Suresh Pal and Another Vs State of Bihar and Another

Court: Patna High Court

Date of Decision: Dec. 18, 2006

Acts Referred: Arms Act, 1959 â€" Section 27
Criminal Procedure Code, 1973 (CrPC) â€" Section 233(3)
Penal Code, 1860 (IPC) â€" Section 302, 34

Citation: (2007) 1 PLJR 650

Hon'ble Judges: Navaniti Pd. Singh, J

Bench: Single Bench

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Navaniti Pd. Singh, J.
By order dated 3.11.2006, the case diary was called for and the case was ordered to be listed thereafter, Opposite

Party No. 2, the informant, has appeared. Heard the parties and with their consent, the case is being disposed of at this stage itself.

2. The petitioners are accused of offences under Sections 302 / 34 of Indian Penal Code and Section 27 of the Arms Act for allegedly murdering

the deceased. They were put on trial. The prosecution closed its case which was, inter alia, based on the allegations as made out in the first

information report. At the stage of entering defence, in terms of Section 233(3) of the Code of Criminal Procedure, an application was made on

behalf of the defence requesting the Additional Sessions Judge I, Patna before whom the trial was pending for summoning two documents which

were station diary entry No. 215 of Khagaul Police Station of the year 2001 and the wireless message bearing PCCRLM No. 53 dated 11th

September, 2001 from the police. It was stated on behalf of the petitioners that these two documents would clearly have revealed that the police

had first received information that some unknown persons had shot the deceased. These two documents were available to the prosecution but they

deliberately suppressed the same and in their cross-examination denied suggestions of their existence. It is submitted that if these two documents

were brought on record by the prosecution, these documents being documents in the possession of the police as a part of the police record, then

prima facie the first information report itself would have been discredited as that is said to be recorded prior to the two aforesaid communications

as recorded. First information report names persons and preponderates the time of death. The two sets of prosecution documents would be in

contradiction to each other. It is submitted that the prosecutor should not identify himself with the informant. His job is to establish the truth and not

the case of any particular party. The prosecutor by not bringing on record the police documents acted in a parisan manner and, therefore, it was in

an interest of justice that in terms of Section 233(3) of Criminal Procedure Code, the Court should have summoned the two documents and

examined them and take steps to get them properly exhibited and brought on record. Instead by the impugned order, the trial Court has gone into

the question of probative value of the documents or its admissibility which is not permissible at the stage of summoning the document in terms of

Section 233(3) of Criminal Procedure Code.

3. Mr. Jaiswal for the State submits that it was for the petitioners,, the defence, to solicit information about these documents in their cross-

examination or to bring these documents on record through their defence witness to establish their innocence. The process of Court could not be

used to establish the innocence of the defence or the falsity of the prosecution case.

4. Having considered the matter, the submissions of Mr. Jaiswal do not appear to be in consonance with established principles of criminal

jurisprudence. If the prosecution has with it evidence which would throw light upon the true facts then it is for the prosecutor to bring those facts on

record. The prosecutor is the first Judge of the truth of the case. He cannot withhold documents only with a view to advance the case of the

informant. He has to advance the cause of justice in bringing an accused to trial. The prosecutor would be failing in his duty if the aforesaid

documents, the existence of which is not denied, is not brought on record. It would lead to miscarriage of justice. Now coming to the question of

defence trying to establish its innocence, this is contrary to the well established criminal jurisprudence in such matters where the onus is on the

prosecution to prove the guilt and not on the defence to establish its innocence. The defence is only to create doubt in the story set up by the

prosecution. If what Mr. Jaiswal submits on behalf of the State is to be accepted then the prosecution need not do anything beyond proving the

first information report and resting leaving it to the defence to establish its innocence. To my mind, this is putting the cart before the horse.

5. The whole purpose of Section 233(3) of Criminal Procedure Code, to my mind, is that before defence is entered upon if prosecution has

deliberately withheld any material witness or any document then it can ask the Court for intervention as the prosecutor must bring on record all that

is relevant for a just determination and not what is relevant for furthering the cause of the informant alone. This distinction has to be kept in mind by

all concerned that is the prosecutor and the trial Judge. The trial Judge cannot prejudge the issue without even summoning the said documents. In

the present case, in my opinion, the trial Judge was duty bound to summon the said documents and then bring on record. This is not the stage to

decide about the probative value or the admissibility of the said document. That matter is to be considered after the document is brought on record

as evidence.

6. In that view of the matter, I have no option but to set aside the impugned order and direct that the learned trial Court would issue appropriate

directions sum moning the said documents and having received the same would then see that they are properly brought on record and then let the

parties argue its merits or demerits. It is not a case where these documents appear to be so irrelevant as amounting to either vexatious exercise of

power or causing delay in the proceedings or opposed to justice. In my opinion, it is just otherwise. These were documents which were in know of

the prosecution but wrongly suppressed and, hence, the application u/s 233(3) of Criminal Procedure Code was maintainable and the proper

remedy at the proper stage. This application is, thus, allowed and the impugned order is set aside.