

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.1125 of 2012

Arising Out of PS.Case No. -210 Year- 1997 Thana -null District- NALANDA (BIHARSHARIFF)

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Harendra Mahto, son of Giral Mahto @ Raj Kishor Mahto, resident of Village -
Raghunathpur, Police Station - Nagarnausa, District - Nalanda

.... Appellant.

Versus

The State of Bihar

.... Respondent.

WITH

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Criminal Appeal (DB) No. 1075 of 2012

Arising Out of PS.Case No. -210 Year- 1997 Thana -null District- NALANDA (BIHARSHARIFF)

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1. Giral Mahto @ Rajkishor Mahto, son of Late Gopal Mahto.

2. Santra Devi, wife of Harendra Mahto.

Both resident of Village - Raghunathpur, Police Station - Nagarnausa, District -
Nalanda.

.... Appellants.

Versus

The State of Bihar.

.... Respondent.

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Appearance :

(In both the appeals)

For the Appellants : Mr. Aaruni Singh, Adv.
Mr. Rajeev Kumar, Adv.
Mr. Amish Kumar, Amicus Curiae
For the Respondent : Mr. Satya Narayan Prasad, A.P.P.

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

And

HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL)

Date:28-02-2018

Heard Mr. Amish Kumr Jha learned amicus curiae
for the appellants, learned counsel for the appellants, who later on
appeared before the Court and learned A.P.P. for the State on both
these criminal appeals.

2. Both these criminal appeals have been preferred
against the judgment and order of conviction dated 09.10.2012



and order of sentence dated 11.10.2012 passed by the IIIrd Additional Sessions Judge, Hilsa (Nalanda) in Sessions Trial No.19 of 1998, arising out of Chandi (Nagarnausa) P.S. Case No.210 of 1997, whereby the learned trial Court convicted the accused, Harendra Mahto, Gigal Mahto and Santra Devi under Section 302/34 and 201/34 of the Indian Penal Code and sentenced them to undergo rigours imprisonment for life and also slapped them with a fine of Rs.5000/- each and in default of payment of fine to further undergo rigours imprisonment for three months for the offence under Section 302/34 I.P.C. and further sentenced them to undergo rigorous imprisonment for three years and also slapped them with a fine of Rs.2000/- each and in default of payment of fine to further undergo rigorous imprisonment for 30 days for the offence under Section 201/34 I.P.C. Both the sentences were directed to run concurrently.

3. The factual matrix of the case is that Chandi (Nagarnausa) P.S. Case No.210 of 1997 was instituted under Section 302/ 201/34 of the I.P.C. against Harendra Mahto, Gigal Mahto and Santra Devi on the basis of fardbeyan of Chaukidar No.12/7, Deo Narain Paswan of P.S. Nagarnausa recorded by S.I. Dinesh Kumar Singh, Officer-in-Charge of Nagarnausa P.S. on 15.07.1997 at 5:15 PM near Lachchhu Bigha more with the



allegation in succinct that on 15.07.1997 at about 8 AM, he learnt in village about floating of decapitated dead body with severed limbs of lady and of a female child in a ditch in village Mohinuddinpur. On the said information, he rushed there and found a decapitated dead body with severed limbs floating in the ditch and beheaded dead body of female child aged about 9-10 years with severed one leg floating about ½ KM ahead of the aforesaid dead body. The locals congregated there and identified the aforesaid dead bodies to be of Manorma Devi and her daughter. The said Manorma Devi was wife of Bhagwan Das and after demise of Bhagwan Das she got hitched with Harendra Mahto two years back and was residing with him. She was blessed with one son and one daughter with Bhagwan Das and one daughter with Harendra Mahto one year back. Harendra Mahto is also having his first wife and children from her even then he along with Manorma Devi and her children used to live in Hilsa. He had arrived in the village Raghunathpur 3-4 days back along with Manorma Devi and children. Manorma Devi had purchased a bullet motorcycle and Tata 407 for Harendra Mahto by selling out her house and shop located in village Nagarnausa. The aforesaid vehicles were in use of Harendra Mahto. The locals converged near the dead body uttered that after taking the property of



Manorma Devi she had became burden on Harendra Mahto and his father, Giral Mahto and wife did not like to see her and Harendra Mahto, his father and wife eliminated Manorma Devi and her daughters by slitting their necks and severing their limbs and concealed the limbs and head at some unknown place while dumped the trunk in the water. After giving information at the P.S. when he along with SHO and several people arrived near the dead body. He found the dead body of the female child missing, which seems to have floated away somewhere in the flood water. Harendra Mahto, his father and his first wife along with their children had absconded.

4. The aforesaid case was investigated by the police and on conclusion of investigation I.O. submitted chargesheet against the accused Harendra Mahto, Giral Mahto and Santra Devi under Section 302/34 and 201/34 of the I.P.C.

5. On receiving the chargesheet and case diary, the learned Magistrate took cognizance of the case and committed the case to the Court of Sessions. After commitment of the case and on transfer, finally the case came in seisin of IIIrd Additional Sessions Judge, Hilsa (Nalanda) for trial. Charge under Section 302/34 and 201/34 of the I.P.C. was framed against the accused persons. Charge was read over and explained to them to which



they pleaded not guilty and claimed to be tried.

6. To substantiate its case, in ocular evidence, the prosecution has examined altogether 10 prosecution witnesses, namely, Anil Kumar as P.W.1, Rameshwar Mistri as P.W.2, Shashi Bhusan Kumar as PW-3, Malti Devi as PW-4, Gopal Prasad as P.W.5, Manoj Kumar as P.W.6, Devendra Prasad @ Devendra Kumar as P.W.7, informant Deo Narain Prasad as P.W.8, Dr. Mathura Prasad, who conducted the autopsy of the cadaver of the deceased as P.W.9 and I.O. Dinesh Kumar Singh as P.W.10. Out of the aforesaid witnesses P.Ws.1, 2, 6 & 7 turned hostile. In documentary evidence, the prosecution has filed and proved some documents.

7. Statement of the accused persons was recorded under Section 313 Cr.P.C. The case of the defence is complete denial of the occurrence claiming themselves to be quite innocent. The accused persons neither adduced any ocular nor documentary evidence in buttress of their case.

8. After hearing the parties and perusing the record, the learned trial Court passed the impugned judgment and order of conviction and sentence as detailed in earlier paragraph.

9. Being aggrieved and dissatisfied with the impugned judgment and order of conviction and sentence, the



convicts have preferred these criminal appeals.

10. The point for consideration in this case is, as to whether the prosecution has been able to bring home the charges levelled against the appellants beyond all shadow of doubt or not.

11. It is submitted by learned amicus curiae and learned counsel for the appellants that there is no eye witness or independent witness of the occurrence. It is the case of circumstantial evidence as the deceased was last seen with the appellant-Harendra Mahto. Barring the aforesaid circumstance, there is no other circumstantial evidence against the appellants indicating the complicity of the appellants in the aforesaid occurrence. Moreover, there is no proximity between the last seen and death of the deceased as the deceased were last seen with the appellant-Harendra Mahto three days preceding to the occurrence. It is further submitted that the dead body of 3rd female child of the Manorma Devi, namely, Neha aged about one year was not recovered, but P.Ws. 3, 4 & 5 have claimed to have identified all the three dead bodies. The postmortem report of her second female child, namely, Anuradha has not been proved by examining its author and is not exhibited. As per the fardbeyan, the dead bodies were identified by the locals who congregated



there but the informant has not disclosed the name and identity of those locals, hence the aforesaid aspect of identification of the dead bodies of the deceased by the locals is not admissible. The informant in his examination-in-chief has not supported the occurrence barring the factum of recovery of dead bodies. He also does not appears to be reliable witness as as per the fardbeyan his statement was recorded near Lachchhu Bigha more while as per his account given in para-9 of his cross-examination it was recorded at P.S. on regression from place of occurrence. Thus, the prosecution has utterly and miserably failed to substantiate the prosecution case by adducing consistent, reliable and trustworthy ocular and documentary evidence, hence the appellants are entitled to be acquitted.

12. On the other hand, learned A.P.P. for the State, advocating the correctness and validity of the impugned judgment and order of conviction and sentence submitted that the informant has supported the prosecution case. Besides the informant three more witnesses, namely, P.Ws.3, 4 & 5 have also supported the prosecution case. P.W.3 has stated that deceased were taken by Harendra Mahto along with him three days back to the occurrence and later on they were eliminated by slitting their neck and severing their limbs to grab the property of Manorma



Devi. Hence, it is a case of last seen and the learned trial Court correctly appreciating the facts of the case and the material available on record, has rightly passed the impugned judgment and order of conviction and sentence, which is liable to be upheld and these appeals are shorn of any merit and is liable to be dismissed.

13. From the perusal of record it appears that it is a case of circumstantial evidence as as per the prosecution case, the appellant-Harendra Mahto had taken deceased Manorma Devi and had two daughters to village Raghunathpur from Hilsa 3-4 days preceding to the occurrence and committed their murder by beheading and dismembering their limbs in association of other two appellants, namely, Giral Mahto and Santra Devi to grab her vehicles as the deceased Manorma Devi had purchased a motorcycle and Tata 407 in the name of her son Shashi Bhushan Kumar which was in use of appellant-Harendra Mahto, by disposing of her shop and house. Harendra Mahto later on got the aforesaid vehicles registered in the name of his father, Giral Mahto by persuading Manorma Devi which resulted into frequent spat between deceased Manorma Devi and the appellant-Harendra Mahto. The son of the deceased, namely, Shashi Bhushan Kumar (P.W.3), Malti Devi (P.W.4) and Gopal Prasad (P.W.5), who



happens to be sister and brother-in-law of the deceased Manorma Devi, had identified the dead bodies of the deceased but none has seen committing the occurrence of murder by the appellants.

14. To substantiate the aforesaid case, the prosecution has examined the son of the deceased, namely, Shashi Bhushan Kumar as P.W.3, sister of the deceased, namely, Malti Devi as P.W.4, brother-in-law of the deceased Gopal Prasad as P.W.5 and informant Deo Narain Prasad as P.W.7. The informant happens to be Chaukidar of P.S. Nagarnausa. Though the informant in his fardbeyan has stated that Manorma Devi and had her two daughters were taken to village Raghunathpur by the appellant-Harendra Mahto three days preceding to the occurrence and he committed their murder in association of his father Giral Mahto and first wife, namely, Santra Devi by beheading and dismembering their limbs to grab the property of deceased Manorma Devi but the informant in his examination-in-chief has not even whispered about the aforesaid case as taken by him in the fardbeyan. He has also not supported the prosecution case regarding last seen of the appellant-Harendra Mahto with the deceased.

15. As per the prosecution case as stated by the informant in his fardbeyan, the locals who flocked near the dead



bodies identified the dead bodies of the deceased to be of Manorma Devi and Anuradha Kumari, but in para-6 & 7 of his cross-examination, he has stated that he had not found any mark on the person of the deceased which might led to her identification. Even it could not be ascertained as to whether the deceased was young or old lady. The cadaver of the girl was also completely mutilated. There was no attire on it and it was completely nude. So the million dollar question arises that when there was no mark of identification on the dead bodies of the deceased and it was also not ascertainable as to whether the dead body was of the young or old lady. Moreover, the dead body of the girl was completely nude and mutilated, so how the locals could have identified the said dead bodies to be of Manorma Devi and her daughter Anuradha Kumari. As per P.W.3 the name of Manorma Devi was tattooed on her hand. From perusal of the inquest report, it appears that the police had also found a tattoo on the hand of the deceased Manorma Devi but police has not reported about scribing the name of Manorma Devi in the said tattoo. Moreover, neither the informant nor P.Ws.4 & 5 have divulged that the name of Manorma Devi was scribed on the hand of dead body of the deceased. Instead the informant has stated that there was no mark of identification on the cadaver of the deceased



Manorma Devi. Thus, the aforesaid aspect of the case creates serious doubt about the credence of the informant and credibility of his testimony. The informant neither in his fardbeyan nor in his deposition has divulged the name and identity of the person identifying the cadavers of the aforesaid deceased which creates serious about identification of the dead bodies of Manorma Devi and her daughter Anuradha Kumari by the locals.

16. P.Ws.3, 4 & 5 have stated in his examination-in-chief that they rushed to the P.S. Nagarnausa and identified the three cadavers which were of Manorma Devi and Anuradha Kumari and Neha Kumari. But, the aforesaid statement of P.Ws.3, 4 & 5 appears to be absolutely wrong as as per their statement they had identified the dead bodies at the P.S. Nagarnausa in the evening of 15.07.1997. While as per the prosecution case and the statement of P.W.8 the dead body of one girl was found missing on 15.07.1997 due to floating away in the flood water when the informant regressed to the place of occurrence from P.S. i.e. earlier to arrival of P.W.3 at the P.S. and the said dead body was recovered on 18.07.1997 and dead body of the second girl of Manorma Devi was not at all recovered and moreover dead bodies were badly mutilated bearing no mark of identification as the informant himself has stated that the dead body of the lady was



not having any mark of identification and it could not be even ascertained as to whether it was the dead body of young or old lady and the cadaver of the girl was also completely mutilated and nude. The postmortem report of Anuradha Kumari indicates that the doctor conducting autopsy of her cadaver has found foul smell coming out from body. It was in stage of decomposition and skin easily pilled out. The aforesaid aspect of the case eloquently indicates that the aforesaid two cadavers were not identifiable. Attention of P.W.3 was drawn regarding contradiction in his statement given before the Court and that before the I.O. under Section 161 Cr.P.C. In para-22 of his cross-examination P.W.3 has stated that he had divulged the factum of identification of all the three cadavers to the police but the I.O. (P.W.10) in para-13 of his cross-examination has denied giving such statement by P.W.3 before him. Thus, P.W.3 appears to have taken altogether different stand in the Court regarding identification of the dead bodies of the deceased.

17. As per P.Ws.3, 4 & 5 they have identified the three dead bodies at P.S. Nagarnausa on 15.07.1997 but the I.O. (P.W.10) in para-4 of his examination-in-chief and in para-10 of his cross-examination has stated that he had recovered dead body of the first girl of deceased Manorma Devi on 18.07.1997 and as



per the statement of the informant P.W.8 dead body of the second girl of the deceased was not at all recovered. So the million dollar question arises as to how P.Ws.3, 4 & 5 could have identified the dead bodies of the two daughters of deceased Manorma Devi at the P.S. on 15.07.1997 as the same were not available at the P.S. at the time of alleged identification. Hence, the aforesaid aspect of the case creates serious doubt about the credence of the said witnesses and the said witnesses appear to be unreliable and untrustworthy. In the aforesaid facts and circumstances, we find that identification of the dead bodies of the deceased does not stand established by the prosecution.

18. As per the statement of P.W.3 as given by him paras-5, 6 & 7 of his examination-in-chief, his father Bhagwan Das had three wives. First wife expired shortly, second wife was Sita Devi and third one was Manorma Devi. After demise of Bhagwan Das, Sita Devi had gone with her daughter to her marital house disposing of all her properties. After demise of Bhagwan Das, Manorma Devi got hitched with the appellant-Harendra Mahto and used to live with him. His father, Bhagwan Das was patient of tuberculosis and was under long treatment. His mother Manorma Devi had taken loan for his treatment. They used to live in the house of one Umesh Master on rent. From the aforesaid



statement of P.W.3, it appears that second wife of Bhagwan Das, namely, Sita Dvi had sold out his entire property and mother of P.W.3, namely, Manorma Devi, who happened to be third wife of Bhagwan Das, had taken loan for the treatment of her husband and they used to live in the rented house. Then the million dollar question arises that when Sita Devi had sold out entire property making the Bhagwan Das and Manorma Devi penniless forcing them to live in rented house and take loan for treatment of Bhagwan Das, so how Manorma Devi would have purchased bike and Tata 407 by disposing of her alleged shop and house, as stated by P.Ws.3 & 4. Thus, the motive behind the occurrence, as alleged by the prosecution also does not stand substantiated by the prosecution witnesses.

19. Regarding the prosecution case of last seen of the appellant-Harendra Mahto with the deceased Manorma Devi and her two daughters, P.W.3 happens to be only eye witness as none else has seen the appellant-Harendra Mahto with the deceased preceding to the occurrence. Though P.Ws.4 & 5 have claimed to have got the knowledge of factum of taking the deceased by the appellant-Harendra Mahto three days preceding to occurrence from P.W.3 but P.W.3 has not corroborated the factum of divulgence of the aforesaid aspect of the case to the said



witness. Thus, the evidence of P.Ws.4 & 5 even as hearsay witnesses is not admissible in the evidence.

20. P.W.3, who happens to be the son of the deceased Manorma Devi and brother of the rest of the two deceased, does not appears to be credible, reliable and worth credence witness as he has given absolute wrong statement regarding the identification of the dead bodies of the deceased and the aforesaid motive behind the occurrence as discussed by us hereinabove. Likewise P.Ws.4 & 5 also does not appear to be reliable witness regarding aforesaid two aspects of the case. P.W.4 though appears to have made an abortive bid to corroborate the factum of motive of the occurrence but in view of the contradiction between the prosecution case and statement of P.W.3, as discussed by us hereinabove, her testimony on the aforesaid aspect of the case also does not appears to be worth credence. Attention regarding contradiction in the statement of P.W.4 given before the Court and that given before the I.O. under Section 161 Cr.P.C. has also been drawn in para-10 of her cross-examination. In her statement before the Court she has stated that she had divulged to the I.O. that Shashi Bhushan had divulged her that appellant-Harendra Mahto had taken her mother and two sisters with him 3-4 days preceding to the occurrence of



murder and she had identified the three dead bodies at the police station. She had also divulged to the I.O. that Harendra Mahto had purchased a motorcycle and Tata 407 in the name of Shashi Bhushan after disposing of entire property of Manorma Devi but later on got the same registered in the name of his father Giral Mahto persuading her which resulted into frequent spar between Manorma Devi and Harendra Mahto. but the I.O. in para-13 of his cross-examination has denied giving aforesaid statement by P.W.4 before him. Thus, the statement of P.W.4 also does not stand corroborated by the I.O. and P.W.4 appears to have taken altogether different stand in the Court regarding last seen of the appellant with the deceased, identification of the dead bodies of the deceased by her and motive behind the occurrence which makes the aforesaid witness quite unreliable and worth credence.

21. No locals have come forward to corroborate the prosecution case and identification of the dead bodies by them. The witnesses of the inquest report, namely, P.Ws.6 & 7 have also turned hostile and not supported the prosecution case. From perusal of the record, it appears that the fardbeyan of the informant was recorded at Lachchhu Bigha more, while as per his account, made by him in para-9 of his cross-examination the writing work regarding occurrence took place at the P.S. on



regression from the place of occurrence. Therefore, the aforesaid aspect of the case creates serious doubt about the recording of the fardbeyan of the informant and the prosecution case. Thus, in the facts and circumstances of the case, we find and hold that the prosecution has utterly and miserably failed to substantiate its case regarding last seen of the deceased with the appellant-Harendra Mahto, the motive behind the occurrence and identification of the dead bodies of the deceased to be of Manorma Devi and her two daughters, namely, Anuradha Kumari and Neha Kumari. Moreover, the prosecution has also not brought on record any other circumstance to establish the chain leading to hypothesis that none else than appellants have committed the occurrence.

22. As per the prosecution case, appellant-Harendra Mahto had taken the deceased with him to Raghunathpur 3-4 days preceding to the occurrence, which means that the occurrence of murder of the deceased had taken place 3-4 days later to the last seen of the appellant-Harendra Mahto with the deceased and hence there is no proximity between the last seen and the occurrence of murder of the deceased to led to the hypothesis that none else than appellants have committed the murder of the deceased and it does not exclude the possibility of death of the deceased at the hand of another person. Hon'ble Apex Court in the



case of **Ganpat Singh Vs. The State of Madhya Pradesh** reported in **2017 (4) PLJR (SC) 161** has been pleased to rule that accused was last seen in the company of the deceased assumes significance when lapse of time between the point when accused and deceased were seen together and when the deceased is found dead is so minimal as to exclude the possibility of a supervening event involving the death at the hands of another.

23. In the case of holding the accused guilty on circumstantial evidence, the circumstances from which an inference of guilt is sought to be drawn must be cogent and firm. Those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused. The circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none-else and the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

24. Hon'ble Apex Court in **Shard Birdhichand Sarda Vs. State of Maharashtra** reported in **1984 (4) SCC 116**



has postulated the cardinal principle regarding the appreciation of circumstantial evidence by holding that whenever the case is based on circumstantial evidence, the following features are required to be complied with and proved by cogent evidence: (i) The circumstances from which the conclusion of guilt is to be drawn must or should be and not merely may be fully established (ii) The facts so established should be consistent only with the hypothesis of the guilt and the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty (iii) The circumstances should be of a conclusive nature and tendency; (iv) They should exclude every possible hypothesis except the one to be proved; and (v) there must be a chain of evidence so complete as not to leave any reasonable ground from 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. Hon'ble Apex Court in **Kanhaiya Lal Vs. State of Rajasthan** reported in **(2014) 4 Supreme Court Cases 715** has been pleased to rule that the circumstances of last seen together does not by itself necessarily lead to inference that it was accused who committed crime. There must be something more establishing connection between accused and the crime, that points to guilt of accused and none else. Mere non-explanation of



being last seen together with deceased person on part of accused, by itself cannot lead to proof of guilt against him. It is further held that where a case rests squarely on circumstantial evidence, reiterated, inference of guilt can be justified only when all incriminating facts and circumstances are found to be incompatible with innocence of accused or guilt of any other person. Circumstances from which an inference as to guilt of accused is drawn have to be proved beyond reasonable doubt.

25. In the facts and circumstances of the case and the discussions made by us hereinabove, we find and hold that the prosecution has utterly and miserably failed to substantiate the prosecution case beyond all reasonable doubts by adducing consistent, trustworthy and reliable ocular and documentary evidence. Hence, the impugned judgment and order of conviction and sentence passed by the learned trial Court is set aside and the appellants are acquitted from the charges levelled against them giving them benefit of doubt. As the appellant-Harendra Mahto is in custody, he is directed to be released forthwith, if not wanted in any other case, while as the appellants-Gigal Mahto and Santra Devi are on bail, they are discharged from the liabilities of their bail bonds.

26. Accordingly, these two appeals are allowed.



27. Let a copy of first and last page of the judgment be furnished to the amicus curiae free of cost and the prescribed fee of the amicus curiae be paid by the Patna High Court Legal Services Committee.

(Prakash Chandra Jaiswal, J.)

Dr. Ravi Ranjan, J. I agree.

(Dr. Ravi Ranjan, J.)

Trivedi/-

AFR/NAFR	AFR
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