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**(2000) 02 SC CK 0008**  
**In the Supreme Court Of India**  
**Case No : Criminal Appeal No. 614 of 1999**

Birju Indori Gij

APPELLANT

Vs

State of Maharashtra

RESPONDENT

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**Date of Decision :** 02-02-2000

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 120B, 302

Terrorist and Disruptive Activities (Prevention) Act, 1987 — Section 3(2)

**Citation :** (2000) 1 ACR 897 : (2000) 4 JT 110

**Hon'ble Judges :** S. N. Phukan, J;G. T. Nanavati, J

**Bench :** Division Bench

**Final Decision :** Dismissed

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## Judgement

G.T. Nanavati, J.—The Appellant has been convicted by the Court of Designated Judge, Nashik, for the offence punishable under Sections 120B, 302 read with 120B of I.P.C. and 3(2)(1) of the Terrorist and Disruptive Activities (Prevention) Act, 1987. The Appellant has been sentenced to suffer imprisonment for life.

2. Briefly stated what was alleged and what has been proved against the Appellant is that the Appellant and his associates viz. (1) Ranjit alias Ravindra Nathu Sonawana, (2) Ravin alias Ravindra Jumman Zanzot, (3) Girdhari Parmanand Wadhava, (4) Major alias Ravindra Mogal Pande and (5) Bandhya alias Sanjay Mohan Jadhav committed the murder of Vaibhav during the night between 15.9.1992 and 16.9.1992. Vaibhav was first kidnapped by Girdhari and taken to Mithun Farm where he was tied and beaten. Girdhari then contacted the family members of Vaibhav and demanded Rs. 2 lacs for releasing Vaibhav. The Appellant had at that time caught hair of Vaibhav and pointed a revolver at his head and made him tell his parents that the amount should be paid otherwise he would be killed. Thereafter at the instance of Birju, Major Pande ill-treated Vaibhav by making him drink liquor and eat mutton and when he spitted out mutton put in his mouth, Birju and his associates started beating him. Again after about 1 1/2 hours, the family of Vaibhav was contacted on telephone and

demand of Rs. 2 lacs was repeated. Thereafter, at the instance of the Appellant, clothes of Vaibhav were removed by Major Pande and a knife blow was given on his stomach. Then he was beaten with a wooden stick. Girdhari thereafter caught the legs of Vaibhav and Birju removed his belt and tied it around the neck of Vaibhav and pulled it forcibly. Desperate attempts were made by Vaibhav to get himself free but in that process, he died and fell down on the ground. The Appellant then told his associates to keep a watch over the dead body and left that place.

3. Initially, all the accused were put up for trial in Special Case No. 1 of 1993 but as the Appellant was absconding, his case was separated and he came to be tried after his arrest in Special Case No. 1 of 1997.

4. Three eye-witnesses were examined to prove that the Appellant and his associates had committed the murder of Vaibhav. Out of them, Andrew Nayadu (P.W. 7) did not support the prosecution and went to the extent of saying that what he had deposed in Special Case No. 1 of 1993 was false. He did say that Raviraj, Bandhya Jadhav and Major Pande were residing in Mithun Farm. He knew all three of them. He also knew Ranjit Sonawana and Girdhari. He also stated that on 15.9.1992 at about 8 p.m., Girdhari had brought Vaibhav to Mithun Farm. He also stated that the boy was beaten by Raviraj and Major Pande. He also stated that at about 9 p.m., Bitu (P.W. 8) had come to Mithun Farm for cleaning the utensils. In his cross-examination, he stated that he had gone to Mithun Farm where Pravir Disuza was residing and he used to take tiffin for him and his aunty who was the owner of that Farm. He also stated that he remained in that Farm till 4 a.m. when the police came and took all of them to the Police Station. He further admitted that he had given evidence in Special Case No. 1 of 1993 and involved Birju also as one of the persons who committed the murder of Vaibhav. Learned Designated Judge did not rely upon his evidence but accepting the evidence of Bitu (P.W. 8) and Pravir Disuza (P.W. 23) held that it was established beyond doubt that Vaibhav was murdered in the manner stated above.

5. As it is a statutory appeal, we have gone through the evidence of Bitu (P.W. 8) and Pravir Disuza (P.W. 23). The only infirmity in the evidence pointed out by the learned Counsel for the Appellant is that Bitu (P.W. 8) had not stated before the police that Birju had opened the door and then he had entered into the house. It is a matter of minor detail. The fact that he knew Pravir Disuza and his going there for cleaning utensils, has remained unchallenged. The fact that he was found there when the police had come also remained unchallenged. Therefore, his presence in the house in Mithun Farm cannot be doubted. We see no reason to doubt his evidence regarding the main incident also. The learned Counsel for the Appellant then urged that this witness was not able to tell the name of the owner of the hotel where he was working nor the name of the aunty to whom the Farm belonged. He was not concerned with knowing who was the owner of the farm or the hotel. He knew 4 or 5 persons who were ordinarily sitting on the cash

counter and pay him his wages.

6. It was next urged that this witness had some criminal background. But nothing has been pointed out nor any material has been placed on the record, on the basis of which it can be said that he had a bad record and was under the influence of police.

7. The evidence of both these witnesses establish beyond any doubt that it was really at the instance of the Appellant that Vaibhav was kidnapped and an amount of Rs. 2 lacs was demanded from his family members and upon his orders Vaibhav was beaten by his associates. The evidence further establishes that he himself had inflicted injuries on Vaibhav which ultimately lead to his death.

8. It was urged by the learned Counsel for the Appellant that when request was made by the defence to the trial court to ask Bitu (P.W. 8) to demonstrate in this Court whether the belt would fit the Appellant, it was rejected and that deprived the defence of an opportunity to prove that Bitu was not a truthful witness. This submission must be rejected as devoid of any merit. The witness could not have been asked to give such a demonstration in the Court.

9. It was submitted by the learned Counsel that one Sunil was cited as a witness and if examined would have proved that at the relevant time, the Appellant was in M.P. He was cited as a witness in the charge-sheet but was dropped. No objection was raised by the defence at that time. Therefore, it is not open to the learned Counsel for the Appellant to make any grievance in that behalf. That apart, the prosecution was under no obligation to examine him as a witness as he was not a witness to the incident. If the Appellant wanted to prove his defence, then he should have examined Sunil as his witness or requested the Court to summon him as witness.

10. It was lastly urged that there was no ligature mark on the neck of Vaibhav and that falsified the evidence of the eye-witnesses. This submission is also without any substance. According to the Doctor, who conducted the postmortem, the neck of the victim was swollen and, therefore, he could not notice any ligature mark. As we find no substance in this appeal, it is dismissed.