

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL APPEAL (DB) No.684 of 2016**

Arising Out of PS. Case No.-20 Year-2012 Thana- AKHODHIGOLA District- Rohtas

Akhilesh Kumar @ Pacchu S/o Jagdish Sah resident of village - Bank, P.S.  
Akodhi Gola, District - Rohtas

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

**CRIMINAL APPEAL (DB) No. 545 of 2016**

Arising Out of PS. Case No.-20 Year-2012 Thana- AKHODHIGOLA District- Rohtas

Asha Devi wife of Sunil Sah resident of village Bairipur, P.S. Natwar, District  
Rohtas.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

**CRIMINAL APPEAL (DB) No. 662 of 2016**

Arising Out of PS. Case No.-20 Year-2012 Thana- AKHODHIGOLA District- Rohtas

Ranjan Kumar @ Pintu S/o Brahmdeo Singh resident of Vilage-Bank,  
P.S.Akodhi Gola, District Rohtas.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

**CRIMINAL APPEAL (DB) No. 834 of 2016**

Arising Out of PS. Case No.-20 Year-2012 Thana- AKHODHIGOLA District- Rohtas

Upendra Sah Son of Suresh Sah resident of village Bank, P.S. Akorhi Gola,  
District - Rohtas

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

**CRIMINAL APPEAL (DB) No. 480 of 2017**

Arising Out of PS. Case No.-20 Year-2012 Thana- AKHODHIGOLA District- Rohtas

Sunil Sah Son of Ramayan Sah, Resident of Village- Bairipur, Police Station-  
Natwar, District- Rohtas at Sasaram.

... .. Appellant/s

Versus

The State of Bihar



... .. Respondent/s

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**Appearance :**

(In CRIMINAL APPEAL (DB) No. 684 of 2016)

For the Appellant/s : Mr. Ajay Kr. Thakur, Adv.  
Mrs. Vaishnavi Singh, Adv.  
Mr. Ravi Ranjan, Adv.

For the Respondent/s : Ms. Shashi Bala Verma, APP

(In CRIMINAL APPEAL (DB) No. 545 of 2016)

For the Appellant/s : Mr. Ajay Kr. Thakur, Adv.  
Mr. Raghunandan Kumar Singh

For the Respondent/s : Ms. Shashi Bala Verma, APP

(In CRIMINAL APPEAL (DB) No. 662 of 2016)

For the Appellant/s : Mr. Ajay Kr. Thakur, Adv.  
Mr. Kuber Pathak, Adv.

For the Respondent/s : Ms. Shashi Bala Verma, APP

(In CRIMINAL APPEAL (DB) No. 834 of 2016)

For the Appellant/s : Mr. Ajay Kr. Thakur, Adv.  
Mr. Raghunandan Kumar Singh

For the Respondent/s : Ms. Shashi Bala Verma, APP

(In CRIMINAL APPEAL (DB) No. 480 of 2017)

For the Appellant/s : Mr. Vikramdeo Singh, Adv.  
Mr. Sadanand Roy, Adv.

For the Respondent/s : Ms. Shashi Bala Verma, APP

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**CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR  
and**

**HONOURABLE MR. JUSTICE HARISH KUMAR  
ORAL JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)**

**Date : 10-05-2023**

We have heard Mr. Ajay Kumar Thakur and Mr. Kuber Pathak for the appellants in all the criminal appeals, which are being disposed of by this common judgment.

2. The appellants in all the appeals have been convicted under Sections 364A, 302, 201 & 120B with the aid of Section 34 of the Indian Penal Code vide judgment and order of conviction and sentence dated 10<sup>th</sup> of May,



2016 and dated 12<sup>th</sup> of May, 2016 respectively passed by learned 3<sup>rd</sup> Additional District & Sessions Judge, Rohtas at Sasaram in Sessions Trial No. 377 of 2013 / Computer Registration No. 5389 of 2013, arising out of Akodhi Gola P.S. Case No. 20 of 2012 whereby all the appellants have been sentenced to undergo rigorous imprisonment for life, to pay a fine of Rs. 10,000/- each and in default of payment of fine to further suffer rigorous imprisonment for two years for the offence under Section 364A/34 of the I.P.C.; rigorous imprisonment for life, to pay a fine of Rs. 10,000/- each and in default of payment of fine to further undergo rigorous imprisonment for two years for the offence under Section 302/34 of the I.P.C.; rigorous imprisonment for seven years, to pay a fine of Rs. 2,000/- each and in default of payment of fine to further undergo rigorous imprisonment for two years for the offence under Section 201/34 of the I.P.C. No separate sentence has been recorded under Section 120B of the I.P.C. The sentences however have been ordered to run concurrently.



3. The nine years old son of Dhanji Singh (P.W.4) went missing on 17.03.2012. A station diary entry was recorded by him which has not been exhibited in this case regarding his son Sanchit Kumar having gone missing while returning from the middle school. In the aforesaid statement, a suspicion was expressed on Subhash Singh, Ranjit Singh, Dillip Singh @ Sumer Singh, Ayodhya Singh and his wife Shobha Devi, all residents of the same village as that of the Informant, for the reason that they had pressurized P.W.4 in not going to police straightway and also promised to have the son of the P.W.4 recovered. This complaint was made on the next day of the son of P.W.4 having gone missing. Later, as has been alleged in the F.I.R., on 21.03.2012, the aforementioned named persons tried to help P.W.4 to recover his son. One Subhash is said to have received a telephone call informing him that the son of P.W.4 has been spotted in Sasaram and he is reported to be crying. On such information, the Informant along with one Ranjit went to Sasaram but, did not find his son.



While at Sasaram, P.W.4 received a telephone call from mobile no. 8579098439 asking him to pay up Rs. 5 lakhs for securing the release of his son.

4. The Informant also learnt that prior to this telephone call for ransom, there was a call on the telephone of one Ranjit Singh who along with his brother and father had been making a pretence of helping P.W.4 for recovering his child but in fact, they were only involved in kidnapping his son.

5. On the basis of the aforementioned written report, a case vide Akodhi Gola P.S. Case No. 20 of 2012 dated 22.03.2012 was registered for investigation under Section 364A and 120B I.P.C. against the aforementioned persons. None of those F.I.R. named accused persons were ultimately found to have had any role in the kidnapping.

6. On the P.W.4 having furnished the telephone number from which the ransom call had come to the police, the police appears to have taken some action in identifying as to who was the owner of such telephone number.



In course of investigation, it was found that such telephone number was registered in the name of one Lila Devi (P.W.9), who had no clue about any such occurrence. She did not even own that telephone number. All that she could say was that a bearded politician, on the pretext of getting a bank account opened in her name, took some documents from her which may perhaps have been used for purchasing the SIM number from which the ransom call was made.

7. It further appears from the records that when the son of P.W.4 was not to be found and the efforts of the local police appeared to be elephantine, P.W.4 approached the High Court and obtained a direction against the police to recover the victim within ten days. It was only after this order of the High Court that some swiftness was shown. It appears further from the deposition of the witnesses, specially of P.W.10, who is the main Investigating Officer of this case that he arrested appellant Ranjan Kumar @ Pintu in Cr. Appeal (DB) No. 662 of 2016 who confessed before him that he, in association with the other ap-



pellants, had kidnapped the victim and when ransom money could not be obtained, the victim was killed and buried. In his confession, he has named the other appellants.

8. On such confession, a skeleton is said to have been recovered after exhuming it from near a drain by the side of a bush. P.W.10 claims that such recovery was made on the indication of appellant Ranjan Kumar @ Pintu, which was supported by the other appellants. The recovery is said to have been made in presence of a government official viz. Block Development Officer who had been deputed to oversee the process of exhumation and recovery. Surprisingly, he has not been examined at the trial nor his statement has been recorded by P.W.10. The skeleton was identified by P.Ws. 3 and 4 (parents of the victim/deceased).

9. One Pinku Kumar @ Pintu Kumar (P.W.7) has only testified to the fact that he saw a skeleton which was recovered during the investigation of the case but clarified



that such recovery was not made in his presence. He has not spoken of any clothes or wearing apparel over the skeleton or the same having been recovered by the police. He only knew and certified therefore that such skeleton which, in most parts, was disjointed was sent to Anugrah Narayan Medical College & Hospital for further examination and confirmation.

10. The so-called inquest report (Exhibit 1/A) has been examined by us. One soiled skull, soiled leg bones, soiled rib-cage and tooth were found to have been recovered.

11. From the recovery noted in the inquest, it appears that even the skeleton was not in its whole form but heavily destroyed. The report further indicates that it needed to be confirmed whether the skeleton was of a human and if so, what was the age and gender of the deceased. There was no visible sign of any cause of death of the deceased which also was required to be ascertained.



This assemblage of the skeleton was sent to A.N.M.C.H. for examination.

12. Dr. Arvind Kumar (P.W.8), who at the relevant time was posted in A.N.M.C.H., examined the various parts of the skeleton and came to the rudimentary conclusion that the skeleton belonged to a male of 8 to 10 years. He could not however give any opinion regarding the cause of death as there was no evidence of any mechanical injury on the skeleton parts. The deceased, according to P.W.8, would have died some 8 to 9 months ago.

13. How did the doctor come to the opinion that the skeleton was of a boy of 10 years is a mystery. There were no indications of gender as only rib-cage and skull was found.

14. Be that as it may, on the basis of the findings that what was recovered was the skeleton of a 8 to 9 years old boy, an attempt was made by the police to have the same identified by Mira Devi (P.W.3) and Dhanji Singh (P.W.4), the parents of the victim/deceased.



15. In this connection, it would be relevant to refer to the deposition of P.W.3 (Mother) who has stated before the Court that on the information that the dead body of a person has been recovered, she went to police station along with her husband (P.W.4). The dead body was kept in a sack which was not found to be sealed. No sooner it was taken out, P.W. 3 became unconscious because of shock and she lost her senses intermittently. She did not remember whether the dead body was taken out from the sack in her presence or whether there was any entrails of human body along with the skeleton kept in the bag. Her olfactory senses were also not stirred, reflecting that the skeleton did not emit any foul/putred smell, which could only be because of passage of time.

16. However Dhanji Singh/P.W. 4 (father) seems to have identified the dead body as that of his son. He claims to have identified it on the basis of the clothes/wearing apparel about which there is no evidence



on record that the same was either recovered or was collected or was presented before P.W. 3 and P.W. 4.

17. As noted above, there is no reference of any wearing apparel having been recovered after the exhumation of the skeleton, as nothing has been mentioned about it in Ext. A/1 (the inquest report). Though, PW 4 has tried to justify that even if ready-made clothes worn by his son would be presented before him, he could identify the same.

18. Here, whether there were any clothes or not is not known.

19. We have earlier noticed that the Block Development Officer, who was deputed to oversee exhumation process, has not been examined nor his statement was recorded by P.W. 10.

20. Thus what was brought to the police station was a collection of bones which were soiled and disjointed. Those were kept in a sack, which was not even sealed. We are at loss to understand as to how P.W. 8, the doctor,



could use those disjointed pieces of bones to conclude that it belonged to a 8 to 9 years old boy, who was killed about six months ago.

21. In our quest to know the connection of the murder and the appellants, we have carefully examined the records of this case. Though there is no reference of the same in the deposition of the witnesses but, we find that one Dr. Arvind Kumar, Associate Professor and Head of the Department of Forensic Medicine and Toxicology in Anugrah Narayan Magadh Medical College and Hospital, Gaya (hereinafter referred to as 'ANMCH') had sent a report to the officer-in-charge of Akorhi Gola police station regarding examination of bones. A sealed wooden box had been received by the Forensic Department of ANMCH. On opening the same, soil and mud stained bones were found but, without any soft tissues. Those bones were cleaned and examined. The whole mass contained one skull, one mandible, portions of left and right tibia and fibula as well as radius and ulna (forearm bones). On examination of



those bones, it was found that those were having rough mark impressions of muscular attachments. The skull orbits were lower and had rounded margins. The frontal nasal junction has distinct angulation. The frontal and parietal evidences were not prominent. In upper jaw, both premolars and first permanent molars were present (total 12 teeth/sockets). The chin was found to be 'U' shaped. Based on these features of the bones, a rough assessment was made by the Forensic Department that it was the skeleton of a male, aged 8 to 10 years approximately but, the Forensic Department could not give any opinion regarding the cause of death, as it was not possible to form any opinion with only such materials before it. There was no sign of any mechanical injury on the bones. The time of death also was fixed at six months prior to such examination.

22. Assuming but not accepting the opinion of the Forensic Department that the skeleton belonged to a boy (male) of 8 to 9 years, that by itself would not be strong



enough evidence of recovery of the skeleton of the deceased. In fact, it could not even be called the corpus delicti as it signifies nothing.

23. We therefore doubt the identification made by P.Ws. 3 and 4. The Investigating Officer is to be blamed for it. Had he reported that along with these bone pieces, there were wearing apparel also and would have got it confirmed through the statement of the Block Development Officer, who had overseen the exhumation process, the situation could have been somewhat different.

24. We do not find any evidence of any wearing apparel either having been recovered along with the skeleton or having preserved and kept in the sack and thereafter shown to the P.W. 3 and P.W. 4.

25. We thus get strong impression that in a hasty manner, for doing lip-service and a pretence of compliance of the order of the High Court, such recovery has been shown to be made in order to close the chapter forever,



not realizing that such an act would belie the tall claim of the police of being a show-stopper.

26. Let us now examine the other materials brought on record by the prosecution in support of its case that the deceased was killed at the hands of the accused persons/appellants.

27. We have already noted that P.W. 4 (informant) only suspected others and not the appellants, as they had enmity with the family of P.W. 4 in the past.

28. P.W. 3 also claims to have been accused of purloining a gold chain of one of the suspected accused/ Subhash for which she was assaulted in the past. Very candidly, P.W. 3 and P.W. 4 have spoken before the police that needle of suspicion veered around them because they had some enmity in the past and that for no apparent good reason, they were pressurizing P.W. 4 in not reporting the police straightway even when a nine year old boy had gone missing. They had also promised to have the son recovered within a couple of days. P.W. 4 is also said to have gone to



Sasaram on the asking of one of the suspected persons viz. Subhash and Ranjeet, who had received definite information that his son was spotted somewhere near Sasaram. It was during that period that P.W. 4 had received the ransom call whereafter it was found that the call had been made from a telephone number registered in the name of P.W. 9.

29. Pankaj Kumar (P.W.1), only knew about the occurrence of kidnapping and later, of the death of the victim. He had no clue about any of the accused persons. Similar statement has been made by Gayatri Devi (P.W. 2) who has gone to the extent of stating that she learnt in the village that the dead body of the victim has not been recovered. P.Ws. 3 and 4, the parents of the deceased/victim have categorically stated that they had no enmity in the past with the appellants herein who have been charged with conspiracy, abduction, kidnapping and murder of their son. P.W. 4, within two days of his son having gone miss-



ing, found the school bag of the victim in the fodder-house of a neighbour namely Ajay Singh.

30. Was he abducted from that place or from some other place is not known.

31. No schoolmate of the victim has been examined either during the course of investigation or during trial. It was also not ascertained whether the victim had gone to school and was returning from school when he was abducted. There could be no doubt that P.W. 3 and P.W. 4 have lost their child, aged about 9 years but, whether he was kidnapped and killed in the manner suggested by the police is highly doubtful. In their eagerness to believe that the dead body of their son has been recovered, P.W. 3 and P.W. 4 have claimed to identify the collection of bones to be that of their son.

32. Such identification cannot be relied upon by a court of law to put any imprimatur on the findings of the police that the dead body of the victim was recovered on the indication of the appellants, thus making it admissible



under Section 27 of the Indian Evidence Act. Even under Section 27 of the Indian Evidence Act, only as such information, as would relate distinctly to the recovery, would be admissible.

33. We find from the records of this case that the investigation proceeded and ended with the confession of the appellants and the same has been the approach of the trial court in accepting such confessional statements and solely relying upon such materials which cannot be called evidence in any sense of the term for convicting and sentencing the appellants.

34. We have not been persuaded by the counsel for the State to take any other view except rejecting the view of the Trial court.

35. We, perforce, set aside the judgment and order of sentence dated 10<sup>th</sup> of May, 2016 and dated 12<sup>th</sup> of May, 2016 respectively passed by learned 3<sup>rd</sup> Additional District & Sessions Judge, Rohtas at Sasaram in Sessions Trial No. 377 of 2013 / Computer Registration No. 5389



of 2013 arising out of Akodhi Gola P.S. Case No. 20 of 2012 and acquit all the appellants.

36. The appellants be released from the jail forthwith if not required in any other case.

37. The appeals are allowed.

(Ashutosh Kumar, J)

( Harish Kumar, J)

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