

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Appeal (DB) No.838 of 2011**

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Against the judgment of conviction dated 23.06.2011 and the order of sentence dated 28.06.2011, passed by the Ist Additional Sessions Judge, Bagaha, West Champaran, in Sessions Trial No.369 of 2010, arising out of Bagaha P.S. Case No.203 of 2010.

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1. Raja Pandey, Son of Sri Vayas Pandey.
  2. Vibha Pandey @ Durga Devi, Wife of Vayas Pandey.
  3. Vayas Pandey, Son of Late Ram Chandra Pandey.
  4. Pushpa Pandey, Wife of Raja Pandey.
- All residents of Village Gandhi Nagar Ward No.18, P.S-Bagaha, District West Champaran.

.... .... Appellants

Versus

The State of Bihar

.... .... Respondent

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**Appearance :**

For the Appellants : Mr. Rama Kant Sharma, Senior Advocate  
Mr. Nityanand Tiwary, Advocate

For the State : Mr. A.K. Sinha, APP

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**CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH**  
**and**  
**HONOURABLE MR. JUSTICE ARUN KUMAR**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH)

Date: 02-05-2017

Appellants Raja Pandey and Vibha Pandey have been convicted under Section 302 IPC and sentenced to life imprisonment along with a fine of Rs.10,000/- each and in default of payment of fine to undergo S.I. for one year. Both the appellants have also been convicted under Sections 307/149 IPC and sentenced to undergo rigorous imprisonment for five years along with a fine of Rs.3,000/- each and in default of payment of fine to undergo S.I. for three months. Appellants Vayas Pandey and Pushpa Pandey have been



convicted under Sections 302/149 IPC and sentenced to undergo life imprisonment along with a fine of Rs.10,000/- each and in default of payment of fine to undergo S.I. for one year. Appellant Vayas Pandey has further been convicted under Section 307 IPC and sentenced to undergo rigorous imprisonment for ten years along with a fine of Rs.5,000/- and in default of payment of fine to undergo S.I. for six months. Appellant Pushpa Pandey has further been convicted under Sections 307/149 IPC and sentenced to undergo rigorous imprisonment for five years along with a fine of Rs.3,000/- and in default of payment of fine to undergo S.I. for three months. All the appellants have further been convicted under Section 148 IPC and sentenced to undergo rigorous imprisonment for two years along with a fine of Rs.500/- and in default of payment of fine to undergo S.I. for 15 days. However, all the sentences were directed to run concurrently.

2. The prosecution case in short, as made out in the *fardbeyan* of Ajay Kumar Gupta, Son of Sri Vindhyachal Prasad of Village Gandhinagar, Ward No.18, P.S. Bagaha, District West Champaran, recorded by S.I. Neehar Bhushan, S.H.O. Bagaha P.S. on 13.05.2010 at 10.00 P.M. at Sub-divisional Hospital, Bagaha, is as follows:-

(i) The informant stated that he along with his family members including his mother Bimla Devi, wife Shakuntla Devi,



*Bhagini* Reena Kumari, brothers Mintu Prasad and Deepu Kumar were supervising the foundation work of the newly constructed house just behind their own residential house. In the meantime, Rani Kumari, daughter of Vayas Pandey came to the toilet situated just by the side of his newly constructed house to answer call of nature. But, she quickly went back. Soon thereafter Vayas Pandey along with his family members and some unknown persons, whom they did not recognize, variously armed advanced towards them. Vayas Pandey was armed with axe, Pankaj Pandey was armed with *farsa*, Raja Pandey was armed with knife, Vibha Pandey was armed with pistol, Rani Pandey was armed with *khanti*, Garila Pandey, daughter of Vayas Pandey along with daughter-in-law of Vayas Pandey were armed with sharp cutting weapon.

(ii) As they came near, Vayas Pandey abusively asked as to who was peeping in the bathroom to which they replied that none peeped in the bathroom and they were in fact supervising their newly constructed house. However, Vayas Pandey remained agitated and hurled an axe blow aiming on the informant's head. The informant tried to save himself but the axe hit his left shoulder causing a lacerated injury. Blood also flowed from the wound. The informant thereafter cautioned his family members that Vibha Pandey is a cantankerous lady and may instead implicate them in a false case and



as such, it is better to inform the police soon about the incident and he proceeded. But as he did not see his brothers following him, he turned back and found his brother Mintu Prasad surrounded by the accused persons with a motive to kill him. Raja Pandey and Pankaj Pandey were attacking him by means of knife and *farsa* kept in their hand. In the meantime, Vibha Pandey fired from the pistol. As another brother of the informant, namely, Deepu Kumar tried to save Mintu Prasad, Pankaj Pandey struck Deepu Kumar with *farsa* on his head on account of which his brother Deepu Kumar sustained bleeding injury from which blood dropped. The informant and his family members began to raise *hulla* whereupon villagers gathered.

(iii) The informant with the help of the villagers and family members carried both brothers to Sub-divisional Hospital, Bagaha. However, one of the brothers i.e. Mintu Prasad died on the way. The condition of Deepu Kumar was precarious so he was referred from Sub-divisional Hospital, Bagaha to Bettiah Sadar Hospital. The informant claims that the occurrence took place because of foundational work carried out by the prosecution side and on pretext that the prosecution side peeped into the bathroom where his daughter had gone to answer call of nature, committed the murder of his brother and injured others.

(iv) After recording *fardbeyan*, the police read over the



statement to the informant and finding the same to be true, the latter put his signature on the same, which was also attested by the family members. On basis of *fardbeyan* of the informant, Bagaha P.S. Case No.203 of 2010, dated 13.05.2010 was registered under Sections 147/148/149/324/326/307 and 302 of IPC as well as Section 27 of the Arms Act.

3. Soon after registration of the FIR, the police prepared inquest of the dead body of the deceased and inspected the place of occurrence. The police took further statements of informant and statement of other witnesses under Section 161 Cr.P.C. The police arrested the accused persons same day. On the confessional statement of the accused, the blood stained knife, which is said to be used in commission of the crime by Raja Pandey, was recovered from his house. The police also obtained post-mortem report and finding the case true against all the FIR named accused persons submitted charge-sheet against them under Sections 147/148/149/324/326/307 and 302 of IPC as well as Section 27 of the Arms Act. On basis of charge-sheet, learned ACJM, Bagaha took cognizance of offence and committed the case to the court of sessions.

4. The trial of Rani Pandey aged about 17 years and Garila Pandey @ Preeti Kumari aged about 12 years were separated vide order dated 14.05.2010 and their case was transferred to the



Juvenile Court, Bettiah. The trial of Pankaj Kumar was also separated and concerned record was sent to the Juvenile Board on 04.12.2010. The prayer of Raja Pandey for declaring him a juvenile was rejected. The regular trial thus proceeded against four accused, namely, Raja Pandey, Vibha Pandey @ Durga Devi, Vayas Pandey and Pushpa Pandey.

5. Charges were framed under Sections 148, 307/149, 302/149, 307 and 302 IPC to which they pleaded not guilty and claimed to be tried. The case of the defence from the mode of cross-examination and statement under Section 313 Cr.P.C. is one of false implication due to enmity.

6. The issue before this Court for consideration is whether the prosecution has been able to prove its case beyond all reasonable doubt against the accused persons.

7. The prosecution in order to substantiate its case examined as many as 19 witnesses. Out of these 19 witnesses, PWs.1 to 13 are not the witnesses of the occurrence.

8. The evidence of Jai Prakash Sah (PW2) is that he saw the accused persons at the place of occurrence just after the crime. The evidence of Indrajeet Sharma (PW6) and Asharfi Prasad (PW8) is to the extent that they saw the accused persons fleeing away with arms. The evidence of Paras Paswan (PW12) is to the extent that he



has seen the accused persons fleeing variously armed after the occurrence from near his door. Reena Kumari (PW14), *bhagini* of informant, Deepu Kumar (PW15), brother of the informant and Ajay Kumar Gupta (PW16), the informant have claimed to be eye witnesses to the occurrence. Dr. Meet Verma (PW18) conducted post-mortem on the dead body of Mintu Prasad and opined that the death was caused due to fire arm injury. Neehar Bhushan (PW19) is the first I.O. of the case and he recorded the *fardbeyan*, prepared inquest report, took statement of witnesses, seized blood stained knife said to be used in commission of crime from the house of Raja Pandey. Naresh Prasad (PW17) is the second I.O. of the case who submitted charge-sheet in the case.

9. Mr. Rama Kant Sharma, learned senior counsel appearing for the appellants assailed the impugned judgment of conviction and sentence on a number of grounds. Learned counsel submits that on account of enmity, entire family members of accused persons have been roped including three minors, namely, Pankaj Kumar, Rani Pandey and Garila Pandey. Their case has been separated and transferred to Juvenile Court for enquiry and disposal. Even as per the prosecution case, there is no eye witness to the occurrence save and except the informant, his brother and his own *bhagini*. Though the informant and his brother Deepu Kumar



sustained injuries by sharp cutting weapon, causing bleeding, still no blood was collected by the I.O. Besides this even the blood stained knife, which was recovered from the house of Raja Pandey, which is said to be used in commission of murder of the deceased was not sent for forensic examination. Besides this, Reena Kumari narrated the entire prosecution case in a parrot like manner. Learned counsel next submits that it is the case of the prosecution that they saw the occurrence in lantern light, which was not produced before the I.O. Besides this, the identification as such, becomes still more doubtful as two of the witnesses i.e. Ramesh Choudhary (PW4) and Indrajeet Gupta (PW6) stated that the night was dark. Alternatively learned counsel argued that the occurrence took place without premeditation and on the heat of the moment and as such, the case would fall within Exception 4 of Section 300 Indian Penal Code.

10. On the other hand, Mr. A.K. Sinha, learned Additional Public Prosecutor for the State has defended the impugned judgment of conviction and sentence. He submits that the informant, his injured brother Deepu Kumar and his *bhagini* Reena Kumari are eye witnesses to the occurrence and have supported the prosecution case. He further submits that apart from these eye witnesses, PWs.2, 6, 8 and 12 have seen the accused persons fleeing away from the place of occurrence. He submits that the post-mortem report also



corroborates the prosecution case. He next submits that in a statement under Section 313 Cr.P.C., Vibha Pandey @ Durga Devi admitted that she shot the deceased Mintu Prasad for which the learned senior counsel for the appellants submits that it could be on account of lack of understanding by a rustic woman in the court.

11. We have heard the counsel for the parties and perused the materials on record.

12. The prosecution case in short is that the informant and his family members had laid foundation of a new house, which was just in back of their present residential house. At about 8.30 P.M. on 13.05.2010, the informant along with his family members had gone to see the new construction. Around that time, the daughter of Vayas Pandey came to the bathroom, situated just by the side of the new construction, but she went back hurriedly.

13. Soon thereafter accused persons, variously armed, came to the construction site. Vayas Pandey charging the prosecution side of peeping while her daughter had gone to the bathroom, assaulted the informant with his axe on his left shoulder. Thereafter Raja Pandey assaulted Mintu Prasad with knife, Pankaj Pandey assaulted Mintu Prasad with *farsa* and finally Vibha Pandey shot at him with pistol. When Deepu Kumar tried to intervene, he too was assaulted by Pankaj Pandey with *farsa*.



14. Dr. Mit Verma (PW18) conducted the post-mortem of the deceased and found both fire arm and incised injuries on the person of the deceased. As per the evidence of the doctor (PW18), the deceased sustained an incised wound ante-mortem in nature on right deltoids area measuring 1½" x ¼" x muscle deep with a tail end above downward. The other injury was fire arm entry wound measuring ¾" x ¼" on left side of back of chest of the deceased Mintu Prasad. The doctor also found exit wound measuring 1" x ½" with everted margin at about left supra clavicular area 1" about left collar Bar. According to the doctor the deceased died on account of injury no.2 caused by firearm. As such, we find that the post-mortem report substantially supports the prosecution case. We also find that the informant Ajay Kumar Gupta (PW16), his injured brother Deepu Kumar (PW15) and his *bhagini* Reena Kumari (PW14) have supported the prosecution case.

15. The defence has not been able to extract any material contradictions worth the matter to make the evidence of the three eye-witnesses unreliable. It is true that the deceased did not sustain any *farsa* injury though the informant and other witnesses in their evidence stated that Pankaj Pandey also assaulted with *farsa* on the person of the deceased. In our view it is not very uncommon in country side to rope some more persons with actual perpetrators of



crime. Except the contradiction, there is no other disparity in the prosecution case, to render the same unbelievable.

16. Learned counsel for the appellants had argued that the prosecution has not produced the lantern with the aid of which, they would see the occurrence. Learned counsel submits that the witnesses stated that lantern was burning and they saw the occurrence in the lantern light. However, the lantern was not produced before the I.O. Non-production of lantern would show that no lantern was burning and the accused could not have seen the occurrence as two of the witnesses stated that the night was dark. In our considered view the submissions of the learned counsel for the appellants on the point of identification on the ground that no lantern was burning and the night was dark cannot be accepted as the accused persons were next door neighbours and the occurrence took place in the open land near their houses. It is not a case of either side that the accused persons had covered their faces.

17. It is also argued that the prosecution has not been able to establish the place of occurrence or the manner of occurrence as the I.O. did not collect blood though as many as three persons including the informant, Deepu Kumar and the deceased sustained sharp cutting injuries. In our view, the I.O. was in error in not collecting the fallen blood and sending the blood stained knife recovered from the house of



Raja Pandey for forensic examination. Non-collection of blood and not sending the blood stained knife for forensic examination would be laches and irregularity on part of the I.O. but the same would not go to the root of the prosecution case in view of ocular evidence of the informant and his two family members which has been supported by the post-mortem report. The presence of the two injured witnesses, namely, the informant and his brother Deepu Kumar cannot be doubted as the occurrence took place in the field near to their house. In view of the forgoing discussions, we find that the prosecution has succeeded in establishing that Vibha Pandey @ Durga Devi opened fire which hit the back of the deceased Mintu Prasad and pierced through it leading to his death.

18. Learned counsel for the appellants alternatively argued that the case of the appellants would not fall under Section 302 IPC but would come within Exception 4 of Section 300 IPC as the occurrence took place on the spur of the moment. Elaborating his submission, learned counsel submits that even assuming the prosecution case to be proved, accused side were agitated as some persons of the prosecution side tried to peeped into the bathroom when Rani Kumari, daughter of Vayas Pandey had gone to answer the call of nature. He submits that in case the occurrence took place on a sudden fight and in a heat of passion, the case would come within the



purview of Exception 4 of Section 300 IPC. In support of his submission, learned counsel has relied upon decisions of the Hon'ble Supreme Court in the case of *K. Ravi Kumar v. State of Karnataka*, reported in (2015) 2 SCC 638 and in the case of *Arjun v. State of Chhattisgarh*, reported in AIR 2017 SCW 1150. There cannot be any dispute to the proposition of law laid down by the Hon'ble Apex Court that in case the occurrence took place in a sudden fight or in a heat of passion without any premeditation, the case would come within the purview of culpable homicide not amounting to murder.

19. In the light of the settled principle, we would now examine whether the case of the accused persons would come within purview of Exception 4 to Section 300 IPC. It would appear from evidence on record that 6 to 7 accused persons variously armed came from their house and assaulted the prosecution side. Accused Raja Pandey struck the deceased with knife, whereas Vibha Pandey shot from her pistol causing fire arm injury on his back leading to his death. The assault followed some altercations between the parties. On this basis, learned counsel for the appellants submits that the occurrence took place without any premeditation and on the heat of the moment.

20. On the other hand, the prosecution case is that there was a dispute with respect to new constructions being raised by the



prosecution, which was the main cause for the occurrence and the story of peeping into the bathroom was developed with an intention to cover the main motive for the crime. We find that the case of the prosecution is consistent on this point and as such, we are unable to accept the prosecution case that the occurrence took place on the heat of the passion and without premeditation so as to convert the offence into one under culpable homicide not amounting to murder and as such, we uphold the conviction of the trial court convicting appellant Vibha Pandey @ Durga Devi under Section 302 Indian Penal Code and is sentenced to undergo life imprisonment under Section 302 IPC and a fine of Rs.5,000/- and in default of payment of fine to undergo simple imprisonment for two months. So far as conviction of Raja Pandey under Section 302 IPC is concerned, we find that he has given one knife blow and that too on the upper arm of the deceased which admittedly is not the cause of the death. There was no repetition of blow by Raja Pandey and as such, we disagree with the view of the learned trial court that appellant Raja Pandey shared the common object of killing the deceased. As such, we convert his conviction into one under Section 307 IPC.

21. Similarly appellant Vayas Pandey assaulted the informant by axe on his left shoulder and there is no allegation that he assaulted any one else. As such, we find that only a case under



Section 326 IPC is made out against the appellant and we accordingly, sentence him to 4 years simple imprisonment. Consequently we acquit him of the charge under Sections 302/149 and 307 of the Indian Penal Code. The appellant would surrender to serve the remaining part of his sentence, if not already served.

22. We further find that there is no cogent evidence against appellant Pushpa Pandey of sharing common object with other accused persons of committing murder of the deceased. There is no material that she committed assault either on the deceased or on any other person. As such, we acquit appellant, Pushpa Pandey, of the entire charge. The Judgment of conviction and sentence against appellant no. 4, namely, Pushpa Pandey, is set aside. As she is already on bail, she is discharged from liabilities of her bail bonds.

23. So far as appellant no.1, namely, Raja Pandey is concerned, the appeal is partly allowed. The conviction under Section 302 IPC is altered to Section 307 IPC and the sentence is also modified to 7 years from life imprisonment. As, he has already remained in imprisonment for seven years, he is set at liberty, if not wanted in any other case.

24. So far as appellant no.2, namely, Vibha Pandey @ Durga Devi is concerned, the appeal as against her is dismissed. As she is on bail, she would surrender and remain in custody to serve out



remaining part of her sentence.

25. In the result, the appeal is partly allowed.

**(Samarendra Pratap Singh, J.)**

**(Arun Kumar, J.)**

S.Kumar/-

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