



2025:AHC:174706-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD
CRIMINAL APPEAL NO. - 5944 OF 2017

Pawan Dixit and 2
others

..Appellants(s)

Versus

State Of U.P.

.....Respondents(s)

Counsel for Appellant(s)	:	Anand Kumar Mishra, Kamlesh Kumar Tripathi, Rajiv Kumar Mishra, Rajrshi Gupta, Sandeep Kumar Gupta, Sarvesh Kumar Dubey, Sikandar B. Kochar
Counsel for Respondent(s)	:	Deepak Dubey, G.A.

Court No. - 43

HON'BLE SIDDHARTHA VARMA, J.

HON'BLE RAM MANOHAR NARAYAN MISHRA, J.

1. The present criminal appeal has been filed with a prayer to set aside the impugned order dated 31.8.2017 passed by the learned Special Judge (D.A.A.) / Additional Sessions Judge, Etawah in Special Case No. 168 of 2010 (State vs. Pawan Dixit and others) arising out of Case Crime No. 389 of 2010, under Sections 302/34, 394, 411 IPC, Police Station – Ikdlil, District – Etawah.

2. When in the night of 19/20th July, 2010, from the room of the Manager of the R.L.T. College, sounds were heard at around 2:00am of 20th July, 2010, then as per the FIR lodged by Banke son of Sri Ramdeen, Banke along with Awadhesh entered into the college and after reaching the channel gate they discovered that the channel gate was opened and the lock was broken. He had stated in the FIR that one person with a country made pistol was standing at the channel gate and he threatened the first informant and his friend Awadhesh to run away from the place else they would also be killed. It was stated by the first informant Banke that afraid of the threat from the armed person, they went inside the college and informed one Anjani Mishra, a member of the faculty, and when the three entered inside the building they found that the Manager Ram Lakhan and his son i.e. Ashish Tiwari were lying on the ground covered with blood. This FIR was lodged on 20.7.2010 at 2:40am.

3. Another application was filed in the Police Station Ikdil Etawah by Smt. Kamla Devi widow of Late Ram Lakhan Tiwari. This was marked as exhibit-ka-1 and in it, it was stated that Ram Lakhan Tiwari and his son Ashish Tiwari in the previous night had stayed back at the R.L.T. college. During those days, admissions were going on in the college and on the instance of Chaukidar Banke Bihari, the husband of the applicant Kamla Devi and her son stayed back in the college. She had in the application itself stated that a few days prior to the date of incident, the deceased had kept with him certain jewellery of the applicant. Along with it a revolver for his safety was also kept. She had stated in the application that in the previous night from the college some teachers had rung

upon her mobile that her husband and her son had been murdered in the college. Upon coming to the college, she had stated that she had seen that in the room where her husband used to sit and also used to stay back when in college the Almirah was opened and the jewellery and the money which were kept in the Almirah had been taken away by the murderer. She had stated that she was absolutely sure that her husband and her son had been killed by one Pawan Dixit son of Banke Bihari. She had stated that she also suspected that a friend of his was also involved. Alongwith them the Chaukidar Banke Bihari was very much hands in glove. She has stated that Pawan Dixit was an accountant in the college and because of certain embezzlements etc. he had been turned out and, therefore, ever since then he had been planning to take revenge.

4. This fact had been told by her husband and her son when they were alive. She had stated in the application that her husband and her son also told that they were afraid that Pawan Dixit would some day be a danger to their lives. She had then stated that upon the information which was received by her, from the mobile phone of a teacher of the college, she had reached the school. The application tagged was along with the first information report which had given rise to Case Crime No. 389 of 2010 and was investigated into.

5. When the investigation commenced then on 22.7.2010, the Station Officer, Nagesh Mishra, the Sub Inspector – Jagannath Singh, Constable -Irshad Ahmad, Constable – Santosh Kumar Singh, went in a Jeep for searching Pawan Dixit. The driver of the Jeep was Prem Pal Singh. When they came to the house, they met

Ramji Dixit @ Ashutosh Dixit, another son of Banke Bihari Dixit. Upon asking as to where Pawan Dixit was, he told that Pawan Dixit had gone to Vaishno Devi by Muri Express at 16:30 on 19.7.2010. When he was, in fact, informed that Pawan Dixit was seen in the night of 19.7.2010, he kept quiet. Upon this conduct of Ashutosh Dixit, the Police asked him some bold questions and then he informed that he was there in town and that on 20.7.2010 in the night at around 2:00PM, Pawan Dixit had called him twice on his Mobile number 9259362846 by Mobile number 8057235759 and had called him at Bharthana Railway Station and had handed over certain articles wrapped in a red cloth. It contained some jewellery. In the recovery memo it was also stated that Ashutosh Dixit had informed the police that Pawan Dixit had informed him that he had taken revenge by killing Ram Lakhan Tiwari and Ashish Tiwari. He had then stated that Pawan Dixit had asked him to keep back the articles in hiding.

6. Upon being asked for the red clothes in which the jewellery was kept, Ashutosh Dixit took the Police behind the house and in the presence of his sister-in-law Poonam Dixit wife of Pawan Dixit, from a container having wheat, took out the jewellery wrapped in the red cloth. When the cloth was opened, it revealed that it contained 26nag one rupee coin of silver, one half rupee of silver, three Laxmi-Ganesh made silver coin, one pair of Laxmi-Ganesh statue of silver, three silver suparis, two gold finger rings, one gold broken finger rings, one Nathuni of gold, two ear rings and one pair of jewellery called Sui-dhaga made of yellow metal. The recovery memo, was exhibited as Exhibit – ka16. It had been stated that the entire jewellery was sealed in the red cloth and was taken in the

custody by the police. The mobile phone of Ashutosh Dixit was also taken into custody. The brother of Pawan Dixit, namely, Ashutosh Dixit was also taken into custody after informing him that he was required in the case under Section 411 IPC.

7. Thereafter on 26.8.2010 after Pawan Dixit had surrendered the boxes in which the jewellery were kept and had been there in the compound of the RLT college were recovered. At the time, when the boxes were being recovered, Deepmala Tiwari and Sri Arvind Sharma, uncle(Mama) of Deepmala Tiwari were present. In their presence, Pawan Dixit and Rajesh Dixit had also got recovered two iron pipes. The two accused Pawan Dixit and Rajesh Dixit had told the police that they were armed with pipes which were used for murdering the deceased Ram Lakhan Tiwari and Ashish Tiwari. The pipes were kept in custody. Also were kept the five empty boxes from which the jewellery had already been taken out were kept in custody. Inside all the boxes, there was inscribed the name of daughter in law of the deceased, namely, Deepmala Tiwari in hindi. Deepmala Tiwari had informed the Police that she had written her own name inside all those boxes herself. The recovery of the pipes was done under Section 27 of the Evidence Act on 26.8.2010.

8. Again, on 26.8.2010, on the pointing of Pawan Dixit and Rajesh Dixit further jewellery was recovered. From the back wall of the house of Pawan Dixit, one yellow circular plastic packet was taken out and when they were checked it was found that they contained finger rings and three pairs of Bichhiya of silver. Another mobile phone of Samsung was also recovered and was taken into custody.

9. Upon asking as to where he had taken the revolver, he had stated that he had thrown it when he was traveling to Agra.

10. The revolver belonging to Ram Lakhan Tiwari was also taken into custody and the recovery memo of which was prepared as Ka-18. The blood stained soil and the plain soil were also kept in custody and the recovery memo was numbered as Ka-19. When the dead-bodies were recovered in the night of 20.7.2010, then a Panchayatnama was also prepared on 20.7.2010 at 9.00 AM. Thereafter the dead bodies of the two deceased were sent for post mortem. The post mortem report of Ram Lakhan Tiwari was prepared at 3.30 PM on 20.7.2010 while the post mortem report of the deceased Ashish Tiwari was prepared on the same date at 4.00 PM. Thereafter the police submitted its investigation report and when it reached the Court, cognizance was taken and the charges were framed against Pawan Dixit, Rajesh Dixit and Ashutosh Dixit under sections 394, 302/34, 120-B IPC read with section 411 IPC. The Sessions Trial was numbered as S.T. No. 168 of 2010. The trial commenced thereafter and when the Trial Court on 31.8.2017 convicted the three accused under sections 302/34, 394 and 411 IPC, the instant appeal was filed.

11. During trial, from the side of the prosecution, 10 prosecution witnesses were produced. PW-1 was Kamla Devi, who had given an application in which she had stated that Pawan Dixit along with his two friends had killed her husband Ram Lakhan Tiwari and her son Ashish Tiwari. She had stated in her examination-in-chief that on the fateful night at around 6.00 AM, from the RLT College some teacher had rung her up informing that her husband Ram Lakhan Tiwari and her son Ashish Tiwari had been murdered in the college.

At that point of time, she had stated that she along with her daughter-in-law Deepmala was in her residence at Bhind. She, upon getting the information, had called her daughter-in-law's father to Bhind and thereafter along with him, she and her daughter-in-law went to RLT College, Ekdil, Etawah and upon reaching the college, she had found that in the verandah, the dead body of her son was lying and in the room the dead body of her husband was lying. She had further stated that a few days prior to the occurrence of the incident, they had got some religious function conducted in the college and, therefore, they all had shifted to the college after closing the house at Bhind and keeping in mind the security of the jewellery etc., they had kept all the jewellery in an almirah in the room where her husband was staying. In the almirah, there were around 6 lacs rupees along with jewellery. When they reached there, they found the almirah opened. She had thereafter stated that prior to the incident, Pawan Dixit, who was an Accountant in the college, had embezzled some money and her husband had initiated a case against him. Pawan Dixit, thereafter, always used to threaten her husband and her son with dire consequences. She had stated that she had got her report scribed by Mahesh Narayan Dixit, the father of her daughter-in-law.

12. PW-2 G.N. Tiwari was the Sub-Inspector who was present at the time when the panchayatnama was being drawn and he proved the same. He had in his cross-examination stated that it was correct to say that in the panchayatnama, no name of any accused was written as by that time there was no news as to who had killed the two deceased.

13. PW-3 was the doctor Sri V.K. Sahu who had conducted the post mortem of the bodies of the two deceased and he had proved the same. During his examination-in-chief, he had given the details of the injuries. However, he was not cross-examined.

14. PW-4 Deepmala Tiwari was the wife of the deceased Ashish Tiwari. She had stated that in the night of 19/20 July 2010 her husband and father-in-law were present in the college and on that date they were murdered and also there was a robbery in the college premises. She, along with her mother-in-law, was staying in the residential house at Bhind and upon the information which she had received from the staff of the college, she along with her mother-in-law and father reached the college. She also repeated the story of the religious function which had taken place in the college and because of which they had all shifted to the college and brought with them all the jewellery. She had also stated that 6 lacs rupees along with jewellery were kept in the room of her father-in-law. She again also stated about the fact that Pawan Dixit was made an accused of some embezzlement case and he was always threatening her husband and father-in-law with dire consequences. She had also stated that at the time of the recovery under section 27, she along with her uncle (Mama) Arvind Sharma was present. She gives the details of the jewellery which were recovered and also gives the details of what all was found during the recovery. She had stated in her examination-in-chief that all the recoveries which were made were kept in the police station Ekdil and the police had made them all disappear and a report with regard to the disappearance of the recovered articles was also lodged by the

Police. Since the accused did not cross-examine the PW-4 Deepmala Tiwari, their opportunity to cross-examine her was adjourned on 6.7.2016 and it was continued on 25.7.2016. In her cross-examination, she had stated that the accused were the sons of the son-in-law of her uncle-in-law. She had stated that ever since she had got married, she had known the accused persons and she also knew where they stayed. However, she had gone to their house only on that date when the recovery was done. She had stated that the stolen jewellery was never produced in the Court whenever she came to get her evidence recorded. She stated that she remembered the jewellery very categorically and if they were shown to her, she would recognize them. She had stated that even the iron pipes which were recovered were not produced before her either on the earlier dates or on the date when she was being cross-examined. The iron rods were recovered from the bushes which were there in the college. When asked as to when the function was held and whether any invitation card was printed, she had stated that no invitation card was printed and there was no written evidence with regard to the fact that the religious function was held.

15. PW-5 was the uncle (Mama) of the daughter-in-law and his name was Arvind Sharma. In his examination-in-chief, he had stated that quite often he used to come to the RLT College. He has also stated that Pawan Dixit was an employee in the RLT College and that Pawan Dixit, Rajesh and Ashutosh were the relatives of the deceased Ram Lakhan Tiwari and, therefore, he stated, he knew them well and also recognized them in the Court. He had

then stated that he along with one Narendra Dixit were going from Lucknow to Bhind and since it had become very dark in the night and the road was not proper, they had decided to stay on in RLT College, Etawah. When they reached the college gate at around 2.00 to 2.30 AM in the night, then they found that there were lights on and that the Chowkidar Banke Lal and Pawan Dixit coming out and behind them Rajesh Dixit was following them. Behind them all, Ashutosh Dixit was also coming out. Upon an inquiry as to whether Ram Lakhan Tiwari (deceased) was there in the college, they stated that he had gone out of station. Upon getting this information, he himself and his companion Narendra Dixit had gone to their own houses. On the next day, they come to know about the murder of Ram Lakhan Tiwari and Ashish Tiwari. He had stated that when he had gone to the college in the night, he had seen in the hand of Pawan Dixit, a bag (jhola). He had then stated about the fact that he was also present at the time when the recovery was made at the pointing of Pawan Dixit and Rajesh Dixit. He had then categorically stated that with help the iron rod the accused had killed the deceased and thereafter had looted the jewellery. He had thereafter also proved the recovery memo. He had also stated that on that very same date, from the house of the accused, the police had made certain recoveries. However, the PW-5 was not cross-examined.

16. PW-6 was Sub-Inspector Jagannath Singh who had accompanied the police team during the time when the recovery was being made. He had stated that he had no knowledge if the articles which were recovered were got identified by the real

owners. He had also stated in the cross-examination that no one from the locality or from the public was made a witness to the recovery.

17. PW-7 was Narendra Dixit who had come along with Arvind Sharma (the Mama of the daughter-in-law). He had stated that Ram Lakhan Tiwari was his relative and that the deceased was the father-in-law of the daughter of his uncle. He has also stated the same story as was narrated by the PW-5 Arvind Sharma. In the cross-examination, he had stated that in between Etawah and Mahgaon, the road was perfect and it took about one to one and half hours to reach Mahgaon from Etawah. In the cross-examination, he had stated that why he had gone Lucknow, he did not know. He had stated that in Lucknow he had no house. He had accompanied Arvind Sharma for no reason whatsoever and for what work Arvind Sharma had gone to Lucknow, was also not known to him. He mentions that he had gone to Lucknow for the upkeep of some tower which was installed around 10 km. away from Lucknow. He had stated that the name of the place where the tower was installed, he did not know. He stated that it took around a month to get a tower installed. He also stated that he had no knowledge as to how many toll booths they crossed during their travel from Mahgaon to Lucknow. He had stated that he was also aware of the fact that when a vehicle crosses the toll gate, the vehicle number is got noted.

18. PW-8 is the Investigating Officer, S.I. Nagesh Mishra and he has informed the manner in which he had conducted the investigation. He had stated that he also asked for a dog squad and

the fingerprint team and that he had also collected the articles which were found at the place of incident. Apart from the statements which were taken of the various accused, the statement of Bakey Bihari who was the Chaukidar and had lodged the initial first information report was also taken and he was considered as a conspirator and the case was also tried for conspiracy under Section 120-B of I.P.C. He had proven all the recovery memos which were prepared by him and also had stated that he had got certain recoveries made after having taken the accused in police custody.

19. PW-9 is the constable Shyamveer Singh. He is the constable who had proven the chick with regard to the Case Crime No.624 of 2014 under Section 409 of the I.P.C. This first information report was got lodged on account of the fact that the recovered articles had disappeared from the malkhana and in fact he had stated that the recovered articles with regard to the Case Crime No. 389 of 2010 had never been seen by him. He had stated that he had never been posted alongwith the accused Virendra Pratap Singh (accused in Case Crime No. 624 of 2014) who was now dead.

20. PW-10 was the Sub-Inspector G.N. Tiwari, who had proven the chick as was recorded by Head Moharrir, Virendra Pratap Singh. This was being done as Virendra Pratap Singh had died. Thereafter, the statements of three accused persons namely Ashutosh Dixit, Rajesh Dixit and Pawan Dixit were recorded under Section 313 of Cr.P.C. and when the accused Pawan Dixit, Rajesh Dixit and Ashutosh Dixit were convicted under Sections under Sections 302/34, 394, 411 IPC, then the instant Criminal Appeal was filed.

21. Learned counsel for the appellants Sri Kamlesh Kumar Tripathi has submitted as under:

(I) The case was of circumstantial evidence. There was no direct eye-witness of the case and therefore as per the judgment of Supreme Court in **Sharad Birdichand Sarda vs. State of Maharashtra** reported in **AIR 1984 SC 1622** the five salient points which were to be seen for convicting an individual which were mentioned in the judgment and were mentioned here under. It had to be looked into that a complete chain of the events which would lead the conclusion that the accused and no one else had committed the crime had to be formed. The salient points were as follows :-

- 1. The circumstances from which the conclusion of guilt is to be drawn should be fully established;*
- 2. The fact so established should be consistent only with the hypothesis of the guilt of the accused;*
- 3. The circumstances should be of conclusive nature and tendency;*
- 4. They should exclude every possible hypothesis except the one to be proved; and*
- 5. There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.*

In the instant case, there was a first information report lodged by the Chaukidar Bakey Bihari. Thereafter an application was filed by the wife of the deceased Ram Lakhan Tiwari in which she had mentioned that she was convinced that her husband and her son had been killed by Pawan Dixit alongwith his friends and that the Chaukidar Bakey Bihari

who had lodged the initial first information report was also hands in glove with them. She had stated that the accused Pawan Dixit had been an accountant in the college and he was implicated in the case of embezzlement and therefore as a revenge he had killed her husband and her son. Learned counsel for the appellants states that when the investigation had taken place there were certain recoveries made of the stolen articles and of the iron pipe/rod by which it was alleged that the accused were beaten to death. He further submits that the accused had surrendered and when they were taken into police custody then recoveries were made under Section 27 of the Evidence Act. Still further it has been submitted that the recovered articles were kept in the malkhana but they were stolen from the malkhana with regard to which an F.I.R. was lodged on 20.12.2014 at 01:30 PM by S.H.O. Radha Mohan Dwivedi, the Inspector In-charge of Thana Ekdil, Etawah. The stolen articles from the malkhana were never recovered and as a result when the trial commenced they were never produced before the Court. He therefore submits that when the stolen articles which were never produced before the Court on account of the fact that they had themselves got stolen from the malkhana of the police station then no conclusion could be drawn that the stolen articles were actually recovered and thereafter were connected with the crime in question. In fact, learned counsel for the appellants states that when the stolen articles were never placed before the Court then even the charge for

robbery and the charge of the possession of stolen articles could not be proved.

(II) Learned counsel for the appellants states that even if the recovery memo was proved by the relevant prosecution witnesses they were of no value as the recovery itself under Section 27 of the Evidence Act was not conducted in the manner as has been provided in the judgment of **Subramanya vs. State of Karnataka** reported in **AIR 2022 SC 5110** and when the recovery itself was doubted, the entire case had no legs to stand.

(III) Even the oral evidence of the PW-5 and the PW-7 would not support the case of the prosecution because it was highly improbable that in a dacoity infested area the PW-5 and the PW-7 had chosen to travel up to Etawah in the mid night of 19/20.7.2010. In fact, learned counsel for the appellants states that a perusal of the statements of the PW-5 and the PW-7 shows that they could not tell the reason for their being in Lucknow and why they traveled in the dark of the night to come to Etawah. Learned counsel for the appellants further states that no call details etc. of the PW-5 and the PW-7 were brought on record to establish that they had ever tried to contact the deceased or their staff to inform the deceased that the PW-5 and the PW-7 were coming to stay in the college.

(IV) Learned counsel for the appellants states that the statement of the PW-1 and that of the PW-4 also become unbelievable in view of the fact that they had stated that information with regard to the death of the two deceased had

been received by them by a telephone call which was of a faculty member. Learned counsel for the appellants states that no effort was made to trace the number which had tried to inform the PW-1 and the PW-4 about the death of the two deceased persons. The faculty member was never produced in the witness box.

(V) The iron rods which were also kept in the malkhana had disappeared and the iron rod was also not thus produced in the Court as an evidence. Still further it has been argued that no effort was made to lift any fingerprints from the iron rod and also the blood which was there on the iron rod was not sought to be matched by any forensic laboratory. Learned counsel for the appellants states that even though the Investigating Officer in his statement-in-chief has stated that he had requested for fingerprint lifting etc. but nothing of that sort was done.

22. Learned counsel appearing for the informant Sri Deepak Dubey and learned A.G.A. Sri Amit Sinha, however, submitted that the chain of the events was complete and that there was not an iota of doubt with regard to the fact that the accused had murdered the deceased. The recovery memos were sufficient to the fact that the articles were stolen from the almirah of the deceased and also the injuries on the skull of the deceased were such which would definitely have been incurred because of the fact that the accused had hit the deceased by an iron rod.

23. Having heard the learned counsel for the appellants, learned counsel for the informant and the learned A.G.A., we find that when the stolen articles and the pipe/rod by which the deceased

had been hit were never produced before the Court then there was absolutely no evidence with regard to the fact that the articles were stolen from the almirah of the deceased and that the deceased was hit by any iron rod. The recovery memos also become doubtful in view of the fact that they were not prepared as per the law laid down in **Subramanya vs. State of Karnataka** reported in **AIR 2022 SC 5110**. Also the statements of the witnesses who claim themselves to have reached the spot at the relevant time namely the testimony of Arvind Sharma, PW-5, and Narendra Dixit, PW-7, are not believable as they had not been able to tell as to why they had gone to Lucknow and why they had travelled all the way to Etawah in the dark of the mid night of 19/20.7.2010. A perusal of the statement definitely shows that these two witnesses were tutored witnesses who had been produced only to strengthen the case of the prosecution. There was absolutely no occasion for them to be at the spot and at the time when they claimed themselves to be at the relevant spot. Thus in view of the fact that when the chain of events was not completed at all, the Court is of the view that the prosecution has not been able to prove the charges as were levelled against the appellants.

24. The Appeal is, therefore, thus allowed.

25. The impugned order dated 31.8.2017 passed by the learned Special Judge (D.A.A.) / Additional Sessions Judge, Etawah in Special Case No. 168 of 2010 (State vs. Pawan Dixit and others) arising out of Case Crime No. 389 of 2010, under Sections 302/34, 394, 411 IPC, Police Station – Ikdil, District – Etawah is hereby

quashed and set-aside. The appellants are acquitted of all the charges and, therefore, they be released from jail immediately.

(Ram Manohar Narayan Mishra,J.) (Siddhartha Varma,J.)

September 26, 2025

PK/GS/M.S. Ansari