

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.172 OF 2018

RAKESH RAI @ VISHAL RAI @ PURNA RAI & ANR. ..Appellants

VERSUS

STATE OF SIKKIM ..Respondent

O R D E R

1. This appeal has been preferred by Rakesh Rai *alias* Vishal Rai *alias* Purna Rai (original accused No.3) and Tenzing Tamang (original accused No.4), collectively referred to as the appellants, challenging the judgment and order dated 20.04.2012 passed by the High Court of Sikkim at Gangtok in Criminal Appeal No.8 of 2011.

2. Four persons, namely, Praveen Subba (original accused No.1), Abishek Rai (original accused No.2), and the appellants were tried in the Court of Sessions, South & West Sikkim at Namchi in Sessions Trial Case No.21 of 2004 for having committed the offences punishable under Section 302 read with 34 of the Indian Penal Code, 1860.

3. The aforesaid trial was taken up pursuant to the crime registered after lodging of the First Information Report No.25(11)03 dated 28.11.2003 registered with Police Station Kaluk, District Gayzing.

4. Said reporting was as under:

"Today (i.e. 28.11.03) at around 030 hrs. a telephonic information has been received from I/C Dentam O.P. stating that one male unidentified dead body has found below road near liching basty, W/Sikkim.

On the basis of above information registered Kaluk P.S. U/D. Case No.11(11)03 dated 25.11.03, U/S 174 Cr.P.C. and took investigation.

During investigation inspected place of occurrence the P.O. has found located Dentam to Pelling road at liching busty which is about one Km. far from the B.B. lall suspension bridge of Dentam. In road tooth and blood are found. About 100 foots below the road one unidentified dead body of male person was found lying dead. Later the dead body was identified as Sonam Dadul Bhutia S/o Kinzang Dadul Bhutia of Chumbang, Gayzing, W/Sikkim. Inquest over the dead body was conducted. During inquest injuries are found on his head and tooth of upper Jaw are found missing. One black chunni is also found nearby the P.O.

So far investigation transpired that the deceased Sonam Dadul Bhutia was suspected to murder by same unknown person(s) and thrown below road at liching busty on 27.1.03 at around 1900 hrs.

As such the above U/D case has been converted into criminal case vide F.I.R. No. 25(11)03, dated 28.11.2003, U/S. 302 IPC against unknown person on suo-motu for further investigation."

5. After due investigation, the aforesaid four accused persons were sent up for trial.

6. According to the prosecution, the evidence on record comprised of following facets:

- a) Certain witnesses had seen one Beena alongwith deceased Sonam Dadul Bhutia in the company of accused Nos.1 and 2 on 27.11.2003 from 2.30 p.m. onwards. Among the witnesses on the point were PWs 19 and 20, according to whom at about 4.00

p.m. they returned alongwith accused nos.1 and 2 as well as Sonam and Beena.

- b) The second facet of the evidence led by the prosecution was to the effect that a Maruti Car bearing registration No.WNC-0525 was seen at Dentam Bridge. According to the prosecution, the vehicle belonged to PW40 Man Bahadur Rai and was under the control of A3 Rakesh Rai.
- c) The other set of material was to the effect that PW41 owner of Himalayan Guest House deposed that A3 Rakesh Rai had stayed in his Guest House under false identity; and a girl was seen in his company by PWs 40, 42 and 43.
- d) The fourth facet of the evidence related to the recovery of dead body of deceased Beena pursuant to the disclosure statement made by A3 Rakesh Rai.

7. It is relevant to note that the disclosure statement was not recorded in the instant matter. A3 Rakesh Rai was in custody in connection with a completely different crime and during the course of said investigation, he allegedly made a disclosure statement. Without making him over to the police which was concerned with the investigation in the present

crime, his statement was recorded and at his pointing out, according to the prosecution, dead body of Beena was recovered.

8. It may further be stated here that insofar as the crime concerning the alleged murder of Beena is concerned, separate criminal proceedings being Sessions Trial No.26(S)/04 pursuant to FIR No.331(11)2003 dated 24.12.2003 lodged with Police Station Matigarh, Siliguri, District Darjeeling, in respect of offences under Sections 302/201/34 IPC are going on. In that crime all the four accused stand named in the FIR and the prosecution is still going on.

9. We are however concerned here with the murder of Sonam Dadul Bhutia and not Beena.

10. The material against the appellants, for that matter principally against accused No.3 can be categorized as under:

- a) Some of the witnesses had seen Maruti Car No.WNC-0525 at Dentam Bridge.
- b) The Car No.WNC-0525, according to the prosecution, was owned by PW40 but was in the custody and under control of accused No.3 Rakesh Rai.

c) A girl was seen in the company of accused no.3 Rakesh Rai though the prosecution chose not to establish the identity of that girl.

d) It was at the pointing out of accused no.3 Rakesh Rai that the body of Beena could be recovered.

11. Considering the entirety of the material on record, the Trial Court by its judgment and order dated 20.05.2011 acquitted all the four accused of the charges levelled against them. The Trial Court did not find the evidence on record adequate to return a finding of guilt against all the four accused.

12. The State did not choose to file any appeal against acquittal of accused Nos.1 and 2 but filed Criminal Appeal No.8 of 2011 challenging the acquittal of the appellants.

13. By its judgment and order presently under challenge, the High Court accepted the appeal preferred by the State and while reversing the acquittal it recorded conviction against the appellants for the offences with which they were charged.

The High Court then sentenced them to imprisonment for life and to pay fine in the sum of Rs.20,000/- each, in default whereof they were directed to suffer further imprisonment of six months.

14. In this appeal, we have heard Ms. Ashima Mandla, learned Advocate for the appellants, and Mr. Raghvendra Kumar, learned Advocate for the respondent State.

15. What emerges from the record is that:

- i. Sonam Dadul Bhutia and Beena, according to the prosecution, were found in the company of accused Nos.1 and 2.
- ii. Both accused Nos.1 and 2 were acquitted of the charges levelled against them.
- iii. Not a single witness stated that Sonam was seen in the company of the appellants.
- iv. Even if it is accepted, at its best, the material on record would thus go to show that a girl was in the company of accused No.3. The identity of that girl was however not established.
- v. It was at the pointing out of A3 Rakesh Rai that the body of Beena was recovered.
- vi. For the murder of Beena, a separate trial is going on and in these proceedings we are concerned with the murder of Sonam Dadul Bhutia.

16. The prosecution, thus, wants to rely on the very same set of circumstances under which both Sonam Dadul Bhutia and Beena were found in the company of accused nos.1 and 2, to submit that both Sonam and Beena were together and since the dead body of Beena was recovered pursuant to the pointing out of accused No.3, the appellants must necessarily be responsible for the murder of Sonam.

17. As stated herein above, not a single person had seen Sonam in the company of the appellants nor was the body of Sonam recovered pursuant to any disclosure made by any of the appellants.

18. In the circumstances, in our considered view, the acquittal recorded by the Trial Court was right and justified. There was no reason for the High Court to overturn the view taken by the Trial Court while dealing with an appeal against acquittal.

19. Consequently, we allow this appeal, set-aside the judgment and order of the High Court and acquit the appellants *i.e.* Rakesh Rai *alias* Vishal Rai *alias* Purna Rai (original accused No.3) and Tenzing Tamang (original accused No.4) of the charges levelled against them. They be set at liberty forthwith unless their custody is required in connection with any other crime.

20. Needless to say that the proceedings which are presently going on in the Court at Siliguri, District Darjeeling concerning the murder of Beena shall be taken to the logical conclusion without in any way being influenced by the order of acquittal recorded against the appellants in the present matter. The proceedings before that Court shall be considered purely on merits and in accordance with law.

.....J.
(UDAY UMESH LALIT)

.....J.
(S. RAVINDRA BHAT)

.....J.
(BELA M. TRIVEDI)

NEW DELHI,
DECEMBER 09, 2021

ITEM NO.104

COURT NO.2

SECTION II

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No.172/2018

RAKESH RAI @ VISHAL RAI @ PURNA RAI & ANR.

Appellant(s)

VERSUS

STATE OF SIKKIM

Respondent(s)

Date : 09-12-2021 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE UDAY UMESH LALIT
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MS. JUSTICE BELA M. TRIVEDI

For Appellant(s) Ms. Ashima Mandla, Adv.
Ms. Mandakini Singh, Adv.
Mr. Syed Ahmad, Adv.
Ms. Jaspreet Gogia, AOR

For Respondent(s) Mr. Raghvendra Kumar, Adv.
Mr. Narendra Kumar, AOR

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

The appeal is allowed, in terms of the Signed Order placed on
the file.

Pending applications, if any, also stand disposed.

(MUKESH NASA)
COURT MASTER

(VIRENDER SINGH)
BRANCH OFFICER