

Criminal Appeal (D.B.) No. 337 of 2002

With

Criminal Appeal (D.B.) No. 380 of 2002

[Arising out of judgment of conviction dated 13.06.2002 and order of sentence dated 18.06.2002 passed by learned 1st Additional Sessions Judge, Chatra in Sessions Trial No. 89 of 2001]

Criminal Appeal (D.B.) No. 337 of 2002

Mithilesh Chauhan @ Khacharwa son of Shri Bideshi Beldar @ Bideshi Chauhan resident of Village Ghanghari, P.S. B. Nagar, District Chatra

.... **Appellant**

--Versus--

The State of Jharkhand

.... **Respondent**

With

Criminal Appeal (D.B.) No. 380 of 2002

Sunil Chaubey son of Sri Balram Chaubey resident of Village Ghanghari, P.S. Bashisath Nagar, District Chatra

.... **Appellant**

--Versus--

The State of Jharkhand

.... **Respondent**

For the Appellant : Mr. Abhay Kumar Chaturvedi, Advocate
(In both Cr. Appeals)

For the State : Mr. Pankaj Kumar, P.P.
[In Cr. Appeal (D.B.) No. 380 of 2002]

Mr. Sanjay Kumar Srivastava, A.P.P.
[In Cr. Appeal (D.B.) No. 337 of 2002]

PRESENT: SRI ANANDA SEN, J.

SRI GAUTAM KUMAR CHOUDHARY, J.

JUDGMENT

Reserved on: 26.11.2024

Pronounced On: 29.11.2024

Per Gautam Kumar Choudhary, J. Both these appeals arise out of common judgment of conviction and sentence under Section 376/34 and 302/34 of the IPC. They have been heard together and will be disposed of by the common judgment.

2. Informant of the case is the daughter of the deceased. As per the fardbeyan recorded on 27.05.2000, her mother (victim lady) was

deserted by her father. Consequently, she came back to her native village- Ghanghari where she was kept by one Raghuvir Singh as his wife. In order to prevent any conception of child, she was operated upon. Father of informant died few years later and the victim lady was maintained by Raghuvir Singh.

3. On 17.04.2000, Raghuvir Singh, Sunil Choubey (appellant), Mithilesh Chouhan (appellant), Satayendra Das, Basant Das, Minku Das and Mannu Singh had chicken and drinks in his house. Her mother also had food and drinks and all returned to their home. It is alleged that Raghuvir Singh sent Sunil Choubey, Mithilesh Chouhan and Dayanand Sao who took her away about 50 yards west from her house and committed rape and murder. They threatened her for not disclosing the incidence which she had seen from courtyard.

4. On the basis of the *fardbeyan*, Bashisth Nagar P.S. Case No.9/2000 was registered under Sections 302/376/201/34 of the IPC against altogether eight accused persons including these appellants.

5. Altogether nine witnesses have been examined on behalf of prosecution. After the prosecution evidence statement of the appellants was recorded under Section 313 of the Cr.P.C. Defence is of innocence. One defence witness has also been examined and the protest petition filed on behalf of the informant has been proved and marked as Exhibit A. Apart from this, Exhibits B, C, D, F and G have also been marked as exhibit on behalf of defence. These documents are related to pending cases between the appellants and P.W. 8 & P.W. 9.

6. It is argued by the learned counsel on behalf of appellants that this is a unique case where neither post-mortem examination report has been brought on record to prove the homicidal death of the deceased, nor medico legal examination report has been proved to prove the charge of rape. To cap it all, there is more than one month's delay in lodging the FIR without any explanation for it. Mother of the deceased (P.W. 1), has not supported the prosecution case and was declared hostile. P.W. 4 and

P.W. 5, who are independent witnesses, and were from the same neighborhood, who have also not supported the prosecution case and were declared hostile. The Investigating Officer and the scribe of the *fardbeyan*, have also not been examined. Prosecution case rests on the testimony of informant (P.W. 2) whose account is riddled with contradictions. In the *fardbeyan*, she has named Sunil Choubey, Mithilesh Chouhan and Dayanand Sao whom she had seen committing rape and murder of his mother. However, in the protest petition, she named Sunil Choubey, Mithilesh Kumar and Mrityunjai Singh.

7. Learned A.P.P. has defended the judgment of conviction and sentence.

8. I find weight in the argument advanced on behalf of the appellants that this is a case where the judgment of conviction and sentence cannot be returned on the basis of uncorroborated testimony of the informant (P.W. 2). Law is settled that in a case where the testimony of the solitary witness inspires confidence and it is wholly reliable, it can be the basis for passing a judgment of conviction and sentence. This is a case where there is an unexplained delay of more than 30 days in lodging the FIR. It is said that informant had been threatened for not lodging the case, but how after one month the said threat disappeared, is not clear. Mother of the deceased (P.W. 1) has not supported the case. In the *fardbeyan*, Mrityunjai Singh has been named as the person who committed the offence with Sunil Choubey and Mithilesh Chouhan. But the informant states in para 1, Dayanand Sao as one of the accused who committed the offence. She has deposed in para 4 that on 17.05.2000 she had filed the case in the Court which is not factually correct as per record, protest petition was filed in the Court on 02.02.2001 whereas FIR was registered on the basis of *fardbeyan* on 27.05.2000 and forwarded to the Chief Judicial Magistrate who has endorsed it on 28.05.2000. On these conflicting and contradictory statements, I am of the view that her solitary account cannot be relied

without any other corroboration. Judgment of conviction and sentence is set aside.

Both these Criminal Appeals are allowed.

Both the appellants are on bail. Their sureties stand discharged from the liability of their bail bonds.

Pending Interlocutory Application, if any, is disposed of.

Let the Trial Court Records be transmitted to the Court concerned along with a copy of this judgment.

(Gautam Kumar Choudhary, J.)

Ananda Sen, J. I agree.

(Ananda Sen, J.)

High Court of Jharkhand, Ranchi

Dated, 29th November, 2024

AFR/Anit