
(2019) 08 JH CK 0118

In the Jharkhand High Court

Case No : Criminal Appeal (D.B.) No. 464, 495 Of 2001

Baiju Gope And Ors

APPELLANT

Vs

Ram Briksh Gope

RESPONDENT

Date of Decision : 06-08-2019

Acts Referred:

Indian Penal Code, 1860 — Section 34, 201, 302

Citation : (2019) 08 JH CK 0118

Hon'ble Judges : Shree Chandrashekhar, J; Ratnaker Bhengra, J

Bench : Division Bench

Advocate : Binod Kumar Dubey, Nawin Kumar, Munna Lal Yadav, Ram Prakash Singh

Final Decision : Allowed

Judgement

Shree Chandrashekhar, J

1. Three persons were suspected by the informant-Kishun Gope in his fardbeyan recorded on 05.11.1994, as the persons who have killed his brother namely, Mahesh Gope.

2. In his fardbeyan, the informant-Kishun Gope has stated that on 04.11.1994 his brother had gone to forest with the cattle, however, he did not return home in the evening. Then, he made inquiries, however, his brother remained traceless. Next day morning when he again started search for his brother with co-villagers, he found trail of blood marks towards west of Sukhlahi river, however, again he could not trace his brother. He goes to the police station and gives his fardbeyan, on the basis of which Sadar (Muffasil) P.S. Case No. 384 of 1994 was lodged against unknown.

3. During the trial the prosecution has examined nine witnesses; the informant is P.W.8. The other witnesses are hear-say witnesses.

4. Dr. Ravindra Nath Sahay-P.W.2 who has conducted autopsy has found the

following injuries on Mahesh Gope:

- (a) Incised wound 2"x2"x bone deep on right side of the front of neck.
- (b) Incised wound 2"x2"x bone deep on the left side of neck in the front.
- (c) Incised wound 2"x2"x brain deep on back of the head (occipital region). Brain matters were peeping through the wound.
- (d) Incised wound ½"x ¼"x bone deep on forefinger.

5. The doctor has found rigour mortis present in limbs and blood was coming out through both the navel. He has also found wind pipe and blood vessels were cut in neck.

6. According to the doctor, the injuries found on Mahesh Gope were incised wounds caused by sharp cutting weapon, like axe. In his cross-examination, the doctor says that Mahesh Gope has died instantly.

7. According to the prosecution, on the confessional statement of the appellants, namely, Ramchander Gope and Ram Briksh Gope, dead body of the deceased has been recovered from the forest. But then, seizure list witness namely, Arjun Gope did not support the prosecution's case and another witness, namely, Prem Thakur was not examined during the trial.

8. Mr. Ram Prakash Singh, the learned APP submits that Cholo Gope-P.W.3 is an eye-witness and he has informed about the occurrence to the informant.

9. In this context it needs to be recorded that statement of P.W.3 was recorded by the police about one month after the occurrence and he never informed the family members of the deceased about the occurrence before that.

10. Admittedly, there is no eye-witness to the occurrence and the alleged eye-witness, namely, Cholo Gope in view of the fact that he has revealed participation of the appellants in the occurrence about one month after the dead body of Mahesh Gope was recovered is not trustworthy. During the investigation, the crime weapon was not seized and as noticed above the seizure list witnesses have not supported the prosecution's case.

11. The above being the factual position, in our opinion recovery of the dead body of Mahesh Gope at the instance of the appellants is not proved. There is no other evidence brought on record by the prosecution which would establish that the appellants have killed Mahesh Gope.

12. In view of the above discussions, we hold that the prosecution has failed to establish the charge under section 302/34 IPC and under section 201/34 IPC against the appellants, namely, Baiju Gope, Ramchander Gope and Ram Briksh Gope.

13. Accordingly, the judgment of conviction under section 302/34 IPC as well as under section 201/34 IPC and the order of sentence of R.I for life under section

302/34 IPC and R.I for Seven years under section 201/34 IPC, both dated 29.09.2001, passed by the learned 6th Additional Sessions Judge, Hazaribagh in Sessions Trial No. 244 of 1995 are set-aside.

14. The appellants, namely, Baiju Gope and Ramchander Gope in Criminal Appeal (D.B.) No. 464 of 2001 and Ram Briksh Gope in Criminal Appeal (D.B.) No. 495 of 2001 are acquitted of the charges framed against them.

15. The appellants are on bail and, accordingly, they are discharged of liability of the bail-bonds furnished by them.

16. In the result, Criminal Appeal (DB) No. 464 of 2001 and Criminal Appeal (DB) No. 495 of 2001 are allowed.

17. The Court appreciates the efforts of Mr. Munna Lal Yadav, the learned Amicus and Mr. Ram Prakash Singh, the learned APP.

18. The Secretary, Jharkhand High Court Legal Services Committee shall reimburse the learned Amicus on submission of bill(s). He shall be paid Rs. 5,500/- for each effective date of hearing, but subject to the cap as provided under the Notification dated 23.11.2017.

19. Let the lower-court records be transmitted to the court concerned, forthwith.