

CRIMINAL REVISION

Present: The Hon'ble Justice Ashim Kumar Roy

Judgement on--- 26.04.2010

CRR 903 of 2010

Shaila Das & Anr

Versus

State of West Bengal

Points:

Defence evidence- Whether the Court can close defence evidence without giving reasonable opportunity and without assigning reason.- Code of Criminal Procedure, 1973 –S 401

Facts---

The petitioners have been facing their trial before the learned Additional Sessions Judge , Fast Track , 5 th Court ,Barasat, North 24 – Parganas of a charge under Sections 304/ 34 of the Indian Penal Code. After their examination under Section 313 of the Code of Criminal Procedure was over on 2nd March ,2010, the petitioners made a prayer for examination of two witnesses. Such prayer was allowed and the court directed issuance of summons against those two witnesses fixing Maech 17,2010 and March 18, 2010 for their examination and the petitioners at once deposited the requisites. However , on the aforesaid dates fixed for examination of the defence witnesses, none of them turned up nor the service report received. On the very day no defence witnesses was present nor service report were

received and the trial court closed the evidence and fixed April 1, 2010 for argument.

Held ---

The right of the defence to adduce evidence in rebuttal to the prosecution case is a very valuable right and the defence is entitled to have the reasonable opportunity for the same. However, in the case at hand, on March 2, 2010 the Trial Court fixed March 17, 2010 and March 18, 2010 for examination of the defence witness and when on that dates no defence witness turned up fixed the next date only a week thereafter. There is no justifiable reason for fixing such a short date. In order dated March 25, 2010, the Learned Judge observed that defence was trying to delay the conclusion of the trial and to defeat the ends of justice and close the defence evidence. However, the said order does not reflect on what basis the Learned Judge came to such conclusion. It is pertinent to note there was nothing on record to show that the service of the summons has been duly effected upon the defence witnesses. Para 2

For Petitioners---- Mr Tirthankar Ghosh

For state ---- Mr Sobhendu Sekhar Roy

The Court:

The petitioners have been facing their trial before the Learned Additional Sessions Judge, Fast Track, 5th Court, Barasat, North 24-Parganas of a charge under Sections 304/34 of the Indian Penal Code. After their examination under Section 313 of the Code of Criminal Procedure was over on 2nd March, 2010, the petitioners made a prayer for examination of two defence witnesses. When such prayer was allowed and the Court directed issuance of summons against those two defence witnesses fixing March 17, 2010 and March 18, 2010 for their examination and the petitioners at once deposited the requisites. However, on the aforesaid dates fixed for examination of the defence witnesses, none of them turned up nor the service report received. On that day the petitioners once again renewed their prayer, when the Learned Trial Court allowed such prayer fixing March 25, 2010 for examination of defence witnesses and in default for argument. However, on March 25, 2010 no defence witness was present nor service report were received and the Trial Court closed the evidence and fixed

April 1, 2010 for argument.

2. The right of the defence to adduce evidence in rebuttal to the prosecution case is a very valuable right and the defence is entitled to have the reasonable opportunity for the same. However, in the case at hand, on March 2, 2010 the Trial Court fixed March 17, 2010 and March 18, 2010 for examination

of the defence witness and when on that dates no defence witness turned up fixed the next date only a week thereafter, in my opinion there is no justifiable reason for fixing such a short date. Moreover, having gone through the order passed on March 25, 2010, I find that the Learned Judge observed that defence was trying to delay the conclusion of the trial and to defeat the ends of justice and close the defence evidence. However, the said order does not reflect on what basis the Learned Judge came to such conclusion. It is pertinent to note there was nothing on record to show that the service of the summons has been duly effected upon the defence witnesses.

For the reasons stated above, the order dated March 25, 2010

whereby the defence evidence has been closed is set aside. The Court below is accordingly directed to issue summons afresh against the defence witness fixing the date for their examination after four weeks from the date of issuance of

summons. It is further directed the defence evidence must not be closed without exhausting all the process available under the Code for compelling their appearance and without being first satisfied service has been effected upon the said witnesses.

This application thus stands allowed.

Criminal Section is directed to deliver urgent Photostat certified copy of this Judgement to the parties, if applied for, as early as possible.

(Ashim Kumar Roy, J.)