

Krishna Gope Vs. State of Bihar

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Court : Patna

Decided On : Apr-19-2002

Judge : M.L. Visa and B.K. Jha, JJ.

Appeal No. : Criminal Appeal No. 332 of 1987

Appellant : Krishna Gope

Respondent : State of Bihar

Disposition : Appeal Dismissed

Judgement :

B.K. Jha, J.

1. This appeal is directed against the order of conviction and sentence passed by the learned Additional Sessions Judge-II, Nalanda at Bihar Sharif under Section 302 of the Indian Penal Code.
2. The sole appellant Krishna Gope has been convicted and sentenced to undergo imprisonment for life with a fine of Rs. 2,000 for the offence under Section 302 of the Indian Penal Code. In case of default of payment of fine, he has further been directed to undergo imprisonment for one year.
3. The prosecution case is unfolded in the fardbayan (Ext. No. 4) of the deceased informant Sarjug Gope alias Rukha Gope. On 25.6.1984 at about 2 p.m. when the

accused Arbind Gope was getting the miller (jhallar) Crops grazed by his cow in the field of the informant Sarjug Gope alias Rukha Gope there was altercation between the informant and the accused Karoo Gope. Seeing the altercation in between them, the appellant Krishna Gope brought a country-made rifle from his house. Thereupon, the accused Arbind Gope and Karoo Gope surrounded the informant and the appellant Krishna Gope opened fire on the informant which hit in his abdomen and he fell down on the ground, It is further case of the prosecution that Banwari Gope, Ramchandra Gope, Devendra Gope and Ambika Gope sitting in the nearby Dalan witnessed the incident and rushed at the place of occurrence. The accused appellant fled away towards west direction making fire from his rifle. Thereafter, the informant was removed to Karaipersurai Dispensary by the villagers for treatment where his fardbayan (Ext. No. 4) was recorded by S.I. Vijay Kumar Sinha, P.W. 12. A formal FIR (Ext. No. 11) was drawn up and a case was instituted against the accused appellant under Sections 341/324/34/307 of the Indian Penal Code and Section 27 of the Arms Act. The informant Sarjug Gope alias Rukha Gope was removed from dispensary to the P.M.C.H. for better treatment but in the night of 25/26.6.1984 he breathed his last and so on the prayer of the police Section 302 of the I.P.C. was added in the FIR.

4. On the basis of the F.I.R. lodged, the investigation commenced immediately. On completion of investigation, the accused-appellants were charge-sheeted by P.W. 10, S.I. Girja Prasad Sharma under Sections 302/34 of the Indian Penal Code and under Section 27 of the Arms Act and were tried by the learned Additional Sessions Judge-II, Nalanda at Biharsharif.

5. The prosecution examined altogether 16 witnesses in support of his case while the defence examined none.

6. The accused-appellants denied the allegations and pleaded their innocence. Their further defence was that the deceased informant Sarjug Gope alias Rukha Gope being hardened criminal was murdered by his enemies but they were implicated falsely in this case due to enmity.

7. After considering the evidence of prosecution witnesses and other materials on record, the trial Judge convicted and sentenced the appellant Krishna Gope as

mentioned above. However, the learned Additional Sessions Judge acquitted the accused Arbind Gope and Karoo Gope. Hence, this appeal by Krishna Gope, the appellant.

8. We have heard Sri Devendra Kumar Sinha, Senior Advocate, learned Counsel for the appellant and Sri Lala Kailash Bihari, learned A.P.P. for the State.

9. We have also gone through the Judgment of the learned Additional Sessions Judge-II, Nalanda at Bihar Sharif and the record of the case.

10. The murder of the informant Sarjug Gope alias Rukha Gope is not challenged before us and has been proved by the evidence. The responsibility of the appellant, Krishna Gope for the murder of the deceased-informant Sarjug Gope alias Rukha Gope has only been challenged before us.

11. The learned Counsel appearing for the appellant has submitted that the prosecution, in the present case, has utterly failed to prove the occurrence and the manner of the occurrence. It has further been argued that the true picture of the case has not been brought before the Court. It has also been submitted that the fardbeyan was not recorded at the time and at the place as alleged by the prosecution.

The learned Counsel for the appellant further contended that the prosecution has utterly failed to prove and fix the actual place of occurrence. According to him, the second I.O., Girja Prasad Sharma (P.W. 10) during the investigation found the P.O. a ditch situated at a distance of 150 ft. south of the place of occurrence first fixed at by the first Investigating officer of this case, P.W. 12.

His last limb of the argument was that there was abnormal delay in sending the First Information Report from the police station to the Court. According to him the Hilsa Police Station is situated at a distance of 1 kms. from Karaipersurai but the First Information Report was received in the Court on 27.6.1984 after two days and the prosecution has failed to furnish the cogent explanation for this delay.

Now it appears necessary to scrutinize the evidence on the record to determine if the appellant, Krishna Gope was responsible for the murder of the deceased

informant, Sarjug Gope alias Rukha Gope.

12. As stated above, the prosecution has examined altogether 16 witnesses in support of its case. Out of them P.W. 5, Bhola Gope and P.W. 6 Banwari Gope are the eye-witnesses to the incident. P.W. 7 is Dr. Indrajit Prasad who first examined the injuries on the person of the deceased informant, Sarjug Gope alias Rukha Gope and P.W. 9 is a Dr. R.P. Srivastava who conducted post-mortem examination on his dead-body. P.W. 12, Vijay Kumar Sinha and P.W. 10, Girja Prasad Sharma both are the Investigating Officers of this case. P.W. 1 Devendra Gope, P.W. 2, Ambika Gope and P.W. 4, Ram Chandra Gope are the hostile witnesses. P.W. 3, Kamta Singh has been tendered by the prosecution, P.W. 8, Shyamanandan Gope, P.W. 11, Jagnandan Prasad, P.W. 13, Krishna Kumar Singh, P.W. 14, Ram Ratan Singh P.W. 15, Harshit Yadav and P.W. 16, Ramjatan Singh are the format witnesses and have proved the documents material Exts of the prosecution.

13. P.W. 7 is Dr. Indrajit Prasad. He has stated that on 25.6.1984 while he was posted as Medical Officer at Karai Parsurai State Dispensary, one Sarjug Gope was referred to him by the Officer Incharge of Karai Parsurai Police Station for examination of injury and treatment. He found the following injuries on his person:

(i) A circular wound over the abdomen left side of 2' in diameter of irregular margin blackish colour caused by fire arm such as rifle. The injury was grievous in nature.

(ii) About 20' in length the part of intestine was coming out through the opening lauging through the bound. It was grievous in nature.

He found the age of injuries within six hours from the time of examination. He proved the injury report (Ext. No. 1)

He has further stated that condition of the injured was serious, so he referred him to P.M.C.H. for better treatment.

In cross-examination, he has stated that injured came to his hospital in unconscious State and remained so till his removal to the P.M.C.H. for better treatment, so he could not be able to take his dying declaration.

He has further stated that the injured remained in the hospital only for about 15-20 minutes and was taken by the police.

He has further stated that blackening is caused when the fire-arm is discharged from the distance of three feet from the victim.

14. The injury report of the deceased informant Sarjug Gope alias Rukha Gope (Ext. No. 1) reveals that he was examined by this witness on 25.6.1984 at about 5.15 p.m. and found fire-arm injury in the left side of his abdomen. As per the prosecution version he sustained fire-arm injury on the same day at about 2 p.m.. Thus, the time elapsed between the injury sustained by the deceased-informant and the examination of the injury was about 3-15 hours and according to this witness it was within six hours.

15. P.W. 9 is the Dr. R.P. Srivastava. His evidence is that on 26.6.1984 while he was posted as Tutor in Forensic Medicine at P.M.C.H., Patna at about 11.15 p.m. he performed post-mortem examination on the dead body of Sarjug Gope. Rigor mortis was present on all over bodies and he found the following ante-mortem on injuries on his person:

(i) Oblique wound 1' x 1/2 x abdominal cavity deep with charred inverted margins in the left flank of abdomen (entry wound).

(ii) On the dissection 500 c.c. of blood and fecal matter in peritoneal cavity, loops of intestine perforated at places, right side of pelvic floor was pierced with circular hole. One elongated bullet was found lodged in the muscle tissue of right side of pelvis. It was taken out and preserved in a glass phial sealed and labelled and handed over to the constable accompanying the dead body after the post-mortem examination.

(iii) Injuries were caused by firearm fired from left to right side and slightly downward.

According to him the time elapsed since the death was within 24 hours and the cause of the death was haemorrhage and shock due to firearm injuries. He proved the post-mortem examination report (Ext. 3).

16. Although the prosecution examined 16 witnesses but its case primarily rests upon the evidence, of P.W. 5 and 6. P.W. 5 Bhola Gope has stated that on the alleged date of occurrence at about 2 p.m. while he was getting his buffalo grazed in the Ahra Mahal in the west of village, his nephew Ashok Kumar, came and informed him about quarreling in between Sarjug Gope, the informant and the accused Arvind Gope and Karu Gope. On receipt of the information, he left his she-buffalo there, rushed to the place of the occurrence and noticed the appellant Krishna Gope fleeing away after firing on his brother Sarjug Gope. He also saw other two co-accused, Arvind Gope and Karu Gope there and all of them managed to escape from there. Sarjug Gope had received injury in the left side of his abdomen and he was removed to Karaipersurai Hospital for treatment. He has further stated that on the same day at about 8 p.m. I.O. visited the P.O. and recorded his statement. He seized empty cartridge and jhalra and prepared seizure-list. He prepared the same in presence of him and Shyam Nandan Gope, Bhola Gope Ramchandra, Banwari Gope and Ambika Gope. Shyam Nandan Gope put his signature on the seizure-list and others their LTIs thereon. His further evidence is that the injured Sarjug Gope was removed to Patna Hospital and in course of treatment there he died. In cross-examination, his evidence is that Ara Mahal is situated at a distance of 20 to 25 bans from the village and the place of occurrence is at a distance of 2-3 bans in the west of the village. He has further stated that he had not heard the sound of firing at any time. Banwari Gope, Ambika, Ramchandra were present at the P.O. from before his arrival there. He denied the defence's suggestion that the occurrence as alleged by the prosecution never took place and his brother, deceased-informant, being a hardened criminal of the locality was murdered by his enemies.

17. P.W. 6 is Banwari Gopa His evidence is that on the alleged date of occurrence at about 2 p.m. while he was in the hut of Ramchandra he witnessed the occurrence. He saw that Sarjug Gope was quarrelling with the accused Karu Gope and Arvind Gope for getting his miller (Jhalra) crops grazed by the accused Arvind Gope. In the meantime, the appellant-Krishna Gope brought a country, made gun from his house, other two co-accused Arvind Gope and Karu Gope encircled Sarjug Gope and Krishna Gope fired at him which hit in the left side of his abdomen. The injured informant-Sarjug Gope was removed to Karaipersurai

hospital for treatment where the police cartie, recorded his fardbeyan and put his L.T.I. Thereon. From Karaipersurai hospital Sarjug Gope was sent to P.M.C.H., Patna where he died. The police came there, prepared inquest report of the dead body of Sarjug Gope and he put his I.T.I. Thereon. In cross-examination at Para 8 he has deposed that the hut in question stands situated at a distance of 25-30 steps in the north east of the place of the occurrence. At para 12 of cross-examination, his evidence is that all through the way the injured-infarmant Sarjug. Gope was talking. He has further stated that at first the injured was taken to the hospital for treatment where the I.O. came and recorded his statement as well as the statement of the injured Sarjug Gope. This witness also denied the defence's suggestion that the occurrence as alleged by the prosecution never took place and the injured informant-Sarjug Gope being veteran criminal was murdered by his enemies and the accused-appellants have falsely been dragged in this case.

18. P.W. 12, Vijay Kumar Sinha, is the 1st I.O. of this case. According to him, while he was posted as Officer Incharge at Karaipersurai Police Station on receipt of O.D. Slip (Court Ext. 1) dated 25.6.1984 he made Sanaha Entry No. 421 (Court Ext. 2) on the same day at 5.20 p.m. He went to the Saraipersurai Hospital and recorded the fardbeyan of the injured Sarjug Gope and he put his LTI thereon (Ext. 4). He has further stated that at the time of giving his statement the injured Sarjug Gope was in State of consciousness. He has further stated that the fardbeyan was recorded by Eraj Kishore Pandey, A.S.I., on his dictation on the basis of which a case under Sections 341, 324/34 and 307 of the I.P.C. and Section 27 of the Arms Act was registered and he switched over to the investigation. He recorded further statement of the injured Sarjug Gope and examined the injuries on his person. A blackish injury on the left side of his abdomen was found and the intestine was seen coming out of the injury. Thereafter, he issued the injuries slip to the Medical Officer of Karaipersurai hospital and sent for his treatment (Ext. 6). The injury slip was received by the Doctor on the same day, in Karainoersurai hospital at about 5.45 p.m. (Ext. 7). He also produced the original copy of the injury slip (Ext. 6/A). He recorded the statement of the witnesses Banwari Gope, Ram Chandra Gope, Bhola Gope, Devendra Gope and Ambika Gope and visited the P.O. land belonging to uncle of the informant Banwari Gope and found the Jhaire crops under the knee deep water without any from fling mark. He also found a bomboo

clump in the south of the P.O. land. He found one empty cartridge of 315 Bore, seized the same and prepared the seizure-list in presence of the witnesses, Bhola Gope and Ambika Gope (Ext. 8). At Para 6 of his evidence he has given the boundary of the P.O. land. He, further stated that then he visited the P.M.C.H. and learnt about the death of Sarjug Gope and prepared inquest report (Ext. 5) and sent requisition (Ext 9) to the Court of Sub-divisional Judicial Magistrate. Hilsa for addition of Section 302 of the I.P.C. in the F.I.R. Thereafter, he also recorded the statement of Jagnandan, witness of inquest report, and obtained post-mortem examination report. Consequent upon his transfer he made over charge to Girja Prasad Sharma P.W. 10. When the attention of this witness was drawn towards the statement given by Devendrs Gope, Ambika Gope and Ram Chandra Gope before him in course of investigation, he has clearly stated that all the three witnesses had stated before him about the firing by Krishna at Sarjug Gope and his death of the injuries received by him. All the three witnesses have supported the prosecution version before the I.O. but later on they retracted from their earlier statement made in course of evidence before the Court for the reasons best known to them.

19. P.W. 10, Girja Prasad Sharma, is the second I.O. of this case. His evidence is that on 13.8.1984 he took over the charge of the investigation of this case from the first I.O., Bijay Kumar Sinha (P.W. 12) of Karaipersurai police Station and interrogated the villagers of Karaipersurai village and learnt that there was a party politics in the village. The investigation was almost complete and he submitted charge-sheet against the accused appellant. In cross-examination of this witness, it has come that he visited the P.O. and found the place of occurrence at a distance of 150 ft. away in the south of the place of occurrence fixed by the first I.O. P.W. 12, Vijay Kumar Sinha.

On close examination of the evidence of P.W. 5, Bhola Gope, P.W. 6 Banwari Gope, it is apparent that P.W. 6 is the sole eye-witness to the incident. He has clearly stated that on the alleged date of occurrence at about 2 p.m. while he was in the hut of Ramchandra Gope he has witnessed the occurrence. He saw that Sarjug Gope was quarreling with the accused Karu Gope and Arvind Gope for getting his miller (jhalra) crops grazed by the accused Arvind Gope. In the meantime, the

appellant. Krishna Gope brought a country-made gun from his house, other two co-accused Arvind Gope and Karu Gope encircled Sarjug Gope and Krishna Gope fired at him which hit in the left side of his abdomen. The injured informant-Sarjug Gope was removed to Karaipersurai hospital for treatment where the police came, recorded his fardbeyan and put his L.T.I. Thereon. From Karaipersurai hospital Sarjug Gope was sent to P.M.C.H., Patna where he died.

20. The evidence of P.W. 5 appears to be corroborative of the evidence of P.W. 6, P.W. 5 has stated that on the alleged date of occurrence at about 2 p.m. while he was getting his buffalo grazed in the Ahra Mahal in the west of village, his nephew Ashok Kumar, came and informed him about quarrelling in between Sarjug Gope, the informant, and the accused Arvind Gope and Karu Gope. On receipt of the information he left his she buffalo there, rushed to the place of the occurrence and noticed the appellant Krishna Gope fleeing away after firing on his brother Sarjug Gope. He also saw other two co-accused, Arvind Gope and Karu Gope there and all of them managed to escape from there. Sarjug Gope had received injury in the left side of his abdomen and he was removed to Karaipersurai hospital for treatment. He has further stated that on the same day at about 8 p.m. I.O. visited the P.O. and recorded his statement.

21. P.W. 12, Vijay Kumar Sinha, the first I.O., has categorically stated that the informant Sarjug Gope was in full sense while making the fardbeyan before him. It appears from formal F.I.R. (Ext. 1) that the fardbeyan was recorded on 25.6.1984 at 5.30 p.m. and the F.I.R. was drawn up on the same day at about 9 p.m. It was sent to the Court on 26.6.1984 and was received in the Court on 27.6.1984, so there was delay of only one day in sending the F.I.R. from the police station to the Court which cannot be said to be abnormal delay.

22. Learned Counsel for the State placed reliance on a case : 1985 CriLJ511 State of U.P. v. Gokaran and Ors.

Where the steps in investigation by way of drawing inquest report and other panchanams started soon which could only follow the handing over of FIR, the delayed receipt of special report by District Magistrate would not enable the Court to dub the investigation as tainted one nor could FIR be regarded as ante timed

and antedated.

23. On the fixation of the place of occurrence, it may be stated that the first I.O. P.W. 12 visited the P.O. in the night of the same day and he has given full description of the P.O. land at Paras 5 and 6 of his evidence. It finds corroboration from the evidence of P.W. 5 Bhola Gope, P.W. 6 Banwari Gope and P.W. 8 Shyamnandan Gope. Witness Shyamanandan Gope, P.W. 8 has clearly stated that on the same day the Officer Incharge visited the P.O. and recovered one cartridge from the field of Jhalar crops and prepared seizure-list. He signed thereon (Ext. 2) and the witness Ambika Gope, Bhola Gope put their LTI thereon. P.W. 10 the second I.O. Girja Prasad Sharma also made inspection of place of occurrence and fixed the same at a quite different place other than the place of occurrence fixed by the first I.O. Vijay Kumar Sinha, P.W. 12. P.W. 10 inspected the P.O. after two months of the occurrence and the place of occurrence fixed by him finds corroboration from the statements of P.W. 1, P.W. 2 and P.W. 4 who have not supported the case of the prosecution and have been declared hostile. This being the position, taking altogether the evidence of the witnesses on the occurrence, coupled with the evidence of the I.O. Vijay Kumar Sinha in Paras 5 and 6 it can be said that the place of occurrence fixed by the first I.O. has been established by the prosecution.

24. The medical evidence of the Doctor R.P. Srivastava, P.W. 9 reflects that Sarjug Gope died due to infliction of fire-arm injury on his body.

25. The P.M. examination was held on 26.6.1984 at 11.15 a.m. and the occurrence took place on 25.6.1984 at 2 p.m., the time elapsed between the death and postmortem examination held was about 20 hours and according to the Doctor it was within 24 hours. Thus, the opinion of the Doctor is in consonance with the prosecution case.

26. On behalf of the appellant a lame plea has been taken that the deceased Sarjug Gope was a hardered criminal and was done to death by his enemies and the appellant has been dragged falsely in this case. The defence has not brought any cogent evidence either oral or abocumentary to show the criminal antecedents of the deceased informant Sarjug Gope.

26. Thus, the finding arrived at on the appreciation of the evidence by the Court below is, in our opinion, quite in accordance with law.

28. Considering the facts and circumstances of the case as well as the evidence on record we do not find any infirmity in the judgment of conviction and sentence of the Court below passed against the appellant. We, therefore, dismiss this appeal. His bail-bond is hereby cancelled and the appellant is hereby directed to surrender before the Court below to serve out the remaining period of sentence.

M.L. Visa, J.

I agree.

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