

(2007) 09 PAT CK 0033

In the Patna High Court

Case No : Criminal Appeal (DB) No. 68 of 1988

Chandeshwar Mandal @ Channa Mandal and Another

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 14-09-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164

Evidence Act, 1872 — Section 25

Penal Code, 1860 (IPC) — Section 302, 34, 376, 379

Citation : (2008) 1 PLJR 508

Hon'ble Judges : Syed Md. Mahfooz Alam, J; Shiva Kirti Singh, J

Bench : Division Bench

Advocate : Kanhaiya Pd. Singh, Ganesh Pd. Singh, Atal Bihari and Reebha Kumari, for the Appellant; Ashwani Kumar Sinha, for the Respondent

Final Decision : Dismissed

Judgement

Syed Md. Mahfooz Alam, J.—This appeal has been preferred against the judgment dated 15.12.1987 passed in Sessions Trial No. 140 of 1983/53 of 1985 by third Additional Sessions Judge, Madhubani whereby he has been pleased to convict both the appellants, namely, Chandeshwar Mandal alias Channa Mandal and Khirkhar Mandal under Sections 376 and 302 / 34 of the Indian Penal Code (hereinafter referred to as "IPC") for the offence of committing rape and murder of the informant's daughter-in-law "Khatoon" in prosecution of their common intention. Having been convicted, the appellants were sentenced to undergo imprisonment for life u/s 302 / 34 of the IPC and rigorous imprisonment for ten years u/s 376 of the IPC. However, the learned court ordered that both the sentences shall run concurrently. The prosecution case, as per the fardbeyan (Exhibit 3) of P.W. 11 Gafoor Mian of village Kusumahi recorded by S.I. Dasrath Singh of Laukahi Police Station on 1.4.1983 at 8.30 A.M. at Karharwa Navtol Badh, in brief, is that on 31.3.1983 at about 8 A.M. as usual his daughter-in-law Khatoon had left her house for Karharwa for selling vegetable. At about 4 P.M. Yashodhar Yadav (P.W. 14), who was going to village Damhan by bullock-cart,

informed the villagers of Kusumahi Purbari Tola that a dead body of a woman was lying at Karharwa Navtol Badh towards west of river Kharad. On getting this information, the informant alongwith his co-villagers Sattar Mian, Rahman Mian, Sadique Mian, Satan Sah and others rushed to the abovementioned place and on reaching there he saw his daughter-in-law dead. At that time she was wearing a Chekdar Jampher and a petticoat. Her Saree and Choti (hair-string) were found tied around her neck. Her body bore some mark of violence and blood was found coming out from her mouth and nostril. One Sattar Mian told the informant that when he alongwith his wife was returning from hospital they had met Khatoon who had told them that she would accompany them after selling paddy which she had got in exchange from vegetables. She also told them that she was going to sell paddy in the shop of Dukhi Mandal. Sattar Mian further told the informant that he alongwith his wife kept waiting for about half an hour near Tharhi Bram Ashthan but when Khatoon did not reach, then they proceeded to their house. The informant further stated that since his daughter-in-law used to sell vegetable in village Karharwa, Kachanarwa and Tharhi, as such he suspected that some person of the abovementioned village might have committed the crime.

2. After recording the said fardbeyan, S.I. Dasrath Singh forwarded the same to the Officer Incharge Laukahi Police Station for instituting a case under Sections 302 and 376 of the I.P.C. and at the spot he took up investigation. On receipt of the fardbeyan of the informant in Laukahi Police Station, Laukahi P.S. Case No. 37/83 dated 1.4.1983 under Sections 302 and 376 of the I.P.C. was instituted and formal F.I.R. (Exhibit 1) was drawn.

3. During investigation S.I. Dasrath Singh prepared inquest report (Ext. 6) of dead body of deceased Khatoon in presence of the witnesses, namely, Bachelal and Kali Charan Jha, seized Saya of the deceased having stains of semen in presence of Gosai Sao and Asharfi Lal Sah, as per seizure list (Ext. 7), inspected the place of occurrence which is a lonely place in village Karharwa between village Karharwa and Kusumahi. Near the place of occurrence there is a Jamun tree and near the said tree the Investigating Officer found the mark of dragging. The Investigating Officer also noticed that the neck of the deceased was found tied with her Saree and Hair-string. He also found mark of violence on the body of the deceased and blood was coming out from her mouth and nostril. After inspecting the dead body and fulfilling other formalities, he sent the dead body for post mortem examination. On 3.4.1983 the I.O. went to the village Kusumahi where a Panchayati was convened by the villagers in connection with the occurrence of rape and murder of Khatoon where the villagers handed over the appellants Chandeshwar Mandal @ Channa Mandal and Khirkhar Mandal alias Ram Dayal Mandal to him. The I.O. also found mark of injuries on the person of Khirkhar Mandal alias Ram Dayal Mandal and so he prepared injury slip of appellant Khirkhar Mandal (Ext. 8). Then both the appellants confessed their guilt before the Investigating Officer as well as the villagers and the I.O. recorded their confessional statements which are Exhibits 10 and 10/1. The I.O. also got the statement of Bholta Sao recorded u/s 164 of the Cr.P.C. During investigation

the informant Gafoor Mian produced a blood stains Gamchha having stains of semen for which production list (Ext. 9) was prepared. After completing the investigation and after receipt of the post mortem report, the I.O. submitted charge-sheet against the appellants and one Ram Dutta Mandal showing him as absconder. On the basis of the charge sheet cognizance was taken and the appellants were committed to the Court of Session where the appellants were put on trial for the offence under Sections 302, 376 and 379 of the I.P.C. The appellants pleaded not guilty but after full trial they were convicted for the offence under Sections 302 / 34 and 376 of the I.P.C. However, they were acquitted for the offence u/s 379 of the I.P.C.

4. The defence of the appellants was that they were falsely implicated in this case but no reason for false implication has been assigned.

5. From perusal of the lower court record and the impugned judgment it appears that the prosecution in support of its case has examined altogether 16 witnesses, namely, Kali Prasad Singh (P.W. 1), Asharfi Lal Sao (P.W. 2), Gosain Ram Sao alias Gosain Sao (P.W. 3), Banwali Mandal (P.W. 4), Bholta Sao (P.W. 5), Rajeshwar Mandal (P.W. 6), Md. Hira (P.W. 7), Sri Madan Gopal Prasad (P.W. 8), Kali Prasad (P.W. 9), Dashrath Singh (P.W. 10), Gafoor Mian (P.W. 11), Md. Idris (P.W. 12), Kali Chandra Jha (P.W. 13), Yashodhar Yadav (P.W. 14), Ganga Prasad Mahto (P.W. 15) and Dr. Vijai Kumar Singh (P.W. 16). Out of the above said witnesses, P.W. 1 Kali Prasad Singh, P.W. 7 Md. Hira, P.W. 9 Kali Prasad and P.W. 15 Ganga Prasad Mandal are formal witnesses and on the basis of their evidence, formal F.I.R., fardbeyan, injury report and charge-sheet have been marked exhibits 1, 3, 5 and 11, respectively. P.W. 2 Asharfi Lal Sao and P.W. 3 Gosain Sao, who are the witnesses of seizure of Saya having semen stains have admitted their signatures on the seizure list Exts. 2 and 2/1 but they have turned hostile. P.W. 4 Banwari Mahto, P.W. 11 Gafoor Mian, P.W. 12 Md. Idris and P.W. 13 Kali Charan Jha are on the point of convening of Panchayati in connection with the alleged offence and of making of extra-judicial confession by the appellants before the Panches with regard to the alleged occurrence. P.W. 14 Yashodhar Yadav is on the point of discovery of dead body of Khatoon. P.W. 5 Bholta Sao and P.W. 6 Rajeshwar Mandal are hostile witnesses. P.W. 8 Sri Madan Gopal Prasad is the Judicial Magistrate, who had recorded the statements of P.W. 5 Bholta Sao u/s 164 of the Cr.P.C., P.W. 10 Dashrath Singh is the Investigating Officer whereas P.W. 16 Dr. Vijai Kumar Singh is the doctor who had conducted post mortem examination.

6. From perusal of the impugned judgment it appears that for convicting the appellants, the trial court has placed reliance upon the evidence of P.W. 4 Banwali Mandal, P.W. 11 Gafoor Mian, P.W. 12 Md. Idris, P.W. 13 Kali Charan Jha besides the evidence of P.W. 16 Dr. Vijai Kumar Singh and P.W. 10 Dasrath Singh, the Investigating Officer of this case and on the basis of their evidence as well as other materials brought on record like inquest report, seizure list, postmortem report, the trial court found the appellants guilty for the offence under Sections

302 / 34 and 376 of the Indian Penal Code.

7. Let me see--whether the said finding of the trial court is correct in law as well as on fact and whether the same is based on the materials available on record or the same requires any interference.

8. First of all, I would like to discuss the evidence of the informant, P.W. 11, the Investigating Officer P.W. 10 and the doctor P.W. 16 with regard to the recovery of the dead body and with regard to the autopsy conducted by P.W. 16 on the dead body of the deceased. According to the evidence of the informant Gafoor Mian, after getting information regarding the presence of the dead body of a woman in Karharwa Navtol Badh he (P.W. 11) alongwith others rushed to the place of occurrence and saw the dead body of his daughter-in-law Khatoon lying there. He found her neck tied with Saree and with her hair-string. He also found mark of violence on her body and blood was coming out from her mouth and nostril. He also found stains of semen on her Saya. According to the evidence of P.W. 10 Dashrath Singh, on 1.4.83 at 8.30 A.M. on getting information about the dead body of a young woman lying in village Karharwa Navtol he went there and saw the dead body of a young woman lying there regarding which Gafoor Mian gave his fardbeyan (Ext. 3). P.W. 10 has further deposed that he prepared inquest report (Ext. 6) of the dead body and seized Saya of the deceased having stains of semen as per seizure list (Ext. 7). He further deposed that he saw the neck of the deceased tied with her Saree and hair-string. He also noticed mark of violence on her dead body and blood coming out from her mouth and nostrils. From perusal of the inquest report (Ext. 6) it appears that the dead body of Khatoon was found having mark of violence and the blood was oozing out from mouth and nostril. Ext. 6 also shows that her neck was found tied with her Saree and hair-string. Ext. 6 further shows that the Investigating Officer has also found the mark of biting of teeth on the cheek and other places of the body of the deceased. He also found the ligature mark around the neck. Ext. 7 which is the seizure list of Saya of the deceased shows that there was stains of semen on the seized Saya of the deceased. All these facts go to show that prior to committing of murder the deceased was subjected to rape. Let me see--whether the fact that prior to murder the deceased was subjected to rape, has been proved by the medical evidence or not and so, the evidence of P.W. 16 will be relevant in this regard.

9. The evidence of P.W. 16 Dr. Vijai Kumar Singh is that on 2.4.1983 at 1.30 P.M. he conducted autopsy on the dead body of Khatoon aged about 21 years and found the following ante mortem injuries:--

- (i) Multiple bruises over the face and thorax measuring 2" to 4" by 1/4" to 1/2".
- (ii) Multiple bruises over lower abdomen and inner aspect of both thighs measuring 1" to 2" by 1/4" to 1/2".
- (iii) External injuries present.

(iv) Hymen ruptured.

(v) Vagina swab for examination revealed spermatozoa seen.

(vi) Carotid artery ruptured.

10. P.W. 16 has further deposed that on dissection of the dead body he noticed following injuries:--

On examination of the neck, abrasion and ecchymosis were found around the edges of the ligature mark. Muscles of the neck were found ruptured and injured. Carotid artery was found ruptured. Trachea ring was fractured.

P.W. 16 has further deposed that in his opinion the death was caused due to strangulation causing asphyxia and the evidence of sexual assault was present. He has proved his post mortem report which has been marked as exhibit 12.

11. From the evidence of P.W. 16 Dr. Vijai Kumar Singh, coupled with the evidence of P.W. 11 Gafoor Mian and P.W. 10 Dashrath Singh, the Investigating Officer of this case, it is established beyond doubt that the deceased Khatoon was murdered and prior to committing her murder the offenders had committed sexual assault on her. Thus, the factum of murder of deceased Khatoon and of committing rape on her prior to her murder by the offenders stands well proved and accordingly, this point is decided.

12. Now the next question is whether there is reliable evidence on record to hold that the appellants had committed rape and murder of deceased Khatoon. At this stage I would like to say that in this case the date, time, place and manner of occurrence are not in dispute and the same stand well proved from the evidence of P.Ws. 4, 11, 12 and 13 besides the evidence of P.W. 10 Dasrath Singh, LO. of this case and P.W. 16 Dr. Vijai Kumar Singh who had conducted post mortem examination on the dead body of deceased Khatoon and thus I find no difficulty in holding that the prosecution has successfully proved the date, time, manner and place of occurrence of this case. Therefore, the only point which remains to be decided is that whether the prosecution has successfully proved that the appellants had committed rape and murder of deceased Khatoon.

13. From perusal of the judgment of the trial court it appears that the appellants have been convicted mainly on the basis of extra-judicial confessions made by the appellants before the Panches in the Panchayati convened at the Darwaza of P.W. 4 Banwali Mandal. According to the finding of the trial court, he has found the said extra-judicial confessions made by the appellants clear, consistent, convincing, true and trustworthy. Regarding voluntary nature of confession, the learned court below has dealt this point at paragraph 14 of his judgment which is being quoted below:--

It is true that the sole eye witness namely Bholta Sao P.W. 5 has turned hostile to the prosecution and there is no other eye witness to the occurrence. But the contention of the learned counsel for the defence that charges have not been

proved against the accused persons is without substance. In this case the evidence furnished by the extra-judicial confession made by the accused persons to P.Ws. 4, 11, 12 and 13 is clear, consistent and convincing. It further appears from the evidence of P.Ws. 4, 11, 12 and 13 that the confessional statement made by both the accused was voluntary, true and trustworthy.

14. The learned Advocate of the appellants while arguing contended that the alleged extra-judicial confessions of the appellants made before the Panches cannot be used against the appellants on the following grounds:--

(1) P.W. 5 Bholta Sao, who had made disclosure about committing of the alleged crime of murder and rape by the appellants and on whose information Panchayati was convened, has not supported this fact in court that he had disclosed to the Panches regarding the crime of rape and murder committed by the appellants and so, the entire evidence of the prosecution witnesses with regard to the convening of Panchayati and making extra-judicial confession in the Panchayati by the appellants becomes inadmissible in evidence and cannot be used against the appellants.

(2) The alleged extra-judicial confessions made by the appellants cannot be said to be voluntary as in view of the evidence that at the time of making extra-judicial confessions, at least 200 persons had assembled there and there was every likelihood that the appellants due to fear might have made some disclosure about their involvements in the occurrence which cannot be said to be voluntary and trustworthy.

(3) The evidence of P.Ws. 11 and 12 shows that the appellants simply confessed their guilt but they have not stated in the evidence as to actual wordings of the statements of the appellants and so, in the eye of law the alleged extra-judicial confessions are inadmissible.

(4) The evidence has come that the alleged confessions by the appellants were made in presence of P.W. 10 Dashrath Singh, who is the LO. of this case and who has reduced in writing the said confessional statements of the appellants. According to the submission, any confession made in presence of police officer is not admissible u/s 25 of the Evidence Act and so, the entire extrajudicial confession alleged to have been made by the appellants should be thrown out.

(5) If the extra-judicial confessions are disbelieved and the same are held to be inadmissible then there remains no legal evidence on record for conviction of the appellants.

15. I have already stated that the learned trial court at paragraph 14 of the judgment has observed that the extrajudicial confessions made by the appellants were clear, consistent, convincing, voluntary, true and trustworthy. I have reason to believe that the extra-judicial confessions made by the appellants before the Panches in the Panchayati which was held at the Darwaza of P.W. 4 Banwali Mandal are voluntary because of the fact that the Panchayati was held in the

village of the appellants at the house of P.W. 4 who is a co-villager of the appellants. There is nothing on record that P.W. 4 who is the co-villager of the appellants is on inimical term with the appellants or has got any grudge against them. There is nothing on record to show that the informant (father-in-law of the deceased) who is a resident of another village, namely, Kusumahi is an influential man and was in a position to influence P.W. 4 and other Panches rather the materials on record show that the informant comes from a very downtrodden family whose livelihood is by way of selling vegetables and even his female members including the deceased used to sell the vegetables in the market for their livelihood. This fact establishes beyond doubt that the informant was never in a position to influence P.W. 4 and P.W. 13, who were the members of the Panchayati. In such view of the matter I am of the view that the above circumstances establish beyond doubt that the extra-judicial confessions made by the appellants before the Panches were made voluntarily.

16. It was also argued by the learned Advocate of the appellants that the evidence on record establishes that at the time of making the alleged extra-judicial confession, a mob of at least 200 persons had assembled at the place of Panchayati and there was every likelihood that due to fear the appellants might have given false statements in order to save their lives but I cannot agree with the argument of the learned Advocate as there is nothing on record to establish that some of the Panches were aggrieved with the appellants and at the time of Panchayati they were angry and agitated which might have developed fear psychosis in the minds of the appellants. It should be noted here that the Panchayati was convened in the village of the appellants and not in the village of the informant so, the appellants had no apprehension of any danger to their lives at the time of making the alleged extra-judicial confession. In such situation, I am unable to accept the argument of the learned Advocate that there was possibility that due to fear of their lives the appellants had made false extra-judicial confession.

17. It was also argued by the learned Advocate of the appellants that the evidence brought on record by the prosecution on the point of extra-judicial confession is not consistent and the prosecution witnesses have given different version of the confession made by the appellants and as such, the evidence of the prosecution witnesses on the point of extra-judicial confession should be thrown out. He pointed out that according to the deposition of P.Ws.11 and 12, both the appellants had simply confessed their guilt before the Panches but according to P.Ws. 4 and 13, appellant Khirkhar Mandal had alone made extra-judicial confession. According to the learned Advocate of the appellants, this material contradiction in the evidence of the prosecution witnesses on the point of extra-judicial confession makes the confession unreliable and so, only on the basis of extra-judicial confession, the appellants cannot be convicted. In support of his argument, the learned Advocate of the appellants has placed reliance upon the two decisions of the Apex Court in the case of Sakharam Shankar Bansode Vs. State of Maharashtra, and in the case of Heramba Brahma and Another Vs.

State of Assam, .

18. In the case of Sakharam Shankar Bansode Vs. State of Maharashtra, , the Apex Court at paragraph 4 of the decision has laid down certain criteria for accepting extra-judicial confession as a piece of evidence. The relevant lines are being quoted below:--

It is well-settled now that a retracted extra-judicial confession, though a piece of evidence on which reliance can be placed, but the same has to be corroborated by independent evidence. That apart, the court must be satisfied that the confession alleged to have been made to P.W. 11 was true and voluntary one and in judging the same, the conduct of P.W. 11 and the circumstances which impelled the accused to make such a statement to P.W. 11 should be above suspicion?.

19. In the case of Heramba Brahma and Another Vs. State of Assam, , the Apex Court at paragraph 17 of the said decision on the point of credibility of the extra-judicial confession has held in the following manner:--

.....This extra-judicial confession is vague and ambiguous because it is not clear whether each one spoke separately and what were the words used by each of the accused. Witness speaks of an extra-judicial confession by three accused persons having simultaneously made and when reproduced in his language, it makes no sense. It is dangerous to rely upon such extra-judicial confession even if the witness's credentials are not in question. The question that agitates our mind is what language was used by each accused, in what words confession was made and whether each used the same language? Evidence of the witness does not reproduce the words used by each accused.....

20. Relying upon the above said two decisions, the learned Advocate of the appellants argued that as per the evidence of P.Ws. 11 and 12, both the appellants had simply stated before the Panches that "they accept their guilt" but according to P.Ws. 4 and 13, the appellant No. 2 Khirkhar Mandal had narrated the entire incident of rape and murder committed by them so there is material contradiction between the evidence of the prosecution witnesses with regard to the making of extra-judicial confession by the appellants before the Panches. He submitted that in view of the abovementioned decisions of the Apex Court, the alleged extra-judicial confession should not be relied upon and on that basis alone, the appellants should not have been convicted.

21. It is true that P.Ws. 11 and 12 have deposed that both the appellants had simply confessed their guilt and they had not reproduced the actual wordings spoken by the appellants and it is also true that P.Ws. 4 and 13 have deposed that only Khirkhar Mandal had made extra-judicial confession before the Panches with regard to the entire incident of rape and murder of Khatoon, but there is reason to believe that the extra-judicial confession made by appellant No. 2 which was inculpatory in nature was voluntary, true and reliable as there-cannot be any two opinions that P.Ws. 4 and 13 were independent, truthful and

trustworthy witnesses and they had no animosity with the appellants. Moreover, P.W. 4 was his co-villager also. Besides that the presence of injuries on the person of appellant Khirkhar Mandal corroborated his confessional statement that he had received the said injuries from the nails of Khatoon when she tried to resist the appellants. This injury report is Exhibit 8 in this case. Not only this but the manner in which the occurrence of rape and murder of Khatoon was committed and described by appellant No. 2 Khirkhar Mandal finds full corroboration from the evidence of P.W. 16 Dr. Vijai Kumar Singh who had conducted postmortem on the dead body of deceased Khatoon. According to his evidence, he had found multiple bruises over the face and thorax and multiple bruises over the lower abdomen and inner aspect of both thighs besides external injuries on vagina and presence of spermatozoa in vaginal swab of deceased. His evidence further shows that on dissection he had found abrasion and ecchymosis and ligature mark around the neck, muscles of the neck and carotid artery were found ruptured and Tracheal ring was fractured. He has opined that the deceased was subjected to sexual assault and the injury found on the neck of the deceased was possible by tightly binding the neck by string (Choti). Thus, the evidence of P.W. 16 fully corroborates the confessional statement of appellant No. 2 made before the Panches that he alongwith appellant No. 1 and one Ramdat Mandal firstly committed rape on Khatoon and then they strangled her by tying her Saree and her hair-string around her neck. For placing reliance upon the extra-judicial confession the law requires that it should be voluntary, true and trustworthy and should be corroborated by some other reliable circumstance. I have already found above that the extra-judicial confession made by appellant No. 2 was voluntary, true and trustworthy and corroborated by medical evidence and so there is no reasonable ground to disbelieve the same.

22. As regards the discrepancy in the evidence of P.Ws. 4 and 13 regarding the actual wordings of the alleged extra-judicial confession made by the appellants before the Panches is concerned, i am of the opinion that law does not require that the witness must reproduce the actual wordings of the confession made by the accused and in this regard I place reliance upon the decision of the Apex Court in the case of Ajay Singh, Appellant vs. The State of Maharashtra, Respondent (2007 AIR SCW 3845) and relying upon the said decision I must say that there is no vital material contradiction between the evidence of P.Ws. 4 and 13 on the wordings of the extra-judicial confession made by the appellants before the Panches. Under such circumstance, I am compelled to reject the argument of the learned Advocate of the appellants that since the witnesses have not reproduced the actual wordings of the confessional statements of the appellants made before the Panches, as such no reliance can be placed upon the said extra-judicial confession.

23. It has further been argued that the evidence has come on record that at the time of Panchayati P.W. 10 Dasrath Singh, who is the Investigating Officer of this case, was also called by the Panches and in his presence, the appellants have made extra-judicial confession and it is settled law that any confession made in

presence of the police officer is inadmissible in evidence. I am not in a position to accept this argument of the learned Advocate of the appellants as the same is against the material available on record. From the evidence of P.Ws. 4, 11, 12 and 13 who are the witnesses of the Panchayati, it is crystal clear that P.W. 10 Dashrath Singh, the Investigating Officer, was called at the place of Panchayati after the appellants had made extra-judicial confession before the Panches with regard to the occurrence. It is true that there is evidence that in presence of P.W. 10 also the appellants had made confessional statements (Exhibits 10 and 10/1) which were recorded by P.W. 10 at the spot but as the evidence available on record establishes that the confessional statements made before P.W. 10 were the second confession made by the appellants, as such the first confession made by the appellants before the Panches i.e. extra-judicial confession does not become inadmissible in the eye of law as the same was never made in presence of any police officer. In such view of the matter, I hold that this argument of the learned Advocate is also not acceptable.

24. It was further argued by the learned Advocate of the appellants that as per the evidence brought on record, P.W. 5 Bholta Sao was the sole eye witness who had disclosed that he had seen the appellants committing the murder of deceased Khatoon and on his disclosure the Panchayati was convened but in court the said witness has become hostile and has deposed that he had not stated that he had seen the appellants committing rape and murder and that on his disclosure any Panchayati was convened. He has also denied this fact that in the Panchayati he has made any disclosure about the commission of offence by the appellants. Referring to the evidence of P.W. 5 Bholta Sao, the learned Advocate of the appellants has argued that since the sole eye witness (P.W. 5) on whose disclosure the Panchayati was held has become hostile, as such the entire evidence regarding the convening of the Panchayati and in the said Panchayati the disclosure of the offence committed by the appellants by P.W. 5 and thereafter giving confessional statement by the appellants before the Panches becomes inadmissible in evidence and thus, there remains no legal evidence against the appellants. I am of the view that this argument is misconceived as the disclosure of the offence committed by the appellants by P.W. 5 and making of the extra-judicial confession in the Panchayati by the appellants are two different parts of the incident and both are independent of each other. If one part becomes inadmissible it cannot be held that another part also becomes inadmissible in law. Admittedly, the evidence of the sole eye witness (P.W. 5) by becoming hostile has become inadmissible in evidence but the fact that a Panchayati was held in the village with regard to the occurrence of rape and murder of the informant's daughter-in-law Khatoon is a fact which cannot be denied and which stands proved from the evidence available on record. Likewise, the evidence that the appellants had made extra-judicial confession before the Panches is also a fact which stands proved from the evidence of P.W. 4, P.W. 11, P.W. 12 and P.W. 13 and there is no material on record to come to the finding that the abovementioned prosecution witnesses were on inimical terms with the

appellants or they have had any adverse interest against them. Moreover, their evidence with regard to the extra-judicial confession appears to be reliable in view of the fact that appellant No. 2 Khilkar Mandal has stated before the Panches that at the time of commission of the crime the deceased had given resistance due to which he had received scratches on his face and other parts of the body by nails of the deceased. All the abovementioned witnesses have also corroborated this fact in their evidence that they had seen the scratches on the face and several parts of the body of appellant No. 2 Khilkar Mandal. This fact further finds corroboration from the injury report (Exhibit 8) of the appellant No. 2 issued on the injury slip prepared by the Investigating Officer. I am, therefore, of the view that extra-judicial confession of the appellants is admissible in evidence and the learned trial court has rightly relied upon the extra-judicial confession made by the appellants.

25. It has lastly been argued by the learned Advocate of the appellants that as per the evidence of P.Ws. 4 and 13.. appellant No. 2 has given details regal the entire incident which forms extra-judicial confession and so, this confession of appellant no 2, cannot be used against appellant not Chandeshwar Mandal alias Channa Mandal but I cannot accept this argument because of the fact that all the four witnesses have stated that both the appellants had confessed their guilt although P.W. 5 and P.W. 13 have reproduced the statement made by appellant No. 2 by way of extra-judicial confession, which is inculpatory in nature and so the said extrajudicial confession can be legally used against appellant No. 1 also.

26. Having considered the facts and circumstances of the case and the materials available on record, I have come to the conclusion that there was ample evidence on record to come to the finding that the appellants alongwith accused Ram Dutta Mandal (not put on trial) had committed the offence of rape and murder of the informant's daughter-in-law Khatoon and they have rightly been convicted by the trial court for the said offence of rape and murder. In such view of the matter, I uphold the conviction and sentence passed against the appellants under Sections 302 / 34 and 376 of the Indian Penal Code by the trial court. In the result, I do not find any merit in this appeal and as such, the same is hereby dismissed. The appellants are on bail, as such their bail bonds are cancelled and they are directed to surrend before the trial court to serve out the remaining part of their sentence. It is further observed that if the appellants fail to surrender before the trial court within fifteen days from the date of receipt of the copy of this judgment in the trial court then the trial court shall take all coercive steps for getting them arrested.

Shiva Kirti Singh, J.

27. I agree.