

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.603 of 2012

Arising Out of PS. Case No.-98 Year-1988 Thana- CHANDI District- Nalanda

Shyam Gope, son of Sri Manik Gope, resident of village- Gunjar Chak, P.S.
Chandi, District- Nalanda.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with
CRIMINAL APPEAL (DB) No. 533 of 2012

Arising Out of PS. Case No.-98 Year-1988 Thana- CHANDI District- Nalanda

Ram Dev Gope, son of late Prayag Gope, resident of village - Gunjar Chak,
P.S. Chandi, District - Nalanda

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with
CRIMINAL APPEAL (DB) No. 708 of 2012

Arising Out of PS. Case No.-98 Year-1988 Thana- CHANDI District- Nalanda

Harinandan Gope Son of Late Balgovind Gope, resident of Gunjarchak P.S.
Chandi District - Nalanda

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :
(In CRIMINAL APPEAL (DB) No. 603 of 2012)
For the Appellant/s : Sri Ramakant Sharma, Senior Advocate
Sri Rajesh Kumar, Advocate
For the Respondent/s : Sri Ajay Mishra, A.P.P.
(In CRIMINAL APPEAL (DB) No. 533 of 2012)
For the Appellant/s : Sri Praveen Kumar, Advocate
For the Respondent/s : Sri Ajay Mishra, A.P.P.
(In CRIMINAL APPEAL (DB) No. 708 of 2012)
For the Appellant/s : Sri Shashi Shekhar Sharma, Advocate
For the Respondent/s : Sri Ajay Mishra, A.P.P.



CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
and
HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

Date : 08-07-2019

1. Appellants in all the aforesaid three appeals were tried together and were convicted and sentenced by a common judgment of the trial court, and as such, all the aforesaid three appeals were taken up together under the heading “For Hearing” and are being disposed of by this common judgment.

2. Appellant - Shyam Gope in Cr. Appeal (D.B) No. 603 of 2012 was convicted by judgment dated: 21.05.2012 for the offence under Section 302 of the Indian Penal Code, 1860 [hereinafter referred to as the “I.P.C.”]. He has further been convicted by the same judgment for offence under Section 27 of the Arms Act, 1959 [hereinafter referred to as the “ Arms Act”] along with Harinandan Gope [appellant in Cr. Appeal (D.B.) No. 708 of 2012]. Other appellants by the same judgment have been convicted for the offence under Section 302 / 34 of the I.P.C. By order dated - 24.05.2012, Shyam Gope [appellant in Cr. Appeal (D.B.) No. 603 of 2012] was sentenced to undergo rigorous imprisonment for life



under Section 302 of the I.P.C. and to pay a fine of Rs. 5,000/-. In case of default in payment of fine, he was directed to further undergo rigorous imprisonment for two months. Rest of the appellants under Section 302 / 34 of the I.P.C. have been sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 5,000/- each. In default of payment of fine they have further been directed to undergo rigorous imprisonment for two months. Appellant -Shyam Gope [in Cr. Appeal (D.B.) No. 603 of 2012] and Harinandan Gope [in Cr. Appeal (D.B.) No. 708 of 2012] by order dated 24.05.2012 were sentenced to undergo rigorous imprisonment for four years under Section 27 of the Arms Act and to pay a fine of Rs. 1,000/- each. In case of default in payment of fine they have been directed to further undergo rigorous imprisonment for one month. The judgment of conviction and sentence was passed by Sri Santosh Kumar Srivastava, learned Additional Sessions Judge-III, Hilsa (Nalanda) [hereinafter referred to as the “trial judge”] in Sessions Trial No. 9 of 1990 {arising out of Chandi P.S. Case No. 98 of 1988}.

3. Short fact of the case is that on 23.04.1988 at about 7.00 A.M. in the morning *fardbyan* of Kapil Gope -P.W.



5 (husband of the deceased) was recorded in State Dispensary, Chandi, District, District - Nalanda. In the *fardbyan* it was disclosed by the informant that on the same day i.e. on 23.04.1988 in morning at 5.15 A.M. while in his house from ground floor he was carrying iron sheet to his roof, he suddenly saw that on the roof on Eastern side of the house of Manik Gope; (1) Ram Dev Gope [appellant in Cr. Appeal (D.B.) No. 533 of 2012] carrying country made gun, (2) Harinandan Gope [appellant in Cr. Appeal (D.B.) No. 708 of 2012] carrying country made gun, (3) Manik Gope (since acquitted), (4) Shyam Gope [appellant in Cr. Appeal (D.B.) No. 603 of 2012] carrying country made gun, (5) Sriballam Yadav (since acquitted) carrying country made gun, all residents of village – Gunjar Chak, P.S. - Chandi and three-four unknown accused persons carrying arms in their hands were present. Accused- Ram Dev Gope exhorted to all the other accused persons who were with him to kill the informant whereupon, Harinandan Gope [appellant in Cr. Appeal (D.B.) No. 708 of 2012] opened fire from country made gun which he was carrying with a view to kill the informant. After getting fire arm injury the informant fell down in injured condition on



his roof itself and started crying for help. On hearing the sound of cry of informant, the informant's wife - Shanti Devi came nearer to him. Then Shyam Gope [appellant in Cr. Appeal (D.B.) No. 603 of 2012] shot fire on his wife through his country made gun. After getting gun shot injury his wife fell down on roof, started squirming and died. All the accused persons fired indiscriminately through country made guns and accused persons also threw bricks. The occurrence was seen by witnesses namely: Ramlagan Gope (P.W. 4), Somar Gope (P.W. 2), Bhola Gope (P.W. 3) and other number of villagers. In injured condition the aforesaid witnesses loaded him on cot and carried to Government Hospital, Chandi and he was being treated there. He stated that on his whole body he had received fire arm injuries. The reason for the occurrence was disclosed by the informant was land dispute. He further disclosed that dead body of his wife was lying on roof. The said *fardbyan* was read over to him and after finding it correct he put his L.T.I. On the basis of the *fardbyan* on same day a formal F.I.R. vide Chandi P.S. Case No. 98 of 1988 was registered for the offence under Section 302, 307/ 34 of the I.P.C. and Section 27 of the Arms Act against five named accused



persons namely: 1 - Manikchandra Gope (acquitted), 2- Ram Dev Gope [appellant in Cr. Appeal (D.B.) No. 533 of 2012], 3- Harinandan Gope [appellant in Cr. Appeal (D.B.) No. 708 of 2012] , 4 - Shyam Gope [appellant in Cr. Appeal (D.B.) No. 603 of 2012], 5- Sriballam Gope (since acquitted) and 3-4 unknown accused persons.

4. After registering F.I.R. Police started investigating the case, inquest report was prepared and dead body was sent for post mortem examination and finally charge sheet was submitted against seven accused persons on 26.07.1988 namely: 1- Manikchandra Gope (since acquitted), 2 - Harinandan Gope [appellant in Cr. Appeal (D.B.) No. 708 of 2012], 3- Shyam Gope [appellant in Cr. Appeal (D.B.) No. 603 of 2012], 4- Sriballam Gope (since acquitted), 5- Rajnandan Gope @ Rajan Gope (since acquitted), 6- Sachidanand Gope (since acquitted), 7 - Rameshwar Prasad Gope (died before commitment), however the Investigating Officer did not find accusation against Ram Dev Gope [appellant in Cr. Appeal (D.B.) No. 533 of 2012] as true and as such, Ram Dev Gope was exonerated by Police.



5. After submission of charge sheet learned Additional Chief Judicial Magistrate, Nalanda in consonance with the charge sheet took cognizance of the offence on 01.05.1989 and the case was committed to the court of Sessions on 06.01.1990. After commitment on 26.05.1994 charge was framed against Shyam Gope under Section 302/34 of the I.P.C. and Section 27 of the Arms Act, whereas on the same day i.e. on 26.05.1994 charge against remaining six accused persons, namely: Harinandan Gope, Manikchandra Gope, Sachidanand Gope, Sriballam Gope, Rajnandan Gope and Ram Dev Gope was framed under Section 302/34 of the I.P.C. On the same day i.e. on 26.05.1994 separate charge against Harinandan Gope was framed for the offence under Section 307 of the I.P.C. and 27 of Arms Act. At the time of framing of charge all accused persons denied charges and claimed to be tried and as such prosecution to establish its case examined total eight witnesses. Besides producing oral evidence four documentary evidences have been brought on record, which are formal F.I.R. (Ext. 1), *fardbyan* (Ext. 2), signature on inquest report (Ext. 3 & 3/1) and post mortem examination report (Ext. 4).



6. Out of eight witnesses, P.W. 2 -Somar Gope (uncle of the informant), P.W. 3 - Bhola Gope (father of the informant), P.W. 4 - Ramlagan Gope (cousin brother of the informant) and P.W. 5 - Kapil Gope (husband of the deceased) were examined as eyewitnesses to the occurrence whereas P.W. 1 - Dharmendra Kumar who was an Advocate Clerk has been examined as formal witness and to the reasons best known to the prosecution he came forward to prove F.I.R. and *fardbyan* which were marked as Ext. 1 and Ext. 2 respectively. P.W. 6 - Chandu Prasad and P.W. 7 - Shiv Kumar Prasad were examined as witnesses to the inquest report and they have identified their signature on the inquest report which were marked as Ext. 3 & 3/1 respectively. The doctor who conducted post -mortem examination namely: Dr. Rajendra Kumar Singh was examined as P.W. 8 and he identified post mortem report which has been marked as Ext. 4.

7. After examination of prosecution evidence, on 25.08.2009 statement of accused persons under Section 313 of the Cr.P.C. was recorded. Appellant- Harinandan Gope in defence under Section 313 of the Cr.P.C. has stated that he had gone to Giridih in connection with his employment.



Appellant- Harinandan Gope, Shyam Gope and one of the co-accused Sachidanand Gope had also taken plea of *alibi* whereas Rajnandan Gope one of the co-accused had claimed to be innocent. Co-accused /Sachidanand Gope had taken plea that he was falsely implicated due to animosity. Ram Dev Gope and Sriballam Yadav had taken plea of alibi. From the trend of cross examination it appears that plea was taken on behalf of the appellants that they were implicated due to old animosity.

8. Sri Ramakant Sharma, learned senior counsel assisted by Sri Rajesh Kumar, learned counsel for the appellant Cr. Appeal (D.B.) No. 603 of 2012 after placing entire evidence has argued that prosecution in the case has not been able to establish its case beyond all reasonable doubts. He has firstly argued that in the case during the trial without any plausible explanation the Investigating Officer of the case has not come forward to depose and his non-examination has seriously prejudiced the case of defence. He has highlighted that due to non-examination of the Investigating Officer defence failed to ask any specific query regarding establishing of place of occurrence since it was case



of prosecution that accused persons before committing crime had climbed over *chappar* and as such, there was every possibility of noticing trampling or breakage of peace of *chappar*. He further submits that witnesses during the trial were consistent that at the time of occurrence they were present in lane beside the house where occurrence had taken place and they are consistent that lane was narrow. In such situation absence of Investigating Officer has seriously prejudiced the case of defence in extracting the exact situation as to what was the width of the lane from where witnesses have claimed to have witnessed the occurrence. It has also been argued that attention of witnesses to their previous statement was drawn during the trial but due to non-examination of Investigating Officer defence was prevented to get contradiction from their previous statement recorded under Section 161 of the Cr.P.C. In sum and substance it has been argued that in absence of Investigating Officer the prosecution has miserably failed to establish the exact place of occurrence. It is not case of prosecution that from the place of occurrence any material was seized since there is no document regarding seizure of any articles whereas it was case of



prosecution that in the occurrence two firings were made, one hit the informant and another hit the wife of informant and even thereafter the accused persons while fleeing away had indiscriminately fired from their weapons.

9. Sri Sharma, learned senior counsel has further argued that no explanation has been given by the prosecution regarding non examination of the only adult member in the house at the time of occurrence namely: Sudamiya (mother of the informant). It has been argued that informant in his evidence has categorically stated that while occurrence had taken place, in the house mother of informant besides children were there and no other male persons were present in the house. In such situation non examination of mother of informant by prosecution shows that the manner of occurrence had taken place in other way and this is the reason that prosecution purposely had not produced Sudamiya as a witness. Sri Ramakant Sharma, learned senior counsel has further argued that prosecution case appears to be not believable particularly in view of the fact that right from the very beginning it was consistent case of prosecution that in the occurrence informant had firstly received gun shot injury and



this was the reason that at the time of framing of charge, charge against one of the accused namely- Harinandan Gope was also framed under Section 307 of the I.P.C. but he was subsequently acquitted from the charge under Section 307 of the I.P.C. It has been argued that prosecution has not produced any chit of paper to show regarding injury of the informant. Neither doctor, who had examined the informant has been examined nor any injury report has been brought on record and as such, the injuries on the person of the informant remained totally uncorroborated which creates serious doubt on the prosecution case. It has also been argued that prosecution evidence is not consistent. He submits that P.W. 3 - Bhola Gope (father of the informant) was examined as one of the eyewitness to the occurrence but on examination of his evidence it is evident that he had given a different story. In examination- in- chief he had stated that Sachida Gope had fired on wife of the informant. In paragraph 26 of his cross examination he further reiterated that he had stated in his statement recorded under Section 161 of the Cr.P.C. before the Police that Sachida fired on Shanti and further stated that Rajnandan Gope had fired on Kapil Gope -informant (P.W. 5)



whereas it was case of informant that firing was made by Shyam Gope on the deceased and informant was injured by shot given by Harinandan Gope. It has been argued that though other witnesses have stated in consonance with the evidence of informant /P.W. 5 but P.W. 3 who was none else but father of the informant who was examined as prosecution witness in categorical term has given a different story. The prosecution even in a case in which P.W. 3 had given a different story had not either declared him hostile or drawn his attention to his previous statement. It has also been argued that land dispute and animosity in between the parties was admitted by almost all the prosecution witnesses and as such, there is every possibility that in a case of offence which was seen by none, the prosecution has falsely come out with a case as if appellants were involved in the crime and this was the reason that in similar circumstances though other accused persons were tried together, some of the accused persons have been acquitted by the trial judge.

10. It has been emphasized that that though occurrence had taken place in the morning, prosecution has not produced any independent witness whereas occurrence



had taken place in the village and informant in his *fardbyan* himself had claimed that occurrence was seen by number of other villagers. Accordingly, it has been argued that prosecution has not been able to establish its case beyond all reasonable doubts, and as such, it is a fit case for interference with the judgment of conviction and sentence. Sri Sharma, learned senior counsel has also argued that post mortem report does not support the prosecution case which indicates that occurrence had taken place early in the morning even before Sunrise.

11. Sri Praveen Kumar, learned counsel appearing in Cr. Appeal (D.B.) No. 533 of 2012 [Ram Dev Gope vs. The State of Bihar] adopting the argument of Sri Ramakant Sharma, learned senior counsel appearing in Cr. Appeal (D.B.) No. 603 of 2012 has further argued that appellant - Ram Dev Gope without any cogent evidence has been held guilty by the learned trial judge which is required to be interfered with. He has highlighted that during initial version it was case of prosecution that appellant was instigator and as per his order Harinandan Gope fired on informant however during trial even in examination- in- chief the witnesses have given a



complete different picture and save and except showing presence of this appellant at the time of occurrence nothing was asserted. He by way of referring to the evidence of P.W. 3 - Bhola Gope submits that P.W. 3 in paragraph 4 of his evidence has stated that in the occurrence only five accused persons had participated and nothing was said against appellant /Ram Dev Gope. He further has argued that despite the fact that appellant was exonerated by Police and he was not charge sheeted and learned Additional Chief Judicial Magistrate already had taken cognizance of the offence on the basis of charge sheet without differing with the charge sheet, to the reasons best known to the court below, the appellant was associated as accused in the present case even without commencement of evidence.

12. Sri Shashi Shekhar Sharma, learned counsel appearing in Cr. Appeal (D.B.) No. 708 of 2012 [Harinandan Gope vs. The State of Bihar] too has adopted the argument of Sri Ramakant Sharma, learned senior counsel appearing in Cr. Appeal (D.B.) No. 603 of 2012 and has further argued that P.W. 3 , father of the informant and one of the eye witness has not even whispered regarding the presence of appellant even



then the learned trial judge has passed order of conviction and sentence.

13. Sri Ajay Mishra, learned Additional Public Prosecutor opposing the aforesaid appeals has argued that number of witnesses who have been examined on behalf of prosecution have consistently stated as to how appellants participated in the occurrence. He further submits that oral evidence of prosecution has also been corroborated by medical evidence i.e. post mortem examination report. He submits that it was consistent case of prosecution that deceased was given gun shot and this was the reason that she had received altogether 26 splinter injury however, he has not disputed the fact that P.W. 3 (father of informant) who was also eye witness to the occurrence has given an altogether different story. Learned A.P.P. has also not disputed the fact that during trial prosecution has not produced any evidence regarding injury on the person of the informant either oral or documentary but he has emphasized that in a criminal trial number of witnesses does not matter, it is quality of the evidence which matters. He submits that informant has categorically stated regarding participation of the appellants in



the case. Accordingly, he has submitted that the judgment of conviction and sentence requires no interference.

14. Besides hearing learned counsel for the parties, we have minutely examined entire evidence on record. Before further proceeding it is necessary to note that in the case the occurrence had taken place long back in the year 1988 and this is the reason that record of the case is completely in dilapidated condition. Even original F.I.R. which was on record, was not completely readable. However at the time of hearing, Sri Ramakant Sharma, learned senior counsel appearing on behalf of appellant in Cr. Appeal (D.B.) No. 603 of 2012 has produced certified copy of F.I.R., which has been directed to be kept on record.

15. Fact remains that during the trial neither Investigating Officer has been examined nor any plausible explanation has been given by the prosecution for non-examination of Investigating Officer. During evidence the informant was examined as P.W. 5 and he deposed that on the date of occurrence he was carrying tin sheet on his roof for the purposes of keeping milk and he noticed five accused persons namely: Harinandan Gope [appellant in Cr. Appeal (D.B.) No.



708 of 2012], Rajan Gope which was alias name of Rajnandan Gope (since acquitted), Shyam Gope [appellant in Cr. Appeal (D.B.) No. 603 of 2012], Sachidanand Gope (since acquitted) and Manik Gope (since acquitted) carrying guns in their hands. Harinandan Gope gave gun shot on him which hit on his hand, chest, stomach and thigh and he was injured. To save his life he raised voice जान बचाओ जान बचाओ . His wife came nearer to him. Then she was shot by Shyam Gope [appellant in Cr. Appeal (D.B.) No. 603 of 2012]. The gun shot given by appellant -Shyam Gope injured neck, chest and stomach of his wife and she died instantaneously on the roof itself. Lagan Gope (P.W. 4) , Bhola Gope (P.W. 3), Somar Gope (P.W. 2) had seen the occurrence. In examination in chief he has not whispered anything in respect of Ram Dev Gope [appellant in Cr. Appeal (D.B.) No. 533 of 2012]. In paragraph 6 of his cross examination he admits that witnesses Lagan Gope (P.W. 4) is his cousin brother. Somar Gope (P.W. 2) is his uncle and Bhola Gope (P.W. 3) is the father of this witness. Further in paragraph 7 of the cross examination he stated that one of the accused -Sachida Gope had lodged a Police case against him as well as his brother- Ramlagan Gope (P.W. 4) and his father-



Bhola Gope (P.W. 3) vide Chandi P.S. Case No. 6 of 1980 which was pending on the date of his evidence in the court of learned 2nd Assistant Sessions Judge . In paragraph 12 of his cross examination this witness stated that when occurrence of firing had taken place in his house there were only his wife and children. Except them there were no other adult person in his family whereas P.W. 3 - Bhola Gope (father of P.W. 5) in his evidence has stated that at the time of occurrence he was inside house. In paragraph 21 of his evidence he stated that of-course in respect of land dispute no case was pending, but he stated that there was dispute in respect of house of his father. His attention to his previous statement was drawn. In paragraph 22 of his cross- examination he stated that before Police he had stated that in occurrence he had received injury on chest, stomach and thigh and after getting injury he had raised alarm and asked for saving him and he had also stated that the pellet had hit neck, chest and stomach of his wife. Fact remains that during the trial the Investigating Officer was not examined, and as such, learned counsel for the appellants have rightly argued that in absence of Investigating Officer the case of defence was prejudiced since defence was prevented



to ask any such question regarding previous statement of witnesses recorded during investigation. On examination of his evidence it also appears that questions were asked to raise suspicion regarding witnessing occurrence while other witnesses almost in similar manner i.e. P.W. 2 (Somar Gope) and P.W. 4 (Ramlagan Yadav) have deposed but fact remains that P.W. 3 -Bhola Gope (father of informant - P.W. 5) has given an entirely different story in which he has alleged that firing was made by other accused persons not those accused regarding whom in the evidence of other eye witnesses the fact has come. It is also evident that despite the fact that P.W. 3 had given a complete different story, prosecution has not bothered to declare him hostile to the extent which was contrary to the case of other witnesses or whether it was inconsistent with his previous statement or not. In a criminal trial if prosecution witness states anything contrary to the prosecution, certainly during trial, prosecution is having liberty to get him declared hostile and draw his attention to his previous statement but in a case no such step has been taken and as such benefit is required to be given to defence. In the case it is also peculiar that *fardbyan* and formal F.I.R. was got



identified by a person who was neither associated with the investigation nor was a Police Official, rather P.W. 1 is an Advocate Clerk who has come forward to identify writing and signature of the then Officer -in -charge of Chandi Police Station on formal F.I.R. which was marked as Ext. 1. He has also identified writing and signature of the said Officer on *fardbyan* which was marked as Ext. 2. In cross -examination he admitted that neither formal F.I.R. nor *fardbyan* was written in his presence. This court deprecates such type of action of the prosecution. If there is reasonable ground for non examining of Investigating Officer and formal F.I.R. or *fardbyan* is required to be exhibited, in normal course first step is to be taken is to secure attendance of any Police Officer conversant with writing and signature of the Officer who has written *fardbyan* or prepared formal F.I.R. In the present case without any plausible explanation prosecution has produced an Advocate Clerk to identify *fardbyan* and formal F.I.R., which has been got exhibited as Ext. 2 & 1 respectively.

16. P.W. 6 - Chandu Prasad and P.W. 7 - Shiv Kumar Singh are witness to the inquest report. P.W. 6 (Chandu Prasad) in his examination- in- chief has stated that on the



date of occurrence he was in his village and inquest report in respect of dead body of deceased -Shanti Devi was prepared in his presence through carbon process on which he identified his signature, which was marked as Ext. 3. However, in cross-examination he stated that *daroga ji* had obtained his signature on inquest report in passage *en route* where he put his signature. Meaning thereby that only formality was completed to obtain signature of this witness on inquest report. Similarly, P.W. 7 - Shiv Kumar Prasad who too has identified his signature on inquest report, in cross examination has stated that *daroga ji* had obtained his signature at 10-11 A.M. on blank paper. However, fact remains that regarding finding of dead body inquest report was prepared.

17. P.W. 8 – Dr. Rajendra Kumar Singh on 23.04.1988 was posted as Civil Assistant Surgeon at Sadar Hospital, Biharsharif and on the same day at 3.45 P.M. he conducted post mortem examination on the dead body of deceased -Shanti Devi and noticed the following facts:

“I. Rigor mortis present in upper and lower limbs.

On external examination :-

I. 26 marks of pellets wounds of size 1/4”x1/5” of varying depth from skin depth to viscera depth on left side chest and also on breast.



II. Two marks of pellet wounds of size 1/4"x1/5"x viscera deep on lower part of rt. side chest.

III. Three marks of pellet wounds of size 1/5"x1/5" of varying depth on rt. side chest below rt. shoulder.

IV. Two marks of pellet wounds of size 1/4"x1/5" x fascia deep on the rt. Breast.

V. Six marks of pellet wounds of size 1/4"x1/5" of varying depth of fascia depth to viscera depth on left side abdomen below left costal margin.

VI. Two marks of pellet wounds of size 1/5"x1/5"x fascia deep on left side abdomen lower part.

VII. One mark of pellet wound of size 1/5"x1/5" on the outer side of rt. shoulder.

VIII. One mark of pellet wound of size 1/5"x1/5" on the top of left shoulder.

IX. Two marks of pellet wounds of size on the front of left forearm, one mark of pellet wound on upper part of front of left thigh, one over front of right thigh in the upper part of sizes 1/5"x1/5"x fascia deep.

3. On dissection both thoracic cavities contained clotted blood, four mark with round opening and viscera deep were present on left lung, two in right lobe of liver, two pellets were found on the surface of left kidney. Abdominal cavity contained clotted blood. Stomach empty and intact. Spleen intact urinary bladder contained 203 of urine. Rectum contained slight fiscses, uterus empty.

4. Death in my opinion was caused by shock and haemmorage due to above noted injuries. The injuries were sufficient to cause death in ordinary course of nature. The injuries were caused by fire arms. Time elapsed since death between 3 to 16 hours. Five pellets were recovered during autopsy were sealed in a viol and handed over to the constable accompanying the dead body."

He identified the post- mortem examination report and stated that it was in his pen and signature and it was marked as Ext. 4. In cross- examination in paragraph 7 this witness stated that *rigor mortis* was found in all the limbs of



the deceased, and as such, he stated that deceased might had died between 12-15 hours prior to autopsy.

18. On examination of the evidence P.W. 8 regarding expected time of death of deceased, the court finds substance in the submission of learned counsel for the appellants that occurrence might had taken place at an odd time and not seen by anyone. If death had occurred between 12-15 hours prior to autopsy then certainly in the case since autopsy was conducted at 3.45 P.M. on the date of occurrence i.e. on 23.04.1988, there is possibility that occurrence might had taken place on or before 3.45 A.M. on 23.04.1988. However on such medical opinion it is difficult to record a definite finding, but in any event, such fact creates some doubt on the prosecution case in the background that none of the independent witnesses have come forward to support the prosecution case. The witnesses who have claimed to be eye witnesses are non else but close relatives of the informant, whose wife was done to death. Besides this, it is further evident that prosecution has not been able to bring on record any material evidence relating to the said occurrence. It is specific case of prosecution that in the occurrence at least two



gun shots firing were made and both shots hit the informant as well as his wife. Besides this, it is case of prosecution that accused persons even thereafter made indiscriminate firing, however prosecution has not produced even single pellet or other material evidence relating to the said occurrence. The court is also in agreement with the submission of learned counsel for the appellants that none examination of Investigating Officer without any plausible reason has seriously prejudiced prosecution case. The prosecution has also not been able to establish its case beyond all reasonable doubts due to the reason that though right from the very inception it was stand of informant that in the occurrence he had received gun shot injury but not even a single chit of paper i.e. injury report has been brought on record to corroborate that he received any injury nor the so -called doctor who examined the injured-P.W. 5 was examined by the prosecution. In such circumstances, it would be difficult to approve the judgment of conviction and sentence.

19. In view of aforesaid evidences, which we have discussed hereinabove and submission of learned counsel for the parties, we are of considered opinion that prosecution has



not been able to establish its case beyond all reasonable doubts. Accordingly, the judgment of conviction dated- 21.05.2012 and sentence dated: 24.05.2012 passed by Sri Santosh Kumar Srivastava, learned Addl. Sessions Judge – III, Hilsa (Nalanda) in Sessions Trial No. 9 of 1990 { arising out of Chandi P.S. Case No. 98 of 1988 } is hereby set aside and all the aforesaid three appeals are allowed. Shyam Gope, sole appellant in Cr. Appeal (D.B.) No. 603 of 2012 is in custody and since judgment of his conviction and sentence has been set aside, it is hereby directed to release him forthwith if not wanted in any other case. In respect of other two appellants namely, Ram Dev Gope in Cr. Appeal (D.B.) No. 533 of 2012 and Harinandan Gope in Cr. Appeal (D.B.) No. 708 of 2012 who are on bail, they are discharged from liability of their bail bonds. All the aforesaid three appeals stand allowed.

(Rakesh Kumar, J)

(Anjani Kumar Sharan, J)

praful/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	12 -07-2019
Transmission Date	12-07-2019

