(2006) 09 JH CK 0023

Jharkhand High Court

Case No: None

Nandlal Mahli	APPELLANT
Vs	
State of Jharkhand	RESPONDENT

Date of Decision: Sept. 7, 2006

Acts Referred:

- Penal Code, 1860 (IPC) - Section 302

Citation: (2007) 4 JCR 412

Hon'ble Judges: Dilip kumar sinha, J

Bench: Single Bench

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

D.K. Sinha, J.
The instant Cr. Revision has been directed against the order impugned dated 19.12.05 passed by Shri O.P. Pandey. 1st Additional Sessions Judge, Gumlain Sessions Trial No. 209/05 arising out of Gumla P.S. Case No. 91/05 whereby and whereunder the prayer of the petitioner-accused to recall all the three prosecution witnesses for their cross-examination was rejected.

2. The petitioner is the sole accused who is facing trial for the charge u/s 302, IPC for allegedly committing murder of the brother of the informant.

3. After framing of charge 3 witnesses were produced and examined on behalf of the prosecution but they could not be cross-examined on behalf of the defence. The learned Counsel explained that there was no person to take steps on behalf of the petitioner and hence no Counsel to cross-examine the said witnesses could be engaged.

4. From the perusal of the impugned order it would be evident that on 28.11.2005 and 29.11.2005 total three witnesses were produced and examined on behalf of the

prosecution but in spite of repeated call Md. Taha, learned Counsel for the accused petitioner whose vakcdatnama was available on the record did not appear to cross-examine the witnesses and hence the witnesses were discharged. The Court had asked the accused as to whether he would prefer State defence (Counsel) for the cross-examination to which the petitioner denied and therefore, the Court below had reason to believe that the learned Counsel for the petitioner intentionally, deliberately and knowingly abstained from the Court to cross-examine the prosecution witness and hence the petition filed on behalf of the petitioner-accused to recall the witnesses for their cross-examination was rejected.

5. The learned Counsel explained that the petitioner-accused was in custody and there was none to take step on his behalf and therefore, Md. Taha, in whose favour vakalatnama was executed could not be approached and hence the witnesses could not be cross-examined to which the Court may take into kind consideration about the compelling situation for the petitioner.

6. Learned Counsel further submitted that the delay in trial is always against the interest of the petitioner-accused and there was no reason for deliberate abstinence of the learned Counsel for the defence from the Court to cross-examine the prosecution witnesses. The petitioner-accused is rustic villager and perhaps he could not understand the appointment of State defence by the Court to defend his case. The charge u/s 302, IPC against the petitioner is very serious in nature and therefore, the administration of justice calls for cross-examination of the prosecution witnesses which could not be at earlier occasion.

7. Having regard to the facts and circumstances of the case, it is settled and Golden Rule that only by cross-examination, a witness''s evidence can be properly tested. "Sarkar on Evidence" 14th Edition 1993 speaks much about the cross-examination of a witness which is attracted to the credibility of the witnesses, the facts to which he had deposed in chief, including the cross-examiner''s version thereof, and the facts to which the witness has not deposed but to which the cross-examiner thinks he is able to depose. The objects are to impeach the accuracy credibility and general value of the evidence given in chief to shift the facts already stated by the witnesses, to detect and expose discrepancies, or to elicit suppressed facts, which will support the case of the cross-examining party. The exercise of this right is justly regarded as one of the most efficacious tests, which the law has devised for the discovery of truth. It is trite law that no evidence affecting a party is admissible against that party unless the latter has had an opportunity of testing its truthfulness by cross-examination. Similarly in the case of serious offences the burden is heavier upon the prosecution to prove it and in the present case denial of the opportunity to the accused of cross-examining the prosecution witnesses for the charge u/s 302, IPC may prejudice the defence under the explained circumstances.

8. In the result, the order impugned dated 19.12.2005 passed by the 1st Additional Sessions Judge, Gumla in Sessions Trial No. 209/05 is set aside with the direction to

the trial Court to accord opportunity to the petitioner-accused for cross-examination of PW 1, 2 & 3 on their recall positively within a month and to proceed in accordance with law so as to conclude the trial as soon as possible.

9. With this observation, the Cr. Revision is allowed.