

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.16 of 2004

1. Rajan Kumar Pandey @ Rajan Pandey,
2. Brajesh Pandey,
3. Ramjee Pandey,
All sons of Bhuneshwar Pandey, resident of Mohalla - Babu Bazar, Arrah,
P.S. - Arrah Town, District – Bhojpur.

... .. Appellants

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellants : Mr.Pramod Kumar, Advocate
For the Respondent/s : Ms.Anita Kumari Singh, A.P.P.

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 24-01-2024

Heard Mr. Pramod Kumar, learned counsel appearing on behalf of the appellants and Ms. Anita Kumari Singh, learned Additional Public Prosecutor for the State.

2. At the outset, it appears important to mention here that appellant nos. 4 and 5 namely, Deep Narayan Pandey and Bhuneshwar Pandey died during pendency of the appeal and as such appeal against them stands abated vide order dated 27.09.2023 of this Court, as provision laid down under Section 394 of the Code of Criminal Procedure (in short the ‘Cr.P.C.’).

3. Now the present appeal survives only against above-named appellant nos. 1, 2 and 3 namely, Rajan Kumar Pandey @ Rajan Pandey, Brajesh Pandey and Ramjee Pandey.

4. The present appeal preferred under Section 374(2)



of the Cr.P.C. challenging the judgment of conviction dated 20.12.2003 and order of sentence dated 22.12.2003 passed by learned Additional Sessions Judge (F.T.C.-II), Bhojpur at Ara in connection with Sessions Trial No. 674 of 1989, whereby and whereunder appellant nos. 1 and 2 namely, Rajan Kumar Pandey @ Rajan Pandey and Brajesh Pandey have been convicted for the offences under Section 307 and 148 of the Indian Penal Code (in short the "I.P.C.") and under Section 27 of the Arms Act and ordered to undergo sentence for seven years, one year and three years respectively, whereas appellant no. 3 namely, Ramjee Pandey has been convicted for the offence under Section 147 and sentenced to undergo sentence for six months.

5. The case of the prosecution, as it springs from the written information of the informant (PW-2) namely, Lalan Singh that on 27.09.1988 when he along with his nephew Dadan Singh (injured/PW-1), Sarwjeet Singh of village Dumra, Ram Babu Singh of village Bhakura, Laxman Yadav, R/o- unknown and Rauf Mian of village Chakiya were sitting near the railway cabin of eastern railway crossing at Ara, at about 5:45 P.M. above-named appellants along with co-accused persons came over there and opened firing upon PW-1 Dadan Singh. It is stated thereof that appellant-accused no. 1 namely, Rajan Kumar



Pandey @ Rajan Pandey opened fire with double barrel gun, whereas appellant no. 2 namely, Brajesh Pandey opened fire with rifle. Further, it appears from narration of said written information that out of said firing PW-1/injured received injuries on his left thigh and lower abdomen and become senseless, thereafter he was brought to Sadar Hospital, Ara and finally to Patna Medical College & Hospital, Patna (in short “P.M.C.H., Patna”) for his better treatment. From narration of F.I.R. it appears that the aforesaid occurrence took place out of business rivalry due to same time table of Bus owned by the parties which were plying in the same route. As per written version of the informant, it also appears that appellant/accused no. 1 namely, Rajan Kumar Pandey @ Rajan Pandey was arrested on the spot itself by traffic police and two constables after chasing for a short distance.

6. On the basis of aforesaid written information, police lodged a case which has been registered as Ara Nawada P.S. Case No. 231 of 1988 dated 27.09.1988 for the offence under Section 147/148/149/307 of the Indian Penal Code and Section 27 of the Arms Act. After registering the F.I.R. Police investigated the matter and after completion of investigation submitted a charge-sheet accordingly, whereupon learned



jurisdictional Magistrate after perusal of the materials collected during investigation took cognizance of the offence and after supplying papers and documents in compliance of Section 207 of the Cr.P.C. committed this case to the court of session for trial and disposal under section 209 of the Cr.P.C., as offence alleged was triable by session court.

7. Learned trial court after perusal of the materials available on the record framed charges against the appellants/accused namely, Rajan Kumar Pandey @ Rajan Pandey and Brajesh Pandey for the offence under Section 307 and 148 of the I.P.C. and also under Section 27 of the Arms Act, whereas charges against appellants/accused Ramjee Pandey were framed under Section 307 and 147 of the I.P.C. vide order dated 07.12.1995.

8. Prosecution as to substantiate its case during trial examined altogether four witnesses, who are PW-1 Dadan Singh, who received bullet injury during the occurrence, PW-2 Birendra Prasad Singh @ Lalan Singh, who is informant and eye witness of the occurrence, PW-3 Raghubansh Prasad Singh, who is the Investigating Officer of the case and PW-4 Pashupatinath Upadhyay who is one advocate clerk and formal in nature as to prove the injury report.



9. Prosecution also exhibited certain documents in support of the case before the trial as under:

Sl. No.	Description of documents
Exhibit – 1	Fardbeyan
Exhibit – 2	Injury report
Exhibit – 3	Formal F.I.R.
Exhibit - 4	Production List
Exhibit – 5	Injury report

10. On the basis of evidence as surfaced during trial and also by taking note of the incriminating circumstances, the appellants/accused were examined under Section 313 of the Cr.P.C. where they shows their complete innocence and stated that they have been falsely implicated in the present case.

11. It appears that appellant no. 1 namely, Rajan Kumar Pandey @ Rajan Pandey stated while making statement under Section 313 of the Cr.P.C. stated that he would submit his statement in writing, same statement was also given by appellant no. 2 Brajesh Pandey, as to submit statement in writing, whereas appellant no. 3 Ramjee Pandey stated that he was in Kolkata on the date of occurrence. Appellants/accused in support of their defence examined four witnesses who are Dr. Sumar Kumar Dutta (DW-1), Binod Kumar Mishra (DW-2), Rajesh Sinha (DW-3) and Tarkeshwar Prasad (DW-4).



12. Defence also exhibited certain documents which are as under:

Sl. No.	Description of documents
Exhibit – A	Doctor’s Prescription dated 27.09.88
Exhibit – B	Discharge slip of doctor dated 19.09.88
Exhibit – C	Telegram
Exhibit - D	Letter no. 211 R.T.A.
Exhibit – D/1	Photocopy of road permit

13. After completion of evidence and going through the materials as surfaced during the trial, learned trial court convicted the above-named appellants/accused No. 1 and 2 for the offence under Section 307/148 of the Indian Penal Code and Section 27 of the Arms Act; whereas appellant no. 3 convicted for the offence under Section 147 of the I.P.C.

14. Being aggrieved with the aforesaid findings of conviction and order of sentence the appellants/accused preferred this appeal.

15. Hence, the present appeal.

16. Learned counsel appearing on behalf of the appellants/accused submitted that appellants were falsely implicated in this case out of business rivalry arises due to close time-table of their buses which were plying on same route, between Ara to Patna and Ara to Sasaram. It is stated that PW-2 namely, Birendra Prasad Singh @ Lalan Singh, who is the



informant of this case, deposed during his cross-examination that blood of Dadan Singh were dropped at the place of occurrence as he was bleeding out of bullet injury, but investigating officer did not find anything like blood-stained soil etc. at the place of occurrence in support of the submission of PW-2. It is submitted that I.O. did not find even empty cartridges or pellets at the place of occurrence.

17. Learned counsel further submitted that there are several material contradiction appears from the deposition of investigating officer of the case regarding attention as drawn to PW-1 and PW-2, which is sufficient to disbelieve the version of injured witness i.e. PW-1.

18. It is also submitted that even the injury report of injured/PW-1 was not stands proved during course of the trial rather it was proved in very casual and formal manner by advocate clerk which cannot be accepted under the law and in want of same it cannot be read as an evidence.

19. Learned counsel also submitted that not even a single doctor, who attended injured starting from Sadar Hospital, Ara upto P.M.C.H., Patna, were not examined during the trial and, therefore, prevailing of ocular evidence over medical evidence, is not a correct finding as held by the learned



trial court for the reason that to prevail oral statement of injured, there must be a proved injury report on record by its author/doctor. This is a case of no injury report.

20. While concluding argument, learned counsel further submitted that the traffic police and two constables who arrested the appellant/accused no. 1 namely, Rajan Kumar Pandey @ Rajan Pandey, were not examined during trial, rather it appears from the deposition of I.O. of this case that the accused persons on their own surrendered before the learned trial court.

21. Per contra, it is submitted by learned A.P.P. appearing on behalf of the State-respondent that PW-1/injured himself narrated during trial that how he received bullet injury out of firing caused by appellant nos. 1 and 2, while he was seated in Gumti with informant/PW-2. It is further submitted by learned A.P.P. that nothing appears from cross-examination of PW-1 and PW-2 which contradict the version of firing as surfaced during their examination-in-chief, and, therefore, judgment of conviction as recorded by learned trial court is appears correct in the eye of law.

22. Perused the records and also the argument as canvassed by learned counsel for the parties. It would be



apposite to discuss the evidence for the purpose of it's reappreciation, for just disposal of the present appeal.

23. PW-1 is injured namely, Dadan Singh, who stated in his examination-in-chief that appellant no. 1 Rajan Pandey and others, who are owner of Buss No. BRC-6689, were plying their Buses in the name of 'Sanjay Bus'. The said Bus was running between Ara to Piro via Garhani. It is stated that said Bus was running without road permit in same time-table, when his Bus was plying on the route. It is stated by him that on the instigation of appellants/accused Ramjee Pandey, Bhuneshwar Pandey and Deep Narayan Pandey, appellant no.1 namely, Rajan Kumar Panday and appellant no. 2 Brajesh Pandey opened fire upon him with double barrel gun (D.B.B.L.) and rifle respectively, which hit upon his thigh and lower abdomen. On receiving said injuries he becomes senseless and regain to self after three days in P.M.C.H., Patna. He came to know from PW-2 his uncle namely Birendra Prasad Singh @ Lalan Singh that when he was senseless, he was brought first to Sadar Hospital, Ara, from where he was referred to P.M.C.H., Patna and it was also told that appellant no. 1 namely, Rajan Kumar Pandey @ Rajan Pandey was arrested by traffic police with gun.

24. From his cross-examination, it transpires that same



confined mainly regarding validity of road permit and time-table of Buses plying on the route. It further appears from his cross-examination that firing was made from a distance of twenty meters and failed to state whether he received first firing out of gun, rifle or pistol. He stated that he regain to self after three days and discharged after 10-15 days from P.M.C.H., Patna. His statement was recorded at P.M.C.H., Patna itself, before his discharge.

25. PW-2 namely, Birendra Prasad Singh @ Lalan Singh, who appears as an eye witness of the occurrence and also informant of the case and uncle of injured/PW-1 namely, Dadan Singh. He also supported the occurrence with it's date and time in his examination-in-chief. He stated almost same fact as deposed by PW-1/injured through his examination-in-chief. He accompanied injured/PW-1 to Sadar Hospital, Ara and also to P.M.C.H., Patna. It was stated by him that he made his statement before S.H.O. of Ara (Nawada) at place of occurrence itself at about 7:30 P.M. He identified his signature over *fardbeyan* which on his identification exhibited as **Exhibit '1'**. It appears from para 14 of his deposition, which is part of his examination-in-chief itself that he recorded his *fardbeyan* before Station House Officer, Sri Raghubansh Prasad Singh of Ara Nawada



Police Station, which was read over and explained to him. But, subsequently, in para '23', he stated that his statement was recorded at about 7:15 P.M. at the place of occurrence by S.H.O. of Police Station, Ara Nawada. These facts lead to a contradiction regarding place of recording *fardbeyan*. It was stated by him that blood was oozing from the body of injured/PW-1 and it dropped at spot, but the I.O. (PW-3) did not find anything like that in support of his submission from the place of occurrence.

26. PW-3 namely, Raghubansh Prasad Singh, who is the Investigating Officer of this case, deposed that he did not find any bullet or empty cartridges or even blood-stained soil at place of occurrence, though it appears from his deposition that he noticed mark of firing at the place of occurrence but from this statement only it cannot be gathered that the mark, which was noticed by I.O., was out of same firing caused by appellants/accused.

27. The most unfortunate part of this trial is the deposition of PW-4 who is none but the Advocate clerk and appeared in dock to prove the injury report of PW-1. He appears in dock merely on the claim that he is acquainted with the writing and signature of the doctor as he got an opportunity to



work with him. This Court fails to understand that how an advocate clerk works with a doctor and came acquainted with his handwriting and signature and in aforesaid background it cannot be said that injury report of injured/PW-1 stand proved during the trial. It is is so, then, this is a case with no injury report, and as such, finding of learned trial court that ocular evidence be prevailed over injury report is of no bearing for the simple reason that there must be injury report on the record duly proved in accordance with law.

28. Appellant no. 3 namely, Ramjee Pandey claimed to be present in Kolkata between 16.09.1988 to 10.10.1988 which fact was surfaced by recording his statement under Section 313 Cr.P.C. In support of his statement, he brought four witnesses in defence. They are Dr. Sumar Kumar Dutta (DW-1), Binod Kumar Mishra (DW-2), Rajesh Sinha (DW-3) and Tarkeshwar Prasad (DW-4). From deposition of DW-1 it appears that while appellant no. 1 came to Kolkata, to attend a marriage ceremony, he became ill and received treatment from DW-1 namely, Dr. Sumar Kumar Dutta. It further appears from his deposition that DW-1 treated him at Kolkata on 23.09.1988, which was continued till 27.09.1988. No material contradiction surfaced during his cross-examination as to disbelieve his



version. Same fact was also supported by DW-2 and DW-3.

29. In view of aforesaid factual discussion, it appears that the injury report of PW-1 cannot be said proved during the trial as none of the doctor either from first attending hospital at Ara or P.M.C.H., Patna were examined during trial. Even the Investigating Officer of this case did not find anything incriminating from the place of occurrence like blood-stained soil, empty cartridges, pellets etc.

30. This Court has gone through the judgment of Hon'ble Supreme Court in the case of **Khema @ Khem Chandra etc. Vs. State of Uttar Pradesh** reported in **(2023) 6 SCC 451** where the Hon'ble Apex Court has held in the following manner:

“31. From the perusal of the evidence as well as the findings of the trial court itself, it is clear that Omveer (PW 1) cannot be said to be an eyewitness. Though, Inder (PW 2) is an injured eyewitness, there are serious discrepancies and inconsistencies with regard to time of the injuries sustained and time at which he was medically examined. Dr Anoop Kumar (PW 6), in his evidence, has changed his stance on several occasions. His testimony is totally contrary to that of Omveer (PW 1) and Inder (PW 2). As held by us, it will not be safe to base the conviction on the sole testimony of Inder (PW 2) though he is an injured witness. The corroboration sought by the prosecution with regard to alleged recoveries of the weapons used in the crime is also not free from doubt. Neither the station diary entry with regard to telephonic intimation given by Vijay Singh at 9.05 a.m. has been brought on record nor has Vijay Singh been examined. Though independent witnesses were available, the prosecution has failed to examine



them. We therefore find that this is a case wherein the appellants are entitled for benefit of doubt.”

31. In view of the above, it can be said safely that several material doubts remains unanswered by prosecution as to prove its case beyond reasonable doubt during the trial.

32. Hence, the appeal stands allowed.

33. Accordingly, the impugned judgment of conviction dated 20.12.2003 and order of sentence dated 22.12.2003 passed by learned Additional Sessions Judge (F.T.C.-II), Bhojpur at Ara in connection with Sessions Trial No. 674 of 1989 are set-aside. The accused/appellants are acquitted of the charges levelled against them by giving benefit of doubt. They are directed to be set at liberty forthwith unless their detention is required in any other case.

34. Lower Court Records, if any, be sent back to learned trial court along with the copy of this judgment. Fine, if any, paid by accused/appellants in furtherance of order of sentence, be refunded to him immediately.

(Chandra Shekhar Jha, J.)

Rajeev/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	31.01.2024
Transmission Date	31.01.2024

