

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.150 of 2003

Arising Out of PS.Case No. -null Year- null Thana -null District- SARAN

- =====
1. Kanhaiya Giri, son of Deo Narayan Giri (since dead)
 2. Deo Narain Giri @ Deo Narayan Giri, son of Late Suneshwar Giri (since dead)
 3. Lallan Giri @ Lalan Giri, son of Deo Narayan Giri
 4. Gobardhan Giri @ Govardhan Giri, son of Deo Narayan Giri, all residents of village Puchhari, P.S. Baniyapur, District Chapra (Saran)
- Appellants

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant/s : Mr. Mukesh Kumar Singh, Advocate

For the Respondent/s : Mr. Binod Bihari Singh, APP

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 03-04-2018

Appellant No.1 Kanhaiya Giri (since dead) has been convicted under Section 326 of the Indian Penal Code and appellants Nos. 2 (since dead), 3 and 4 have been convicted under Section 326/34 IPC and all the appellants have been sentenced to undergo rigorous imprisonment for seven years with a fine of Rs.1000/- each with default clause vide judgment and order dated 7.3.2003 passed by Sri Shyam Nandan Prasad Verma, the then Ad hoc District and Sessions Judge, Fast Track Court No.1, Saran, Chapra in Sessions Trial No. 132 of 1989.



2. In this case a report was called for from the Superintendent of Police, Saran regarding life status of the appellants and report has been received from which it appears that appellants Nos. 1 and 2, namely, Kanhaiya Giri and Deo Narain Giri @ Deo Narayan Giri, have died during pendency of the appeal, as such, this appeal against them stands abated.

3. Prosecution case, in short, is that on 22.9.1987 at about 4 P.M. when informant Sarbdeo Giri (PW 3) was coming from his field after cutting a bundle of fodder (marua stems) on his head and when he reached near the maize field of Wakil Bharti, he was surrounded by accused appellants and on the order of appellant Deo Narain Giri (since dead) appellants Nos. 3 and 4 assaulted him by lathi on his waist and when he fell down appellant No.1 Kanhaiya Giri (since dead) threw acid on the person of informant, causing burn injuries on his back, arms, shoulder, neck and other parts of body.

4. In this case it further appears that during trial six



witnesses have been examined on behalf of prosecution, they are PW 1 Wakil Bharti, PW 2 Ram Kripal Giri, both claim to be eye-witnesses to the occurrence, PW 3 Sarbdeo Giri, is informant in this case and also injured, PW 4 Dr. Ramendra Nath Roy, Medical Officer of State Dispensary, Baniapur, PW 5 Jai Narain Bharti is seizure list witness and has proved Ext.3 and PW 6 Nagendra Bharti Chaturvedi is also a seizure list witness. Apart from that, some documents have been brought on record as exhibits on behalf of prosecution as well as defence.

5. Learned trial court on conclusion of trial has convicted the appellants under Section 326 and 326/34 IPC and sentenced them as stated above.

6. Contention of learned counsel for the appellants is that allegation against appellants Nos. 3 and 4 is of only assault by lathi to the informant and when he fell down, on the order of appellant Deo Narain Giri (since dead), appellant Kanhaiya Giri (since dead) threw acid on him and, as such at best they would be held guilty for the offence under Section



323 IPC. Further submission of learned counsel is that prosecution evidence is contrary to the earliest version in the fardbeyan as in the fardbeyan it is alleged that when informant raised alarm the witnesses came there, whereas evidence of PWs 1 and 2 shows that when they reached at the place of occurrence the occurrence took place, as such above improvement is made just to show that PWs 1 and 2 were the eye-witnesses to the occurrence. Further submission is that no case is made out under Section 326 IPC as injury was not grievous though Doctor found the injury to be grievous, as such on the basis of above contentions learned counsel for the appellants has assailed the impugned judgment.

7. On the other hand, learned counsel for the State has submitted that conviction is just and proper as there was grievous injury on the person of informant and there was extensive burn injury also.

8. In the background of above contentions, on examination of evidence of PW 3, who is informant in this case and has supported the prosecution version, it appears



that while he was coming from field he was surrounded by accused appellants and on the order of appellant Deo Narain Giri (since dead) appellants 3 to 4 assaulted him by lathi and when he fell down appellant Kanhaiya Giri (since dead) threw acid on him from back, causing burn injuries to him. Apart from that, the Doctor, who has examined the informant, has found the following injuries on his person :

(i) Extensive burn on the back of the head, back of the neck and whole of the back, buttock, anal canal, back of both arms, back of both thighs and upper portion of both sides of chest and the upper part of the chest,

(ii) Swelling 3-1/2" x 1" on the left side of the back above iliac crest.

According to Doctor, injury No.1 was grievous and injury No.2 was simple. However, although there is evidence that both the appellants assaulted by lathi but only there was only one swelling injury on the person of informant apart from the acid burn injuries. It further appears that though injury No.1 was grievous in nature but there is nothing in the



evidence of Doctor to show that injured informant was caused grievous hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance, though Doctor found the injury No.1 to be dangerous to life and he was in shock but there is no finding of Doctor to show that he was suffering from bodily pain and further there is no finding of Doctor as to what percentage of burn was caused to the informant. In view of above, the finding of Doctor on injury No.1 does not hold good. Further allegation of throwing acid is on Kanhaiya Giri. Seizure list was prepared but the cloth or the bowl has not been sent for examination to show that it contains acid. The above inconsistencies also go against the prosecution.

9. The other witnesses, who claim to be eye-witnesses to the occurrence, have also supported the



prosecution case so far assault by lathi is concerned. However, FIR shows that they have come after the occurrence and their evidence has been corroborated by the evidence of Doctor and it appears that at best it is a case under Section 324 IPC but learned trial court has not considered aforesaid aspects of the matter.

10. In view of discussions made above, the conviction of appellants Nos.3 and 4 is modified to a conviction under Sections 324/34 IPC.

11. On the point of sentence, learned counsel for the appellants has submitted that appellants Nos. 3 and 4 have remained in custody for one and a half months and occurrence is of the year 1987 and, as such, 30 long years have passed and in the said circumstances a lenient view may be taken.

12. I find force in the submission of learned counsel for the appellants and considering the above submission, their sentence under Sections 324/34 IPC is reduced to the period already undergone by them in custody.



13. With the above modification in the order of sentence, this appeal is disposed of.

(Vinod Kumar Sinha, J)

spa/-

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