

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.958 of 2009

(Against the judgment of conviction, dated, 10th September, 2009, and the order of sentence, dated, 14th September, 2009, passed by Shri Vijay Kumar Sinha, Additional Sessions Judge (Fast Track Court No.II), Araria, in Sessions Trial No.528 of 2005, arising out of Palasi P.S. Case No. 06 of 2005).

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1. Shambhu Marandi
 2. Vishnu Marandi, both sons of late Barka Marandi, resident of Village Pipra Pakri, Police Station Palasi, District Araria

.... Appellants

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellants: Mr. Vikramdeo Singh,
Mr. Mukesh Kumar Rana, Advocates

For the Respondent: Mr. Ajay Mishra, Addl. P.P.

Mr. Prabhat Kumar, learned counsel as Amicus Curiae

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CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI

And

HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE I. A. ANSARI)

Date: 30-06-2015

Under the judgment, dated 10.09.2009, passed, in Sessions Trial No. 528 of 2001, by learned Additional Sessions Judge, Fast Track Court No. II, Araria, the accused-appellants, namely, Shambhu Marandi and Vishnu Marandi, stand convicted under Sections 364, 302 and 201 read with Section 34 of the Indian Penal Code. In consequence of their conviction under Sections 302 and 364 read with Section 34 of the Indian Penal Code, the accused-appellants stand, under the order, dated 14.09.2009, sentenced to suffer imprisonment for life with fine of Rs.1,000/- each and, in default of payment of fine, they have been

sentenced to suffer imprisonment for one month each. For their conviction under Section 201 read with Section 34 of the Indian Penal Code, they have been sentenced to suffer imprisonment for seven years and fine of Rs.500/- each and, in default of payment of fine, they have further been sentenced, under the order, dated 14.09.2009 aforementioned, to suffer imprisonment for fifteen days. All the sentences are ordered to run concurrently.

2. The case of the prosecution, as unfolded by the First Information Report, may, in brief, be described as follows:

(i) Deceased Sonu Marandi, husband of the informant, Fulmani Hembram (PW 10), was the elder brother of accused Shambhu Marandi (since deceased) and accused Vishnu Marandi. Sonu Marandi had two wives, Durgi Soren (since deceased) and the informant, Fulmani Hembram (P.W.10).

(ii) On 06.11.2004, at 4.00 P.M., both the accused, who are residents of village Pipra Pakri, came to the house of Sonu Marandi and took Sonu Marandi and Durgi Soren to their house for feast. Since neither Sonu Marandi nor Durgi Soren returned to their house, the informant, Fulmani Hembram (PW 10), went, on 07.11.2004, to the houses of both the accused and enquired from them as to where her husband, Sonu Marandi, and Durgi Soren were. Both the accused informed PW 10 that Sonu Marandi and Durgi Soren had returned home on the previous day itself i.e. 07.11.2004 and that they (i.e., the two accused) did not know as

to where Sonu Marandi and Durgi Soren had gone. Despite hectic search, Fulmani Hembram could not trace out whereabouts of her husband, Sonu Marandi, and Durgi Soren and, then, Fulmani Hembram informed her son, Sukumar Marandi (PW 9), about the disappearance of Sonu Marandi and Durgi Soren.

(iii) Sukumar came from Delhi and since he, too, could not trace out Sonu Marandi and Durgi Soren, the informant, suspecting that both the accused were involved in the disappearance of Sonu Marandi and Durgi Soren, lodged written information, in this regard, on 03.01.2005. The reason for suspicion was that there was a land dispute between them. Treating the said written information as First Information Report, Palasi P.S. case No.06 of 2005 was registered, under Section 364 read with Section 34 of the Indian Penal Code, on 03.01.2005, against the two accused.

(iv) During investigation, both the accused were taken into custody by the police and, on being interrogated, they gave statements indicating that they had buried the dead body of Sonu Marandi and Durgi Soren and, acting upon the statement of the accused Vishnu Marandi, the police arrived at their agricultural field. Inquest reports (Exts.7 and 7/1) were prepared in presence of the witnesses, namely, Shamim Akhtar, Mukhiya Gram Panchayat, Sukhsena and Doman Rishideo. While one of the dead bodies was identified by Samim Akhtar (PW 11) as the dead body



of Durgi Marandi, the other dead body was identified by Doman Rishidev (PW 12) as the dead body of Sonu Marandi. The said two dead bodies were subjected to *post mortem* examination and, on completion of investigation, charge sheet was laid, under Sections 364/302/201/34 of the Indian Penal Code, against the two accused aforementioned.

3. At the trial, charges were framed under Sections 364, 302 and 201 read with Section 34 of the Indian Penal Code. To the charges so framed, both the accused pleaded not guilty.

4. In support of their case, prosecution examined altogether 14 (fourteen) witnesses. Both the accused were, then, examined under Section 313 (1) (b) of the Code of Criminal Procedure, wherein both the accused denied that they had committed the offences, which were alleged to have been committed by them, the case of the defence being that of denial. No evidence was adduced by the defence.

5. Having, however, found both the accused guilty of the offences, which they stood charged with, learned trial Court convicted them accordingly and passed sentences against them as mentioned above.

6. Aggrieved by their conviction and the sentences, which have been passed against them, both the accused, as convicts, have preferred this appeal.

7. During pendency of the appeal, one of the appellants,

namely, Shambhu Marandi, died. The appeal stands, therefore, abated as far as the accused-appellant, Shambhu Marandi, was concerned.

8. We have heard Mr. Vikramdeo Singh, learned Counsel, appearing for the appellants, and Mr. Ajay Mishra, learned Additional Public Prosecutor, appearing on behalf of the State. We have also heard Mr. Prabhat Kumar, learned Counsel, appearing as *Amicus Curiae*.

9. While considering the present appeal, it may be pointed, at the very outset, that according to the evidence of Dr. Atul Kumar Mallick (P.W.14), he had conducted *post mortem* examination, on 08.01.2005, on a highly decomposed and incomplete remains of a male dead body and found as follows:

"(1) The anatomical study of bones revealed that they are human in origin and belonged to only one individual. For determination of sex pelvis, sacrum, skull, Mandible and long bones were studied and they had features of Masculine (Male) Bones.

(2) Age was determined by study of skull, Mandible and Vertebra and it was found that the age of person was of between 50 to 60 (Fifty to Sixty) years.

(3) Injuries – No ante mortem injuries, such as cut or fracture could be found on available bones.

Due to high degree of decomposition at the time of preliminary examination, it was not possible to ascertain whether the deceased had died due to strangulation or not."

10. According to doctor (PW 14), it was not possible to give any opinion about the cause of death.

11. It is also in the evidence of Dr. Atul Kumar Mallick (P.W.14), that on the same day, i.e., on 08.01.2005, he conducted *post mortem* examination on highly decomposed and incomplete remains of another dead body, which was of a female, and found as follows:

" Anatomical study of bones revealed that they are human in origin belonging to only one individual. Sex was determined by study of Hib bones, Sacrum, Skull and Mandible and the study suggests that they are of a female.

Age was determined by study of Skull, Mandible, Hib bone, Sacrum, and Vertebra and age was determined between Forty to Fifty years.

Injuries- No ante mortem injury such as cut or fracture could be found on the available bones. Due to high degree of the decomposition at the time of preliminary examination, it was not possible to ascertain any feature of any strangulation."

12. According to doctor (PW 14), it was not possible to give any opinion about the cause of death.

13. From a bare reading of the evidence of the doctor, what clearly transpires is that the dead bodies were not only in highly decomposed state, but were also incomplete. In his evidence, the doctor has agreed that the dead bodies were beyond recognition. The doctor could not ascertain the cause of death inasmuch as the evidence of the doctor is clear that there was no external injury and no feature of strangulation existed and, therefore, the reason could not be given as regards death except that one dead body was of male and other one was of female.



14. From the medical evidence on record, what becomes transparent is that dead bodies could not have been recognized and, therefore, question of identification of the said two dead bodies and dead bodies of Sonu Marandi and Durgi Soren could not have arisen. In fact, we have minutely gone through the evidence of PW 11 and PW 12, who had identified the dead bodies and we do not find in their evidence as to how they were able to identify the said two dead bodies, when, and in the light of the evidence of the doctor, the said two dead bodies were far beyond recognition and not even complete. In fact, it was the duty of the learned trial Court to have recorded, in a case of present nature, as to what were the reasons or basis for identification of the said two dead bodies; but the learned trial Court has completely failed in this regard.

15. Prosecution, however, claims that the said two dead bodies were recovered on the basis of the statements, which were made by accused Shambhu Marandi and accused Vishnu Marand. In fact, investigating officer has proved Ext.4 and Ext. 4/1 as the statements of accused Vishnu Marandi and Shambhu Marandi respectively.

16. What is, now, important to note is that according to the evidence of the Investigating Officer (PW 13), after arresting accused Shambhu Marandi, he rerecorded his statement, which is Ext. 4/1, and, similarly, he, then, recorded the statement of Vishnu

Marandi, which is Ext. 4, and, on the basis of their confessional statements, he dug out a ditch and recovered dead bodies of Sonu Marandi and Durgi Soren. Though the Investigating Officer has not mentioned as to where dead bodies were found, the inquest reports, which are Exts. 7 and 7/1, state as under: -

Inquest report of Sonu Marandi

<i>P. S. case number and date & time of Inquest</i>	<i>Palasi P.S. case No.06/05 dated 03.05.2005 u/s 364/34 of the I.P.C. added sections 302/201 of the I.P.C.</i>
<i>Name of deceased and alias name and father's name, address age and gender</i>	<i>Sonu Marandi, S/o Barka Marandi, resident of Maina P.S. Palasi, District Araria age 60 years approximately, Male</i>
<i>Place where dead body was found, time and date</i>	<i>In village Pipra Pakri Advasi Tola 20 yards north by the side of house of accused Shambhu Marandi, S/o Barka Marandi in North-West of Brinjal field about four & half feet buried in a ditch which was taken out after digging the earth as per statement of accused Shambhu Marandi and Vishnu marandi date 5.1.2005 time 13.30 hours</i>
<i>Description and condition of dead body, height, identification mark, colour of eyes and hair etc.</i>	<i>Dead body found four and half feet beneath buried in the earth head south leg south, both hand folded hair black, stain of face decomposed height five feet five inch.</i>
<i>Injury visible on the body, wound and other sign and the weapon</i>	<i>As the skin was highly decomposed, the injury could not be detected.</i>

used for causing

Cloths found on the dead body or near the body, ornaments, weapon and other articles and its description.

Wearing old half paint, old Lungi of blue colour, one pair plastic shoes on the dead body, old Baniyan of white colour Half old Sweater printed of read colour full sweater, old shirt of white colour.

Cause of death as per witnesses their name and signature (1) Shamim Akhtar, Mukhiya Gram Panchayat Sukhsena, S/o Ashahabuddin resident of Rupail (2) Doman Rishideo S/o Dofai Rishideo resident of Maina P.S. Palasi

It is said that after strangulated dead body was buried in the earth

*(1) Sign- Shamim Akhtar
(2) Sign- Doman Rishideo*

Opinion of police office about cause of death and signature

Accused Vishnu Marandi and Shambhu Marandi has accepted in their respective confessional statement, that they had killed the deceased Sonu Marandi and Durgi Marandi after strangulating them and buried the dead body.

Inquest Report of Durgi Soren

P. S. case number and date & time of Inquest

Palasi P.S. case No.06/05 dated 03.05.2005 u/s 364/34 of the I.P.C. added sections 302/201 of the I.P.C.

Name of deceased and alias name and father's name, address age and gender

Durgi Soren, W/o Sonu Marandi, resident of Maina P.S. Palasi, District Araria age 45 years approximately, Female

Place where dead body was found, time and date

In village Pipra Pakri Advasi Tola 20 yards north by the side of house of accused Shambhu Marandi, S/o Barka Marandi in North-West of Brinjal field about four & half feet buried in a ditch which was taken out after digging the earth as per statement of accused Shambhu Marandi and Vishnu marandi date 5.1.2005 time 13.30 hours

Description and condition of dead body, height, identification mark, colour of eyes and hair etc.

Dead body found four and half feet beneath buried in the earth head south leg north, both hand folded hair long black, one Churi in hand, skin of face decomposed height five feet.

Injury visible on the body, wound and other sign and the weapon used for causing

As the skin was highly decomposed, the injury could not be detected because it is said that after strangulation dead body was buried on the earth.

Cloths found on the dead body or near the body, ornaments, weapon and other articles and its description.

Wearing blouse blue, petticoat red in colour, old head karhif printed red and khathei in colour.

Cause of death as per witnesses their name and signature (1) Shamim Akhtar, Mukhiya Gram Panchayat Sukhsena, S/o Ashahabuddin resident of Rupail (2) Doman Rishideo S/o Dofai Rishidoe resident of Maina P.S. Palasi

It is said that after strangulated dead body was buried in the earth

*(3) Sign- Shamim Akhtar
(4) Sign- Doman Rishodeo*

Opinion of police office about cause of death and

Accused Shambhu Marandi and Vishnu Marandi have

signature

*accepted in their respective
confessional statement that
they had killed the deceased
Sonu Marandi and Durgi
Marandi after strangulating
them and buried the dead
body.*

17. In order to determine as to whether evidence of the Investigating Officer can be safely relied upon, it is imperative that the evidence of PWs. 11 and 12 is carefully perused.

18. The evidence of PW 11 (Shamim Akhtar) is that he was Mukhiya of Sukhsaina Gram Panchayat from 2001 to 2005, Maina village falls under his Panchayat and, on 05.01.2005, he went to Pipra village from Maina, where he saw Shambhu Marandi with the police. It is in the evidence of PW 11 that on the basis of the statement of accused Shambhu Marandi, the place, where brinjal had grown, situated on the north-western side of the house of accused Shambhu Marandi, was dug and after digging, two dead bodies were recovered, one dead body was of a female and the other one was of a male. One of the dead bodies was of Durgi Soren and the other one was of her husband. How PW 11 could identify the dead bodies of Durgi Soren and Sonu Marandi remains a mystery.

19. Thus, while the Investigating Officer claims that the two dead bodies aforementioned were recovered on the basis of the statements of both the accused aforementioned, the evidence of PW 11 and PW 12 show that it was on the basis of the

statement of accused Shambhu Marandi (since deceased) that the said dead bodies were recovered from a brinjal field situated on the north-western side of the house of accused Shambhu Marandi.

20. Situated thus, we have no other option, but to hold that since there is no consistent evidence on record as to which of the statements, relied upon by the prosecution, led to the recovery of the said two dead bodies, it will be highly unsafe and hazardous to place implicit reliance on the evidence of the Investigating officer (PW 13) or on the evidence of PW 11 and PW 12 as regards the fact as to whose statement had led to the recovery of the said two dead bodies.

21. Keeping, therefore, excluded from consideration unsafe and unreliable nature of the evidence, as regards recovery of the said two dead bodies, when we turn to the evidence of the informant (PW 10), we notice that according to her, her *devars* (husband's brothers), namely, Shambhu Marandi and Vishnu Marandi, came to her house to invite them to a feast at 5 O' clock in the evening of a Saturday about three years and four months ago, they took her husband, namely, Sonu Marandi, and the second wife of her husband, namely, Durgi Soren, to their house at village Pipra Pakari. It is in the evidence of informant (PW 10) that her husband did not come back on that day, she herself went out to Pipra-Pakri to search them, but they were not at the houses of the accused and when she asked accused Shambhu and Vishnu, they replied that her husband, Sonu Marandi, and his second wife,



namely, Durgi Soren, had returned to their home in the night itself after attending the feast. It is also in the evidence of informant (PW 10) that as her search for her husband and Durgi Soren failed, she rang up her son, namely, Sukumar Marandi, who live at Delhi, and told him to come back to his house, whereupon she went to police station and lodged there an information in this regard. It is the further evidence of the informant also that the police arrested both the accused and the police recovered both the dead bodies.

22. On the heels of the evidence of the informant (PW 10), the evidence of Hapan Pauria (PW 7), who is a co-villager of the informant, is that the occurrence took place two years nine months ago. Accused Shambhu and Vishnu Mrandi came to the village, namely, Maina, to take Sonu Marandi at 4 O' clock in the evening of a Saturday and Sonu Marandi and Durgi Soren were taken to attend the feast. It is in the evidence of PW 7 that Fulmani Hembram (PW 10) informed him that Sonu Marandi and Durgi Soren had not come back, and when accused Shambhu and Vishnu were asked, they responded by saying that Sonu Marandi and Surgi Soren had left for their home after having their dinner on very night, they had come to village Maina.

23. Closely following the evidence of the informant (PW 10) and Hapan Pauria (PW 7), Babulal Hansda (PW 8) has deposed that he had seen Shambhu, Vishnu Marandi, Sonu and Durgi Marandi going towards the direction of Pakari village at 4 O' clock in the evening on a Saturday about two years and nine

months ago.

24. Thus, from the evidence of PW 7, PW 8 and PW 10, what evidence clearly transpires is that the two accused came to the house of Sonu Marandi and, then, invited Sonu Marandi and Durgi Hembram to the house of the accused and, accompanied by two accused, both of them (Sonu and Durgi) proceeded for the house of the accused. While the said four persons were proceeding towards village Pakri, where two accused came from, they were seen by PW 8.

25. In the face of the evidence on record, as depicted above, we have no hesitation in holding that Sonu and Durgi did leave their house, accompanied by the two accused aforementioned, for the houses of the accused. From the evidence of PW 10, it also transpires that the two accused admitted that Sonu and Durgi had dinner at the house of the accused and left in the night itself. Sonu and Durgi were, thus, seen last in the company of the two accused and since thereafter, they were not seen alive.

26. Though there is, thus, great suspicion that the two accused had their hands in the disappearance of Sonu Marandi and Durgi Soren, the fact remains that suspicion, howsoever grave, cannot be made basis of conviction.

27. Because of what has been discussed and pointed out above, we are clearly of the view that in the facts and attending circumstances of the present case, the accused-

appellant, Vishnu Marandi, ought to have been accorded benefit of doubt.

28. In the result and for the foregoing reasons, we allow this appeal. The impugned conviction of the accused-appellant and the sentences passed against him by the judgment, under appeal, are hereby set aside. The accused-appellant, Vishnu Marandi, is held not guilty of the offences, which he stood convicted of, and he is hereby acquitted of the same under benefit of doubt.

29. As the accused-appellant, Vishnu Marandi, is on bail, his bail bonds are hereby cancelled and his sureties shall stand discharged.

30. Let the *Amicus Curiae* be paid a fee of Rs. 5,000/-.

31. Registry shall, forthwith, send a copy of this judgment and order to the learned trial Court along with the Lower Court Records.

(I. A. Ansari, J.)

(Vikash Jain, J.)

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