the appellant approached a lawyer at Patna and paid the expenses and legal fee for filing the appeal against the judgment of acquittal whereafter the appeal could be filed before this Court on 15.11.2021. He contended that since the date of knowledge, i.e. 12.03.2020, the delay in filing the appeal is only 1 year, 3 months and 26 days. He submitted that the delay caused in filing the appeal was neither willful nor deliberate. It could not be filed within the stipulated period because of the circumstances enumerated above. He contended that the appellant has good grounds on merit and he is ready to adduce evidence before the court if an opportunity would be granted to him.

4. On the other hand, Mr. Dilip Kumar Sinha, learned Additional Public Prosecutor for the State submitted that the appellant appears to be a close agnate of respondent nos. 2 to 4. After framing of the charges, the case was adjourned to several dates for examination of witnesses on behalf of the prosecution.



The trial court took all possible steps to ensure appearance of the witnesses. However, for almost six years, no witness turned up to depose before the trial court and under such compelling circumstance, the trial court closed the prosecution case and acquitted the accused respondents in exercise of powers conferred under Section 232 of the CrPC. He submitted that no plausible explanation has been given by the appellant for the delay of 7 years 4 months and 19 days caused in filing the appeal.

5. We have heard learned counsel for the parties and carefully perused the record.

6. The appellant is the informant of Fatehpur P.S. Case No.75 of 2005 registered under Section 307 read with 34 of the Indian Penal Code and Section 27 of the Arms Act. In the first information report, he had stated that he is a khalasi in Railway and posted at Gajhandi. On 09.05.2005, he came to his house after his duty was over at about 7 p.m. At about 8 p.m., he came out of his house on hearing *hulla*. He saw that altercation was going on between two of his neighbours. He tried to pecify them. However, on his intervention accused respondents Mahesh Yadav, Lakhan Yadav, Baiju Yadav and one Sonwa Devi started abusing him. When he tried to go back to his house, the accused



Sonwa Devi exhorted upon which Mahesh Yadav shot at him with his pistol which hit him in his right buttock as a result of which he fell down and became unconscious. His wife and daughter brought him inside the house. He stayed at his house for the whole night in an injured condition as there was no male member present in his house. In the morning, his wife called upon the other family members, namely, Birendra Prasad and Indradeo Yadav who brought him to Magadh Medical College, Gaya for treatment. Since his condition did not improve, he was brought to the clinic of Dr. Binod Kumar Singh. He regained his consciousness at his clinic on 12.05.2005. He alleged that since he was inducted into service in place of his father, accused persons demanded 50% of his pay. As he did not oblige them, they committed the offence.

7. After institution of the FIR, the case was investigated upon. On completion of investigation, the investigating officer submitted charge sheet before the court of Jurisdictional Magistrate on 31.07.2007.

8. On perusal of the police report submitted under Section 173(2) of the CrPC, the learned Jurisdictional Magistrate took cognizance of the offence and after complying with the mandatory requirements of Section 207 of the CrPC



committed the case to the court of sessions vide order dated 27.02.2008.

9. The learned Sessions Judge transferred the case to the court of *Adhoc* Additional District and Sessions Judge-2nd, Gaya. The trial court framed charges for the offences punishable under Sections 307 read with 34 of the Indian Penal Code and Section 27 of the Arms Act against the accused persons on 19.08.2008.

10. During trial, the accused Sonwa Devi died on 24.08.2011. Hence, the trial against her was dropped vide order dated 21.05.2014.

11. It would be evident from the record that after framing of the charges on 19.08.2008, the case was adjourned from one date to another on not less than 50 occasions for producing evidence on behalf of the prosecution.

12. It would further appear from the record that the trial court issued summons to the witnesses. Since the witnesses failed to turn up before the court pursuant to issuance of summons, bailable warrant of arrest was issued against them. Repeated reminders to the bailable warrant of arrest were also issued by the court on various occasions. As the witnesses failed to turn up before the trial court pursuant to the bailable warrant



of arrest, the trial court issued non-bailable warrant of arrest through the Superintendent of Police, Gaya against the witnesses. Furthermore, the learned Additional Public Prosecutor was given *dasti* summons also by the court and was repeatedly reminded to produce the witnesses. Unfortunately, all attempts taken by the trial court to ensure the appearance of witnesses between 19.08.2008 and 11.04.2014 went in vain. Ultimately, the trial court adjourned the case to 20.05.2014 as a matter of last indulgence and directed the learned Additional Public Prosecutor to produce witnesses on behalf of the prosecution. Since no witness turned up even on that date, the case of the prosecution was closed vide order dated 21.05.2014.

13. As the prosecution failed to adduce any evidence in support of the charges, vide impugned judgment dated 23.05.2014, the trial court acquitted the accused persons in exercise of powers conferred under Section 232 of the CrPC.

14. It has rightly been pointed out by the learned counsel for the State that the appellant is a co-villager and an agnate of the accused respondents. He and his family members were so closely related to the accused respondents that they went to attend the *puja* function being held at the house of the respondent nos. 2 to 4. Under such circumstance, it is difficult to



believe that they were totally unaware about the ongoing proceedings before the trial court. Furthermore, from the record it is apparent that ample opportunity was granted to the prosecution to produce its witnesses. It is reiterated that charges were framed on 19.08.2008 and the prosecution case was closed on 21.05.2014. In between this period, number of adjournments were granted by the court so that the prosecution may produce its witnesses. The trial court took all possible steps by issuance of summons, bailable warrant of arrest and non-bailable warrant of arrest to ensure appearance of the witnesses. The non-bailable warrant of arrest was made executable by the Superintendent of Police, Gaya. Not only this, the trial court handed over *dasti* summons to the learned Additional Public Prosecutor and issued repeated reminders to him to produce witnesses. All attempts made by the trial court to ensure appearance of the witnesses failed because of indifferent attitude of the prosecution and its witnesses. The informant having launched a prosecution cannot afford to be so complacent or indifferent in the matter. He cannot forget about the case after launching the prosecution and rake up the issue once again after lapse of more than sixteen years from the date of institution of the FIR or after lapse of more than seven years from the date of judgment of acquittal.



15. The right to a speedy trial is an inalienable right under Article 21 of the Constitution of India. The administration of justice is not limited to the conviction of the guilty person and acquittal of the innocent one but it also deals with fair and speedy trial. Speedy trial is one of the basic human rights as without speedy trial justice cannot be said to be done. The mandate of law is not only that guilty of an offence should not escape punishment but it is also necessary that the accused person facing a trial in a criminal case should not be harassed indefinitely.

16. In the instant case, the accused persons attended the court proceedings continuously for nine years. One of the accused died on 24.08.2011. The other three accused persons attended the court proceedings from the date of institution of the FIR till the date of the impugned judgment. The prosecution was sitting tight over the matter for all these years. At this belated stage, the informant cannot plead that he was unaware about the progress of the case before the trial court for all these years and plead for reopening the trial.

17. Taking into consideration the circumstances discussed above, we are of the view that the appellant has not been able to show sufficient cause for filing this appeal against



the judgment of acquittal belatedly. The application for condonation of delay has no merit. It is liable to be dismissed. Accordingly, it is dismissed.

18. Consequent upon the dismissal of the application for condonation of delay, the criminal appeal against the judgment of acquittal also stands dismissed.

(Ashwani Kumar Singh, J)

(Rajeev Ranjan Prasad, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.04.2022
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