

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.554 of 1993

AGAINST THE JUDGMENT OF CONVICTION, DATED 16.10.1993,
AND ORDER OF SENTENCE, DATED 18.10.1993, PASSED, BY
SHRI KAILASH BEHARI VERMA, SESSIONS JUDGE, WEST
CHAMPARAN AT BETTIAH, IN SESSIONS TRIAL NO. 52 OF 1992,
ARISING OUT OF JOGAPATTI P.S. CASE NO. 3 OF 1992

=====
Mohan Giri, son of Marua Giri, resident of village Sikta
Kala, P.S. Jogapatti, District West Champaran, at Bettiah
..... Appellant

Versus

The State of Bihar

.....Respondent

=====
Appearance :

For the Appellant : Mr. Farooque Ahmad Khan,
Senior Advocate
Mr. Arun Kumar Singh No. 3,
Advocate
Mr. Thakur Brajesh Singh, Advocate
Mr. Jeetendra Narayan, Advocate
For the Respondent : Mr. Ajay Mishra, APP

Mr. Ravi Bhardway, Advocate as Amicus Curiae

=====
**CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI
AND
HONOURABLE MR. JUSTICE GOPAL PRASAD**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE I. A. ANSARI)

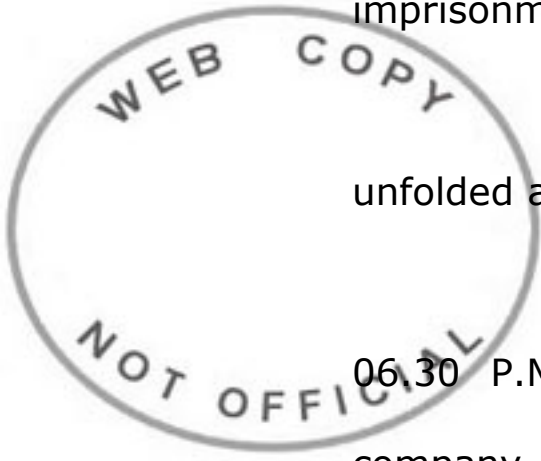
Date: 18-03-2015

Under the judgment, dated 16.10.1993,
passed, in Sessions Trial No. 52 of 1992, by learned
Sessions Judge, West Champaran at Bettiah, the
appellant, Mohan Giri, stand convicted under Section 302
of the Indian Penal Code. Following his conviction, the

accused-appellant has been sentenced to suffer imprisonment for life.

2. The case of the prosecution, as unfolded at the trial, may, in brief, be set out as under:

(i) On 06.01.1992, at around 06.00 to 06.30 P.M., when Deojani Kuer was passing, in the company of Sharda Devi (since acquitted), from a place located about hundred yards in the east of village Sikta Kala, accused Mohan Giri came out of the bushes and though Deojani Kuer resisted pleading to Mohan Giri to leave her, accused Mohan Giri dragged her and chopped off her head by means of *kata*, i.e., sharp edged weapon. The occurrence was seen by Teni Sah (P.W. 1), Sachidanand Thakur (P.W. 3) and Parshuram Mahto (P.W. 4). When the accused was in the process of dragging the said deceased and before he assaulted said deceased, P.W. 1 and P.W. 3 moved forward in order to save the said deceased, but accused, Mohan Giri, abused them and threatened to kill them also. Being frightened and panicked, not only P.W. 1 and 3, but P.W. 4 also, who was present near the place of occurrence, ran away



and came to their village.

(ii) On the following day, at about 10.45 A.M., P.W. 8, Achhaiber Nath Pathak, lodged a *fardbeyan* at Jogapatti Police Station, alleging to the effect, *inter alia*, that his son, Braj Bhushan Pathak (not examined), came and informed him (P.W. 8) that her maternal grandmother, Deojani Kuer, had been hacked to death and, on receiving this information, he (informant, P.W. 8) came to the village and saw the headless dead body of Deojani Kuer lying on the rural road at a distance of hundred yards south of the said village. The informant also mentioned, in the *fardbeyan* (Exhibit 6), that he started receiving information from his co-villagers that on previous day, i.e., on 06.01.1992, Deojani Kuer had gone to Bettiah, along with accused Sharda Devi (since acquitted), and while she was returning in the evening, she had been killed by chopping off her head and, leaving her dead body at the very place of occurrence, the assailant had disappeared.

(iii) The informant also alleged, in the *fardbeyan* that he was confident that his co-villager,

Mohan Giri, had committed the murder, because Mohan Giri, with the help of his co-villager, Kewal Sah, had, in the year 1989, got one bigha of land, belonging to Deojani Kuer, registered in his name, by substituting, in place of the seller, accused Mohan Giri's own wife and, on coming to know about the said fact, the said deceased was proposing to file a case against accused, Mohan Giri, alleging commission of fraud.

3. Treating the said *fardbeyan*, as the First Information Report, Jogapatti P.S. Case No. 03 of 1992 was registered, under Sections 302/201/120B of the Indian Penal Code, against accused Mohan Giri and Sharda Devi.

4. During investigation, police visited the place, where the said dead body was found and held inquest over Deojani Kuer's dead body. The said dead body was also subjected to *post mortem* examination and, on completion of investigation, *charge sheet* was laid, under Sections 302/201/120B of the Indian Penal Code, against accused persons, namely, Mohan Giri, Prabhu Giri, Umesh Singh and Sharda Devi.

5. At the trial, when *charges*, under Sections 302, 201 and 120B of the Indian Penal Code, were framed against accused persons, namely, Mohan Giri, Prabhu Giri, Umesh Singh and Sharda Devi, all the accused pleaded not guilty thereto.

6. In support of their case, prosecution examined as many as 9 (nine) witnesses. The accused were, then, examined under Section 313 (1) (b) of the Criminal Procedure Code and in their examinations aforementioned, the accused persons denied that they had committed the offences, which were alleged to have been committed by them, the case of the defence being that of denial. The defence also adduced evidence. The learned trial Court, too, examined a witness as Court Witness.

7. Having, however, arrived at the finding that the accused-appellant, Mohan Giri, had been proved guilty of the charge framed under Section 302 of the Indian Penal Code, the learned trial Court convicted him accordingly. Having, however, found that the *charge*, against the other three co-accused, namely, Sharda Devi,



Prabhu Giri and Umesh Singh, under Sections 302, 201 and 120B of the Indian Penal Code, had not been proved, they were accordingly acquitted. Following his conviction, sentence has been passed against the convict, Mohan Giri, as mentioned above.

8. Aggrieved by his conviction and the sentence passed against him, the convict, Mohan Giri, has preferred this appeal.

9. We have heard Mr. Farooque Ahmad Khan, learned Senior Advocate, appearing on behalf of the appellant, and Mr. Ajay Mishra, learned Additional Public Prosecution, appearing for the State. We have also heard Mr. Ravi Bhardwaj, learned Counsel, appearing as *Amicus Curiae*.

10. While considering the present appeal, it needs to be noted that according to the evidence of the doctor (P.W. 9), who had, admittedly, conducted *post mortem* examination on a headless female dead body, which was identified to him as the dead body of Deojani Kuer, he found as follows:

"Rigor mortis was present. Head was absent from the lower part of neck



and following ante mortem injuries were seen.

(i) A sharp cut on middle aspect of left wrist joint 3" x 1½" x 1" ulna bone was cut.

(ii) A sharp cut on posterior medial aspect of left arm below the elbow joint 4" x 1" x 1½" shaft of ulna bone was cut.

(iii) A sharp cut on posterior aspect of left arm below the shoulder joint 3" x 1½" x 1".

(iv) A sharp cut 1" x ¼" x ½" on right shoulder joint.

(v) Three sharp cut, on anterior aspect of right shoulder joint one below the other ½" x ¼" x ½" ."

11. In the opinion of the doctor (P.W. 9), the death took place, because of the head having been chopped off by a sharp cutting weapon and the injuries were sufficient to cause death in the ordinary course of nature.

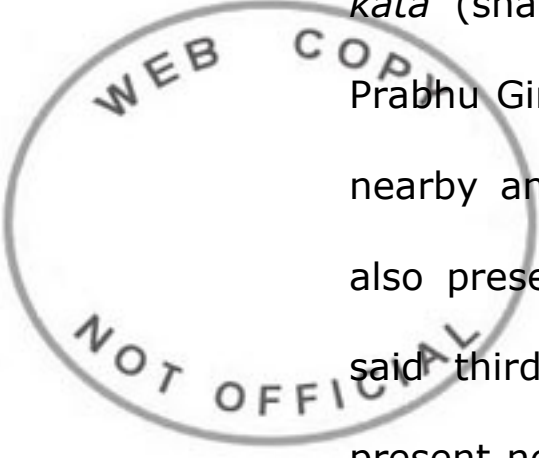
12. The prosecution did not dispute the correctness of the findings of the doctor (P.W. 9) and/or his opinion with regard of the nature of the injuries,

which had been found on the said dead body, the cause of her death and/or the nature of weapon, which might have been used. Even the defence did not dispute the evidence given by the doctor (P.W. 9). This Court, too, does not find anything inherently incorrect or improbable in the evidence given by the doctor (P.W. 9).

13. From the undisputed evidence of the doctor (P.W. 9), we find that Deojani Kuer had been put to death by chopping off her head. There is, therefore, no doubt in our mind that Deojani Kuer's death was homicidal in nature.

14. The question, however, remains as to whether the accused-appellant was the one, who had caused the death of Deojani Kuer?

15. Our quest for an answer to the above question brings us to the evidence of P.W. 1 (Teni Sah), who has been examined as an eye-witness to the occurrence. The evidence of P.W. 1 is that on the day of occurrence, at about 05.45 P.M., when he was proceeding towards his granary to keep harvested mustard seeds, he saw three persons, one of them being



accused Mohan Giri, cutting the neck of Deojani Kuer, by *kata* (sharp-edged weapon) and at that time, accused Prabhu Giri, brother of accused Mohan Giri, was standing nearby and though there was a third person, who was also present there, he (PW 1) could not recognize the said third person and, on noticing that P.W. 1 was present nearby, accused Mohan Giri abused him and told him to run away or else, he (PW 1), too, would be hacked to death and, out of fear, according to the evidence of P.W. 1, he fled away without raising any alarm and informed his younger brother, Ramdhani Sah (not examined), about the occurrence.

16. Close on the heels of the evidence of P.W. 1 is the evidence of P.W. 3, whose evidence is to the effect that on the day of occurrence, at about 06.30 P.M., while he was returning from his field, he saw accused Mohan Giri emerging out of bushes, catching hold of Deojani Kuer and chopping off her head and noticing that P.W. 3 was present there, accused Mohan Giri, according to the evidence of P.W. 3, threatened P.W. 3, too, and, out of fear, he (P.W. 3) fled away, but told

about the occurrence to Prayag Pandit (P.W. 6), whom he found at a distance of about 50 cubit from the place of occurrence.

17. So far P.W. 4 (Parshuram Mahto) is concerned, his evidence is that while he was going to fetch a pumping set, he saw accused Mohan Giri, who asked him to go away. It is in the evidence of P.W. 4 that leaving the bullocks behind, he ran away from there and informed Ghanshyam Mahto, whom he met on the way and, in the morning, he came to learn about the murder of Deojani Kuer and identified the dead body of Deojani Kuer lying at the place of occurrence.

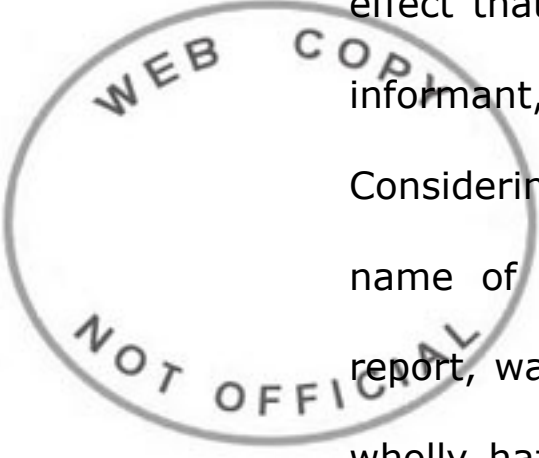
18. What is, now, of utmost important to note is that in their evidence, P.Ws. 1, 3 and 4 have deposed that they met their co-villagers including the informant (P.W. 8) and told them about the occurrence. Even P.W. 8 has deposed, in his cross examination, that he had met the said witnesses (P.Ws. 1 and 3) at about 08.00 A.M. on the day, he (P.W. 8) lodged the First Information Report, i.e., 07.01.1992.

19. As the First Information Report has,

admittedly, been lodged on 07.1.1992, at 10.45 A.M., by P.W. 8, a plea was naturally raised, on behalf of the accused-appellant, at the trial, as to why the names of the accused had not appeared, or had not been mentioned, in the First Information Report and what the informant had expressed, in the First Information Report, is merely his strong suspicion that Mohan Giri was involved in the killing of Deojani Kuer.

20. The learned trial Court, having taken the assertion into account, observed, in the judgment, under appeal, that this is an infirmity, which is not vital to the prosecution's case inasmuch as because P.Ws. 1, 3 and 4 were not inimical to the accused and that the informant (P.W. 8) might have been cautious in disclosing his name in the *fardbeyan*.

21. Both the explanations, which have been given by the learned trial Court for not considering the omission of the informant to mention, in the First Information Report, the name of accused Mohan Giri as the assailant or one of the assailants except expressing suspicion against him, do not take into account the fact



that the evidence, given by P.Ws. 1, 3 and 4, are to the effect that they had met their co-villagers, including the informant, and they had narrated about the occurrence. Considering from this angle, the omission to mention the name of accused Mohan Giri, in the first information report, was, in our firm view, not only fatal, but made it wholly hazardous to confidently rely on the evidence of P.Ws. 1, 3 and 4 and/or the evidence of P.W. 8; more so, when there is nothing, in the evidence on record, as to how the Investigating Officer came to learn about the fact that P.Ws. 1, 3 and 4 had witnessed the occurrence.

22. At any rate, in the light of the evidence, which we have discussed above, it is too hazardous and unsafe to place reliance on the evidence of P.Ws. 1, 3 and 4, more particularly, the evidence of P.Ws. 1 and 3, who claimed to have seen accused Mohan Giri in the act of killing the deceased, Deojani Kuer, and yet we find that these witnesses' evidence is not consistent with each other inasmuch as P.W. 1 has claimed that the woman, who had been caught hold by Mohan Giri, was not shouting, whereas P.W. 3 has claimed that the

woman had shouted. Further-more, the act of assault and/or killing of Deojani Kuer is alleged to have been witnessed by P.W. 1 and P.W. 3. Surprisingly, however, neither P.W. 1 deposed about the presence of P.W. 3 nor P.W. 3 has claimed to have seen P.W. 1 at or near the place of occurrence. This apart, though P.W. 1 and P.W. 3 has claimed, as already indicated above, to have disclosed the occurrence to others, prosecution failed to muster even one witness who supported the evidence of PW 1 and PW 3 that they, or anyone of them, had disclosed, before the First Information Report was lodged, that anyone of them had witnessed the occurrence.

23. Because of what have been discussed above, we are clearly of the view that the evidence on record, adduced by the prosecution, failed grossly short of the standard of proof, which is insisted in a criminal trial, and the accused-appellant, in the facts and attending circumstances of the present case, ought to have been accorded, at least, benefit of doubt.

24. In the result and for the foregoing reasons, we allow this appeal. The impugned conviction

of the accused-appellant and the sentence passed against him by the judgment and order, under appeal, are hereby set aside. The accused-appellant is held not guilty of the offence, which he stands convicted of, and he is hereby acquitted of the same under benefit of doubt.

25. Since the accused-appellant is on bail, his bail bond is hereby cancelled and his sureties shall stand discharged.

26. Let the Amicus Curiae be paid a fee of Rs. 5,000/-.

27. Registry shall, forthwith, send a copy of this judgment and order to the learned trial Court, along with the Lower Court Records.

(I. A. Ansari, J.)

(Gopal Prasad, J.)

S.A./Kundan

U	✓	T	✓
---	---	---	---