

**IN THE HIGH COURT OF JUDICATURE AT PATNA  
CRIMINAL APPEAL (DB) No.197 of 1995**

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{Against the Judgment of conviction dated 06.06.1995 and Order of sentence dated 14.06.1995 passed in Sessions Trial No.216 of 1994/29 of 1994 by the learned Additional Sessions Judge-III, Nalanda at Biharsharif}.

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Dhuri Gope, S/o Rohan Gope, Resident of Village- Narati, Police Station- Thartheri, District- Nalanda.

... .. Appellant.

Versus

The State of Bihar.

... .. Respondent.

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**Appearance :**

|                   |   |                                                                      |
|-------------------|---|----------------------------------------------------------------------|
| For the Appellant | : | Mr. Rajendra Prasad, Senior Advocate.<br>Mr. Pramod Kumar, Advocate. |
| For the State     | : | Mr. Dilip Kumar Sinha, A.P.P.                                        |

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**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR  
SRIVASTAVA**

**and**

**HONOURABLE MR. JUSTICE RAJENDRA KUMAR  
MISHRA**

**CAV JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA)**

**Date : 16 -05-2019**

This criminal appeal has been preferred against the Judgment of conviction dated 06.06.1995 and Order of sentence dated 14.06.1995 passed in Sessions Trial No.216 of 1994/29 of 1994 by the learned Additional Sessions Judge-III, Nalanda at Biharsharif, by which and whereunder the appellant Dhuri Gope and one Dukhi Gope (since dead) have been convicted under Section 302 of the Indian Penal Code and Section 27 of the Arms Act and sentenced to undergo life imprisonment under Section 302 of the Indian Penal Code but no separate sentence



was passed under Section 27 of the Arms Act.

2. It is relevant to mention here that, initially, this appeal was filed by the appellants Dukhi Gope (since dead) and Dhuri Gope but during the pendency of this appeal, the appellant Dukhi Gope died and due to that reason, this appeal against him was dismissed as having abated due to his death vide order dated 15.05.2018, as such, this appeal survives only against the appellant Dhuri Gope.

3. The facts leading to this criminal appeal are that Ramanand Pandey (P.W.21) gave his fardbeyan (Ext.3) at village-Taranpur before the S.I. Jang Bahadur Prasad (P.W.23) of Police Station-Chandi (Tharthari) on 27.08.1993 at about 06.00 P.M., to the effect that on the same day, in the morning at about 08.00 A.M., he along with his brother Janardan Pandey and villager Sukumar Singh had gone to Noorsarai market. After finishing the work of market, he along with his brother Janardan Pandey and villager Sukumar Singh, boarding on 'Tumtum', were coming to their home. He was sitting on 'Tumtum' in the back side, whereas his brother Janardan Pandey and villager Sukumar Singh were sitting in front side of the 'Tumtum'. Saryug Singh (P.W.9) of village-Diha was also sitting in front side of the 'Tumtum'. When the 'Tumtum'



reached in the east side of the village-Taranpur, where the construction work of bridge was going on, at about 04.00 P.M., his villagers Dukhi Gope (since dead) and Dhuri Gope (appellant), both sons of Rohan, stopped the 'Tumtum'. In the meantime, Muni Gope, Muneshwar Gope, Lalmuni Gope, Krishna Gope alias Punjabi, Binod Gope, Jagdish Gope, Shambhu Pandey, Chandrika Pandey, Sadhu Gope, Ramlagan Gope, Arjun Gope, Modan Gope and Baran Gope also came there from south corner of the road. Dukhi Gope (since dead) along with his associates pulled his brother Janardan Pandey on the point of pistol from the 'Tumtum' and fired 2/3 rounds at his head, due to which his brother Janardan Pandey fell down in the south side of the road and died. Dhuri Gope (appellant) along with his associates also pulled Sukumar Singh from the 'Tumtum' and fired through pistol at his head and in screaming condition, he fell down in the river, situated in the south of the road, where he died. The cause of occurrence is that the land dispute between Sukumar Singh and Kushmakar Singh alias Dhutan Singh of village-Narari was going on since long. Before 10-15 days, Kushmakar Singh alias Dhutan Singh had sent his all family members to his 'Sasural', and used to arrange the meeting at his house with the aforesaid accused to hatch



conspiracy for committing the murder of Sukumar Singh. Before 6-7 days, his relative Sheo Balak Pandey (P.W.22) of village-Dhoti Chariyari was coming to his village from Noorsarai market, then Dukhi Gope (since dead) caught hold him and assaulted through fists and slaps, Dukhi Gope (since dead), Dhuri Gope (appellant) and the aforesaid persons also came in village-Narari and assaulted him and his relative Sheo Balak Pandey (P.W.22), in which Sheo Balak Pandey (P.W.22) sustained head injury regarding which case was lodged at the Police Station-Tharthari. Before six months, his electric motor was stolen, in which Raghunandan Gope,, Shivam Gope, Arjun Gope, Ramlagan Gope and Modan Gope were made accused, who were released on bail from the High Court after four months. The name of the aforesaid accused was disclosed by the deceased Janardan Pandey, due to that reasons, there was enmity. The informant Ramanand Pandey (P.W.21) further stated that before 10 years, his father was murdered, in which Dukhi Gope (since dead) and Dhuri Gope (appellant) were convicted but they always used to ask to withdraw the case. After the death of his father, Chandirka Mahto was watching his boring but he was also murdered in village-Chinuara by the criminals. Due to aforesaid reasons, his brother Janardan Pandey



and villager Sukumar Singh have been murdered. After committing the murder, all the accused fled away in the south direction, crossing the river. The persons, who were sitting on 'Tumtum' had seen the occurrence.

4. On the basis of the aforesaid fardbeyan (Ext.3) of the informant Ramanand Pandey (P.W.21), Chandi (Tharthari) P.S. Case No.278 of 1993 was instituted on 28.08.1993 under Sections 302/34 of the Indian Penal Code and Section 27 of the Arms Act and S.I. Jang Bahadur Prasad (P.W.23) took the charge of investigation.

5. After investigation, S.I. Jang Bahadur Prasad (P.W.23) submitted the charge-sheet dated 11.10.1993 against the 16 accused including Dukhi Gope (since dead) and Dhuri Gope (appellant) in the court of the Chief Judicial Magistrate, Nalanda at Biharsharif. Thereafter the cognizance of the offence was taken against them and the case was committed to the court of sessions on 09.05.1994. Due to absence of the accused Modan Gope, his record was separated and the case proceeded against the 15 accused, named in the charge-sheet, only. The accused Kushmakar Singh alias Dhutan Singh stood charged under Sections 302 and 120B of the Indian Penal Code. The accused Muni Gope, Muneshwar Gope, Lalmuni Gope,



Krishna Gope alias Punjabi, Binod Gope, Jagdish Gope, Shambhu Pandey, Chandrika Pandey, Sadhu Gope, Ramlagan Gope, Arjun Gope and Baran Gope stood charged under Sections 302/34 of the Indian Penal Code, whereas Dukhi Gope (since dead) and Dhuri Gope (appellant) stood charged under Section 302 of the Indian Penal Code and Section 27 of the Arms Act.

6. During trial, the prosecution examined, altogether 24 witnesses and also got exhibited several documents, whereas the defence did not examine any witness in support of their defence, while they pleaded their innocence in their statements as recorded under Section 313 of the Code of Criminal Procedure.

7. On perusal of the oral and documentary evidence, available on the record, the learned Additional Sessions Judge-III, Nalanda at Biharshari, convicted and sentenced to Dhuri Gope (appellant) and Dukhi Gope (since dead), in the manner, as stated above, whereas the accused Baran Gope, Arjun Gope, Arvind Gope, Chandrika Pandey, Shambhu Pandey, Lalmuni Gope, Krishna Gope, Muni Gope, Mueshwar Gope, Binod Gope, Jagdish Gope, Kushmakar Singh alias Dhutan Singh and Ramlagan Gope were acquitted of the charges levelled against



them and they were set at liberty.

8. Learned counsel appearing for the appellant assailed the impugned Judgment of conviction and Order of sentence arguing that the learned trial court has failed to appreciate the evidence, available on the record, in its right perspective, as a result whereof, the learned trial court came to wrong conclusion. He further submitted that it would appear from the First Information Report that at the time of the occurrence, the informant Ramanand Pandey (P.W.21), his brother Janardan Pandey, Sukumar Singh and Saryug Prasad Singh (P.W.9) were on 'Tumtum' but Chandan Gope (P.W.5), the driver of 'Tumtum', and Saryug Prasad Singh (P.W.9) have not supported the prosecution case and they have been declared hostile and only the informant Ramanand Pandey (P.W.21) has supported the prosecution case, which is also full of contradiction. It is further submitted that Ram Swarath Prasad (P.W.18) has claimed about reaching at place of the occurrence after hearing the sound of firing and seeing Ramanand Pandey (P.W.21) there, who asked him to give information at the police station, but at that time, the name of the assailants was not disclosed to Ram Swarath Prasad (P.W.18) by Ramanand Pandey (P.W.21), nor he disclosed the name of the assailants at the police station, which



is apparent from the evidence of S.I. Jang Bahadur Prasad (P.W.23), Investigating Officer of the case. As such, Ramanand Pandey (P.W.21), who claimed to be eye witness of the murder of his brother deceased Janardan Pandey and the deceased Sukumar Singh, was not aware about the assailants, when he asked Ram Swarath Prasad (P.W.18) to give information at the police station. As such, only on the basis of the sole testimony of Ramanand Pandey (P.W.21), who was an inimical term with the appellant, as admitted by him in his evidence, the appellant cannot be held guilty for committing the murder of the deceased Janardan Singh and Sukumar Singh but the learned trial court illegally passed the impugned Judgment of conviction and Order of sentence against the appellant.

On the other hand, learned Additional Public Prosecutor appearing for the State submitted that from the evidence of the prosecution witnesses, it is clear that Ramanand Pandey (P.W.21) was present at the time of the occurrence where his brother Janardan Pandey and Sukumar Singh were killed by Dukhi Gope and this appellant respectively by encircling the 'Tumtum' with the help of his associates. As such, there is no illegality in the impugned Judgment of conviction and Order of sentence passed against the appellant.



9. I have gone through the evidence, available on the record, in the light of the argument as advanced by the learned counsel for the appellant and the learned A.P.P. for the State.

10. Out of the 24 witnesses, P.W.1 Ramchandra Ravidas, P.W.4 Bilas Ravidas, P.W.5 Chandan Gope (Tuntum Driver), P.W.8 Chandeshwar Das, P.W.9 Saryug Prasad Singh and P.W.16 Binod Prasad have not supported the prosecution case and have been declared hostile. P.W.2 Ramashrai Ravidas, P.W.3 Shankar Ravidas, P.W.6 Ram Jatan Das, and P.W.7 Banshi Das have been tendered by the prosecution for cross-examination by the defence. P.W.17 Manki Devi, the wife of the deceased Sukumar Singh, P.W.19 Chandramani Sharma and P.W.20 Sarita Kumari, on hearing about the murder of Janardan Pandey and Sukumar Singh reached at the place of the occurrence and came to know about the occurrence from Ramanand Pandey (P.W.21). P.W.10 Rampravesh Singh is a witness of the inquest reports of the dead bodies of the deceased Janardan Pandey and Sukumar Singh and he has proved his signature on inquest reports of the deceased Janardan Pandey and Sunkumar Singh as Exts.1 and 1/1. P.W.11 Jugeshwar Mahto, P.W.13 Badri Mahto, P.W.14, Bimal Ram, P.W.15 Bal Govind Prasad and P.W.18 Ram Swarath Prasad had seen the



dead bodies of the deceased Janardan Pandey and Sukumar Singh at village-Taranpur, and came to know about the occurrence from Ramanand Pandey (P.W.21), who was weeping there. P.W.22 Sheo Balak Pandey came to know about the occurrence from P.W.18 Ram Swarath Prasad, who was going to the police station to give information of the occurrence. P.W.21 Ramanand Pandey is the informant of the case. P.W.24 Dr. Atmanand Kumar, who was posted as Civil Assistant Surgeon at Sadar Hospital, Nalanda, held the post-mortem examination over the dead bodies of the deceased Janardan Pandey and Sunkumar Singh on 28.08.1993. P.W.23 Jang Bahadur Prasad is the Investigating Officer of the case.

**11.** P.W.24 Dr. Atmanand Kumar has stated in his evidence that on 28.08.1993 at about 08.35 A.M., he performed the post-mortem examination over the dead body of the deceased Janardan Pandey, son of Late Krishna Nandan Pandey of village-Narari, Police Station-Tharthari, District-Nalanda and found the following injuries on his person:

Abrasion 1" x 2" on the left side of parietal region.

(i). One lacerated wound with inverted blackened margins 1" x 1" on the right side of occipital region (wound of entry).



On opening of the skull, right side of occipital bone was found fractured, brain tissue lacerated, one metallic piece simulating bullet was found in the skull cavity.

(ii). One lacerated wound with inverted blackened margins 1/2" x 1/2" into cavity deep on right side of back of chest, one inch lateral to vertebral column in the sixth intercoastal space (wound of entry).

(iii). One lacerated wound with inverted margins 1" x 1" on the front of the chest in the fifth intercoastal space 1" medial to right nipple.

Injury nos.(ii) and (iii) were communicating to each other.

(iv). Multiple small blackened margins of about pin head size on the back of right side of chest below injury no. (iii).

In his opinion, the death was caused due to shock and haemorrhage as a result of the above noted chest and head injuries caused by firearm and the time elapsed since death and the post-mortem was between 12 to 24 hours. He proved the post-mortem report of the deceased Janaradan Pandey as Ext.7.

This witness further stated that on the same day at about 09.00 A.M., he performed the post-mortem examination



over the dead body of the deceased Sukumar Singh, son of Madan Singh, of village-Narari, P.S. Tharthari, District-Nalanda and found the following injuries on his person:

(i). One lacerated wound 1/2" x 1/2" on the left side of face in front of left pinna with inverted blackened margins (wound of entry).

(ii). One lacerated wound with everted margin on the right parietal region (wound of exit).

In his opinion, the death was caused due to shock and haemorrhage, as a result of the above noted head injuries caused by firearms and the time elapsed since death and post-mortem between 12-24 hours. He proved the post-mortem report of the deceased Sukumar Singh as Ext.7/1.

**12.** P.W.21 Ramanand Pandey, who is the informant of the case, has stated in his evidence that the occurrence is of about 04.00 P.M. of 27.08.1993. On that date, he along with Sukumar Singh and Janardan Pandey had gone to Noorsarai Market and at about 02.30/03.00 P.M., they proceeded for their home, boarding on the 'Tumtum'. He was sitting on the back side of the 'Tumtum', whereas Janardan Pandey, Sukumar Singh and Saryug Singh (P.W.9) were sitting in front side of the 'Tumtum'. Shukul Master Saheb (not examined) and two



unknown were also sitting on 'Tumtum'. When 'Tumtum' reached at village-Taranpur, Dukhi Gope (since dead) and Dhuri Gope (appellant) armed with pistols came there and stopped the 'Tumtum'. Thereafter, their other associates Jagdish Gope, Binod Gope, Muni Gope, Modan Gope, Arjun Gope, Ramlagan Gope, Chandrika Pandey, Shambhu Pandey, Dhutan Singh, Muni Gope, Lalmuni Gope, Baran Gope, Sadhu Gope, Muneshwar Gope and Krishna Gope came from south direction. Dukhi Gope (since dead) pulled Janardan Pandey from 'Tumtum' and Dhuri Gope (appellant) pulled Sukumar Singh from the 'Tumtum'. At that time, scuffle started in between Dukhi Gope (since dead) and Janardan Pandey. In the meantime, Jagdish Gope and Krishna Gope caught hold the hand of Janardan Pandey and carried him to west side of the road, where Dukhi Gope (since dead) shot fire at Janardan Pandey. Dhuri Gope (appellant) also carried to Sukumar Singh in west direction and shot fire at him. Janardan Pandey and Sukumar Singh received injuries at their forehead and died. The other accused were also armed with pistols and encircled the 'Tumtum'. This witness has further stated that he get down from the 'Tumtum', then he was threatened to kill, if he would move even one step ahead. He further stated that after the



occurrence, Ram Swarath Prasad (P.W.18) of village-Narari came, then he asked him to give information at the police station. He has further stated that the land dispute was going on in between his father and Dhuri Gope (appellant) and Dukhi Gope (since dead) and the land dispute was also going on in between the Sukumar Singh (deceased) and Dhutan Singh. Before the occurrence, Modan Gope had removed his electric motor with the help of Arjun Gope, Ramlagan Gope and Chhedi Gope, who are relatives of Dhuri Gope (appellant). Earlier, Dukhi Gope, Dhuri Gope (appellant), Muni, Binod, Krishna, Lalmuni and Munirak Gope had assaulted him and Sheo Balak Pandey (P.W.22). Darogaji and police had come at village-Taranpur, made query and recorded his fardbeyan. After reading the fardbeyan, he put his signature on the fardbeyan and he proved his signature on the fardbeyan as Ext.2. He has further stated that the police prepared the paper in respect of the dead bodies of Janardan Pandey and Sukumar Singh in his presence and in presence of Ram Swarath Prasad (P.W.18), Baso Paswan (P.W.12) and Yugeshwar Mali. At that time, Manki Devi (P.W.17) and Sarita Kumari (P.W.20), the wife and daughter respectively of the deceased Sukumar Singh were also present. At that time, the police also recorded the statement of Ram



Swarath Prasad (P.W.18) and others. He had also shown the place of the occurrence to the police, then the police seized the blood and cartridges from there. This witness has denied the suggestion of the defence in paragraph-6 of his cross-examination that a pistol was recovered from his house regarding which his father was made accused and in that case, Ganauri Gope, the father of Sadhu Gope, was witness and in that case, his father was convicted and sentenced for one year. He has also denied the suggestion of the defence in paragraph-7 of his cross-examination that theft was committed in the house of Dhutan Singh alias Kushmakar Singh and in that case, Sukumar Singh (deceased) was accused and Dhuri Gope (appellant) and Dani Yadav were witnesses. This witness has further stated in paragraph-8 of his cross-examination that Kamta Pandey is the uncle of the accused Chandrika Pandey and the land dispute was going on in between Kamta Pandey and the deceased Janardan Pandey. This witness has further denied the suggestion of the defence in paragraph-10 of his cross-examination that three pistols were recovered from the house of his brother Janardan Pandey (deceased). He has further stated in paragraph-11 of his cross-examination that when he saw the accused, the 'Tumtum' was in standing



condition on which 5-7 persons were sitting. The accused had encircled the 'Tumtum'. While he was at the 'Tumtum' for 1-2 minutes but, thereafter, he got down from the 'Tumtum' and raised alarm but none of the locality came on his alarm. The 'Tumtum' was standing there for half an hour but, thereafter, the driver of the 'Tumtum' fled away. When he got down from the 'Tumtum', his brother Janardan Pandey was lying 20 yards ahead on the pitch road in the west and Sukumar Singh was 20 yards ahead in the east, lying dead in the river. He went near Sukumar Singh, thereafter, he went near his brother Janardan Pandey and raised alarm on which Swaroop Singh (not examined), Kashi Paswan (not examined) and Jugeshwar Mali (P.W.11) came there. The dead bodies were not carried on the road, at that time. He has further stated that when he reached near his brother Janardan Pandey, none was present there and his brother Janardan Pandey had died, then he started weeping, thereafter, Jugeshwar (P.W.11), Baso (P.W.12) and Swarath Prasad (P.W.18) had come. About 14 villagers of Taranpur had also come there. He has further stated in paragraph-12 of his cross-examination that Darogaji had come after 1 ½ hours at the place of the occurrence and till that time, only Dayanand Pandey of his family had come. He has further stated in



paragraph-13 of his cross-examination that while there was no land dispute in between his father and the appellant Dhuri Gope but the occurrence of 'Maar-Peet' had taken place. He has further stated in paragraph-16 of his cross-examination that he had stated before the police that Sukul Master was also at the 'Tumtum', Dukhi and Dhuri (appellant) were armed with pistols and, at that time, the scuffle had taken place in between Dukhi and Janardan. He has also stated before the police that the accused Krishna and Jagdish had caught hold the hand of the deceased Janardan Pandey and had carried him in west side, he had also stated before the police that Sukumar Singh was also pulled from the 'Tumtum' and the accused shot fire at him. But P.W.23 Jang Bahadur Prasad, the Investigating Officer of the case, has stated in paragraph-37 of his cross-examination that the aforesaid facts were not stated by this witness before him in his restatement under Section 161 of the Code of Criminal Procedure. This witness has further stated in the same paragraph that when he got down from the 'Tumtum', then accused threatened that if he would move even one step ahead, they would shot fire at him but P.W.23 Jang Bahadur Prasad, the Investigating Officer of the case, has stated in his cross-examination at paragraph-37 that the aforesaid fact was not



stated by P.W.21 Ramanand Pandey in his restatement.

**13.** P.W.17 Manki Devi, who is the wife of the deceased Sukumar Singh, has deposed in her evidence that her husband along with Ramanand Pandey (P.W.21) and Janardan Pandey (deceased) had gone to Noorsarai Market. While they were returning to home from Noorsarai Market boarding on 'Tumtum', in the way, her husband was murdered at 04.00 P.M. Before 7 days of the occurrence, Dhuri Gope (appellant), Dukhi Gope (since dead), Dhutan Babu, Krishna Gope and Jagdish Gope had come at her door and had given threatening to kill. At the time of the occurrence, she was at her house, then Chowkidar Awadhesh Gope came and informed that her husband and Janardan Pandey (deceased) have been shot fire but he had not disclosed the name of any assailant, then she reached at the place of occurrence, situated near Diha bridge, then she saw that Ramanand Pandey (P.W.21) was weeping at the road near bridge and he told that Dhuri Gope (appellant) shot fire at her husband and Dukhi Gope shot fire at Janardan Pandey. He also disclosed that Dhutan Babu, Krishna Gope, Jagdish Gope, Binod Gope, Shambhu Pandey, Chandrika Pandey, Arvind Gope and Muneshwar Gope were also in the company of Dhuri Gope (appellant) and Dukhi Gope. There



was land dispute in between her husband and Dhutan Singh alias Kushmakar Singh and Dhutan Singh alias Kushmakar Singh used to arrange the meeting in his house. She has further stated in her cross-examination at paragraph-7 that before the occurrence, the accused had come at her door and abused but they did not commit "Maar-Peet". She does not know whether any case was lodged regarding that occurrence or not. She has further stated in paragraph-12 of her cross-examination that she had stated before the police that on the date of the occurrence, her husband along with Ramanand Pandey and Janardan Pandey (deceased) had gone to Noorsarai Market and she had also stated before the police that before the occurrence, Dhuri Gope (appellant), Dukhi Gope (since dead), Krishna Gope and Dhutan Singh had come at her door and abused but P.W.23 Jang Bahadur Prasad, the Investigating Officer of the case, has stated in paragraph-35 of his evidence that Manki Devi (P.W.17) had not stated in her statement recorded under Section 161 of the Code of Criminal Procedure that her husband along with Ramanand Pandey (P.W.21) and Janardan Pandey (since deceased) had gone to Noorsarai Market and before the occurrence, Dhuri Gope (appellant), Dukhi Gople (since dead), Krishna Gope and Dhutan Singh had come at her house and



abused and, as such this witness, for the first time, has stated the aforesaid facts in the court during her evidence. This witness further stated in paragraph-12 of her cross-examination that she had stated before the police that Chowkidar Awadhesh had come at her house and told her that her husband has been shot fire. Thereafter, she went near Diha bridge, where Ramanand Pandey (P.W.21) was present and he disclosed that Dhuri Gope (appellant) shot at her husband and Dukhi Gope (since dead) shot fire at Janardan Pandey, who were in the company of Dhutan, Krishna, Jagdish, Binod, Shambhu, Chandrika, Arvind and Muneshwar Gope but P.W.23 has stated in paragraph-35 of his evidence that Manki Devi (P.W.17) had not stated in her statement recorded under Section 161 of the Code of Criminal Procedure that Chowkidar Awadhesh had come at her house and informed that her husband and Janardan Pandey have been shot fire. She had also not stated that she reached at Diha bridge, where Ramanand Pandey (P.W.21) informed that Dhuri Gope (appellant) had shot fire at her husband, whereas Dukhi Gope (since dead) had shot fire at Janardan Pandey, who were in the company of Dhutan, Krishna, Jagdish, Binod, Shambhu, Chandrika, Arvind and Muneshwar Gope, rather she had stated that she came to know about the occurrence on rumour. As



such, while this witness has claimed that she was informed about the killing of her husband and Janardan Pandey by Chowkidar Awadhesh and when she reached at Diha bridge, Ramanand Pandey (P.W.21) informed her that her husband was shot fire by Dhuri Gope (appellant) and Janardan Pandey was shot fire by Dukhi Gope (since dead), who were in the company of others but she had not stated the aforesaid facts in her statement recorded under Section 161 of the Code of Criminal Procedure before the Investigating Officer, rather she had stated before P.W.23 that she came to know about the murder of her husband and Janardan Pandey on rumour.

**14.** P.W.20 Sarita Kumari is the daughter of the deceased Sukumar Singh. She has stated in her evidence that in the evening of 27.08.1983 at about 04.00 P.M, she was at her house, then she heard that Janardan Pandey and her father have been killed. Thereafter, she along with her mother Manki Devi (PW17) went at Diha bridge, then saw Ramanand Pandey (P.W.21) there in weeping condition. The dead body of Janardan Pandey was lying on the road, whereas the dead body of her father Sukumar Singh was lying at the bank of river. Ramanand Pandey (P.W.21) informed that Dukhi Gope (since dead) killed Janardan Pandey and Dhuri Gope (appellant) killed



her father Sukumar Singh, who were in the company of Dhutan Singh, Krishna Gope, Binod Gope, Chandrika Pandey, Shambhu Pandey, Sadhu Gope, Jagdish Gope, Arjun Gope, Modan Gope, Binod Gope, Muneshwar Gope, Muni Gope and Lalmuni Gope, and both were killed by gun shot firing, at the time of killing, Janardan Pandey and Sukumar Singh were on 'Tumtum'. She has further stated that the land dispute in between her father Sukumar Singh and Dhutan Singh was going on. Before 8 days of the occurrence, Dhutan Singh had arranged a meeting to kill her father. She has further stated in paragraph-6 of her cross-examination that Chowkidar Awadhesh had informed her about the occurrence at her house. Thereafter, she along with her mother (P.W.17) proceeded for the place of the occurrence but Chowkidar Awadhesh after giving information moved from there. She has further stated in paragraph-8 of her cross-examination that she had given her statement before the police in which she had stated that in the evening of the date of the occurrence, she received information about the murder of Janardan Pandey and her father. Thereafter, she along with her mother proceeded for Taranpur bridge, where Ramanand Pandey (P.W.21) was weeping and he informed that Dhuri Gope (appellant) shot fire at her father Sukumar Singh and Dukhi



Gope (since dead) shot fire at Janardan Pandey and he also disclosed the name of other accused, who were present at the place of the occurrence but Jang Bahadur Prasad (P.W.23), the Investigating Officer of the case, has stated in his evidence at paragraph-36 that this witness had not stated the aforesaid fact in her statement, rather she had stated that she heard about the occurrence on rumour. As such, this witness, for the first time, has stated in her evidence before the trial court that on the date of the occurrence, Chowkidar Awadhesh came at her house and informed about the murder of his father Sukumar Singh and Janardan Pandey. Thereafter, she along with her mother went at the place of the occurrence, where Ramanand Pandey (P.W.21) disclosed that Dhuri Gope shot fire to her father Sukumar Singh and Dukhi Gope shot fire at Janardan Pandey and other accused were in their company.

**15.** P.W.22 Sheo Balak Pandey has deposed in his evidence that at about 04.00 P.M. on 27.08.1993, he was going to Noorsarai Market from his village. When he reached near village-Asta, then Ram Swarath Prasad (P.W.18) met him and disclosed that he is going to give information at the police station in respect to the murder of Sukumar Singh and Janaradan Pandey. Thereafter, he went at Diha Taranpur near bridge, then



saw that Ramanand Pandey (P.W.21) was weeping and he disclosed that Dukhi Gope (since dead) had shot fire at his brother Janardan Pandey and Dhuri Gope (appellant) had shot fire at Sukumar Singh. He also disclosed that he along with his brother Janardan Pandey and Sukumar Singh were going to their village boarding on 'Tumtum', then Dhuri Gope (appellant), Dukhi Gope (since dead) and their associates surrounded the 'Tumtum'. Thereafter, Dukhi Gope (since dead) shot fire at Janardan Pandey and Dhuri Gope (appellant) shot fire at Sukumar Singh. He also disclosed that Dukhi Gope (since dead) and Dhuri Gope (appellant) were in the company of Chandrika Pandey, Shambhu Pandey, Kushmakar Singh and others. This witness further stated that Ramanand Pandey (P.W.21) also disclosed that Kushmakar Singh had made plan since before for murder.

From the evidence of this witness, it is apparent that while this witness was going to Noorsarai Market, then Ram Swarath Prasad (P.W.18) met him, who disclosed that he is going to give information at the police station regarding the murder of Sukumar Singh and Janardan Pandey. Thereafter, he proceeded towards Diha Taranpur, then Ramanand Pandey (P.W.21) informed him about the occurrence, disclosing the



name of the assailants. As such, this witness was not informed about the name of the assailants by Ram Swarath Prasad (P.W.18).

**16.** P.W.18 Ram Swarath Prasad has stated in his evidence that at about 04.00 P.M. on 27.08.1993, he was returning to his house from Noorsarai Market. When he reached near village-Manaura, then he heard the sound of firing then he stayed there. After sometime, he reached near semi constructed bridge of village-Taranpur, then saw the dead bodies of Janardan Pandey and Sukumar Singh. The dead body of Janardan Pandey was lying in the south of the road, whereas the dead body of Sukumar Singh was lying at the bank of river. Ramanand Pandey (P.W.21) was weeping there. When he asked Ramanand Pandey (P.W.21), then he disclosed that Dhuri Gope (appellant) and Dukhi Gope (since dead) pulled Sukumar Singh and Janardan Singh from 'Tumtum' and killed them. Thereafter, he went to the police station for giving information. After giving information there, he reached at the place of occurrence along with Darogaji, then Ramanand Pandey (P.W.21) disclosed the name of Dhuri Gope (appellant), Dukhi Gope (since dead), Dhutan Singh alias Kushmakar Singh, Chandrika Pandey, Shambhu Pandey, Binod Gope, Jagdish Gope and Krishna



Gope, saying that they had come in the group and committed the murder. This witness has further stated that Darogaji inspected both the dead bodies and prepared the paper on which he put his signature and he identified his signature on the inquest report as Exts.1/2 and 1/3. This witness has further stated in paragraph-5 of his cross-examination that he had given information at the police station to the effect that Janardan Pandey and Sukumar Singh have been killed by unknown criminals and the dead bodies were lying inside the road. He had also not informed the police that Ramanand Pandey (P.W.21) was present at the place of the occurrence and he had not disclosed that Dukhi (since dead) and Dhuri (appellant) pulled Janardan and Sukumar Singh from 'Tumtum' and killed them. He has further stated in the same paragraph that when he reached at the place of the occurrence along with Darogaji after giving information, till that time Daya Nand Pandey had come there, while Ramanand Pandey present since before but his family members were not there. Manki Devi (P.W.17) and Sarita Kumari (P.W.20), the wife and daughter of Sukumar Singh, were present.

From the evidence of this witness, it is apparent that while he claimed that Ramanand Pandey (P.W.21) had informed that Dhuri Gope (appellant) and Dukhi Gope (since dead) are



assailants but had not disclosed their name at police station at the time of giving information rather he informed to the police station about killing of Janardan Pandey and Sukumar Singh by unknown. As such, when Ramanand Pandey (P.W.21) asked him to give information to police, Ramanand Pandey (P.W.21) was not aware of the name of the assailants.

17. P.W.23 Jang Bahadur Prasad is the Investigating Officer of the case. He has deposed in his evidence that on 27.08.1993, he was posted as Officer Incharge of the Police Station-Tharthari. At about 05.25, he received information that Janardan Pandey and Sukumar Singh have been murdered and their dead bodies are lying inside the road. On the basis of the aforesaid information, he made Sanha entry and proceeded along with Havildar and constables for village-Diha Taranpur, where he recorded the fardbeyan of Ramanand Pandey (P.W.21) and proved the fardbeyan of Ramanand Pandey (P.W.21) as Ext.3. He further stated that he sent the fardbeyan of Ramanand Pandey (P.W.21) at the Chandi Police Station for institution of the First Information Report. He proved the formal First Information Report as Ext.4, saying that the First Information Report is drawn by Vijay Nath Munshi on which Janardan Rai, the Officer Incharge, has put his signature. He further stated that



he prepared the inquest report of the dead bodies of Janardan Pandey and Sukumar Singh on which Ram Swarath Prasad (P.W.18) and Rampravesh Singh (P.W.10) put their signatures and he proved the both the inquest reports as Exts.5 and 5/1. He further stated that he sent both the dead bodies to Sadar Hospital for Post-Mortem Examination. At that time, he recorded the statements of the witnesses and also inspected the place of the occurrence. The place of the occurrence was 200 yards away to the village-Diha, near the pitch road of Hilsa Noorsarai. The dead body of the deceased Sukumar Singh was found in the south of the road at the bank of river and the dead body of Janardan Pandey was found in the south of the pitch road, where the blood had fallen on the ground. One 315 bore empty cartridge was also recovered from there. He seized the blood stained soil and prepared the seizure list of the same and he proved the seizure list as Ext.6. He further stated that after receiving the supervision note of higher authority and receiving the post-mortem report, he submitted the charge-sheet. He has further stated in paragraph-10 of his cross-examination that he had received information from Ram Swarath Prasad (P.W.18) but he had not recorded his statement, rather he made Sanaha entry. Ram Swarath Prasad (P.W.18) had not disclosed the name



of the assailants at the police station and he had also not disclosed the exact location of the place of the occurrence. He further stated that he proceeded from the police station at about 05.30 P.M. and recorded the fardbeyan of Ramanand Pandey (P.W.21) in village-Diha Taranpur but the same had not been entered in the case diary. He has further stated that both the dead bodies were not found on the pitch road. He has further stated that one dead body was found at the bank of river. No any blood stained was found on the pitch road nor any sign was found there. He further stated that the dead body of Janardan was found near the house of Musafir Manjhi but he had not recorded the statement of Musafir Manjhi. He further stated that the dead body of Janardan Pandey was found in the east of Taranpur village and he had not found 'Tumtum' at the place of the occurrence when he reached there in course of investigation.

**18.** From the evidence of Ramanand Pandey (P.W.21), as discussed above, it is apparent that at the time of the occurrence, Saryug Prasad Singh (P.W.9) was present at the 'Tumtum' and he had seen the occurrence but Saryug Prasad Singh (P.W.21) has not supported the prosecution case and he has been declared hostile. From the evidence of Ramanand Pandey (P.W.21), it is also apparent that after the occurrence,



Ram Swarath Prasad (P.W.18) of village-Narari came near him and he asked him to give information at the police station but he had not stated in his evidence about disclosing the name of the assailants to Ram Swarath Prasad (P.W.18). From the evidence of Ram Swarath Prasad (P.W.18), it is apparent that when he reached near village-Manaura, he heard the sound of firing and after sometime, he reached near the semi constructed bridge of village-Taranpur, then saw the dead bodies of Janardan Pandey and Sukumar Singh lying inside the road and at the bank of river respectively, where Ramanand Pandey (P.W.21) was weeping and asked him about the killing of the deceased by Dhuri Gope and Dukhi Gope and also asked to give information at the police station but he did not disclose the name of the assailants at the police station and Jang Bahadur Prasad (P.W.23), the Investigating Officer of the case, has also stated that on receiving information from Ram Swarath Prasad (P.W.18), he made Sanha entry and proceeded for the place of the occurrence and at that time, Ram Swarath Prasad (P.W.18) had not disclosed the name of the assailants. Sheo Balak Pandey (P.W.22) has stated in his evidence that at about 04.00 P.M. on 27.08.1993, he was going to Noorsarai Market from his village and when he reached at village-Asta, then Ram Swarath Prasad



(P.W.18) met him and he disclosed that he is going to police station for giving information regarding the murder of Sukumar Singh and Janardan Pandey and, thereafter, he reached at the place of the occurrence, then Ramanand Pandey (P.W.21) disclosed about the occurrence, detailing the name of the assailants but this witness has not stated about disclosing the name of the assailants by Ram Swarath Prasad (P.W.18). Manki Devi (P.W.17) and Sarita Kumari (P.W.20), the wife and daughter of the deceased Sukumar Singh respectively, while have stated in their evidence about receiving the information regarding he murder of Sukumar Singh and Janardan Pandey at their home from the Chowkida Awadhesh Gope but he had not disclosed the name of the assailants. Therafter, both reached at the place of the occurrence, where Ramanand Pandey (P.W.21) disclosed about the incident, disclosing the name of the assailants but from their evidence, it is apparent that both had not stated before the police about disclosing the name of the assailants by Ramanand Pandey (P.W.21) and, for the first time, they had disclosed that Ramanand Pandey (P.W.21) had disclosed about the occurrence in detail, disclosing the name of the assailants. As such, non-disclosing the name of the assailants and the manner of occurrence to Ram Swarath Prasad



(P.W.18) by the informant Ramnandan Pandey (P.W.21) at the time of giving instruction to Ram Swarath Prasad (P.W.18) to go at the police station for giving information, clearly indicates that Ramanand Pandey (P.W.21) was not aware about the name of the assailants at that time.

**19.** From the evidence of the witnesses, as discussed above, it is apparent that only Ramanand Pandey (P.W.21) has claimed himself to be the eye witnesses of the occurrence but he did not disclose the name of the assailants to Ram Swarath Prasad (P.W.18), who met him firstly, just after the occurrence, and instructed to give information at the police station. The evidence Ramanand Pandey (P.W.21) also shows that in between the family of the informant Ramanand Pandey (P.W.21) and the appellant, who are co-villagers, there was old enmity. Hence, due to old enmity, the false implication of the appellant by the informant Ramanand Pandey (P.W.21) cannot be ruled out.

**20.** On the basis of the aforesaid discussions, I come to the conclusion that the prosecution has not been able to prove its case beyond all reasonable doubts and the appellant is entitled to get the benefit of doubt.

In the result, this appeal is allowed. The impugned



Judgment of conviction and Order of sentence are, hereby, set aside and the appellant is acquitted of the charges. The appellant is on bail, hence, he is discharged from the liability of his bail bonds.

( Rajendra Kumar Mishra, J)

Hemant Kumar Srivastava, J:- I agree.

(Hemant Kumar Srivastava, J)

Pradeep Srivastava/-

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