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Cr1.A.No. 185-186 OF 1999
ITEM NO. 102

COURT NO. 5

SECTION IIA

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

CRIMINAL APPEAL No. 185-186 of 1999@@
EE

Naresh K. Mahto & Anr. ..Appellants

Vs.

State of Bihar ..Respondent
(With Office Report)

Date : 26/09/2001 This/these Petition(s) was/were called on for
hearing today.

CORAM :

HON'BLE MR. JUSTICE K.T. THOMAS
HON'BLE MR. JUSTICE S.N. VARIAVA

For Appellant Mr. R.K. Jain,Sr.Adv.
Mr. Akhilesh Kumar Pandey,Adv.
Mr. Ajay Bhalla,Adv.
Mr. Ashok Kr. Pandey,Adv.

For Respondent Mr. B.B. Singh,Adv.
Mr. Kumar Rajesh Singh,Adv.
Ms. Sunita R. Singh,Adv.

UPON hearing counsel the Court made the following

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.SP2 Appeals are disposed of in terms of the signed order.
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(N.K. Goel) (H.K. Bhatia)
Court Master Court Master
(Signed order is placed on the file)

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IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No. 185-186 of 1999@@
EE

Naresh K. Mahto & Anr. ..Appellants

Vs.

State of Bihar

..Respondent

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Regarding the murder of a student aged 22 by name Amit Kumar @ Munna a Sessions Judge convicted the two appellants (A-1 Naresh Kumar Mahto and A-2 Ranjeet Mahto) for offences under Sections 302 and 201 read with Section 34 of the Indian Penal Code. Both were sentenced to imprisonment for life. They filed two appeals before the High Court of Patna challenging their conviction and sentence and a Division Bench of the High Court confirmed the conviction and sentence and dismissed the appeals. They have approached this Court in these appeals by special leave.

The murder took place in ~Room No. 207 of Asiana Hotel, Station Road, Patna at some time prior to 8.30 a.m. on 18.5.1987. After commission of the crime, the dead body was stuffed in the almirah of the same room and locked it. The Manager of the hotel was told by a room boy that he noticed blood oozing out from that almirah percolating through the quilt kept in the almirah. The Manager informed the police and immediately some police officers reached the spot and

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opened the almirah and found the dead body. When the post-mortem examination was conducted by PW-16 he noticed that stab wounds had been inflicted on the chest and abdomen of the deceased and death was caused thereby.

There is no dispute that the dead body was that of Amit Kumar @ Munna, the son of PW-10 Raj Kumar Prasad. There is also no dispute that he was murdered in the said room some time between 17.5.1987 and the morning of 18.5.1987.

The following circumstances have been pitted against the appellants by the prosecution:

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1. On 16.5.1987 the appellants checked in room no. 207. A-1 Naresh Kumar Mahto made entries in the register of the hotel while checking in.
2. On 17.5.1987, A-2 Ranjeet Mahto went to the house of PW-1 Devrani Sinha and decoyed the deceased from that house (where the deceased was staying on rent) took him for a movie in the night and brought him to room no. 207 of Asiana Hotel, Station Road, Patna.
3. As mentioned above the murder of the deceased took place inside the room prior to the morning of 18.5.1987.
4. Both the accused checked out of the hotel on the morning of 18.5.1987.
5. A letter was recovered from the almirah containing threatening words (This is the content of that letter: it is my order to the owner of Ashiana Hotel that this dead body

should not be handed over to the police; he should either bury or cremate the body; in case police or anyone else comes to know about this dead body, then I have already enquired about the address of your house; I will ruin your family. The fate which this person has

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met, you will also meet the same end. It is for your benefit that no one should come to know about this dead body.)

6. Hand writing expert after comparing the said letter with the specimen hand writing of A-1 Naresh Kumar Mahto sent up his report that both were written by the same hand.

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So far as the guilt of first accused is concerned we are fully satisfied of the sufficiency of the aforesaid circumstances and hence we are disinclined to interfere with concurrent finding made by the trial court as well as by the High Court against him.

Mr. R.K. Jain, learned senior counsel, understanding the difficulty as against the first accused, focussed more on A-2 Ranjeet Mahto. We have noticed that the prosecution has succeeded in proving that A-2 Ranjeet Mahto had decoyed (if that expression can be used in the broad circumstances of this case) from the house of PW1 to Asiana Hotel, Station Road, Patna and that A-2 Ranjeet Mahto was also found checking out of the hotel by PW-13 Nagendra Raut, a waiter of the hotel. Learned senior counsel contended that the said two circumstances, even if believed are hardly sufficient to form a completed chain against him. The grey area in between could admit of a hypothesis consistent with the innocence of A-2 Ranjeet Mahto also, according to the learned senior counsel. He further contended that A-2 Ranjeet Mahto would perhaps have not been told by the first accused that he had any intention to do away with the deceased and that A-2 Ranjeet Mahto would have come to know of the murder only later.

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While appreciating the said contention we noticed one serious draw back which is too late in the day for rectification. The trial court did not put a single incriminating circumstance as against the second accused when he was questioned under Section 313 of the Code of Criminal Procedure. When we perused the record pertaining to such examination we have noticed that all the circumstances incriminating A-1 Naresh Kumar Mahto in the case alone have been put to the second accused for affording that accused an opportunity to explain. There is no necessity for the second accused to explain any such incriminating circumstance found against the first accused.

Mr. B.B. Singh, learned counsel for the State of Bihar made an endeavour to have the case remitted back to the trial court for putting the necessary questions to the second accused, so that, the latches committed by the judge should not result in miscarriage of justice. We have pondered over the said submission of the learned counsel. For the two reasons we are not disposed to accept the said request. First is the long interval between the date of occurrence and today (14 years have already elapsed in between). We understand that the second accused has already been in jail for a lengthy period by now. Second is that we are not very hopeful of confirming the conviction even if all the necessary questions are put to him under Section 313 CrI.P.C. This is because

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even the remaining circumstances as against him are not sufficient to form a completed chain unerringly pointing to the guilt of the second accused. Thus a second opportunity may also be an exercise in futility.

For the above reasons we set aside the conviction and sentence passed on A-2 Ranjeet Mahto and he is acquitted. We direct him to be set at liberty forthwith unless he is required in any other case. As we confirm the conviction and sentence passed on A-1 Naresh Kumar Mahto he will undergo the sentence imposed on him in accordance with law.

These appeals are disposed of accordingly.

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.....J.@@

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(K.T. THOMAS)@@

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.....J.@@

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(S.N. VARIAVA)@@

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NEW DELHI@@

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SEPTEMBER 26, 2001 @@

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