

Mahadev Gope, Jagdish Gope, Kalipado Gope and Mahendra Gope @ Manindra Gope Vs The State of Jharkhand

Court: Jharkhand High Court

Date of Decision: Sept. 17, 2013

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 107, 144
Penal Code, 1860 (IPC) â€” Section 147, 148, 149, 302, 313

Citation: (2013) 4 AJR 722 : (2013) 4 JLJR 373

Hon'ble Judges: Narendra Nath Tiwari, J; Dhrub Narayan Upadhyay, J

Bench: Division Bench

Advocate: A.K. Sahani and Ms. Amrita Banerjee, for the Appellant; T.N. Verma, Assistant Public Prosecutor for the State, for the Respondent

Final Decision: Dismissed

Judgement

Dhrub Narayan Upadhyay, J.

These criminal appeals have been directed against the judgment of conviction dated 16.04.2003 and

sentence dated 17.04.2003, passed by learned 3rd Additional Sessions Judge, Bokaro in connection with Sessions Trial No. 105 of 2000

whereby and whereunder the learned 3rd Additional Sessions Judge has held the appellants guilty for the offence punishable u/s 148 & 302 read

with 149 of the Indian Penal Code and sentenced them to undergo rigorous imprisonment for life for the offence punishable u/s 302 read with 149

of the Indian Penal Code and three years rigorous imprisonment u/s 148 of the Indian Penal Code and the sentences so passed were directed to

run concurrently. The prosecution case, as it appears from the fardbeyan of Bishu Gope, is that on 27.11.1999 in the morning at about 6.00 a.m.

the informant could learn that agnates of deceased Bhim Gope had assembled at the disputed field situated at Dhowa Tand in order to carry

harvested paddy. After receiving such information the informant along with Bhim Gope and Ashu Gope went to the place of occurrence to raise

objection against removal of paddy When they reached to the field, they found all the appellants having Farsa and Tangi in their hands and some of

their associates, who were unknown to the informant, were armed with bows and arrows. No sooner objection was raised, the appellant Mahadev

Gope ordered to kill them. Thereafter Kalipad Gope, Mahendra Gope, Mahadev Gope, Jagdish Gope, Dhundha Gope and Suka Gope inflicted

indiscriminate blows by means of the weapon which they were having in their hand and killed Ashu Gope in the field itself. Bhim Gope tried to

escape but could not succeed and he was restrained near the pond and he too was badly assaulted by the accused persons and lost his life. The

informant, who had been watching the incident from a distance, fled (away raising alarm. The fardbeyan of Bishu Gope was recorded on

27.11.1999 at about 8.00 a.m. in the village. On the basis of fardbeyan Pindrajora P.S. Case No. 76 of 1999 under Sections 147, 148, 149 and

302 of the Indian Penal Code against seven named accused including the appellants was registered. The police, after due investigation submitted

chargesheet against all the six appellants excluding one of the accused Suka Gope. Learned C.J.M. took cognizance and the case of the appellants

was committed to the Court of Sessions and registered as S.T. Case No. 105 of 2000. The charges u/s 147, 148 and 302 /149 were framed on

28th July, 2000. Since the appellants denied the charges, the trial proceeded.

2. Prosecution has examined altogether 12 witnesses to substantiate the charges framed against the appellants whereas the appellants have also

examined two witnesses in their defence.

3. Learned Sessions Judge, at the conclusion of the trial, held the appellants guilty for the offence punishable u/s 148 and 302 /149 of the Indian

Penal Code and sentenced them as aforesaid.

4. Appellants have assailed the impugned judgment of conviction and sentence mainly on the ground that the informant is not an eye witness and he

has not seen the entire incident. According to him, after the incident he went to the police station and lodged information but no such information is

available on record rather a fardbeyan recorded by police at about 8.00 a.m., that too in the village, is the basis on which the case was registered.

There are vital contradictions in the statement of so-called eye witnesses PW-1, PW-2 and PW-7. As per the deposition of PW-2 Durga Gope

no other eye witness was present at the scene of occurrence at the relevant point of time. If the statement of PW-2 Durga Gope is taken to be

true, PW-1 Subhash Gope and PW-7 Bishu Gope had not seen the incident. The informant has not named any of the eye witness in his fardbeyan.

According to fardbeyan Madhu Sudan Gope and Sadhu Gope had witnessed the occurrence but Madhu Sudan Gope has not been examined

whereas Sadhu Gope has been declared hostile. Most of the witnesses are closely related to the deceased and they are highly interested witnesses.

There are vital contradictions in the deposition of so (called eye witnesses PW-1, PW-2 and PW-7. Land dispute prevailing between the parties is

admitted case of the prosecution. The informant has named these appellants and one Suka Gope but the police did not find involvement of Suka

Gope and submitted final form which indicates false implication of the person not involved and therefore the F.I.R. is not reliable piece of evidence.

The Investigating Officer, though recorded fardbeyan of appellant Mahendra Gope and also issued requisition for medical examination as

Mahendra Gope and Kalipad Gope were having injuries on their person, but did not investigate into the matter for the reason best known to him.

The injuries appearing on the person of appellant Kalipad Gope and Mahendra Gope have not been explained by the informant in the fardbeyan.

The weapon seized were not sent for its chemical examination. PW-10 Harin Gope, PW-11 Rohini Gope and PW-12 Haradhan Gope have not

supported the prosecution case. It was also argued that the appellants had examined two defence witnesses and out of them DW-2 Govind Gope

has produced sale deed which has been marked exhibit-A series. This sale deed indicates that the land from where paddy crop was harvested,

belongs to the appellants. The presence of appellants in their field was quite natural whereas presence of deceased indicates that they had been to

the place to create violence. On the basis of evidence on record it cannot be said that all the appellants were having common object to commit

murder of deceased Ashu Gope and Bhim Gope. So far appellant Newa Gope and Dhundha Gope are concerned, no overt act is alleged against

them and therefore they cannot be held guilty for the offence punishable u/s 302 with the aid of Section 149 of the Indian Penal Code. The learned

Sessions Judge has committed gross error by not appreciating all the points raised above and therefore, the impugned judgment is required to be

set aside and the appellants are liable to be acquitted.

5. On the other hand, learned counsel appearing for the State has opposed the argument and submitted that evidence of PW-1, PW-2 and PW-7

are consistent and they have explained the manner in which the incident took place and the deceased were killed. In such type of occurrence minor

contradictions is always expected and on the basis of (such contradictions the entire prosecution case should not be thrown away. The

investigation was properly done and the I.O. PW-8 had given all the details of the investigation done by him. The weapon used for committing the

offence have been seized on the basis of confession made by appellant Kalipad Gope from the house of appellant Mahadev Gope. Only because

the witnesses are related to the deceased, they cannot be considered as interested witnesses and their evidence cannot be discarded if it is

otherwise reliable, credible and trustworthy. The evidence on record, particularly, evidence of PW-8 indicates that proceeding u/s. 144 Cr.P.C.

was initiated on the disputed land but even then the appellants had assembled to remove the harvested paddy and they were armed with deadly

weapons like Farsa, Tangi, bows and arrows. As soon as the deceased appeared, they were assaulted by the appellants and were killed. The

preparation made by the accused persons and the overt act committed by them is sufficient to prove that they were members of unlawful assembly

and they had been to the place to commit offence of murder in prosecution of their common object. The case of the prosecution is well proved and

learned Sessions Judge has rightly recorded the judgment of conviction and sentence and the findings need no interference. There is no merit in

these appeals and the same is liable to be dismissed.

6. Having heard the rival arguments and also after perusing the judgment, evidences on record and the documents which have been marked

exhibits, we find that the appellants mainly challenged the impugned judgment on the following grounds:-

(i) that the eye witnesses are related and highly interested,

(ii) the informant is not an eye witness,

(iii) the name of so called two eye witnesses PW-1 and PW-2 is not disclosed in the fardbeyan,

(iv) the fardbeyan (exhibit-2) is not reliable piece of evidence,

(v) the eye witness namely Sadhu Gope, whose name find place in the fardbeyan, has not supported the prosecution case,

(vi) the I.O. has admitted that he had seen injuries on the person of Mahendra Gope and Kalipado Gope and recorded fardbeyan of Mahendra

Gope, but has not investigated into the matter and the injuries appearing on the person of appellant Mahendra Gope and Kalipado Gope were not

explained by the informant.

7. We are commencing the discussion on the points raised by the counsel appearing for the appellants in chronological manner. In this context

Hon"ble Apex Court has a number of times given guidelines about the precaution the Court shall take in considering evidence of related/interested

witnesses. It was held, only because the witness is related either to the deceased or informant, his testimony, if it is otherwise reliable, trustworthy

and inspire confidence, should not be discarded. In Ashok Kumar Chaudhary and Others Vs. State of Bihar, Hon"ble Apex Court has held as

under:-

8. Insofar as the question of creditworthiness of the evidence of relatives of the victim is concerned, it is well settled that though the court has to

scrutinise such evidence with greater care and caution but such evidence cannot be discarded on the sole ground of their interest in the prosecution.

The relationship per se does not affect the credibility of a witness. Merely because a witness happens to be a relative of the victim of the crime,

he/she cannot be characterised as an "interested" witness. It is trite that the term "interested" postulates that the person concerned has some direct

or indirect interest in seeing that the accused is somehow or the other convicted either because he had some animus with the accused or for some

other oblique motive.

12. Very recently in *Namdeo v. State of Maharashtra*, one of us (C.K. Thakker, J) has said that a close relative cannot be characterised as an

interested" witness. He is a natural witness. His evidence, however, must be scrutinised carefully. If on such scrutiny, his evidence is found to be

intrinsically reliable, inherently probable and wholly trustworthy, conviction can be based on the "sole" testimony of such witness. Close relationship

of witness with the deceased or victim is no ground to reject his evidence on the contrary, close relative of the deceased would normally be most

reluctant to spare the real culprit and falsely implicate an innocent one.

8. In the above perspective, we have examined the evidence of PW-7 who is the informant and also brother of one of the deceased Ashu Gope. It

is admitted case of the prosecution that deceased Bhim Gope and the (appellants in Criminal Appeal (DB) No. 1088 of 2012 are agnates and they

were having land dispute and proceeding u/s. 144 Cr.P.C. with regard to the disputed land between them was also initiated. As per the evidence

of I.O. PW-8 proceeding u/s. 107 Cr.P.C. was also prevailing. The informant has stated that on 27.11.1999 in the morning at 6.15 a.m. he was

informed that the appellants have assembled at the disputed field in order to remove harvested paddy. Thereafter the informant along with

deceased Bhim Gope and Ashu Gope went to the place of occurrence where Bhim Gope and Ashu Gope raised objection against removal of

paddy. No sooner they raised objection, appellant Mahadev Gope ordered to kill them. Thereafter Mahadev Gope, Mahendra Gope, Jagdish

Gope, Kalipado Gope by means of Farsa and Dhundha Gope by means of Tangi inflicted indiscriminate blows to Ashu Gope as a result he died at

the spot. Bhim Gope tried to escape but he was chased by Nebu Gope and Suka Gope who restrained him with the help of bows and arrows

whereafter accused Mahadev Gope, Kalipado Gope, Jagdish Gope and Mahendra Gope reached to the place and killed Bhim Gope by causing

injury by means of Farsa and Bhim Gope also died. Seeing the situation the informant, by raising alarm, ran from the place of occurrence. It is also

stated that on hulla Sadhu Gope PW-3, Durga Gope-PW-2, Subhash Gope PW-1 and some more persons reached to the place. The informant

went to the police station and reported the matter. The statement was recorded by S.I. Sri K.N. Ram on which he put his L.T.I. and the fardbeyan

has been proved as exhibit-2.

9. Now the question arises that only because the informant is brother of one of the deceased Ashu Gope and another deceased Bhim Gope is also

his cousin, his testimony can be discarded? It has come in the evidence that Bhim Gope and accused Kalipado Gope and others are agnates and

they have been claiming their right, title and possession over the disputed land. In a case in which agnates are fighting for their right, title, interest

and possession over the land in dispute to which they had inherited from their ancestors, if any occurrence of assault takes place, presence of

relatives is quite natural and if they appear as a witness to support the incident and give true picture of the incident which is not (influenced from any

corner, that evidence cannot be discarded only on the ground that they are relatives to the aggrieved. It has come in the evidence that Bhim Gope

was residing in the village with the family of informant from before the incident and he was having claim over the land in dispute. Therefore, arrival

of Bhim Gope (deceased) along with his cousin Ashu Gope (deceased) and informant Bishu Gope to the place of occurrence was quite natural.

The testimony of PW-7 has also been challenged on the ground that he is said to have lodged information at the police station itself but PW-8, the

I.O. says that fardbeyan of informant was recorded at the village itself. PW-8 has stated that he had been to the village after receiving rumour

about the murder and the information was entered as S.D.E. No. 503 dated 27.11.1999 and to verify the information he went there. We do find

such contradiction in respect of recording of fardbeyan of PW-7 which put a question whether this contradiction in respect of place of recording of

fardbeyan is sufficient to falsify the deposition of an eye witness whose brothers have been killed in the incident? Anyone can judge the palpitation,

nervousness and the state of mind of a person who had seen his two brothers being murdered in his presence. PW-7 has stated that he knows to

sign and he is little literate but he was so perplexed after seeing the incident that he was not in a position to put his signature even and therefore he

had given his L.T.I. on his fardbeyan.

10. The next point which has come to our mind is that whether this contradiction has caused any prejudice to the appellant in making their defence

or there was occasion for the informant to manipulate the institution of F.I.R. in any manner or any exaggeration of the incident was appearing in

the statement. We do not find that the informant had availed opportunity either to make exaggeration in the statement or to manipulate the

institution of F.I.R. As per the evidence available on record the occurrence took place between 6.30 to 7.00 a.m. According to PW-8 he received

rumour about the incident at about 7.30 and proceeded to the place of occurrence and after reaching over there, recorded the fardbeyan of

informant at 8.00 a.m. We find that in quick succession these events had taken place and therefore, we feel no hesitation to hold (that in such

circumstances there was no chance of any manipulation in institution of the F.I.R. or the informant got opportunity to exaggerate the incident. Only

by making a submission that the statement which the informant had given at the police station was suppressed is not sufficient to justify that

prejudice has been caused to the appellants.

11. The evidence of PW-1, PW-2 and PW-7 gives a picture which shows the aggressiveness of the appellants that how they inflicted

indiscriminate blows by means of Farsa and Tangi and brutally killed Ashu Gope who was having as many as twenty seven cut and lacerated

wound on his person as per post mortem report. This can well be visualised from the evidence available on record. The appellants did not stop the

brutal assault even after killing Ashu Gope and to satisfy their thirst of blood, they targeted Bhim Gope who tried to escape but could not succeed

and restrained by the other accused who were armed with bows and arrows The appellants namely Mahadeo, Jagdish, Kalipado and Mahendra

immediately reached there and killed Bhim Gope too by causing injuries by means of Farsa. In such a panicky situation it was not expected that the

witness present at the scene of occurrence would notice presence of other witnesses who had been witnessing the occurrence. We are also of the

opinion that names of each and every witness is not required to be disclosed in the First Information Report. If the names of witnesses are not

appearing in the F.I.R. that does not mean that every person who had witnessed the occurrence was not present at the place of occurrence at the

relevant point of time. It is needless to say that First Information Report is not encyclopaedia of the occurrence rather it is the brief substance of the

occurrence which the informant could notice and reproduce the same before the police. It is settled law that each and every minor details are not

expected to be incorporated in the First Information Report and if it is not done so, the F.I.R. cannot be viewed with doubt. In Animireddy

Venkata Ramana and Others Vs. Public Prosecutor, H.C. of A.P., Hon"ble Apex Court has held as under:-

In the first information report all the accused persons were named and overt acts on their part were also stated at some length. Each and every

detail of the incident was not necessary to be stated. A first information report is not meant to be encyclopedic. While considering the effect of

some omissions in the first information report on the part of the informant, a court cannot fail to take into consideration the probable physical and

mental condition of the first informant. One of the important factors which may weigh with the court is as to whether there was a possibility of false

implication of the appellants. Only with a view to test the veracity of the correctness of the contents of the report, the court applies certain well-

known principles of caution. Once, however, a first information report is found to be truthful, only because names of some accused persons have

been mentioned, against whom the prosecution was not able to establish its case, the entire prosecution case would not be thrown away only on

the basis thereof.

12. In the discussions made above, we have already observed that the incident took place between 6.30 to 7.00 a.m. and according to PW-7

after the incident he rushed to the police station and reported the matter which was recorded by the police on which he had given his L.T.I. but,

according to PW-8 he had reached to the village after receiving rumour about the incident and recorded the fardbeyan of PW-7 at about 8.00

a.m. in the village itself. So there appears discrepancy as to which was the place where the fardbeyan of informant was recorded? The

circumstances in which the murder of two persons in the morning hour had taken place, has been explained by the witnesses which we have

discussed above. The informant has also deposed that he was so perplexed after seeing the incident that he was not in a position to put his

signature on his statement and he had given his L.T.I. In the aforesaid circumstances, we do not find that prejudice has been caused to the

appellants in making their defence. Once the statement of PW-7 is accepted to be credible, this contradiction would not come in the way on

relying upon the prosecution story which stood supported by other two eye witnesses on material point. In such type of attack, in the nature of

things, some omissions and discrepancies are bound to occur. In this context the judgment reported in Subal Ghorai and Others Vs. State of West

Bengal, (para 27 to 39) has been relied upon.

13. PW-1 Subhash Gope has corroborated the evidence of informant PW-7. He has stated that at the time of incident he was present in his field

which is situated just beside the disputed field. This witness has (named all the appellants who had killed Ashu Gope by causing injury to him by

means of Farsa. Another deceased Bhim Gope who was also present, tried to escape but he was chased and restrained by Nebu Gope and other

accused persons who were having bows and arrows in their hands. Within no time appellants Mahadev Gope, Manindra Gope, Kalipado Gope

and Jagdish Gope reached there and killed Bhim Gope too. Again the counsel appearing for the appellants tried to connect this witness with the

informant and deceased and he was cross-examined on this point. The defence has also raised a question that except this witness nobody else had

seen the occurrence and therefore, the informant is not an eye witness. In this context we have already discussed in preceding paragraphs that

witnessing the presence of witnesses at the scene of occurrence is not essentially to be disclosed by each and every witness. The informant, in his

cross-examination in para-31 of his deposition, has clearly stated that Subhash Gope, PW-1 was standing at a distance of 20 steps at the relevant

point of time. This witness was put to the test of cross examination and nothing important has come in his cross-examination to dent the

prosecution case. Durga Gope PW-2 is a witness who was present near the pond and he had gone to answer the call of nature at the relevant

point of time. He has seen the appellants Mahadev Gope, Jagdish Gope, Kalipado Gope, Manindra Gope and Dhundha Gope along with others

and he has also described the weapons which they had been holding. The genesis of the occurrence also finds support from the evidence of this

witness. He has corroborated that Ashu Gope was killed in the field itself whereas Bhim Gope ran towards the pond to save himself but he was

chased by appellant Nebu Gope and others who were having bows and arrows in their hand. He was restrained by the accused persons

whereafter former accused Jagdish Gope, Mahadev Gope, Kalipado Gope, Manindra Gope and Dhundha Gope reached to the place and killed

Bhim Gope too. This witness, in para-2 of his deposition, has named Sadhu Gope (PW-3) and Subhash Gope (PW-1) who had witnessed the

occurrence. At this juncture, we feel desirable to indicate that this witness has proved the presence of PW-1 Subhash Gope. The name of witness

Sadhu Gope (PW-3) was also disclosed by the informant (in the fardbeyan itself but Sadhu Gope who has been examined as PW-3 has turned

hostile on the point of allegation levelled against the appellants but he has stated that at about 6.00 a.m. he had gone towards pond side to answer

the call of nature. He heard hulla from the side of Dhowa Tand. He went there and saw many persons present there. He had seen dead bodies of

Bhim Gope and Ashu Gope and he has further indicated the location of dead bodies of Bhim Gope and Ashu Gope. He has confirmed this fact

that dead body of Ashu Gope was lying within the disputed field whereas dead body of Bhim Gope was lying near the pond. It is experienced that

in such incident some of the witnesses usually try to become neutral while deposing in Court and they do not want to invite enmity with the accused

persons.

14. Now coming to the evidence of Investigating Officer PW-8. We find that he has examined both the place of occurrences just after recording

the fardbeyan. The description of the place of occurrence where the dead bodies were lying supports the ocular evidence disclosed by PW-7. The

sign of scuffle and number of footprints within the disputed field as well as near the pond were noticed by the I.O. in the course of P.O. inspection

(para-4 and 5). Immediately inquest report was prepared which has been duly proved in Court by the I.O. The evidence of PW-8 (Para-7) is very

important. It was deposed that after receiving secret information that appellants Manindra Gope and Kalipado Gope have created self-inflicted

injury in order to lodge case against the deceased and others and they are present near the bus stand he rushed to the place and arrested them.

The confession of appellant Kalipado Gope (exhibit-7) was recorded at about 11.30 a.m. on 27.11.1999. On the basis of that confession some of

the weapons used for commission of the offence were also recovered for which seizure list (exhibit-6/1) was prepared. In para-10 the I.O. has

also given detail about the dispute prevailing between the parties. The I.O. was fair enough and he has filed chargesheet in which accused Suka

Gope was shown as not sent up for trial because he did not find evidence against him. In his cross-examination in para-27 the I.O. has confirmed

this fact that on the date of incident itself he had recorded the statement of Subhash Gope PW-1 who (was present at the place of occurrence. The

I.O. has made it clear that injuries on the person of Manindra Gope and Kalipado Gope were self-inflicted and therefore, if these injuries were not

explained by the informant, his presence or evidence should not be doubted because those two appellants had not sustained injuries in the incident.

Furthermore, these two appellants have also not admitted this fact in their statement recorded u/s. 313 Cr.P.C. nor they had adduced evidence on

this aspect. We do not find any material contradiction in the statement of I.O. He has left no lacunae in the investigation which would become fatal

to the prosecution case. In a case where eye witnesses are present, non-sending of seized weapons allegedly used for commission of the offence to

the F.S.L. for its chemical examination is not sufficient to disbelieve the prosecution story. The doctor who had conducted autopsy on the dead

bodies of Ashu Gope and Bhim Gope has been examined as PW-9 and he has proved the post mortem reports as exhibit-10 and 10/A. The ante

mortem cut and lacerated wound which were 27 in number appearing on the body of deceased Ashu Gope not only corroborate the ocular

evidence brought on record by PW-1, PW-2 and PW-7 but this also suggest as to how brutally Ashu Gope was killed. The injuries caused to

another deceased Bhim Gope on his head were fatal. In view of the discussions made above, we find that the evidence of informant PW-7 stands

corroborated by the evidence of other two eye witnesses i.e. PW-1 and PW-2. The manner of occurrence, as described by aforesaid eye

witnesses and the injuries sustained find support from the post mortem reports exhibit 10 and exhibit 10-A and the evidence of PW-9. The places

of occurrence have well been proved by the I.O. and recovery of weapon used for commission of the offence just after the incident is also

incriminating circumstances against the appellants. We do not find any merit in these appeals and accordingly, the same are dismissed.