

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.231 of 1995

Arising Out of PS.Case No. -null Year- null Thana -null District- BUXAR

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Srikant Pandey son of Shiv Parsan Pandey, resident of village Pokhaha, P.S-
Brahmpur, Dist- Buxar

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

with

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Criminal Appeal (DB) No. 262 of 1995

Arising Out of PS.Case No. -null Year- null Thana -null District- BUXAR

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Sidhnath Pandey @ Sidha Pandey son of Gupeshwar Pandey, resident of village-
Pokharahan, P.S- Brahmpur(Begami) Dist-- Buxar

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mrs. Rina Sinha

Mr. Pramod Kumar

For the Respondent/s : Mr. Satya Narain Prasad

Mr. S.C. Mishra, APP

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**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA**

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)

Date: 07-05-2018

Heard Mrs. Rina Sinha, advocate appearing as amicus
curiae for the appellant and Mr. S. C. Mishra for the State and perused
the record.

2. Both the Criminal Appeals have arisen out of common
judgment of conviction and sentence order dated 15.07.1995 passed



by the learned 1st Additional Sessions Judge, Buxar in Session trial no. 168 of 1993 by which and whereunder the learned 1st Additional Session Judge, Buxar convicted the appellants in Cr. Appeal No. 231 of 1995 for the offence punishable under section 302 whereas convicted the appellant in Cr. Appeal No. 262 of 1993 for the offence punishable under section 302/34 of the Indian Penal Code and accordingly, sentenced both the appellants to undergo rigorous imprisonment for life. Since both the above stated appeals have arisen out of common judgment, accordingly, both the appeals are heard together and are being disposed of by this common judgment.

3. PW-3, namely, Surajnath Pandey gave his fardbeyan to officer-in-charge of Barahampur Police Station, namely, Rajbansh Singh (PW-5) on 24.01.1992 at about 6 a.m at the *Khalihan* of Inderdeo Pandey of village-Pokhrah to this effect that at previous evening at about 5.30 p.m he along with his brother Raja Ram Pandey and his villager Sawami Nath Pandey (PW-1) were returning to their home from their *Khalihan* and Raja Ram Pandey was ahead and when they reached near the *Khalihan* of Inderdeo Pandey, they noticed that appellant Srikant pandey, armed with rifle, F.I.R named accused Vijay Pandey armed with single barrel gun, Umashanker Pandey armed with single barrel gun, Sidha Pandey armed with Farsa, Dudh Nath Pandey and Bhuneshwar Pandey armed with double barrel gun and Suman



Yadav armed with double barrel gun came out from *Sarso Masor* field and, thereafter, F.I.R named accused Umashanker Pandey, Sidha Pandey and Ajay Pandey caught hold his brother Raja Ram Pandey and, thereafter, F.I.R named accused Dudh Nath Pandey ordered others to kill him upon which the appellant Srikant Pandey opened fire twice of his rifle touching the face of Raja Ram Pandey. The F.I.R named accused Vijay Pandey and Suman Yadav also made fire on his brother Raja Ram Pandey, as a result of which he having sustained firearm injury, fell down and died then and there. PW-3 and others raised alarm but the above stated persons started making firing as a result of which PW-3 and his associates started fleeing towards eastern side and escaped unhurt. The aforesaid persons made attempt to take away the dead body of Raja Ram Pandey but subsequently, they left the dead body and took to their heels towards south side. The reason behind the occurrence is said to be previous enmity between PW-3 and deceased, as the P.W-3 is residing with one Baijnath Pandey of his village and the murder of brother of appellant Srikant Pandey had taken place in September, 1991 and in the aforesaid murder case, Baijnath Pandey and son of PW-3 were made accused and the son of P.W-3 was in jail custody at the time of recording the fardbeyan of PW-3.

4. On the basis of fardbeyan of PW-3, Surya Nath Pandey



Bhrampur, P.S case no. 14 of 1992 was registered on 24.01.1992 for the offence punishable under section 302/34 of the Indian Penal Code and the 27 of the Arms Act and on the same day at 9 p.m. formal F.I.R was drawn up against the appellants and other F.I.R named accused persons.

5. PW- 5, Rajbansh Singh took charge of investigation and after completion of investigation, he submitted charge sheet against the appellants and others for the offences punishable under section 302/34 of the Indian Penal Code. Cognizance of the offence was taken and the case of the appellants was committed to the court of session and, accordingly, only appellants were put on trial before the learned 1st Additional Session Judge in Session trial no. 168 of 1993. Both the appellants stood charged for the offences punishable under section 302/34 of the Indian Penal Code to which they denied and claimed to be tried.

6. In course of trial, the prosecution examined, altogether, five witnesses and also got exhibited some documents. The statements of appellants were recorded under section 313 of the Cr.P.C in which they claimed their false implication on account of previous enmity and, furthermore, the appellant Srikant Pandey claimed that on the alleged date of occurrence, he was not in his village. One defence witness, namely, Rajendra Pandey, was examined on behalf of the



defence to prove this fact that on the alleged date of occurrence, the appellant Srikant Pandey was at Arrah.

7. Learned trial court having scrutinized the evidences available on the record convicted the appellants in the manner as stated above.

8. Learned Amicus curiae appearing for Cr. Appeal No. 231 of 1995 challenged the impugned judgment of conviction and sentence order arguing that the learned trial court failed to take notice of improbability of the prosecution case as well as contradictions made by the prosecution witnesses in their statements. Learned Amicus curiae further submitted that the post mortem report also contradicted the claim of prosecution witnesses but the learned trial court did not pay any heed to the aforesaid contradictions.

9. Learned counsel appearing for the appellant in Cr. Appeal No. 262 of 1995 supported the above stated submissions of learned amicus curiae adding that the appellant in Cr. Appeal No. 262 of 1995 was implicated on account of serious long standing enmity and, as a matter of fact, the claim of the so-called eye witnesses is not trustworthy.

10. On the other hand, learned Additional Public Prosecutor supported the impugned judgment of conviction and sentence order arguing that the learned trial court has rightly convicted the appellants



as there was ample material to show the involvement of the appellants in the alleged crime. He further submitted that prosecution witnesses succeeded to prove its case beyond all shadow of reasonable doubt and there is no scope to interfere into the impugned judgment of conviction and sentence order.

11. Having heard the contentions of both the parties, we went through the record along with lower court record.

12. PW-1 Swami Nath Pandey claimed that on 23.01.1992 at about 5.30 p.m., while he along with deceased and PW-3 Suraj Nath Pandey as well as PW-2 Chandra Bhushan Pandey was returning to his home from *Khalihan* and when they reached near the *Khalihan* of Inderdeo Pandey, all of a sudden, appellants and F.I.R. named accused persons being armed with weapons came out from the Sarso-masor field and F.I.R. named accused Ajay Pandey as well as appellant Sidha Pandey caught the deceased whereas on the instigation of F.I.R. named accused Dudh Nath Pandey, appellant Shri kant Pandey opened fire on Raja Ram Pandey touching his face. The F.I.R. named accused Vijay Pandey made fire twice whereas F.I.R. named accused Suman Yadav also made one fire on deceased Raja Ram Pandey. This witness has stated that he as well as others raised alarm but the aforesaid persons made firing upon them but they did not sustain any injury. This witness stated that reason behind the



alleged occurrence was old enmity and he identified the appellants before the court. This witness further stated that two empty cartridges of 12 bore and 2 empty cartridges of 3.15 bore and one bag of cartridges of 3.15 bore, blood stained Gamcha, blood stained earth were seized and the seizure list of the aforesaid seized articles was prepared in his presence and he has put his signature on the seizure list.

13. This witness identified his signature on seizure list as well as signature of another witness, namely, Rang Nath Pandey as Exhibit-1. P.W-1, frankly, admitted that in the murder of Kameshwar Pandey, his brother Kashi Nath Pandey, was made accused. He has further stated in his cross-examination that the masoor plant was one feet in height. This witness further stated that deceased Raja Ram Pandey was ahead and behind him Surya Nath Pandey, Swami Nath Pandey and Chandra Bhushan Pandey were going. This witness further admitted that in the murder of Kameshwar, Byasmuni Pandey was accused. This witness further stated that he was behind the deceased Raja Ram Pandey and that was the reason, deceased Raja Ram Pandey was caught by the appellants and others. This witness admitted the previous enmity between him and appellant Srikant Pandey.

14. PW-2, Chandra Bhushan Pandey repeated the same



statement as stated by the PW-1 and this witness also stated that it was appellant Srikant Pandey, who shot fire twice upon the deceased, touching the face of the deceased and furthermore, this witness claimed that the appellants and their associates committed the alleged occurrence on account of previous enmity. On being cross-examined, this witness stated that his statement was recorded by the police on 24.01.1992 at 8.00 - 8.45 a.m. and prior to recording his statement, the police had recorded the statement of PW-1. This witness further stated that he remained near the dead body for whole night. This witness stated that his *Khalihan* was at the distance of 25 gaj from the *Khaliyan* of Inderdeo Pandey . This witness happens to be own nephew of Raja Ram Pandey and admitted that in the murder of Kameshwar Pandey, his full brother Viyas Muni was an accused. This witness stated that when he as well as others saw the appellants and their associates, they started fleeing away from there but unfortunately, the deceased Raja Ram Pandey was caught by the above stated person. This witness further stated that within one second of seeing the appellants and others, the firing was made.

15. PW-3 Suraj Nath Pandey also claimed himself to be eye-witness of the alleged occurrence and repeated the same story as stated by PW-1, PW-2. This witness was cross-examined by the prosecution but there is nothing important and alarming in the cross-



examination of this witness on the basis of which the statement of this witness could be discarded. Being informant, this witness supported his fardbeyan and stated that it was appellant Srikant Pandey, who shot fire twice upon the deceased whereas the appellant Sidha Pandey and co-accused Umashanker Pandey and Ajay Pandey caught, hold the deceased. This witness was cross-examined by the prosecution at length and in cross-examination, he admitted the long standing enmity between him and the appellants and other accused. This witness stated that on the alleged date of occurrence at about 12 noon, he as well as others eye witnesses including deceased had gone to their respective houses to take lunch and after that they returned to their *Khalihan*. This witness further admitted that after the occurrence several villagers had assembled there and he disclosed the names of some villagers. This witness also admitted that he remained near the dead body for whole night. He further admitted that in the murder of Kamshwer Nath Pandey, Kashi Nath Pandey, Viyas Muni Pandey and Baban Pathak were accused. This witness further stated that Viyas Muni Pandey was his son and Kashi Nath Pandey was brother of PW-1 Swami Nath Pandey. He also admitted that the murder of Brinda Narayan Pandey son of Baijnath Pandey was committed by Nexalites and the second son of Baijnath Pandey was also murdered. This witness also admitted that deceased Raja Ram Pandey was accused in



the case of murder of one Baban Singh Yadav. This witness further admitted that in the case of murder of Ram Pujan Yadav PW-1 and his father Swami Nath Pandey and Baidhyanath Pandey were accused. He also admitted that there was litigation between the Swami Nath Pandey and Baiju Pandey. He further stated that on the alleged date of occurrence, he did his work at his Khalihan from 6.00 a.m to 5.50 p.m because *Dauni* of paddy was going on. This witness further stated that occurrence took place near the field of Inderdeo Pandey. This witness denied the suggestion of defence that he has not seen the alleged occurrence and lodged the case after seeing the dead body of the deceased.

16. PW-4, Dr. Shashi Bhushan Pandey, had conducted the post mortem examination on the dead body of the deceased on 24.01.1992 at 4.30.p.m.

(i) This witness stated that he found rigor mortis present in all the four limbs of the dead body of the deceased. He further stated that he found one wound 6''x3'' bone deep with irregular charred margin inverted on the left cheek and mouth region extending from the front of left ear to lower boarder of the left side chin with fracture of left mandible and left side of temporal bones, damaging the blood vessels, nerves and muscles. This injury was wound of enterence.

(ii) He also found left eye ball depressed inside with



blackening of the forehead nose and cheek.

(iii) He also found one wound 8''x5''x bone deep with irregular and everted margin on the right side of face and forehead, extending from nose to right ear horizontally and from the front of scalp to prominence of right cheek vertically including the right eye ball. Right temporal erictd bone and right side face bone are broken into multiple pieces.

(iv) Brain matter, blood vessels, nerves and muscles are damaged and coming outside. The above stated injury was the wound of exit.

17. This witness stated that the death was caused by hemorrhage and shock due to firearm injury of the vital organs. The witness also opined that time elapsed since death to the post mortem examination was within 36 hours. This witness stated in his cross-examination that he did not find any foreign material in the body of deceased and also admitted that the injuries found on the person of the deceased was possible from a distance of 1 and ½ meter. This witness stated that at the time of post mortem examination, the clothes of dead body had already been removed and the clothes of the deceased were handed over to constable who had brought and identified the dead body. He had further stated that some portion of the face of the deceased was blown off but it was



identifiable to some extent though in same sequence he stated that it was not identifiable. He, further, stated that undigested food was found in the stomach of the deceased and the presence of undigested food in his stomach shows that the deceased had taken food within half an hour of his death.

18. PW-5 was officer in-charge of Bhrampur Police Station at the time of alleged occurrence. This witness had recorded the fardbeyan of PW-3 and had taken charge of investigation. This witness proved the fardbeyan of PW-3 as exhibit-4 and also formal F.I.R. as exhibit-5. This witness also proved the inquest report of deceased as Exhibit-6. This witness described the place of occurrence and stated that the place of occurrence was Khaliyan of Inderdeo Pandey where he found lying the dead body of the deceased. He, further, stated that towards southern side of the *Khaliyan* of Inderdeo Pandey, there was a field of Sarso-masoor. He found blood-stains from the field up to the place where the dead body was lying. He, further, found sign of trampling in the field . He found one empty cartridge of .12 bores at the distance of 10 yard from the dead body of the deceased. He also found empty box, blood stains, blood stained *gamchha* and some other articles from the place of occurrence. He prepared a seizure list and he proved the seizure list. This witness further stated that he sent the dead body of the deceased for post



mortem examination and after completion of the investigation he submitted charge sheet. On being cross- examined by the defence, this witness stated that on 23.01.1992 at about 11.30 p.m, he heard some rumour and having got the aforesaid rumour in the morning of 24.01.1992, he went to the place of occurrence. He further stated that when he reached on the place of occurrence, he found witnesses Chandra Bhushan Pandey (P.W-2), Swami Nath Pandey (P.W-1), Nandu Pandey, Sonu Pandey, Devnath Pandey were present there and also found the dead body of the deceased lying in the field. He admitted that he had not sent the blood stained earth to chemical examination. He further stated that the distance between the police station and place of occurrence was at 7 k.m. He also stated that he had remained on the place of occurrence for near about 3 hours and after that he went inside the village.

19. On careful examination of the prosecution witnesses, we find that PW-1, PW-2, PW-3 consistently supported the prosecution case and stated that it was appellant Srikant Pandey, who shot fire on the deceased keeping his rifle on the face of the deceased. The aforesaid statement of the above stated witnesses is supported by the post mortem report. PW-3 claimed that appellant Sidhnath Pandey and two others had caught the deceased at the time of alleged occurrence and at that time the appellant Sidhnath Pandey was armed



with Farsa but admittedly, no Farsa blow was found on the person of the deceased and there was long standing enmity between the appellant and the prosecution party. Therefore, possibility of false implication of appellant Sidhnath Pandey cannot be ruled out but so far as appellant Srikant Pandey is concerned, there is no contradiction in the statement of prosecution witnesses nor there is any improbability in the prosecution case and in our view, the learned trial court rightly convicted the appellant Srikant Pandey but so far as appellant Sidhnath Pandey is concerned, we are of the view that the learned trial court ought to have given benefit of doubt to him, taking note of factum of previous enmity as well as taking note of this fact that no farsa injury was found on the person of deceased and the aforesaid fact goes to show that appellant Sidhnath Pandey had not participated in assaulting the deceased.

20. On the basis of aforesaid discussion, Cr. Appeal No. 23 of 1995 filed by Srikant Pandey stands dismissed and, accordingly, his conviction and sentence order is, hereby, confirmed. Appellant Srikant Pandey is on bail. His bail bond stands cancelled. The appellant, Srikant Pandey, is directed to surrender before the court below within a month from today failing which the learned trial court shall take proper steps to procure his arrest so that the appellant Srikant Pandey could serve his sentence.



21. So far as, Cr. Appeal No. 262 of 1995 is concerned, the same is allowed and accordingly, impugned judgment of conviction and sentence order in respect of appellant Sidhnath Pandey in Cr. Appeal No. 262 of 1995 is, hereby, set aside and, accordingly, the appellant Sidhnath Pandey in Cr. Appeal No. 262 of 1995 is acquitted of the charges framed against him. He is on bail and he is discharged from the liabilities of the bail bonds.

22. Let first and last page of the copy of this judgment be handed over to learned amicus curiae so that she could take steps for getting his remuneration from Legal Aid Services Committee, Patna High Court, Patna .

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

N.K/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	28.06.2018
Transmission Date	

