

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.409 of 2003

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

- =====
1. Dharmanath Giri, son of Late Ram Surat Giri
 2. Balaram Giri, son of Dharmanth Giri, both residents of village Dihchhapiya,
P.S. Taraiyan, District Saran

.... Appellants

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant/s : Mr. Rajesh Kumar Sharma (amicus curiae)

For the Respondent/s : Mr. Bipin Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 17-07-2018

Nobody appears on behalf of the appellants on repeated calls,
as such Sri Rajesh Kumar Sharma, Advocate has been appointed as
amicus curiae to assist this Court.

2. This appeal arises out of the judgment and order dated
5.8.2003 passed by Sri Shyam Nandan Prasad Verma, the then Adhoc
District and Sessions Judge, FTC-I, Saran in Sessions Trial No. 1835
of 1994 by which the appellant Dharamnath Giri has been convicted
under Section 323 of the Indian Penal Code and appellant Baliram
Giri has been convicted under Section 379 of the Indian Penal Code
and appellant Dharamnath Giri has been sentenced to undergo
rigorous imprisonment for three years under Section 323 IPC and
appellant Baliram Giri has been sentenced to undergo rigorous
imprisonment for one year under Section 379 of the Indian Penal



Code.

3. Prosecution case as per fardbeyan of PW 3 Jaidwar Giri, in short, is that while he was returning from sasural along with his wife and reached Moglahia near Khajoorbanni, accused appellant Dharamnath Giri, accused Sachchidanand Giri and accused appellant Baliram Giri came to him and started abusing him and on objection appellant Dharamnath Giri dealt lathi blows on right hand of the informant, causing fracture injuries, accused Sachchidanand Giri dealt him knife blow on his neck and appellant Baliram Giri snatched gold chain from the wife of informant worth Rs.5000/- and further committed theft of one tin box.

4. On the basis of aforesaid fardbeyan, Mashrakh P.S.Case No. 78 of 1994 was registered and police after investigation submitted charge sheet, accordingly cognizance was taken and case traveled to the file of Sri Shyam Nandan Prasad Verma, the then Adhoc District and Sessions Judge, FTC-I, Saran, Chapra for trial and disposal.

5. Charges were framed under Sections 307/34, 325, 379 and 323 of the Indian Penal Code against the appellants and in order to prove its charge the prosecution has examined altogether six witnesses, they are PW 1 Suresh Giri, who claims to be eye-witness to the occurrence, PW 2 Andhawati Devi, wife of informant, who also claims to be eye-witness to the occurrence, PW 3 Jaidwar Giri,



informant and injured, PW 4 Brijesh Rai, declared hostile, PW 5 Ram Dayal Bhagat, declared hostile and PW 6 Sheopujan Manjhi was Tangawala, who has stated that he has not seen the marpit.

6. Defence of the accused is of false implication due to enmity.

7. Learned trial court on conclusion of trial has convicted the appellants under Sections 323 and 379 IPC respectively and sentenced them, as stated above.

8. Learned amicus curiae has assailed the judgment on the ground that in this case PWs 2 and 3 are only eye-witnesses to the occurrence as per prosecution case and PW 1 is not an eye-witness which will appear from the evidence of PW 2, who has stated in his evidence that at the time of occurrence none was present except PWs 2 and 3. So far other witnesses are concerned, they have either been declared hostile or they have not seen the occurrence and there was enmity between the parties from before. Further submission of learned amicus curiae is that there are several contradictions in the evidence of PWs 2 and 3 from their earlier statement made before police. In such view of the matter, non-examination of I.O. is vital and further Doctor has not been examined in this case and in such a situation the conviction of the appellants is not sustainable in the eye of law.



9. On the other hand, learned counsel for the State has supported the judgment of guilt and submitted that evidence of PWs 2 and 3 clearly shows that PW 3 has been assaulted and a tin box was taken away by appellant Baliram Giri and as such they have rightly been convicted.

10. In the background of the above submission on perusal of the evidence it appears that PW 1 claims to be an eye-witness to the occurrence and he has been cross examined and in paragraph-15 of this cross examination he has stated that he could not disclose that Jaidwar Giri, his father and four others had killed Harendra Giri, who is brother of Hardwar Giri, is now in jail and he did not know that deceased Harendra Giri was cousin brother of Sachida Giri. He has stated that he does know that the Sessions Case No. 963 of 1994 was pending before the court of Additional Sessions Judge-I.

11. PW 2 is wife of informant and from her evidence in chief it appears that occurrence was not seen by any witness and the witnesses have come after the occurrence and as such the claim of PW 1, who claims to be an eye-witness to the occurrence, is not believable. She has supported the occurrence of assault by lathi, causing injury to the informant (PW 3) and she has also stated about snatching of gold chain and theft of tin box. Her attention has been drawn towards her earlier statement made before police in paragraph-



17 of her evidence and she has stated before police that Baliram Giri assaulted her husband by lathi, causing fracture injury to him, Sachchidanand Giri assaulted by chhura and Baliram Giri on the point of pistol snatched gold chain and taken away tin box.

12. In this case I.O. has not been examined as such he cannot be confronted with the aforesaid contradictions and that creates serious prejudice to the appellants as it goes into the root of the case.

13. PW 3 is the informant of this case and he has stated in his evidence in chief that he was assaulted by accused Dharamnath Giri by lathi, causing fracture injury and appellant Baliram Giri snatched gold chain and taken away tin box. His evidence in paragraph-17 shows that murder case of Harendra Giri is going on in which Hardwar Giri was informant and others are accused and Hardwar Giri is in custody in that case.

14. From the above discussions of entire evidence it appears that there was enmity between the parties from before and neither I.O nor Doctor has been examined in this case and there are material contradiction in the evidence of PW 2, in such a situation non-examination of I.O. creates serious prejudice to the defence and there is no injury report available on record because of non-examination of Doctor. Moreover prosecution case is based on the evidence of PWs 2 and 3 and evidence of PW 2 does not inspire confidence, there is



material contradiction in her evidence from earlier statement before police. So far PW 3 is concerned, he appears to be interested and inimical witness. In the aforesaid background of the case, conviction of the appellants is not free from reasonable doubt, hence the appellants are at least entitled to the benefit of doubt. However, learned trial court has not considered the aforesaid aspects of the matter and convicted the appellants.

15. Accordingly, this appeal is allowed. The impugned judgment and order are set aside. As the appellants are on bail, they are directed to be discharged from the liabilities of their bail bonds.

(Vinod Kumar Sinha, J)

spa/-

AFR/NAFR	
CAV DATE	
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