

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Appeal (DB) No.399 of 2014**

(AGAINST THE JUDGMENT OF CONVICTION, DATED 25th APRIL, 2014, AND THE ORDER OF SENTENCE, DATED, 28<sup>TH</sup> APRIL, 2014, PASSED BY SHRI MAN MOHAN SHARAN LAL, 3RD ADDITIONAL SESSIONS JUDGE, MADHUBANI, IN SESSIONS TRIAL NO. 385 OF 2011, ARISING OUT OF KALUAHI POLICE STATION CASE NO. 92 OF 2010).

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Lal Babu Choudhary, son of Late Lutan Choudhary, resident of village Mahinathpur, P.S. Basopatti, District Madhubani

.... .... **Appellant**

Versus

The State of Bihar

.... .... **Respondent**

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**Appearance :**

For the Appellant : Mr. Ajay Kumar Thakur, Advocate  
Mr. Md. Imteyaz Ahmad, Advocate  
Mr. Ravi Ranjan, Advocate

For the Respondent : Mr. Ajay Mishra, APP

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**CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI**

**and**

**HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH**

ORAL JUDGMENT

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

**Date: 24-05-2016**

By the judgment, dated 25.04.2014, passed, in Sessions Trial No. 385 of 2011, by learned 3rd Additional Sessions Judge, Madhubani, the appellant, Lal Babu Choudhary, S/o late Lutan Choudhary, stands convicted under Section 302 and 201 of the Indian Penal Code. In consequence of his conviction, the appellant stands, under the order, dated 28.04.2014, sentenced to suffer imprisonment for life. The appellant is aggrieved by the said judgment and order in the

present appeal.

**2.** The Chaukidar of Kaluahi Police Station, Dharmdeo Yadav (P.W 10) is the informant of Kaluahi P.S. Case No. 92 of 2010, who, according to the F.I.R., is said to have seen the dead body of the deceased lying on the eastern side of N.H. No.105, on the bank of Jibachh river, nearly 200 yards away from Parsa bridge. The dead body appeared to be that of a girl aged 18 to 20 years. He is said to have informed the Officer Incharge of the Police Station raising suspicion that the deceased appeared to have been killed somewhere else and her dead body thrown away at the place, as described. Upon receiving information to this effect, the Officer Incharge of the Police Station reached there, whereafter *fardbeyan* of the Choukidar was recorded leading to registration of the *First Information Report*.

**3.** From the materials on record, it transpires that the dead body could not be initially identified and a photograph of the dead body was published in newspaper(s). After publication of the photograph in newspaper(s), the dead body of the deceased is said to have been identified as that of Kajal Kumari, daughter of Ganesh Rai (PW 14).

**4.** Upon completion of the investigation, the Police submitted charge sheet against the appellant, and one accused Chhotan Mandal @ Ram Lochan Mandal for the offences

punishable under Sections 302 and 201 of the Indian Penal Code. The charges came to be framed thereafter, against them for the offences punishable under Sections 302 and 201 read with Section 34 of the Indian Penal Code. Trial commenced since the accused persons denied the charge.

**5.** At the trial altogether 15 (fifteen) witnesses were examined including the doctor, who had conducted the *post mortem* examination. After the prosecution witnesses having been examined, the statements of the appellant and of the co-accused were recorded under Section 313(1)(b) of the Code of Criminal Procedure. They denied the allegation against them.

**6.** The learned trial Court, upon analysis, appreciation and scrutinizing the evidence on record, recorded conviction of the appellant under Sections 302 and 201 of the Indian Penal Code and acquitted co-accused Chhotan Mandal @ Ram Lochan Mandal. Consequent upon conviction of the appellant for commission of offence under Section 302 of the Indian Penal Code, learned trial Court sentenced the appellant to undergo imprisonment for life and fine of Rs. 10,000/- has been imposed with the stipulation that in case of default in payment of fine, the appellant shall undergo rigorous imprisonment for three months. For the offence punishable under Section 201 of the Indian Penal Code, the sentence of four years rigorous imprisonment and a fine of Rs. 7,000/- has been imposed and in

default thereof, rigorous imprisonment of two months has been stipulated by the impugned order, passed by the learned 3rd Additional Sessions Judge, Madhubani.

**7.** We have heard Mr. Ajay Kumar Thakur, learned Counsel for the appellant, and Mr. Ajay Mishra, learned Additional Public Prosecutor, appearing for the State.

**8.** From the evidence recorded at the trial, it appears that out of 15 witnesses, two witnesses, namely, P.W 1 (Bachchu Sahni) and P.W.2 (Ram Viveki Devi) were declared to be hostile to the prosecution as they did not support the case of the prosecution.

**9.** The prosecution tendered the prosecution witnesses Nos. 3, 4 and 6, namely, Vijay Das, Dharmnath Mishra and Manoj Kumar Jha, who in cross examination expressed their complete ignorance about the occurrence.

**10.** Ganesh Rai (PW 14), father of the deceased, Maheshwar Rai (PW7), and Dinesh Rai (PW 11) are full brothers. It is their common evidence that at the time of occurrence, the father of the deceased, Ganesh Rai (PW14), had gone to Punjab for earning livelihood. PW 7 (Maheshwar Rai) in his evidence has said that his elder brother (Dinesh Rai) PW 11 had seen the photograph of the deceased in newspaper and suspecting that the photograph is of the daughter of the P.W 14, he informed PW 11 (Dinesh Rai) about the same. PW 7 (Maheshwar Rai) and



PW 11 (Dinesh Rai) are thereafter said to have gone to the house of the appellant, where the deceased used to reside. The appellant is co-brother of father of the deceased Ganesh Rai (PW 14). Ganesh Rai (PW 14), in his evidence, has deposed that the deceased used to reside with the appellant for the purpose of her studies and that is why, they had gone to the appellant's place to enquire about the deceased. When they (PWs 7 and 11) reached there, the house of the appellant was found locked. It was specifically deposed at the trial by P.W 7 (Maheshwar Prasad Rai) that a co-villager of the appellant, namely, Ram Viveki Devi (PW 2) informed them that on 30.11.2010, the appellant, along with Mithlesh Devi, had taken her (deceased) to some place in a Bolero vehicle, which was being driven by Ghutan Mandal. They also learnt that the appellant, Mithlesh Devi, and Kamlesh Choudhary had killed the deceased and for the purpose of disappearance of the dead body, it was handed over to the driver, namely, Ghutan Mandal. The dead body was identified by P.W 7 (Maheshwar Prasad Rai), as deposed by him.

**11.** Brother of Maheshwar Pd. Rai (PW 7), namely, Dinesh Rai (PW11) in his deposition has said that a neighbour of the appellant had informed him that the appellant in inebriated condition had attempted to commit rape on the deceased.

**12.** From perusal of the evidence of the



prosecution witnesses on record, it is evident that implication of the appellant is mainly on the information, which PWs 7 and 11 are said to have received from Ram Viveki Devi (PW 2). There is no eye witness to the occurrence. It is apparently a case of circumstantial evidence, which rests on the information of the PW 2, said to have been given to PWs 7 and 11.

**13.** As has been noticed at the very outset, PW 2 (Ram Viveki Devi) has been declared hostile to the prosecution. In her deposition, she has categorically stated that she had not made any statement before the Police.

**14.** Considering the circumstances that PWs 7 and 11 are merely hearsay witnesses and their evidence is based on the information which they are said to have received from PW 2 (Ram Viveki Devi), who has been declared to be hostile to the prosecution, we are of the considered view that the prosecution, in the present case, has miserably failed to prove the accusation against the appellant beyond all reasonable doubt.

**15.** In the result and for the forgoing reasons, we allow this appeal. The impugned conviction of the accused-applicant and the sentences passed against him by the judgment and order, under appeal, are hereby set aside. The accused-appellant is held not guilty of the offences, which he stands convicted of, and he is hereby acquitted of the same under benefit of doubt.

**16.** Let the accused-appellant be set at liberty, forthwith, unless he is required to be detained in connection with any other case.

**17.** The Registry shall, forthwith, send a copy of this judgment and order to the learned trial Court along with the Lower Court Record.

**(I. A. Ansari, ACJ)**

**(Chakradhari Sharan Singh, J)**

A.I./-

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