

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.356 of 1992

(Against the Judgment of conviction dated 25.08.1992 and Order of sentence dated 26.08.1992 passed by the 8th Additional Sessions Judge, Nalanda in Sessions Trial No.305 of 1984/44 of 1990).

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Brijey Gope, son of Shri Lakhan Gope, a resident of village-Patuana, P.S. Biharsharif, District-Nalanda.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant : Mr. Nand Kishore Prasad No.2, Advocate.

For the State : Mr. A.K. Sinha, A.P.P.

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)

Date: 09-02-2016

The Appellant has been convicted under Section 302 of the Indian Penal Code and sentenced to rigorous imprisonment for life and under Section 27 of the Arms Act and sentenced to rigorous imprisonment for seven years vide Judgment of conviction dated 25.08.1992 and Order of sentence dated 26.08.1992 passed by the 8th Additional Sessions Judge, Nalanda, in Sessions Trial No.305 of 1984/44 of 1990.

2. The case of the prosecution, according to the Informant Dwarika Gope (P.W.11) is that on 19.02.1984 at about 01.00 P.M. while he was at his home, accused persons variously armed entered into his



house and then Shaukhi Gope ordered pointing to Siddheshwar Gope that it was he, who had given evidence in favour of Brahmadeo against Lakhan Gope, who was agnate of Shaukhi Gope, and he should be killed. At this, Sia Gope alias Siya Sharan Singh fired at Siddheshwar Gope, the son of the Informant, on his chest and immediately, thereafter, Jadu Gope fired on account of which he fell down. Hearing this, when Shree Gope rushed to the place of occurrence, accused Brijey Gope fired at him between his legs and, thereafter, Lakhan Gope, Shobawan Gope and Ratan Gope also fired which hit him and he died. Accused Dinesh Gope fired at Vijay Gope. Dhurwahu Gope was assaulted by Ramraj Gope by 'Garasa' Kailu Gope was fired at by Chando Gope alias Chandeshwar Gope, Ram Kumar was assaulted by Baudhu Gope by 'Garasa', Mina Kumari was assaulted by Lekha Gope and Siddheshwar Gope by 'Garasa' and 'Lathi' Vijay was fired at by Dinesh Gope, Ramdeo Gope and Jagdeo Gope and Dhurwahu Gope was also assaulted by Lakhan Gope, Arjun Gope, Charitar Gope and Uday Gope by means of 'Lathi'. Thereafter, they were removed to the Sadar Hospital where two injured, namely, Siddheshwar Gope and Shree Gope died.

3. During trial, the prosecution examined 14 witnesses whereas the defence examined four witnesses and number of documents to bring on record the factum of counter version.

4. The trial court after appreciation of facts acquitted 15

accused persons against which a Government Appeal and Criminal Revision was filed which we have dismissed on hearing today. Co-accused, Siya Sharan Singh alias Sia Gope was also convicted by the same Judgment who preferred another appeal but his appeal abated due to his death.

5. Now, to appreciate the prosecution evidence, we would briefly come to the major point of the case which have led us in allowing the appeal.

6. P.W.1 Kapildeo Prasad stated that on the date of occurrence, 20 to 21 persons came variously armed and, thereafter, injured a number of persons whereas the Appellant caused the death of Shree Gope. In cross examination, he admitted that he was closely related to the rest of the witnesses and also that railway line was in front of his 'Dalan' and nearby was a graveyard . He also stated that the house of some of the accused persons was just adjacent to theirs and denied that on the same day any other occurrence had taken place. His attention was drawn to the earlier statement before the police that he had not attributed specific roles to each of the accused persons. Later, he admitted that on the same day, Siya Sharan Singh alias Sia Gope had instituted a case against them in order to create a defence for having fired. He denied having seen the accused Siya Sharan Singh alias Sia Gope in the hospital.



7. P.W.2 Raj Kumar Prasad is the son of the deceased Shree Gope, who stated that while he was at home, which was adjacent to that of Dwarika Gope (P.W.11), they heard some 'Hulla' from his house so they reached there and they saw 20-21 persons variously armed who specifically fired at the persons mentioned in the examination in chief. His attention was drawn to the earlier statement with regard to the very major contradictions as to from where he exactly watched the occurrence. He explains how the accused persons were related to each other. He was himself related to the rest of the witnesses. He also explained that the place of occurrence was road side of the house of Dwarika Gope.

8. P.W.3 Jugeshwar Gope, son of Daroga Gope, stated that on the date of occurrence while he was in his fields and was returning, he saw a group of 20-21 persons in front of the Dalan of Dwarika Gope, out of which he identified the Appellant and other acquitted accused. He stated as to how they fired and caused injury to the two deceased and the injured as well. His attention was drawn to the earlier statement that he had not attributed specific roles to each of the accused persons. He further stated that part of the occurrence had taken place near the railway line. He denied that anybody had fired at the accused persons.

9. P.W.4 Kailu Gope is a tendered witness whereas P.W.5 Bijay Gope is the other son of the deceased Shree Gope. He stated that



on the date of occurrence, he was in his house and he ran towards the alleged place where he saw the accused persons variously armed making firing and killing the two persons. His attention was drawn to the earlier statement that he had not attributed specific roles to each of the accused persons. He was also asked to explain the place of occurrence, the graveyard and also the Akhara of the accused Siya Sharan Singh alias Sia Gope. He explains the relationship between some of the accused persons. He admits that he was an accused in a case instituted by accused Siya Sharan Singh alias Sia Gope for an occurrence of the same day, which was, in his opinion, a false case. He also delineates the earlier litigation between the parties. He stated that Siddeshwar Gope had fallen on the south of the 'Maidaan' whereas Shree Gope had fallen on the east of the 'Maidaan' which was slightly lower and the railway line was situated nearby. He also admitted that when he heard 'Hulla' he did not find any one at the door of Dwarika Gope.

10. P.W.6 Dr. B.P. Keshaw examined Raj Kumar Prasad (P.W.2) and found two injuries on his person and Dhur Nandan Yadav and also found two injuries on his person. He also examined Mina Kumari (P.W.10), who had sustained one injury on her person and Kailu Gope (P.W.4) who had sustained two injuries on his person as also Vijay Gope, who had sustained one firearm injury on his person. His evidence is immaterial since it does not concern the present Appellant and is

confined to rest of the accused, who have stood acquitted.

11. P.W.7 Naresh Gope stated while he was at his surface well and crossing the railway line towards his 'Gumti', he saw on the Dalan of Dwarika Gope the accused persons having entered there with firearms and 'Garasa' assaulted the injured and caused death of the two deceased. He firstly stated that he had seen the injured on the Dalan of Dwarika but later on they had been lifted from there and put on the bullock cart. His attention was drawn to the earlier statement that he had not attributed specific roles to each of the accused persons. He admitted that there was a counter case instituted by Sia Gope. He denied that any occurrence had taken place on the west of the railway line and he watched the occurrence from the railway line itself. He stated that he had seen Siddheshwar Gope sitting on the Dalan from the railway line itself. He also admitted that he was in a nervous state but had seen the entire occurrence.

12. P.W.8 Singheshwar Gope was also tendered witness.

13. P.W.9 Brij Kishore Sinha is a formal witness who had recorded the statement under Section 164 of the Cr.P.C. and proved the same as Ext.3 series.

14. P.W.10 Mina Kumari is next witness, who is also tendered.

15. P.W.11 Dwarika Gope is the Informant who stated that



on the date of occurrence while he was at his home, he saw 20-21 persons coming to his Sahan near the compound, out of which he identified the accused persons variously armed making firing side by side on account of which two persons lost their lives and number of persons were injured. In cross examination, he stated that adjacent to the Dalan of his house, there was a boundary wall and on the east, there was a Maidaan which was also called a Sahan. The railway line turned towards the east and there was a graveyard. He stated that he had shown the Investigating Officer the place of occurrence where Siddheshwar Gope was shot at and he had seen the injured at the Sahan itself. He then shifted the place of occurrence to be that of being Maidaan where he had seen the people assaulting. He then stated that his son Siddheshwar Gope had been shot at from about 15 feet east in the Maidan. His attention was drawn to the earlier statement recorded under Section 161 of the Code of Criminal Procedure about the specific roles attributed to each of the accused persons.

16. Rajuddin Ahmad has been examined as P.W.12 who had stated that on 19.02.1984 while he was A.S.I. at Biharsharif Police Station, he received information that some firing had taken place at Fatuana in which some persons have been injured. He then made a Sanha Diary Entry and proceeded for Fatuana where he learnt that the injured had been taken to the hospital on a bullock cart and then he

proceeded for there. He recorded the Fardbeyan of the Informant which he proved as Ext.4 and also took the statements of the injured witnesses in the hospital and prepared the Inquest Reports of the two deceased Exts.5 and 5/1. He inspected the place of occurrence and found it to be within village Fatuana and found that the Informant had Dalan and on the east there was his own land, in the east, there was also a railway line which turned to north to south. About 70 feet away of the east of the Dalan of the Informant, there was railway line and yet another 80 feet east, blood was found of which seizure list was prepared (Ext.7) in presence of the witnesses. He proves the material exhibits which was recovered from the place of occurrence. In cross examination, he stated that accused Siya Sharan Singh was arrested at the Bihar Hospital itself in course of his treatment. He had sustained injuries on his stomach for which he was referred to PMCH. On the statement of Siya Sharan Singh Bihar Police Station Case No.101 of 1984 was instituted and he investigated both the cases simultaneously. He stated that he found the dead body of Siddheshwar Gope at the empty field near the railway line which was a graveyard. His attention was drawn to the earlier statement of the witnesses and he confirmed that the witnesses had not made such statement earlier. He also stated the son and father of Siya Sharan Gope were arrested immediately but no incriminating article was found from their possession.

17. P.W.13 Dr. Anil Verma conducted the Post-Mortem Examination of the two deceased and found one injury on the person of the deceased Siddheshwar Gope as also a single firearm injury on the person of the deceased Shree Gope.

He found the followings ante mortem injuries on the person of the deceased Siddheshwar Gope:

- (i). Small oval hole $\frac{1}{4}$ " in diameter on the front of the chest of the level of manubrium sterni known as the wound of entry within inverted margin.
- (ii). Oval shaped hole placed horizontally 1" X $\frac{1}{4}$ " into skin deep with the bullet lodged and peeping through it. The margins were everted.

He found the following ante mortem injuries on the person of the deceased Shree Gope:

Rigor Mortis was present in all the four limbs.

Time elapsed since death was within 12 to 24 hours.

- (i). Horizontal lacerated wound 2" X $\frac{1}{2}$ " X bone deep at the occipital region of the scalp caused by hard and blunt substance.
- (ii). Oval shaped wound at the right inguinal region of $\frac{1}{2}$ " diameter and peritoneum deep known as the wound of entry.
- (iii). Oval shaped wound with everted margin over the left buttock 1 $\frac{1}{2}$ " in diameter with a portion of rectum protruding through the opening known as the wound of

exit.

There is nothing in the cross examination which is notable.

18. P.W. 14 Shiv Shambhu Prasad Singh is a formal witness, who has proved the supervision note (Ext.10) in regard to the investigation of both the cases.

19. The defence examined four witnesses but since none of them related to the present Appellant, their discussion would be of no use.

20. On going through the evidence of the witnesses, we find that, no doubt, there is consistent evidence of the number of the witnesses in regard to the occurrence. However, they appeared to be highly interested on account of which their evidence has to be dealt with utmost caution. In this background we find that there is admission that there was a counter case in regard to the injuries having been caused to Siya Sharan Singh, one of the accused, who had instituted a police case in this regard. Both the cases instituted was with regard to the same occurrence despite which some witnesses have taken care not to disclose the factum of the counter case nor explained injury found on the person of Siya Sharan Singh. We also find that initially the case was that the accused persons had entered into the house of the Informant and, thereafter, the occurrence had taken place there. However, the

Investigating Officer found blood stains and the dead body at a different point altogether which further casts suspicion in regard to veracity of the prosecution case. We also find objective evidence, i.e., post-mortem report of the deceased Shree Gope does not confirm the allegations as propounded by the prosecution witnesses since only one firearm injury was found on his person which is contrary to the prosecution case. In such circumstances, we are inclined to give benefit of doubt to the Appellant.

21. In the result, this appeal is allowed. The impugned Judgment of conviction and Order of sentence passed against the Appellant is set aside. The Appellant is on bail, so he is discharged from the liabilities of his bail bonds.

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

**Pradeep Srivastava/Manish Kumar/
A.F.R.**

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