

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.120 of 2023

Arising Out of PS. Case No.-220 Year-2020 Thana- KASHICHAK District- Nawada

Ajit Pandit @ Ajit Bharti, S/o Ganauri Pandit, R/o Village- Madhepur, P.S.-
Kashichak, Distt- Nawada.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with
CRIMINAL APPEAL (DB) No. 47 of 2023

Arising Out of PS. Case No.-220 Year-2020 Thana- KASHICHAK District- Nawada

1. Kundan Pandit @ Kundan Bharti, S/O Budhan Pandit, R/V- Madhepur, P.S.-
Kashichak, District- Nawada
2. Ghorai Pandit @ Saro Pandit, S/O Ganauri Pandit, R/V- Madhepur, P.S.-
Kashichak, District- Nawada
3. Tittu Kumar, S/O Ghorai Pandit @ Saro Pandit, R/V- Madhepur, P.S.-
Kashichak, District- Nawada

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 120 of 2023)

For the Appellant/s	:	Mr. Ajay Kumar Thakur, Adv. Mr. Ritwik Thakur, Adv. Ms. Vaishnavi Singh, Adv. Ms. Kiran Kumari, Adv.
For the Respondent/s	:	Mr. Ajay Mishra, APP.
For the Informant	:	Mr. Rajendra Narain, Sr. Adv. Mr. Shiv Kumar Prasad, Adv.

(In CRIMINAL APPEAL (DB) No. 47 of 2023)

For the Appellant/s	:	Mr. Ajay Kumar Thakur, Adv. Mr. Ritwik Thakur, Adv. Ms. Vaishnavi Singh, Adv. Ms. Kiran Kumari, Adv.
For the Respondent/s	:	Mr. Ajay Mishra, APP.
For the Informant	:	Mr. Rajendra Narain, Sr. Adv. Mr. Shiv Kumar Prasad, Adv.

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE JITENDRA KUMAR



ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 11-07-2024

Both the appeals have been taken up together and are being disposed off by this common judgment.

2. We have heard Mr. Ajay Thakur, learned Advocate for the four appellants in the two appeals and Mr. Rajendra Narain, learned Senior Advocate for the informant in both the cases assisted by Mr. Shiv Kumar Prasad, learned Advocate. The State is represented by Mr. Ajay Mishra, learned APP.

3. Appellants/Ajit Pandit @ Ajit Bharti and Kundan Pandit @ Kundan Bharti have been convicted for the offence under Section 302 of the IPC, whereas the appellants/Ghorai Pandit @ Saro Pandit and Tittu Kumar have been convicted under Section 302 with the aid of 34 of the IPC *vide* judgment dated 09.11.2022 passed by the learned Additional Sessions Judge-VIII (Succ.), Additional District and Sessions Judge-X, Nawada in connection with Sessions Trial No. 286 of 2021, arising



out of Kashichak P.S. Case No. 220 of 2020. Appellant/Ajit Pandit has also been convicted under Section 27 of the Arms Act. Along with him, appellant/Tittu Kumar has been convicted under Section 307 of the IPC as also Section 27 of the Arms Act. By order dated 16.11.2022, appellant/Ajit Pandit @ Ajit Bharti has been sentenced to undergo R.I. for five years, to pay a fine of Rs. 5000/- and in default of payment of fine to further suffer S.I. for one month for the offence under Section 27 of the Arms Act as well as life imprisonment, to pay a fine of Rs. 10,000/- and in default of payment of fine to further suffer S.I. for three months under Section 302 of the IPC; appellant Kundand Pandit/Kundan Bharti has been sentenced to undergo life imprisonment, to pay a fine of Rs. 10,000/- and in default of payment of fine to further suffer S.I. for three months under Section 302 of the IPC; appellant/Tittu Kumar has been sentenced to undergo R.I. for seven years, to pay a fine of Rs. 7000/- and in



default of payment of fine to further suffer S.I. for two months under Section 307 of the IPC as well as life imprisonment, to pay a fine of Rs. 10,000/- and in default of payment of fine to further suffer S.I. for three months for the offence under Section 302/34 of the IPC and R.I. for five years, to pay a fine of Rs. 5000/- and in default of payment of fine to further suffer S.I. for one month under Section 27 of the Arms Act and appellant/Ghorai Pandit @ Saro Pandit has been sentenced to undergo life imprisonment, to pay a fine of Rs. 10,000/- and in default of payment of fine to further suffer S.I. for three months under Section 302/34 of the IPC.

4. One Sintu Kumar is said to have been killed in an occurrence which took place on 20.12.2020. Sanjit Kumar @ Sanjo (P.W. 2) is also alleged to have been injured by gun-shot in the same transaction. The FIR has been lodged by the father of the deceased viz. Satyendra Prasad (P.W. 3), who had lodged the written



report on 20.12.2020 at about 11.30 P.M. The FIR also was registered on the same date *i.e.* on 20.12.2020.

5. He has alleged in the written report that while he along with the deceased, Deepak Kumar @ Chandan Kumar (P.W. 5) and Sanjit Kumar @ Sanjo (P.W. 2) was going to his field for irrigating the crops, a dispute was raised by appellants/Ghorai Pandit @ Saro Pandit, Ajit Pandit @ Ajit Bharti and one Budhan Pandit over the issue of irrigation. The informant and his associates closed down the boring pump and were coming back, when the accused persons started abusing them. One Budhan Pandit exhorted the other accused persons to assault him and his associates. On such exhortation, appellant/Ajit Pandit fired from his weapon which hit the deceased in his chest. The second shot was fired by Budhan Pandit which hit the deceased in his stomach. In the meantime, appellant/Kundan Pandit @ Kundan Bharti came and assaulted the deceased by an iron rod on his head. With this assault, the deceased



died at the spot.

6. The informant has then claimed that all the surviving persons fled away for shelter. In the meantime, appellant/Tittu Kumar also arrived and fired from his weapon which hit Sanjit Kumar @ Sanjo (P.W. 2) in his hand. The accused persons were also alleged to have resorted to indiscriminate firing. The informant ran away from the place of occurrence and straightaway reached the police station and lodged the aforementioned written report.

7. Based on the above mentioned written report, a case *vide* Kashichak P.S. Case No. 220 of 2020 dated 20.12.2020 was registered for investigation for offences under Sections 302, 307 and 34 of the IPC and Section 27 of the Arms Act against the appellants and Budhan Pandit.

8. The police after investigation submitted chargesheet only against the appellants and did not send up Budhan Pandit, who not only had exhorted the other



accused persons to kill the members of the prosecution party but had also fired on the deceased, which shot hit the deceased in his abdomen.

9. The Trial Court, after having examined eleven witnesses on behalf of the prosecution and none on behalf of the defence, has convicted and sentenced the appellants as aforesaid.

10. While assailing the judgment and order of conviction and sentence, Mr. Thakur, learned Advocate has submitted that the prosecution has not been able to prove the case beyond all reasonable doubts. The first information to the police has been deliberately suppressed and that the medical evidence does not at all corroborate the ocular testimony. He has further argued that the written report, so far as the case is concerned, is a spurious document, not worthy of any reliance. As such, the evidence of the informant/P.W. 3 is fit to be discarded.

11. The investigator though has not investigated



the case properly but whatever he could do further reflects that the claim of the eye witnesses to the occurrence is absolutely false and unreliable.

12. As opposed to the aforementioned contentions, Mr. Narain, learned Senior Advocate and Mr. Ajay Mishra, learned APP have submitted that the witnesses are consistent about the nature and manner of assault; P.O.; the circumstance under which the deceased was killed and that the medical evidence clearly proved the homicidal death of the deceased caused by gun-shots.

13. It has further been argued on behalf of the prosecution that the failure of the I.O. in investigating the case in a foolproof manner cannot be the sole basis for jettisoning the prosecution case in its entirety. In cases of defective investigations, Mr. Narain has argued, the Courts are to be circumspect in evaluating the evidence but it would not be justifiable in acquitting an accused person solely on account of the defect, as it



would tantamount to playing into the hands of the I.O., if the investigation is designedly defective or the I.O. is incompetent.

14. To substantiate the aforementioned proposition, he has referred to the decisions in ***Karnail Singh vs. State of MP (1995) 5 SCC 518*** and ***Paras Yadav and Others vs. State of Bihar, 1999 (2) SCC 126.***

15. The sum and substance of his argument is that the case story of the prosecution is required to be examined *de hors* such omissions and lackadaisical conduct of the I.O., lest the mischief which has deliberately been done would be perpetuated and justice would be denied to the prosecution side. This would have a deleterious effect on the confidence of people, not merely on law enforcing agency, but also in the administration of justice.

16. The further argument of Mr. Narain and of the learned APP is that the evidence must be examined as a whole. If it reflects a ring of truth, the Courts



should eschew from giving undue importance to minor omissions and discrepancies which do not shake the foundations of the prosecution case.

17. After having heard the learned counsel for the parties and having perused the records, we have noticed that the informant (P.W. 3) though has claimed in the written report that he had accompanied the deceased but while deposing before the Trial Court, has made such statements which clearly demonstrate that he was not an eye witness to the occurrence.

18. In his cross-examination, he has said that he heard three sounds of gun-shot within a period of five minutes. In the next breath, he has claimed that he saw that the deceased was hit in his chest and abdomen. He had also seen injuries on his head. The deceased had been bleeding and his clothes were drenched with blood. This statement clearly reflects that he had not seen the occurrence, perhaps because he was not present at the P.O.



19. In this context, we have also noticed the deposition of Sanjit Kumar (P.W. 2), the injured witness who too in his examination-in-chief has only stated that he along with the deceased and Chandan was going to *Kandopur Khandha* when the occurrence had taken place. Had P.W. 3 accompanied the deceased and P.W. 2, he would not have missed to take the name of P.W. 3 Deepak Kumar @ Chandan Kumar (P.W. 5) was also very specific before the Trial Court in talking about his companions when the occurrence had taken place.

20. Getting back to the narrative put forth by P.W. 3, he had stated before the Trial Court that after about 10-12 minutes of the occurrence and the death of his son, he had reached the police station and within 15 minutes of the occurrence, the police party had arrived at the P.O. This appears to be completely asynchronous. According to him, the police had arrived at the P.O. on the oral information given by Sanjit Kumar (P.W. 2). He has further claimed that after the police reached the



P.O., he gave his statement on which he put his thumb impression. According to him, the statement was recorded by Rajkumar (P.W. 6), the investigator. He has also said that he did not know the contents of the written report as he is illiterate.

21. All this signifies that P.W. 3 had not been speaking the truth all this while. We say so for the reason that he claims to be an eye witness to the occurrence and ran for his life from the P.O. to the police station and gave his statement to the police. Interestingly, no *fardbeyan* was recorded and his written report, scribed by somebody else and not the investigator, was lodged at 11.30 P.M. in the night of the occurrence. This does not appear to be possible. According to the evidence of P.W. 3 and P.W. 2 both, Sanjit Kumar (P.W. 2) had reached the police station first and had informed in the police station about the occurrence and the death of the deceased. Close to his heels, P.W. 3/informant also reached there.



22. Where was the occasion for the police not to have recorded the fardbeyan of the informant (P.W. 3) or of P.W. 2?

23. The investigator viz. Rajkumar (P.W. 6), however, has stated before the Trial Court that he did not know the identity of the person who gave him the information about the occurrence. He claims to have recorded the statement of the informant at the P.O. He also claims to have recorded the further statement of P.W. 3/informant at the P.O. only after sometime. With respect to the information about the occurrence, he has admitted before the Trial Court that he received the written report on 20.12.2020 at about 11.30 P.M. A perusal of his evidence indicates that within no time of receiving oral information, he along with his police party had reached the P.O. Even though he had remained at the P.O. in the night for about 1½ hours, but he found nothing incriminating to seize nor was he told about the assailants or anything about the manner of occurrence.



He has also expressed his complete ignorance about as to where the dead body was kept in the night.

24. In further cross-examination, he has been forthcoming in stating before the Court that the information about the occurrence was first given to him by the villagers of the deceased on mobile telephone. Somewhere around 6.00 – 7.00 P.M., in the evening of 20.12.2020 after receiving such oral information, he made an entry in the station diary and sent one Surendra Paswan (not examined) ASI, who conducted the inquest. The investigator reached the P.O. about 5-10 minutes later than Surendra Paswan. For all this while that the investigator was present at the P.O., no villager or the family member of the deceased made any statement before him accusing the appellants. This makes the prosecution version even more doubtful.

25. The police, therefore, was present at the P.O. by 7.00 P.M. but the written report, scribed by an unknown person, naming the appellants and one Budhan



Pandit against whom the accusation was not found to be true, was lodged at 11.30 P.M. Normally, a delay of about 2-3 hours in reporting the matter to the police would not be that significant but in this background when the police had reached the P.O. and had not learnt anything about the appellants; and then accepting the written report by a person who is not literate at 11.30 P.M. raises eye-brows with respect to the veracity of the document treated as written report on which the prosecution rested its case.

26. There is force in the contention of the learned Advocate for the appellants that this was the time which was well utilized by the prosecution to concentrate on whom to be made accused in the case. Some of the witnesses at the Trial were given the suggestion that perhaps the deceased and others had an evil eye on some land donated to a temple which was referred to as *Math* in the village. There could also be a possibility of the deceased having been killed in some



other transaction and taking advantage of that death, it was easy for P.W. 3 to sharpen his axe and use the present prosecution case as the butcher's block.

27. The deceased, according to the eye witnesses, is said to have been shot at twice; first by appellant/Ajit Pandit and thereafter by Budhan Pandit. The shot fired by Ajit Pandit hit the deceased in his chest, whereas Budhan's shot hit him in his abdomen.

28. We may remind ourselves here that P.W. 3 had heard three gun-shots within a time span of five minutes.

29. The post-mortem examination on the dead-body was conducted by Dr. Ataul Haque Ansari (P.W. 8) who had found five injuries on the person of the deceased. The post-mortem was conducted on 21.12.2020, *i.e.*, a day after the occurrence at about 10:30 A.M. One oval inverted lacerated wound of the dimension 2 cms. x 2cms. into abdominal cavity deep at the back of the lumbar vertebra and one oval inverted



lacerated wound at the lower end of the chest cavity and both the injuries were communicating to each other. The third wound found on the person of the deceased was again an oval, inverted lacerated wound which went up-till the abdominal cavity but the bullet never came out of the body of the deceased. The projectile of the second shot, perhaps, got stuck in the dead-body which was recovered at the time of post-mortem examination.

30. This reflects that the deceased was shot at twice. Along with these three injuries, P.W. 8 had also found two incised wounds on the mid occipital parietal region and the lateral portion of the parietal region. There was no wound on the chest.

31. In his cross-examination, P.W. 8 has further asserted that he did not find any gunpowder etc. on the body of the deceased and there were no burn injuries or injury marks on the body.

32. This, therefore, means that the deceased was shot at from a distance which was not very afar.



33. Mr. Thakur, the learned Advocate for the appellants has argued that the second shot which hit in the abdomen is specifically attributed to Budhan, who was never sent up for trial. The shot fired by appellant/Ajit Pandit perhaps never hit the deceased.

34. This argument is not acceptable for the reason that merely because the place of wound would not determine the correctness of the version of the eye witness with respect to the part of the body of the deceased, which was hit by the shot fired by an accused person. If it is seen from a distance, an observer would not be able to tell precisely as to which part of the human anatomy was hit by which shot. Nonetheless, the injuries on the head of the deceased would cause some doubt about the witnesses having seen the assault themselves.

35. According to P.W. 3, after appellant/Kundan assaulted the deceased by means of an iron rod, the deceased died. During his cross-examination, he has



asserted that appellant/Kundan struck him on his head when the deceased had already fallen down on the ground.

36. If this were so, then the iron rod attack would not have caused any injury on the occipital/parietal region of the head of the deceased. Incidentally, both the injuries were incised wounds and not lacerated wounds.

37. It was also suggested by the learned Advocate for the appellants that an iron rod does not have any sharp-edge for it to cause incised wounds on the deceased.

38. Taking these aspects into account, we find that neither P.W. 3 (informant) nor P.Ws. 2 and 5, one of whom claims to have been injured in the occurrence, have come out with truth.

39. It would be apposite to refer to the injury of Sanjeet Kumar (P.W. 2) at this juncture only. He was examined by Dr. Sadab Jamil (P.W. 10) in the night of



20.12.2020 at 08.51 P.M. There was only one lacerated wound on the left hand above the wrist joint on the anterior side, which was muscle deep and the dimension was of 1.5 cm x 0.5 cm x 0.5 cm. This injury did not cause any fracture or any bony lesion. The injury was opined to be simple in nature caused by hard and blunt substance like *lathi*.

40. These variances between the medical testimony and the ocular version make the prosecution case very doubtful.

41. We are conscious of the position of the law that normally the discrepancy between medical evidence and ocular testimony, if the variations are not very appreciable in nature, the ocular testimony would prevail.

42. However, in this instance, the entire fact scenario changes with the medical evidence of P.W. 2 having not received any gun-shot which is attributed to appellant/Tittu and the deceased having received iron



rod injuries on the top of his head, which was inflicted on him when he was in a supine position.

43. The Supreme Court in ***Thaman Kumar vs. State of Union Territory of Chandigarh (2003) 6 SCC 380*** has very aptly discussed about the impact of the conflict between oral testimony and medical evidence on the prosecution case.

44. In the afore-noted case, it has been held that conflict between oral testimony and medical evidence can be of various dimensions and shapes. There may be a case where there is total absence of injuries which are normally caused by a particular weapon. There is another category where though the injuries found on the victim are of the type which are possible by the weapon of assault, but the size and dimension of the injuries do not exactly tally with the size and dimension of the weapon. The third category can be where the injuries found on the victim are such which are normally caused by the weapon of assault but



they are not found on that portion of the body where they are deposed to have been caused by the eye witnesses.

45. The same kind of inference cannot be drawn in the three categories of apparent conflict in oral and medical evidence. In the first category, it may legitimately be inferred that the oral evidence regarding assault having been made from a particular weapon is not truthful. However, in the second and third categories, no such inference can straightaway be drawn. The manner and method of assault; the position of the victim; the resistance offered by him; the opportunity available to the witnesses to see the occurrence like their distance; presence of light and many other similar factors will have to be taken into consideration in judging the reliability of the ocular testimony.

46. As we have already noted, Sanjeet (P.W. 2) has not received any gun-shot injury. The deceased has



received only two gun-shot wounds and two other injuries supposedly by hard and blunt substance but those injuries were found to be incised. This variance is no small one to be ignored especially when P.Ws. 2, 3 and 5 have claimed to be present at the P.O. at the time of occurrence.

47. In this context, we have also noticed the deposition of P.W. 2, who has asserted before the Trial court that when the deceased was shot at and assaulted, he did not make any attempt to run away. Later, he learnt that the deceased had died. He never went to see him. While he himself was going to the hospital, he learnt on telephone that the deceased had died. P.W. 2 is not a family member of the deceased or the informant. He does not even hail from the village of the deceased. He claims to have accompanied the deceased and the informant to the field for irrigation. And he is the person who first ran to the police station and informed the police about the occurrence.



48. These discrepancies in the prosecution case make the version of all, viz., P.Ws. 2, 3 and 5 to be absolutely doubtful.

49. How do we brand these witnesses?

50. In our estimation, they are wholly unreliable.

51. In the *locus classicus* case of ***Vadivelu Thevar vs. the State of Madras, AIR 1957 SC 614***, three types of witnesses have been described; one who are wholly reliable; wholly unreliable and neither wholly reliable nor wholly unreliable.

52. In case of wholly unreliable witnesses, it would only do justice to discard their versions altogether. We are again conscious of the requirement of law that a Court has to have a judicial colander with him to winnow the truth after separating the chaff from the grain.

53. In the present case, we find the testimonies of P.Ws. 2, 3 and 5 to be absolutely unworthy of any reliance.

54. Thus, we find that the witnesses to the



occurrence including the informant, who is the father of the deceased is completely untrustworthy. All of them have twisted the facts and have made contradictory statements. It would definitely not be safe to impose conviction on the basis of untrustworthy witnesses.

55. We have also taken into account the suggestions given to the witnesses regarding the possibility of the deceased having been killed in some other transaction.

56. Before we part, we must state that the investigator has completely abandoned his functions as a police officer and as an important stakeholder in the act of gathering evidence. Not seizing anything from the P.O.; not recording the statement of the witnesses which could have been uncontaminated; as it was very close to the time when the occurrence had already been committed, speaks of the Investigator having either colluded with the prosecution side or of having adopted a short-cut approach which has only resulted in thwarting



the ends of justice.

57. For the afore-noted reasons, we find the conviction and sentence of the appellants to be absolutely unjustified.

58. We, therefore, set aside the judgment and order of conviction and set the appellants free.

59. Appellant/Ajit Pandit @ Ajit Bharti [Cr. APP. (DB) No. 120 of 2023] is in jail. He is directed to be released from jail forthwith, if not required or detained in any other case.

60. The rest of the appellants, viz., Kundan Pandit @ Kundan Bharti, Ghorai Pandit @ Saro Pandit and Tittu Kumar are on bail. They are discharged of their liabilities under their bail bonds.

61. Both the appeals are allowed.

62. Let a copy of this judgment be dispatched to the Superintendent of the concerned Jail forthwith for compliance and record.

63. The records of this case be returned to the



Trial Court forthwith.

64. Interlocutory application/s, if any, also stand
disposed off accordingly.

(Ashutosh Kumar, J)

(Jitendra Kumar, J)

krishna/manoj-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	15.07.2024
Transmission Date	15.07.2024

