

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.204 of 2017

(Against the judgment of conviction, dated 03.02.201, and order of sentence, dated 09.02.2011, passed by Shri Ajit Kumar Sinha, Additional Sessions Judge-VIII, Patna in S.T. No. 613 of 2006, arising out of Mokamah P.S. Case No. 110 of 2005)

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Tarkeshwar Manjhi @ Tareshwar Manjhi @ Budhwa, S/o Late Yamuna Manjhi,
R/o vill. - Malna Tola, Mokama, P.S. Mokamah, Distt. - Patna

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

with

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Criminal Appeal (DB) No. 238 of 2011

Arising Out of PS.Case No. -0 Year- null Thana -null District- PATNA

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Pankaj Kumar @ Langra S/O Bishundeo Singh Resident Of Village- Mokama
Moldiyar Tola, P.S.- Mokama, Distt.- Patna

.... Appellant/s

Versus

The State Of Bihar

.... Respondent/s

with

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Criminal Appeal (DB) No. 151 of 2011

Arising Out of PS.Case No. -0 Year- null Thana -null District- PATNA

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Jitu @ Jitendra Singh S/O Late Shyam Nandan Singh @ Lulti Singh Resident Of
Village- Mokama, Police Station- Mokama, Distric- Patna.

.... Appellant/s

Versus

The State Of Bihar



.... Respondent/s

Appearance :

(In CR. APP (DB) No.204 of 2017)

For the Appellant/s : Mr.

For the Respondent/s : Mr.

(In CR. APP (DB) No.238 of 2011)

For the Appellant/s : Mr.

For the Respondent/s : Mr.

(In CR. APP (DB) No.151 of 2011)

For the Appellant/s : Mr. Ramyash Singh, Adv.

For the State : Mr. S.N. Prasad, APP

Mr. Bipin Kumar, APP

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE ANIL KUMAR UPADHYAY

Date: 16-09-2017

These two appeals arising out of common judgment of conviction in Sessions Trial No. 613 of 2006 whereby two appellants and one Pankaj Kumar @ Langra were convicted by the Additional Sessions Judge-VIII, Patna vide judgment and order dated 3.2.2011 and order of sentence dated 9.2.2011 whereby the appellants were awarded for life imprisonment and a fine of Rs. 25,000/- each for an offence under section 302 of the Indian Penal Code and 10 years rigorous imprisonment for the offence under section 364 of the Indian Penal Code and further rigorous imprisonment for seven years for the offence under section 201 of the Indian Penal Code and in the event of default of payment of fine to undergo three months rigorous imprisonment.

2. Cr. Appeal No. 238 of 2011 has been abated on account of death of the sole appellant of that case i.e. Pankaj Kumar @ Langra.

3. Cr. Appeal No. 204 of 2017 is the jail appeal which is heard along with Cr. Appeal No. 151 of 2011 preferred against the common judgment as stated above.



4. We have heard Mr. Ramyes Singh appearing on behalf of the appellants. Mr. Ramyes Singh is the empanelled Advocated of Patna High Court Legal Service Committee on behalf of both the appellants.

5. The appellants were convicted by the additional Sessions Judge-VIII, Patna in Sessions Trial No. 613 of 2006 for the offence under sections 364, 376, 302 and 201 of the Indian Penal Code.

6. The prosecution case in short is that on 31.08.2005, the informant Girija Devi (P.W. No.5) gave her statement before Officer in charge of Mokamah Police Station alleging therein that she along with her elder sister Gunga, aged about 65-66 years, who was a deaf used to work as domestic help in the Mokama police station. On 30.08.2005, after cooking food she went to her residence but her elder sister did not reach home. Next morning she came to police station and inquired about her sister. She was informed that last evening her sister left thana around 9.00 P.M. On further inquiry she learnt that from Kali Mandir near High School, where from way to her house emanates, 5-6 young persons of the locality caught her sister and took her along. The informant searched her sister in the nearby places but no trace of her sister could be had. The informant suspected that 5-6 persons who took her sister along would have confined her. On the basis of Fard-beyan of the P.W. 5, the police has lodged formal FIR bearing Mokamah P.S. Case No. 110 of 2002. During the course of investigation police got the clue from one Ranjit about involvement of appellant Tarkeshwar in the commission of crime and thereafter police interrogated Tarkeshwar who made confessional statement regarding commission of rape and murder of the victim and on the basis of confessional statement dead body was recovered from the toilet. The other accused persons involvement was disclosed by Tarkeshwar.



7. The police after investigation submitted charge-sheet against the appellants and on 13.06.2006, case was committed to the court of sessions for trial and accordingly sessions trial commenced.

8. The charges were framed against the appellants for offence under sections 364, 376, 302, 201,34 of the Indian Penal Coed. They pleaded not guilty and as such trial commenced against them.

9. On behalf of the prosecution 12 witnesses were examined to prove the case. However, out of 12 witnesses, P.W.1, P.W.2, P.W.3 and P.W.4 were declared hostile.

10. P.W.-5 Girija Masomat is the informant of the case and sister of the deceased.

11. P.W.-6 is also relative of the deceased. He has only deposed to the extent that the deceased was working as maid servant in the Thana and was his relative.

12. P.W.-7 is the doctor who conducted most-mortem examination of the deceased and found injury of evidence of rape upon deceased.

13. P.W.-8 is the I.O. of the case who has recorded confessional statement of the appellants Tarkeshwar Manjhi and **Pankaj Kumar @ Langra** (now dead) of Cr. Appeal No. 204 of 2017.

14. In this case, confessional statement of the appellant Tarkeshwar Manhi was recorded before the police as well as before the Magistrate under section 164 of the Cr.P.C. The dead body of the deceased was recovered on the confessional statement of the appellant Tarkeshwar Manjhi.

15. Mr. Ram Yash Singh in the instant appearing on behalf of the appellant has submitted that retracted confession of the accused has no evidentiary value. He submitted that the so-called confessional statement recorded



under section 164 of the Cr.P.C. cannot be relied upon for convicting the appellant as the said confessional statement was not recorded by the Magistrate by cautioning him that his statement may go against him. He submitted that the confessional statement in the absence of Forensic Science report cannot be relied upon. Mr. Singh has submitted that appellant was arrested on the statement of Ranjit Singh but the prosecution failed to examine Ranjit Singh and non-examination of Ranjit Singh in the instant case is fatal as the material witnesses who could have unfolded the true narrative of the case was withheld this act of prosecution goes against the prosecution as the appellant Tarkeshwar Manjhi was arrested on the basis of statement of Ranjit Singh who gave clue to the police about involvement of this appellant and as such his examination in the instant case was required and non-examination of Ranjit Singh has caused serious prejudice to the appellant as the appellant could have cross-examined Ranjit Singh. Mr. Singh submitted that in a case where the conviction is based on circumstantial evidence and confessional statement cannot be relied upon if not supported scientific examination and in the case where confession was recorded without cautioning the accused that the statement may go against him. He submitted that no attempt was made to examine the accused medically and DNA test to prove that they have committed rape of the victim.

16. We have gone through the judgment of the trial court. The trial court has primarily based the conviction on the confessional statement of Tarkeshwar Manjhi. The confessional statement of Tarkeshwar Manjhi before the police and before the Magistrate under section 164 of the Cr.P.C. is dominating factor for holding the appellant guilty. Tarkeshwar Manjhi has retracted his confession in the trial and therefore, retracted confession cannot be used against the co- accused and there is no independent material than the confessional



statement of Tarkeshwar Manjhi to connect the appellant Jitu @ Jitendra Singh in the instant case. The conviction of the appellant Jitu @ Jitendra Singh is unsustainable, advertent to the confessional statement of Tarkeshwar Manjhi, it is seen that while recording statement under section 164 Cr.P.C. by the Judicial Magistrate, he was not cautioned that his statement can go against his interest which was one of the solemn duties of the Judicial Magistrate while recording confessional statement under section 164 of the Cr.P.C. and for the aforesaid lapse in recording the statement under section 164 Cr.P.C. the confessional statement cannot be taken as reliable testimony to hold the appellant guilty.

17. In addition thereto, we find that the appellant Tarkeshwar Manjhi has remained in custody since 2005 for 13 years, in addition thereto, we find that while examining the appellant under section 313 Cr.P.C. the appellant Tarkeshwar Manjhi not confronted with the adverse material and only formality of section 313 of the Cr.P.C. was completed. Not a single adverse situation about the involvement of the appellant was confronted during the course of examination under section 313 Cr.P.C. the aforesaid defects in the conduct of the trial goes to the root of the case that the trial was not conducted and the appellant be held to be guilty beyond all reasonable doubts as in the instant case beyond confessional statement there is nothing to establish the guilt of the appellants.

18. In the aforesaid backdrop of the facts and circumstances, we are of the considered view that the conviction of the appellant is not based on material which established the allegation against the appellant proved beyond reasonable doubts.

19. Accordingly, we set aside the judgment of conviction in Sessions Trial No. 631 of 2006 and order of sentence dated 9.2.2011. The appellant of Cr. Appeal No. 151 of 2011, namely, Jitu @ Jitendra Singh is



already on bail, he is discharged from the liability bail bond and the appellant of Cr. Appeal No. 204 of 2017 namely, Tarkeshwar Manjhi @ Tareshwar Manjhi @ Budhwa is directed to be released forthwith, if he is not required in any other case.

20. In the result, both the appeals are allowed.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

Ravi/-

AFR/NAFR	NAFR
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