

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.702 of 2018

Arising Out of PS. Case No.-54 Year-2014 Thana- BUNIYAD GANJ District- Gaya

Raju Kumar Yadav Son of Dhaneshwar Yadav @ Dhanesar Yadav Resident of Village - Kathautiya, P.S. Muffasil, District - Gaya.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with
CRIMINAL APPEAL (DB) No. 719 of 2018

Arising Out of PS. Case No.-54 Year-2014 Thana- BUNIYAD GANJ District- Gaya

Dharmendra Kumar Son of Munnilal @ Munnia Yadav, resident of Village- Shadipur, P.S. Buniyadganj, District- Gaya.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with
CRIMINAL APPEAL (DB) No. 743 of 2018

Arising Out of PS. Case No.-54 Year-2014 Thana- BUNIYAD GANJ District- Gaya

Jitendra Chaudhary @ Jitendra Kumar Chaudhary son of Arjun Choudhary, resident of Village- Manpur Pehani, Police Station- Buniyadganj, District- Gaya Bihar.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :
(In CRIMINAL APPEAL (DB) No. 702 of 2018)
For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
Mrs. Vaishnavi Singh, Advocate
Mr. Purushotam Kumar, Advocate
For the Respondent/s : Mr. Ajay Mishra, APP
(In CRIMINAL APPEAL (DB) No. 719 of 2018)
For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
Mrs. Vaishnavi Singh, Advocate
Mr. Purushotam Kumar, Advocate
For the Respondent/s : Ms. Shashi Bala Verma, APP
(In CRIMINAL APPEAL (DB) No. 743 of 2018)
For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate



Mrs. Vaishnavi Singh, Advocate
Mr. Purushotam Kumar, Advocate
For the Respondent/s : Mr. Abhimanyu Sharma, APP

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH
and
HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 30-01-2024

These appeals have been preferred by the appellants under Section 374(2) of the Code of Criminal Procedure, putting to challenge the impugned judgment of conviction dated 17.04.2018 and the order of sentence dated 24.04.2018, passed by learned 1st Additional District & Sessions Judge-cum-Special Judge (POCSO Act), Gaya, arising out of Buniyadganj P.S. Case No. 54 of 2014, POCSO Case No. 12 of 2015, whereby the appellants have been convicted and sentenced as under:

Cr. Appeal (DB) No. 702 of 2018				
Appellant	Penal Provision	Sentence		
		Imprisonment	Fine (Rs.)	In default of fine
Raju Kumar Yadav	Under Section 302/34 of the IPC	R.I. for life	25,000/-	R.I. for two years
	Under Section 201/34	R.I. for seven years	10,000/-	R.I. for one year
	Under Section 6 of the POCSO Act	R.I. for life	25,000/-	R.I. for two years
Cr. Appeal (DB) No. 719 of 2018				
Appellant	Penal Provision	Sentence		
		Imprisonment	Fine (Rs.)	In default of fine
Dharmendra Kumar	Under Section 302/34 of the IPC	R.I. for life	25,000/-	R.I. for two years
	Under Section 201/34	R.I. for seven years	10,000/-	R.I. for one year
	Under Section 6 of the	R.I. for life	25,000/-	R.I. for two years



	POCSO Act			
Cr. Appeal (DB) No. 743 of 2018				
Appellant	Penal Provision	Sentence		
		Imprisonment	Fine (Rs.)	In default of fine
Jitendra Chaudhary @ Jitendra Kumar Chaudhary	Under Section 302/34 of the IPC	R.I. for life	25,000/-	R.I. for two years
	Under Section 201/34	R.I. for seven years	10,000/-	R.I. for one year
	Under Section 6 of the POCSO Act	R.I. for life	25,000/-	R.I. for two years

2. All the sentences have been ordered to run concurrently.

3. An information given by the maternal grandmother of the victim (PW-7) through a communication addressed to the Senior Superintendent of Police, Gaya dated 26.06.2014, led to registration of Buniyadganj P.S. Case No. 54 of 2014, disclosing commission of offence punishable under Section 363 read with Section 34 of the Indian Penal Code. According to the said information, on 22.06.2014, the victim, a minor girl, was found missing from her house and did not return till late in the night. On 23.06.2014, she got a *sanha* registered vide *sanha No. 342* in Buniyadganj Police Station regarding the missing of the victim. She suspected that these appellants, Jitendra Chaudhary, Raju Kumar Yadav and Dharmendra Kumar had in a conspiracy kidnapped the victim and killed her. The reason behind such suspicion was previous disputes and threats issued by them. It is the prosecution's case that during the course of investigation, the



confessional statement of the appellant Jitendra Chaudhary @ Jitendra Kumar Chaudhary was recorded on 28.06.2014, leading to recovery of the dead body of the deceased on the same date from a drain adjacent to railway line. The dead body of the victim was identified by the informant. Consequent upon the recovery of the dead body of the deceased in the background of the confessional statement made by the appellant Jitendra Chaudhary @ Jitendra Kumar Chaudhary, Sections 376 and 201 of the IPC were added in the FIR. An inquest report was prepared and the dead body was sent for postmortem examination. It is worthwhile mentioning that in his confessional statement (Ext. 8) the appellant Jitendra Chaudhary @ Jitendra Kumar Chaudhary is said to have disclosed that he had illicit relationship with the victim's aunt (PW-5). The victim had once witnessed both of them in compromising position. Being afraid that the victim might disclose about their relationship, the appellant Jitendra Chaudhary @ Jitendra Kumar Chaudhary called her in a factory where all these appellants worked. The appellant Jitendra Chaudhary @ Jitendra Kumar Chaudhary and other two appellants subjected the victim to sexual intercourse because of which she had become unconscious. They later killed the deceased, packed the dead body in a plastic bag and threw the dead body of the deceased in the drain. He also , said to have,



disclosed that after committing the crime, he and his accomplices returned but the appellant Dharmendra Kumar met with an accident somewhere and was undergoing treatment. As has been noted above, the disclosure to the aforesaid effect led to recovery of the dead body of the deceased. The police submitted chargesheet on completion of investigation against these appellants for commission of the offences punishable under Section 376(2) (g), 302, 201 read with Section 34 of the IPC and Section 4 and 6 of the POCSO Act. Cognizance was subsequently taken of the aforesaid offences. The appellants were charged of commission of offences under Section 376 D, 302 and 201 read with Section 34 of the IPC and Section 6 of the POCSO Act. The appellants denied the charges and claimed to be tried.

4. At the trial, the prosecution got examined altogether 11 witnesses including the informant (PW-7), the Investigating Officer who had committed the investigation (P- 8), another Investigating Officer who had submitted the chargesheet (PW-1), the doctor who had conducted postmortem examination (PW-3), the victim's aunt (PW-5). The victim's mother and her father deposed at the trial as PWs 2 and 3. PW-6 happened to be the maternal uncle of the deceased. PW-6 deposed at the trial on the point of seizure of a mobile phone from the possession of the



appellant Jitendra Chaudhary. Further, PW-9 had typed the information dated 26.06.2014, which was sent to the Superintendent of Police, Gaya and is a formal witness. PW 10 proved the Sanha entry dated 23.06.2014. PW-11 has brought the sanha entry to the court for production.

5. Apart from the oral evidence of the aforementioned prosecution witnesses, the prosecution brought on record following documentary evidence to substantiate the charges:-

S. No.	Exhibit No.	Description
1.	Exhibit-1	P.M. Report dt. 29.06.2014 of Anjali Kumari deceased.
2.	Exhibit-1/4	P.M. Report dt. 30.06.2014 of Anjali Kumari deceased.
3.	Exhibit-2	Signature of Ramrati Devi on written statement.
4.	Exhibit-3	Endorsement of statement of F.I.R.
5.	Exhibit-4	Formal F.I.R.
6.	Exhibit-5	Written report of F.I.R.
7.	Exhibit-6	Inquest report
8.	Exhibit-6/1	Petition written by Suman Jha A.S.I. dt. 28.11.2016
9.	Exhibit-7	SDE No. 342 of Buniyadganj P.S.
10.	Exhibit-8	Confessional statement of Jitendra Choudhary

6. After closure of the evidence of the prosecution witnesses, the appellant were questioned under Section 313 of the CrPC, so as to give them an opportunity to explain the incriminating circumstances emerging against them, based on the evidence adduced at the trial. The appellant reiterated their plea of innocence and answered the said questions in negative.



7. The trial court after having evaluated the evidence adduced at the trial has convicted the appellants and sentenced them to imprisonment and fine as has been noted herein above.

8. Mr. Ajay Kumar Thakur, learned counsel appearing on behalf of the appellants has submitted that the trial court has erroneously convicted the appellants based on the so called confessional statement of the appellant Jitendra Chaudhary said to have been obtained by them when he was in police custody. He has argued that the trial court ought not to have marked as exhibit the entire confessional statement said to have been made by the appellant before the police, the same being not admissible in evidence. He contends that only such part of the confessional statement of an accused is admissible in evidence under Section 27 of the CrPC which leads to discovery of a fact. He has secondly submitted that in no case confession made by the appellant Jitendra Chaudhary while in police custody could have been used to convict the two other appellants, namely, Raju Kumar Yadav and Dharmendra Kumar. He has argued that as against the appellant Raju Kumar Yadav and Dharmendra Kumar, there is no evidence at all over and above the so called confessional statement of the appellant Jitendra Chaudhary. He has also argued that failure on the part of the police to prepare *panchanama* at the place of



occurrence demolishes the entire case of the prosecution of recovery of dead body of the deceased based on the disclosure made by the appellant Jitendra Chaudhary in his confessional statement. He has also argued that the confessional statement of the appellant Jitendra Chaudhary was not recorded in the presence of any Magistrate or any independent witness, and is therefore not admissible in evidence. In support of his submissions, he has relied on the Supreme Court's decisions in the case of *Subramanya v. State of Karnataka* reported in *2022 SCC OnLine SC 1400* and in the case of *Ramanand v. State of U.P.* reported in *2022 SCC OnLine SC 1396*. Referring to these decisions, he has submitted that it was incumbent upon the Investigating Officer to have prepared the seizure memo and the confessional statement ought to have been recorded in the presence of independent witnesses. Relying on the Supreme Court's decision, in case of *Venkatesh and Ors. Vs. State of Karnataka* reported in *(2023) Cr.LJ 183*, he has argued that the confessional statement as a whole ought not to have been exhibited by the trial court. He has also relied on the Supreme Court's decision in the case of *Rajesh v. State of M.P.*, reported in *2023 SCC OnLine SC 1202*. He has submitted that there is no evidence to the effect that the appellant was arrested by the police before his confessional statement was recorded. In such



circumstances, the confessional statement of the appellant cannot be taken into evidence. Referring to the above decisions, in the facts and circumstances of the case, he has submitted that the chain of circumstances cannot be said to have been proved to reach a definite conclusion that the appellants were guilty of the offences of which they were charged with.

9. Learned Additional Public Prosecutors appearing on behalf of the State have argued that it is evident from the confessional statement of the appellant Jitendra Chaudhary (Ext. 8) that the same was voluntary without any coercion. Based on the disclosure made by him, the dead body of the victim was recovered which was duly identified by the informant herself. The prosecution's witnesses have supported the prosecution's case. According to them, in the present case the chain of circumstances are complete and conclusively directed towards the guilt of these appellants.

10. We have perused the impugned judgment and order of the trial court as well as the lower court's records including the evidence adduced at the trial carefully. We have given our thoughtful consideration to the rival submissions advanced on behalf of the parties. It is evident from the materials on record that



the entire case of the prosecution against these appellants is based on

(i). The confessional statement of the appellant Jitendra Chaudhary. @ Jitendra Kumar Chaudhary.

(ii) recovery of the dead body of the deceased from a drain, and, recovery of a mobile phone from the possession of the appellant Jitendra Chaudhary. @ Jitendra Kumar Chaudhary.

11. We are convinced with the submissions advanced on behalf of the appellants that in no case, the confession of appellant Jitendra Chaudhary could have been used against other co-accused persons, namely, Raju Kumar Yadav and Dharmendra Kumar. We are satisfied, based on materials on record that there is absolutely no evidence against the appellants Raju Kumar Yadav and Dharmendra Kumar other than the confessional statement of the appellant Jitendra Chaudhary, said to be leading to recovery of the dead body of the victim.

12. As regards the confessional statement of the appellant Jitendra Chaudhary, so far as the same relates to his conviction, we find substance in the submissions advanced on his behalf that the trial court ought not to have exhibited the entire confessional statement rather could have marked as exhibit only such part of the said confession which could be said to have led to



discovery of a fact. In the present case, it is the prosecution's case that disclosure of Jitendra Chaudhary led to recovery of the dead body of the deceased from a drain. It is manifest from the record that no *panchnama* was prepared at the place of occurrence after the alleged recovery of the dead body of the deceased. The confessional statement was not recorded by the police in presence of any independent witness. The Supreme court in case of ***Subramanya v. State of Karnataka (supra)*** has held in paragraph 84 as under:-

"...If, it is say of the investigating officer that the accused appellant while in custody on his own free will and volition made a statement that he would lead to the place where he had hidden the weapon of offence, the site of burial of the dead body, clothes etc., then the first thing that the investigating officer should have done was to call for two independent witnesses at the police station itself. Once the two independent witnesses would arrive at the police station thereafter in their presence the accused should be asked to make an appropriate statement as he may desire in regard to pointing out the place where he is said to have hidden the weapon of offence etc. When the accused while in custody makes such statement before the two independent witnesses (panch-witnesses) the exact statement or rather the exact words uttered by the accused should be incorporated in the first part of the panchnama



that the investigating officer may draw in accordance with law. This first part of the panchnama for the purpose of Section 27 of the Evidence Act is always drawn at the police station in the presence of the independent witnesses so as to lend credence that a particular statement was made by the accused expressing his willingness on his own free will and volition to point out the place where the weapon of offence or any other article used in the commission of the offence had been hidden. Once the first part of the panchnama is completed thereafter the police party along with the accused and the two independent witnesses (panch-witnesses) would proceed to the particular place as may be led by the accused. If from that particular place anything like the weapon of offence or blood stained clothes or any other article is discovered then that part of the entire process would form the second part of the panchnama. This is how the law expects the investigating officer to draw the discovery panchnama as contemplated under Section 27 of the Evidence Act. If we read the entire oral evidence of the investigating officer then it is clear that the same is deficient in all the aforesaid relevant aspects of the matter..."

13. Mr. Thakur has laid great emphasis on his submission that no arrest memo was prepared. The prosecution failed to establish that any arrest memo was prepared and the appellant Jitendra Chaudhary has made his confessional statement



when he was in police custody, and, therefore, no part of the so called confessional statement of the appellant can be used in evidence. In case of ***Subramanya v. State of Karnataka (supra)***, the Supreme Court has laid down the conditions necessary for applicability of Section 27 of Evidence Act as under:-

- 1) Discovery of fact in consequence of an information received from accused;*
- 2) Discovery of such fact to be deposed to;*
- 3) The accused must be in police custody when he give information; and*
- 4) So much of information as relates distinctly to the fact thereby discovered is admissible.*

14. After having gone through the circumstances in which the prosecution has claimed to have recorded the confessional statement of the appellant Jitendra Chaudhary and the recovery of the dead body has been made so as to link the said recovery with the disclosures made in the confessional statement, in our opinion, the prosecution cannot be said to have established the charges against the appellant Jitendra Chaudhary. Apparently the police did not record confessional statement of the appellant in the presence of any independent witnesses. It did not prepare the *panchnama* at the place of recovery of the dead body of the deceased. The motive behind the occurrence, according to the



prosecution, for the first time emerged in the confessional statement of the appellant Jitendra Chaudhary i.e. the victim having seen the appellant Jitendra Chaudhary and PW-5 in compromising position. The said part of the prosecution’s case has not been proved.

15. In the facts and circumstances noted above, we do not find safe to uphold the conviction of appellant Jitendra Chaudhary @ Jitendra Kumar Chaudhary also.

16. In the result these appeals are allowed.

17. Accordingly, the impugned judgment of conviction dated 17.04.2018 and the order of sentence dated 24.04.2018, passed by learned 1st Additional District & Sessions Judge-cum-Special Judge (POCSO Act), Gaya, arising out of Buniyadganj P.S. Case No. 54 of 2014, POCSO Case No. 12 of 2015 are hereby set side.

18. The appellants are in custody. Let them be released from jail forthwith, if not required in any other case.

(Chakradhari Sharan Singh, J)

(G. Anupama Chakravarthy, J)

Nishant/-

AFR/NAFR	NAFR
CAV DATE	NA
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