SUPREME COURT OF INDIA

Krishna Gope

Vs.

State of Bihar

Crl.A.No.61 of 2003

(K. G. Balakrishnan and B. N. Srikrishna JJ.)

25.08.2003

JUDGEMENT

K. G. Balakrishnan, J.

1. Appellant-Krishna Gope was tried for the offence of murder for having caused the death of Sarjug Gope. The Sessions Court found him guilty and sentenced him to undergo imprisonment for life. Two other accused tried along with him were acquitted by the Sessions Court. The appellant filed an appeal before the Patna High Court challenging his conviction and sentence. The High Court elaborately re-appreciated the prosecution evidence and confirmed the conviction and sentence of the appellant. The judgment and order of the High Court is challenged before us.

2. The prosecution case is that on 25-6-1984 while accused-Arbind Gope was grazing his cattle, his cow strayed into the field of Sarjug Gope alias Rukha Gope and this led to a wordy altercation between Sarjug Gope on the one hand and Arbind Gope and Karoo Gope on the other. When this wordy altercation was going on, the appellant-Krishna Gope brought a country-made rifle from his house and fired at Sarjug Gope. Sarjug Gope sustained firearm injuries and fell on the ground. Meanwhile, some persons from the neighbourhood had collected at the place of occurrence and injured Sarjug Gope was removed to Karai Parsurai dispensary for treatment. At the dispensary, the Doctor advised that the injured be taken to the hospital at Patna. Injured Sarjug Gope, while undergoing treatment at the hospital at Patna died in the night. Earlier, while injured Sarjug Gope was in the Karai Parsurai dispensary, P.W. 12 Sub-Inspector of Police recorded his statement at about 5.30 p.m. P.W. 12 conducted the investigation and he prepared the 'muazzer.' Near the place of incident, he found one .315 bore empty cartridge and he recovered the same in the presence of two witnesses. He recorded the statement of various witnesses and later held inquest on the dead body of deceased at the hospital at Patna. After the investigation, he filed the charge-sheet.

3. On the side of the prosecution, P.W. 5 Bhola Gope and P.W. 6 Banwari Gope were examined to prove the incident. P.W. 6 is the sole eye-witness who saw the entire incident. According to him, at the relevant time, he was in the hut of one Ram Chandra Gope which

was about 30 feet from the place of incident. He stated that he heard the noise of the wordy altercation that was going on between the deceased and the accused persons and saw the appellant-Krishna Gope bringing a country-made rifle and shooting the deceased. It was suggested to him that the hut of Ramchandra Gope was at some distance away from the place of occurrence and that it was not possible to see the place of occurrence as the same was at a lower level than the land on which Ramchandra Gope's hut was situated. But there is nothing in the evidence to show that there was anything to obstruct the visibility. It is quite common that a witness being a curious onlooker would always take up a vantage position to find out and gather the reasons of the quarrel that takes place in the village. Moreover, the accused is very much known to him and there could not have been possibility of his mistaking the identity of the accused.

4. The evidence of P.W. 6 is further corroborated by the evidence of P.W. 5, Bhola Gope. P.W. 5 deposed that at the relevant time his nephew Ashok Kumar came running to him and told him that a quarrel was going on between Sarjug Gope and accused-Arbind Gope and Karoo Gope, Bhola Gope, who was grazing his buffalo, left the cattle in the custody of Ashok Kumar and proceeded to the place of incident. When he reached there, he saw appellant-Krishna Gope running away from the place of occurrence. He saw Sarjug Gope lying in the field with injuries on his abdomen. The evidence of P.W. 5 was severely attacked on the ground that this witness had no occasion to see the actual incident. Of course, this witness had not seen the appellant shooting the deceased, but, nevertheless, the fact that the appellant was at the place of incident and that he was seen running away from there is certainly an incriminating circumstance. Thus, the prosecution has satisfactorily proved that the appellant-Krishna Gope used his country-made firearm to cause injuries to the deceased.

5. Learned counsel for the appellant strenuously urged before us that the First Information statement itself is a fabricated document and that P.W. 12 could not have recorded the statement of the deceased-Sarjug Gope. This contention was based on a note made at the bottom of the injury report prepared by Dr. Inderjit Prasad, who was the duty doctor at the Karai Parsurai dispensary where the injured Sarjug Gope was first taken for treatment. The injury report is Annexure P-1, which is purported to have been prepared at 5.15 p.m. on 25-6-1984. In the last portion of this report, it is noted by Doctor : "As the patient was unconscious and so I could not be able to take dying declaration and referred to P.M.C.H."

Based on this note, it was contended by learned counsel that the injured Sarjug Gope must have been unconscious when he was stated to have made the statement to P.W. 12 at the Karai Parsarai hospital and, therefore, the deposition of P.W. 12 that he had gone to the hospital and recorded the First Information statement between 5.00 and 5.30 p.m. is highly improbable. We do not find much force in the contention advanced by learned counsel for the appellant. It is pertinent to note that the doctor at the Karai Parsarai hospital was never asked to record any dying declaration nor was his assistance sought for the same by anybody. It might be possible that when the doctor saw the injured Sarjug Gope, he may have been unconscious. But that does not mean that when the Sub-Inspector came to the hospital, the injured continued to be in that State. Moreover, P.W. 12 Sub-Inspector could have recorded the statement of any other witness who was present at the hospital and treated the same as the

First Information statement for the purpose of the case. P.W. 6 Banwari Gope was very much present at the hospital when the Sub-Inspector took the statement of Sarju Gope. P.W. 6 even deposed that the statement recorded by P.W. 12 was read over to him and it was admitted to be correct by Sarjug Gope.

6. Counsel for the appellant also contended that P.W. 12 when examined as a witness deposed that the statement of Sarjug Gope was recorded by one Braj Kishore Pandey and when he was confronted with a question that Braj Kishore Pandey, Asstt. Sub-Inspector could not have been the person to record the statement of Sarjug Gope, P.W. 12 changed his version and said that it was recorded by one Suresh Singh and not Braj Kishore Pandey. This sort of minor mistakes are not uncommon and often committed as the Investigating Officer may, at a given point of time, be required to handle investigation of more than one criminal case. We do not attach much importance to an inconsistency of this sort.

7. The counsel for the appellant also contended that there was a long delay in sending the First Information Report from the police station to the Magistrate. Even though the police station is very close to the Magistrate's Court, the First Information Report reached the Court on 27-6-1984. Though the incident happened on 25-6-1984, injured Sarjug Gope passed away during the night of 25th/26th June, 1984. There was only one day's delay in sending the First Information Report to the Magistrate. The 'fardebeyan' was received in Hilsa police station on 25-6-1984 and from there it was sent to Hilsa Court. This must have caused some delay in sending the F.I.R. to the Magistrate.

8. Learned counsel further pointed out that the country-made firearm alleged to have been used by the appellant was not recovered by the police and the same was not sent to the police station. The learned counsel submitted that the investigation was not properly done and that the appellant is entitled to the benefit of doubt. In our view, this plea is not tenable. The house of the appellant was searched immediately after the incident, but the police could not recover the weapon of offence from his house. It appears that the appellant had succeeded in concealing the weapon before the police could search his house. In our opinion, the fact of non-recovery of the weapon from the house of the appellant does not inure to his benefit.

9. We have carefully considered the prosecution case, the evidence adduced and the attending circumstances. We do not think that any failure of justice or illegality has taken place so as to warrant interference by this Court. The appeal is without any merits and is dismissed accordingly.

Appeal dismissed.