
Raj Kumar Pandit and Another Vs State of Bihar

Criminal Appeal No. 98 of 1996 (R)

Court: Jharkhand High Court

Date of Decision: March 20, 2001

Acts Referred:

Evidence Act, 1872 & Section 30#Penal Code, 1860 (IPC) & Section 302, 34, 364

Citation: (2002) 50 BLJR 677 : (2001) CriLJ 3570 : (2001) AIR JHA RHCR 103 : (2001) 1 JLJR(Jhar) 189

Hon'ble Judges: Chy. S.N. Mishra, J; A.K. Prasad, J

Bench: Division Bench

Advocate: R.K. Sahai, for the Appellant; Prabir Chatterjee, APP, for the Respondent

Final Decision: Allowed

Judgement

A.K. Prasad J.

1. This appeal is directed against the judgment dated 27-4-1996 and order dated 30-4-1996 in S.T. No. 5 of 1994 passed by Sri Sreepakash

Rai, the then Addl. Judicial Commissioner, Ranchi, Whereby and whereunder the appellants, namely, Raj Kumar Pandit and Naimuddin Ansari,

have been convicted under Sections 364/34 and 302/34 of the Indian Penal Code and sentenced to rigorous imprisonment for ten years and for

life, respectively, on such counts. However, both the sentences have been ordered to run concurrently.

2. Briefly put, the prosecution case, is as under : On 3-7-1993, around evening, Sima Kumari, the seven-year old daughter of the informant,

Bhukhli Devi (P.W.3) was playing in HMG Colony (G. Type) of ACC at Dhawra, within P.S. Khelari, district Ranchi, with Sita Kumari (P.W.1),

the minor sister of co-accused Sibuh Ganjhu. While Sima Kumari, the deceased, was playing, she disappeared and did not return home. On search

and enquiries, the informant (P.W. 3) could come to know from Sita Kumari (P.W.1) and Phulwa Devi (P.W.2) that a short while ago Sibuh

Ganjhu, the co-convict had lifted away Sima Kumari and when on that night, Sibu Ganjhu did not reach her home, the informant became

suspicious and she started hectic search to trace the whereabouts of missing Sima Kumari. Ultimately, on 6-7-1993 with the help of Somra Oraon,

Binod Ganjhu (P.W.7) and some boys, all villagers of the informant, apprehended Sibu Ganjhu, the co-convict, from the place known as Ojha-

Sarang, within P.S. Chanho and brought him to ACC, G. Type, Dhowra Colony and in presence of the informant and the villagers, he made extra-

judicial confession to the effect that in conspiracy with the accused/appellants he had decoyed/lifted away Sima Kumari on the pretext of feeding

her with Bread and with their assistance, he had done her to death in a Sectionuded place at ACC, Khelari Magizine Forest and on his pointing

out, the skeleton remains of deceased Sima Kumari were recovered from the forest. The skeleton remains were identified by the informant /

mother with the help of bangles and clothes, lying nearby to be the dead body of her daughter (Sima Kumari). It is further alleged that Sibu Ganjhu

disclosed that due to enmity with the father (P.W.4 /Arjun Bhuian) of the deceased, he in association with the appellants/accused had kidnapped

and done her to death by strangulation in the forest.

On 6-7-1993, at about 4.45 pm. the in-formant lodged the written report about the occurrence with the Officer-in-charge of" Khelari Police

Station (Exhibit 2/1). On its basis, the present case came to be instituted, investigation was commenced and on completion of investigation, charge-

sheet was laid in Court against the accused persons.

The case was, ultimately, committed to the Court of Session by the then Judicial Magistrate, Ranchi, on 4-1-1994.

3. The main defence of the appellants is of innocence and false implication.

4. At the trial, the prosecution examined eight witnesses in support of its case. Out of them, (P.W.7) (Binod Ganjhu) is the hostile witness, whereas

P.W. 8 (Premchandra Lohra) is a formal witness, who has proved the formal first information report (Exhibit 2) the written report (Exhibit 2/1) and

the police case diary in the hand writing of Abhilash Rai, the then Officer-in-Charge, Khelari Police Station. The other P.Ws. are : P.W. 1 (Sita

Kumari), a child witness, P.W. 2 (Phulwa Devi), P.W. 3 (Bhukhli Devi), the informant, P.W. 4 (Arjun Bhuian) father of the deceased, P.W. 5

(Sahdeo Munda) and P.W. 6 (Bhuneshwar Oraon).

5. The defence, on the other hand, examined no witness.

6. On consideration of the evidence and materials on record, the learned trial Court held the co-accused (Sibu Ganjhu) and the accused/appellants

guilty of the charge under Sections 364/34 and 302/34 of the Indian Penal Code and convicted and sentenced them as stated above.

It was submitted at the Bar that Sibu Ganjhu, the co-convict, did not appeal against the verdict of the trial Court.

7. While assailing the impugned convictions of the appellants, Mr. R.K. Sahai, learned counsel for the the appellants, submitted that there is no

direct evidence that the appellants had kidnapped the deceased or had done her to death and their convictions are based on the extra-judicial

confession of co-accused Sibu Ganjhu, implicating them, which could not have been used as substantive evidence u/s 30 of the Evidence Act

against the appellants for convicting the appellants, when there was no substantive evidence, direct or circumstantial, to establish the charges

against the appellants. According to him, the conviction of the appellants 364/34 and 302/34 of the Indian Penal Code cannot be sustained.

Mr. Prabir Chatterjee, learned APP for the State, on the other hand, has fairly submitted that the conviction of the appellants is based on the extra-

judicial confession made by co-accused /co-convict (Sibu Ganjhu) and there is no other material on record to establish the complicity of the

appellants in the kidnapping or murder of the deceased.

8. The point that falls for consideration is; whether the conviction of the appellants under Sections 364/34 and 302/34 of the Indian Penal Code

can be sustained.

9. The factum that the deceased (Sima Kumari), 7 year old daughter of the informant met with homicidal death has not been disputed before us.

Now the crucial point which arises for consideration is ; whether the appellants were instrumental in the murder of the deceased. P.W.1 (Sita

Kumari) is a child witness and own sister of co-ac-cused (Sibu Ganjhu). She has testified to the effect that on the fateful evening, she had

witnessed Sibu Ganjhu, her brother, lifting away the deceased (Sima Kumari) on the pretext to feed her with bread, when she was playing with her

and had promised to reach her home, which he did not do and, ultimately, the dead body of the deceased was recovered from the forest.

P.W. 2 (Phulwa Devi), a neighbour of the deceased, has stated that Sima Kumari, the deceased and Sita Kumari (P.W. 1) were playing together

in the evening near her house and she saw Sibu Ganjhu, the co-accused, taking away Sima Kumari who was weeping and on enquiry, made by

her, he had stated that he was taking her to feed her with bread and on search, her whereabouts could not be known and, ultimately, after some

days, Sibu Ganjhu was caught and brought from village Ojha Sarang and in presence of the villagers, he made extra-judicial confession admitting

his guilt and implicated the appellants as well and on his pointing out, the dead body of kidnapped Sima Kumari was recovered from Khelari

forest. P.Ws. 1 and 2 have admitted in their cross-examination that Sibu Ganjhu, co-accused, had alone lifted away the deceased. They did not

state that they had seen the appellants on the spot at the time, Sima Kumari was kidnapped by Sibu Ganjhu. There is no evidence, direct or

circumstantial, that the appellants were instrumental in the kidnapping or the murder of the deceased.

P.W. 3 (Bhukhli Devi), the informant, P.W. 4 (Arjun Bhuiya), father of the deceased, have testified to the effect that Sibu Ganjhu, the co-accused,

was caught and brought from village Ojha-Sarang and he made extra-judicial confession that in association with the appellants he had kidnapped

and murdered the deceased and he pointed out the spot in the forest from where the dead body of the deceased (Sima Kumari) was recovered.

P.W. 5 (Sahdeo Munda) has simply stated that Sibbu Ganju was brought from village Nawatoli by his co-villagers and he admitted in his extra-

judicial confession that he had murdered the deceased and her dead body was recovered from the bushes in the forest. P.W. 6 (Bhuneshwar

Oraon) has deposed that he was one of them who had brought Sibbu Ganju from village Ojha Sarang but he pleaded his ignorance whether any

enquiry was made from him regarding the whereabouts of Sima Kumari (the deceased).

P.Ws. 5 and 6 are the witnesses on the seizure of Articles, namely, frock and pants from near the dead body of the deceased in the forest.

P.W. 3 has admitted in her cross-examination that the appellants, are her co-villagers and she had no enmity or quarrel with them.

P.W. 4 has stated in his cross-examination that he had no quarrel or dispute with the appellants before the occurrence. He has further clarified that

no incident of assault had taken place with them. He has also stated that once he had quarrel with Sibbu Ganju, the co-accused over drinks and

there was also quarrel with him over fare of cart. The evidence of P.W. Section 3 and 4 clearly shows that the appellants had no motive for the

murder of the deceased.

10. On analysis of the evidence on record, the only circumstance which has come against the appellants is that Sibbu Ganju, the co-accused, has

implicated the appellants as his associates, who were involved in the kidnapping and murder of the deceased. It is not the case where any

incriminating Article is alleged to have been recovered from the house or possession of the appellants. The prosecution witnesses do not

whisper in their evidence that the appellants have made any extra-judicial confession or that on their pointing the dead body of Sima Kumari was

recovered.

11. Now the question arises : whether the conviction of the appellants can be sustained solely on the extra-judicial confession made by the co-

accused, Sibbu Ganju.

It is well settled that confession of a co-accused cannot be treated as substantive evidence and it can be pressed into service only, as laid down

u/s 30 of the Evidence Act, when the Court is inclined to accept other evidence and feels necessity of seeking for an assurance in support of its

conclusion deducible from such evidence Ref Hari Charan Kurmi and Jogia Hajam Vs. State of Bihar, .The confession of a co-accused may be

used as circumstance when there is independent evidence against the other accused persons. In the present case, there is no evidence, direct or

circumstantial, on the involvement of the appellants in the kidnapping or murder of the deceased. Hence, in the circumstances of the case, the

conviction of the appellants cannot be based solely on the extra-judicial confession made by co-ac-cused (Sibu Ganjhu).

The learned Court below has committed a grave error when he used the extra-judicial confession of the co-accused (Sibu Ganjhu) as substantive

evidence in convicting the appellants under Sections 364/34 and 302/34 of the Indian Penal Code.

For the reasons and discussions aforementioned, the conviction of the appellants cannot be sustained.

12. In the result, this appeal is allowed. The impugned judgment and orders of conviction and sentence, passed by the Court below against the

appellants are set aside. The appellants are acquitted of the charge under Sections 364/34 and 302/34 of the Indian Penal Code. The appellants

are in jail. They are directed to be relelased from custody forthwith, of not required in any other case(s).

Chy. S.N. Mishra, J.

I agree.