

IN THE HIGH COURT OF JUDICATURE AT PATNA

Govt. Appeal (DB) No.12 of 1993

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

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State of Bihar

.... Appellant.

Versus

1. Singheshwar Gope @ Sidheshwar Gope, son of Lakhan Gope.
 2. Charitar Gope, son of Bulaki Gope.
 3. Uday Gope, son of Charitar Gope.
 4. Arjun Gope, son of Baudhu Gope.
 5. Yadu Gope, son of Shaukhi Gope.
(Abated vide order dated 17.09.2015).
 6. Lekha Gope, son of Lal Gope.
 7. Ramdeo Gope, son of Lekha Gope.
 8. Dinesh Gope, son of Lekha Gope.
 9. Lakhan Gope, son of Saudagar Gope.
(Abated vide order dated 17.09.2015)
 10. Ramraj Gope, son of Jagdeo Gope.
 11. Dinesh Gope, son of Jagdeo Gope.
 12. Chando Gope alias Chandeshwar Gope, son of Biru Gope.
 13. Shobawan Gope, son of Lakhan Gope.
 14. Ratan Gope, son of Lakhan Gope.
 15. Shaukhi Gope, son of Biru Gope.
(Abated vide order dated 17.09.2015).
- All resident of village-Patuana, P.S.Bihar, District-Nalanda.

.... Respondents.

with

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Criminal Revision No. 627 of 1992

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Dwarika Gope, son of Late Baijnath Gope, resident of Mohalla-Patuana, P.S. Biharsharif, District-Nalanda.

.... Petitioner.

Versus

1. Singheshwar Gope, son of Lakha Gope.
2. Charitar Gope, son of Bulaki Gope.
3. Uday Gope, son of Charitar Gope.
4. Arjun Gope, son of Baudhu Gope.
5. Yadu Gope, son of Shaukhi Gope.
(Abated vide order dated 17.09.2015).
6. Lekha Gope, son of Lal Gope.
7. Ramdeo Gope, son of Lekha Gope.
8. Dinesh Gope, son of Lekha Gope.
9. Lekha Gope, son of Saudagar Gope.
(Abated vide order dated 17.09.2015)
10. Ramraj Gope, son of Jagdeo Gope.
11. Dinesh Gope, son of Jagdeo Gope.

12. Chando Gope alias Chandeshwar Gope, son of Biru Gope.

13. Shohawan Gope, son of Lakhan Gope.

14. Ratan Gope, son of Lakhan Gope.

15. Shaukhi Gope, son of Biru Gope.

(Abated vide order dated 17.09.2015.

All resident of village-Patauana, P.S. Bihar (Nalanda).

..... Accused-Opposite Party.

16. The State of Bihar.

.... Opposite Parties.

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Appearance :

(In G. APP. (DB) No. 12 of 1993):

For the State : Mr. S.N. Prasad, A.P.P.

For the Respondents : Mr. Nand Kishore Prasad, no.2, Advocate.

(In CR. REV. No. 627 of 1992):

For the Petitioner : Mr. Madan Prasad Singh, Advocate.

For the State : Mr. A. Sharma, 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

Government Appeal (DB) No.12 of 1993 and Criminal
Revision No.627 of 1992 have been filed against the acquittal of 15
accused persons, namely, Singheshwar Gope alias Sidheshwar Gope,
son of Lakhan Gope, Charitar Gope, son of Bulaki Gope, Uday Gope,
son of Charitar Gope, Arjun Gope, son of Baudhu Gope, yadu Gope,
son of Shaukhi Gope, Lekha Gope, son of Lal Gope, Ramdeo Gope,
son of Lekha Gope, Dinesh Gope, son of Lekha Gope, Lakhan Gope,
son of Saudagar Gope, Ramraj Gope, son of Jagdeo Gope, Dinesh
Gope, son of Jagdeo Gope, Chando Gope alias Chandeshwwar Gope,
son of Biru Gope, Shobawan Gope, son of Lakhan Gope, and Shaukhi
Gope, son of Biru Gope, by Judgment dated 25.08.1992 passed in

Sessions Trial No.305 of 1984/44 of 1990 by the 8th Additional Sessions Judge, Nalanda.

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 that it is Siddheshwar Gope, 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 acquitted accused Saukhi Gope was charged under Sections 302/114 of the Indian Penal Code. Accused Siddheshwar Gope was charged under Section 323 of the Indian Penal Code for causing injury to Mina Kumari. Accused Lekha Gope and Siddheshwar Gope was charged under Section 324 of the Indian Penal Code for causing injury by 'Garasa' to Mina Kumari. Accused Chando Gope alias Chandeshwar Gope and Ramraj Gope were charged under Section 324 of the Indian Penal Code for causing injury to Kailu Gope by gun and 'Garasa' respectively. Accused Ramraj Gope, Lakhan Gope, Arjun Gope, Charitar Gope and Uday Gope were charged under Section 325 of the Indian Penal Code for having caused injury to Dhurwahu Yadav. Accused Shaukhi Gope, Siya Saran Gope alias Sia Gope, Lakhan Gope, Brijey Gope, Ratan Gope, Shobawan Gope, Ramraj Gope, Arjun Gope, Chando Gope alias Chandeshwar Gope, Charitar Gope, Uday Gope, Lekha Gope and Siddheshwar Gope was charged under Sections 307/149 of the Indian Penal Code for having caused injury to Bijay Gope. Further, Accused Shaukhi

Gope, Siyasan Gope alias Siya Gope, Jadu Gope, Siddheshwar Gope, Ramraj Gope, Dinesh Gope, son of Jagdeo Gope, Arjun Gope, Chando Gope alias Chandeshwar Gope, Charitar Gope, Uday Gope, Lekha Gope, Ramdeo Gope and Dinesh Gope, son of Lekha Gope were charged under Sections 302/149 of the Indian Penal Code for having caused the murder of Shree Gope. Further, Accused Shaukhi Gope, Lakhan Gope, Brijey Gope, Ratan Gope, Shobawan Gope, Ramraj Gope, Dinesh Gope, son of Jagdish Gope, Arjun Gope, Chando Gope alias Chandeshwar Gope, Charitar Gope, Uday Gope, Lekha Gope, Ramdeo Gope and Dinesh Gope, son of Lekha Gope were charged under Sections 302/149 of the Indian Penal Code for having caused the murder of Siddheshwar Gope. Accused Jadu Gope was charged under Section 307 of the Indian Penal Code for having attempted to cause the death of Bijay Gope. Accused Dinesh Gope, son of Jagdeo Gope, Dinesh Gope son of Lekha Gope and Ramdeo Gope were charged under Sections 307 of the Indian Penal Code and Section 27 of the Arms Act for having attempted to cause the death of Bijay Gope. Accused Brijey Gope, Shobawan Gope, Ratan Gope and Lakhan Gope were charged under Section 302 of the Indian Penal Code and Section 27 of the Arms Act for having caused the death of Shree Gope. Accused, Siya Saran Singh alias Siya Gope and Jadu Gope were charged under Section 302 of the Indian Penal Code and



Section 27 of the Arms Act for having caused the death of Siddheshwar Gope. Accused Siya Sharan Singh alias Siya Gope, Jadu Gope, Lakhan Gope, Brijey Gope, Ratan Gope, Shobawan Gope, Ramraj Gope, Dinesh Gope, son of Jagdish Gope, Chando Gope alias Chandeshwar Gope, Ramdeo Gope, Dinesh Gope, son of Lekha Gope and Siddheshwar Gope were charged under Section 148 of the Indian Penal Code for forming an unlawful assembly and Accused Saukhi Gope, Arjun Gope, Charitar Gope and Uday Gope were charged under Section 147 of the Indian Penal Code to commit the murder of Siddheshwar Gope and Shree Gope and cause assault upon Vijay Gope, Dhurwahu Gope, Kailu Gope and Mina Kumari.

5. As mentioned above, the trial court acquitted the aforesaid opposite parties, out of whom Charitar Gope, Uday Gope, Arjun Gope, Yadu Gope, Lakhan Gope and Shaukhi Gope are now dead and the application as against them has abated. Only two persons, namely, Brijey Gope and Siya Sharan Singh alias Siya Gope, were convicted by the said Judgment, out of whom, Siya Sharan Singh alias Siya Gope preferred another appeal but the same abated since he also died. Now, against the said conviction, only Criminal Appeal (DB) No.350 of 1992 preferred by Brijey Gope survives.

6. On going through the evidence of the witnesses, we find that the prosecution examined 14 witnesses. Out of the 14



witnesses, P.W.1 Kapildeo Prasad, P.W.2 Raj Kumar Prasad, P.W.3, Jugeshwar Gope, P.W.5, Bijay Gope, P.W.7 Naresh Gope, P.W.9 Brij Kishore Sinha and P.W.11 Dwarika Gope have deposed as eye witnesses. P.W.4, Kailu Gope, P.W.8, Singheshwar Gope, P.W.10 Mina Kumari have been tendered by the prosecution, P.W.12, Rajiuddin Ahmad is the Investigating Officer whereas P.W.13 is Dr. Anil Verma, who conducted the post-mortem examination of the two deceased, P.W.14 Shiv Shambhu Prasad Singh is a formal witness, who proved the supervision note and P.W.6 is Dr. B.P. Keshaw who examined the injured Raj Kumar Prasad (P.W.2), Dhurwahu Gope (not examined), Kailu Gope (P.W.4) tendered witness, Bijay Gope (P.W.5) and Mina Kumari (P.W.10) tendered witness.

7. While appreciating the evidence of the witnesses, we find that the trial court acquitted the 15 accused persons on full appreciation of facts. One of the reasons was that on appreciation of evidence adduced on behalf of prosecution he was of the opinion that the eye witnesses had not stated about entire occurrence and they had given a one sided picture of it which was in their favour. The Investigating Officer had pointedly created a doubt in regard to the place of occurrence which was not probable as stated by the prosecution. He also examined the motive propounded by the prosecution and held that in the facts of the case, there was no reason

for Shaukhi Gope to order for killing and assaulting the injured. The relationship of the prosecution was also that P.W. Kapildeo Prasad was the son of Dwarika Gope (Informant) and the brother of one of the deceased, Siddheshwar Gope, P.Ws.2 and 5, Raj Kumar Prasad and Bijay Gope respectively were the sons of another deceased Shree Gope. P.W.11 the Informant Dwarika Gope was the father of the deceased and P.W.3 Jugeshwar Gope was nephew of Informant and directly related to the deceased. P.W.7 Naresh Gope also stated that he was closely related to the rest of the witnesses. It, thus, appears that all the witnesses were highly interested in prosecuting the accused persons and siding with the prosecution. Further, he found that the assault which was attributed to the various accused persons did not conform to the objective evidence of the doctor who examined the injured as well as performed the post-mortem examination of the two deceased and, hence, he held their implication doubtful. The manner of occurrence did not match with the medical evidence and he relied upon independent evidence. He also held it against the prosecution that they did not explain the injury on the person of the accused. He also took note of the fact that there was a counter version and the Investigating Officer had held both the occurrences true which create a serious doubt about the veracity of the one-sided prosecution case and having considered all these points, the trial court acquitted

the 15 opposite parties.

8. On appreciation of the aforesaid reasonings, we are unable to find any fault and, hence, both, the Government Appeal as well as the Criminal Revision are dismissed.

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

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

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