

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Appeal (DB) No.930 of 2015**

Arising Out of PS.Case No. -43 Year- 1995 Thana -RAMNAGAR District-  
WESTCHAMPARAN(BETTIAH)

Madhusudan Giri S/o late Kalap Narain Giri R/o Village- Parsauna Tapsi, P.S  
Palanwa, District East Champaran.

.... .... Appellant

Versus

1. The State of Bihar

2. Ajai Chandra Giri S/o late Brijbhushan Giri

3. Lalpari Devi W/o Ajai Giri

Both are R/o Village- Chamardiha Bargaon, PO. Gudgudi, P S Ramnagar, District  
West Champaran.

.... .... Respondents

**Appearance :**

For Appellant : Mr. Ram Adya Singh, Advocate

For the State : Mr. Ajay Mishra, APP

**CORAM: HONOURABLE THE ACTING CHIEF**

**and**

**HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH**

ORAL JUDGMENT

**(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)**

**Date: 26-11-2015**

The present appeal under the proviso to Section  
372 of the Code of Criminal Procedure has been preferred  
against the judgment, dated 9.9.2015, passed by the learned 3<sup>rd</sup>  
Additional Sessions Judge, Bagaha, in Sessions Trial No. 411 of  
2004 arising out of Ramnagar PS Case No. 43/95, whereby he  
has recorded acquittal of respondent Nos. 2 and 3, who stood  
charged of the offences punishable under Sections 302 and 321

read with Section 34 of the Indian Penal Code.

**2.** From the records, it appears that respondent No. 2 lodged a written information to the effect that his wife, Shanti Devi (the deceased), had been missing since 17.4.1995, and, then, information was recorded in the police diary on 18.4.1995. The police are said to have deputed an informer to collect information in this regard, whereafter it was reported to the police that the deceased was killed and her dead body was concealed in the western room of her house at village Kumbhiya Khurd. It was also reported to the police that respondent No. 2 and respondent No. 3 had come at village Kumbhiya Khurd to dispose of the dead body. The dead body was, thereafter, found concealed, in a room of her house at village Kumbhiya Khurd, where the deceased used to live.

**3.** On the basis of the information so received, First Information Report came to be instituted and the police, on completion of investigation, submitted *charge sheet*, whereafter the learned Assistant Judicial Magistrate took cognizance of the offence and the case was committed to the court of sessions on 2.7.2004. Charge was framed on 30.11.2004.

**4.** From the records, it transpires that altogether 13 witnesses were examined. Out of these 13 witnesses, 7 witnesses, namely PW 1, PW 2, PW 3, PW 8, PW 9, PW 10 and PW 11 have been declared hostile. PW 4 is said to have identified



the signature on the inquest report and the seizure list. In the cross-examination, PW 4 has stated that respondent No. 2 did not live with the deceased and the respondent No. 2 had been living with his second wife and children in another village, i.e., Chamardiha Bargaon. The learned Trial Court has recorded that PW 4 has not stated anything as regards the cause or motive behind the murder. PW 5, claiming to be the Manager of the deceased, is said to have deposed that respondent No. 2 had given 8 bighas of land to the deceased and she used to live in village Kumbhiya, whereas respondent No. 2 lived in village Bargaon. According to him, the deceased used to send the yield, out of the said land, to her *maaike*, because of which, quarrel between her and respondent No. 2 was a common feature. He has also deposed that respondent No. 2 used to demand ornaments from the deceased.

**5.** From the impugned judgment, it also transpires that PW 5 also deposed that he himself was in custody for three months in connection with the aforesaid Ramnagar PS Case No. 43/95. PW 6 is said have narrated almost the same story as narrated by PW 5 in his deposition. He has deposed that the deceased had made her brother and son nominees of the bank account, which had caused annoyance to respondent No. 2. He has simply raised a suspicion, in his evidence, that because of the dispute between the deceased and respondent No. 2,

respondent No. 2 either killed the deceased or got her killed by hired criminals. PW 7 is the son of PW 6. He too, in his evidence, has not said anything indicating involvement of respondent No. 2 in commission of the offence.

**6.** PW 13 has been described as *Sankat Mochan* witness, who is claiming to have identified the signature of the informant-cum-Investigating Officer.

**7.** Learned counsel appearing on behalf of the appellant has submitted that the learned Trial Court failed to appreciate the motive behind the occurrence by not taking into account the evidence on record to the effect that respondent No. 2 and respondent No. 3 had serious property dispute with the deceased. He has also contended that the learned trial Court ought to have taken into account the fact that respondent Nos. 2 and 3 would have been the most benefited persons in terms of the property consequent upon the death of the deceased and that there was sufficient evidence on record to this effect.

**8.** After having considered the materials on record, submission made on behalf of the appellant and having gone through the judgment under appeal, we find that there is no eye-witness to the occurrence. This is not in dispute that respondent No. 2 and the deceased were not living together, when the occurrence had taken place. This is admitted that respondent No. 2 had strained relationship with the deceased for

several years and had been living separately with respondent No. 3 as husband and wife.

**9.** As has been indicated above, several witnesses have been declared hostile. PW 5, the person who used to manage the affairs of the deceased and has been described as her Manager, has, in his evidence, said nothing on the basis of which it can be said that the respondents were involved in the commission of the offence. He has merely deposed that there used to be quarrel between the deceased and respondent No.2 over the yield of crop from the land which he (respondent No. 2) had given to the deceased. PW 6 and PW 7 have also not suggested any circumstance over and above their suspicion of involvement of respondent Nos. 2 and 3 in the commission of the offences, in question.

**10.** The doctor has been examined as PW 12, who found the following external and internal injury on the deceased:-

External :

A sharp cut, transverse, in front of middle of the neck 4"x ½" x ¼"

Internal :

On dissection of the neck, muscles of neck were lacerated. Hyoid bone was fractured. Trachea was congested.

Chest – lungs were found to be congested. All chambers of the heart were empty.

Abdomen – stomach was empty. Dark red and irregular patches were seen on the anterior and posterior wall of the stomach involving the whole thickness was due to purification.

Spleen – soft and pulpy. Live – sort and flabby due to decomposition. Kidneys were

greenish in colour due to decomposition.”

**11.** However, there is no material evidence to infer that respondent Nos. 2 and 3 were the authors of the crime or, in any way instrumental, in the commission of the offences. No evidence has been brought to our notice by learned counsel appearing on behalf of the appellant on the basis of which one can arrive at a definite conclusion that respondent Nos. 2 and 3 were the persons, who were instrumental in commission of the offence.

**12.** In view of the facts and circumstances and the discussions noted above, we find no infirmity in the impugned judgment, whereunder respondent Nos. 2 and 3 have been found to be not guilty.

**13.** We accordingly do not find any merit in this appeal.

**14.** The principle is well settled that in an appeal against acquittal, interference with judgment of the trial court will be required only if the view taken by the trial Court cannot be said to be a reasonably possible view with reference to evidence adduced at the trial. Further, in order to make out a case against acquittal of an accused by trial Court, the appellant is required to show that certain clinching evidence, adduced at the trial, establishing commission of offence by the accused, beyond all reasonable doubt, could not be considered and duly

weighed by the trial court. We do not find the view, taken by the learned trial Court, in the impugned judgment, to be not reasonably possible view requiring our interference in the present appeal. Further, no evidence could be pointed out by the learned counsel for the appellant, so crucial and clinching, as to prove the guilt of the accused beyond all reasonable doubt.

**15.** This appeal stands dismissed at this stage itself as it does not deserve admission for the foregoing reasons.

**(I. A. Ansari, ACJ)**

**(Chakradhari Sharan Singh, J)**

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