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CrI.A.No. 978 OF 2003
ITEM No.102

Court No. 3

SECTION IIA

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Criminal Appeal No.978 of 2003

AJAY CHOUDHARI

...

Appellant (s)

VERSUS

STATE OF BIHAR

...

Respondent (s)

(With appln.(s) for exemption from filing O.T. and with office report)
WITH CrI.A.No. 979/2003

Date : 22/04/2004 These appeal were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DORAISWAMY RAJU
HON'BLE MR. JUSTICE ARIJIT PASAYAT

For Appellant (s) Mr. S.Wasim A.Qadri, Adv.
Mr. Ravi Praksh, Adv.

For Respondent (s)Dr. Krishan Singh Chauhan, Adv.
Mr. B.B.Singh, Adv.
Kumar Rajesh Singh, Adv.

UPON hearing counsel the Court made the following
O R D E R

CrI.A.No. 978/03:

The CrI. Appeal is dismissed in terms of the
signed order placed on the file.

CrI.A.No. 979/03:-

As requested by the learned counsel for the
appellant the matter is adjourned for 28.4.04

(Shashi Sareen)
Court Master

(Vijay Aggarwal)
Court Master

(Signed order is placed on the file)
IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 978 OF 2003

AJAY CHOUDHARI

...
Appellant (s)

Versus

STATE OF BIHAR

...
Respondent (s)

O R D E R

The appellant Ajay Choudhary along with three other accused persons were convicted for offence punishable under Section 302 and 376 read with Section 34 of the Indian Penal Code, 1860 (for short " I.P.C. "). The trial court found all the four accused persons guilty and sentenced each to undergo imprisonment for life for the offence relatable to section 302 read with Section 34 I.P.C. and additionally sentenced each to undergo 10 years rigorous imprisonment for offence relatable to Section 376 read with Section 34 I.P.C. The High Court affirmed the conviction and sentence by the impugned judgment. A thirteen year old minor girl was allegedly raped and subsequently murdered. In order to prove its accusation prosecution examined PW5 who is claimed to be an eye-witness. Additionally Pws.6, 7 and 8 were examined to show the presence of the accused persons with the deceased just prior to the alleged time of occurrence. Placing reliance on their evidence, as noted above, the trial court recorded conviction and sentence. A Division Bench of the High Court of Patna in appeal found the conclusion of the trial court to be in order and dismissed the appeals filed by the accused appellants.

In support of the appeal Mr. Qadri, learned counsel for the appellant submitted that the evidence of PW5 is not relatable, cogent and his presence at the spot has not been established. Additionally he was examined after considerable length of time and that is a vital factor which should have weighed with courts below. The evidence of PWs 6, 7 and 8 in no way establishes that the accused persons were responsible for the rape and murder of the deceased.

In response Mr. B.B.Singh, learned counsel for the State of Bihar supported the judgments of the Courts below.

We find that PW 5's evidence have been analysed in detail by both the trial court and the High Court. His explanation as to belated examination has been found to be plausible and has been accepted by the courts below. We do not find any infirmity in the conclusion to warrant any interference so far as the acceptance of his evidence is concerned. In addition to that, the evidence of Pws 6, 7 and 8, to a great extent, corroborated the evidence of PW5. Since the accused appellant is found guilty of offence punishable under Section 302 I.P.C., the question of any interference with the sentence imposed for the offence relatable to Section 376 I.P.C. is really of no consequence. The appeal is without merit and is dismissed.

.....J.
(DORAISWAMY RAJU)

.....J.
(ARIJIT PASAYAT)

New Delhi,
APRIL 22, 2004.