

**IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM OFFICIAL CHAMBERS VIA VIDEO APPLICATION)
CRIMINAL APPEAL (SJ) No.3070 of 2021**

Arising Out of PS. Case No.-401 Year-2020 Thana- BIRAUL District- Darbhanga

SUNIL RAI Son of Shri Jai Kant Rai Resident of Village - Bairampur, P.S.-
Biraul, District - Darbhanga

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate

Ms. Vaishnavi Singh, Advocate

For the Respondent/s : Mr. Binay Krishna, Spl.P.P.

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER**

3 14-09-2021 Heard Mr. Ajay Kumar Thakur, learned counsel for
the petitioner and Mr. Binay Krishna, learned Special Public
Prosecutor for the State.

The appellant, in the present appeal, is seeking setting
aside the order dated 02.03.2021 passed by learned Additional
Sessions Judge - 1st – cum – Special Judge, SC/ST (POA) Act,
Darbhanga passed in connection with SC/ST G.R. No. 215/2020
arising out of Biraul P.S. Case No. 401/2020 registered for the
offence under Section 302, 201, 34 of the Indian Penal Code and
Section 3(1)(r)(s), 2(va), 3(2)(v) of the Scheduled Castes and
Scheduled Tribes (Prevention of Atrocities) Act. He is in
custody since 09.12.2020 having no criminal antecedent.

As per the prosecution story, the husband of the
informant had gone in the previous evening to this appellant and

one Bauna @ Naresh Manjhi asking them to pay his wages for the cutting of bamboos and other works. It is alleged that both of them had threatened the husband of the informant. It is alleged that at about 7:00 P.M. Bauna @ Naresh Manjhi took away the husband of the informant to his toddy shop for giving him toddy for consumption. The informant claims that she also went behind her husband and found that Bauna @ Naresh Manjhi was pulling down the husband of the informant and was assaulting. At this stage, it is stated that while Bauna @ Naresh Manjhi was taking her husband by pulling him, in the meanwhile this appellant came there who was sitting near the 'chour' and the appellant started tying legs and hands of the husband of the informant which was objected to but it is alleged that this appellant and Bauna @ Naresh pushed her and asked her to flee away. The informant alleges that she got frightened by this and raised hulla whereupon the co-villagers and informant started searching the husband of the informant and all the co-villagers caught hold of Bauna @ Naresh and asked him about the whereabouts of the husband of the informant. At this stage, Bauna @ Naresh disclosed that he and this appellant had killed the husband of the informant and his dead body was drawn in the 'Chour'. Informant says that the dead body was not

found after search, police was informed and then the dead body was found from the Dubariya Chour. The hands and legs of the husband of the informant were found tied.

Learned counsel for the appellant submits that from the First Information Report itself it appears that the allegation of threatening has been made against the appellant as well as Bauna @ Naresh Manjhi but the specific allegation of taking the husband of the informant to his toddy shop has been made against Bauna @ Naresh Manjhi. This appellant is not said to be present or accompanying said Naresh Manjhi when the husband of the informant was being taken away or was being assaulted by Bauna @ Naresh. It is only by way of addition at subsequent stage it is stated that this appellant also reached there and had tied the hands and legs of the husband of the informant.

Learned counsel submits that in the post-mortem report no ante-mortem injuries have been found on the hands and legs and it is not possible that if the hands and legs were tied during the assault then no ante-mortem injury will be found. It shows that so far as this appellant is concerned, the allegation that he had tied the ropes on the hands and legs of the husband of the informant are false and baseless.

Learned counsel further submits that again the

informant says that the co-villagers caught hold of Bauna @ Naresh Manjhi. It is the said co-accused who disclosed about the dead body. Learned counsel thus submits that it is a case of false implication of the appellant.

Mr. Binay Krishna, learned Spl.P.P. for the State has opposed the prayer for regular bail of the appellant. It is submitted that in course of investigation although no co-villager has come as an eye witness to the alleged occurrence but the informant has named this appellant also. On the query made by this court as to whether any ante-mortem injury has been found on the hands and legs of the deceased, learned Spl.P.P. has informed this court that no such ante-mortem injuries have been noticed in the medical report. The cause of death is said to be Asphyxia as a result of drowning in water. Learned Spl.P.P. has further informed that on legs and hands even no post-mortem injuries have been noticed.

Considering the facts and circumstances of the case, the specific allegation of having taken away the husband of the informant while assaulting him on way has been made against co-accused Naresh Manjhi, the allegation against the appellant that he had tied the hands and legs of the deceased by ropes not getting substantiated from the medical report and there is no

independent eye witness to the alleged occurrence, the recovery of body has been made on the subsequent date and the co-villagers have caught hold of Naresh Manjhi are some of the circumstances which have persuaded this court to set-aside the impugned order and directs release of the appellant above-named on bail on furnishing bail bond of Rs. 25,000/- (Rupees Twenty Five Thousand only) with two sureties of the like amount each to the satisfaction of learned Special Judge, SC/ST Act, Darbhanga in connection with Biraul P.S. Case No. 401/2020, subject to the condition as laid down under Section 437 (3) Cr.P.C.

And further condition that the court below shall verify the criminal antecedent of the appellant and in case at any stage it is found that the appellant has concealed his criminal antecedent, the court below shall take step for cancellation of bail bond of the appellant. However, the acceptance of bail bonds in terms of the above-mentioned order shall not be delayed for purpose of or in the name of verification.

(Rajeev Ranjan Prasad, J)

Rajeev/-

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Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.