



IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.282 of 2007

(Against the judgment of Conviction dated 1.2.2007 and order of Sentence dated 3.2.2007 passed by Dr. Syed Akhtaruddin, Additional Sessions Judge, Fast Track Court-3, Samastipur Sessions Trial No. 251 of 2003, arising out of Hathauri P.S. Case No. 4/2003-G.R. No.29/2003)

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1. Ravi Manjhi @ Siya Manjhi, son of late Gena Manjhi
2. Lalo Manjhi son of Ravi Manjhi @ Siya Manjhi
3. Ful Bahadur Manjhi @ Malho Manjhi son of Ravi Manjhi @ Siya Manjhi
4. Paltu Manjhi son of Bantu Manjhi
All resident of Village Balipur, P.S. Hathauri, District Samastipur

..... Appellants

Versus

State of Bihar Respondent

with

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Criminal Appeal (DB) No. 423 of 2007

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Rajesh Manjhi son of Rabi Manjhi, resident of Village Balipur, P.S. Hathauri, District Samastipur

..... Appellant

Versus

State of Bihar Respondent

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Appearance :
(In both the Appeals)
For the Appellant/s : Mr. Sujit Kumar Singh, Advocate
For the State : Mr.Abhimanyu Sharma, A.P.P.
For the Amicus Curiae: Mr. Neeraj Kumar @ Sanidh, Advocate

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH
and
HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH)
Date: 09-03-2015

The sole appellant Rajesh Manjhi preferred Criminal Appeal No.423 of 2007 against the judgment of conviction dated 1.2.2007 and order of Sentence dated 3.2.2007 passed by the Additional Sessions Judge, Fast Track Court-IIIrd, Samastipur in Sessions Trial No.251 of 2003 whereby he has been convicted

under Sections 376 and 302 of the Indian Penal Code and sentenced to under go imprisonment for life.

The appellants Ravi Manjhi @ Siya Manjhi, Lalo Manjhi, Ful Bahadur Manjhi @ Malho Manjhi and Paltu Manjhi preferred Criminal Appeal No.282 of 2007 against the judgment of conviction dated 1.2.2007 and order of Sentence dated 3.2.2007 passed by the Additional Sessions Judge, Fast Track Court-IIIrd, Samastipur in Sessions Trial No.251 of 2003 whereby they have been convicted under section 201 of the Indian Penal and sentenced to under go rigorous imprisonment for three years. During the pendency of this appeal, appellant Ravi Manjhi @ Siya Manjhi passed away and as such the appeal abates as against him.

2. The prosecution case, as made out in the written report of one Akhileshwari Devi (P.W.7) wife of Prabhu Das, resident of Village Balmipur, P.S. Hathauri, District Samastipur made to Officer Incharge, Hathauri P.S. on 10.1.2003 at 4.30 P.M., in short is as follows; While the informant along with her daughter was in their courtyard on 9.1.2003 at 6 P.M., her neighbour Rajesh Manjhi called her daughter Rita Kumari to bring Sikhar Gutka from a nearby shop. Though, the informant dissuaded her daughter from going outside because of cold weather, her daughter still went to bring Sikhar Gutka. When her daughter did not return for some time, her mother (P.W. 7) went out and enquired from the shop owner as to whether she had come to his shop, to which he expressed his total ignorance. The informant along with her 'Gotni' Lakchhaminia Devi (P.W.1), Sattu Das (P.W.2), Bihari Das (P.W. 8) and Rajendra Das (P.W.4) started searching Rita Kumari. When in spite of hectic search, her daughter was not found, a written report was made to the police station. The informant is certain that Rajesh Manjhi had abducted her daughter

with an intention to sell her.

4. On the basis of written report, Hathauri P.S. Case No.04 of 2003 dated 10.1.2003 was instituted under Sections 363, 370 of the Indian Penal Code to which Sections 364, 376, 302, 201/34 of the Indian Penal Code was added vide order dated 21.1.2003 of the Magistrate. The Police after investigation, submitted charge sheet under sections 364, 376, 302, 201/34 of the Indian Penal Code. Cognizance was taken accordingly and the case was committed to the Court of Sessions. Charge under sections 302, 364, 201, 376 was framed against Rajesh Manjhi, but charge only under Section 201 was framed against other co-accused. The accused appellants, however, pleaded not guilty to the charge and claimed to be tried.

5. The prosecution in support of its case examined altogether 14 witnesses namely P.W. 1 Lakchhaminia Devi, P.W. 2 Sattu Das, P.W.3 Sakur Das, P.W. 4 Rajendra Das, P.W. 5 Sita Ram Das, P.W.6 Ramraji Devi, P.W. 7 Akhileshwari Devi, P.W. 8 Bihari Das, P.W. 9 Ram Bahadur Mandal, P.W. 10 Prabhu Das, P.W. 11 Sonia Devi, P.W. 12 Arbind Kumar, P.W. 13 Dr. Ajit Kumar Sinha and P.W. 14 Dr. Sudha Verma. Out of these witnesses, P.W. 2 Sattu Das, P.W. 3 Sakur Das, P.W. 5 Sita Ram Das, P.W. 8 Bihari Das, P.W.9 Ram Bahadur Mandal have been declared hostile. P.W. 4 Rajendra Das, P.W. 6 Ramraji Devi (Mausi), P.W. 10 Prabhu Das, father of the deceased, are hearsay witnesses. P.W. 13 Dr. Ajit Kumar Sinha who has conducted post mortem on the dead body of Rita Kumari on 20.1.2003. P.W. 14 Dr. Sudha Verma, who was also a member of the Medical Board conducted post mortem on the dead body of Rita Kumari on 20.1.2003 and has proved her signature on post mortem report as Ext.2/a. The Investigating Officer was not examined.

6. The defence did not choose to examine any witness. The case of the

appellants in their statements under section 313 Cr.P.C. was complete denial of the occurrence as alleged by the prosecution. The Trial Court on consideration of materials on record convicted the appellant Rajesh Manjhi under sections 376 and 302 of the Indian Penal, whereas convicted rest of the appellants under section 201 of the Indian Penal Code. Being aggrieved, the appellants have filed their respective appeals.

7. The appellants contend that there is no eye witness on the point of commission of murder and the case is based on circumstantial evidence which is of a weak nature and do not form a complete chain to establish the guilt of the appellant and appellants alone. The case of the prosecution is based on last seen theory and confessional statement of co-accused, which is not only hit by Sections 24 and 25 of the Indian Evidence Act, but has also not been brought on record as an Exhibit.

8. Before we examine the case of the defence in detail, it would be relevant to notice the ocular and medical evidence, on which the prosecution has tried to bring home the charge against the appellants. As stated in the earlier paragraphs, the prosecution has examined altogether 14 witnesses in support of its case. Out of these witnesses, P.W. 2, P.W. 3, P.W. 5, P.W. 8 and P.W. 9 have been declared hostile. P.W. 4 Rajendra Das, P.W. 6 Ramraji Devi and P.W. 10 Prabhu Das are hear say witnesses.

9. P.W. 7 Akhileshwari Devi, mother of the deceased, has supported the prosecution case. She states that on the fateful day at about 6 P.M. she was sitting in her court yard along with her daughter Rita Kumari. Around that time, Rajesh Manjhi asked her daughter to bring Gutka from a nearby shop. Though, she restrained Rita Kumari from going outside because of cold weather, the later did not relent and went out to bring Gutka. When she did not return for quite

sometime, she along with other persons tried to search her, but all went in vein. Later on Rajesh Manjhi confessed that he raped and murdered her daughter and with the help of other accused, has hid her dead body in the nearby field. On his confessional statement, the dead body was recovered by the police and sent for post mortem. She has proved L.T.I. on the fardbeyan and also identified the accused persons.

10. P.W.1 Lakchhaminia Devi is the Gotni of the informant and aunt of the deceased Rita Kumari. She stated that she too was present in the court yard along with informant and her niece Rita Kumari at 6 P.M. on the fateful day. In the meantime, Rajesh Manjhi came in the Aangan and asked Rita Kumari to bring Sekhar Gutka from a nearby shop. When she did not return for quite some time, she along with informant and others, started searching for her. Her dead body was recovered only after ten days on the confession of Rajesh Manjhi before the police. Rajesh Manjhi also confessed of committing rape and murder. Rajesh Manjhi also confessed that the other appellants helped in hiding the dead body in the nearby field.

11. P.W. 5 Sita Ram Das is an Inquest witness and has been declared hostile. He stated that the police took his signature on a blank paper. P.W. 6 Ram Raji Devi is the sister of the informant P.W. 7 and Mausi of deceased Rita Kumari. She stated that on the fateful day around 6 P.M., she was preparing food in her house when Rajesh Manjhi came and called Rita Kumari to bring Sikhar Gutka from a nearby shop. When Rita Kumari did not return, a search was made for her, but neither she nor Rajesh Manjhi could be traced. The Police was informed on the following day about the incident. Rajesh Manjhi confessed before the Police that he raped and murdered the victim with the help of other appellants and hid her dead body in nearby field.



12. P.W. 10 Prabhu Das is father of the deceased and is a hear say witness and was not present in the house at the relevant time when Rajesh Manjhi called his daughter to bring Gutka from a nearby shop. On receiving telephonic information that her daughter was kidnapped, he came home. He was informed by his wife about the incident. He stated that the Police arrested Rajesh Manjhi who confessed his involvement in rape and murder of the deceased. The dead body was recovered wrapped in Lungi belonging to accused Ravi Manjhi, in presence of Mukhiya and others.

13. P.W. 11 Sonia Devi is cousin of the informant. She stated that in the evening she was preparing food. Around that time Rajesh Manjhi came and asked Rita Devi to bring Sikhar Gutka. Rita Kumari was not initially inclined to go. However, on insistence of Rajesh Manjhi, she relented and went ut to bring Gutka. When she did not return for quite some time, hectic search was made for her. However, she was not traced nor the accused was present in his house. Later on the Police arrested Rajesh Manjhi who confessed his guilt. The dead body was recovered on his statement. Rajesh Manjhi confessed that the other appellants helped him in hiding the dead body in the nearby field.

14. P.W. 12 Arbind Kumar is brother of the deceased Rita Kumari. He stated that in the evening Rajesh Manjhi came to his house and called his sister to bring Gutka from a nearby shop. Thereafter he reiterated the incident as narrated by other witnesses i.e. P.W.1 and P.W.7.

15. P.W. 13 is Dr. Ajit Kumar Sinha, who conducted autopsy on the dead body of deceased Rita Kumari on 20.1.2003 and found the body decomposed. Rigor -Mortis was absent. The skin was peeling off gradually from different part of body. There was bleeding from vagina. He found bruises near Vulna 3" x 1". He found laceration of vaginal organ posteriorly with tearing of fourcheth and

perania. Bruises were present over right of neck 2" x 1.5". In the opinion of the Doctor, death was caused due to asphyxia on account of throttling.

16. P.W. 14 Dr. Sudha Verma was one of the members of the Medical Board who conducted post mortem. In her cross-examination, she stated that she is unable to state whether any injury was detected on the person of the dead body.

17. The prosecution did not examine Investigating Officer and its case is that the non-examination of the witness had caused no prejudice to the defence side.

18. On the strength of these evidences, the prosecution argued that sufficient materials have been brought on record to bring home the charge of rape and murder against appellant Rajesh Manjhi and one under section 201 of the Indian Penal Code against rest of the appellants for helping Rajesh Manjhi in hiding the dead body and in their attempt to write off the evidence of her rape and murder.

19. Mr. Abhimanyu Sharma, learned Additional Public Prosecutor appearing for the State points out the following circumstance against the accused persons. He submits that almost all the witnesses stated that they either saw or learnt that Rajesh Manjhi came to the house of P.W. 7 on the fateful day at 6 P.M. and called the deceased Rita Kumari to bring Gutka from a nearby shop. Hectic search was made for deceased Rita Kumari, but neither she nor Rajesh Manjhi could be traced. Rajesh Manjhi in his confessional statement, confessed his guilt. The dead body of deceased Rita Kumari was recovered from a nearby field wrapped in the lungi of accused Ravi Manjhi, brother of Rajesh Manjhi. He submits that the fact that victim and Rajesh Manjhi became traceless since she was called by latter to bring Gutka from a nearby shop, would conclusively

point suspicion at him and none else.

20. Mr. Neeraj Kumar @ Sanidh, learned counsel who was appointed as Amicus Curiae and Mr. Sujit Kumar Singh, learned counsel for the appellants argued that the prosecution has miserably failed to bring the charge against the accused persons. They submit that the circumstantial evidence against the accused persons are of a weak nature and do not form complete chain to establish the guilt of accused beyond all reasonable ground. They submit that the confession of the accused was taken under coercion and as such it would not be admissible under Sections 24 and 25 of the Indian Evidence Act. They submit that even confessional statement of Rajesh Manjhi was not brought on record. They further submit that it would appear from the evidence of the witnesses that the confessional statement was elicited under duress and coercion. Only two witnesses namely P.W. 11 and P.W. 12 did not state that the confessional statement of Rajesh Manjhi was made under coercion or fear of Police. They submit that the statement of P.W. 11 and P.W.12 cannot be relied upon as according to them both of them were present in the house, but they did not make their statement to Police at the time of occurrence. P.W. 11 Sonia Devi, who is cousin of the informant, made her statement after 3 days of the occurrence and P.W. 12, Arbind Kumar, who is brother of the deceased made his statement after 12 days of the occurrence and there is no explanation for the same.

21. We have heard learned counsel for the parties and perused the materials on record.

22. We find from the evidence of P.W. 7, the informant, P.W. 1 Lakshminia Devi, P.W. 6 Ram Raji Devi and P.W. 11 Sonia Devi, that Rajesh Manjhi had come to the house of the informant and called deceased Rita Kumari to bring Sekhar Gutka from the nearby shop. When even Rita Kumari did not

return after elapse of considerable period of time, the informant along with others tried to look for her. However, neither Rita Kumari nor Rajesh Manjhi were traced. The dead body of Rita Kumari was recovered after 9-10 days of a nearby field on the confession of Rajesh Manjhi who confessed of having raped and kill the deceased and thereafter he hide the dead body of Rita Kumari with the help of other appellants and digging the filed.

23. The issue before this Court is whether it would be reliable and safe to fasten the guilt of the appellants on the basis of the circumstances that the accused Rajesh Manjhi and the deceased were last seen at 6 P.M. and the former confessed his guilt. No material has been brought on record by the prosecution to show that the deceased was raped soon after 6 PM and immediately murdered thereafter to wipe out any possibility of anyone else committing murder other than the appellant Rajesh Manjhi.

24. We find that the prosecution has been able to establish that the deceased was last seen with Rajesh Manjhi on 9.1.2003 at 6 P.M. However, there was no trace of both of them about till Rajesh Manjhi was apprehended 8-9 days of the occurrence and the dead body of Rita Kumari was recovered from a nearby field under the soil on his alleged confession.

25. We would now examine whether the confession of Rajesh Manjhi is admissible in view of tests laid down in sections 24 and 25 of the Indian Evidence Act. Section 24 of the Act states that confession caused by inducement, threat or promise, would be irrelevant in criminal proceeding. Section 25 of the Act states that no confession to police officer shall be proved as against a person accused of any offence. Section 26 of the Act bars proving of confession made by the accused while in custody of police. Section 27 of the Act makes partial exception and provides that information received from accused

may be proved if any fact is deposed to as discovered in consequence of information received from a person accused of any offence, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered may be proved and would be admissible in law.

26. In the backdrop of the conditions laid down by the aforesaid provisions, we would now examine whether the confession made by the appellant was valid or not. We find that P.W. 1 Lakchhaminia Devi, Gotni of P.W. 7 and aunt of deceased, stated that Rajesh Manjhi made a confessional statement after he was assaulted by the Police. P.W. 4 Rajendra Das who is hearsay witness stated that the Police caught Rajesh Manjhi whereafter he made a confession. P.W. 6 Ram Raji Devi in paragraph 10 too stated that the police applied coercion on the accused whereafter he made a confession. P.W. 7, the informant Akhileshwari Devi, stated that the police did '*marpit*' whereafter the accused Rajesh Manjhi made his confession. P.W.10, father of the deceased, who too is a hearsay witness states that on being rebuked the appellant Rajesh Manjhi made his confession.

27. We find that only two witnesses namely P.W.11 Sonia Devi and P.W. 12 Arbind Kumar did not talk of any coercion or pressure applied on the accused Rajesh Manjhi prior to his confession. In case the statement of P.W. 11 and P.W. 12 are free from all doubts and the confession made by the appellant Rajesh Manjhi was made without any coercion, their statement cannot be brushed aside. We find that P.W. 12 himself stated that he had made statement before the police after 12 days of the occurrence. This witness is brother of the deceased and on his own statement, he was present in the house. There is no explanation as to why he made statement belatedly after 12 days of the occurrence. In this view of the matter, the statement of P.W. 12 cannot be relied upon and have to be

discarded for deciding this issue.

28. Mr. Neeraj Kumar, learned counsel appearing Amicus Curaie and Mr. Sujit Kumar Singh, learned counsel for the defence have rightly relied upon a decision in the case of State of Orissa vs Mr. Brahmananda Nanda, reported in (1976) 4 SCC 288 and in the case of Pakkirisamy vs. State of Tamil Nadu, reported in (1997) 8 SCC 158. In case of Mr. Brahmananda Nanda (supra) the sole eye witnesses did not disclose the name of the murderer for a day and a half after the occurrence though she was present at the place of occurrence. The Apex Court observed that not disclosing the name of the murderer though the witness was present and had seen the occurrence would seriously affect the credibility of the witness.

29. They submit that in the case cited, there was delay of one and half days in disclosing the name of the murderer. In the instant case there is a delay of 12 days in disclosing the incident by the P.W.12, though he was present in the house and the police too had visited the place of occurrence. In our view, the delayed disclosure of the incident by the own brother of the deceased, though he was present in the house, seriously affects his credibility. For similar reason, it will be difficult for us to fully rely upon the evidence of P.W. 11 Sonia Devi, the own cousin of the informant, who made her statement after 3 days of the occurrence. Besides this, the statement of P.W. 11 that she was present in the courtyard along with the informant does not find support even from the statement of P.W. 7 who stated that she was present in the courtyard along with her daughter and she went along with P.W. 2 Sattu Das, P.W. 8 Bihari Das and P.W.4 Rajednra Das to look for her daughter.

30. It is well settled that circumstantial evidence is a weak evidence and unless and until it is of very high standard, reliance cannot be placed to fasten



guilt, unless and until it is corroborated by some other relevant materials, which we find lacking in this case. Besides this, the fardbeyan and F.I.R. has also not been exhibited and Investigating Officer has not proved the Inquest report. The case of the prosecution that the dead body was found wrapped in the lungi of accused Ravi Manjhi, the brother of Rajesh Manjhi cannot be of any aid to it. The inquest report has not been proved by the witness but has been proved only by P.W. 5 Sita Ram Das who stated that he signed on a blank paper. In such circumstances, it is difficult for us to rely upon inquest report. Further more, the confessional statement has also not been exhibited and as such it is difficult for the Court to rely upon it in fastening the conviction on the accused.

31. Thus, in view of the discussions made in the foregoing paragraphs, we have no hesitation in holding that the prosecution has not succeeded in proving the chain of circumstances to fasten the guilt of Rajesh Manjhi under Sections 376 and 302 of the Indian Penal Code. The appellant Rajesh Manjhi in the facts and circumstances of the case would be entitled to benefit of doubt and as such we acquit him of the guilt under sections 376 and 302 of the Indian Penal Code.

32. So far as conviction under section 201 of the Indian Penal Code is concerned, we find that appellant Rajesh Manjhi was neither charged nor convicted under section 201 of the Indian Penal Code. We find that only appellants of Criminal Appeal No.282 of 2007 were charged and convicted under the aforesaid provision. We further find that on confession of Rajesh Manjhi the dead body of Rita Kumari was recovered from a nearby field concealed under the soil, which as per the prosecution was made in order to wipe off the evidence. We have already noticed that as per Section 27 of the Indian Evidence Act, any discovery made pursuant to information received from an accused under the Police custody would be admissible in law and as such the

discovery of the dead body on the information provided by the accused would be admissible to its limited extent. As such, we are of the considered view that the prosecution has been able to prove the case under Section 201 of the Indian Penal Code against the surviving appellants of Criminal Appeal No.282 of 2007.

33. As these appellants convicted under section 201 of the Indian Penal Code have already remained in custody for about six months and have faced rigors of trial and as such we hold that the period under gone by them would serve the ends of justice. They are discharged from the liabilities of their bail bonds.

34. With the aforesaid modification in the judgment and conviction, these appeals are allowed to the extent indicated above.

(Samarendra Pratap Singh, J)

Kishore Kumar Mandal, J
I agree

(Kishore Kumar Mandal, J)

Md. Jamaluddin Khan

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