

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.506 of 1993

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(AGAINST THE JUDGMENT OF CONVICTION AND ORDER OF SENTENCE, DATED 18TH SEPTEMBER, 1993, PASSED BY SHRI DAHAUR BAITHA, 1ST ADDITIONAL SESSIONS JUDGE, BEGUSARAI, IN SESSIONS TRIAL NO.294 OF 1986/64 OF 1986, ARISING OUT OF CHAIRIA BARIARPUR POLICE STATION CASE NO. 83 OF 1984, CORRESPONDING TO G.R. NO. 2323 OF 1984).

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1. Ram Naresh Marwari @ Naresh Kumar, S/o. Murlidhar Marwari,
 2. Sheo Kumar Marwari @ Sheo Kumar, S/o. Murlidhar Marwari,
 3. Ram Piyari Devi, W/o. Murlidhar Marwari,
- All are residents of Village and P.S. Cheria Bariyarpur, District-Begusarai.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellants : None

For the Respondent : Mr. Ajay Mishra, APP

Mr. Amish Kumar, Amicus Curiae

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CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI

and

HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE I. A. ANSARI)

Date: 17-03-2015

Under the judgment, dated 18.09.1993, passed, in Sessions Trial No. 294 of 1986/64 of 1986, by learned 1st Additional Sessions Judge, Begusarai, the appellants, Ram Naresh Marwari, Sheo Kumar Marwari and Ram Piyari Devi, stand convicted under Sections 302 read with Section 34 and Section 201 of the Indian Penal Code. Following their conviction, under Section 302 read with Section 34 of the Indian Penal Code, the accused-appellants have been

sentenced to suffer imprisonment for life and for their conviction, under Section 201 of the Indian Penal Code, the accused-appellants have been sentenced to suffer rigorous imprisonment for five years, both the sentences having been directed to run concurrently.

2. The case of the prosecution, as unfolded at the trial, may, in brief, be described as under:

(i) Ishri Lal Marwari, Murlidhar Marwari and Durga Marwari were full brothers. While accused-appellants, Ram Naresh Marwari, Sheo Kumar Marwari @ Sheo Kumar are sons of Late Murlidhar Marwari, accused-appellant, Ram Piyari Devi, is widow of Late Murlidhar Marwari. Ishwari Marwari adopted Krishna Kumar Marwari as his son, Kishun Kumar Marwari being the eldest son of Murlidhar Marwari.

(ii) On 12.06.1984, in the middle of night, on hearing *hulla*, informant, Ram Naresh Singh, and his other co-villagers came out of their respective houses and they realized that the *hulla* was being raised from the house of Ishri Lal Marwari. Immediately thereafter, the informant and others rushed to the house of Ishri Lal Marwari, but found the door of the house of Krishna Kumar Marwari locked from outside and, on making query from the accused persons, accused Ram Piyari Devi told them that the key to the lock was not with them as the lock belonged to Krishna Kumar Marwari. The

informant removed the flank of the door and, then, he found that Krishna Kumar Marwari was lying dead, in a pool of blood, having cut injury on his body.

(iii) An information, in writing, in the form of *fardbeyan*, was lodged, with regard to the occurrence, at Chairia Bariyarpur Police Station. Treating the *fardbeyan* as *First Information Report*, Chairiya Bariyarpur Police Station Case No. 83 of 1984 was registered, under Sections 302/201/34 of the Indian Penal Code, against the accused persons, Ram Naresh Marwari, Sheo Kumar Marwari and Ram Piyari Devi.

3. During investigation, police held inquest over Krishna Kumar Marwari's dead body, which was also subjected to *post mortem* examination, and, on completion of investigation, *charge sheet* was laid, under Sections 302/201/34 of the Indian Penal Code, against the three accused persons aforementioned.

4. At the trial, while charges, under Section 302 read with Section 34 and Section 201 of the Indian Penal Code, were framed against the accused-appellants, namely, Ram Naresh Marwari, Sheo Kumar Marwari and Ram Piyari Devi, all the accused-appellants pleaded not guilty thereto.

5. In support of their case, prosecution examined altogether 13 (thirteen) witnesses including the

doctor (PW 7), who had conducted the *post mortem* examination on Krishna Kumar Marwari's dead body. The three accused aforementioned were, then, examined under Section 313(1)(b) of the Code of Criminal Procedure and, in their examinations aforementioned, all the accused denied that they had committed the offences, which were alleged to have been committed by them, the case of the defence being that of denial. No evidence was adduced by the defence.

6. Aggrieved by their conviction and the sentences passed against them, all the convicted persons have preferred this appeal.

7. We have heard Mr. Amish Kumar, learned Counsel, appearing as *Amicus Curiae*, and Mr. Ajay Mishra, learned Additional Public Prosecutor, appearing on behalf of the State.

8. While considering the present appeal, it needs to be noted that according to Dr. Gulam Saiful Haque (PW 7), who had, admittedly, conducted, on 13.06.1984, *post mortem* examination on the dead body of Krishna Kumar Marwari, he (PW 7) found following *ante mortem* injuries:

"(i) *Multiple incised wound numbering 8 (eight) situated on the forehead and face. The size ranging from 3"x1/2"x1/2" to 8"x1"x1". The incised wound on the forehead was bone deep*

involving the membrane and brain matter. The membrane torn, brain matter lacerated the wound on nose had cut the nose completely and deep to the level of bone. The incised wounds were so placed on the face, forehead and nose that these wounds mutilated the face. The mouth cannot full of blood. The wounds were inclined and horizontal to the face. All wounds having tapping at both the ends;

(ii) Fracture of left wrist with incised wound 2" x ½" x bone deep at the left wrists.

(iii) Fracture of right wrist with incised wound 1"x1/2"xbone deep at the right wrist.

(iv) Incised wound 1½"x1/2"x1/2" on the back of right upper arm.

(v) Incised wound 1"x1/2"x1/2" on the back of left upper arm.

(vi) Multiple incised wound 3"x1/2"xskin deep on the back of the right shoulder.

(vii) Incised wound 3"x1/2"x scalp deep on the back of the head.

(viii) Three incised wounds on left leg at the level of ankle each 2"x1/2"x1/2".

(ix) Incised wound on the left clavicle 1"x1/2"x

skin deep."

9. In the opinion of the doctor (PW 7), death was caused due to shock and hemorrhage resulting from the injuries sustained by the said deceased, which were caused by sharp cutting instruments, such as, *garasa*. In the opinion of the doctor (PW 7), injury No.1 was sufficient to cause death in ordinary course of nature.

10. Neither the findings of the doctor (PW 7) nor his opinion, with regard to cause of death of the said deceased and/or his opinion with regard to the nature of injuries and the nature of weapon, which might have been used, for causing assault on, and death of, the said deceased, were disputed either by the prosecution or by the defence. We, too, notice no infirmity in the findings of the doctor (PW 7) and/or in the opinion, which he has expressed with regard to the nature of injuries sustained by the said deceased, the nature of weapon used and the cause of death.

11. From the above unshaken evidence of the doctor (PW 7), what clearly transpires is that Krishna Kumar Marwari had met with homicidal death. The question, which, however, falls for consideration, is: whether accused-appellants were, or any of them was, involved in causing death of Krishna Kumar Marwari?

12. While considering the question posed above,



it needs to be pointed out that there was, admittedly, no eyewitness to the occurrence of assault on the said deceased. The entire case of the prosecution is based on circumstantial evidence. When a case is based on circumstantial evidence, every incriminating circumstance must be independently proved beyond any pale of doubt. The convincingly proved circumstances must form a complete chain pointing unerringly to the accused as the guilty one. The evidence, adduced by the prosecution, in a case, which is based on circumstantial evidence, must be consistent with the hypothesis of guilt of the accused and must also be inconsistent with the hypothesis of innocence of the accused.

13. In the backdrop of the position of law relating to a case based on circumstantial evidence, it needs to be noted that apart from the fact that in the present case, there is no eyewitness to the occurrence, no weapon has been recovered from the house of the appellants, which could go to prove that none but the accused were the ones, who had put to death Krishna Kumar Marwari.

14. There is nothing in the evidence on record to show that there was strained relation between the deceased, on the one hand, and, the accused-appellants, on the other, nor has any motive been proved, which could have impelled the accused-appellants to cause the death of the said

deceased.

15. In the light of what has been discussed above, when we consider the evidence of PW 1, we notice that according to his evidence, on hearing *hulla* of dacoits, when he went, along with others, to the house of Ishri Lal Marwari, he found that the house was locked from outside and, then, he, along with others, broke open the lock and, in the flash of torch light, found Krishna Kumar Marwari's dead body lying inside and that there was a copper vase lying in the room having blood stains thereon.

16. In no uncertain words, PW 1 has deposed that the said dead body was found inside the house of Ishri Lal Marwari and that Naresh Kumar Marwari and Sheo Kumar Marwari had been living separately and that the said deceased was the eldest son of Murlidhar Marwari and that the accused-appellant, Sheo Kumar Marwari, and accused-appellant, Ram Naresh Marwari @ Naresh Kumar, are the brothers of the said deceased, whom Ishri Lal Marwari had taken into adoption. This witness (PW 1) has also deposed that the relation between the families of Durga Marwari and Murlidhar Marwari was strained. There is nothing in the evidence of PW 1 to show that Ishri Lal Marwari or the said deceased had strained relation with the accused-appellants.

17. So far as PWs 2, 3 and 4 are concerned,



they have not given any clinching evidence against the accused-appellants; rather, their evidence show that the relation between Ishri Lal Marwari (family of the deceased) and Murlidhar Marwari (family of the accused-appellants) was cordial. This aspect of the evidence adduced by the prosecution, instead of advancing the case of the prosecution, helps the case of the defence that they had cordial relation of the said deceased and had apparently no reason to put death Ishri Lal Marwari's adopted son, Krishna Kumar.

18. PW 4 (Baijnath Prasad Singh) has deposed, in clear terms, about recovery of some articles including an iron *garasa* from the house of the deceased. There is nothing to show that the said weapon belonged to the accused-appellants and/or was ever used by them.

19. So far as PW 5 is concerned, his evidence is that he, along with the informant (Ram Naresh Singh), went to the house of Krishna Kumar Marwari and saw the house locked, the informant asked the mother of Krishna Kumar Marwari to open the lock, but she replied that she did not have the key. There is nothing to show that what the accused-appellant, Ram Pyari Devi, had told PW 5 and others were untrue or false.

20. PW 9 is a witness to the seizure of the articles found inside the room of the said deceased.

21. What emerges from the above discussion is

that the evidence, adduced by the prosecution, did not even make out a case of suspicion against the accused-appellants far less a case of conviction against the accused-appellants. The learned trial Court appears to have convicted the accused-appellants merely on suspicion and not on legally established evidence available on record.

22. Situated thus, we are clearly of the view that in the facts and attending circumstances of the present case, the appellants ought to have been acquitted. It, therefore, logically follows that the conviction of the accused-appellants and the impugned sentences passed against them cannot be sustained.

23. In the result and for the foregoing reasons, we allow this appeal. The impugned conviction of the accused-appellants and the sentences passed against them by the judgment and order, under appeal, are hereby set aside. The accused-appellants are held not guilty of the offences, which they stand convicted of, and they are hereby acquitted of the same.

24. Since the accused-appellants are on bail, their bail bonds are hereby cancelled and their sureties shall stand discharged.

25. Let the *Amicus Curiae* be paid a fee of Rs.5,000/-.

26. Registry shall, forthwith, send a copy of this judgment and order to the learned trial Court along with the Lower Court Records.

(I. A. Ansari, J.)

(Gopal Prasad, J.)

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