

Neutral Citation No. - 2024:AHC-LKO:37192-DB

Reserved

Court No. - 1

(1) **Case :-** CRIMINAL APPEAL No. - 2526 of 2006

Appellant :- Arun Kumar @ Arun Devi Pandey And 4 Others

Respondent :- The State Of U.P.

Counsel for Appellant :- K.N.Misra,Alok Srivastava,Alok Srivastava
li,Girdhari Lal Shukla,Nagendra Mohan,Rajendra Prasad Mishra

Counsel for Respondent :- Govt.Advocate,Dhirendra Kumar
Mishra,Indrajeet Shukla,Kapil Misra,Pawan Shukla,Prashant Singh
Atal,Sushil Kumar Singh

CONNECTED WITH

(2) **Case :-** CRIMINAL REVISION No. - 53 of 2007

Revisionist :- Shesh Narain Pandey

Opposite Party :- State Of U.P.And 5 Ors.

Counsel for Revisionist :- Indrajeet Shukla,Dhirendra Kumar Mishra

Counsel for Opposite Party :- Govt.Advocate

Hon'ble Attau Rahman Masoodi,J.

Hon'ble Ajai Kumar Srivastava-I,J.

(Per Attau Rahman Masoodi,J.)

- (1) The aforementioned criminal appeal as well as the criminal revision have been filed against a composite order dated 27.11.2006 passed by Additional District and Sessions Judge/FTC Court, Gonda in Sessions Trials No. 7 of 2003 and 297 of 2004. Criminal Appeal No. 2526 of 2006 has been filed by the appellants Arun Kumar @ Arun Dev Pandey, Chandra Pratap Pandey, Dinesh Pal @ Munesar, Bablu @ Ratnesh and Umesh Chandra Pandey whereby they have been convicted under Section 147 IPC and sentenced to one year S.I.,

under Section 148 IPC 2 years S.I. with default stipulation. Appellant Arun Kumar has also been convicted under Section 302 IPC and has been sentenced to undergo life imprisonment and rest of the appellants, namely, Chandra Pratap Pandey, Dinesh Pal @ Munesar, Bablu @ Ratnesh and Umesh Chandra have further been convicted under Section 302/149 IPC and sentenced to life imprisonment with default stipulation. Appellant Umesh Chandra has also been convicted under Section 307 IPC and sentenced to undergo ten years R.I. whereas the other appellants in Criminal Appeal No. 2526 of 2006 have also been convicted under Section 307/149 IPC and sentenced to ten years R.I. with default stipulation. All the appellants have been acquitted of the charges under Section 5 of Explosive Substances Act, 1908. All the sentences have been directed to run concurrently.

- (2) Criminal Revision No. 53 of 2007 has been filed by the informant Shesh Narayan against the impugned judgement and order dated 27.11.2006 whereby the appellants (respondents in the revision) have been acquitted of the charges under Section 5 of Explosive Substances Act, 1908 in Sessions Trial No. 27 of 2002.

- (3) Shorn of the details not relevant for the adjudication of the offence in question and the judgement and order rendered by the trial court, the facts of the case are that the informant Shesh Narayan Pandey was sitting on a cot outside the Verandah of his house situated at Mangura Bazar. At about 1 pm Umesh Chandra, Arun Kumar, Chandra Pratap, Dinesh Pal, sons of Daya Shankar Pandey, residents of Village Susunda and Bablu son of Awadh Bihar resident of Pure Rameshwar Purwa, Mauja Susunda, P.S. Paraspur, District Gonda who were already having enmity with him with respect to the house at Mangura Bazar, came in front of his house at Mangura Bazar and started hurling abuses to him. Then his father Janardan Prasad and brother Kaushalendra Kumar came out of the room and seeing them Arun Kumar and Umesh Chandra instigated his fellow miscreants that these three are together here, kill them. At that moment, Arun with his single bore gun and Umesh Chandra with country-made pistol fired shots. The gunfire shot by Arun hit his father and one shot fired by Umesh hit his brother. The other three persons carrying bombs started throwing the bombs towards them and on alarm being raised by the informant Mewaram son of Devki, Village Susunda and his wife Arti Devi and many persons from the market gathered and

witnessed the incident. All the people gathered on the spot challenged the miscreants whereupon all of them, five in number, ran away firing and waving their arms towards the market. Such an unprecedented incident instilled fear and terrorized the people in the market and the shopkeepers started shutting their shops and running from the place of occurrence. There was chaos all around and no one could muster courage to apprehend and catch the criminals. After the miscreants left the scene, the informant had taken his father and brother to District Hospital, Gonda and by the time they reached the hospital the father of the informant succumbed to the injuries and his brother was hospitalised.

- (4) On the basis of written complaint, Case Crime No. 27/02, Section 147, 148, 149, 302, 307, 307/34 IPC and Section 5 Explosive Substances Act was registered. The investigating officer investigated the crime and made spot inspection, prepared site-plan and after recording the statements of the witnesses submitted chargesheet against the accused-appellants in the court. The IO submitted chargesheet against the accused Umesh Chandra Pandey in S.T. No. 297/2004 separately.

- (5) After submission of the charge-sheet, case was committed to the court of sessions.
- (6) The case of the defence was of denial and false implication.
- (7) The prosecution, in order to prop up its case, examined (i) Shesh Narayan Pandey PW-1 the informant, (ii) Umesh Chandra Kumar Pandey, PW-2, (iii) Mewa Ram PW-3. (iv) SI Rana Bhupendra Pratap Singh, PW-4, (v) Dr P.K. Srivastava, Senior Radiologist PW-5; and (vi) SI R.P. Arya, DIG Office.
- (8) The statement of the accused persons under Section 313 Cr.P.C. was recorded. They denied the very occurrence of the incident in question. Accused Arun Kumar stated that the entire story is fake and the report has been lodged by the complainant after consultation with the police and that the report is ante timed. They questioned the veracity of the post-mortem and alleged that the witnesses have deposed against them due to animosity in collusion with the police. It was emphatically stated that the incident had occurred at some other place and no identification of the assailants was done. Rest of the accused persons supported the statement of Arun Kumar.
- (9) In S.T. No. 297/04, in his statement under Section 313 Cr.PC., the accused Umesh Chandra Pandey

reiterating his earlier stand, added that since before the occurrence he was working as Lekhpal attached with Tehsil Tarabganj of which he had received the salary. On 7.3.2002, being a Thursday, Tehsil Diwas was organised, where he reached at 11.30 am and stayed there till the evening with Tehsildar and other officers. He stated that from 12 noon to 2 p.m. he was present in the meeting and also performed other works. In support of his submission, Umesh Chandra Pandey examined DW-1 Ram Gopal Soni, Revenue Inspector, Tehsil Tarabganj and DW-2 Ram Bhawan Singh, Tehsildar, District Bareilly.

- (10) We have heard learned counsel for the appellants and the revisionist as well as carefully gone through the evidence on record.
- (11) PW-1 Shesh Narayan Pandey is the informant of the case. He supported the contents of the FIR. He proved the written report lodged at the police station and verified his signatures. He also stated that Panchnama was written by the SI at District Hospital, Gonda which was read over and thereafter he and other Panchas made signatures thereon. The dead body of his father was wrapped in a cloth and was handed over to the SI after getting it sealed for

postmortem. His statement was also recorded by the SI.

- (12) PW-2 is the injured witness who stated on oath that the incident had occurred at 1 pm. At the time of occurrence he was present in the house at Mangura Bazar. His brother Shesh Narayan Pandey was sitting on a cot outside the house. He and his father Janardan Prasad were in the room. At about 1 pm Arun Kumar, Umesh Chandra, Chandra Pratap, Dinesh Pal and Bablu @ Ratnesh came in front of his house and started abusing his father. Hearing the abuses, he and his father alongwith sister-in-law (Bhabhi) Arti Devi came out of the house whereupon Arun Kumar called upon his accomplices to kill them as they were found together. In nutshell this injured witness also supported the case of the FIR as well as the deposition made by the informant which is not unusual in any manner since this witness is one of the persons involved in the incident and PW-1 is informant and his real brother. This witness stated that the assailants were armed with weapons and caused grievous injuries to him and his father, however, he could not know as to who had fired upon him because on being hit by first gunshot he had collapsed.

(13) PW-3 Mewaram deposed that the incident had occurred about two years four months back. It was 1 pm and he went Mangura for treatment as he was having some ailment in his leg. He saw there that Umesh Chandra, Arun Kumar, Chandra Pratap, Dinesh Pal and Bablu all reached in front of the house of Janardan Master and started hurling abuses. Master asked them not to abuse then Arun and Umesh Chandra challenged their accomplices to kill all the three persons as they were found at the place of occurrence together. According to him Arun Kumar fired upon Janardan Prasad from his single bore gun and Umesh Chandra fired a shot from his country made pistol (tamancha) upon Kaushalendra which hit him and they also abused them. Chandra Pratap and Dinesh Pal started throwing hand grenades which they were holding in their hands. Kaushalendra and Janardan Prasad were taken to the hospital on a Jeep. Janardan Prasad died on the way to the hospital and Kaushalendra was admitted in District Hospital where during treatment he was referred to Lucknow and he went back to home. This witness has also stated that before this incident Janardan Prasad had lodged a criminal case under Section 307 IPC of which incident the place was also Mangura Bazar and he was also a witness in that case. On this ground it is said that he is a

hired witness. PW-3 in his statement, however, stated that before this occurrence there was some matter regarding exchange of land with the accused and that matter was solved without any interruption.

- (14) PW-4 SI Rana Bhupendra Singh was posted as SHO, PS Umri Begumganj. Case Crime No. 27/2002 under Section 147,148, 149, 307, 302 IPC and Section 5 Explosive Substances Act, 1908 was registered in his presence on a written application of informant Shesh Narayan Pandey and the investigation was assumed by him. He stated that on 7.3.2002 copy chik, copy of report, statement of informant and statement of Moharrir Gaya Prasad was recorded. The informant was taken to the place of occurrence and on his pointing spot inspection was done. He further stated that two live bombs found at the place of incident were diffused by immersing them in water and two empty cartridges 12 bore were taken into possession and fard was prepared and after reading them over to the witnesses, their signatures were obtained thereon. Recovered empty cartridges were sealed separately which were proved by the witness. It was stated by the witness that thereafter the statement of eye-witnesses and fard witnesses Shyam Sundar and Nand Kishore were recorded and this witness also deposed that charge sheet against the accused

Arun Kumar, Chandra Pratap, Dinesh Pal and Bablu @ Ratnesh was sent to the court and this witness also proved his writing and signature on the chargesheet. He also stated that investigation against Umesh Chandra was carried on. On the direction of SP, Gonda this witness i.e. IO Rana Bhupendra Pratap Singh handed over the investigation to SHO Nawab Ganj.

- (15) PW-5 Dr P.K. Srivastava, is a Senior Radiologist, District Hospital, Gonda who conducted medical examination of the injured Kaushalendra Pandey. The noted the following injuries on the body of the injured:

(a) Injury No. 1 : Lacerated wound 2 cm x 1 cm, cavity deep, Margin inverted and towards left side of the stomach, Abraded collar all around the wound;

(b) Injury No. 1 : Lacerated wound 2.3 cm x 1.3 cm, cavity deep, on the left lateral part of back, 16 cm below the left nipple of which margin everted. Omentum out of the wound.

(c) Injury No. 3 : Abrasion 1 cm x 0.5 cm, on the upper portion of left leg 13 cm below the left knee.

(d) Injury No. 4 : Scratch 3 cm x 0.1 cm on lateral side of left leg below 1.7 cm below the injury no. 3.

In the opinion of the doctor injuries no. 1 and 2 were caused by fire arms which were kept under observation with the advice of x-ray and

was referred to surgeon. Injuries no. 3 and 4 were kept in observation, they were simple in nature, injuries were fresh. The doctor also opined that the injuries could have been caused on 7.3.2002 at 1 pm.

Dr. P.K. Srivastava also conducted autopsy on the dead body of the deceased Janardan Prasad Pandey on 8.3.2002 during 3.30 to 4.50 (pm). Postmortem of the same dead body was also conducted on the next day i.e. 9.3.2002. According to the doctor he deceased was of average stature, his mouth and eyes were partially opened. There was stiffness on the upper part of the body (upper and lower in extremities). The doctor noted the following ante mortem injuries on the person on the deceased

(a) Injury No. 1. Lacerated wound 5 cm x 1 cm on the back of the head towards right, 5 cm towards back of right ear.

(b) Injury No. 2. Numerous fire arm entry wounds, margins inverted size 17 cm x 15 cm. Upper part of the chest, upper part of right arm and also on shoulder, alongwith small scratch of 0.2 cm without entry wound, wound 0.3 cm in diameter.

(c) Injury No. 3. Numerous fire arm wounds of exit, margins everted, size 18 cm x 16 cm, towards back side of shoulder, on right hand and back of the upper part of chest size 0.4 cm diameter.

(d) Injury No. 4 Single wound of exit, 0.8 cm diameter, margin everted, towards back of lateral side on the left portion of chest.

The doctor observed that despite all efforts during postmortem, no pellet was found, all the pellets passed across the wound of exit. The death of the deceased was assessed to have occurred one day before and the cause thereof was shock and hemorrhage due to ante-mortem fire arm injuries.

(16) PW-6 SI R.P. Arya, DIG Office, Devipatan Mandal, Gonda is the IO who had assumed the charge of investigation after PW-5. He stated on oath that on 8.10.2002 he was posted as SHO Wazirganj. He was entrusted with the investigation of Case Crime No. 27/2002 under Section 147, 148, 149, 302, 307 IPC and after going through the documents already on record he also recorded statement of the witnesses and thereafter after the charges under Section 147, 148, 149, 307, 302/34 IPC were levelled, the charge sheet which was available on the file, marked as Prapatra No. 3/4 was dispatched by him and the same bore his signatures.

(17) The main ground of attack on behalf of the appellants is that the statements of the PW-1 and PW-2 are self-contradictory and that the story set up regarding hand grenades being used in the crime stands belied from the fact that from the place of occurrence no remains of the exploded hand

grenades were found. In the medical report also no injury caused by hand grenade could be pointed out.

- (18) It is further submitted that the story set up by the prosecution is not supported by any evidence beyond doubt. The statements of the witnesses are not corroborated by the injury report or the postmortem report. The allegation of firing gunshot or use of country-made pistol could not be established by any cogent evidence or the medical report. No pellets were found from the place of occurrence. Though there is mention of there being signs of pelletets in the statement of PW-4 but no pelleters could be recovered nor any pellets were found in the medical examination of the injured or the postmortem report of the deceased.
- (19) Insofar as the testimony of PW-1 is concerned, the same is self-contradictory as in his statement recorded on 12.1.2004, he stated that a number of people in the market witnessed the incident, gathered on the spot and challenged the assailants whereupon the assailants fled away but subsequently in cross examination on 20.3.2004, he made an improvement to the extent that since the assailants were carrying fire arms and bombs, therefore, no one came forward and raised an alarm. It clearly

implies that it was an attempt on his part to evade from making identification of any such person who was present on the spot and raised an alarm except himself, PW-2 his real brother and the injured and interested witnesses.

- (20) It is also noteworthy that the PW-1 in his deposition he expressed uncertainty about the number of bombs exploded and vaguely stated that he cannot tell how many bombs were exploded, one or eight-ten but explosions did take place. He also stated that the bombs were exploded inside the house as well as on the road so mention of term “one” or eight-ten shows extreme uncertainty in his version when he specifically testifies at least “two” places of explosion i.e. on the road as well as in the verandah. He even expressed his unawareness as to on whose Maruti Car his injured brother was taken to Lucknow and and surprisingly he did not know the names of his own relatives who had brought the Car. He unhesitatingly refuted his own statement given earlier and stated that he had deposed falsely that no person either came to the spot or challenged the assailants and as a matter of fact many people from the market gathered there and challenged the accused. He, however, named only two persons namely Arti Devi and Mewa Ram and claimed to have forgot the names of other people. He stated

that he cannot even guess as to how many people had raised the alarm and challenged the accused persons. The two persons whom he named i.e. Mewa Ram is PW-3 who himself stated that he is the relative of Janardan Pandey, the deceased and had previous enmity with the convicts and Arti is the wife of PW-1 himself. Hence it is clear that out of so many people he conveniently named two persons who were related to him.

- (21) PW-1 also stated that he did not know as to who was the person who had written the report and even till the date of the recording of evidence i.e. about two years of the incident he remained unaware about the same. He did remember that on the date of occurrence he reached Gonda hospital from the police station at 5.30 pm and after staying at Gonda for one and half an hour he went to his home at Mangura Bazar and reached his home at 8-9 O' clock in the night but he did not remember the vehicle he took for going his home. PW-1 in his statement also stated that the victims were first fired at and then grenades were thrown, however, PW-2 in his version initially deposed that first grenades were thrown, then firing was done though he later on changed his version so as to match the deposition of PW-1.

- (22) All the above facts make the deposition of witnesses suspicious and contradictory.
- (23) Insofar as the appellant Umesh Chandra is concerned, learned counsel for the appellants has submitted that he has also been wrongly implicated in the case out of animosity. He was posted at Tehsil Tarabganj as a Lekhpal. In his statement under Section 313CrPC he clearly stated that at the time of occurrence of the incident he was engaged in revenue work with his officers. It was a Thursday and hence Tehsil Diwas was convened on that day where he reached at 11;30 am and stayed up to 2 pm.
- (24) DW-1 Ramgopal Soni and DW-2 Rambhawan Singh have been examined by appellant Umesh Chandra who have corroborated the plea of alibi put forth by him and have verified the presence of Umesh Chandra in the Tehsil Tarabganj and his participation in the meeting held on 7.3.2002 i.e. the date of incident.
- (25) DW-1 and DW-2 the defence witnesses who supported the version of the appellant Umesh Chandra are government servants working on the posts of Revenue Inspector and Tehsildar and it is highly improbable that the witnesses who are in government service would falsely depose in favour

of an accused just because he is their colleague and would put their government job at stake. DW-2 Ram Bhawan Singh specifically stated that Umesh Chandra Pandey had remained in the office and attended the meeting held on 7.3.2002 from 12 noon up to 2 pm. He had also issued a certificate on 30.3.2022 under his own signatures certifying the presence of the appellant Umesh Chandra in the meeting. He has proved his signature and stamp thereon. Likewise attendance register was also produced by DW-1 Ram Gopal Soni on which the appellant Umesh Chandra had made his signatures.

- (26) Thus, the evidence of PW-1 and PW-2 does not inspire confidence coupled with the fact that the injury report as well as postmortem report do not corroborate the commission of crime in the manner stated by the witnesses.
- (27) The incident was admittedly occurred in the market area which was familiar to the witnesses and moreso their house which the appellants are alleged to have ambushed is within the market area. It is hard to believe that in the area where the incident is alleged to have occurred is the market place and the house of the deceased, injured and the witnesses are situated, and as per the own statements of PW-1 and PW-2, where scores of people gathered, no one

came forward to testify against the appellants except those who are interested or chance witnesses.

(28) Keeping in view the manner of commission of offence and the testimony of witnesses vis-a-vis the uncorroborated injury report/post-mortem report and the recovery made, we are of the view that the trial court erred in appreciating the entire evidence and has either overlooked the minute glitches or gave the benefit of same to the prosecution.

(29) The apex court in the case of **Vadivelu Thevar v. State of Madras, reported in 1957 SCR 981** observed as under:

“Generally speaking, oral testimony in this context may be classified into three categories, namely:

(1) Wholly reliable.

(2) Wholly unreliable.

(3) Neither wholly reliable nor wholly unreliable.

In the first category of proof, the court should have no difficulty in coming to its conclusion either way -- it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court, equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial.”

(30) In view of the aforesaid discussions, we are of the view that the trial court has erred in appreciating the evidence in its correct perspective and thus, the finding of conviction of the appellant Arun Kumar @ Arun Dev Pandey, Chandra Pratap Pandey,

Dinesh Pal @ Munesar, Bablu @ Ratnesh and Umesh Chandra Pandey is set aside and the appellants are acquitted of the charges levelled against them.

- (31) Insofar as the criminal revision filed by the complainant against the acquittal of the appellants under Section 5 of Explosive Substances Act, 1908 is concerned, in view of the discussions made above, the same does not stand to appeal.
- (32) Since the appellants have not been found guilty of committing the crime in the light of the evidence on record, the charge of use of any Explosive Substance cannot stand. Moreover, the prosecution has not been able to recover any pellets or remains of the exploded grenades or bombs from the spot of alleged occurrence either inside or outside the house of the deceased and the live grenades alleged to have been found and diffused also could not be connected to the appellants, moreover the injury report or the postmortem report does not corroborate the case of the prosecution.
- (33) Thus, the acquittal of the appellants under Section 5 of the Explosive Substances Act, 1908 is affirmed.
- (34) In the result Criminal Appeal No. 2526 of 2006 is **allowed** and the Criminal Revision No. 53 of 2007 is **dismissed**.

- (35) Appellant no. 1 Arun Kumar @ Arun Devi Pandey has already been released on remission of his sentence on 12.5.2022. Rest of the appellants are reported to be on bail. They need not surrender unless wanted in any other case. Their bail bonds are cancelled and sureties discharged.
- (36) The appellants are directed to file the personal bonds and two sureties in the like amount to the satisfaction of the court concerned in compliance of Section 437-A Cr.P.C. within six weeks from today.
- (37) Let the trial court record alongwith this judgement and order be sent back to the trial court forthwith for necessary compliance.

(Ajai Kumar Srivastava, J.) (Attai Rahman Masoodi, J.)

Order Date :- May 15, 2024

Fahim/-

Criminal Appeal No. 2526 of 2006
Criminal Revision No. 53 of 2007