
(2019) 12 JH CK 0259

In the Jharkhand High Court

Case No : Criminal Appeal (DB) No. 264 Of 2012, 309 Of 2013

Gorkha Gope And Ors

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 18-12-2019

Acts Referred:

Indian Penal Code, 1860 — Section 34, 201, 302, 307

Citation : (2019) 12 JH CK 0259

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

Bench : Division Bench

Advocate : R. P. Gupta, Ram Prakash Singh

Final Decision : Allowed

Judgement

Shree Chandrashekhar, J

1. In these criminal appeals; Criminal Appeal (DB) No. 264 of 2012 by Mohan Gope and Criminal Appeal (DB) No. 309 of 2013 by Gorkha Gope, the

appellants have challenged their conviction and sentence of R.I for life with fine of Rs. 1000/- each under section 302 of the Indian Penal, R.I for

Seven years with fine of Rs. 1000/- each under section 307 of the Indian Penal Code and R.I for Five years under section 201 of the Indian Penal

Code.

2. On the basis of the fardbeyan of Paltan Gope, Chakradharpur P.S. Case No. 139 of 2006 was registered against Mohan Gope, Gorkha Gope,

Budhram Gope and Sadhu Charan Gope under sections 302, 307, 201 read with section 34 of the Indian Penal Code. The appellants have faced the

trial on the charge under section 302/34 of the Indian Penal Code, under section 307/34 of the Indian Penal Code and under section 201/34 of the

Indian Penal Code; Sadhu Charan Gope has died and Budhram Gope had absconded who, however, was subsequently arrested after the judgment in Sessions Trial No. 114 of 2007.

3. The informant of this case, namely, Paltan Gope is son of Rundai Gope. In his fardbeyan, the informant has stated that in the night of 06.11.2006, at about 7:45 p.m, when he was taking meal Mohan Gope armed with farsa, Gorkha Gope armed with tangi and Sadhu Charan Gope and Budhram Gope carrying bow & arrow came at his house and knocked the door. At that time his mother and sister were resting on a cot. When he opened the door and found the accused persons armed with deadly weapon he tried to flee away but after some chase he was caught by Budhram Gope and Sadhu Charan Gope. They pushed him on the ground, tried to strangulate him by hand and Gorkha Gope had tried to assault him with tangi, however, he warded off the attack. In the meantime, his mother came running there to save him but the accused persons caught her and pushed her on the ground and Mohan Gope and Gorkha Gope assaulted her with tangi and farsa. The informant somehow fled away and hid himself in the paddy fields. The informant has claimed that he has identified the accused persons in dibri light. Next day he has informed his uncle and when he reached home he did not find the body of his mother. He has found dragging marks and blood sign outside his house. He has stated that due to previous land dispute the accused persons have killed his mother.

4. The prosecution has projected the informant-P.W.1 and his sister-P.W.2 as eye-witnesses. In the court, the informant has described the occurrence in a similar manner as recorded in his fardbeyan. He has stated that the accused persons were armed with tangi and bow & arrow. They caught hold of him and thrashed him on the ground and tried to assault him and when his mother came there to save him Mohan Gope and Gorkha Gope assaulted her with tangi. The sister of the informant, namely, Belmati Gope has also deposed that the accused persons came and knocked the door. She has stated that her brother was running away, however, he was caught by Gorkha Gope and Mohan Gope. Her mother was raising cries and she was caught by Sadhu Charan Gope and Budhram Gope and when the accused persons started assaulting her mother she fled away. She has stated that she has seen Budhram Gope assaulting her mother with arrow. She

fled away and hid herself in the house of Turam Bodra @ Bajju Bodra and narrated the incident to him.

5. From the testimony of P.W.1 and P.W.2, it is apparent that there is wide variation in their evidence on the manner of occurrence and specific role played by the accused persons. The informant has stated that when he was fleeing away Sadhu Charan Gope and Budhram Gope caught him whereas his sister has stated that Gorkha Gope and Mohan Gope caught her brother. On assault on Rundai Gope, the informant has stated that Mohan Gope and Gorkha Gope have assaulted with tangi on her neck but his sister has stated that she has seen Budhram Gope assaulting her mother with arrow.

6. There is considerable doubt on registration of the First Information Report. A First Information Report was lodged on the basis of the fardbeyan of Paltan Gope which was recorded on 07.11.2006 at 14:30 hrs. at village-Hathibari near his house, however, in his deposition the informant has stated that his statement was recorded at the police station at the instance of the police and he has put his signature on that paper and the same has been marked as Exhibit-1, which is the fardbeyan. Another witness to the First Information Report has also stated that the police has recorded statement of Paltan Gope at the police station.

7. The prosecution witnesses, Turam Bodra @ Bajju Bodra-P.W.5 and Ramai Sundi-P.W.6 have turned hostile; Turam Bodra @ Bajju Bodra is the person in whose house P.W.2 has taken shelter. The seizure witnesses have not supported the prosecution's case. P.W.3 has stated that on the day when the incident has happened there was heavy rain and storm in the night. He has admitted that he has spoken about the incident on hearsay. In paragraph no. 9 of his cross-examination he says that nothing was seized in his presence. P.W.4 is another seizure witness. He has stated that he has no knowledge about the occurrence and when he was called by the police he has put his signature on the seizure memo.

8. It is elementary in every criminal case that where the prosecution comes with a positive case it must prove its case on all material aspects [refer, Mohinder Singh Vs. The State reported in AIR 1953 SC 415].

9. The case set up by the prosecution against the appellants is that after committing murder of Rundai Gope they have concealed her skull and

skeleton which were recovered on 10.11.2006. The prosecution has also led evidence on seizure of cloths of Rundai Gope.

10. However, in view of the testimony of P.W.3 and P.W.4, who are the seizure witnesses, the prosecution has failed to establish that cloths, skull

and skeleton of Rundai Gope were recovered. It is also an admitted position that report of forensic examination has not been brought on record. By

now, it is well-settled that to prove the charge under section 302 of the Indian Penal Code it is not necessary to prove corpus delicti, but then, the

prosecution must lead cogent, convincing and consistent evidence, direct or indirect, on death of a person.

11. In *Rishipal Vs. State of Uttarakhand* reported in (2013) 12 SCC 551, the Supreme Court has explained the law on the subject, thus:

14. In the absence of corpus delicti what the court looks for is clinching evidence that proves that the victim has been done to death. If

the prosecution is successful in providing cogent and satisfactory proof of the victim having met a homicidal death, absence of corpus

delicti will not by itself be fatal to a charge of murder. Failure of the prosecution to assemble such evidence will, however, result in failure

of the most essential requirement in a case involving a charge of murder. That is precisely the position in the case at hand. There is no

evidence either direct or circumstantial about Abdul Mabood having met a homicidal death.

12. In the present case, the prosecution has sought to establish death of Rundai Gope by producing her cloths, skull and skeleton but identification of

these material objects has failed. In view of the evidence of P.W.2 and P.W. 3 who have said that it was a stormy night, seizure of blood-stained

cloths has become doubtful.

13. There are serious inconsistencies in the testimony of the prosecution witnesses which also create serious doubt on the prosecution story.

14. The informant has stated in his cross-examination that next day he did not inform anyone about the occurrence; his house is in the middle of the

village and door of his house was open. His sister has admitted in her cross-examination that whatever she has deposed in the court was told to her by

her brother. P.W.3 and P.W.4 have stated that next day of the occurrence Paltan Gope has informed them about the incident but he did not inform

them who have killed his mother. P.W.8 has stated that Paltan Gope came in the morning, at about 5:00-6:00 a.m, and informed him that Mohan Gope,

Budhram Gope, Sadhu Charan Gope and Gorkha Gope have killed his mother with tangi, but in his cross-examination he admits that he is resident of a different village.

15. On such evidence, the testimony of P.W.2 and P.W.3 has become suspect.

16. The claim of the informant that he fled away and hid himself in the paddy field is doubtful in the face of the evidence of P.W.2 and P.W.3 that it

was a stormy night with heavy rain. The conduct of the informant in not informing the villagers has also created doubt on veracity of his evidence. He

claims that Gorkha Gope tried to assault him with tangi which was warded off by him, but then, the doctor who has examined him has found abrasion

of size of $\frac{1}{2}$ " x $\frac{1}{2}$ " on his back. The occurrence has happened on 06.11.2006 and he was examined on 08.11.2006 by Dr. Parmeshwar Pradhan.

17. In the above factual scenario, we are of the opinion that on the basis of the testimony of P.W.1 and P.W.2, which is highly doubtful and thus not

reliable, conviction of the appellants cannot be recorded under section 302/34 of the Indian Penal Code.

18. In view of nature of the injury suffered by the informant, that is, small abrasion on his back which in the opinion of the doctor can be caused by a

fall, conviction of the appellants under section 307/34 of the Indian Penal Code is also not sustainable. The essential distinction between the offence

under section 302 of the Indian Penal Code and section 307 of the Indian Penal Code is that the victim finally survives. Section 307 provides that an

act with such intention or knowledge and under such circumstances that, if accomplished would cause death would amount to attempt to murder.

Injury with small abrasion on the back of the informant cannot fall under such category.

19. Since the prosecution has failed to establish the main charge against the appellants, the charge under section 201/34 of the Indian Penal Code also

must fail.

20. In the result, conviction of the appellants under section 302/34 of the Indian Penal Code, section 307/34 of the Indian Penal Code and section

201/34 of the Indian Penal Code is set-aside.

21. The appellants are acquitted of the charges framed against them in Sessions

Trial No. 114 of 2007.

22. The appellant, namely, Gorkha Gope in Criminal Appeal (DB) No. 309 of 2013, who is in jail, shall be set free forthwith, if not wanted in

connection to any other case.

23. The appellant, namely, Mohan Gope in Criminal Appeal (DB) No. 264 of 2012, who is on bail, is discharged of liability of the bail-bonds furnished

by him.

24. In the result, Criminal Appeal (DB) No. 309 of 2013 and Criminal Appeal (DB) No. 264 of 2012 are allowed.

25. Let a copy of the Judgment be transmitted to the court concerned through FAX.

26. Let the lower-court records be sent to the court concerned forthwith.