(2014) 4 AJR 298 : (2014) 4 JLJR 165

Jharkhand High Court

Case No: Criminal Jail Appeal (D.B.) No. 574 of 2003

Antu Gope	APPELLANT
Vs	
State of Jharkhand	RESPONDENT

Date of Decision: July 10, 2014

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 157, 161
- Penal Code, 1860 (IPC) - Section 302

Citation: (2014) 4 AJR 298 : (2014) 4 JLJR 165

Hon'ble Judges: Dhirubhai Naranbhai Patel, J; Amitav Kumar Gupta, J

Bench: Division Bench

Advocate: Amrita Banerjee, Advocate for the Appellant

Judgement

@JUDGMENTTAG-ORDER

Dhirubhai Naranbhai Patel, J.
When this appeal is called out today for final hearing, nobody appeared on behalf of the appellant. Counsel for the appellant, who was appointed by this court as Amicus Curiae, is absent. We, therefore, appoint Ms. Amrita Banerjee, who is in the panel of Jharkhand State Legal Services Authority, as Amicus Curiae, Ms. Banerjee has accepted this matter and argued out the case at length.

2. This criminal appeal has been preferred against the judgment and order of conviction and sentence dated 21st January, 2003 and 22nd January, 2003 respectively, passed by the Sessions Judge, Singhbhum West at Chaibasa in Sessions Trial No. 49 of 1998. This appellant has been convicted and sentenced to life imprisonment for the offence punishable under Section 302 I.P.C.

3. It is the case of the prosecution that on 28th July, 1997 informant Krishna Chandra Tamsoy (P.W. 3) gave written report to police that on 28.07.1997 at 9 A.M. informant"s

younger brother Rajesh Chandra Tamsoy (deceased) was constructing Merh in his field. In the meantime his co-villager Antu Gope (accused) came there and after sitting on the Merh he started talking with Rajesh Chandra Tamsoy in the paddy field and during the talk he assaulted Rajesh Chandra Tamsoy with Chhura and gave about 10 blow of Chhura in stomach, chest, hand, thigh and in back portion of body due to which he was badly injured and died at the place of the occurrence (in paddy field). The informant further alleged that due to Hulla of Bacchao-Bacchao raised by his younger brother, the informant with his co-villagers ran towards the place of occurrence and after seeing them, Antu Gope fled away towards jungle and when he reached near his brother at paddy field, at that time he was dead.

4. Details regarding seven witnesses examined by the prosecution in a tabular chart.

5. It is submitted by counsel for the appellant that the prosecution has failed to prove the offence committed by this appellant beyond reasonable doubt.

The so-called eye witness P.W. 3, the informant, is not an eye witness to the incident at all. Though on perusal of the First Information Report, which was lodged by P.W. 3, it appears that P.W. 3 is an eye witness, but, looking to cross examination of P.W. 3, it appears that he reached the place of occurrence 10 minutes after the occurrence. This witness has also stated that one Diwakar Gope is an eye witness and he was ploughing the field nearby. The reference of Diwakar was also given in his examination-in-chief. It appears that the police has neither recorded the statement of this Diwakar Gope-eye witness nor he was named as a prosecution witness in the chargesheet. In fact, this person, namely Diwakar was never examined by the prosecution in this case. It is further submitted by the counsel for the appellant that the very same Diwakar is also referred to by P.W. 5. As per P.W. 5, Diwakar is an eye witness and that upon information of this Diwakar, P.W. 5 came to know about the murder of the deceased committed by this appellant P.W. 5 then informed P.W. 4. Thus, the witnesses examined by the prosecution, are hearsay witnesses and in fact, Diwakar the actual eye witness, has not been examined by the prosecution. Thus, star witness in this case has not come before the court. It is further submitted by counsel for the appellant that as per P.W. 3, who is the informant, one Arjun Tamsoy (P.W. 7) is also an eye witness, but said Arjun Tamsoy has not supported the case of the prosecution and he has been declared hostile. Thus, prosecution has failed to prove the offence committed by this appellant beyond reasonable doubt.

It is submitted by counsel appearing for the appellant that so called bloodstained weapon recovered by the Investigating Officer has not been sent to Forensic Science Laboratory and no report from the Forensic Science Laboratory is ever placed on record of the Sessions trial. This weapon has not been produced before the court Similarly,

bloodstained earth has neither been given any Exhibit number nor there is any Forensic Science Laboratory report of this blood stained earth recovered by the Investigating Officer. Thus, there is no cogent and convincing evidence before the trial court to prove the offence committed by the deceased beyond reasonable doubt This aspect of the matter has not been properly appreciated by the trial court and hence judgment and order passed by the Sessions Judge deserves to be set aside.

It is further submitted by counsel for the appellant that the First Information Report is dated 28th July, 1997. Looking to the calendar of that year, it was a Monday. It has reached the Magistrate on 31st July, 1997. There is no explanation worth a mention in the deposition of the Investigating Officer (P.W. 6) regarding this delay. Whenever there is unexplained delay in sending the F.I.R. to the Magistrate, there is every chance of false implication. This aspect of the matter has also not been properly appreciated by the learned trial court.

6. We have heard counsel for the State A.P.P., who has submitted that immediate is the F.I.R. in this case and the same was sent to the Magistrate. The case is based upon eye witnesses P.W. 3, P.W. 4 and P.W. 5. They have clearly stated that they have seen this appellant accused running away from the place of occurrence after committing the murder. This aspect of the matter have been properly appreciated by the trial court. As per F.I.R. there are 10 stab wounds given by the appellant accused. Thus, enough mens rea is present for the accused and hence he is rightly punished for committing murder of the deceased. F.I.R., Inquest Panchnama has also been proved by the prosecution. P.W. 1 Dr. Arun Kumar has proved the post mortem report, wherein it has been stated that there are several stab injuries on the body of the deceased. Thus, ocular and medical evidence are in consonance with each other and they are corroborative. Therefore, this appeal may not be entertained by this court.

7. Having heard the counsel for both sides and looking to the evidences on record, it appears that P.W. 3 is the informant, who has given information in writing to Manjhari Police Station situated in District West Singbhum on 28th July, 1997 that while this appellant and brother of the informant were in the field, this appellant has inflicted 10 stab injuries upon the brother of the informant and upon alarm when the informant reached the place of occurrence, he saw this appellant running away after committing murder towards jungle and when he reached the place of occurrence, his brother expired. This witness has also stated that other co-villagers had also reached the place of occurrence and they have also seen this appellant running away. Thus, looking to the record, it appears that P.W. 3 is a material witness and he has seen the occurrence as per F.I.R. Looking to his examination-in-chief and cross examination closely, as he is brother of the deceased, it appears that P.W. 3, in para 1 of his examination-in-chief, stated that Diwakar Gope and Arjun Tamsoy were also at the place of occurrence. Arjun Tamsoy (P.W. 7) has turned hostile. So far as Diwakar is concerned, police has neither recorded the statement of Diwakar, who is an eye witness, nor this Diwakar has been cited as prosecution witness in the charge-sheet. Further, looking to the cross examination of P.W. 3, it appears that

again he has referred to the same eye witness Diwakar in his cross examination and it has also been stated in the cross examination that upon hearing alarm he reached the place of occurrence approximately within 10 minutes. He has further stated in cross-examination that he has seen this appellant while running away. Thus, looking to the cross examination of this witness it appears that he has not seen the occurrence of murder committed by this appellant. There is a falsehood in narration of the F.I.R. that he has seen appellant committing murder. Moreover, Diwakar is a material eye witness, but, his statement has neither been recorded by the investigating officer nor he has been examined as a prosecution witness and this witness (P.W. 3) has reached the place of occurrence after 10 minutes. Thus, looking to the over all deposition of witness P.W. 3 before the learned trial court, it appears that when this witness reached the place of occurrence after 10 minutes of the occurrence, it is not possible that accused remained present there till then and no sooner did this witness reach the spot on 11th minute, the accused ran away. Looking to the flow of deposition given by this P.W. 3, read with deposition of P.W. 7 and P.W. 1, it appears that P.W. 3 is not an eye witness at all and looking to the material improvement and material omission in his deposition, he is an untrustworthy and unreliable witness. This aspect of the matter has not been property appreciated by the learned trial court.

8. Looking to the deposition of P.W. 4, it appears that he has proved inquest Panchnama (Ext. 4 and Ext. 4/1) and the Seizure List (Ext. 4/2 and 4/3). This witness is also an hearsay witness. Looking to the deposition given by P.W. 4, it appears that he has stated in paragraph No. 1 of his deposition that P.W. 5-Dhaneshwar Tamsoy has informed this witness (P.W. 4) that appellant has committed murder of deceased Rajesh Chandra Tamsoy. Thus, it appears that P.W. 4 is a hear say witness and he has not proved the offence of murder committed by this appellant beyond reasonable doubt. So far as seizure list is concerned, neither the bloodstained earth nor the bloodstained weapon have been given Exhibit numbers. These items were neither produced before the learned trial court nor were sent to the Forensic Science Laboratory. Further, no Forensic Science Laboratory report is brought on record and thus Ext. 4/2 and 4/3 are absolutely useless. We fail to appreciate the case of the prosecution that there was true and genuine seizure of these two items because if such was the case, they ought to have been produced before the learned trial court along with the Forensic Science Laboratory Report.

9. In the State of Jharkhand seldom this type of terns are sent to the Forensic Science Laboratory and seldom such reports are produced before the learned trial court and in rarest of rare cases blood group of the deceased is matched with group of the blood found upon this type of articles seized and this case is not an exception. Routinely police officials are failing to discharge their duties. They never send such items for Forensic Science Laboratory and the related reports are never brought on record. It is high time that Police Training Centre. Hazaribag and Shri Krishna Institute of Public Administration take proper steps to make the Investigating officers and the A.P.Ps. understand that the seized articles have their own importance and should be treated as such.

10. We therefore, direct that a copy of this Judgment shall be sent to the Principal, Police Training Centre, Hazaribag as well as to the Director, Shri Krishna Institute of Public Administration to point out to both the police officials and the A.P.Ps. the importance of sending the seized articles for Forensic Science Laboratory Report. Otherwise there is no purpose of preparing seizure list, particularly in the murder cases. Lethargic approach of the Investigating Officers must now be dealt with firmly. It appears that the Investigating Officers are never issued Notice by the State as per the decision rendered by the Hon''ble Supreme Court in the case of State of Gujarat Vs. Kishanbhai etc., whenever such type of failure occurs on their part and therefore, they must be served Notice by the Secretary. Home Department and Director General of Police.

11. In this case, we, hereby, direct the Secretary. Home, Govt. of Jharkhand/Director General of Police to issue Notice upon the concerned Investigating Officer about his lethargic approach in this case mainly on the points noted as under:

(i) Why the statement of Diwakar Gope was not recorded under section 161 Cr.P.C.

(ii) Why the seized articles were not sent to Forensic Science Laboratory for the F.S.L. Report for the purpose of placing it before the trial court.

(iii) Why the seized articles were not produced before the trial court during trial.

12. Whenever there is an eve witnesses to the incident in question and if his statement is not recorded and if he is not examined as a prosecution witness and when several prosecution witnesses are referring to the same eve witness before the learned trial court, it is fatal to the prosecution case if this particular eve witness is not examined. Therefore, in such a circumstance. Investigating Officer must state in his deposition as to why and under what circumstances he has not recorded the statement of the eye witness. In the facts of the present case, P.W. 6. who is investigating officer of the case, has not explained why the statement of Diwakar Gope has not been recorded by him.

13. Duty of the court: It was also the duty of the learned trial court to issue summons upon the eye witness, who is referred to by the other prosecution witnesses. Frequently the prosecution witnesses have referred to one Diwakar Gope as an eye witness. It goes without saying that the role of the trial court is not of an silent spectator and in the present case. It was the duty of the trial court to issue summons upon this Diwakar Gope even though he is not referred to as a prosecution witness in the chargesheet Error on the part of the Investigating Officer and on the part of the A.P.P. could have been rectified by the learned trial court. A Court should take utmost care so that on one hand no innocent person is punished and on the other no culprit may go scot-free. Whenever prosecution witnesses are referring consistently to someone as an eye witness and when he is the only eye witness to a murder, it was the prime duty of the trial court to examine this witness.

Now the occurrence in question is of the year July. 1997 and since 17 years have already lapsed, we are not inclined to record the evidence of this Diwakar Gope in the High Court, though it is permitted under the provisions of the Code of Criminal Procedure. Further, taking into consideration the ocular evidence of this case and also looking to the fact that this appellant is in custody since 1997, we are not inclined to take evidence of the eye witness, though it is permissible under the Code of Criminal Procedure.

14. Looking to the deposition of P.W. 4, as stated above, it appears that he is a hearsay witness. He was informed about the incident by P.W. 5. On perusal of the deposition of P.W. 5, it appears that he has stated before the trial court that he was informed by Diwakar Gope that this appellant has committed murder of the deceased. Therefore, P.W. 5 is also a hearsay witness. Thus, P.W. 4 and P.W. 5 are hear say witnesses.

15. On perusal of the deposition of P.W. 7, who is Arjun Tamsoy, it appears that he has not supported the prosecution case. Thus, P.W. 4, P.W. 5 and P.W. 7 has not proved the offence committed by the appellant.

16. P.W. 6 is the Investigating Officer. He has stated in his cross-examination that the seized articles were never sent to the Forensic Science Laboratory. He has proved the F.I.R., Inquest Panchnama Looking to the deposition given by P.W. 1, who is the doctor Arun Kr., following are the ante-mortem injuries.

"1. Stab wound - 1 1/2" X 1/2" - five in number; over abdomen, two in number over chest interiorly, one left side and second right side.

2. One Stab wound - 1 1/2" X 1/2" X Bone deep over right arm

3. One Stab wound - 1 1/2" X 1/2" X Bone deep over right thigh

4. One stab wound - 2" X 1/2" X Bone deep over left thigh"

On perusal of the evidence given by P.W. 1, it is clear that there were stab wounds upon the body of the deceased. It appears from the evidences on record that the incident has taken place on 28th July, 1997. Post Mortem was carried out on 29th July, 1997. Copy of the F.I.R. was sent to the Judicial Magistrate on 31st July, 1997. Thus, after getting post mortem report copy of the F.I.R. as sent to the Judicial Magistrate First Class as required under section 157 Cr.P.C. and this F.I.R. has been sent at a much belated stage and no explanation worth a mention has been given by the Investigating Officer in his deposition regarding this aspect of the matter.

17. Thus, looking to the over all evidence on record, it appears that prosecution has failed to prove the offence committed by this appellant beyond reasonable doubt since following aspects of the matter has not been properly appreciated by the learned trial court.

(a) P.W. 3 is an untrustworthy and unreliable witness.

(b) P.W. 4 and P.W. 5 are hear say witnesses.

(c) Diwakar Gope, who were referred to by other witnesses as the actual eye witness to the incident, has not been examined by the prosecution.

(d) P.W. 7 has turned hostile.

(e) No Forensic Science Laboratory report of the seized articles were placed before the trial court.

(f) P.W. 6, Investigating Officer in his deposition has not given any explanation for not placing the F.S.L. Report of the seized articles, regarding non-examination of aforesaid Diwakar Gope and delayed transmission of the F.I.R. to the Judicial Magistrate First Class.

18. AS a cumulative effect of the evidences on record discussed above, it appears that the prosecution has failed to prove the charge of murder levelled against this appellant beyond reasonable doubt.

19. In the facts and circumstances discussed above, this criminal appeal is allowed and the impugned judgment of conviction dated 21st January, 2003 and order of sentence dated 22nd January, 2003 passed by Sri B.N. Pandey, Sessions Judge, West Singhbhum, Chaibasa in Sessions Trial No. 49 of 1998 is quashed and set aside and the appellant is acquitted from the charges levelled against him. Therefore, this appellant, namely Antu Gope, who is in judicial custody since 2nd August, 1997, is directed to be released forthwith if not wanted in any other case.