

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Appeal (SJ) No.188 of 2004**

Sessions trial no. 236 of 1988/386 of 2002 arising out of Guthani P.S.

Case No. 44/1987 District- SIWAN

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1. Ramchij Giri Son of Late Nagina Giri

2. Sheojee Giri Son of Braj Kishore Giri

Both resident of Village Belaur Ke Mathia P.S. Guthani District Siwan

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ajay Kumar Thkaur

Mr. Nilesch Kumar

Mrs. Babita Kumari

For the State : Mr. Parmeshwar Mehta, APP

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR**SRIVASTAVA****ORAL JUDGMENT****Date: 26-03-2018**

1. This criminal appeal has been preferred against the judgment of conviction and sentence order dated 16.3.2004 passed by the Addl. Sessions Judge (Fast Track Court No. IV), Siwan in Sessions trial no. 236 of 1988/386 of 2002 by which and whereunder the appellants were convicted for the offence punishable under sections 279,337 and 323 of the Indian Penal Code and accordingly, were sentenced to undergo imprisonment for six months for the offence punishable under section 323 of the Indian Penal Code, to undergo imprisonment for three months under section 279 IPC, to undergo imprisonment for three months under section



337 IPC and all the sentences were ordered to run concurrently.

2. On 20.6.1987 PW2 gave his fardbeyan to ASI Siwan Town police station to this effect that on 28.5.1987 at 4.30 p.m, while he was selling vegetables near the road, a jeep came from Marwa and on the aforesaid jeep appellants were sitting on the front seat. PW2 claimed that he noticed that the appellants signaled the driver of the aforesaid jeep and thereafter, driver of the aforesaid jeep made attempt to hit him by the aforesaid jeep and in that course, he got injury on his right leg. The driver of the aforesaid jeep was caught by the local people. However, he was taken to State hospital but the doctor of the State hospital issued requisition and refused to treat him. PW2 further claimed that he along with the aforesaid requisition went to Gutahani police station but the Officer-in-charge of Gutahani police station refused to institute FIR and thereafter, he came to Siwan Sadar hospital but he was referred to BHU, Banaras. He along with his family members went to BHU, Banaras but doctor refused to take his admission in the hospital and thereafter, he returned and got himself admitted in State hospital and having got his treatment, he reached to his house on 17.6.1987 and



thereafter, lodged the present case.

3. On the basis of the aforesaid fardbeyan, Guthani P.S. case no. 44/1987 was registered for the offences punishable under sections 279, 337 and 307 of the Indian Penal Code and matter was investigated and after completion of investigation, police submitted charge sheet against the appellants but police could not succeed to trace out the aforesaid jeep. The cognizance of the offences was taken and after submission of charge sheet, appellants were put on trial. Appellants stood charged for the offences punishable under sections 279, 337 and 307 of the Indian Penal Code. They denied charges.

4. However, in course of trial, prosecution examined, altogether, three witnesses to prove its case and also got exhibited fardbeyan as exhibit 1, formal FIR as exhibit 2 and injury report as exhibit 3. The statements of the appellants were recorded under section 313 of the Code of Criminal Procedure in which they reiterated their innocence.

5. The learned court below, having analyzed the evidences available on record, convicted and sentenced the appellants in the manner as I have already stated.

6. Learned counsel appearing for the appellants



while challenging the impugned judgment of conviction and sentence order argued that learned trial court failed to appreciate the evidences in its right perspective and also failed to take note of this fact that there was long standing enmity between the appellants and PW2 and furthermore, learned trial court also failed to take note of this fact that there was long delay in institution of the present case. He, further, submitted that moreover, the evidences available on record go to show that PW2 sustained injury in an accident and even if it assumed that appellants were sitting in the vehicle in question, then also, they could not have been convicted for the offence punishable under section 279 of the Indian Penal Code as according to the prosecution case itself, vehicle in question, at the relevant time, was being driven by another person.

7. On the other hand, learned Additional Public Prosecutor appearing for the State supported the impugned judgment of conviction and sentence order.

8. It would appear from perusal of lower court record that PW1 has stated that while PW2 was selling vegetables near his shop, a jeep dashed him. PW1 claimed that the appellants were sitting in the aforesaid jeep and after the



accident, they fled away towards northern side. The aforesaid deposition of PW1 goes to show that an accident had taken place on the alleged date of occurrence but the vehicle was being driven by another person. However, PW2 has admitted in his deposition that the vehicle (jeep) was being driven by unknown person at the time of accident. Although PW2 claimed that the appellants signaled the driver of the aforesaid vehicle to crush him but the aforesaid statement does not inspire confidence to the court because admittedly, there was long standing enmity between the appellants and PW2 and moreover, there was long delay in institution of the present case. Therefore, in my view, learned trial court has committed error in convicting and sentencing the appellants.

9. Accordingly, this criminal appeal is allowed and the impugned judgment of conviction and sentence order are, hereby, set aside. Appellants are on bail. They are discharged from the liability of bail bonds.

(Hemant Kumar Srivastava, J)

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