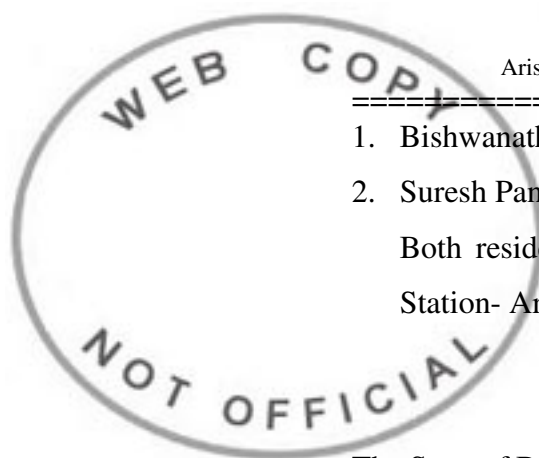




IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.214 of 1993

Arising Out of PS.Case No. – 166 Year- 1990 Thana – Arrah Muffasil District- BHOJPUR

1. Bishwanath Pandey, son of late Tilak Pandey.
2. Suresh Pandey, son of late Bishwanath Pandey,
Both residents of Village- Mani Rai Ka Tola, Post Office- Salempur, Police
Station- Arrah Muffasil, District- Bhojpur.

.... Appellants

Versus

The State of Bihar

.... Respondent

with

Criminal Appeal (DB) No. 231 of 1993

Arising Out of PS.Case No. – 166 Year- 1990 Thana – Arrah Muffasil District- BHOJPUR

Rameshwar Pandey, son of Bishwanath Pandey, resident of Village- Moni Rauke
Tola, Police Station- Arrah Muffasil, District- Bhojpur (Arrah).

.... Appellant

Versus

The State of Bihar

.... Respondent

with

Criminal Appeal (DB) No. 246 of 1993

Arising Out of PS.Case No. – 166 Year- 1990 Thana – Arrah Muffasil District- BHOJPUR

Hridayanand Pandey, son of Bishwanath Pandey, resident of Village- Mani Rai Ka
Tola, Police Station- Arrah Muffasil, District- Bhojpur (Arrah)

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellants : Mr. Kumar Uday Singh, Advocate.
Mr. Manish Chandra Gandhi, Advocate.

For the Respondent : Mr. A.K. Sinha, A.P.P.
Mr. S.C. Mishra, A.P.P.
Ms. S.B. Verma, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE V.N. SINHA
and
HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE V.N. SINHA)
Date: 29-07-2015

These three appeals arise out of judgment of conviction, order of sentence dated 29.04.1993 passed by 2nd Additional Sessions Judge, Arrah in Sessions Trial No. 34 of 1992, whereunder the appellants have been convicted for the offence under Section 302/34 of the Penal Code, sentenced to suffer Rigorous Imprisonment for life. Appellant Hridayanand Pandey has further been convicted for the offence under Section 302 of the Penal Code, sentenced to suffer Rigorous Imprisonment for life. Both his sentences, however, have been directed to run concurrently. Appellant Rameshwar Pandey has further been convicted for



the offence under Section 307 of the Penal Code, sentenced to suffer Rigorous Imprisonment for seven years with further direction to pay fine of Rs. 1,000/-, in default of payment of fine, to suffer Rigorous Imprisonment for six months. His both the sentences have also been directed to run concurrently. Appellant Suresh Pandey has further been convicted for the offence under Section 27 of the Arms Act, directed to suffer Rigorous Imprisonment for seven years with further direction to pay fine of Rs. 1,000/-, in default of payment of fine, to suffer Rigorous Imprisonment for six months.

2. Prosecution case, as set out in the First Information Report of informant (P.W. 8) Ramadhar Pandey, recorded by Officer-in-Charge, Arrah Muffasil Police Station on 15.10.1990 at 12.15 P.M. in presence of his mother P.W. 5 Sonamati Devi and one Rudradhar Tiwari, resident of Village- Barja is that on the same day in the morning at about 9:00 A.M. informant along with his father Shiv Kumar Pandey was preparing for sowing mustards in the backyard of his house. Mother of the informant, P.W.

5 Sonamati Devi came with the seeds. Meanwhile, Accused No. 2 Bishwanath Pandey, Accused No. 4 Hridayanand Pandey, Accused No. 3 Rameshwar Pandey, Accused No. 4 Suresh Pandey, all sons of his agnate Bishwanath Pandey came near the informant and began to uproot the tomato plants. Mother of the informant protested and asked the aforesaid persons not to uproot the same but the aforesaid persons did not listen to her and began to abuse her. Father of the informant also asked the aforesaid persons not to uproot the tomato plants, whereafter Accused No. 2 Bishwanath Pandey asked his sons to annihilate informant and his parents, whereafter Accused No. 4 Hridayanand Pandey, Accused No. 3 Rameshwar Pandey and Accused No. 1 Suresh Pandey went to their house and came back with Farsa, Barchha and licensed gun respectively and proceeded to assault his father which persuaded mother of the informant to register further protest, whereafter Accused No. 3 Rameshwar Pandey assaulted the mother of the informant on her head with Barchha causing injury and her fall. After mother of the informant became injured, the father ran to save her whereafter



Accused No. 4 assaulted the father of the informant with Farsa on his head causing head injury, his father became unconscious and fell down. On alarm being raised, sister-in-law of the informant (P.W. 3) Godawari Devi, his wife (P.W. 4) Urmila Devi and brother (P.W. 1) Srinivas Pandey also came to the place of occurrence, whereafter Suresh Pandey fired thrice from his licensed gun. Informant and others became fearful and concealed themselves. On hearing the alarm, various co-villagers also came and accused persons went away from the place of occurrence, whereafter informant came to the place of occurrence, saw that his father has died. Having seen the father dead, informant and other members of his family began to weep. After sometime, Dafadar Bashistha Singh (P.W. 2) and one Chowkidar came to the place of occurrence. P.W. 2 asked the informant that he shall be guarding the dead body and informant may proceed along with his injured mother for the Muffasil Police Station for recording his statement, whereafter informant came to the Police Station, recorded his statement for necessary action. Informant having read the statement, found the



same correct, put his signature over the First Information Report in presence of witness, who also put his signature as attesting witness.

3. Officer-in-Charge, Mufassil Police Station having registered the First Information Report asked Sub-Inspector Janardan Singh (P.W. 11) to investigate the case. After registering the First Information Report, informant took his mother Sonamati Devi (P.W. 5) to Sadar Hospital where she was examined on 15.10.1990 at 1.30 P.M. by Dr. Arjun Prasad who found as many as five injuries on her person. Out of the five injuries, Injury No. 1 is said to have been caused by sharp cutting weapon, may be Bhala. Rest of the injuries caused by hard, blunt substance, may be lathi. Nature of all injuries found on the person of P.W. 5 is simple. In the light of the First Information Report and the instruction of the Officer-in-Charge, S.I. Janardan Singh (P.W. 11) came to the place of occurrence on the same day at about 3:00 P.M. and conducted inquest proceedings on the dead body of Shiv Kumar Pandey. Perusal of the Inquest Report indicates that he had suffered sharp cutting head injury and other injuries on his



body. The inquest proceeding was conducted in presence of Suresh Singh and Paras Singh, both resident of Village Piparpanti within Krishnagarh Police Station.

4. After conducting the inquest proceeding, P.W. 11 forwarded the dead body of Shiv Kumar Pandey to Arrah Sadar Hospital for conducting his post mortem which was received in the hospital on the same day 15.10.1990 at 4:45 P.M. but the autopsy surgeon saw the dead body on 16.10.1990 at 9:00 A.M. and also conducted the post mortem at the same time. Post Mortem Report also confirms that the deceased suffered head injury which was grievous in nature and the other injuries were on non-vital parts of the body and was also simple.

5. In the light of the further statement of the informant, police statement of Sonamati Devi and other family members of the informant and the deceased, S.I. Janardan Singh having found the occurrence true, submitted charge-sheet. In the light of the chare-sheet, cognizance was taken and after supply of police papers case was committed to the

court of Sessions. The Sessions Court under order dated 17.07.1992 framed charges against the four accused persons to which they pleaded not guilty, claimed to be tried.

6. In support of the prosecution case, prosecution examined as many as 11 witnesses. P.W. 1 Srinivas Pandey, P.W. 3 Godawari Devi, P.W. 4 Urmila Devi are the brother, sister-in-law and wife of the informant. P.W. 6 Ramdeo Singh, P.W. 7 Janardan Singh are co-villagers who came to the place of occurrence after the occurrence but have not been named in the First Information Report. P.W. 8 Ramadhar Pandey is the son of the deceased and informant of the case. P.W. 9 Dr. Mahesh Kumar Sinha, P.W. 10 Dr. Arjun Prasad are the two Medical Officers serving in the Arrah Sadar Hospital who conducted autopsy on the person of the deceased on 16.10.1990 and examined the mother of the informant (P.W. 5) on the date of occurrence itself. P.W. 2 Bashistha Narayan Singh is the Dafadar named in the First Information Report who came to the place of occurrence after the occurrence. P.W. 11 Janardan Singh is Sub-Inspector, Arrah Muffasil

Police Station and Investigating Officer of the case.

7. Learned counsel for the appellants assailed the judgment of the trial court and submitted that prosecution witnesses being the family members of the informant and the deceased, their testimony is required to be examined with caution as the prosecution witnesses being the family members in their anxiety to get the prosecution case established are likely to make exaggerated statement. The submission appears to be right and in the light of such submission we have examined the evidence of P.W. 5, the wife of the deceased and mother of the informant with caution. It appears, she suffered as many as five injuries on her person and was examined by P.W. 10 Dr. Arjun Prasad on the date of occurrence i.e. 15.10.1990 at 1:30 P.M. in Sadar Hospital, Arrah after informant and his mother appeared before the Officer-in-Charge, Muffasil Police Station, Arrah and recorded their First Information Report at 12:15 P.M. on the same day. The doctor has categorically found on the person of P.W. 5 as many as five injuries, which are quoted hereinbelow:-



(i). Incised wound 1½"x1/4"x bone deep on the middle of the forehead.

(ii). Abrasion 1/6"x1/6" on left ring finger.

(iii). Bruise 2"x1" on left forearm

(iv). Bruise 3"x1" on left shoulder

(v). Bruise 2"x1" on left forearm

8. Doctor has found Injury No. 1 caused by sharp cutting weapon but has opined that the same is simple and is neither piercing nor penetrating. In the circumstances, it is difficult for us to accept that author of the said injury can be convicted for the offence under Section 307 of the Penal Code. Accordingly, we modify the conviction of Rameshwar Pandey, appellant in Cr. Appeal (D.B.) No. 231 of 1993, from Section 307 of the Penal Code to Section 324 of the Penal Code and sentence him to suffer Rigorous Imprisonment for the period already undergone by him under that count.

9. Now we come to the case of Accused No. 4 Hridayanand Pandey who has inflicted sharp cutting head injury on the person of deceased Shiv Kumar Pandey. Deceased Shiv Kumar Pandey has

suffered other injuries as well besides the head injury, as is evident from the evidence of autopsy surgeon P.W. 9 Dr. Mahesh Kumar Sinha. It is evident from the evidence of P.W. 9 that deceased suffered the following three injuries:-

(i). Incised wound 1"x1"x muscle deep over right forearm near wrist.

(ii). Incised wound 3½"x ½ "x bone deep over left parietal region of skull

(iii). Penetrating wound ½"x ½"x abdominal cavity deep over left iliac phora.

10. Injury No. 2 is the head injury caused by Farsa said to have been inflicted by Accused No. 4. Injury No. 3 is said to have been caused by Bhala, may be Barchhi with which Accused No. 3 was armed. Accused No. 3, however, may not be said to be the author of Injury No. 3 on the person of deceased, as in the First Information Report informant has not claimed that Accused No. 3 assaulted the deceased. As per the version in the First Information Report it is only Accused No. 4 who has assaulted the deceased. The evidence of the informant in Paragraph 1 that Accused No. 3 also

assaulted the deceased appears to be improvement during trial, as such, is not being relied upon. None of the prosecution witnesses have attributed any overt act against Accused Nos. 1, 2 that they assaulted the deceased. In the circumstances, there does not appear any material available on record on the basis of which Accused Nos. 1, 2 and 3 can be attributed with the overt act of having assaulted the deceased. The evidence of the prosecution witnesses that Suresh Pandey resorted to three rounds of firing can also not be accepted as there is no objective evidence of firing having been found at the place of occurrence by the Investigating Officer (P.W. 11). In the circumstances, we not only set aside the conviction, sentence of Accused No. 1 for the offence under Section 27 of the Arms Act but also hold that Accused Nos. 1, 2 and 3 did not take part in assaulting the deceased Shiv Kumar Pandey, as there is no such overt act asserted in the First Information Report against Accused Nos. 1, 2 and 3 which is the first version of the occurrence. Accordingly, their conviction, sentence for the offence under Section 302/34 of the Penal Code is set aside.





11. There is no difficulty in holding that Accused No. 4 Hridayanand Pandey is the author of one Farsa injury on the person of deceased Shiv Kumar Pandey. He, however, did not repeat the assault, considering the distance of time and the fact that he has remained on bail during pendency of appeal, we modify his conviction from Section 302 of the Penal Code to Section 304 Part-II of the Penal Code and sentence him to suffer Rigorous Imprisonment for a period of five years. It is said that he has remained in jail custody during trial and after filing of this appeal, in all about 2½ years, as such, for undergoing the further sentence, he must surrender forthwith and his bail bonds are accordingly cancelled.

12. In the light of our finding above, the appeal filed by Accused No. 4 Hridayanand Pandey bearing Cr. Appeal (D.B.) No. 246/1993 is dismissed with modification in conviction, sentence. The appeal of Accused No. 3 Rameshwar Pandey bearing Cr. Appeal (D.B.) No. 231/1993 is also dismissed with modification in conviction, sentence.

13. In the light of our finding above

Accused Nos. 1, 2 are granted benefit of doubt, acquitted of the charges levelled against them. Their appeal bearing Cr. Appeal (D.B.) No. 214 of 1993 is, accordingly, allowed. They are discharged from the liability of their respective bail bonds.

(V.N. Sinha, J)

(Jitendra Mohan Sharma, J)

P.K.P./N.A.F.R.

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