

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1372 of 2025**

Arising Out of PS. Case No.-5 Year-1991 Thana- CHANDI District- Nalanda

Kishor Gope @ Yugal Kishor Singh @ Ugal Kishor Prasad, S/o Late Kewal Gope, R/o vill - Kesaura, Police Station - Chandi, Distt. - Nalanda.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant : Mr. Sanjeev Ranjan, Advocate

For the State : Ms. Shashi Bala Verma, Addl.PP

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and**

HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 20-07-2026

Heard learned counsel for the appellant and learned Additional Public Prosecutor for the State.

2. The present appeal has been preferred for setting aside the judgment of conviction dated 08.09.2025 (hereinafter referred to as the 'impugned judgment') and order of sentence dated 15.09.2025 (hereinafter referred to as the 'impugned order') passed by learned District & Sessions Additional Judge-III, Hilsa, Nalanda (hereinafter referred to as the 'learned trial court') in Sessions Trial No. 19 of 1992 arising out of Chandi P.S. Case No. 05 of 1991. By the impugned judgment, the appellant has been convicted for the offences punishable under Section 302 of the Indian Penal Code (in short 'IPC') and Section 27 of the Arms Act.



By the impugned order, he has been sentenced to undergo rigorous imprisonment for life with a fine of Rs.10,000/- under Section 302 IPC and in default of payment of fine, he shall further undergo simple imprisonment for six months. He has also been sentenced to undergo rigorous imprisonment for five years with fine of Rs.5,000/- under Section 27 of the Arms Act and in default of payment of fine, he shall further undergo three months simple imprisonment. Both the sentences are to run concurrently.

Prosecution Case

3. The prosecution case is based on the *fardbeyan* of one Mukund Gope (PW-8). In his *fardbeyan*, he has stated that on 05.01.1991 at about 07:00 AM, the informant was taking meal in his cowshed in front of his house, suddenly his co-villagers, namely, (1) Kishor Gope, (2) Vidyasagar Gope, (3) Sunder Gope, (4) Awadhesh Gope, (5) Suresh Gope, (6) Naresh Gope, (7) Jageshwar Gope, (8) Shyam Gope, (9) Laddu Gope, (10) Chandrashekhar Gope and (11) Arjun Gope attacked on his house. One of the accused, namely, Kishore Gope (appellant) fired from his gun which hit Ramavtar Gope who got injured and died on the way to hospital. Accused Sundar Gope fired from his gun due to which Sunita Kumari got injured and accused Naresh Gope fired from his gun due to which Mahajani Devi and Ramdev Gope got



injured. All the accused persons then damaged the roof tiles and scattered the rice grains stored in the house. The informant further alleged that a title suit was going on between him and Mohan Gope who resides in the same house having common courtyard and due to animosity all the above-named accused persons have taken side of Mohan Gope and committed the incident. The informant further stated that apart from the women of the house, the occurrence was witnessed by Lokan Singh and Rajkumar Singh.

4. On the basis of the *fardbeyan* of the informant (PW-8), Chandi P.S. Case No. 05 of 1991 dated 05.01.1991 was registered under Sections 147, 148, 149, 452, 427, 307, 302 read with 34 IPC and Section 27 of the Arms Act against eleven named accused persons.

5. After investigation, police submitted chargesheet bearing Chargesheet No. 46 of 1991 dated 01.04.1991 against twelve accused persons, namely, (1) Kishor Gope, (2) Shyam Gope, (3) Vidyasagar Gope, (4) Sunder Gope, (5) Awadhesh Gope, (6) Laddu Gope, (7) Suresh Gope, (8) Naresh Gope, (9) Arjun Gope, (10) Jageshwar Gope, (11) Chandrashekhar Gope and (12) Mohan Gope under Sections 147, 148, 149, 452, 427, 307, 302 read with 34 IPC and Section 27 of the Arms Act.



6. Learned S.D.J.M., Hilsa vide order dated 04.04.1991 took cognizance of the offences under Sections 147, 148, 149, 452, 427, 307, 302 read with 34 IPC and Section 27 of the Arms Act against all twelve accused persons. Learned Magistrate committed the records to the court of sessions on 20.11.1991.

7. Charges were read over and explained to the accused persons on 27.07.1993 to which they denied. Accordingly, the learned trial court framed charges against the appellant Kishor Gope under Section 302 IPC and Section 27 of the Arms Act, against accused Sundar Gope and Naresh Gope under Sections 148, 302/149, 307 IPC and Section 27 of the Arms Act and against accused Shyam Gope, Awadesh Gope, Suresh Gope, Chandrashekhar Gope, Vidyasagar Gope, Laddu Gope, Jageshwar Gope, Arjun Gope and Mohan Gope under Sections 148, 302 read with 149 and 307/149 IPC.

8. During trial five accused persons, namely, Jageshwar Gope, Vidyasagar Gope, Mohan Gope, Arjun Gope and Laddu Gope died and proceeding against them was abated.

9. In course of trial, the prosecution examined as many as eight witnesses and got exhibited various documentary evidence. The description of the prosecution witnesses and the list



of documents exhibited on behalf of prosecution are provided hereunder for ready reference in a tabular form:-

List of Prosecution Witnesses

Prosecution witness No.	Name of Witness	Description
PW-1	Lila Devi	Eye Witness
PW-2	Dr. Ashok Kumar	Medical Witness
PW-3	Sunita Kumari	Injured Witness
PW-4	Mahajani Devi	Injured Witness
PW-5	Lalmuni Devi	Eye Witness
PW-6	Chauthi Devi	Eye Witness
PW-7	Ambika Ram	Investigating Officer
PW-8	Mukund Gope	Informant

List of Exhibits on behalf of Prosecution

Exhibit No.	Description of the Exhibit	Proved by/Attested by
‘1’	C.C. of Post Mortem Report of the deceased Ramavtar Gope	PW-2
‘2’	Signature of the Informant on <i>fardbeyan</i>	PW-8

10. Thereafter, the statements of the accused persons were recorded under Section 313 of the Cr.P.C. in which they pleaded innocence.

11. The defence exhibited several documentary evidences which are being mentioned hereunder in tabular form:-



List of Defence Exhibits

Exhibit No.	Description of the Exhibit	Proved by/Attested by
‘A’	C.C. of FIR of Chandi P.S. Case No. 03 of 1991	Public document
‘B’	C.C. of Chargesheet of Chandi P.S. Case No. 03 of 1991	Public document
‘C’	C.C. of deposition of Mohan Gope in Title Suit No. 304/87	Public document
‘C/1’	C.C. of deposition of Avadhesh Gope in Title Suit No. 304/87	Public document
‘C/2’	C.C. of deposition of Laddu Gope in Title Suit No. 304/87	Public document
‘C/3’	C.C. of deposition of Surendra Gope in Title Suit No. 304/87	Public document
‘C/4’	C.C. of deposition of Yugal Kishor Singh in Title Suit No. 304/87	Public document
‘C/5’	C.C. of deposition of Vidyasagar Gope in Title Suit No. 304/87	Public document
‘C/6’	C.C. of deposition of Harkhi Devi in Title Suit No. 304/87	Public document
‘C/7’	C.C. of deposition of Ramnandan Prasad in Title Suit No. 304/87	Public document
‘D’	C.C. of Baxis-nama (gift deed) dated 28/06/90	Public document

Findings of the learned Trial Court

12. Learned trial court after examining the oral as well as documentary evidences available on the record found that the prosecution witnesses, namely, PW-1, PW-3, PW-4, PW-5, PW-6 and PW-8 have stated specifically in their examination-in-chief about Kishor Gope to have inflicted firearm injury to the deceased Ramavtar Gope. Accordingly, learned trial court found that the statement of the informant with respect to causing firearm injury



by Kishor Gope (appellant herein) to deceased Ramavtar Gope finds corroboration by the accounts of all witnesses who claimed themselves to be eye witnesses.

13. Learned trial court found that the oral account of the informant and rest of the witnesses with respect to inflicting firearm injury by Kishor Gope to deceased Ramavtar Gope finds support from the *post mortem* report as corresponding injury was found on the left upper thigh of the deceased. Although learned trial court found some minor contradictions carved out by the learned defence counsel but those contradictions are minor in nature with respect to culpability as far as accused Kishor Gope is concerned.

14. Learned trial court after considering all the facts and circumstances of the case held that the prosecution has been successfully able to prove the charges beyond all reasonable doubts against this appellant Kishor Gope under Section 302 IPC and Section 27 of the Arms Act. Accordingly, the appellant was convicted for the offences punishable under Section 302 IPC and Section 27 of the Arms Act.

Submissions on behalf of the Appellant

15. Mr. Sanjeev Ranjan, learned counsel for the appellant has assailed the impugned judgment and order on



various grounds. It is submitted that in the present case, the learned Trial Court has failed to appreciate the ocular evidences of the prosecution witnesses. According to him, the ocular evidences are not fit to be relied upon in view of the contradictions by the medical evidence. His submission is that as per the medical evidence, the deceased had received four injuries, two by firearm and two by hard and blunt substance and there is blackening of injury caused by firearm. As per the informant and another so-called eye witnesses, the appellant has allegedly fired only one single shot and there is no allegation of assaulting the deceased by any other weapon which could have resulted in causing injuries by hard and blunt substance.

16. Learned counsel submits that on the face of the medical evidences led by the prosecution, the ocular evidences are liable to be discarded.

17. It is submitted that the occurrence in this case has taken place on 06.09.1991 at 7:00 AM but the *fardbeyan* of the informant (PW-8) in connection with this case has been recorded at 3:00 PM i.e. after eight hours. In his *fardbeyan*, the informant (PW-8) did not disclose the fact that the wife of Mohan Gope had got injured in the scuffle which took place at 7:00 AM and that she was seriously injured.



18. Referring to the counter case lodged by Mohan Gope, learned counsel submits that the counter case being Chandi P.S. Case No. 3 of 1991 was registered prior in time on 05.01.1991 at 12:30 PM. In the said counter case (Exhibit 'A'), this appellant is one of the accused. The fardbayan of Mohan Gope was recorded in the Sadar Hospital wherein he was admitted in injured condition. It is, thus, submitted that while recording his fardbayan, informant (PW-8) has not come clean, therefore, he is not a fully reliable witness.

19. Learned counsel has further submitted that from the First Information Report giving rise to the present case, it will appear that the informant has stated at first instance that when the accused persons entered into his house, he was eating in the Gaushala which is in front of the house but in subsequent statements and in course of trial, the informant (PW-8) changed his statement and he has shown his presence inside the house. It is submitted that the presence of the informant (PW-8) is highly doubtful.

20. Learned counsel submits that in this case though two injured witnesses have been introduced by the prosecution namely Sunita Kumari (PW-3) and Mahajani Devi (PW-4), their injuries reports are though available in the case diary and have been



discussed by the learned trial court in the impugned judgment, are not duly exhibited in course of trial. So far as Mahajani Devi (PW-4) is concerned, she is *bhabhi* of the deceased. In paragraph '6' of her statement, she has stated that all were firing from the western side but she had not seen anyone firing. It is, thus, submitted that PW-4 had not seen the occurrence. Attention of this Court has also been drawn towards paragraph '8' of her cross-examination wherein her attention was drawn towards her previous statements made before the I.O. She denied the suggestion of the defence that before police she had not stated that Kishore Gope had fired which hit Ramvatar and Sundar fired which hit Sunita Devi.

21. Learned counsel submits that since the I.O who had investigated the case has not been examined by the prosecution, serious prejudice has been caused to the defence inasmuch as the defence could not elicit contradictions from the I.O. with regard to the statement of PW-4 as suggested in paragraph '8' of her cross-examination.

22. Learned counsel submits that the prosecution has failed to examine any independent witness in this case. The persons like Lokan Singh and Raj Kumar Singh who are named in the FIR and the other witnesses of the adjoining house whom the prosecution claimed to have witnessed the occurrence were



withheld. It is, thus, submitted that the entire prosecution case rests upon the statement of the interested witnesses whose presence and credibility are highly doubtful due to the material contradictions, improbability and inconsistencies. Reliance has been placed on the judgment of the Hon'ble Supreme Court in the case of **Takhaji Hiraji vs Thakore Kubersing Chamansing & Ors** reported in (2001) 6 SCC 145 to submit that where admitted witnesses are available but not examined, the prosecution evidence become inherently weak and unsafe.

23. Learned counsel submits that the I.O. had not seized any firearm or any empty cartridge or empty shell from the place of occurrence, no seizure list has been brought on the record, therefore, it would cast serious doubt regarding the incident having taken place in the house of the informant. Learned counsel submits that the prosecution in this case has failed to establish the place of occurrence.

24. It is submitted that the learned trial court has disbelieved the version of the injured witnesses namely PW-3 and PW-4 and thereby acquitted the accused persons namely Sundar Gope, Naresh and other accused persons who faced trial for under Section 302/149 and 307/149 of the IPC read with Section 27 of the Arms Act. It is submitted that the whole prosecution case is premised on an alleged unlawful assembly and a common object



as defined under Section 149 of the IPC. In a case where six accused persons have been acquitted on the same set of evidence, this Court may take a view that the prosecution has failed to prove the common object. Learned counsel has relied upon the judgment of the Hon'ble Supreme Court in the case of **Munna Lal versus State of Uttar Pradesh** reported in **(2023) 18 SCC 661** wherein the Hon'ble Supreme Court has considered the scope and ambit of Section 134 of the Evidence Act. Reliance has also been placed on the judgment of the Hon'ble Supreme Court in case of **Pankaj Vs. State of Rajasthan** reported in **(2016) 16 SCC 192**. It is submitted that in case where the prosecution has failed to explain the circumstances which took place inside the house of the informant and the deceased, the prosecution case is liable to fail.

25. Learned counsel submits that in the present case, the learned trial court has convicted the appellant on the basis of surmises and conjectures. The trial court has fallen in error in appreciation of the evidences available on the record. Prayer is to set aside the impugned judgment of conviction and order of sentence.

Submissions on behalf of the State

26. The appeal has been contested by learned Additional Public Prosecutor for the State. It is submitted that in the present



case, altogether eleven persons were made accused and twelve were chargesheeted but during trial, five accused persons were reported dead, therefore, the proceeding against them was dropped. Seven accused persons, including the present appellant, faced the trial. In ultimate analysis, the learned trial court held that the prosecution had failed to prove the charges levelled under Sections 148, 307, 302 read with Section 149 of IPC and Section 27 of the Arms Act against the accused Sundar Gope (A-3) and Naresh Gope (A-5). Accordingly, they were acquitted of those charges extending them the benefit of doubt. Further, the prosecution failed to establish the charges levelled under Sections 148, 302 read with Section 149, 307 read with 149 of IPC against the accused Shyam Gope (A-2), Awadesh Gope (A-4), Suresh Gope (A-6) and Chandrashekhar Gope. They were acquitted of the charges.

27. It is submitted that the prosecution has, however, successfully proved the charge under Section 302 IPC and Section 27 of the Arms Act against the accused Kishor Gope (A-1) beyond all reasonable doubts. Accordingly, he has been convicted for committing offence under Section 302 IPC and Section 27 of the Arms Act.



28. Learned Additional Public Prosecutor for the State submits that in the present case, the informant (PW-8) is an eye witness of the occurrence. He is star witness of this case who has testified before the learned trial court and sustained the test of cross-examination. He was present in the house at the time of occurrence. No contradiction has been taken from this witness as regards his previous statement made before police. It is stated that his objection was never drawn towards his previous statements in the *fardbeyan* or in the case diary.

29. It is submitted that apart from the informant (PW-8), Sunita Kumari (PW-3) who is the grand daughter of the informant, aged about fourteen years was present in the house and was injured in the occurrence. Learned Additional Public Prosecutor submits that the place of occurrence was the common house of Mukund Gope and Mohan Gope. It is not in question that both of them resided in the same house. In his counter case, Mohan Gope has also given the same place of occurrence i.e. the courtyard of the common house. He has given the same date and time of the occurrence. It is submitted that on a bare perusal of the materials available on the record, it may be found that the learned trial court has not committed any error in appreciation of the evidences available on the record.



30. It is submitted that the trial court has discarded PW-2 and PW-3 as regards the injuries allegedly caused to them by Sundar Gope and Naresh Gope. It is only because the nature of injury of these two witnesses were not proved by the prosecution. It is submitted that the maxim "*falsus in uno, falsus in omnibus*" is not applicable in India. It is for the Court to take out the chaffs from the grain while appreciating the evidence.

31. Learned counsel submits that cross-examination of the I.O could not prove fatal to the prosecution in as much as it would appear from the evidence of the injured witness PW-3 (Sunita Kumari) and the informant (PW-8) that the defence could not point out that in course of investigation by police, they had made a different statement. Attention of PW-8 was not drawn towards the *fardbeyan* and no cross-examination has been done with reference to the contents of the FIR and the statements recorded in the case diary.

32. It is submitted that so far as the delay in lodging of the FIR is concerned, the Hon'ble Supreme Court has in the case of **Tara Singh versus State of Punjab** reported in **1991 Supp (1) SCC 536** has observed that when an occurrence of this nature takes place, the family gets disturbed and a delay of some time in lodging of the FIR alone would not prove fatal to the prosecution



so long as the prosecution witnesses are credible. It is submitted that the genesis of the occurrence is the title suit filed by Mohan Gope. Mohan Gope is the cousin brother of the informant (PW- 8). They had land dispute and for that reason, the title suit was going on, the witnesses were examined in the title suit. At this point of time, the prosecution side were assaulted by the accused persons. In the said occurrence, Ramvatar was fired upon by this appellant and he died. On all these grounds, it is submitted that the impugned order of the learned trial court is based on proper appreciation of the materials available on the record. No infirmity may be found with the judgment of the learned trial court. Hence, the appeal is liable to be dismissed.

Consideration

33. This Court has heard learned counsel for the appellant and the learned Additional Public Prosecutor as also perused the trial court's records. This Court finds that the whole prosecution case is based on the *fardbeyan* of Mukund Gope (PW- 8). He has proved his signature on the said *fardbeyan* which has been marked Exhibit '2'. In his *fardbeyan* recorded by SI R.N. Singh, Officer Incharge, Chandi Police Station on 05.01.1991 at 03:00 PM, the informant alleged that on 05.01.1991 at about 07:00 AM, the named accused persons entered into his house. He has



attributed arms in the hand of the named accused persons. It is alleged that amongst the assailants, Kishor Gope (the appellant) fired from the gun in his hand which hit his nephew Ramvatar Gope aged about 45 years. On way to hospital, he died. The informant alleged that Sundar Gope had fired from his gun which hit Sunita Kumari, aged 14 years and Naresh Gope fired from his gun which hit Mahajani Devi (PW-4) and they were also injured. He has stated that at the time of occurrence, he was eating in the *Gauhal* in front of the house. He has stated that the ladies in the houses and Lokan Singh, son of Pamlal Gope and Rajkumar Gope, son of Lokan Singh have seen the occurrence from their naked eyes and they will say about it. Regarding the genesis of the occurrence, the informant (PW- 8) has stated in the *fardbeyan* that due to the old enmity on account of land dispute, the accused persons came armed with weapons and fired which caused injuries to several persons.

34. The defence has brought on record the *fardbeyan* of the counter case being Chandi P.S. Case No. 03 of 1991 which has been marked as Exhibit 'A'. In the *fardbeyan* of the counter case, Mohan Gope has stated that his wife Harkhi Devi was sitting in the *verandah* of her house in the morning at 07:00 AM, all of a sudden the six named accused persons including the informant (PW-8) of



the counter case entered into the house, they were variously armed with gun, lathi and bricks. He alleged that his wife was assaulted by lathi, butt of the gun and bricks as a result whereof, she became unconscious, she was bleeding profusely and in unconscious condition, she was brought to Chandi hospital wherein she was serious and was not likely to survive. He has stated that the reason behind the occurrence is the land dispute as according to him, the defence side had got executed a sale deed in respect of his land by placing some other person in the name of Mohan Gope and thereby impersonating him. According to the F.I.R. of Chandi P.S. Case No.03 of 1991, this appellant Kishor Gope is an eye witness of the occurrence.

35. This Court finds that the defence has got exhibited certified copy of the Baxisnama dated 28.06.1990, the deposition of Harkhi Devi in Title Suit No. 304 of 1987, certified copy of the FIR of Chandi P.S. Case No. 03 of 1991.

36. On going through the documents, it is evident that both the sides have given the same place, date and time of occurrence. In Chandi P.S. Case No. 03 of 1991, the present appellant has been shown as an eye-witness of the occurrence, therefore, presence of the appellant at the place of occurrence on the given date and time of occurrence is not in dispute. Since the



place, date and time of occurrence is the same and one, in our considered opinion, no serious prejudice has been caused to the defence due to non-examination of the I.O.

37. It appears on perusal of the trial court's record that in this case altogether eight witnesses were produced on behalf of the prosecution and two documentary evidences were exhibited for the prosecution. Exhibit '1' is the certified copy of the *post mortem* report of the deceased Ramvatar and Exhibit '2' is the signature of the informant on the *fardbeyan*. Out of eight prosecution witnesses, Lila Devi (PW-1), Lalmuni Devi (PW-5) and Chauthi Devi (PW-6) are the eye witnesses. Mukund Gope (PW-8) is the informant and eye witness of the occurrence whereas Sunita Kumari (PW-3) and Mahajani Devi (PW-4) are the injured witnesses. Ambika Ram (PW-7) is the Investigating Officer who submitted the chargesheet. Dr. Ashok Kumar (PW-2) was posted at Sadar Hospital, Biharshariff on 05.01.1991. He had conducted the autopsy on the dead body of the deceased Ramavtar. PW-2 has proved the *post mortem* report (Exhibit '2').

38. This Court has carefully scrutinized the deposition of the informant (PW-8) who is the star witness of this case. In his examination-in-chief, PW-8 has taken the name of this appellant along with some other accused persons who were armed with gun



and stones. They had entered into the house of the informant and they were breaking the *khapra on the* roof of the house. He has clearly stated in his examination-in-chief that Kishor Gope (the appellant) fired which hit Ramavtar Gope. Sundar Gope had fired on Sunita Kumari causing her injuries and firing made by Naresh Gope hit Mahajani Devi and Ramdev Gope. On way to hospital, Ramavtar died, others were treated in the hospital. He had recorded his *fardbeyan* in the hospital whereafter it was read over which he found to be correct and had made his signature thereon. In paragraph '2' of his deposition, he has stated that Mohan Gope had filed a title suit and that is the reason behind this occurrence. In his cross-examination, the witness (PW-8) has stated that in the murder case of Harkhi Devi wife of Mohan Gope, Chandeshwar Gope, Siya Lal, Ramavtar, Mahendra and Mithilesh were accused and the case was going on in the Sessions Court. Siya Lal is the father of Ramavtar Gope. This witness has stated that he had quarrel with Vidyasagar whose house is situated in between his house and that of Siya Lal's House. In paragraph '5' of his cross-examination, this witness has stated that in the house which is the place of occurrence, he and Mohan were residing, the other co-sharers were living in another house. On the date of occurrence, there was a date fixed in the title suit and in connection with the



same, Chandrashwar Gope and Siya Lal Gope were in Hilsa for the last four days. Siya Lal was the nephew of this witness. He has stated that the title suit was being heard, his son was Pairvikar in the said title suit.

39. This Court has further noticed that in paragraph '8' of his cross-examination, this witness has narrated that from the Western *osara* firing was being done. He has stated that he had himself gone to the police station and had brought police. This witness was suggested by the defence that in order to usurp the property of Mohan, he had called a group of persons, this suggestion was denied by this witness. The defence further suggested this witness that he had lodged this false case in his defence. On going through the deposition of the informant (PW-8), this Court found that the defence has not elicited any contradiction from this witness. Although learned counsel for the appellant has submitted that this witness was not in his house at the time of occurrence, no such suggestion has been given by the defence.

40. This Court has further noticed that the learned trial court has discussed the evidence of all witnesses to find corroboration to the evidence of the informant (PW-8). The trial court has recorded that the statement of the informant with respect to causing firearm injury by Kishor Gope to deceased Ramavtar



Gope finds corroboration by the accounts of all witnesses who claim to be the eye witnesses. In this regard, it is noticed that the testimonies of the prosecution witnesses such as PW-1, PW-3, PW-4, PW-5, PW-6 and PW-8 have been examined by the learned trial court and it is recorded that all of them have very categorically stated that on the date and time of incident the accused persons were armed with guns and stones and they had vandalised roof tiles, scattered the grains stored in the house. About Kishor Gope (the appellant), it is stated that he fired from his gun which hit Ramavtar Gope. The learned trial court has carefully scrutinized the evidences and found that there is no evidence attributing specifically against any of the accused persons other than three accused persons, namely, Kishor Gope, Naresh Gope and Sunder Gope but out of them, the alleged firing done by Sunder and Naresh does not find support from the prosecution evidence. It is for this reason, Naresh and Sunder have been acquitted by the learned trial court.

41. As regards the evidence of the Doctor (PW-2), who conducted the *post mortem* on the dead body, learned trial court has noticed that the Doctor had found firearm pellet injury on the left upper thigh and scrotum with blacken margin from small nail head size to big nail head size. Learned trial court noticed that



there were some contradictions in ocular and medical account of evidences as all the prosecution witnesses stated specifically about the solitary firearm injury inflicted to deceased but during *post mortem*, the Doctor found a lacerated wound 1" x ½" x bone deep on the base of left thumb and an abrasion 2" x 1" over right chest which was caused by hard and blunt object due to which third and fourth ribs of right of the chest were fractured. The learned trial court found that during *post mortem*, there were some unexplained injuries on the body of the deceased but on dissection of the injury caused by firearm the blood clots were found underneath the tissues in left upper thigh and femoral vessel was found lacerated corresponding to that injury. The Doctor who conducted the autopsy opined that the death was caused by the shock and haemorrhage by the above noted injuries. The injury on left upper thigh and on scrotum though were caused by firearm, the other injuries were caused by hard and blunt substances. The firearm injury was alone sufficient to cause death in ordinary course of nature. After discussing these materials on the record, learned trial court took a view that the oral account of the informant and rest of the witnesses with respect to inflicting firearm injury by Kishor Gope to deceased Ramavtar found support from the *post mortem* report as the corresponding injury was found on the left upper



thigh of the deceased. Some minor contradictions in this regard have been discarded. We are of the considered opinion that the learned trial court has rightly appreciated the evidences on this point.

42. We have also noticed that Sunita Kumari (PW-3) is the grand daughter of the informant who is the injured witness in this case. The learned trial court has taken note of the injuries found on the body of Sunita Kumari (PW-3) and Mahajani Devi (PW-4) which we reproduce hereunder for a ready reference:-

“Injury report of Sunita Kumari (PW-3)

I. Four small lacerated wound on left upper arm.

II. A small lacerated wound on left side of upper chest.

III. A small lacerated wound on left side of neck above clavicle,

The nature and cause of injuries could not be ascertained by the Doctor, that, whether it was caused by firearms or otherwise.

Injury report of Mahajani Devi (PW-4)

I. Lacerated wound on forearm of right hand $\frac{1}{2}$ ” x $\frac{1}{2}$ ” x $\frac{1}{2}$ ”

II. Lacerated wound around ankle joint $\frac{1}{2}$ ” x $\frac{1}{2}$ ” x $\frac{1}{4}$ ”

The nature of all injuries were simple and caused by hard and blunt substances.”

43. On going through the entire evidences available on the record, which have been discussed by the learned trial court, we are of the considered opinion that the prosecution witnesses who are giving the eye witness account of the occurrence, particularly, the informant and the injured witness (PW-3) have withstood the test of cross-examination. The defence is unable to



make any dent in the prosecution case. The delay in recording of the *fardbeyan* of the informant alone would not prove fatal to the prosecution case as the prosecution witnesses are credible witnesses, hence, the whole prosecution case cannot be thrown away only because the *fardbeyan* in this case has been lodged after eight hours. In this regard, the observations of the Hon'ble Supreme Court in the case of **Tara Singh** (supra) are recorded hereunder for a ready reference:-

“4. It is well settled that the delay in giving the FIR by itself cannot be a ground to doubt the prosecution case. Knowing the Indian conditions as they are we cannot expect these villagers to rush to the police station immediately after the occurrence. Human nature as it is, the kith and kin who have witnessed the occurrence cannot be expected to act mechanically with all the promptitude in giving the report to the police. At times being grief-stricken because of the calamity it may not immediately occur to them that they should give a report. After all it is but natural in these circumstances for them to take some time to go to the police station for giving the report. ...”

44. It is well settled by judicial pronouncements that the whole case is to be decided on the basis of broad probabilities which are apparent on the face of the materials available on the record. In the case of **Gopal Singh versus State of Bihar** reported in **1993 (1) PLJR 236**, the Hon'ble Division Bench of this Court has held that in the nature of the case, the same may be decided on broad probabilities.



45. In this case, after going through the deposition of the prosecution witnesses, the prosecution exhibits and the defence exhibits, this Court has no iota of doubt that the prosecution has been able to prove its case beyond all reasonable doubts. The learned trial court has not committed any error in appreciation of the evidences available on the record. We find no reason to interfere with the impugned judgment and order.

46. This appeal is dismissed.

47. Let a copy of this judgment along with the trial court’s record be sent down to learned trial court.

(Rajeev Ranjan Prasad, J)

(Sunil Dutta Mishra, J)

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