

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.424 of 1993

(AGAINST THE JUDGMENT OF CONVICTION, DATED 25.09.1993, AND THE ORDER OF SENTENCE, DATED, 28.09.1993,, PASSED BY SHRI MADHUSUDAN SINGH, 6TH ADDITIONAL SESSIONS JUDGE, ROHTAS AT SASARAM, IN SESSIONS TRIAL NO. 363 OF 1989/39 OF 1991, ARISING OUT OF SANJHAULI POLICE STATION CASE NO. 24 OF 1987, CORRESPONDING TO G.R.NO.1092 OF 1987).

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1. Ramchij Missir son of Late Raja Ram Missir
 2. Mahendra Missir son of Shri Rammurat Missir
 3. Khusi Missir son of Ramchij Missir

All resident of Village- Englishpur, Police Station-Sanjhauli, District-Rohtas.

.... Appellants

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellants : Mr. Kamal Nayan Choubey, Senior Advocate
Mr. AmbujNayan Chaubey, Advocate

For the Respondent : Dr. Mayanand Jha, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

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

Date: 15-04-2015

By the judgment, dated 25.09.1993, passed, in Sessions Trial No. 363 of 1989/39 of 1991, by learned 6th Additional Sessions Judge, Rohtas, at Sasaram, the accused-appellants, namely, Ram Chij Missir, Mahendra Missir and Khusi Missir, have been convicted under Sections 302 and 201 read with Section 34 of the Indian Penal Code. Following their conviction under Section 302 read with Section 34 of the Indian Penal Code, the accused-appellants aforementioned have been sentenced to suffer imprisonment for life ach and also to

undergo, for their conviction under Section 201 read with Section 34 of the Indian Penal Code, rigorous imprisonment for a period of two years each, both the sentences having been directed to run concurrently.

2. The case of the prosecution, as unfolded by the First Information Report, may, in brief, be described as under:

(i) Deceased Vijay Kumar Missir was son of the informant, Shyam Lal Missir (PW 3). Claiming partition of the ancestral property, the informant instituted Title Suit No.14 of 1987. The accused Ram Chij Missir (since deceased), Khusi Missir (since deceased) and Mahendra Missir are full brothers of the informant. Because of the property dispute, which the informant had with the three accused aforementioned, their relation was strained.

(ii) On 27.04.1987, at about 5:00 PM, when Raghubansh Missir (PW 4) was returning home from the market, he met, on the way, at Nokha, accused Mahendra Missir, Ram Chij Missir and Khusi Missir and, when he proceeded further, he happened to meet Vijay Kumar Missir. Though Vijay Kumar Missir wanted to take PW 4 to the house of Vijay Kumar Missir, PW 4 was unwilling. While parting company with Vijay Kumar Missir, PW 4 noticed the three accused aforementioned following Vijay Kumar Missir. Since

thereafter, Vijay Kumar Missir became traceless inasmuch as he did not return home and all search made by his family proved futile.

(iii) Eventually, Vijay Kumar Missir's dead body was found from a dried well in the village, where the informant resided. Police, having come to know about the fact that a dead body had been found in a dried well, arrived at the place, where the said dead body was found. On arrival of police, as indicated hereinbefore, PW 3 orally reported to the police about the fact that he had strained relation with his brothers, namely, Mahendra Missir, Ram Chij Missir and Khusi Missir, the three accused aforementioned.

(iv) The information so given by Shyamlal Missir (PW 3) was reduced in to writing as his *fardbeyan* and, treating the same as First Information Report, Sanjhauli Police Station Case No.24 of 1987 was registered against the 04 (four) accused persons, namely, Ram Chij Missir, Rammurat Missir, Mahendra Missir and Khusi Missir.

(v) During investigation, inquest was held over the said dead body, which was also subjected to *post mortem* examination. After about five days, PW 4 happened to meet the informant and told him that he had seen, in the evening of 27.04.1987, the three accused aforementioned following the said deceased. The police was also accordingly informed and

the statement of PW 4 was recorded. Having completed the investigation, police laid *charge sheet*, under Sections 302/201/120B/34 of the Indian Penal Code, against 5 (five) accused persons, namely, Ram Chij Missir, Rammurat Missir, Mahendra Missir, Khusi Missir and Surendra Sao.

3. At the trial, when charges, under Sections 302 and 201 read with Section 34 of the Indian Penal Code, were framed against the accused aforementioned, they all pleaded not guilty thereto.

4. In support of their case, prosecution examined altogether 06 (six) witnesses. The accused were, then, examined under Section 313 (1) (b) of the Code of Criminal Procedure, 1973, wherein 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. Defence also adduced evidence by examining one witness.

5. Having, however, found no incriminating material against accused Ram Murat Missir and Surendra Sah, learned trial Court acquitted them accordingly. Having, however, found the prosecution's case proved against the remaining accused, namely, Ram Chij Missir, Mahendra Missir and Khusi Missir, learned trial Court convicted them accordingly and passed sentences against them as mentioned above.

6. Aggrieved by their conviction and the sentences, which have been passed against them, the accused-appellants have preferred this appeal.

7. As informed at bar, since the accused-appellants, namely, Ram Chij Missir and Khusi Missir died during the pendency of this appeal and no substitution was sought for on their behalf, the appeal stands abated as against the accused-appellants, namely, Ram Chij Missir and Khusi Missir, and shall proceed against accused-appellant, Mahendra Missir, only.

8. We have heard Mr. Ambuj Nayan Chaubey, learned Counsel, appearing on behalf of the surviving appellant, and Dr. Mayanand Jha, learned Additional Public Prosecutor, appearing on behalf of the State.

9. While considering the present appeal, what needs to be noted is that the Dr. Lalu Prasad Jaiswal had admittedly, conducted *post mortem* examination on the dead body, which was claimed to be the dead body Vijay Kumar Missir. The *post mortem* report has been proved as Exhibit-4 by Kali Charan Ram (PW 5), who had been working as an Attendant during the period, when the said Doctor had been working at Sasaram Hospital and had conducted the *post mortem* examination. As already indicated hereinbefore, the *post mortem* report, which was prepared and signed by Dr.

Lalu Prasad Jaiswal, has been proved as Exhibit 4. The findings, as recorded, in the *post mortem* report show that on conducting the *post mortem* examination, it was found that the dead body, which had been identified as the dead body of Vijay Kumar Missir, was of a person aged about 25 years.

10. Coupled with the above, the said deceased was found to have suffered following *ante mortem* injuries: -

"(A) *Lacerated wound 3"x 1/2"bone depth on the right temporal region. Right temporal bond was fractured.*

(B) *Penetrating wound 1" x 1"muscle deep on the left upper arm.*

(C) *Right thumb whole amputated. Right index and middle finger and right hand lost.*

(D) *Penetrating wound 1"x 1" in front of chest slightly on the right side. Right lung punctured."*

11. As per the *post mortem* report, injury No. (A) was caused by hard blunt substance, whereas injuries Nos. (C) and (D) were caused by sharp pointed weapon and injury No. (B) was caused by sharp-cutting weapon.

12. In the opinion of the doctor, as reported in the *post mortem* report (Exhibit-4), the cause of death was hemorrhage and shock, time elapsed since death being more than 72 hours.

13. what is, now, of immense importance to



note is that though the said dead body has been identified by the informant as the dead body of Vijay Kumar Missir, a bare reading of the findings, recorded by the doctor, show that the said dead body was in advanced stage of decomposition so much so that the eyes had bulged out and cornea was about to fall. Maggots were rolling all over the body and there was peeling of skin except at the legs.

14. In the condition in which the said dead body was found, it could not have been held that the said dead body was of Vijay Kumar Missir, when no identifying mark on said dead body was proved and when the said dead body was, admittedly, beyond identification.

15. Assuming for a moment that the said dead body was of Vijay Kumar Missir and his death was *homicidal* in nature, the question remains: Whether the accused-appellants had, in furtherance of their common intention, put to death Vijay Kumar Missir and committed thereby offence of *murder*, punishable under Section 302 of the Indian Penal Code and also removed the said dead body so as to screen themselves from the offence, which had been committed by them?

16. With regard to above, the evidence of PW 4 has been treated as pivot, around which revolved the case of the prosecution. Merely because of the fact that the three accused aforementioned were seen going behind Vijay Kumar

Missir, it could not have been concluded, confidently and boldly, that they were the ones and none else, who had put to death Vijay Kumar Missir, more particularly, when we find that Vijay Kumar Missir disappeared on 27.04.1987, whereas the dead body was found on 01.05.1987.

17. No doubt, the property dispute, which the family of the deceased had with the accused persons, could furnish a motive for eliminating the said deceased, this fact, in itself was not sufficient to hold the accused aforementioned guilty of having caused death of Vijay Kumar Missir.

18. Having considered the evidence on record from every possible angle, we find that the evidence, adduced by the prosecution, fall grossly short of the standard of proof, which is insisted in a criminal trial.

19. The case at hand is, admittedly, based on circumstantial evidence. When a case rests on circumstantial evidence, the circumstances must not only be consistent with the guilt of the accused, but must also be inconsistent with his innocence meaning thereby that every reasonable possibility of innocence of the accused must be excluded before the accused is held guilty of an offence on the strength of circumstantial evidence.

20. The standard of proof required, for the purpose of convicting a person, on the basis of circumstantial

evidence, has been laid down, with great clarity, in the case of **Hanumant Govind Nargundkar v. State of M.P.**, reported in **1952 SCR 1091**, wherein the Court has pointed out that the circumstances, which are relied upon, must be fully established and the chain of evidence, furnished by the circumstances so established, should make a complete case against the accused and shall not leave any reasonable ground for a conclusion consistent with the innocence of the accused. The relevant observations, appearing in **Hanumant Govind Nargundkar** (supra), read as under:

"It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

21. Referring to the case of **Hanumant**



Govind Nargundkar (supra), the Supreme Court, in **Sharad Birdhichand Sarda v. State of Maharashtra**, reported in **(1984) 4 SCC 116**, has pointed out that in a case, based on circumstantial evidence, the circumstances from which the conclusion of guilt is required to be drawn shall be fully established and the facts, so established, shall be not only consistent with the hypothesis of guilt of the accused, but shall be in consistent with any hypothesis of innocence of the accused.

22. Elaborately dealing with the principles, laid down in **Hanumant Govind Nargundkar** (supra), the Supreme Court, in **Sharad Birdhichand Sarda** (supra), pointed out, at para 152, thus:

"152. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra where the observations were made:

[SCC para 19, p. 807: SCC (Cri) p. 1047]

"Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

23. Referring to the case of **Hanumant Govind Nargundkar** (supra), the Supreme Court has pointed out, in **Deonandan Mishra Vs. The State of Bihar (AIR 1955 SC 801)**, too, that in a case of circumstantial evidence, not only should the various links in the chain of evidence be clearly established, but the completed chain must be such as to rule out a reasonable likelihood of the innocence of the



accused. Referring to the facts of **Deonandan Mishra** (supra), the Supreme Court pointed out that in a case like the one in **Deonandan Mishra** (supra), where various links had been satisfactorily made out and the circumstances point to the appellant as the probable assailant, with reasonable definiteness and in proximity to the deceased as regards time and situation, and when he (accused) offers no explanation, which if accepted, though not proved, would afford a reasonable basis for a conclusion on the entire case consistent with his innocence, such absence of explanation or false explanation would itself be an additional link, which completes the chain.

24. In the case at hand, chain of circumstances is not complete and it cannot be held, on the basis of the evidence on record, that none else but the three accused aforementioned were the ones, who had put to death Vijay Kumar Missir in furtherance of their common intention.

25. Situated thus, we are clearly of the view that the accused-appellant, Mahendra Missir, and his said two associates ought to have been acquitted.

26. In the result and for the foregoing reasons, we allow this appeal. The impugned conviction of the accused-appellant, Mahendra Missir, and the sentences passed against him by the judgment and order, under appeal, is hereby set

aside. The accused-appellant is held not guilty of the offences, which he stands convicted of, and he is hereby acquitted of the same.

27. Since the accused-appellant, Mahendra Missir, is on bail, his bail bonds are hereby cancelled and his sureties shall stand accordingly discharged.

28. 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)

(Nilu Agrawal, J)

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