

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Appeal (S.J.) No. 838 of 2015

with

I.A. No. 261 of 2016

Pranabatma Nand Mandal, son of Late Bijay Basant Mandal,
resident of village Poda Malik, P.O. & P.S.- Potka, District- East
Singhbhum (Jharkhand)Appellant

Vs.

The State of Jharkhand

....Respondent

CORAM: HON'BLE MR. JUSTICE RATNAKER BHENGRA

For the Appellant:

Mr. Suraj Singh, Advocate

For the Resp/State:

Mr. Ravi Kumar Singh,APP

By Court: Let the name of Mr. Ravi Kumar Singh, APP, be appear in
the cause list.

2. I.A. No. 261 of 2016 has been filed under section 391 of
Cr.P.C. for adducing additional evidence under section 391 Cr.P.C.

3. The appellant states that date of incident is 1.12.2008,
whereas the victim girl has stated that on 1.12.2008 there was
practical examination in the school. But as per the information
received under Right to Information Act from Kedar nath Jhujhunwala
High School, no practical examination was held on 1.12.2008, rather
the examination was conducted on 28.11.2008 itself. So the learned
counsel for the appellants would like to adduce additional evidence of
the examination dates for different subjects provided by the school
and which is attached as Annexur1 to the interlocutory application.

4. The appellant stated that it has also been stated by the
victim girl that there was boy, named Samir/Sameer, who studying in
Class-X of the school, but as per the information given by Kedar Nath
Jhunjhunwala High School, no such student in the name of
Samir/Samer was studying in Class -X in the year 2008-2009. The
victim has also stated in her deposition that there was a teacher,
namely, Chandra Mohan Mandi in the said school, but as per the
information given by the school in the year 2008-2009 no such teacher
in the name of Chandra Mohan Mandi was there. So the learned
counsel for the appellants would like to adduce additional evidence of
the certificates provided by the school that no such student with the

name of Samir/Sameer was studying there and no any teacher by the name of Chandra Mohan Mandi was there, which is attached as Annexur-2 to the interlocutory application.

5. The appellant states that the victim, namely, Dulari Murmu was studying in Balibandh Middle School, Chakulia in the year 2003-2004 in Class-VIII and she was given a bicycle by the said school under the scheme floated by the Government, which is evident from the information provided by the office of the Block Development Officer, Chakulia.. So the learned counsel for the appellants would like to adduce additional evidence of the Memo 756 dated 09.06.2014 issued by the B.D.O., Chakulia, and Memo 762 dated 09.06.2014 and Schedule 14 Form No. 511 dated 11.06.2014 which are attached as Annexur-3 to the interlocutory application, including pages 19 to 23 of this Interlocutory Application.

6. The appellant stated that from the information provided under Right to Information Act by the District Education Officer-cum-Public Information Officer, East Singhbhum, Jamshedpur vide Letter No. 1190 dated 17.07.2014, it appears that bicycle was given to the victim girl under the scheme floated by the State Government. So the learned counsel for the appellants would like to adduce additional evidence of Letter No. 1190 dated 17.07.2014 which is attached at page 24 till 29 of the I.A. No. 261 of 2016 and marked as Annexur-4 to the interlocutory application.

7. The appellant states that as per the information provided by the District Education Officer vide Letter No. 1104 dated 26.06.2014 under Right to Information Act, the victim girl was studying at Balibandh Middle School in the year 2004 in Class-VIII and she left the school on 31.3.2004, as she applied for transfer certificate. After getting transfer certificate she applied for admission in Kedar Nath Jhujhunwala High School in the year 2004 itself i.e. on 13.5.2004 in Class-VIII itself for getting the benefit of another bicycle. So the learned counsel for the appellants would like to adduce additional

evidence of Letter No. 1104 dated 26.06.2014, at page 30 till 33 and which is attached as Annexur-5 to the interlocutory application.

8. Learned counsel for the State has countered the adducing of additional evidences by saying that it was well within the knowledge of the teachers concerned whether there was an examination on 1.12.2008 or not and there is no need of any documentary evidence to prove that there was an examination or not and if he has not taken this line of argument in the trial, he cannot be allowed to adduce evidence on the same at this stage. Regarding the enmity with teacher and getting the bicycle, it is stated that this is not the main issue of trial rather it deflects the offence under section 354 of the IPC. On these two grounds, he has opposed for adducing the additional evidences.

9. Having gone through the arguments and going through the documents, as has been presented by the counsel for the appellant I find that one of the main thrust of the argument is that in absence of documentary evidences, the court below might not have believed his claims or his arguments against the victim so he has said that he would like to adduce additional evidence for better appreciation of the case, evidences which were not available with him there but related to the case.

10. Where the court notices that for some valid and genuine reasons, some evidence has been omitted, then the observation as given in the case reported in **(2004) 4SCC 158 in Zahira Habibulla H. Sheikh and another Vs. State of Gujarat and others** may be useful:-

47. Section 391 of the Code is another salutary provision which clothes the courts with the power to effectively decide an appeal. Though Section 386 envisages the normal and ordinary manner and method of disposal of an appeal, yet it does not and cannot be said to exhaustively enumerate the modes by which alone the court can deal with an appeal. Section 391 is one such exception to the ordinary rule and if the appellate court considers additional evidence to be necessary, the provisions in Section 386 and Section 391 have to be harmoniously considered to enable the appeal to be considered and

disposed of also in the light of the additional evidence as well. For this purpose it is open to the appellate court to call for further evidence before the appeal is disposed of. The appellate court can direct the taking up of further evidence in support of the prosecution; a fortiori it is open to the court to direct that the accused persons may also be given a chance of adducing further evidence. Section 391 is in the nature of an exception to the general rule and the powers under it must also be exercised with great care, especially on behalf of the prosecution lest the admission of additional evidence for the prosecution operates in a manner prejudicial to the defence of the accused. The primary object of Section 391 is the prevention of a guilty man's escape through some careless or ignorant proceedings before a court or vindication of an innocent person wrongfully accused. Where the court through some carelessness or ignorance has omitted to record the circumstances essential to elucidation of truth, the exercise of powers under Section 391 is desirable.

11. Accordingly, the Lower Court Records along with copy of I.A. No. 261 of 2016 filed in Cr. Appeal (SJ) No. 838 of 2015 be sent to the court of learned District & Additional Sessions Judge, Ghatsila in Sessions Trial No. 147 of 2010 where proposed evidences that have been brought on record will be presented and the court below, after looking into the matter and after giving opportunity to both the parties, and after recording of the findings, whatever it may be, shall send the same to this court within four months from the receipt of this order, so that the appeal may again continue to be heard in the High Court of Jharkhand.

12. I.A. No. 261 of 2016 stands allowed.

(Ratnaker Bhengra,J.)

Jharkhand High Court,Ranchi
Dated 25th July, 2016
Sharda/AFR