
(2003) 10 PAT CK 0042

Patna High Court

Case No: Criminal Appeal (DB) No. 332 of 1999

Karu Gope and Others

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision: Oct. 17, 2003

Acts Referred:

- Arms Act, 1959 - Section 27
- Penal Code, 1860 (IPC) - Section 149, 302, 304

Citation: (2006) 3 PLJR 243

Hon'ble Judges: S.N. Jha, J; B.N.P. Singh, J

Bench: Division Bench

Advocate: Devendra Kumar Sinha, Arbind Kumar, Anil Kumar No. 1, R.K. Prasad and Lal Bahadur Singh, for the Appellant; Lala Kailash Bihari Prasad, for the Respondent

Final Decision: Dismissed

Judgement

B.N.P. Singh, J.

While appellant Parmeshwar Gope suffered conviction u/s 302 of the Indian Penal Code (IPC), rest appellants Manoj Gope, Karu Gope, Bholi Gope and Sokinder Gope suffered conviction u/s 302/149 IPC and all these appellants were sentenced to undergo rigorous imprisonment for life. Appellant Parmeshwar Gope suffered conviction also u/s 27 of the Arms Act for which he was sentenced to suffer rigorous imprisonment for a term of 3 years. At this juncture it would be convenient to briefly advert to the factual backdrops which are as follows. At about 6 p.m. on 4.2.1996 while Surendra Mahto (P.W. 12) was at the door of his house and deceased Jitendra Kumar aged about 12 years was there, appellants, namely, Parmeshwar Gope, Manoj Gope, Karu Gope, Bholi Gope and Sokinder Gope came holding arms, pursuant to which on exhortation made by Karu Gope, Parmeshwar Gope, pumped bullet in left side of chest of Jitendra Kumar on arms being supplied by Manoj Gope and said Jitendra Gope instantaneously died with bleeding wounds on his person. Though the appellants were given good chase, they wielded their arms and while pelting brickbats, made good their escape in the north. Deceased Jitendra

Kumar did not survive fatal injury and those who were suggested to have witnessed the incident, were Moti Mahto, Mannu Mahto, and Ram Awatar Prasad, who have been examined at trial by the State. The prosecution was launched on strength of fardbeyan of Surendra Mahto (P.W. 12), pursuant to which investigation followed, in course of which, Investigating Officer visited place of occurrence, recorded statement of witnesses, prepared inquest report over the dead body of the deceased, took steps for apprehension of the appellants, got autopsy held over the dead body of the deceased and on conclusion of Investigation laid charge-sheet before the Court.

2. In the eventual trial, that followed, State examined altogether 13 witnesses of whom Ram Autar Prasad (P.W. 3), Mannu Mahto (P.W. 5), and Surendra Mahto (P.W. 12) claimed to be ocular witnesses. The State also examined those who, though, were not ocular witnesses, had lent assurance to the prosecution allegation about appellants having been seen fleeing with arms, shortly after the incident. Some witnesses were seizure list witnesses who suggested seizure of incriminating articles from the place of occurrence by the Investigating Officer and also two witnesses testifying preparation of inquest report by the Police Officer. The Police Officer, who carried out investigation of the incident was also examined as P.W. 13.

3. Defence of the appellants both before this Court and the court below had been that of innocence and they ascribed false implication for no good reasons. Explicit defence of the appellants was that if narrations made by the prosecution witnesses was to be given any due consideration about there being dispute with Moti Mahto, no good reasons were assigned by the State as to why assailants had picked up Jitendra Kumar for execution of his killing, and on these premises it was urged that motive assigned by the State was quite fragile. The trial court, however, on evaluating probative value of the testimony of witnesses and regard being had to the positive findings recorded by the doctor, while negating plea of innocence of the appellants recorded findings of guilt and sentenced the appellants in the manner stated above.

4. Before adverting to the contentions raised, we wish to examine the narrations made by the witnesses so as to appreciate them, with brevity. While reiterating his earliest version, Surendra Mahto (P.W. 12) father of the deceased and also maker of the fardbeyan, stated that while Jitendra was at the door of the house, appellants came holding arms, when on exhortation made by Karu Gope, Parmeshwar Gope, on being supplied firearm by Manoj Gope, fired shots on the left side of chest of Jitendra who dropped dead. When appellants were chased by Moti Gope and Mannu Gope, they escaped pelting brickbats. He stated to have rendered his fardbeyan to the Police at his house. Narrations almost in similar terms and veins were made also by Ram Awatar Prasad (P.W. 3) and Mannu Mahto (P.W. 5) who too claimed to be ocular witnesses to the incident. As these witnesses too stated that appellants came running from north and on exhortation made by Karu Gope, Parmeshwar Gope, on being supplied firearm, shot dead Jitendra Kumar by pumping bullet in left side of chest, who instantaneously dropped dead. Then they made good their escape, and in course of being chased Sokinder Gope and Bholi Gope pelted

brickbats. Though attention of Ramautar Prasad had been drawn by the defence towards his earlier version rendered before the Police to impeach credibility of the witness, there was no material, we have noticed, which could impair credibility of this witness. Mannu Mahto (P.W. 5) too stated to have noticed appellants coming from north, holding arms, when on exhortation made by Karu Gope, Parmeshwar Gope on being supplied pistol by Manoj Gope, pumped bullet in the left side of chest of Jitendra Kumar who dropped dead. The appellants had escaped towards north. Attention of this witness too had been drawn by the defence which in our opinion did not affect broad features of the prosecution case even if such narrations were not made before the Police during investigation.

5. As we have noticed, there had been evidence of other witnesses too who though did not claim to be ocular witnesses to the incident but lent substantial assurance to the prosecution allegations and they happened to be Moti Mahto (P.W. 1) Yugeshwar Prasad (P.W. 2), Bhujju Gope (P.W. 4), and Raj Kumar Gope (P.W. 11). We wish to examine credibility of these witnesses too for whom scathing comments have been made by the learned counsel for the appellants. Moti Mahto (P.W. 1) while taking meal heard sound of firing and when came out of the house, noticed Jitendra writhing in pains with gun shot injuries. The appellants had escaped with arms. He stated to have learnt about details of the incident from Surendra Mahto, Mannu Mahto, and Ram Awatar Gope about Parmeshwar Gope executing killing of Jitendra Gope. Though attention of this witness too had been drawn by the defence, it would appear from evidence of the Investigating Officer that this witness had made parallel statement before the Police leaving no room for suspecting his credibility.

6. Now adverting to the evidence of Jugeshwar Prasad (P.W. 2), we find witness stating that while he had been to the shop of Dukhi, he heard sound of firing and came to know that appellants had escaped after executing killing of Jitendra Kumar. He too claimed to have noticed Parmeshwar Gope, Manoj Gope, and Bholi Gope making good their escape. Though attention of this witness too had been drawn by the witness to impeach his credibility about he having not made parallel statement before the Police, for noticing appellants while making good their escape and evidence of the Investigating Officer would confirm suggestion given to the witness about he having not made such parallel statement before the Police and hence the witness appears to be partly true in the narrations which he made at the trial.

7. Bhujju Gope (P.W. 4) too states to have run to the house of Surendra Gope on hearing sound of firing, when he noticed Jitendra, dropped dead with gun shot injuries in chest. He got information from Surendra Mahto about the incident and complicity of the appellants and also that Parmeshwar on being supplied pistol had shot dead Jitendra Kumar. Raj Kumar Gope (P.W. 11) too stated to have run to the house of Surendra Mahto on hearing sound of shot and noticed Jitendra dropped dead with gun shot injuries on chest. He stated that he learnt about the incident from female members of Surendra Mahto about Parmeshwar Gope to be killer of the deceased. He also noticed Parmeshwar Gope making good his escape with pistol alongwith two others.

8. Now we may advert to the evidence of other witnesses both Rajendra Prasad Yadav (P.W. 6) and Wakil Prasad Yadav (P.W. 9) who were witnesses to the preparation of the inquest report by the Police Officer. Similarly Umesh Kumar (P.W. 8) and Mahesh Yadav (P.W. 10) were witnesses to the seizure of the blood stained earth by the Police Officer from the place of occurrence. Considering nature of evidence of these four witnesses, they did not deserve much comments.

9. Uday Shankar Prasad (P.W. 13) stated to have taken up investigation of the case after recording fardbeyan of Surendra Mahto at village Prahlad Nagar. He stated to have prepared inquest report over the dead body of Jitendra Prasad, visited place of occurrence, noticed copious blood there, seized blood stained earth, recorded statement of witnesses, taken steps for apprehension of the appellants, who were absconding, sent the dead body to mortuary for post mortem examination, found criminal antecedent of Parmeshwar Gope and on conclusion of investigation, laid charge-sheet before the Court.

10. Now we may notice some of the objective findings recorded by Dr. R.K. Prasad (P.W. 7), who held autopsy over the dead body of the deceased. The injuries ante mortem in nature noticed by the doctor were as follows:-

(I) Lacerated wound 1/2" x 1/2" with black inverted margin on upper and outer quadrant of left chest below and medial to left shoulder joint 1-1/2" lateral to mammary line. This was wound of entry.

(II) Lacerated wound of size 3/4" x 3/4" with everted margin on mid axillary line 1-1/2" below apex of axilla. This was wound of exit.

Both the injuries were communicating to each other. Death in opinion of the doctor was due to shock and haemorrhage by above injuries which were caused by firearms.

11. As we have noticed, main thrust of argument of the learned counsel for the appellants was that considering the prosecution accusation to be true about relation of Parmeshwar Gope with Moti Mahto being strained due to exchange of abuses, two hours preceding the incident, there was no good reason for the appellants to pick up Jitendra for execution of his killing leaving Moti Mahto spared. Learned counsel would submit that evidences placed on the record did not fail to suggest that Surendra Mahto, Moti Mahto and Mannu Mahto were brothers but they were living separately, and since there was no community of interest among them, motive assigned by the State was fragile. There is no gainsaying the fact that Surendra Mahto happens to be own brother of Moti Mahto and as has been the evidence of witnesses, he too resides in the same house with Moti Mahto. Though Parmeshwar Mahto had grudge against Moti Mahto, human nature at some times is not predictable, as it is difficult to assess as to what actuated the wrong doer to commit wrong against a person, and even if motive may be weak or fragile, that would not constitute infirmity in the prosecution version once evidences are direct, and witnesses are found trustworthy.

12. Yet it is urged that the prosecution was also guilty of introducing distorted version of the prosecution case, as while P.W. 3 states that occurrence took place at about 20 paces from darwaza of the house of Surendra Mahto, P.W. 5 stated that the occurrence took place adjacent to the door of Surendra Mahto, and on this score too we may negative assertions made on behalf of the appellants, as while witnesses are speaking of details about the distance, they are not expected to have made their statement with all mathematical precision.

13. The investigating Officer found sahan land, west to the house of Surendra Mahto to be the place of occurrence. The witnesses too have stated with sustained consistency that Jitendra was shot dead at the door of house of Surendra Mahto, and taking evidence of witnesses together with that of the Police Officer, we find that there has been no ambiguity whatsoever about the place of occurrence. Referring to the stray statement made by Surendra Mahto (P.W. 12), learned counsel wants to dig a hole in the prosecution case and submits that if such assertion made by Surendra Mahto was given any credence, it was Manoj who fired shots on the deceased. We are afraid that submission of the learned counsel can be given due weight as not the isolated statement made by a witness has to be considered to judge his credibility but statement made by witnesses in totality has to be taken into consideration.

14. Unable to find any meaningful criticism, teamed counsel would submit that if all the appellants had allegedly carried arms with them, there was no occasion for Manoj Gope to supply arm to Parmeshwar Gope and we may notice that when witnesses are speaking of details, some variations in their statements are apt to occur and they do not assume much significance if they do not affect the broad features of the prosecution case. Other feeble argument was though the doctor has found undigested food in the stomach, it was not in conformity with the prosecution case, as evidence of Surendra Mahto (P.W. 12) would suggest that Jitendra Kumar had been standing at the door of the house for about two hours. This argument too appears to be not meritorious to merit serious consideration, as movement of a child from one place to another cannot be ruled out and that apart, much appears on the quality of food which the deceased might have taken preceding his death. Yet it is urged that though the deceased is suggested to have been shot dead from a distance of 8 ft. only, positive finding of the doctor would not suggest either charring or blackening around the wound and on this score too we are of the view that the presence of charring and blackening would depend on variety of arms and nature of projectile, for which there has been no evidence. As there has been no finding of the chemical examiner on the record about nature and origin of blood, learned counsel was critical on this score too but this aspect in our opinion did not assume much significance that being lapses on the part of the Investigating Officer for which the prosecution case would not suffer casualty.

15. Contentions are raised that as P.W. 5 says that darkness had set in, hence possibility or visibility of the appellants would have been remote. However, we find that what P.W. 5 says is that though darkness had set in, objects were quite visible, and that apart,

appellants were not strangers to make their identification difficult by the witnesses. In defence, though suggestion was given to P.W. 3 about he being inimical to the appellants owing to dispute with regard to irrigation of land, suggestion was emphatically refuted by the witness. While commenting on credibility of P.W. 3 and P.W. 5, learned counsel would submit that though they came after Jitendra was shot dead, they projected themselves to be eye witnesses. However, we find that both P.Ws. 3 and 5 have been emphatically stating to have witnessed the occurrence with their naked eyes. Both witnesses are residing in the neighbourhood of Surendra Gope and their presence at the place of occurrence was most probable. Narrations made by those who claimed to be ocular witnesses have been amply corroborated by the positive findings recorded by the doctor who noticed gun shot injuries in chest. Occurrence took place at 6 p.m. on 4.2.1996 and it was within couple of hours that fardbeyan of Surendra Mahto, father of the deceased, was recorded by the Police Officer at his house. It would appear from the body of the first information report that the distance of Prahlad Nagar where place of occurrence is situate is about four kms. from Police Station and regard being had to the distance of place of occurrence from the Police Station, we are of the view that the prosecution was launched against the appellants with all promptitude which too suggests bona fide of the incident. True it is that the Investigating Officer did not say about there being marks of violence at the place of occurrence, these are in our view, matters of petty details which did not befog the real issue and the last argument canvassed at Bar was that in case accusations attributed to the appellants are found to be true, the case of the appellants would squarely fall within the mischief of Section 304 Part II of the Indian Penal Code. However, we find that evidences available on the record and also fardbeyan, which was recorded within couple of hours of the incident did suggest that the appellants came variously armed with weapons only two hours after the first incident when there had been exchange of abuses between Parmeshwar Gope and Moti Gope, pursuant to which on exhortation made by one of them, Parmeshwar Gope shot dead Jitendra Kumar. Appellants came in a body of unlawful assembly when Jitendra Kumar was shot dead by one of them. Since provisions of Section 149 IPC postulates concept of constructive criminal liability by virtue of legal fiction, if any offence was committed by any member of unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of committing of that offence, was a member of the same assembly, is guilty of the offence. The appellants visited the place of occurrence holding arms with them. The entire gamut of the matter in issue leaves no manner of doubt that there was concerted action, by reason of simultaneous conscious mind of persons participating in the action, and it is that piece of evidence which brings element of Section 149 IPC in operation. Having given our anxious and deepest consideration to the evidences placed on the record, we are of the view that the findings recorded by the court below are based on meticulous appreciation of evidences which did not merit interference. All the three appeals being meritless are accordingly dismissed. Since Karu Gope, Bholi Gope and Sokinder Gope in Cr. Appeal No. 332 of 1999 and Manoj Gope in Cr. Appeal No. 401 of 1999 are on bail, their bail bonds are cancelled and it is directed

that coercive steps be taken for their apprehension and to send them to custody to serve out remainder of sentences awarded to them.

S.N. Jha, J.

I agree.