

SHYAM BABU

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v.

STATE OF U.P.

(Criminal Appeal No. 434 of 2006)

SEPTEMBER 7, 2012

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[P. SATHASIVAM AND DR. B.S. CHAUHAN, JJ.]

Penal Code, 1860 – ss. 148, 307 and 302 r/w 149 – Prosecution under – Five deaths and injury to one – Caused by fire-shots from 7 accused – Acquittal by trial court – High Court convicting 3 accused and the appeal abated against 4 of the accused due to their death – During pendency of appeal to Supreme Court, appeal abated against 2 of the three surviving accused – Held: In view of the evidence of the three eye-witnesses (one of whom was injured); medical evidence and FSL report, prosecution established its case – Accused liable to be convicted – The sole accused cannot be exonerated from conviction because the other accused died due to natural death and because there was delay of 25 years in disposal of appeal by High Court.

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Appeal – Appeal against acquittal – Held: Appellate court to interfere with acquittal order only on being satisfied that the view taken by trial court was perverse and unreasonable resulting in miscarriage of justice.

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Witness – Related witness – Evidentiary value of – Held: There is no bar in law on examining related persons as witnesses – If statements of witnesses who are related to the affected parties is credible, reliable, trustworthy and corroborated by other witnesses, court not to reject their evidence.

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Appellant-accused, alongwith others was prosecuted u/ss. 147, 148, 149, 307 and 302 IPC for having caused

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A five deaths and for causing injury to 1 person. As per prosecution, the death and injuries were caused due to firing by the accused persons. Post-mortem report and the evidence of the doctor who conducted autopsy on dead bodies, revealed that the death was caused due to shock and hemorrhage as a result of ante mortem injuries. FSL opined that the blood-stained clothes of the deceased and blood-smearred earth contained human blood. There were three eye-witnesses viz. PWs. 1, 3 and 6.

C Trial court acquitted all the seven accused of all the charges. High Court, in appeal, set aside the acquittal order holding that prosecution established the case against all the accused. Since 4 of the accused died their natural death during the pendency of the appeal and the case against them abated, High court convicted the remaining three accused.

E During pendency of the appeal to this Court, two out of the three surviving accused died and the case abated against them.

F The sole accused (appellant) contended that High Court was not justified in modifying the acquittal into conviction; that since the prosecution witnesses were related to deceased persons, their evidence could not have been relied upon; that since prosecution against 6 out of the 7 accused stood abated, the sole accused should be exonerated from the conviction and sentence; and that he should be discharged from the commission of offence on the ground that there was delay of 25 years in disposal of the appeal, by High Court.

G Dismissing the appeal, the Court

H HELD: 1. It is true that it would not be possible for the appellate Court to interfere with the order of acquittal

passed by the trial court without rendering specific finding, namely, that the decision of the trial court is perverse or unreasonable resulting in miscarriage of justice. At the same time, it cannot be denied that the appellate court while entertaining an appeal against the judgment of acquittal by the trial court is entitled to re-appreciate the evidence and come to an independent conclusion. In doing so, the appellate court should consider every material on record and the reasons given by the trial court in support of its order of acquittal and should interfere only on being satisfied that the view taken by the trial court is perverse and unreasonable resulting in miscarriage of justice. If two views are possible on a set of evidence, then the appellate court need not substitute its own view in preference to the view of the trial court which has recorded an order of acquittal. [Para 9] [264-E-H]

2. PW-1, PW-3 and PW-6 have appeared as eye-witnesses to the occurrence. PW-1, son of on of the deceased has categorically narrated all the facts of the occurrence. The other eye-witnesses relied on by the prosecution and accepted by the High Court were PW-3 - injured person and PW-6, who corroborated the entire statement of PW-1 in all material aspects. A perusal of the cross-examination of these three eye-witnesses clearly shows that all of them were subjected to lengthy cross-examination but as rightly observed by the High Court, nothing tangible could be brought on record to impair their credibility. After going through their evidence, this Court fully concurs with the conclusion arrived at by the High Court and hold that the trial Judge committed an error in discarding the testimony of all the three eye-witnesses doubting their presence at the scene of occurrence. [Paras 10 and 11] [265-B, 266-C-F]

3.1. The version of an eye-witness cannot be discarded by the court merely on the ground that such

A eye-witness happened to be a relative or friend of the
 deceased. Where the presence of the eye-witnesses is
 proved to be natural and their statements are nothing but
 truthful disclosure of actual facts leading to the
 occurrence, it will not be permissible for the court to
 B discard the statement of such related or friendly
 witnesses. There is no bar in law on examining family
 members or any other person as witnesses. In fact, in
 cases involving family members of both sides, it is a
 member of the family or a friend who comes to rescue the
 C injured. If the statement of witnesses, who are relatives
 or known to the parties affected is credible, reliable,
 trustworthy and corroborated by other witnesses, there
 would hardly be any reason for the court to reject such
 evidence merely on the ground that the witness was a
 family member or an interested witness or a person
 D known to the affected party or friend etc. [Para 14] [266-
 H; 267-A-C]

Mano Dutt and Anr. vs. State of Uttar Pradesh (2012) 4
 SCC 79; *Dayal Singh and Ors. vs. State of Uttaranchal 2012*
 E (7) SCALE 165 – relied on.

3.2. In the instant case, PW-1 is closely related to all
 the deceased. It is also true that PW-3, the injured witness,
 is the real brother of two of the deceased. PW-6 has also
 F admitted in his cross-examination that he has some land
 in joint khata with the victims but their testimony cannot
 be discarded on the ground of relationship alone as they
 appeared to be honest and truthful witnesses and their
 testimony has not been impaired in their cross-
 G examination. Among these three eye-witnesses, PW-3 is
 an injured witness and his evidence stands on higher
 pedestal. There is no reason to either disbelieve his
 version or his presence at the place of occurrence. The
 High Court was justified on relying upon their evidence.
 H [Para 15] [267-E-H; 268-A]

4. The appellant-accused cannot be exonerated from the conviction and sentence, in view of the clinching evidence led by the prosecution. Due to gruesome incident, 5 persons lost their lives and one person sustained injuries. Even otherwise, the present appellant along with others was convicted by the High Court under Sections 148, 307 & 302 read with Section 149 IPC, hence he cannot be exonerated. Taking note of all these aspects and considering the gruesome murders, there is no reason to exonerate the present sole appellant-accused merely because the other co-accused died due to natural death. [Para 16] [268-B-E]

5. The Limitation Act, 1963 does not apply to criminal proceedings unless there is express and specific provision to that effect. It is also settled law that a criminal offence is considered as a wrong against the State and the Society even though it is committed against an individual. In the case on hand, merely because the High Court had taken nearly 25 years to dispose of the appeal, the present appellant cannot be exonerated on the ground of delay. [Paras 17 and 18] [268-G-H; 269-C]

Abdul Rehman Antulay vs. R.S. Nayak (1992) 1 SCC 225; 1991 (3)Suppl. SCR 325 ; *Kartar Singh vs. State of Punjab* (1994) 3 SCC 569; 1994 (2) SCR 375 ; *P. Ramachandra Rao vs. State of Karnataka* (2002) 4 SCC 578 – followed.

Case Law Reference:

(2012) 4 SCC 79	Relied on	Para 14	
2012 (7) Scale 165	Relied on	Para 14	G
1991 (3) Suppl. SCR 325	Followed	Para 17	
1994 (2) SCR 375	Followed	Para 17	
(2002) 4 SCC 578	Followed	Para 17	H

A CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 434 of 2006.

From the Judgment & Order dated 13.1.2006 of the High
Court of Judicature at Allahabad in Government Appeal No.
B 159 of 1981.

V.K. Shukla, A.K. Tripathi, K.K. Mohan for the Appellant.

Gaurav Bhatia, AAG, Ardhendumauli Kumar Prasad,
Gautam Talukdar, Manoj Dwivedi for the Respondent.

C The Judgment of the Court was delivered by

P. SATHASIVAM, J. 1. This appeal has been preferred
against the final judgment and order dated 13.01.2006 passed
by the High Court of Judicature at Allahabad in Government
D Appeal No. 159 of 1981 whereby the Division Bench of the
High Court allowed the appeal filed by the State and set aside
the order of acquittal of accused persons dated 08.09.1980
passed by the First Additional Sessions Judge, Etawah in
Sessions Trial No. 77 of 1979.

E 2. The facts and circumstances giving rise to this appeal
are as under:

(a) Moolu Singh and Kunji were real brothers. Prayag
Singh, Pahunchi Lal and Lalta Prasad were sons of Moolu
F Singh. Badan Singh and Gaya Prasad were sons of Kunji.
Ratan Singh is the son of Prayag Singh and Nathu Ram and
Rajendra Singh were sons of Pahunchi Lal. Jaswant Singh was
the son of Badan Singh and Ujagar Singh was the son of Gaya
Prasad.

G (b) On 21.12.1978, at about 9.00 a.m. one Nathu Ram-the
Complainant and his father Pahunchi Lal were ploughing their
field situated at Har Balapur P.S. Bharthana. At that time, the
Complainant's uncle - Gaya Prasad along with his son Ujagar
H Singh were sowing their field which was nearer to the field of

the Complainant. At some distance, his uncle - Prayag Singh along with his son Ratan Singh were also ploughing their field. A

(c) There was a water channel passing towards north of their fields and Mahipal Singh-the accused was irrigating his field through that channel. Since water was overflowing in the channel and entering into the sowed field of the Complainant's uncle-Gaya Prasad, he asked Mahipal Singh to repair the same. On this issue, an altercation took place between Mahipal Singh and Gaya Prasad. The accused Mahipal Singh left the place saying that he would see him. B

(d) In the meanwhile, Lalta Prasad, first cousin of Gaya Prasad and his nephew Jaswant Singh also reached there. At about 11.00 a.m., Nathu Ram and his father Pahunchi Lal resumed ploughing their field. At that time, accused Mahipal Singh and his brothers Shyam Babu and Tej Ram armed with guns, Indal having rifle and Bhabhooti with lathi along with their father Ramjit with spear and Babu Ram – son of Bhabhooti with countrymade pistol reached there. Mahipal Singh, standing near Gaya Prasad, told his associates that he was behaving in an arrogant manner and asked them to make an assault on him. Thereupon, Shyam Babu and Mahipal Singh fired at Gaya Prasad with their respective guns thereby causing injuries to him. On seeing this, Ujagar Singh– son of Gaya Prasad, rushed to save his father and he also sustained pellet injuries by Tej Ram. At that time, Prayag Singh, Pahunchi Lal, Lalta Prasad and Jaswant Singh rushed to the scene of occurrence. Then Ramjit and Bhabhooti shouted that they should also be killed and immediately Indal fired at Jaswant Singh and Prayag Singh using rifle and Babu Ram and Mahipal Singh fired at Pahunchi Lal and Lalta Prasad with country made pistol and gun respectively. All of them fell down in the field of Badan Singh except Prayag Singh, who received injuries. On hearing the hue and cry, Rajendra Singh brother of Nathu Ram and several other persons rushed to the spot and challenged the accused persons. On seeing them, all the accused persons fled away. C
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A Due to fatal injuries, Ujagar Singh, Jaswant Singh, Gaya Prasad, Pahunchi Lal and Lalta Prasad died on the spot and Prayag Singh received grievous injuries.

B (e) On the same day, i.e., on 21.12.1978, an FIR was lodged by the Complainant - Nathu Ram, son of Pahunchi Lal, at P.S. Bharthana, Etawah against the above-mentioned 7 persons under Sections 147, 148, 149, 307 and 302 of the Indian Penal Code, 1860 (in short 'the IPC').

C (f) On 06.03.1979, after filing of charge sheet, the case was committed to the Court of Sessions and numbered as Sessions Trial No. 77 of 1979. The First Additional Sessions Judge, Etawah, by judgment dated 08.09.1980, acquitted all the 7 accused persons holding that the prosecution has failed to prove beyond reasonable doubt the guilt of the accused persons in the case against them.

E (g) Being aggrieved, the State filed Government Appeal No. 159 of 1981 before the High Court. Pending appeal in the High Court, 4 accused persons, viz., Ramjit, Mahipal Singh, Indal and Bhabhooti died due to natural death and the case against them stood abated.

F (h) On 13.01.2006, the High Court allowed the appeal filed by the State and convicted the remaining 3 accused persons, viz., Shyam Babu, Babu Ram and Tej Ram under Sections 148, 307 and 302 read with Section 149 of IPC and sentenced them to undergo rigorous imprisonment under various heads mentioned above including life sentence and all the sentences were to run concurrently.

G (i) Being aggrieved by the judgment of the High Court, the remaining 3 accused persons preferred an appeal before this Court under Section 379 of the Code of Criminal Procedure, 1973 (in short 'the Code'). During the pendency of the appeal, 2 accused persons, viz., Tej Ram and Babu Ram died and appeal against them stood abated and only one accused,

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Shyam Babu is before this Court facing conviction and sentence. A.

3. Heard Mr. V.K. Shukla, learned counsel for the appellant-accused and Mr. Ardhendumauli Kumar Prasad, learned counsel for the respondent-State. B.

Discussion

4. The incident relates to death of 5 persons and causing injury to 1 person. According to the prosecution, all the 5 persons were shot dead and one person sustained injuries due to firing by the accused persons. It is revealed from the post mortem reports and the evidence of the Doctor, who conducted autopsy on the dead bodies that death was caused due to shock and hemorrhage as a result of ante mortem injuries about one day ago. C.

5. On receipt of the complaint, the Investigating Officer rushed to the spot and collected the blood stained clothes of all the 5 deceased and also collected the samples of blood stained earth near the place where dead bodies of all the 5 were lying and the same were sent to Forensic Science Laboratory (FSL) for opinion which opined that the samples were found to be containing human blood. D.

6. After filing of charge-sheet against all the accused, the prosecution examined several witnesses. Among them, Nathu Ram (PW-1), Prayag Singh, injured witness (PW-3) and Mukut Singh (PW-6) were the persons who actually witnessed the occurrence. In other words, PWs-1, 3 and 6 are eye-witnesses to the occurrence. The trial Judge, after noting certain discrepancies and their relationship with the deceased persons, disbelieved their version and, ultimately, acquitted all the accused persons. On the other hand, the High Court, being the appellate Court, analysed all the materials, more particularly, the evidence of eye witnesses, medical evidence, FSL Report etc., and arrived at a categorical conclusion that the E.

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A prosecution has established the case against all the accused persons.

7. Inasmuch as 4 accused died during the pendency of the appeal before the High Court, the High Court convicted the remaining 3 accused, namely, Shyam Babu, Tej Ram and Babu Ram. Even during the pendency of the present appeal, 2 accused persons died, namely, Tej Ram and Babu Ram and as on date, we are concerned with only one accused, namely, Shyam Babu – the present appellant.

C **Power of the High Court in an appeal against acquittal :**

8. Mr. V.K. Shukla, learned counsel for the appellant, submitted that in view of the acquittal of the accused persons by the trial Court, the High Court was not justified in interfering with the decision of the trial Court and modifying the acquittal into conviction.

9. It is true that it would not be possible for the appellate Court to interfere with the order of acquittal passed by the trial Court without rendering specific finding, namely, that the decision of the trial Court is perverse or unreasonable resulting in miscarriage of justice. At the same time, it cannot be denied that the appellate Court while entertaining an appeal against the judgment of acquittal by the trial Court is entitled to re-appreciate the evidence and come to an independent conclusion. We are conscious of the fact that in doing so, the appellate Court should consider every material on record and the reasons given by the trial Court in support of its order of acquittal and should interfere only on being satisfied that the view taken by the trial Court is perverse and unreasonable resulting in miscarriage of justice. We also reiterate that if two views are possible on a set of evidence, then the appellate Court need not substitute its own view in preference to the view of the trial Court which has recorded an order of acquittal.

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Reasoning on merits

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10. Keeping the above principles in mind, let us consider the evidence led by the prosecution and the ultimate decision of the High Court. We have already mentioned that Nathu Ram (PW-1), Prayag Singh (PW-3) and Mukut Singh (PW-6) have appeared as eye-witnesses to the occurrence. PW-1, son of deceased Pahunchi Lal, has categorically narrated all the facts of the occurrence. According to him, at about 9 or 9.30 a.m., on the fateful day, he and his father were ploughing the field of Badan Singh which they had taken on 'batai' and his uncle Gaya Prasad and his son Ujagar Singh were sowing crop in their field. He further deposed that his uncle Prayag Singh and his son Ratan Singh were ploughing their field situated at a distance of 40-50 footsteps from the field in which they were working. Mahipal Singh was irrigating his field through water channel abutting the field of Gaya Prasad and since the water was overflowing and entering into the field of Gaya Prasad, he asked Mahipal Singh to repair the same which resulted in an altercation between them and, thereafter, Mahipal Singh went away saying that he would teach him a lesson. By that time, Lalta Prasad and Jaswant Singh also reached there and all of them were sitting in the field of Badan Singh. He further narrated that at about 11 a.m., when he and his father resumed ploughing their field, at that time, Shyam Babu (present appellant-accused) and Tej Ram with guns, Indal with rifle and Bhabhooti with lathi along with their father Ramjit with spear (ballam) and Babu Ram-son of Bhabhooti with country made pistol reached there. Mahipal Singh pointing at Gaya Prasad started shouting that he was speaking much and should be killed and, immediately thereafter, Shyam Babu and Mahipal Singh fired at Gaya Prasad using guns. When Ujagar Singh rushed towards his father to rescue him, he also received pellet injuries by Tej Ram. He further stated that immediately Pahunchi Lal, Prayag Singh, Lalta Prasad and Jaswant Singh also rushed to the scene of occurrence and then Ramjit and Bhabhooti shouted that they should also be killed. Thereafter, Indal and

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- A Babu Ram fired at Jaswant Singh and Pahunchi Lal with their respective weapons. The accused persons also fired at Lalta Prasad and Prayag Singh with their weapons. Ramjit and Bhabhooti also gave blows to the injured with their respective weapons. On sustaining fatal injuries, Pahunchi Lal, Ujagar
- B Singh, Lalta Prasad, Gaya Prasad and Jaswant Singh died on the spot and Prayag Singh received firearm injuries at his back. He also stated that thereafter at about 12.00 noon he went to the police station Bharthana, Etawah situated at a distance of 8 miles from his village and made a written complaint about
- C the occurrence.

11. The other eye-witnesses relied on by the prosecution and accepted by the High Court were Prayag Singh (PW-3) - injured person and Mukut Singh (PW-6), who corroborated the entire statement of Nathu Ram (PW-1) in all material aspects.

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12. A perusal of the cross-examination of these three eye-witnesses clearly shows that all of them were subjected to lengthy cross-examination but as rightly observed by the High Court, nothing tangible could be brought on record to impair

E their credibility. We were also taken through their evidence. We fully concur with the conclusion arrived at by the High Court and hold that the trial Judge committed an error in discarding the testimony of all the three eye-witnesses doubting their presence at the scene of occurrence.

F **Evidentiary value of related witnesses :**

13. Mr. V.K. Shukla, learned counsel for the appellant submitted that since most of the prosecution witnesses are related to the deceased persons, the same cannot be relied

G on. We are unable to accept the said contention.

14. This Court has repeatedly held that the version of an eye-witness cannot be discarded by the Court merely on the ground that such eye-witness happened to be a relative or

H friend of the deceased. It is also stated that where the presence

of the eye-witnesses is proved to be natural and their statements are nothing but truthful disclosure of actual facts leading to the occurrence, it will not be permissible for the Court to discard the statement of such related or friendly witnesses. To put it clear, there is no bar in law on examining family members or any other person as witnesses. In fact, in cases involving family members of both sides, it is a member of the family or a friend who comes to rescue the injured. If the statement of witnesses, who are relatives or known to the parties affected is credible, reliable, trustworthy and corroborated by other witnesses, there would hardly be any reason for the court to reject such evidence merely on the ground that the witness was a family member or an interested witness or a person known to the affected party or friend etc. These principles have been reiterated in *Mano Dutt and Another vs. State of Uttar Pradesh*, (2012) 4 SCC 79 and *Dayal Singh and Others vs. State of Uttaranchal*, 2012 (7) Scale 165.

15. In the case on hand, Nathu Ram (PW-1) is closely related to all the deceased as he is the son of the deceased Pahunchi Lal and nephew of deceased Lalta Prasad. It is also true that Prayag Singh (PW-3), the injured witness, is the real brother of the deceased Pahunchi Lal and Lalta Prasad. Mukut Singh (PW-6) has also admitted in his cross-examination that he has some land in joint khata with the victims but their testimony cannot be discarded on the ground of relationship alone as they appeared to be honest and truthful witnesses and their testimony has not been impaired in their cross-examination. We have already referred to the lengthy cross-examination of all these persons and nothing has come out to impair their credibility. We have also observed that among these three eye-witnesses, PW-3 is an injured witness and his evidence stands on higher pedestal. There is no reason to either disbelieve his version or his presence at the place of occurrence. On the other hand, we agree with their statement and hold that the High Court was justified on relying upon their

A evidence.

Only surviving accused – effect :

16. Finally, Mr. V.K. Shukla pointed out that inasmuch as the present appellant alone is the remaining accused since out of 7, other 6 accused persons died due to natural death, he may be exonerated from the conviction and sentence. In view of the clinching evidence led by the prosecution, we are unable to accept his submission. We should not forget that due to gruesome incident, 5 persons lost their lives and one person sustained injuries. It is also brought in evidence that Shyam Babu, appellant herein and Tej Ram used guns and the third one Babu Ram used country made pistol for the said diabolical act of shooting. It is undisputed fact that 5 persons died and 1 person sustained injuries by use of such weapons. Even otherwise, the present appellant along with others was convicted by the High Court under Sections 148, 307 & 302 read with Section 149 IPC, hence he cannot be exonerated. Taking note of all these aspects and considering the gruesome murders, there is no reason to exonerate the present sole appellant-accused merely because the other co-accused died due to natural death.

Delay in disposal of appeal

17. It was argued by the learned counsel for the appellant that considering the fact that though the appeal was filed before the High Court at Allahabad in the year 1981, the same was disposed of by the High Court only on 13.01.2006, i.e., after a gap of 25 years and, the sole appellant be discharged from the commission of offence on the ground of delay. We are unable to accept the said contention. This Court, in a series of decisions, held that the Limitation Act, 1963 does not apply to criminal proceedings unless there is express and specific provision to that effect. It is also settled law that a criminal offence is considered as a wrong against the State and the Society even though it is committed against an individual. After

considering various decisions including the decision of the Constitution Bench of this Court in *Abdul Rehman Antulay vs. R.S. Nayak*, (1992) 1 SCC 225 and *Kartar Singh vs. State of Punjab* (1994) 3 SCC 569 and a decision rendered by seven learned Judges of this Court in *P. Ramachandra Rao vs. State of Karnataka* (2002) 4 SCC 578, recently on 17.08.2012, a Bench of two Judges of this Court in *Ranjan Dwivedi etc. vs. C.B.I., Through the Director General (Writ Petition (Crl.) No. 200 of 2001)* rejected similar argument based on delay either at the stage of trial or thereafter.

18. In the case on hand, merely because the High Court had taken nearly 25 years to dispose of the appeal, the present appellant cannot be exonerated on the ground of delay. As stated earlier, it is not a case of single murder but due to firing and gunshot, five persons died and one injured. Accordingly, we reject the said contention.

19. In the light of the above discussion, we are unable to accept the reasoning of the trial Court and submissions made by the learned counsel for the appellant. On the other hand, we fully agree with the conclusion arrived at by the High Court. Consequently, the appeal fails and the same is dismissed.

K.K.T.

Appeal dismissed.