

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.280 of 1994

1. Sheo Gope, son of Ramdhani Gope
2. Vijay Gope, son of Ramdhani Gope
3. Ramdhani Gope, son of Barhu Gope (deceased)
All Residents of Mohalla – Kazipur Police Station, Kadamkuan, District - Patna

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent

with
Criminal Appeal (DB) No. 440 of 1994

Munna Gope, son of Ramdhani Gope, resident of Mohalla – Kazipur Police Station, Kadamkuan, District - Patna

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with
Criminal Appeal (DB) No. 307 of 1994

1. Binda Gope, son of Late Diwali Gope,
2. Sunil Gope, son of Sri Binda Gope,
Both resident of Mohalla – Kazipur Police Station, Kadamkuan, District - Patna

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :
(In Criminal Appeal (DB) No. 280 of 1994)
For the Appellant/s : Mr. Ranbir Singh
Amicus Curiae
For the Respondent/s : Mr. Dr. Mayanand Jha
APP
(In Criminal Appeal (DB) No. 440 of 1994)
For the Appellant/s : Mr. Ranbir Singh
Amicus Curiae
For the Respondent/s : Mr. Dr. Mayanand Jha
APP
(In Criminal Appeal (DB) No. 307 of 1994)



For the Appellant/s : Mr. Ranbir Singh
Amicus Curiae
For the Respondent/s : Mr. Dr. Mayanand Jha
APP

**CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA)**

Date : 01-12-2017

All these appeals arises of the judgement, and order dated 17.06.1994, passed by Shri Paras Nath, 3rd Addl. Sessions Judge, Patna in Sessions Trial No. 365 of 1992, by which he has convicted the appellant-Munna Gopa under Section 302 I.P.C. and further convicted Munna Gope; Sheo Gope; Vijay Gope; Ramdhani Gope; Sunil Gope; and Binda Gope under Section 302/149 I.P.C. and also convicted appellant Sheo Gope under section 302 read with Section 109 I.P.C. The learned trial court has also convicted Munna Gope and Vijay Gope under section 27 of the Arms Act. However, acquitted the appellant-Vijay Gope from the charge under section 307 I.P.C. Learned Trial Court has sentenced all the appellants to undergo RI for life under section 302 I.P.C. as well as under Section 302/149 I.P.C. and 302/109 I.P.C. and appellant-Munna Gope and Vijay Gope were further sentenced to RI for three years under section 27 of the Arms Act.

2. Prosecution Case is in two parts. First part reveals that appellant Raju Gope was found abusing and threatening a



rickshaw puller on the point of pistol, which was objected to by the deceased-Raman Kumar @ Mantu; P.W-1; Rajan Kumar (informant); and P.W. 2 Sohan Prasad. They got Raju Gope arrested by the police for which they were threatened by the family members of Sheo Gope.

3. Further prosecution case is that the deceased Raman Kumar @ Mantu along with Lallan Kumar, P.W. 3 and Raman Kishore @ Munna, P.W. 6 were taking signature of Mohalla people against the illegal sale of country-made liquor by appellant Sheo Gope. One of the appellant Binda Gope informed about the same to appellant Sheo Gope and appellant Munna Gope, who came and went away to his house after giving threat to them. Further case is that thereafter all the appellants came there and on the order of Sheo Gope, appellant Munna Gope fired from his pistol, which hit the deceased Mantu on his back, he fled towards north and fell down. Further case is that he was brought to the P.M.C.H. where he was declared brought dead.

4. If further appears that Kadamkuan P.S. Case No. 621 of 1987 was registered against the appellants under sections 147/148/149/307/302 I.P.C. as well as 27 Arms Act and police after investigation submitted charge-sheet against them. Cognizance of the offence was taken and case has been committed



to the Court of Sessions, which ultimately traveled to the Court of Sri Paras Nath, learned 3rd Additional Sessions Judge, Patna for trial and disposal.

5. During trial altogether nine witnesses have been examined. Out of them, P.W. 6 is the informant in this case and P.W. 8 is the Investigating Officer (I.O.) and P.W. 9 is the Doctor, who conducted post-mortem examination. Apart from those witnesses P.W. 1 is the brother of the deceased, P.W. 2 is the uncle of the deceased and P.W. 7 is the father of the deceased.

6. On behalf of prosecution following documents have also been brought on record:

Exhibit -1 : Petition, dated 04.08.1991 against the sale of liquor.

Exhibit – 2: Signature of Lallan Kumar

Exhibit – 3: Signature of Ram Pratap Singh in inquest
report

Exhibit -3/1: Signature of Dayanand Singh on inquest report

Exhibit -4: Signature of Bhushan Prasad on fard-beyan

Exhibit – 4/ 1: Signature of Raman Kishore alias Munna on
fard-beyan

Exhibit -4/2: Signature of Sohan Prasad on fard-beyan

Exhibit -5 : Signature of Mohan Prasad on on seizure list



Exhibit -5/1: Signature of Lallan Prasad on seizure List

Exhibit – 6: F.I.R. Signature of Kedar Rai

Exhibit -7 : Inquest Report

Exhibit -8: Production cum seizure list of the application
(Ext. 1)

Exhibit -9: Entire Post-mortem reported

7. No oral or documentary evidence has been brought on record on behalf of defence and as per the trends of examination and statement under section 313 of Code of Criminal Procedure, the defence of the appellant appears to be of total denial of the occurrence and their false implication and further defence is that the deceased was criminal, having several cases against him and as such he had been killed in some other manner and appellants have been implicated in this case.

8. The main ground for assailing the judgement by the amicus curiae, who was appointed by the Court to assist, as no one appeared on behalf of the appellants.

9. On behalf of the appellants it is said that the informant (P.W.. 6) and the Lallan Kumar (P.W.. 3) who was said to be accompanying the deceased at the time of alleged occurrence has not supported the prosecution case and they had been declared hostile. As far as other witnesses are concerned, their evidence



clearly shows that they have not seen the occurrence. P.W. 1 has stated in his evidence in para 6 that he has not seen the occurrence. Evidence of P.W. 2 also shows that he was at his factory and heard the sound of firing and when he rushed to the place of occurrence he saw the accused persons fleeing. Similarly, evidence of P.W. 4 in para 2 and P.W. 5 para 1 also shows that they are not eye witness of occurrence.

10. Taking us to the evidence of P.W 7, who is father of deceased, appellants also tried to show that he is not the eye witness of occurrence and I.O (P.W 8) had also stated in para 7 that P.W. 7 has stated before him on the basis of hearsay, and evidence of other P.Ws. also does not disclose that P.W. 7 is an eye witness of the occurrence. Hence there is no eye witness of the occurrence. As such there is absolutely nothing against the appellants, so far the manner of occurrence is concerned, to show that the appellants have killed the deceased. It has also been submitted that evidence clearly shows that the deceased was accused in 10 other cases and as such possibility cannot be ruled out that he has been killed in some other manner.

11. Further submission of learned amicus curiae is that evidence of P.W. 1, 2, 4 and 7 have supported in their evidence that deceased and P.W. 1 and 2 were instrumental in sending Raju



Gope to jail as he had threatened and abused a rickshaw puller on the point of pistol and that is why he was threatened by family members of Sheo Gope but on that point, no independent witness of the locality was examined. No rickshaw puller was named or examined, nor any document was produced to show Raju Gope was arrested for threatening a rickshaw puller.

12. It has also been submitted that the prosecution witness has come with a case that on the day of the occurrence the deceased, along with P.W. 3 and P.W. 6 were collecting signature on an application against illegal sale of illicit wine by appellant Sheo Gope, but P.W. 3 and 6 had been declared hostile. So far evidence of other witnesses are concerned, it clearly appears that they were not present at the place of occurrence and none of witnesses were examined by the prosecution.

13. In view of above submission, the learned amicus curiae has submitted that there is absolutely nothing available on record in support of the prosecution case and the appellants are entitled for acquittal but instead of that being a case of no evidence, appellants were convicted under section 302 I.P.C. as well as 302 / 149 I.P.C. and under section 302/109 and also under section 27 Arms Act. Hence the conviction of the appellants is not sustainable and liable to be quashed.



14. On the other hand, learned counsel for the State has submitted that though P.W. 6 the informant has been declared hostile by the prosecution but he has proved his signature on the fard-beyan and IO (P.W.8) has also stated that the same was recorded as per statement of P.W. 6 and as such it is admissible in law. It has also been submitted that so far P.W. 3 Lallan Kumar is concerned though he has been declared hostile but he has been cross-examined by the prosecution and confronted with the statement and considering the same as well as evidence of IO (P.W. 8) shows that he has been gained over and as such his evidence is of no value. Further submission of the learned counsel for the State is that the evidence of P.W. 1, 2, 4 & 7 clearly show that they have supported the manner of occurrence, as well as on the point of genesis of occurrence and they are eye-witness of the occurrence. In their evidence it is discussed that all the appellants surrounded the deceased and on the order of appellant Sheo Gope, appellant Raju Gope fired, resulting in injury on back of deceased and later on he succumbed to that injuries. It has also been argued by the learned State Counsel that so far the manner of occurrence is concerned, the same has been corroborated by the evidence of Doctor (P.W. 9) who has conducted post-mortem examination, and found gunshot injury as well as the fard-beyan. So far a genesis of



occurrence is concerned, they have also produced exhibit 1, the application against the illegal sale of wine by appellant Sheo Gope before the Court, which is the blood stained, containing the signature of 36 persons. Hence as per learned counsel for the State there is no illegality or inconsistency in the prosecution case and the conviction of the appellant is just and proper.

15. On the above background now this Court is going to examine the evidence available on record.

16. P.W. 6 is the informant in this case and he claimed to be present with deceased at the time of occurrence and on his statements, fard-beyan was recorded. It appears that he had identified his signature on the fard-beyan as exhibit 4/1 and he has also admitted that deceased Raman was murdered, but this witness has been declared hostile as he has stated that his statements was not recorded and he has been confronted with the statement made before the police, which he has denied. It appears that he has resiled from his previous statement and appears to be gained over by the prosecution.

17. As per the prosecution P.W. 3, Lallan Kumar is also said to be an eye-witness of the case. He has identified his signature on production cum seizure list as exhibit 2, the application against illegal sale of liquor. Thereafter as he has not supported the



prosecution case, he has been declared hostile and he has also been confronted with the statement made before the police, from which it appears that he has resiled from his previous statement.

18. P.W. 1 is the brother of the deceased and from his evidence it appears that he stated in his chief that the deceased along with Lallan Kumar P.W. 3 and informant were obtaining signature against the illegal trade of appellant Sheo Gope and he has proved the blood stained application as exhibit 1. His evidence further show that the appellant Binda Gope complained about the same to the Munna Gope; Sheo Gope; Vijay Gope; and Ramdhani Gope and they threatened the deceased and after 10 minutes on the order of appellant Sheo Gope, Munna Gope fired from his pistol causing injury on the back side of the deceased. His evidence also shows that he has been taken to hospital where he has been declared dead. His evidence also support the prosecution story of an altercation with Raju Gope earlier because he was abusing a rickshaw puller and also threatened by putting a pistol on his head and the deceased and his uncle Sohan Prasad got him arrested, for which his family members were threatened by Sheo Gope and his family members. This witness has been cross-examined also, which will be discussed later.



19. Evidence of P.W. 2, uncle of deceased, disclosed that he was at his factory and he heard the sound of firing when he came he saw the deceased running towards north and appellants were fleeing towards south with Vijay Gope and Munna Gope with pistol in their hands. The deceased fell down near the house of Rajendra Singh and when he went there, he saw injury on his back. His evidence also disclosed that the deceased told him about the firing by Munna Gope and also disclosed about five other accused persons, but did not disclose their names. He has also been cross-examined.

20. P.W. 4 claims to be uncle of deceased and his evidence also show that there was some altercation between appellants and his nephew 5 to 6 days earlier. He has also stated that his nephew was collecting signature on the application for not selling wine and further stated that he saw Munna Gope, Sheo Gope, Vijay Gope, Sunil Kumar and on the order of Sheo Gope, Munna Gope fired on deceased. Vijay Gope also fired, but that did not hit anybody. His evidence also shows that when he went near the dead body, Sohan, Munna and Lallan were present there, from where the dead body was taken to PMCH. This witness has also been cross-examined.

21. Evidence of P.W. 5 shows that he is not an eye-witness but he has stated that he has gone to the hospital on hullah that



Munna has received gun injury and family members were present there. He has also stated that informant has put his signature in front of him and thereafter he has also put his signature. He identified his signature of that of Munna (P.W. 6) and of Sohan Prasad (P.W. 2).

22. P.W. 7, Mohan Prasad is the father of the deceased and he also supported the prosecution case in his chief and claims to be eye-witness of the occurrence. He has also supported the prosecution case. As far as the genesis of occurrence regarding the threatening by the accused persons prior to occurrence to the deceased and that they got Raju Gope arrested and also about the obtaining signature on the application against the illegal sale of country-made liquor, his evidence also discloses that on information of one Bindeshwari Singh, he reached there along with Bindeshwari Singh and saw the appellants had surrounded the deceased and on order of Sheo Gope, Munna Gope fired on the deceased, causing injury and he tried to run away, but he fell down near house of Rajendra Singh. There was second firing and thereafter the appellants fled away and he had taken the deceased to PMCH. This witness has also been cross-examined at length.

23. P.W. 9 is the doctor in this case and he has stated in his evidence that on 04.08.1991 he was posted in P.M.C.H. as Medical



Officer and he has conducted post-mortem examination on the dead body of Raman Kumar @ Munna and found following:

(i) Lacerated wound 1" x ½" cavity deep over front of chest 1" right to seerum and 1 ½" below right clavicle. Margin was everted and lacerated. It was wound of exist.

(ii) Lacerated wound 1" x ½" cavity deep over posterior part of the chest 4" right to mid line and 3" below lower end of scapula. Margin was inverted and lacerated, tattoing was present all around the wound in an area of 8" x 6", it was wound of entry. On dissection both injuries were found in track facing through 6th rib posteridly right lung then second rib anteriorly, right chest was full of blood. All visceras were found pale, heart was empty. Stomach contained digested meal. Bladder was empty. Time elapsed since death within 6 to 24 hours approximately. Cause of death hemorrhage and shock. Nature of weapon fire arm, may be pistol."

24. P.W. 8 is the IO in this case and as per his evidence he reached on information at P.M.C.H. and recorded the fard-beyan of the informant and he has proved the fard-beyan, which is in his writing and he has further stated that informant has put his signature in his presence and witnesses also put their signatures. Thereafter formal F.I.R. was drawn. He has also gone to the place



of occurrence and stated that in north there is road facing south. Both the sides, there is government quarters and east to the place of occurrence there is quarter no. 22 and west to it quarter no. 15. He has also stated that he has not found any marks of blood at the place of occurrence, it might have erased due to rain. He has also narrated the statement made by the informant before him in paragraph 3 of his evidence and also the statement made by Lallan Kumar in paragraph 2 of his evidence. His evidence in cross-examination in paragraph 5 shows that he has not found blood picket or empty cartridges from the place of occurrence and his evidence further shows that at the time of recording fard-beyan father of the deceased was not present at the hospital. Paragraph 6 of his statement shows that P.W. 1 has stated on the basis of hearsay and he has not stated before him that on the date of occurrence by 11.00 A.M. he was at Road No. 1 in a quarter and he heard sound of firing and saw Mantu fleeing from the place of occurrence. His evidence also shows that P.W. 4 Ram Pratap Singh also is a hearsay witness and even P.W. 7 Mohan Prasad Is also a hearsay witness. Binda Singh has not deposed before him.

25. As stated above, no oral or documentary evidence has been adduced on behalf of the defence.



26. From the discussions of the prosecution evidence it clearly appears that the F.I.R. named eye-witness, i.e., P.W. 3 and P.W. 6, Lallan Kumar and Raman Kishore @ Munna has been declared hostile in this case and except their signature at fard-beyan and production cum seizure list respectively they have not supported the prosecution case. However, learned trial court has considered the fact that the IO has stated that informant has deposed before him and he has also identified his signature and other witnesses has also identified his signature on the fard-beyan and as such it clearly supports the prosecution case of recording of fard-beyan and the same can be relied for the purpose of corroboration and contradiction.

27. Learned trial court also held that P.W. 1, 2, 4 and 7 are eye-witness of the occurrence and their evidence is corroborated by fard-beyan as well as evidence of Doctor (P.W.9) so far manner of occurrence and Ext. 1, 2 and 8 supports the genesis of occurrence and come to a conclusion that prosecution has been able to establish its case.

28. So far evidence of P.W. 1, 2, 4 and 7 are concerned, they have supported the manner of occurrence as well as genesis of occurrence in their evidence in-chief. However, the evidence of P.W. 1 in paragraph 6 and 8 shows that he had not seen firing on



the deceased and further on getting information he came at 01.30 p.m. Similarly, evidence of P.W. 2 shows that at the time of firing he was in his factory at quarter no. 18 in Road No. 1. He heard sound of firing and then he came there and saw deceased running towards north and also the appellants fleeing towards south. P.W. 4, who also claims to be eye-witness and narrated about the occurrence in detail in his chief, but his evidence in paragraph 2 disclosed that he had not gone to the place where the deceased had fallen.

29. The above evidence of P.W. 1, 2 and 4 makes their claim of prosecution that they are eye-witness, but, unfortunately, as according to their evidence, they were not present at the place of occurrence at the time of occurrence.

30. So far P.W. 7 is concerned, he is father of the deceased and his evidence shows that he was not there at the time of collecting of signature by the deceased, but he claimed that on information given by one Bindeshwari Singh, when he reached along with Bindeshwari Singh he saw the occurrence and the deceased being surrounded by the appellants and on the order of Sheo Gope, Munna Gope fired on the deceased. On the other hand, the evidence of I.O. shows that P.W. 1, 4 and 7 has stated on the basis of hearsay and the evidence of IO further disclosed that when



he was recording the statement at hospital, P.W. 7 was not present there.

31. Evidence of P.W. 2 in paragraph 10 also disclosed that he was the first person to reach near the deceased-Mantu and after 10 minutes of his arrival, Lallan (P.W. 3); Raman Kishore (P.W. 6); and Mohan Prasad (P.W. 7) came there. If the evidence of P.W. 2 is believed, the P.W. 7 cannot be an eye-witness of the occurrence. P.W. 7 also claims that on information of Bindeshwari Singh, he has reached at the place of occurrence, but Bindeshwari Singh has not been examined by the prosecution in this case and IO has stated that statement of Bindeshwari Singh was not recorded.

32. On discussion made above, presence of P.W. 7 is also not free from doubt.

33. The evidence of P.W. 1, 2, 4 and 7 even on above scrutiny appears to be consistent, so far genesis of occurrence is concerned and their evidences also corroborated by Ext. 1 (Application against Sheo Gope), 2 and 8 of the application.

34. No doubt the defence has tried to dislodge the evidence on first of the genesis of occurrence, as rickshaw puller has not been examined and there is no independent witness of the occurrence. So far second part of manner of occurrence is concerned that while the deceased and other were collecting



signature against Sheo Gope, they were threatened and killed the deceased. It has been argued that though the prosecution case is that the aforesaid letter was signed by 36 persons, but not a single person, whose signature is there, has been examined by prosecution to support their signature on the application.

35. Discussions made above shows that P.W. 1, 2, 4 and 7 do not appear to be eye-witness of the occurrence. However, evidence of P.W. 2 disclosed that just after the occurrence he was there and he saw the accused persons-appellants fleeing towards north and the deceased running towards south and near the house of Rajendra Singh, he fell down. This evidence, even on cross-examination remain unrebutted. Thereafter he was taken to the hospital. His evidence also shows that deceased has disclosed to him before becoming unconscious that Munna Gope has fired and though he stated about five more persons, but he could not disclose their names. The learned trial court has relied on the above evidence as dying-declaration of the deceased, which is admissible under section 32 of the Evidence Act. P.W. 2 has also stated that within a second the deceased disclosed the name of appellant Munna Gope and thereafter he became unconscious. On the other hand evidence of P.W. 7 disclosed that he found deceased unconscious at the place of occurrence and he remained



unconscious. Even the Doctor in his cross-examination has stated that injuries was very serious and spontaneous death was expected. That creates a serious aspersion against the claim of P.W. 2 that the deceased has disclosed the name of appellant Munna Gope as the person, who had fired and also disclosed about five other appellants, but could not name them.

36. In such view of the matter, evidence of P.W. 2 about disclosure made by the deceased does not appear to be believable and not inspire any confidence. It is well established that the Court should be cautious in accepting such disclosure and search for corroboration of such evidence. There is no corroboration of evidence of P.W. 2 about his claim.

37. It appears that learned trial court has not considered the above infirmities in the evidence of the P.W. 1, 2, 4 & 7 as their own evidence, P.Ws. 1, 2, 4 and 7 disbelieves their claim of being eye-witness of the occurrence and story of dying declaration is not believable in view of the evidence of P.W. 7 and the evidence of doctor, as discussed above. So far evidence of P.W. 2 that he saw appellants fleeing and appellant Munna Gope and Vijay Gope fleeing with pistol, that in itself is not sufficient to convict the appellants.



38. In totality, it appears that though the deceased was murdered and there are motive behind the occurrence, but there are no sufficient cogent and unrebutted evidence available on record to come to a finding that deceased was killed by the appellants and none-else. Hence, conviction of the appellants does not appear to be sustainable in the eye of law.

Accordingly, this appeal is allowed. Since the appellants are on bail, they are discharged from the liabilities of their bail-bonds.

(Ajay Kumar Tripathi, J)

(Vinod Kumar Sinha, J)

skm/-

AFR/NAFR	N.A.F.R.
CAV DATE	11.11.2017
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