

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.302 of 1992

Arising Out of PS.Case No. -74 Year- 1989l Thana –Dariyapur, District- SARAN

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1. Lalbabu Giri son of Late Sheo Prasad Giri
2. Bachcha Giri son of Late Sheo Prasad Giri
Both residents of Village- Math Kakara, P.S. Dariyapur, District-Saran.
..... Appellants

Versus

The State of Bihar

..... Respondent

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Appearance :

For the Appellants : Mr. Ashish Giri, Advocae.

For the Respondent : Mr. Ajay Mishra (A.P.P.)

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CORAM: HONOURABLE MR. JUSTICE V.N. SINHA

and

HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE V.N. SINHA)

Date: 06-08-2015

This appeal is directed against the judgment and order dated 20th July, 1992 passed by the 3rd Additional District & Sessions Judge, Saran at Chapra in Sessions Trial No. 422 of 1989/87 of 1989, whereunder the two appellants, i.e. Lal Babu Giri and Bachcha Giri have been convicted for the offences under sections 302 and 302/34 of the Penal Code and sentenced them to suffer Rigorous imprisonment for life.

2. The prosecution story, as set out in the FIR, scribed by Shambhu Nath Singh, the Officer Incharge, Dariyapur Police Station, Saran on 02.05.1989 is that the informant, Raj Narayan Giri (P.W.6) along with Rajdeo Giri and Yogendra Giri approached him on



02.05.1989 at 3.30 A.M. with the dead body of Bishwanath Giri and recorded statement that on 01.05.1989 at 4 P.M. a Panchayati for Khop land was being held between the informant, Bishwanath Giri on the one side and their step brothers, the two accused on the other side. The Panches were Ramakant Giri, Yogendra Giri and villagers, namely, Manager Giri, Surjan Giri, Deosaran Giri and others. The Panches announced their decision which persuaded the two accused to not only abuse informant and his brother but also the Panches. Accused Lal Babu Giri held out that Bishwanath Giri will not understand unless he is given lesson. Meanwhile, Bishwanath Giri attempted to run away from the place where Panchayati was being held. He was chased by accused Bachcha Giri who took out a knife from his pocket and assaulted him with the same. Lal Babu Giri also assisted Bachcha Giri by apprehending Bishwanath Giri and facilitated assault on his person by Bachcha Giri who stabbed him with knife on his back. The informant and others put Bishwanath Giri on a cot and proceeded towards Naya Gaon for providing medical treatment to Bishwanath Giri the doctor was not available at Naya Gaon, the informant and others arranged a tempo at Naya Gaon and proceeded to Dariyapur. The prosecution party while on the way to Dariyapur met Dr. Choudhary at Shitalpur who provided treatment to Bishwanath Giri and referred him to P.M.C.H. around 8.30 P.M. The injured and others on their way to P.M.C.H reached Agam Kuan



Patna at 11 P.M. where the deceased succumbed to the stab injury. The informant accordingly brought the dead body to Dariyapur Police Station on 02.05.1989 at 3.30 A.M. and recorded his First Information Report, on the basis of which Dariyapur P.S. Case No. 74 of 1989 was registered. The F.I.R. was dispatched for perusal by the C.J.M. Saran through special messenger on 02.05.1989 which was also perused by the learned C.J.M. Saran on 02.05.1989. Perusal of the F.I.R. indicates that besides the informant, Rajdeo Giri and Yogendra Giri also put their signatures over the F.I.R. as attesting witnesses.

3. In the light of the F.I.R. the Officer Incharge proceeded with the investigation and conducted the inquest proceeding on the dead body of Bishwanath Giri, vide inquest report dated 02.05.1989 (Ext.1). Perusal of Ext. 1 indicates that the inquest over the dead body of Bishwanath Giri was conducted in Dariyapur Police Station on 02.05.1989 at 4 A.M. Perusal of inquest report further indicates that inquest proceeding was conducted in presence of Yogendra Giri, Ramakant Giri (P.W.2) and Akshay Giri. Further perusal of inquest report indicates that Bishwanath Giri had suffered one stab injury. After conducting inquest proceeding the dead body of Bishwanath Giri was sent to the dead-house in Sadar Hospital, Chapra for conducting postmortem which was received in the hospital on 02.05.1989 at 10 A.M. The postmortem was also conducted on the same day at the same time by Dr. Rajbali Singh, Civil Assistant



Surgeon, Sadar Hospital, Chapra, (the report of the doctor is marked as Ext.2), who found one stab injury on the back of Bishwanath Giri measuring 2" x 1/8" right side of lung causing deep cut in the right lobe of the lung with massive collection of blood and blood clot in plural cavity. In the opinion of Dr. R. B. Singh death was caused due to shock and hemorrhage resulting from the injury inflicted to the vital organ caused by sharp cutting weapon. The Officer Incharge having sent the dead body for postmortem recorded further statement of the informant as also statement of the witnesses and in the light of the contents of the F.I.R, inquest report, postmortem report and the statements of the witnesses submitted charge sheet. In the light of the charge sheet cognizance was taken, summons issued to the accused persons and after supply of police papers to the accused the case was committed to the court of Sessions. The Sessions Court framed charge under order dated 20.03.1999.

4. In Support of the prosecution case the prosecution party examined as many as ten witnesses, namely, P.W. 1 Sarjan Giri is co-villager who claims to be the Punch and participated in the Panchayati proceeding in the village and happens to be a close relative of the wife of the deceased. P.W. 2 Ramakant Giri is brother-in-law of the deceased. P.Ws. 3 and 4, namely, Deo Sharan Giri and Manager Giri are co-villagers and claim themselves to be the Punches in the arbitration preceding the occurrence. P.W. 5 is Dr. Rajbali Singh who



conducted postmortem on the dead body of the deceased Bishwanath Giri. P.W. 6 Raj Narayan Giri is the informant. P.W. 7 Prabhavati Devi is the wife of the deceased. P.W. 8 Dr. Mahesh Choudhary is the doctor who treated the deceased at Dariyapur Referral Hospital on 01.05.1989 in the evening and referred him to P.M.C.H. P.W. 9 Deo Nath Prasad is a formal witness who has proved F.I.R. (Ext.6). P.W. 10 Shambhu Nath Singh the then Officer Incharge of Dariyapur Police Station, who not only scribed the F.I.R. but also identified the writings over the F.I.R. and further deposed about the manner in which he scribed the same and conducted further investigation in the case.

5. The accused persons have also examined two defence witnesses, namely, Sri Niwas Giri and Ram Charan Giri who have come forward to depose in the court that no panchayati as claimed by the prosecution party was ever held on the date and time of occurrence and the deceased Bishwanath Giri was a man of shady character and they learnt that he was killed elsewhere and not in the village.

6. The learned counsel for the appellants has assailed the findings recorded by the trial court asserting that the prosecution party, investigating officer and the eye witnesses have not disclosed the true version of the occurrence. According to him the occurrence has perhaps taken place elsewhere as from the fardbeyan itself it will appear that the occurrence had taken place on 01.05.1989 around 4



P.M., soon thereafter the injured was put on a cot and taken to village Naya Gaon where the members of the prosecution party could not meet the doctor, within few minutes hired a tempo carried the victim to Dariyapur and when they reached Shitalpur could meet Dr. Choudhary (P.W. 8) who referred the injured to P.M.C.H. around 8 P.M. and while the members of the prosecution party along with the injured were on way to P.M.C.H. and reached Agam Kuan, Patna the deceased succumbed to the stab injury. It is submitted that the aforesaid version of the informant and the prosecution witnesses is not corroborated by Dr. Mahesh Choudhary (P.W. 8) who categorically deposed that on 01.05.1989 he was posted at Dariyapur State Dispensary and on that day he examined injured Bishwanath Giri at about 8 P.M and as his condition was serious referred the patient to P.M.C.H. at 8 P.M. It is submitted that the occurrence having been taken place around 4 P.M. and soon thereafter the injured was brought to Naya Gaon wherefrom the injured and others boarded a tempo and proceeded to Dariyapur State Dispensary which is at a distance of 4 to 5 kilometer from Naya Gaon. In the circumstances it is not understandable as to why the informant and the injured approached Dr. Choudhary at 8 P.M. It is submitted that the tempo by any standard will take hardly half an hour to cover the distance of 4-5 kilometer and if the occurrence had taken place at 4 P.M. the prosecution party and the injured reached Naya Gaon around 6 P.M.

they ought to have approached Dr. Choudhary by 6.30 P.M and not at 8 P.M. It is submitted that the delay of two hours in approaching the doctor is indicative of the fact that the occurrence has taken place in a manner other than the manner which is disclosed in the F.I.R.

7. In this connection appellants have also relied upon the reference made by Dr. Choudhary from the records. It appears that Dr. Choudhary examined Bishwanath Giri on 01.05.1989 at 7 P.M. and informed Dariyapur P.S, carbon copy whereof is available on the record from which it appears that having examined the injured information about the injury on his person was given to S.I. Dariyapur. There is another endorsement over the same under the signature of Yogendra Giri also dated 01.05.1989 which indicates that the police station refused to accept the information. Dr. Choudhary thereafter prepared another note at 8 P.M. on 01.05.1989 which is also addressed to S.I. Dariyapur Police Station in which Dr. Choudhary stated that he examined Bishwanath Choudhary at 8 P.M. and found stab injury on his back and referred him to P.M.C.H.

8. In view of the controversy about the timing of examination of Bishwanath Giri by Dr. Mahesh Choudhary (P.W.8) and Dr. Choudhary failing to explain such discrepancy in his evidence, it is difficult for us to accept the prosecution version that Bishwanath Giri sustained stab injury around 4 P.M. and moved from his village to Naya Gaon on a cot reaching Naya Gaon at 6 P.M. and

then proceeded on a tempo to Dariyapur reaching there at 8 P.M. The delay is indicative of the fact that the occurrence perhaps has not taken place in the manner and the time as stated in the F.I.R.

9. In this connection we would like to refer to yet another aspect of the matter. In Ext. 5 issued by Dr. Choudhary on 01.05.1989 at 7 P.M. there is endorsement by Yogendra Giri who is also an attesting witness of the F.I.R and the inquest proceeding and from these documents it is quite evident that he was present along with members of the prosecution party right from the beginning i.e. when the panchayati was undertaken on 01.05.1989 as he was also one of the punch and remained with them until the inquest proceeding, yet the prosecution has chosen not to examine him though after the occurrence he accompanied the injured till he succumbed to the injury and then put his signature over the F.I.R and the inquest report. Failure of the prosecution not to explain as to why such important witness of the entire occurrence has been given-up in our opinion is fatal and also affects the credibility of the other interested witnesses.

10. In view of failure of the prosecution to explain the discrepancies in the time of examination of injured by Dr. Mahesh Choudhary (P.W.8) as also failure of the prosecution to examine Yogendra Giri and other punches who were not directly related to the informant and his brother, we think it appropriate not to place reliance

on the evidence of P.Ws. 1 and 2, the two relatives of the deceased from the side of his wife as P.W.2 is brother-in-law of the deceased and P.W. 1 is agnate of P.Ws. 2 and 3, cousins of P.W.1. The evidence of the informant also does not inspire confidence as he has not explained the delay caused in reaching the injured to the doctor and as such the prosecution has not been able to prove the charge against the appellants beyond shadow of all reasonable doubts.

11. In the circumstances, we not only set aside the impugned judgment/order of conviction/sentence but also direct that both the appellants be granted benefit of doubt and are hereby acquitted from the charges levelled against them. As the appellants are on bail, they are also discharged from the liabilities of their bail bonds.

(V.N. Sinha, J)

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(Jitendra Mohan Sharma, J)