

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.910 of 2017

Arising Out of PS. Case No.-64 Year-1982 Thana- AANDAR District- Siwan

1. Yogendra Pathak, son of Muneshwar Pathak, resident of village- Barwa, P.S.- Andar, District- Siwan.
2. Ram Suresh Pathak, son of Yadunandan Pathak, resident of village- Barwa, P.S.- Andar, District- Siwan.
3. Tarkeshwar Pathak, son of Suruj Pathak, resident of village- Barwa, P.S.- Andar, District- Siwan.
4. Bachcha Pathak, son of Muneshwar Pathak, resident of village- Barwa, P.S.- Andar, District- Siwan.
5. Harendra Pathak, son of Muneshwar Pathak, resident of village- Barwa, P.S.- Andar, District- Siwan.
6. Vyas Pathak, son of Ram Chandra Pathak, Resident of village- Barwa, P.S.- Andar, District- Siwan.
7. Prabhunath Pathak, son of Ram Pravesh Pathak, resident of village- Barwa, P.S.- Andar, District- Siwan.
8. Umanath Pathak, son of Pauhari Pathak, resident of village- Barwa, P.S.- Andar, District- Siwan.
9. Pauhari Pathak, son of Sri Kishun Pathak, resident of village- Barwa, P.S.- Andar, District- Siwan.
10. Amarnath Pathak, son of Pauhari Pathak, resident of village- Barwa, P.S.- Andar, District- Siwan.
11. Radhey Shyam Pathak, son of Yadunandan Pathak, Pauhari Pathak, resident of village- Barwa, P.S.- Andar, District- Siwan.

... .. Appellants

Versus

The State Of Bihar

... .. Opposite Party

with

CRIMINAL APPEAL (DB) No. 771 of 2017

Arising Out of PS. Case No.-64 Year-1982 Thana- AANDAR District- Siwan

Ram Vilas Pathak @ Sudama Pathak @ Ram Velas Pathak, son of Late Sharda Pathak, resident of village Barwa, P.S. Andar, District Siwan.

... .. Appellant

Versus

The State Of Bihar

... .. Respondent



Appearance :

(In CRIMINAL APPEAL (DB) No. 910 of 2017)

For the Appellant/s : Sri Ramakant Sharma, Sr. Advocate
Shri Rajesh Kumar, Advocate
Mrs. Prem Sheela Pandey, Advocate
For the Opposite Party/State: Sri Ajay Mishra, A.P.P.
For the informant : Smt. Soni Shrivastava, Advocate
Smt. Rachana Saraswati, Advocate
Smt. Madhuri Kumari, Advocate

(In CRIMINAL APPEAL (DB) No. 771 of 2017)

For the Appellant/s : Shri Kanhaiya Prasad Singh, Sr. Advocate
Shri Pratik Mishra, Advocate
Shri Birendra Kumar Singh, Advocate
For the Respondent/State: Shri Ajay Mishra, A.P.P.
For the informant : Smt. Soni Srivastava, Advocate
Smt. Rachna Saraswati, Advocate
Smt. Madhuri Kumari, Advocate

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
and
HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

Date : 20 -08-2019

1. Eleven [11] appellants in Cr. Appeal (D.B.) No. 910 of 2017 and the sole appellant in Cr. Appeal (D.B.) No. 771 of 2017 were tried together and convicted and sentenced by the common judgment of the trial court, and as such, both the appeals were taken up together under the heading “For Hearing” and are being disposed by this common judgment.

2. This is second round of appeal filed by the appellants in Sessions Trial No. 281 of 1982. The present appeal under Section 374 (2) of the Code Of Criminal Procedure, 1973 [hereinafter referred to as the “Cr.P.C.”] has been filed against the judgment of conviction dated 8th June ,



2017 passed by Shri Om Prakash Rai, learned Sessions Judge, Siwan [hereinafter referred to as “trial judge”] in Sessions Trial No. 281 of 1982 [arising out of Andar P.S. Case No. 64 of 1982]. By judgment date 8th June, 2017 all the twelve appellants in both the appeals were convicted for the offence under Section 302/149 of the Indian Penal Code, 1860 [hereinafter referred to as “I.P.C.”]. Tarkeshwar Pathak (A3), Harendra Pathak (A5) and Pauhari Pathak [A9] in Cr. Appeal (D.B.) No. 910 of 2017 were further convicted under Section 323 of the I.P.C. All the appellants under Section 302/ 149 of the I.P.C. by order dated 13.06.2017 were sentenced to undergo rigorous imprisonment for life and to pay fine of Rs. 5000/- each. In case of default of payment of fine, they have further been sentenced to undergo simple imprisonment for two months. By the same judgment of conviction, Vyas Pathak (A 6) in Cr. Appeal (D.B.) No. 910 of 2017 has been convicted for offence under Section 324 of the I.P.C. and by order dated 13.06.2017 has been sentenced to undergo rigorous imprisonment for three years and to pay fine of Rs. 2000/- each. In case of default in payment of fine he has further been directed to undergo simple imprisonment for one



month. Appellant / Tarkeshwar Pathak @ Timal Pathak in Cr. Appeal (D.B.) No. 910 of 2017 by the same judgment of conviction and sentence has been directed to undergo simple imprisonment for one year under Section 323 of the I.P.C. and imposed fine of Rs. 1000/- . In case of default in payment of fine he has been directed to further undergo simple imprisonment for one month. Yogendra Pathak [A1], Bachcha Pathak [A4], Vyas Pathak [A6], Radhey Shyam Pathak [A11] in Cr. Appeal (D.B.) No. 910 of 2017 and Ram Vilas Pathak @ Sudama Pathak @ Ram Velas Pathak [sole appellant in Cr. Appeal (D.B.) No. 771 of 2017] by the same judgment of conviction and sentence under Section 148 of the I.P.C. were directed to undergo rigorous imprisonment for three years. Ram Suresh Pathak [A2], Tarkeshwar Pathak @ Timal Pathak [A3], Harendra Pathak [A5], Prabhunath Pathak [A7], Umanath Pathak [A8], Pauhari Pathak [A9] and Amarnath Pathak [A10] were convicted under section 147 of the I.P.C. and sentenced to undergo simple imprisonment for one year. Appellant no. 1 in Cr. Appeal (D.B.) No. 910 of 2017 by the same judgment i.e. judgment of conviction and sentence dated 8th June 2017 and 13th June, 2017 respectively was under



Section 27 (1) of the Arms Act, 1959 [hereinafter referred to as the “Arms Act”] was sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs. 1000/-. In case of default in payment of fine he has further been directed to undergo one month simple imprisonment. All the sentences were directed to run concurrently. The judgment of conviction and sentence was passed in Sessions Trial No. 281 of 1982 { arising out of Andar P.S. Case No. 64 of 1982} by Shri Om Prakash Rai, learned Sessions Judge, Siwan.

3. The case has got a chequered history. In the case occurrence had taken place long back on 29.05.1982 in which three persons from prosecution side were done to death and number of others received injuries. Initially 19 accused persons were put on trial and by judgment dated- 31.03.1992 learned Special Judge -cum -Additional Sessions Judge, Siwan acquitted all the 19 convicts and discharged them from charge under Section 302 read with 149 of the I.P.C. and also under Section 302/34 of the I.P.C. and instead the learned Special Judge -cum- Additional Sessions Judge, Siwan by judgment dated 31.03.1992 in Sessions Trial No. 281 of 1982 convicted some of the accused persons under Section 304 read



with Section 114 of the I.P.C. and other Sections of the I.P.C. and also acquitted /discharged the accused persons from offence under Section 27 of the Arms Act. After the judgment of conviction and sentence dated 31st March, 1992 and 28.04.1992 respectively passed by Shri Jhauri Prasad Paul, learned Special Judge – cum- Additional Sessions Judge, Siwan, the said judgment of conviction and sentence was assailed by all the 19 convicts before this court by filing five different appeals i.e. Cr. Appeal (D.B.) No. 36 of 1992, Cr. Appeal (D.B.) No. 37 of 1992 , Cr. Appeal (D.B.) No. 38 of 1992, Cr. Appeal (D.B.) No. 44 of 1992 and Cr. Appeal (D.B.) No. 98 of 1992. The said appeals were finally taken up by a Division Bench of this court and on considering the fact that conviction order was under Section 304 of the I.P.C. and there were some discrepancies, by judgment dated 23.07.2015 the co-ordinate bench allowed all the appeals and set aside the judgment of conviction and order of sentence and remitted back the matter with a direction for re- trial from the stage of hearing arguments of both the sides. It is apt to incorporate the relevant concluding paragraphs of the judgment of Co-



ordinate Bench of this Court passed in earlier appeals, which are as follows:-

“10. We after having heard the learned counsel for the appellants and after having considered the evidence of the witnesses and without expressing any opinion as regards the merits of the evidence and the findings recorded by the court below, want to go the part of the judgment by which the learned trial judge had recorded the findings of guilt against the appellants. If the charges had been proved by the evidence then we find that there was no material discussed by the learned trial judge to justify that it could be a case under Section 304 of the Indian Penal Code and even if it could be assumed by taking the worst view that an offence under Section 304 of the Indian Penal Code was made out, we simply could not reconcile ourselves to the sentence passed by the learned trial judge upon those appellants who had been held guilty under Section 304 of the Indian Penal Code and were directed to suffer rigorous imprisonment for fourteen years. Likewise, if there was an unlawful assembly, as appears held by the learned trial Judge, as he was convicting some of the appellants under Section 147 of the Indian Penal Code and others of them under Section 148 of the Indian Penal Code, which unlawful assembly had a common object, as appears from the above finding of guilt, then we simply could not reconcile ourselves again as to how the others who were not convicted for homicide either punishable under Section 302 or under Section 304 of the Indian Penal Code could be acquitted for the charges under Sections 302/149 or 302/34 of the Indian Penal Code. The learned trial judge had never stated in his judgment that there was any grave and sudden provocation or that the accused persons had acted in exercise of their right of private defence and exceeded it, rather the learned trial judge had held that the accused persons, while the informant alongwith the three deceased were retreating from the plot of land over which the Jamun tree was standing, were chased down and beaten up as a result of which three persons died and seven others were badly injured. This was a case in which a reasonable - conscientious person could not come to a conclusion that there could be conviction only under Section 304 of the Indian Penal Code and that too only against some of the nineteen appellants.



The way the learned trial Judge approached the evidence in order to marshalling the facts indicates a pure mechanical illegal approach without considering the facts in the light of the provisions of the Indian Penal Code and further appears as if the learned trial Judge was not trained in applying the provisions of the Indian Penal Code to the facts of a case and then reaching a conclusion as to what offences were made out. He appears probably falling in slumber while dictating the judgment as his own findings were conflicting to each other as at the one time he was finding an unlawful assembly with common object and at the other he was not applying the appropriate provision to convict all the appellants under the principles of vicarious liability creating the offence under Section 149 of the Indian Penal Code. The judgment was written in a manner which defied the weight of the evidence on record.

11. Some of the submissions that Ram Bilash Pathak had not been charged under Section 304/149 of the Indian Penal Code and was still convicted of that offence appears serious contention. Likewise, the submission of the prosecution that the learned trial Judge was unmindful of his duties of appreciating the facts so as to reaching a just conclusion and, as such, it was urged that the judgment be set aside and a direction be issued to the trial Court to hear the parties again and to pass a fresh judgment. While making the above submission, it was contended that a time frame should be fixed for delivery of the judgment after hearing the parties again.

12. None framing of charge or omission to frame charge or framing of wrong charge are not going to have any impact on the judgment of conviction as regards the findings recorded by the learned trial court in view of the provisions of Sections 468 and 465 Cr.P.C. In Kantilal Chandulal Mehta (supra), the Supreme Court was also pointing out that position of law with reference to Section 535 of the Code of Criminal Procedure, 1898 which corresponds to the present provision of Section 464 of the Code of Criminal Procedure, 1973. In that view of the matter, the conviction of Ram Bilash Pathak under Sections 304/114 of the Indian Penal Code might not have been of such importance as to allowing his appeal but what we found was that the learned counsel for the parties had rightly pointed out that the judgment impugned herein was so perverse as regards the application of the law to the established facts that it was extremely desirable



that this Court acting under Section 386 Cr.P.C. ought to direct rehearing of the arguments of the parties so that a fresh judgment was passed after due application of mind by appreciating the facts so as to applying the law properly to them. The learned Judge was holding that there was an unlawful assembly and that unlawful assembly had a common object as well in prosecution whereof the murder of three persons was committed and, as such, he was convicting some of the accused under Section 147 and some other under Section 148 of the Indian Penal Code but the curious aspect of the judgment is that he was simply ignoring the application of Section 149 of the Indian Penal Code by virtue of which a charge under Section 302 of the Indian Penal Code had been framed and was not assigning any reason as to why after being found members of an unlawful assembly some of the members of which had committed culpable homicide the others who were acting in prosecution of the same common object should not be convicted even for that offence. We do not want to express our opinion in spite of holding a very concrete one as to what offence could be constituted in the light of the evidence which was adduced by the prosecution during the trial, but we do feel that the trial court is required to pass fresh judgment as it was necessary to be done so as to imparting justice fully and completely. The present judgment was ridiculous and had only heaped injustice not only to the informant and the three deceased persons and their families but also to the accused persons who had either been not adequately convicted or had been convicted and sentenced improperly.

13. These are some of the reasons besides the others which we do not want to express so as to avoid prejudicing the retrial which we are ordering. In the light of the evidence and the observations which we have recorded in brief by giving brief reasons, we allow the appeals, set aside the judgment of conviction and order of sentence passed upon the appellants and direct the retrial of Sessions Trial No. 281 of 1982 from the stage of hearing arguments on both the sides. We shall request the District & Sessions Judge, Siwan that he should list this case in his Court and take up the hearing of the trial on a day to day basis. The appellants are on bail. They are directed to surrender in the court below and the District & Sessions Judge shall allow them to remain on bail and if he so desires, he may ask them to furnish fresh bail bonds to his own satisfaction. We fix a



time frame of three months from the date of receipt of the lower court records with the copy of the present judgment as the counsel for both the parties have undertaken before us to conclude the hearing so that the judgment is delivered within three months as noted above.

14. Before we part, we want to point out that we have noted down the age of some of the appellants, like, accused Harendra Pathak, Keshav Pathak, Tarkeshwar Pathak, Yogendra Pathak and Dilip Kumar Pathak who could be in our opinion less than 18 years on 29.05.1982. The learned trial Judge may examine their case in the light of the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 and after due enquiry, if they are found aged below 18 years on 29.05.1982 then their case may be sent to the Juvenile Justice Board for enquiry as per the provisions of the above noted act. We want further to point out that during pendency of these appeals, Swaminath Pathak, Paras Nath Pathak, Ram Pravesh Pathak, Ramjee Pathak and Prahalad Pathak died. As such, the trial court should not spend any time on that aspect of the trial. The trial shall continue only against the surviving accused persons. With the above observations and directions, the trial is remanded back in terms as indicated above by allowing the five appeals.

15. We believe that the learned District & Sessions Judge, Siwan shall not be prejudiced by any observation made herein nor he shall go through the impugned judgment and shall pass his judgment independent of any observation/ findings recorded by any court. The learned trial Judge shall not hesitate in passing any judgment which, in his opinion, appears justified under the facts and circumstances of the case.”

4. It is evident that till disposal of earlier appeals altogether six convicts, namely: Swaminath Pathak, Paras Nath Pathak, Ram Pravesh Pathak, Ramjee Pathak and Prahalad Pathak had already died and as such trial was to continue only against surviving accused persons. In respect of some of the accused considering their age the earlier Bench of



this Court also directed the learned trial judge to examine their cases in the light of provisions contained in Juvenile Justice {Care and Protection of Children} Act, 2000. After the case was remitted back the case of two convicts were considered and convicts - Dilip Kumar Pathak and Keshav Pathak were declared juvenile and finally case of twelve accused persons who are appellants before this court was tried from the stage of argument and by the impugned judgment of conviction and sentence all twelve appellants were convicted and sentenced and same has been assailed in the aforesaid two appeals.

5. Short fact of the case is that on 29.05.1982 at 22.30 Hours [10.30 P.M.] *fardbyan* of Brajesh Kumar Pathak [P.W. 7] , S/o Sheo Shanker Pathak [deceased], resident of village- Barwan, P.S. - Ander, District- Siwan was recorded in outdoor of Sadar hospital, Siwan by Shri T.N. Mukharji, Sub Inspector of Police, Siwan Town Police Station who was deputed by the Officer-in-charge of Siwan Town Police Station. In *fardbyan* informant disclosed that on the same day i.e. 29.05.1982 at about 4.00 P.M. (evening) his villager: Ram Suresh Pathak (A2), Radhey Shyam Pathak [A11], Ramgee Pathak, Ram Prabesh Pathak, Dilip Kumar Pathak and



Shambhu Nath Pathak were cutting or getting cut Jamun tree of the informant which was on the Eastern Southern direction of the village. After noticing the same, the informant with his father- Sheo Shanker Pathak [deceased], Kanhaiya Pathak [deceased], Girijesh Kumar Pathak [deceased], Kashi Nath Pathak [P.W. 8], Tribhuwan Pathak [P.W. 9], Upendra Pathak [P.W. 18] all went there and tried to forbade them from cutting tree. Thereafter altercation started to take place. In the meanwhile, Parash Pathak, Pauhari Pathak [A9] also arrived there and then Ram Vilas Pathak ordered to kill and exhorted to assault whereupon Prahalad Pathak gave *farsa* blow on the head of the informant, Tarkeshwar Pathak @ Timal Pathak (A3) with *lathi*, Harendra Pathak (A5) also with *lathi* assaulted him. Radhey Shyam Pathak [A11] gave *bhala* blow on Sheo Shankar Pathak and Ram Suresh Pathak (A2) by means of lathi. Kanhya Pathak was assaulted by Ramagee Pathak, Dilip Pathak and Prabhunath Pathak by means of bhala, farasa and lathi respectively, Girgesh Kumar Pathak was assaulted by Bacha Pathak Yogendra Pathak and Uma Pathak by means of bhala, farasa and lathi respectively and Amar Pathak and Pawahari Pathak also assaulted to Girgesh



Kumar Pathak by means of lathi. Kashi Nath Pathak was assaulted by Veyash Pathak and Ram Prabesh Pathak by means of farasa and lathi respectively. Tribhuwan Pathak was assaulted by Pawahari Pathak by means of lathi on the order of Parash Pathak and Upendra Pathak also received injury in the occurrence in presence of villagers. Ramashrya Pathak, Ramayan Shukla, Kedar Pathak and others. Immediately after the aforesaid occurrence Yogendra Pathak by his country made pistol caused two fire resulting in injury to none. Thereafter all injured persons were carried to Sadar hospital Siwan for treatment where injured his father Sheo Shanker Pathak and his uncle Kanhya Pathak succumbed to injuries.

6. After recording the said *fardbyan* same was sent to the Police Station and as such on 30.05.1982 a formal F.I.R. vide Andar P.S. Case No. 64 of 1982 was registered for the offence under Section 147, 148, 149, 302, 324, 323 of the I.P.C. and Section 27 of the Arms Act against eighteen accused persons which includes the aforesaid twelve appellants however, in the meanwhile, other injured- Girijesh Kumar Pathak also succumbed to his injuries. The Police prepared inquest report in respect of three dead bodies. The



inquest report was prepared by Sub Inspector of Police, Siwan Town Police Station. The injured were examined, re-statement of the informant and statement of witnesses were recorded. After receiving post mortem report and finding the case true charge -sheet was submitted against eighteen accused persons.

7. After cognizance the case was finally committed to the court of Sessions and it was numbered as Sessions Trial No. 281 of 1982. On 23.12.1983 charge under Section 302/149 of the I.P.C. was framed against all the accused persons and charge under Section 302/34 of the I.P.C. was framed against seven accused persons namely: (1) Bachcha Pathak, (2) Yogendra Pathak, (3) Umanath Pathak, (4) Amarnath Pathak, (5) Ramjee Pathak, (6) Dilip Kumar Pathak and (7) Prabhu Nath Pathak. Charge under Section 307 of the I.P.C. was framed against Prahalad Pathak. Charge under Section 325 of the I.P.C. was famed against Ram Prabesh Pathak. Charge under Section 324 of the I.P.C. was framed against Vyas Pathak and charge under Section 323 I.P.C. was framed against: (1) Tarkeshwar Pathak, (2) Harendra Pathak, (3) Pauhari Pathak and (4) Keshaw Pathak. Under Section



148 I.P.C. charge was framed against: (1) Radhey Shyam Pathak, (2) Dilip Kumar Pathak, (3) Ramji Pathak, (4) Bachcha Pathak, (5) Yogendra Pathak, (6) Prahalad Pathak and (7) Ram Vilas Pathak. Similarly charge under Section 147 of the I.P.C. was framed against (1) Ram Suresh Pathak, (2) Prabhu Nath Pathak, (3) Umanath Pathak, (4) Amarnath Pathak, (5) Tarkeshwar Pathak @ Timal Pathak, (6) Harendra Pathak, (7) Ram Pravesh Pathak, (8) Pauhari Pathak, (9) Keshav Pathak, (10) Paras Pathak and (10) Swaminath Pathak however charge under Section 27 of the Arms Act was framed only against Yogendra Pathak.

8. After framing of the charge to establish its case on behalf of the prosecution altogether eighteen witnesses were examined. Out of eighteen witnesses, P.W. 7 - Brajesh Kumar Pathak [informant and son of deceased- Sheo Shanker Pathak], P.W. 8- Kashi Nath Pathak, P.W. 9 -Tribhuwan Pathak and P.W. 18- Upendra Kumar Pathak are injured eye witnesses to the occurrence. P.W. 2 / Ramayan Shukla, P.W. 4 - Kedar Nath Pathak, P.W. 5 - Indrajit Pathak and P.W. 15 - Dwarikanath Pathak were examined as eyewitness to the occurrence. P.W. 1 - Rama Shankar Pathak is a formal witness



who proved the endorsement on the fardbyan of P.W. 13 and it was marked as Ext. 1, signature of the informant - P.W. 7 on the fardbyan [Ext. 1/1] and his own signature on the fardbyan which was marked as Ext. 1/2. P.W. 3 - Hira Prasad Dubey is a formal witness who proved signature on the inquest report of dead body of Sheo Shankar Pathak [Ext. 2], inquest report of Kanhaiya Pathak [Ext. 2/1] and inquest report of deceased Girijesh Kumar Pathak [Ext. 2/2] and he proved his signature on the three inquest reports which were marked as Ext. 2/6, 2/7 and 2/8. P.W. 6 - Mohan Pandey is also a formal witness and he has proved his signature on the inquest report i.e. Ext. 2/3 and his signature on other inquest report which was marked as Ext. 2/3 2/4 2/5. P.W. 10 [Ramji Singh] is a Police Constable and formal witness who had carried some documents from Siwan to Andar Police Station. P.W. 11 - Shri Raj Kishor Lal, learned Judicial Magistrate who has recorded statement of Vyas Pathak under Section 164 of the Cr.P.C. i.e. Ext. 5 , statement of Dwarikanath Pathak [P.W. 15] recorded under Section 164 Cr.P.C. which was marked as Ext. 5/1 and also statement of Indrajit Pathak [P.W. 5] recorded under Section 164 Cr.P.C. which was marked as Ext. 5/2. Sri



Maheshwar Prasad Singh [P.W. 12] is the Police Inspector and he identified Station Diary Entry which was marked as Ext. 7/8. P.W. 13 - Shri T.N. Mukharji was Sub Inspector of Police at the relevant time and he had recorded *fardbyan* of the informant of the present case and identified *fardbyan* which was marked as Ext. 4/1. He also proved requisitions which were marked Ext. C, C/1 , C/2. P.W. 14 / Lalan Singh was Constable in Andar Police Station and he had carried packet to the F.S.L. and he identified material exhibits which were marked as Ext. X, X/1 & X/2. P.W. 16 - Shri Dinanath Pathak is a formal witness and in the month of May- June, 1982 he was Sub Inspector of Police of Town Police Station, Siwan and had prepared inquest report i.e. Ext. 2, 2/1 and 2/2. He also identified carbon copy of O.D. slip, which was marked for identification as Ext. E. P.W. 17 - Dr. Rameshwar Singh who conducted post mortem examination on three dead bodies i.e. of Sheo Shankar Pathak and identified the post mortem report of Sheo Shankar Pathak which was marked as Ext. 11. He conducted post mortem examination on the dead body of Kanhaiya Pathak and post mortem report was marked as Ext. 11/1 and also conducted post mortem examination on



the dead body of Girigesh Kumar Pathak and identified the post mortem report which was marked as Ext. 11/2. He also proved O.D. slip regarding injuries which was marked as Ext. 6. This P.W. 17 on 29-30 May, 1982 was posted as Civil Assistant Surgeon, Sadar Hospital, Siwan. He prepared injury report dated 29.5.1982 of Brajesh Kumar Pathak [P.W. 7] which was marked as Ext. 12; injury report dated 29.5.1982 of Kashi Nath Pathak [P.W. 8] marked as Ext. 12/1. In this case Investigating Officer was examined as Court witness i.e. Shri Bhuneshwar Prasad Singh was examined as Court Witness C.W. 1 and he stated that on 30.05.1982 he was Officer- in-charge of Andar Police Station. He had identified *fardbyan* which was marked as Ext. 13, formal F.I.R., which was marked as Ext. 14, seizure list relating to seizure of soil soaked with blood Ext. 15, seizure list of empty cartridges [khokha] Ext. 15/1, seizure list relating to recovery of blood stained *khoncha* from the house of one of the accused - Pauhari Pathak [A9] was marked as Ext. 16 and he also proved six requisitions for injury report i.e. Ext. 17 to 17/5, letter sent to F.S.L marked as Ext. 18. He further identified *fardbyn* of one Radhey Shyam Pathak [A11] which was



marked for identification as Ext. F however he stated that the case i.e. Andar P.S. Case No. 63 of 1982 which was lodged by the accused side was found false and final report was submitted.

9. After closure of the prosecution evidence, from 7.5.1986 to 23.7.1986 circumstances and evidences brought on record against the accused persons were explained to them and their statement under Section 313 of the Cr.P.C. was recorded in which they claimed to be innocent.

10. From defence side altogether 12 witnesses were examined, who are D.W. 1- Sheo Pujan Prasad, an Advocate's Clerk, D.W. 2 [Ram Naresh Dubey] who proved the sale deed, D.W. 3 - Gautam Giri, D.W. 4 - Vaidya Nath Singh, D.W. 5 [Janardhan Singh], D.W. 6 - Jagdish Singh, D.W. 7- Parshuram Pandey, D.W. 8 - Vishnu Singh, D.W. 9 - Kailashpati Chaubey, D.W. 10 / Phoolandev Divedi, D.W. 11 - Surendra Giri and D.W. 12 - Gautam Prasad an other Advocate's Clerk, however primarily it was stated that there was old animosity in between the parties.

11. On the basis of evidence available on record the learned Special Judge- cum -Additional Sessions Judge,



Siwan firstly by judgment of conviction dated 31st March 1992 though convicted accused persons under Section 304 read with 114 of the I.P.C. and other penal Sections, acquitted the appellants from the charge under Section 302/ 149 and Section 302/ 34 of the I.P.C. however, the said judgment was assailed earlier by filing appeals and appeals were allowed on 23.7.2015 and the case was remitted back to the court below with a direction to the learned Sessions Judge to re-hear the case from the stage of argument and now finally by the impugned judgment appellants have been convicted and sentenced even under Section 302/149 of the I.P.C. By the impugned judgment altogether 12 accused persons were convicted and sentenced.

12. Shri Kanhaiya Prasad Singh, learned senior counsel who has appeared on behalf of the sole appellant-Ram Vilas Pathak @ Sudama Pathak @ Ram Velas Pathak in Cr. Appeal (D.B.) No. 771 of 2017 has argued that only evidence against appellant /Ram Vilas Pathak @ Sudama Pathak @ Ram Velas Pathak was that he was an order giver who had simply ordered to assault and he did not intend to order any one to kill however in the occurrence altogether



three persons from prosecution side were done to death. It has been emphasized that while he had ordered there was no intention to kill anyone rather his intention was only inflicting some injuries or assault the prosecution side and as such it has been argued that learned Special Judge -cum -Additional Sessions Judge at first instance had rightly acquitted the appellants from charge under Section 149 read with Section 302 I.P.C. and also Section 34 read with Section 302 of the I.P.C. The case after being remitted back, the learned trial judge on the same evidence has convicted the appellants under Section 302/149 of the I.P.C. besides other Sections of the I.P.C. He has further argued that prosecution case may be considered as doubtful since during the trial witnesses have come out with a case as if at time of occurrence this appellant exhorted that “*aisa mauka nahi milega*” [he may not get such chance] however, this was not described in the *fardbyan* of the informant -P.W. 7 which can be examined from paragraph 22 page no. 93 of the evidence of P.W. 7 / informant.

13. Shri Kanhaiya Prasad Singh has further argued that the appellant had not shown any overt act in the occurrence and this is the reason that P.W. 9 / Tribhuwan



Pathak who is also one of the injured witnesses in paragraph 1 page no. 125 of his evidence has stated that this appellant was only cutting jamun tree by means of *tangi* [axe] and he had done nothing. Similarly, P.W. 5 -Indrajeet Pathak in paragraph 1 has stated that all the accused persons were cutting tree. Shri Singh has further argued that there was every possibility of false implication of the appellants due to the reason that this appellant stood as a witness to the *fardbyan* of the counter case i.e. Andar P.S. Case No. 63 of 1982.

14. Shri Ramakant Sharma, learned senior counsel assisted by Shri Rajesh Kumar , learned counsel appearing on behalf of all the eleven appellants in Cr. Appeal (D.B.) No. 910 of 2017 has argued that injuries found on the person of three deceased in the post mortem examination falsifies the oral version of the prosecution. He highlighted that in respect of injuries inflicted on deceased -Sheo Shanker Pathak, it was case of the prosecution that Radhey Shyam Pathak [A 11] had given *bhala* blow and Ram Suresh Pathak [A 2] had given *lathi* blow however, post mortem report of Sheo Shanker Pathak only reflects injuries caused by hard and blunt substance. Similarly, he has argued that injuries found on the



person of deceased -Kanhaiya Pathak in the post mortem examination report falsifies the oral evidence since in the evidence it was alleged that Ramagee Pathak, who died after earlier conviction had inflicted *bhala* blow. Prabhunath Pathak [A 7] on injured gave *lathi* blow whereas Dilip Kumar Pathak [who was declared juvenile] had allegedly inflicted *farsa* blow, however in the post mortem report of Kanhaiya Pathak though six injuries were found, most of the injuries were found by hard and blunt substance except injury no. 3 which was shown to be caused by sharp edged weapon. In respect of injuries found on the person of deceased -Girijesh Kumar Pathak, it has been argued that it is case of prosecution that Yogendra Pathak [A1] gave *farsa* blow on Girijesh Pathak, Bachcha Pathak [A4] had inflicted *bhala* blow, Umanath Pathak [A8] and Amarnath Pathak [A10] had assaulted him by *lathi*, however in post mortem examination report out of seven injuries except injury no. 7 i.e. injury caused by sharp cut weapon all other injuries were shown to be caused by hard and bunt substance.

15. Shri Ramakant Sharma has further questioned the credibility of evidence of Brajesh Pathak [P.W. 7] who is



informant of the case and submits that it was informant's case that he was given first *farsa* blow on his head and as such after getting such injury there was no possibility for him to give description of other injuries inflicted by number of other accused persons on number of other prosecution witnesses and as such, he has argued that evidence of informant is not reliable. Shri Sharma has also argued that of- course number of witnesses who were injured have deposed showing culpability/ involvement of the appellants but their evidence as well as evidence of other so -called eyewitness appears to be parrot type, which is not credible. Shri Sharma has further tried to persuade the court that it appears that while dispute was going on regarding cutting of Jamun tree in spur of moment occurrence had taken place and as such, it was not a case of causing intentional death of anyone and there was case and counter case. Shri Sharma has emphasized that entire prosecution case is liable to be ignored and judgment of conviction is required to be set aside only on the ground that prosecution has suppressed the injuries received on the person of the accused side and on this very point he has placed reliance on a judgment of Hon'ble Supreme Court reported in



**AIR 1976 SUPREME COURT 2263 Lakshmi Singh and
others v. State of Bihar.**

16. Shri Ajay Mishra, learned Additional Public Prosecutor as well as Smt. Soni Shrivastava, learned counsel appearing on behalf of the informant have vehemently opposed the appeal. It has been argued that it is consistent case of the prosecution that appellants had actively participated in the occurrence and they had formed unlawful assembly and with common object they had in the occurrence inflicted injuries causing death of three persons. Besides this in the said occurrence they inflicted several injuries on number of witnesses and case is based on oral evidence as well as corroborated by medical evidence. Smt. Srivastava, learned counsel for the informant has further argued that there is no doubt regarding the date and time of occurrence and as such, manner of occurrence is not in dispute. She further has argued that the place of occurrence has also been established by the Investigating Officer and by most of the prosecution witnesses. According to Smt. Shrivastava, the evidence of injured witnesses may not be considered as doubtful and it may not be questioned. The genesis of the occurrence has also



been established by the prosecution. She has also argued that though learned counsel for the appellant Shri Ramakant Sharma at the time of hearing of appeal has argued that prosecution has suppressed injuries on the person of the accused persons, but defence though had examined altogether twelve witnesses, none of defence witnesses have whispered regarding injuries received by either of the accused - appellants. Even in cross -examination of prosecution witnesses none of the witnesses were asked as to how prosecution had inflicted injuries on the accused persons. According to her, in absence of any such evidence available on record the submission advanced by learned senior counsel for appellants regarding suppression of injuries on the person of the accused may not be looked into. Accordingly, it has been argued that learned trial judge has correctly passed judgment of conviction and sentence.

17. Besides hearing learned counsel for the parties, we have minutely examined entire evidence on record. Before proceeding further it may be recorded that even while the accused persons including the appellants were earlier convicted in the year 1992 for the offence under Section 304



read with Section 114 of the I.P.C. and for other offences, in earlier appeals this Court had not considered the prosecution evidence as doubtful. Had it been a case that prosecution was not able to establish its case, there was no reason for remitting back the matter to the learned court below to hear the case from the stage of argument only, otherwise, if on merit the High Court was earlier satisfied that there was no case, instead of remitting back the matter the Division Bench would had simply set the matter at rest by passing judgment of acquittal as we have noted the observation of earlier Division Bench of this Court in preceding paragraphs of this judgment. It is evident that no apparent infirmity was noticed on prosecution case. Only it was noticed that the learned Special Judge- cum- Additional Sessions Judge, Siwan had incorrectly discharged the accused persons from charge under Section 302 /149 of the I.P.C. and instead he converted the same from 302 of the I.P.C. to Section 304 of the I.P.C. Besides this, on examination of entire evidence it is further reiterated that prosecution has successfully proved its case, which is evident in view of the findings recorded hereinafter:-



(1) The occurrence has categorically been established by the prosecution. The informant/ Brajesh Kumar Pathak in the *fardbyan* had disclosed that the occurrence took place at 4 P.M. on 29.5.1982 in the orchard named Shri Ram ka Bagicha. It is his statement of P.W. 7 that when he along with his father Sheo Shanker Pathak, Kanhaya Pathak, Girgesh Pathak, Brajesh Pathak, Tribhuwan Pathak, Kashi Nath Pathak and Dwarika Pathak were returning back from the very Jamun tree on the suggestion of his father Sheo Shanker Pathak and they came to the sugar cane field of Muneshwar Pathak, accused persons armed with Bhala, Lathi and Farasa assaulted them. This statement of the witness is corroborated by statement of P.W. 2 Ramayan Shukala, P.W. 4 Kedar Nath Pathak, P.W. 5 Indrajit Pathak, P.W. 8 Kashi Nath Pathak, P.W. 9 Trihuwan Pathak, P.W. 15 Dwarika Nath Pathak and P.W. 18 Upendra Pathak. Out of the witnesses corroborating the statement of the informant, witnesses P.W. 8 Kashi Nath Pathak , P.W. 9 Tribhuwan Pathak and P.W. 18 Upendra Pathak received injuries in the occurrence and as such although they belong to the family of the informant are eye witness to the occurrence. Apart from above, P.W. 2



Ramayan Shukla, P.W. 4 Kedar Nath Pathak and P.W. 5 Indrajit Pathak have consistently corroborated the evidence of P.W. 7 that the occurrence of Marpit took place on 29-5-1982 at 4 p.m. in the sugar cane field of Muneshwar Pathak. P.W. 4 and P.W. 5 are not family members of the prosecution rather they were neighbours and belong to the P.O. village and their houses are situated in the vicinity of the houses of members of the prosecution and defence. P.W. 2 is a chance witness to the occurrence and saw the occurrence while he was passing through the way to Aswan Bazar. In addition to it fardbyan of Ander P.S. Case No. 63 /82 and its F.I.R disclose that the occurrence of assault between the members of the prosecution party and the defence took place on 29-5-1982 at 4 p.m. This goes to further corroborate the evidence of the informant and other prosecution witnesses as referred to above that the occurrence of assault took place on the alleged date, time and place. It is therefore established from above materials on the record beyond doubt that the occurrence as alleged by the prosecution took place on the alleged date, time and place.



(2) Genesis of occurrence has also been established beyond all reasonable doubts. It is admitted fact on the record that the genesis of the occurrence is land dispute relating to orchard named Shri Ram Ka Bagicha having an area of 14 katha 5 dhurs bearing khata no. 89 and Keshara no. 205 in which members of the prosecution party admittedly have $\frac{1}{4}$ th share and accused persons in the defence first set have $\frac{3}{4}$ th share. In the boundary of it in western side there is orchard of accused persons in the second set. It is evidence of P.W. 7 the informant Brajesh Kumar Pathak duly corroborated by his family members injured P.W. 8, 9 and 18 that accused persons were cutting the Jamun tree which was planted by them and was in their $\frac{1}{4}$ th share. P.W. 2 Ramayan Shukla, P.W. 4 Kedar Nath Pathak, P.W. 5 Indrajit Pathak and P.W. 15 Dwarika Nath Pathak have also deposed so in their evidence before the trial court as well as in their statement before I.O. in course of investigation. The I.O. of the case as C.W. 1 in para 55 of the case diary has clearly stated in his evidence that he found fresh sign of cutting in the root of the Jamun tree. C.W. 1 on getting information of the occurrence and drawing the F.I.R. rushed to the place of occurrence and he found blood stained



soil in sugar cane field of Muneshwar Pathak. Though this witness was cross examined at length nothing has been brought on the record to disbelieve about the genesis of the occurrence as stated by the informant and his witnesses i.e. C.W.1 The faradbeyan of Ander P.S. Case No. 63 /1982 also discloses that the genesis of the occurrence is the land dispute between the members of the prosecution and the defense resulting in commission of the offence.

(3) The manner of occurrence has fully been established. Now it is to be examined as to whether the occurrence took place in the manner as alleged because P.W.7 in his fardbeyan, in his further statement and in his evidence during the trial has consistently stated that the accused persons were cutting the Jamun tree armed with bhala, lathi and farasa. In his evidence he deposed that after noticing that accused persons were cutting his Jamun tree, he along with murdered and injured persons and Dwarika Nath Pathak came from their house empty handed and they stopped themselves on the bank of canal which was located north west of Jamun tree. They objected to it. Accused persons disown their objection. Thereafter they were retreating and came to the



sugarcane field of Muneshwar Pathak, where on the abetment of Ram Bilash Pathak accused Radheshyam Pathak gave bhala blow to his father Sheo Shanker Pathak and Ram Suresh Pathak gave his father lathi blow. It is also his statement that accused Ramagi Pathak gave bhala blow to Kanhaya Pathak and Prabhu Nath Pathak gave lathi blow. Dilip Pathak gave the farasa blow to Kanhya Pathak. It is also his statement that Uma Pathak and Amar Pathak assaulted Girgesh Pathak by means of lathi and Bacha Pathak gave him bhala blow. Accused Yogendra Pathak assaulted Girgesh Pathak by means of farasa. Similarly it is statement of this witness that Harendra Pathak and Tarkeshwar Pathak alias Timal Pathak assaulted Brajesh Pathak by means of lathi and accused Prahalad Pathak gave him farasa blow. It is said that on the abetment Parash Pathak, Pawahari Pathak gave lathi blow to the Tribhuwan Pathak . It is also his statement that Veyash Pathak and Ram Prabesh Pathak assaulted Kashi Nath Pathak by means of farasa and lathi respectively. Lastly it is his statement that Upendra Pathak also received injury in the occurrence at the hands of accused persons. When this witness has been put to test about the manner of occurrence by the



defence as appearing in para 14, 15, 16, 17, 18 , 19 and 37 in the deposition, he has more or less corroborated the manner of the commission of the occurrence as stated above. Of course there are some inconsistency in between his earlier version and evidence during trial, but same are not so serious, rather it appears to be natural.

18. Apart from the above, P.W. 2 Ramayan Shukla, P.W. 4 -Kedar Nath Pathak, P.W. 5- Indrajit Pathak, P.W. 8 - Kashi Nath Pathak, P.W. 9- Tribhuwan Pathak, P.W. 15 -Dwarikanath Pathak and P.W. 18- Upendra Kumar Pathak have more or less during their evidence disclosed the manner of the commission of the offence as stated by the informant -P.W. 7 Brajesh Kumar Pathak.

19. So far question of commission of offence by the accused persons is concerned, we have already discussed the entire evidence which reflects as to how accused persons participated in the occurrence. So far injuries caused on three deceased and weapon used by them is concerned, following chart categorically clarifies the position;----

Name of Deceased	Accused / Appellant	Weapon	Injuries received
Sheo Shankar Pathak	Radhey Shyam Pathak [A11] Ram Suresh Pathak [A-2]	Bhala Lathi	(i) One lacerated wound 4" x 1½" x scalp deep on centre of scalp



			(a) fracture at two places weapon used hard blunt substance (Death caused by head injury)
Kanhaiya Pathak	Ramji Pathak (dead) Dilip Pathak (Juvenile) Prabhunath Pathak (A- 7)	Bhala Farsa Lathi	(i) One lacerated wound 4" x ½" x scalp deep on skull extending from hair line to vertex (ii) One lacerated wound 3" x 1/2" x scalp deep on skull parallel to injury no. (i) (iii) One incised wound 3" x 1/2" x scalp deep on left half of skull (a) skull bone was found fractured (iv) One bruise 2" x 1" on left knee (v) One bruise 1 ½" x 1" on right knee (vi) one bruise with abrasion 1" x 1/2" on nose caused by hard blunt substance except injury no. (iii) injury no. (iii) caused by sharp cutting weapon [death caused by injury no. (i), (ii) & (iii)
Grijesh Kumar Pathak	Bachcha Pathak (A-4) Yogendra Pathak (A-1) Umanath Pathak (A-8) Amar Pathak (A-10))	Bhala Farsa Lathi Lathi	(i) one lacerated wound 3" x 1/2" x scalp deep on skull on its middle (ii) One lacerated wound 2 ½" x 1" x scalp deep on right half of scalp (a) skull bone was found fractured. (iii) One bruise 2" x 1/2" on right side of chest (iv) One bruise 2" x 1" on right wrist (v) one bruise 1 ½" x 1" on right leg (vi) one bruise 2" x 1" on left leg (vii) One incised wound 2 ½" x ½" x scalp deep on right temporal area with fracture of right temporal bone All injuries caused by hard blunt substance except injury no. (vii) Injury no. (vii) caused by sharp cutting weapon (Death caused by injury no. (i), (ii), & (vii)

20. Besides this the evidence of injured witnesses
entirely depicts the prosecution case as to what role was



played by the accused persons in the occurrence and it reflects that the accused persons right from the very beginning had formed an unlawful assembly with unlawful object and it has come that with a common object the accused persons had assaulted prosecution side by lethal weapons which were sufficient for causing death.

21. It goes without saying that in a case of application of offence under Section 149 of the I.P.C., act of one accused becomes act of other, and as such, in a situation like this, one may not claim that he was only an order giver and one has only assaulted the prosecution by means of *lathi* or slapped. If the object of causing death is evident which can be achieved even in spur of moment, in such situation none of the accused persons can be absolved from the offence under Section 302 read with Section 149 of the I.P.C.

22. So far plea taken by Shri Ramakant Sharma that prosecution has not explained injury of accused persons is concerned, in this context it is relevant to examine the evidence of P.W. 17 – Dr. Rameshwar Singh who conducted post mortem examination and also examined injured. In paragraph 40 of his cross -examination he stated that none of



the injuries on the person of accused Prahalad Pathak , Tarkeshwar Pathak [A3], Vyas Pathak [A6] were fatal. On question put by the prosecution he answered that all the injuries save and except injury no. 1 of Prahalad Pathak, all injuries caused on Prahalad Pathak, Tarkeshwar Pathak and Vyas Pathak were simple in nature and further on being asked P.W. 17 further stated in the same paragraph that all the injuries caused to the injured persons namely Prahalad Pathak, Tarkeshwar Pathak , Vyas Pathak could be manufactured if risk is taken. In paragraph 41 of his cross -examination P.W. 17 further stated that in all cases injuries which may not be so serious he writes regarding dying declaration. Besides this P.W. 7 / Brajesh Kumar Pathak who is injured and informant of the case is the son of one of the deceased-Sheo Shanker Pathak and in his evidence he corroborated the fact disclosed in the *fardbyan* and gave descriptive picture as to how in the occurrence accused persons had participated. Almost in similar manner all the witnesses i.e. P.W. 2 – Ramayan Shukla, P.W. 4 / Kedar Nath Pathak, P.W. 5 - Indrajit Pathak, P.W. 8 - Kashi Nath Pathak, who was injured and eye witness , P.W. 9 – Tribhuwan Pathak {injured and eye



witness}, P.W. 15 – Dwarikanath Pathak (eye witness) and P.W. 18 – Upendra Kumar Pathak {injured and eye witnesses} have supported the prosecution case. In the evidence of P.W. 18 – Upendra Kumar Pathak it has come that he has received such serious injuries that he remained in hospital for 10-15 days.

23. P.W. 17 / Dr. Rameshwar Singh on 29th & 30th May , 1982 was posted as Civil Assistant Surgeon , Sadar Hospital, Siwan and on the same day he had issued O.D. slip which has been marked as Ext. 6 regarding seven injured persons and he had examined injuries of the injured person. Besides this, he had also conducted post mortem examination on the dead body of (1) Sheo Shanker Pathak, (2) Kanhaiya Pathak, (3) Girjesh Kumar Pathak and he identified three post mortem reports which were marked as Ext. 11 { P.M. of Sheo Shankar Pathak}, 11/1 { P.M. Kanhaiya Pathak} and 11/2 { P.M. Girjesh Kumar Pathak}. On 30.05.1982 at 9.30 A.M. he conducted post mortem examination on the dead body of Sheo Shankar Pathak and noticed that his injuries were ante mortem in nature and also noticed the following facts:-

“(i) one lacerated wound 4”x 1½”x scalp deep
on centre of scalp



On further dissection bone was found fractured at two places. On openings the skull clotted blood was found inside cranial cavity and brain matter was found lacerated.

Weapon used- hard blunt substance.

Death was caused by above mentioned head injury leading to brain damage, shock and death.

The time of death- 15 to 20 hours before the time of post mortem”

24. On the same day at 9.45 A.M. he conducted post mortem examination on the dead body of Kanhaiya Pathak and noticed the following anti mortem injuries on his person and the following facts:-

“(i) one lacerated wound 4”x½”x scalp deep on skull extending from hair line to vertex.

(ii) One lacerated wound 3”x ½” x scalp deep on skull parallel to injury no. (i)

(iii) One incised wound 3”x ½” x scalp deep on left half of skull.

On dissection of these three injuries clotted blood was found beneath the scalp. Skull bone was found fractured.

On opening the cranial cavity clotted blood was found inside the cranial cavity and brain matter was found lacerated.

(iv) One bruise 2”x1” on left knee

(v) One bruise 1½ ” x 1” on right knee.

(vi) One bruise with abrasion 1”x ½” on nose.

Weapon used – All the injuries were caused by hard blunt substance except injury no. (iii) which was caused by sharp cutting weapon.

Cause of death was above mentioned head injuries no. (i), (ii) and (iii) leading to brain damage, shock and death.

Time of death: The patient died at 9.40 P.M. on 29.5.1982 while under treatment in sadar hospital Siwan.

25. Again on same day on 30.5.1982 at 10.00 A.M. he held post mortem examination on the dead body of Girijesh



Kumar Pathak and found following ante mortem injuries and facts:-

“(i) One lacerated wound 3” x 1/2” x scalp deep on skull on its middle.

(ii) One lacerated wound 2½” x 1” x scalp deep on right half of scalp.

On dissection of these two injuries clotted blood was found beneath the scalp. The skull bone was found fractured at three places. On opening the cranial cavity clotted blood was found, inside the cranial cavity and brain was found lacerated.

(ii) One bruise 2”x ½” on right side of chest.

(iv) One bruise 2”x1” on right wrist

(v) One bruise 1 ½” x 1” on right leg.

(vi) One bruise 2” x 1” on left leg

(vii) one incised wound 2½” x ½” scalp deep on right temporal area with fracture of right temporal bone.

Weapon used:- All the injuries were caused by hard blunt substance except injury no. (VII) which was caused by sharp cutting weapon.

Cause of death was injury (i)(ii) and (VII) causing brain damage leading to shock and coma and death.

Time since death – 8 to 10 hours. Patient died in Sadar hospital Siwan while under treatment.”

26. Similarly on the date of occurrence i.e. on 29.05.1982 he had examined injuries on the person of the Brajesh Kumar Pathak – informant (P.W. 7) and found the following injuries:-

“(i) One incised wound 1½” x 1/2” x scalp deep on right half of skull.

(ii) One swelling with abrasion 4” x 1” on left knee joint

(iii) One swelling with abrasion 4”x1 ½” on right deltoid region

(iv) One swelling 2” x 1” on right scapular area



weapon used- injury no. (i) caused by sharp cutting weapon, no. (ii) to (iv) caused by hard blunt substance.

Nature of injuries- no. (i) opinion was reserved at that time.

Question- Could injury no. (i) have caused the death of the injured?

Answer: Injury as it was, was not sufficient to cause death.

Question:- Under what condition could it have caused death?

Answer:- If the injury had caused brain injury, then the patient might have died.

Injury no. (ii) to (iv) were simple. Age of injuries within 6 hours.

27. Injury report in respect of injury of Brajesh

Kumar Pathak was identified and marked as Ext. 12.

On 29.05.1982 at 7.35 P.M. he examined injuries of

Kashi Nath Pathak { P.W. 8 } and noticed following injuries:

“(i) fracture of 5th metacarpal bone of right hand with swelling covering whole of the back of right hand.

(ii) One incised wound 1”x1/4”x1/4” on right thumb

(iii) One lacerated wound 1 1/2” x1/2”x1/4” on the back of right fore arm

(iv) One abrasion 1”x 1/2” on left elbow

(v) One bruise 4” x 1” on back on left side

(vi) One lacerated wound and swelling 2 1/2 ” x 1” right scapular area.

(vii) One bruise 4”x 1” on left scapular area

weapon used- no. (ii) caused by sharp cutting weapon and the rest caused by hard and blunt substance

nature of injuries: no. (i) grievous and rest simple. Age of injuries within 6 hours.

Injury report in respect of Kashi Nath Pathak

marked as Ext. 12/1 .



28. On 29.05.1982 at 7.40 P.M. he examined injury of Tribhuwan Pathak (P.W. 9) and found following injuries:-

“(i) One bruise covering whole of right knee joint size 4”x all sides of the right knee joint

(ii) One bruise 5”x1” on back of left forearm
weapon used:- Both the injuries were caused by hard blunt substance

Nature : Opinion was reserved regarding injury no. (i). Injury no. (ii) was simple.

Age of injuries within 6 hours

Injury no. (i) was later on proved to be simple in nature.

29. Injury report of Tribhuwan Pathak Ext. 12/2 and on the same day at 7.50 P.M. he examined injury on the person of Upendra Kumar Pathak [P.W.18] and found following facts:-

“(i) One swelling 4” x 3/4” on dorsum of left foot

(ii) Complains of pain all over the body

The injury was simple and caused by hard blunt substance.

Age of injury within 6 hours.”

Injury report of Upendra Kuamr Pathak Ext. 12/3.

This doctor has also identified O.D. Slip etc.

30. The evidence of P.W. 17, injury reports and post mortem examination reports depict that accused persons with common object with a view to take away life of prosecution side had inflicted injuries and as such, there was no reason for holding them guilty for offence under Section 304 read with Section 114 of the I.P.C. as was done earlier by the learned



Special Judge- cum- Additional Sessions Judge, Siwan and rightly in earlier appeals Co-ordinate Bench of this Court had set aside the earlier judgment of conviction and sentence and remitted back the matter to hear the case from the stage of argument.

31. On examination of the judgment impugned which has been passed after the case was remitted back by a co-ordinate bench of this court , the court is of opinion that learned Sessions Judge in its judgment of conviction dated 08.06.2017 has elaborately discussed the evidence and there is no infirmity in the same. Accordingly, we do not find any ground to interfere with the impugned judgment of conviction and sentence. Accordingly, judgment of conviction dated 08.06.2017 and sentence dated 13.06.2017 passed by Sri Om Prakash Rai, learned Sessions Judge, Siwan in Sessions Trial No. 281 of 1982 {arising out of Andar P.S. Case No. 64 of 1982 } is hereby approved and aforesaid two appeals are dismissed.

32. Appellant no. 2 - Ram Suresh Pathak, appellant no. 4 – Bachcha Pathak and appellant no. 9- Pauhari Pathak in Cr. Appeal (D.B.) No. 910 of 2017 and sole appellant i.e.



Ram Vilas Pathak @ Sudama Pathak @ Ram Velas Pathak in
Cr. Appeal (D.B.) No. 771 of 2017 are on bail and since
judgment of their conviction and sentence has been approved
their bail bonds are hereby cancelled and they are directed to
surrender forthwith for serving remaining period of sentence
otherwise the learned Court below is directed to take all steps
for securing their attendance.

(Rakesh Kumar, J)

Anil Kumar Sinha, J: I agree.

praful/-

(Anil Kumar Sinha, J)

AFR/NAFR	AFR
CAV DATE	21-06-2019
Uploading Date	20-08-2019
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