
(2007) 01 JH CK 0049
In the Jharkhand High Court

Pancham Bhuiyan and Others

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 07-01-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Evidence Act, 1872 — Section 27
Penal Code, 1860 (IPC) — Section 201, 202, 302, 34, 376

Citation : (2007) 2 JCR 212

Hon'ble Judges : Dhananjay Prasad Singh, J; Amareshwar Sahay, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

D.P. Singh, J.—Both the appeals, arising out of same judgment, were heard together and are being disposed of by this common judgment.

2. Both the appeals are directed against the judgment of conviction and order of sentence dated 17.2.2001 and 22.2.2001 passed by the learned 1st Additional Sessions Judge, Jamshedpur in Sessions Trial No. 254/99, whereby and whereunder the learned Sessions Judge held all the appellants guilty under Sections, 302, 376(2)(g), 201, 34 IPC and sentenced them to undergo RI for life u/s 302 IPC, 12 years RI u/s 376(2)(g) and 5 years RI u/s 201 IPC. However, sentences were directed to run concurrently.

3. The factual matrix leading to these appeals are that in the night of 1.9.11.98 Munni Devi, wife of the informant Pradeop Sao, Munni Devi was not found in the house when he returned home at about 10.45 PM. The informant tried to search her out but she could not be found. According to the informant, he went in search of his wife along with PWs 9 and 11 towards the river assuming she might have gone for natural call. However, they could not locate the lady. It is further stated that during such search appellant Raju Chhatisgarhia and one man met them near the river bed who informed that no lady was seen by them. It is also alleged when they tried to move forward they were chased by them. The search

for missing lady continued till next day and ultimately an information was given to police at about 3 PM. According to the informant, when he returned from the police station, he learnt that the dead body of a female was lying near Lal Bhatta. The informant went there along with villagers to find the dead body of his wife lying in river bed. Somebody informed the police, which arrived and recorded his statement. The Informant further asserted in the fard beyan that in the evening of 19.11.98 all the appellants had assaulted PW 5 Ajay Kumar Roy, neighbour of the informant and the deceased had intervened. He further asserted that thereafter the appellants came back at about 9 PM threatened the neighbour and carried away his wife to commit gang rape and killed her.

4. On the basis of this information, Sidgora P.S. Case No. 84/98 was registered against all the above named appellants u/s 202,376,201,34 IPC. The police prepared inquest report, sent the dead body for post mortem examination and recorded the statements of a number of witnesses, wherein it was disclosed that appellant Raju Chhatisgarhia was apprehended by villagers in the evening of 20.11.98 and he has confessed his guilt to have committed this offence along with all other appellants. The police started searching the appellants who surrendered in the court of CJM Jamshedpur on 23.11.98. The police took all of them on remand and recorded their statements. On the basis of their confessional statements the police again arrived at the river bed and recovered d Sari worn by the deceased in the night of the occurrence, concealed within the river bed. Police further seized broken bangles from the place where the deceased was gang-raped. Accordingly the police submitted chargesheet against all of them under Sections 302,376,201,34 IPC.

5. The appellants' trial was committed to the court of sessions for charges as mentioned above. They have denied the confessional statements made before the public and police. They have further denied that they made any confessional statement and any incriminating article was recovered on the disclosure of appellant Kanchan Bhuiyan. Appellant Raju Chhatisgarhia has also denied his involvement in any such crime and to have made any extra judicial statement before the villagers as well as police. According to all the appellants their LTI and signatures have been obtained by the police on plain papers. However, the learned trial court considered the evidence on record and found and held them guilty for committing gang-rape with murder and attempt -to destroy the evidence to sentence them as aforesaid.

6. The present appeals have been preferred on the ground that the learned trial court has committed mistake by relying upon extra judicial confessional statement. It is further asserted that the learned trial court should not have held the appellants guilty on the basis of circumstantial evidence, as the chain of such circumstances were not complete and insufficient to prove their guilt. It was also asserted that in the event when story of quarrel between PW 5 Ajay Roy and appellants was not supported, then subsequent occurrence could not be proved. The memo of appeal further mentions that the appellants were not medically

examined to suggest that they had indulged in such sexual intercourse with the deceased. The learned Counsel for the appellants further asserted that in view of the improbability of involvement of the appellants in the alleged crime without direct evidence, they deserve to be acquitted. It is further asserted that appellant Mukesh Mardi was a minor at the time of occurrence.

7. Mr. B.M. Tripathy, learned Counsel for the appellants, further stressed before us that so called confessional statement of Raju Chhatisgarhia cannot be used against other appellants. Learned Counsel further pointed out that the confessional statement of one co-convict cannot be made basis; to find and hold guilty other appellants. Mr. Tripathy further stressed that circumstances used against the appellants are incomplete and create serious doubts regarding the prosecution case. According to him, when none of the witnesses have come to support the prosecution story that deceased was forcibly taken away from her house in the evening of 19.11.98, the involvement of the appellant cannot be presumed in alleged commission of gang rape and murder. Mr. Tripathy further criticized the impugned judgment in which the learned trial court has accepted the prosecution case that Raju Chhatisgarhia has confessed his guilt before PWs 1,9,10,11, 12,16 and 17, as they have contradicted each other on material points. Learned Counsel further pointed out that recovery of sari and broken bangles made on the Basis of confessional statement of Kanchan Bhuiyan may not be utilized against other appellants in the present facts. Therefore, the appellants deserve to be acquitted.

8. In the present case the prosecution has examined 19 witnesses. It is undisputed fact on record that Munni Devi, aged about 25 years, wife of the informant Pradeep Sao, was found missing from her house in the night of 19.11.98. It has also come on record that her dead body was found lying in the river bed in the evening of 20.11.98. The post mortem report confirms that she has been mauled and sexually abused before her death. Her dead body was found with petticoat and blouse only. The sari, worn by her at the time of occurrence, was recovered from the same river bed on the disclosure made by appellants. Raju Chhatisgarhia and Kanchan Bhuiyan on 27.11.98. The prosecution case, therefore, remains confined within the fact that Munni Devi was subjected to gang-rape in the night of 19.11.98 and thereafter murdered. There is no eye witness of the occurrence. However, it has come on record that in the evening of 19.11.98 a scuffle took place between PW"5 and 5-6 boys of the locality, after which abduction of Munni Devi happened as she has dared to intervene during this scuffle. The prosecution case is that these appellants were the boys, who were involved in the scuffle and they by way of reprisal, abducted Munni Devi and committed the offences. The learned trial court has considered all these facts in details. According to; impugned judgment, the confessional statement of appellant Raju Chhatisgarhia made before the villagers in the evening of 20.11.98 was later on confirmed by his statement in police custody on 27.11.98. The recovery of sari and broken bangles was made on the disclosure of appellants Kanchan Bhuiyan and Raju Chhatisgarhia, therefore, all the appellants

were held guilty of the offences.

9. We have carefully gone through lower court records and the evidence in above context. PW 4 Narsing Ram and PW 5 Ajay Kumar Roy, both have denied that the appellants were involved in the alleged scuffle with Ajay in the evening of 19.11.98 and they were declared hostile by the prosecution. The IO, PW 19, vide para 4 and 5, contradicted these witnesses and asserted that they have stated before him that a scuffle took place between the appellants and PW 5, in which Munni Devi has intervened inviting wrath of the appellants, who came at about 9.30 PM and threatened the villagers to shut their doors, thereafter the deceased was found missing. PW 7 Gayatri Devi though declared hostile has supported the prosecution version before the police. Said Ajay Ram as PW 5 has supported partly the prosecution case by admitting that: in the evening of 19.11.98 some boys had questioned him for calling them. He further admitted that those boys came later on in the village but thereafter became in accessible. So the story that there was some scuffle between PW 5 and some boys is found true. Question remains who were these boys and what happened afterwards when the villagers were forced to shut their doors.

10. The second set of the evidence by PWs 1,9,10,11,12,16 and 17 are on confessional statement of appellant Raju Chhatisgarhia before the villagers and consequential recovery of dead body, sari and incriminating articles from the PC). All these witnesses are independent, who specifically mentioned the name of appellant Raju Chhatisgarhia to have confessed before the villagers his involvement in the alleged crime along with other appellants. It is true that the confessional statement of one co-accused cannot be used against the others. However the involvement of the appellants cannot be ruled out only on the ground that they have been held guilty in this case on the basis of incriminating articles recovered in pursuant of the confessional statement of co-accused persons.

11. The witnesses, mentioned above, are of the same locality and in all probabilities would be witness regarding interrogation of Raju Chhatisgarhia by the villagers. According to PW 1, Binod Sao, he went to Kanu Bhatta where villagers have kept the appellant Raju in their custody. He asserted that appellant Raju disclosed his involvement in the alleged offence along with other appellants. He identified appellant Raju Chhatisgarhia in the court. During cross examination this witness admitted that by that time at about 6 PM the entire villagers have assembled there. PW 9 has supported this version by stating in para 3 that when he returned from the river he saw many people questioning appellant Raju who disclosed the entire incident. He further identified appellants Raju and Kanchan in the court. This witness was cross examined, where he mentioned that Raju has disclosed the names of other appellants on a paper. No such paper has been produced. Therefore, this part of the statement that Raju gave the name of other appellants in his writing is not acceptable. This witness has further asserted that when he along with informant went in search of the deceased, appellants Raju

and Kanchan met them and resisted further searching of the deceased by using force. He is a witness on the recovery of sari and broken bangles of the deceased from the river bed and. PO, having signed over the seizure list, vide Ext.3 and 3 /4.

12. PW 10 Puran Sao is another witness who stated that when he was returning after location of the dead body, he found appellant Raju being questioned by the villagers. According to him, Raju asserted before the villagers, why they were holding him alone responsible for the offence committed by other appellants. He is another witness on the seizure list along with PW 9. He proved his signature on the seizure list as Ext.3/5. According to these two witnesses, Sari and broken bangles were recovered on the disclosures made by appellants Raju and Kanchan. This witness has asserted vide para 6 that PW 17 Radheshyam has recorded the names of other appellants on the disclosure made by appellant Raju. However, no such paper even recorded by PW 17 has come on record. This witness has further proved beyond doubts that Sari and broken bangles of the deceased were recovered by police on the disclosure made by appellants Raju and Kanchan.

13. PW 11 Raghunandan Sao has gone in search of the deceased along with the informant in the night of 19.11.98. He asserted that appellant Raju and another person concealing his face met them near the river bed and informed that no woman was seen in the vicinity. He further asserted that when they tried to go further in search, they were chased away. This witness further admitted that next day in the evening he came to know that villagers have caught appellant Raju, who was being questioned by them. He reached there to hear that Munni was killed by them after gang rape. According to him, Raju named all other appellants. PW 12 Sheobalak Sharma is another witness supporting the prosecution version that Raju confessed and disclosed his involvement along with other appellants in the alleged crime. He is another witness on the recovery of sari and broken bangles from the river bed and PO on disclosure made by the appellants, He is also a witness of the seizure of sari vide Ext.3/6. He has identified this sari later on 7.12.98 in presence of BDO, PW 15 as material ext.5. He identified his signature on material Ext.5 as Ext.3/7. During cross examination this witness asserted that sari was concealed inside the river bed. PW 13 Binod Kumar Singh supports the prosecution version to the extent that dead body was recovered from the river bed on 20.11.98 by the police. PW 15 Binodanand Jha, BDO has proved TIP being conducted by him, in which PW 6 Pradip Sao and PW 18 Gopal Sahu identified the sari belonging to the deceased. PW 16 is further a witness on the confession made by Raju before the villagers. PW 17 Radheshyam Gupta has supported the prosecution version that Raju has confessed before the villagers his involvement in the alleged crime along with others. He has not been cross examined on any material point.

14. All these witnesses are neither related with the informant nor interested in any manner to implicate the appellants. They are admittedly independent and of

neighbouring village. The defence has not brought on record any circumstance to show that they were interested in any manner to implicate the appellants falsely in this case. These witnesses proved that Raju has confessed before the villagers regarding the involvement of the appellants in the alleged crime. Now it has to be scrutinized along with subsequent development and circumstances in which Sari, worn by the deceased and broken bangles were recovered from the PO by the police on 27.11.98. The admitted case of the prosecution is that although Raju disclosed his involvement before the villager, the police could not get hold of him before 25.11.98. According to the informant, PW 6, when he went in search of his wife along with PWs 9 and 11, appellant Raju and one person having concealed his face, met them. He further asserted that when they enquired from Raju whether they have seen any lady going that side, he answered in negative and restrained them from further search. He admitted that in the evening of 20.11.98 he learnt that a body was lying in the river bed and arrived at that place to find his wife dead. This witness, during cross examination has admitted that his statement was recorded by police at about 7 PM after removal of the dead body. However, when PW 5 Ajay Ram was asked by villagers, he disclosed the name of Raju Chhatisgarhia and thereafter Raju was caught by the villagers, who disclosed his involvement along with other appellants, This witness, vide para 14, stated how Raju could manage to slip away from the villagers and thereafter police was informed. He is also a witness of the recovery of sari and broken bangles etc. from the river bed. According to him, vide para 17, he did not know other appellants except Raju. He has identified the said sari during TIP and proved his signature on it, vide Ext.3/9. Therefore, it is apparent that the informant Pradip Sao has got no previous animosity with the appellant Raju and others to implicate them falsely in this case. The main question remains if Raju has not disclosed the name of other appellants, in which circumstance they could be named in this case. The consistent evidence available on record by PWs 1,6,9,10,11,12,15 and 17 cannot be brushed aside just because the confessional statement of Raju was; neither recorded by the villagers nor before a Judicial Magistrate. It has come on record that appellants surrendered themselves in the court on 23.11.90 and police took them on remand in the evening of 25.11.98. In this context the evidence of PW 19, Md. Safiulla, the IO, is important to ascertain the correctness of the information and subsequent event leading to recovery of sari and broken bangles.

15. PW 19, the IO has proved the confessional statements of appellants, vide Ext.8 series. According to him, on receipt of the information on wireless that a dead body was lying in river bed, he went to Lal Bhatta to find the informant and other witnesses assembled at the river bed. He recorded the statement of the informant, Ext.5, on which. PWs 1,9 and 16 have signed as witnesses. He prepared the inquest report of the dead body at about 2.30 hours and sent it for post mortem. He admitted that the dead body was not having sari on it. The inquest report has been marked as Ext.7. He has described PO as lonely place having no habitation nearby. He admitted in para 12 that when he reached in

village Kanu Bhatta to arrest the appellants he was informed by the villagers at 22 hours that appellant Raju has confessed his-guilt before the villagers and he managed to slip away. He immediately thereafter recorded the statement of PWs 1,9,10,11,12,16,17 including PWs 4,5,7 and 8, declared hostile during the trial. He has admitted that these witnesses have supported the prosecution case regarding disclosures made by appellants Raju and Kanchan alongwith others in the alleged crime. He has also asserted that PW 5 Ajay has named the appellants to have assaulted him in the evening of 19.11.98, in which the deceased has protested. He further, stated that PWs 5 has disclosed that same night at 9.30 PM the appellants came back, threatened the villagers to shut the doors and thereafter the deceased was found missing. According to PW 19 the confessional statement recorded by him of the appellants were voluntary. According to established law, the statement of the accused persons recorded by the police cannot be relied and accepted by the trial court except to the extent relating to recovery of incriminating articles and weapon of assault etc, u/s 27 of the Indian Evidence Act. The learned Counsel for the appellants has stressed that such confessions made before the police requires to be discarded.

16. In view of the facts on record, we are of the view that the confessional statement leading to recovery of sari worn by deceased and broken bangles from the PO has to be considered in accordance with law. This, witness got the sari recovered from the river bed, vide para 12, wherein it is mentioned that at 10.30 AM on 27.11.98 he along with appellants arrived at the river bed where appellant Kanchan Bhuiyan took out the sari concealed in the river, identified by PW 6 and others belonging to the deceased. He has got the signatures and LTI of all the appellants on the seizure list prepared by him. He specifically mentioned that sari was concealed beneath the river bed and it was dug out by appellant Kanchan Bhuiyan. This witness further stated that the appellants took him to the place where gang rape was committed at a distance of 400 yards from the place from where sari was recovered. He seized broken bangles of red colours, which tallied with the bangles in the hands of the deceased. This seizure list of the broken bangles was also signed and put LTI by appellants. He has sent the appellant Kanchan Bhuiyan for medical examination by PW 14, Dr. Sanjay Kumar, Resident Surgeon MGM, who examined appellant Kanchan Bhuiyan on 27.11.98 at 1.20 PM to find 8 small dry wounds on right side of his chest near axilla. According to PW 14 these wounds were arranged in oval shape in which size of upper four dry wounds was 1/4 cm x 1/6 cm and size of another four dry wounds 1/5 cm x 1/6 cm. He further opined that the injury was caused by teeth bite about eight days ago. The confessional statements of appellants Raju and Kanchan mentioned that the deceased has bitten Kanchan Bhuiyan while he was committing rape, resulting in this injury. It is also the prosecution case, as disclosed by appellants that on being bitten by the deceased, appellants became enraged and started hitting the deceased on her head, due to which she became unconscious, after which she was killed.

17. The post mortem report of the deceased, vide Ext.1 conducted by PWs 2 and

3, mentions as follows:

- A. 1. Abrasion- 2x1/4cm and 3 tiny nail head, abrasion over right hand back.
2. 1/2x1/4cm and two tiny abrasions over right forearm lower portion ulnar boarding.
3. Linear abrasion left face 8 cm.
4. 2x1/2cm over right breast.
- B. 1. Burise-3x1/2cm right thigh front lower part.
2. 3x3 cm left leg upper front.
3. 3x3 cm left leg medial middle part.
4. 4x2 cm left elbow and adjoining forearm back.
5. 4x3 cm right leg middle front.
6. 6x4 cm left leg upper front
7. 3x2 cm left thigh lower back.
8. 3x2 cm right leg upper front.
9. 2x1 cm right shine middle.
10. 3x3 cm right elbow front.
11. The valva on each side swollen and bruised.

The vaginal wall both on left and right and posterior aspect bruised size 3x2 cm, 2x2 cm x 3x2 cm.

12. Bruised area ranging from 2x2 cm over both breasts.

13. Bruised area 3x1/2cm, 2x1/2cm and 3x1cm over lips.

C. Internal- there was contusion of whole scalp more extensive over forehead, left half of scalp and occipital scalp contusion of whole brain more on left half of brain." The Medical Board opined, bruises and abrasions present over the genatelia, thighs and breasts are suggestive of sexual intercourse with injuries over valva and vaginal walls were result of forceful penetration prior to death.

The report itself shows that the deceased was subjected to forceful sexually intercourse and brutally mauled before her death.

18. The IO during cross examination has admitted that he could recover the sari as well as broken bangles from the lonely place only on disclosure made by appellants particularly Raju and Kanchan. He has also obtained the signatures and LTI of appellants on the seizure list, vide Exts.9 and 10. According to this witness, the place from where broken bangles were recovered was an open space by the side of river Swarnarekha. He further mentioned, vide para 14 that

sari was recovered at a distance of 400 yards on the southern bank of river Swarnarekha. He admitted that during investigation he could learn that missing report was given by informant PW 6 at 3 PM on 20.11.98 vide SD Entry No. 630 dated 20.11.98. He admitted, vide para 25 that the story of disclosure made by Raju before the villagers was known to him first time at 22 hours on 20.11.98, whereas the fard beyan was recorded at 20 hours earlier on the same day. During cross examination of the IO, the appellants suggested that the confessional statements, vide Ext 8 series, was obtained by using force. Some minor contradictions in the statement of witnesses in their cross examinations have been pointed out.-

19. The learned trial court has considered all these aspects in the impugned judgment, vide para 23 to 28, in details, before relying upon the extra judicial confessional statement of Raju Chhatisgarhia, to accept the prosecution version. We have carefully gone through it particularly keeping in view the arguments advanced on behalf of the appellant. According to the learned Counsel so called extra judicial confession, which was later on recorded by police in police custody, vide Ext.8 series, has to be discarded. We have already discussed the provisions of law in this context to consider the materials available on record irrespective of the confessional statement recorded by the police. The provision of law specifically provided that such confessional statement may be accepted only to the extent which relates to recovery of incriminating articles. As discussed above, we have found that the IO could recover the sari worn by the deceased, broken bangles from two places on disclosure made by appellants Raju and Kanchan. This fact has been established beyond doubt that in the presence of the appellants at that time the recoveries were made with their signatures and LTI on the seizure-list. Further more PWs 6,13,14 have proved their signatures on the seizure list. The learned trial court, while recording the statement of appellants u/s 313 Cr.P.C, has put these circumstances to all the appellants. The appellants have answered saying that this fact was not in their knowledge but all of them have accepted that police has taken their statement and got their signatures or LTI of course under duress on plain paper. Even if this is accepted that signatures and LTI on the seizure list, Ext.9 and of material Exts.1 and 2 along with endorsement of appellants on the seizure list where the recovery of articles have been mentioned in the writing of appellant Gorelal Bhuiyan, stand corroborated. The learned lower court has considered these aspects vide par 25 and 26 of the impugned judgment Therefore, the recovery of sari and broken bangles after eight days of the occurrence could be made only at the disclosure of the appellants which cannot be brushed aside only because this" information was obtained by police during police remand of the appellants.

20. Apart from this, their circumstances coming on record are that as per confessional statements of appellants the deceased has bitten on right chest of appellant Kanchan Bhuiyan during commission of rape, which enraged appellants Kanchan and Raju resulting in thrashing the deceased on her head. The circumstances that Kanchan was bitten by the deceased on his right chest stand

supported with presence of dried wounds in oval shape caused by teeth biting when he was examined of 27.11.98 by PW 14. The appellant Kanchan Bhuiyan has been put this question clearly and specifically by the trial court, in which he admitted that he was examined by doctor but he denied that any oval shaped wound was found on his chest. The statement of PW 14 is specific that this dried oval shaped wounds four on upper portion and four on lower portion measuring 1/4 cm x 1/6 cm and 1/5 cm x 1/6 cm was teeth bite of about eight, days old which completely supports that it was caused by teeth bite. Other appellants have admitted that Kanchan was sent for medial examination on 27.11.98 after recovery of these incriminating articles. All of them have accepted that their LTI or signatures were obtained by the police on a plain paper. The circumstances therefore show that incriminating articles were recovered on their disclosure by police in the forenoon of 27.11.98 from the place where it could not be possible without their indication. The teeth bites wounds found on the chest of appellant Kanchan Bhuiyan also supports that he was bitten about 7-8 days before his examination by PW 14.

21. Therefore, the prosecution has been able to prove as already discussed in the forgoing paragraphs that the deceased Munni Devi found missing from her house in the night of 19.11.98 and later on was found dead in lonely place after being ravished. The manner in which she has been done to death, has been proved by the medical evidence along with post mortem report Ext.1, proved by PWs 2 and 3. it confirms that Munni Devi was subjected to sexual assaults prior to her death. It is further mentioned that the contusion of whole scalp along with brain materials resulted in her death. The prosecution version that Munni was forcibly taken away by the appellants from her house at about 9.30 PM though not supported by any eye witness. The retracted statements of PWs 4,5,7 Narsing Ram, Ajay Kumar Rai and Gayatri Devi show that there was some altercation between the appellants and PW 5 in which the deceased had intervened. These three witnesses had supported the prosecution case before PW 19, the 10, vide para 4 and 5. The incident with PW 5, as alleged by the prosecution, in the evening of 19.11.98 has not been disputed. He has admitted, vide para 2 that after the first incident those boys visited the Basti second time in the night. The defence counsel has objected to these statements on the ground that in case any incident took place between the appellants and PW 5, it cannot be presumed that second incident also took place. The learned Counsel for the State submitted that when the informant came to his house, he could not find his wife till the evening of 20.11.98. Our attention has been drawn towards the assertions of PW 6, Pradip Sao, PW 9 Rakesh Kumar and PW 11 Raghunandan Sao, wherein they have asserted that when they went in search of the deceased towards the river, the appellants Raju Chhatisgarhia and Kanchan Bhuiyan misled and obstructed when they wanted to move further towards the place, where the dead body was recovered next day. They have consistently asserted that when they inquired from the appellants, they denied that any lady was seen by them. They have further asserted that when they tried to proceed further in search of the

deceased, they were threatened to leave the place. Next day in the evening the dead body of Munni Devi was found in the river bed. It has also come on record that after that villagers have confronted the appellant Raju Chhatisgarhia with the alleged crime and he disclosed the involvement of all the appellants in this crime. Further appellant Kanchan Bhuiyan, arrested in the morning of 27.11.98 and sent for medical examination, was found having injuries on his chest vide. Ext.4. It shows that PW 14 has found 8 small dried wounds on right chest near nipple arranged in oval shape of 1/4 CM x 1/6 CM and 1/5 CM x 1/6 CM. According to this witness, these injuries were caused by teeth biting. These circumstances, therefore, complete the chain leading to their guilt.

22. All the above-mentioned facts and circumstances stand supported with retracted confessional statements of appellant. Unlearned Counsel for the appellants has criticized these confessional statements on the ground that they were recorded by the police while the appellants were in their custody. As such these confessional statements have been accepted by the learned trial court against the law. The fact remains that police recorded the confessional statements of all the appellants on 27.11.98, wherein all of them have confessed their participation in the alleged gang rape and killing of the deceased Munni Devi by appellants Raju Chhatisgarhia and Kanchan Bhuiyan. It is true that confessional statement of appellants cannot be accepted regarding the guilt of the appellants until it is supported and corroborated by other circumstances. The learned Counsel for the appellants has not disputed that certain incriminating articles like broken bangles of the deceased, the sari, which she was wearing at the time of her death were recovered from the river bed only on the disclosure made by appellants Kanchan Bhuiyan and Raju Chhatisgarhia. The presence of teeth biting on the right portion of chest of Kanchan Bhuiyan is also proved beyond doubt. The alleged incident of committing rape and afterwards causing death of the deceased Munni Devi has been disclosed by all appellants also. The cause of death, presence of contusion with marks of sexual assaults on the deceased have been proved beyond doubt by PWs 2 and 3, vide Ext.1. These facts along with circumstances discussed above, cannot be discarded only because the police has recorded the confessional statement of the appellants.

23. The prosecution witnesses have consistently supported that on the basis of these confessional statements police recovered the incriminating articles from a place, where rape is said to have been committed such as the broken piece of bangles found at that lonely place. It has further been proved beyond doubt that on the indication of appellant Kanchan Bhuiyan, the sari worn by the deceased at that time was recovered having been concealed beneath the river bed. The appellants have not suggested any ground of their false implication. The learned Counsel for the appellants has relied upon the hostile witnesses, PWs 4, 5 and 7 in this context and asserted no such confessional statement was ever made by appellant Raju Chhatisgarhia before the villagers in the night of 20.11.98. We do not find any reason why so many persons like PWs 9, 10, 11, 12, 16 and 17 have asserted falsely this fact specifically when there appears no occasion for such

false assertions. All these facts have been discussed by the learned trial court at length in the impugned judgment. We fail to find any valid ground to disagree with the view of the learned lower court. Having considered the above-mentioned facts and circumstances, we find that the learned trial court has rightly found and held all the appellants guilty.

24. In the result, we find and hold that both the appeals have got no merit. Accordingly, the judgment of conviction of the trial court and further the sentence passed against the appellants are upheld and confirmed. In this manner the present appeals are dismissed.

Amareshwar Sahay, J.

25. I agree.