

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.587 of 2019

Arising Out of PS. Case No.-58 Year-1995 Thana- CHENARI District- Rohtas

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1. LALBABU PANDIT @ KRISHNA PATEL Son of Bhikhari Pandit Resident of Village - Chaurahi, P.S.- Chenari, District- Rohtas
 2. Bhikhari Pandit Son of Late Anirudh Pandit Resident of Village - Chaurahi, P.S.- Chenari, District- Rohtas
 3. Jay Kumar Pandit Son of Bhikhari Pandit Resident of Village - Chaurahi, P.S.- Chenari, District- Rohtas

... .. Appellant/s

Versus

THE STATE OF BIHAR

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Digvijay Kumar Ojha, Advocate
For the State	:	Mr. Sujit Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI

and

HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

Date : 29-07-2024

The present appeal has been filed under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred as ‘Code’) challenging the judgment of conviction and order of sentence dated 16.05.2019 passed by learned Presiding Officer, F.T.C. II, Rohtas at Sasaram in Sessions Trial No. 263 of 1996, arising out of Chenari P.S. Case No. 58 of 1995, G.R. No. 1642/1995, whereby the concerned Trial Court has convicted the present appellants for the offences punishable under Sections 341, 307/34, 323 and 302/34 of the I.P.C., 5 years for Section 307/34 of the I.P.C. and



imprisonment for life under Section 302 of I.P.C. and the sentences have been directed to run concurrently.

2. At the outset, learned counsel for the appellants submits that after filing of the present appeal, Appellant No. 2 Bhikhari Pandit has died and, therefore, the present appeal stands abated *qua* Appellant No. 2 Bhikhari Pandit.

3. We have, therefore, considered the present appeal *qua* the Appellant No. 1 and Appellant No. 3.

4. The prosecution story, in brief, is as under:-

“On 10.09.1995, at 08:30 a.m., the informant and his father Shivdhari Pandit were going towards Narayanpur to buy Kerosene oil. As soon as they reached near the house of Pata Pandit and Bhenga Pandit, the accused persons, armed with *lathi* in their hands, surrounded them and then Bhikhari Pandit assaulted with *lathi* on the head of the informant causing injury on his head. Lalbabu Pandit and Jay Kumar Pandit assaulted his father on head and body by *lathi* causing injury which made him to fall down on earth and also the blood started oozing. Thereafter, they fled away. Ram Vyash Pandit, Kachahari Ram and Lal Mohar informed him about the incident. Thereafter, they rushed his father to Chenari Hospital for his treatment. The reason of the said occurrence is that some altercation took place between both the parties on the point of soil cutting and water lobbing in the land of the accused persons nearby the house of the informant.”

5. After registration of the F.I.R., the Investigating Officer carried out the investigation and, during the course of investigation, he had recorded statement of the witnesses, collected



the material and thereafter filed the charge-sheet against the accused. The case was exclusively triable by the Court of Sessions and, therefore, the concerned Magistrate committed the same under Section 209 of the Code to the concerned Sessions Court where the same was registered as Sessions Trial No. 263 of 1996.

6. During the course of trial, the prosecution examined five witnesses and also produced certain documentary evidence. Thereafter, further statement of the accused under Section 313 of the Code came to be recorded. After conclusion of the trial, the Trial Court passed the impugned judgment and order whereby the Trial Court convicted the present appellants, as stated hereinabove. The appellants have, therefore, preferred the present appeal.

7. Heard Mr. Digvijay Kumar Ojha, learned counsel for the appellants and Mr. Sujit Kumar Singh, learned A.P.P. for the Respondent-State.

8. Learned counsel for the appellants would mainly contend that though there are no eye-witnesses to the incident in question, the prosecution had projected PW-1, PW-2 and PW-3 as eye-witnesses. In fact, they are not eye-witnesses to the incident in question and they are near relatives of the deceased. It is further submitted that there are major contradictions, inconsistencies and discrepancies in the deposition given by the so called eye-



witnesses and, therefore, this Court may not accept the version given by the said so called eye-witnesses who are near relatives of the deceased.

9. Learned counsel, at this stage, submits that the prosecution has failed to examine the Doctor who had conducted the *post mortem* of the dead body of the deceased. The prosecution has also not examined the Investigating Officer who had carried out the investigation. Thus, because of the non-examination of the Doctor as well as the Investigating Officer, the defence has lost the opportunity to cross-examine the expert as well as the Investigating Officer, who had carried out the investigation, and thereby serious prejudice has been caused. It is also submitted that even PW-5 has not supported the case of the prosecution and he has turned hostile.

10. Learned counsel further submits that even the *fardbeyan* is not duly proved nor the Inquest Report has been duly proved by the prosecution. Thus, the prosecution has failed to prove the case against the appellants/accused beyond reasonable doubt, despite which the Trial Court has passed the impugned judgment and order. Learned counsel, therefore, urged that the present appeal be allowed and the impugned judgment and order passed by the concerned Trial Court be quashed and set aside.



11. On the other hand, learned A.P.P. has opposed the present appeal. It has been mainly contended by the learned A.P.P. that there are three eye-witnesses to the incident in question and merely because they are relatives of the deceased, their version may not be discarded. It is submitted that though there are contradictions and inconsistencies in the deposition of the prosecution witnesses, the same cannot be said to be a major contradiction and, simply on this ground, the deposition given by the eye-witnesses may not be ignored. It is further submitted that once the eye-witnesses have specifically alleged against the appellants and specific role has been attributed to each of the appellants, the Trial Court has not committed any error while passing the impugned judgment and order. Learned A.P.P., therefore, urged that the present appeal may not be entertained.

12. We have considered the submissions canvassed by the learned counsels. We have also perused the material placed on record and the evidence led by the prosecution before the Trial Court. It would emerge from the record that the prosecution had examined five witnesses out of which PW-1 to PW-3 are projected as eye-witnesses and they are near relatives of the deceased. PW-4 is the witness who has signed the Inquest *Panchnama* whereas PW-5 has not supported the prosecution-case and he was declared



hostile. Thus, from the evidence led by the prosecution, it transpires that the prosecution has mainly placed reliance upon the deposition of the so called eye-witnesses who are near relatives of the deceased. At this stage, it is pertinent to note that except the related/interested witnesses, the prosecution has failed to examine any independent witnesses. It is true that merely because the witnesses are interested/related witnesses, their deposition cannot be discarded. However, the version given by such witnesses is required to be scrutinized closely. Hence, we would like to examine the deposition given by PW-1 to PW-3 closely.

13. PW-1 Lal Mohar Pandit is the son of the deceased Shivdhari Pandit. He has stated that, on the day of incident, at about 07:00-08:00 a.m., his father went to buy Kerosene oil. At that time, Lal Babu Pandit, Jay Kumar Pandit and Bhikhari Pandit came there with *lathi* and started assaulting him as a result of which he fell down. When his brother Awadhesh Pandit came there, the accused persons assaulted him and tore his clothes. When the villagers gathered there, the accused persons fled away. Then, they took his father to Chenari Hospital where he was treated. He was then referred to Sasaram Hospital where he died during the course of his treatment. It is stated that there was a land dispute which was the bone of contention with the accused persons. It is further stated that his father was aged about 80 years at the time of incident. His father was going to a fair



price shop to buy Kerosene oil. He reached at the place of occurrence when his father fell down. 20-25 villagers had also gathered at the place of incident. His father was treated at Sasaram for about 5-6 hours. He was also treated at Chenari Hospital for 2-3 hours. He had met with the Police officials but they did not take his statement.

14. PW-2 Fuljharo Kunwar is the wife of the deceased. She has stated in her examination-in-chief that on the day of incident at about 08:00 a.m., her husband went to buy Kerosene oil. Then, Jay Kumar, Lal Babu and Bhikhari came there with *lathi*. Bhikhari hit him on his head. Jay Kumar and Lal Babu also hit her husband on his head and other parts of his body with *lathi*. Her husband got injured and fell down. On *hulla*, villagers arrived there and the accused persons fled away. The injured person was taken to Chenari Hospital for treatment. The Doctor then referred him to Sasaram where he died during the course of his treatment.

14.1. In her cross-examination, she has stated that she was the first in the family to reach at the incident site. When she reached there, Lal Mohar and Awadhesh were already there. She has further stated that she along with other persons carried her husband from the site and went to Chenari Police Station. The *Darogaji* of Chenari Police Station inquired her about the incident. She cannot remember as to when she had got her statement recorded before *Darogaji*. *Darogaji* took her thumb impression.



When *Darogaji* was inquiring her, her husband was alive. *Darogaji* did not inquire anything with her husband. She has further stated that there were blood stains at the place of incident. When she reached there, she saw that some people were collecting blood stained soil and were throwing it into the ditch. It is also stated that there were blood marks on the clothes of her husband. Her statement was recorded before the Police three days after the incident.

15. PW-3 Ram Awadhesh Pandit is the informant of the case. He has stated, in his examination-in-chief, that the incident happened on 10.09.1995 at 08:30 a.m. He along with his father was going to Narayanpur to buy Kerosene oil. When they reached in front of Pata Pandit and Sahu's house, Bhikhari Pandit, Jay Kumar and Lal Babu came there with *lathi*. They hit the informant and then Lal Babu hit his hand with the *lathi*. On Bhikhari Pandit's behest, Lal Babu and Jay Kumar Pandit hit his father on his head and ears with *lathi* due to which he fell down after getting injured. After that, the accused persons fled away. Then they went to the Chenari Hospital where he was treated with his father. Then, they were referred to the Sasaram Hospital where his father died during the course of his treatment. It is also stated that the accused persons were cutting the edge of the reservoir of his house which



was forbidden and this was the reason because of which the incident occurred.

15.1. In his cross-examination, he has stated that Bhikhari, Lal Babu, Jay Kumar, Shivdhari, Ram Awadhesh Pandit, Fuljhari Devi, Ramdayal Pandit and Kachchari were at the place of incident. It is stated that the accused persons first surrounded him and hit him 2-3 blows with *lathi*. Further, he has stated that, after getting assaulted, they went to hospital. He, with the help of Lal Mohar, took his injured father on the cot and he had wrapped a *gamcha* on his injury. They left for hospital from the incident spot at 08:45 a.m. It is stated that it might have taken two minutes for the incident to occur at the spot. He went to Chenari on foot. When he went to Chenari Police Station, his father had fainted. His mother also went with him. He gave the statement before *Darogaji*. He has further stated that he was treated at Chenari Hospital. The Doctor referred him to Sasaram. His father got admitted in Sasaram Hospital on the same day at 02:30 p.m. After his father's death, Police came to the village. He did not remember the date and day of the incident.

16. PW-4 Langtu Pandit, as stated hereinabove, is the witness who has signed the Inquest Report and he has identified



his signature in the Inquest Report. However, the said witness is not an eye-witness to the incident in question.

17. PW-5 Shiv Kumar Pandit, has not supported the case of the prosecution, as discussed hereinabove.

18. From the deposition given by the aforesaid three witnesses, it is revealed that PW-3 Ram Awadhesh Pandit is the informant. The said witness has stated in the *fardbeyan* that the incident took place at 08:30 a.m. in the morning when he was going with his father Shivdhari Pandit to bring the Kerosene oil. At that time, all the accused came at the place of incident armed with *lathi*. The informant has specifically stated in the *fardbeyan* that the accused Bhikhari Pandit gave *lathi* blow on his head and thereafter the accused Lalbabu Pandit as well as Jay Kumar Pandit gave blow with *lathi* on the head of his father. Several blows were given on the body of his father, as a result of which his father sustained injury and fell down on the ground. At that time, one Ram Vilas Pandit, Kachchari Ram, Nihora Ram and Lal Mohar, were present and, with the help of the aforesaid persons, the father of the informant was taken to the Chenari Hospital. It has been specifically stated, in the *fardbeyan*, that the dispute arose at about 06:00 a.m. in the morning with regard to the neighbouring land situated next to the house of the informant. At that time, the



quarrel took place between the father of the informant and one Bhikhari Pandit.

19. Keeping in view the aforesaid *fardbeyan*, if the deposition given by PW-3 Ram Awadhesh Pandit (informant) is carefully seen, it is revealed that, in the examination-in-chief, the informant stated that the accused came at the place of incident and Lal Babu gave blow with *lathi* on his hand and thereafter at the instance of Bhikhari Pandit, Lal Babu Pandit and Jay Kumar Pandit (other co-accused) gave blow with *lathi* on the head and various parts of body of his father and thereafter the accused fled away from the place of occurrence. Thereafter, his father was taken to the Chenari Hospital. Thus, from the aforesaid deposition given by the informant, it is revealed that there are major contradictions in the deposition given by the informant. It is further revealed from the record that though the informant sustained injury in the incident in question, he had not taken any treatment in the hospital. There is nothing on record to suggest that he had taken treatment in Chenari Hospital or hospital situated at Sasaram.

20. From the evidence, it further transpires that the informant did not state the name of Fuljharo Kunwar (PW-2), who is wife of the deceased, in the *fardbeyan*. The informant has



specifically given the name of one Ram Vilas Pandit, Kachchari Ram, Nihora Ram and Lal Mohar. Thus, from the *fardbeyan*, it is revealed that PW-2 Fuljharo Kunwar was not present at the place of occurrence and the persons who are named in the *fardbeyan* i.e. Ram Vilas Pandit, Kachchari Ram and Nihora Ram have not been examined by the prosecution. Thus, the independent witnesses have not been examined by the prosecution.

21. From the deposition given by PW-1 Lal Mohar Pandit, who is the son of the deceased and brother of the informant, it is revealed that the said witness reached at the place of occurrence after his father fell on the ground after sustaining the injury. The said witness has stated, in the examination-in-chief, that dispute between the parties was with regard to the land. Thus, from the cross-examination of the said witness, it is revealed that the said witness was not an eye-witness to the incident and he reached at the place of incident after the incident took place. It is further revealed that, in Para-4 of the said deposition, PW-1 had stated that the Police did not take his statement and only inquired with regard to his name.

22. PW-2 Fuljharo Kunwar is the wife of the deceased and mother of the informant. The said witness, in the cross-examination, has stated that when she reached at the place of



occurrence, Lal Mohar Pandit and Awadhesh were present. However, from the deposition given by PW-1 Lal Mohar Pandit, it is revealed that he reached at the place of occurrence after the deceased fell on the ground and after he had sustained injuries. Thus, from the aforesaid deposition of PW-2, it can be said that the said witness is also not an eye-witness to the incident in question. Further, PW-2 has stated that her husband was taken to the Police Station from the place of incident and thereafter *Darogaji* inquired from them with regard to the incident. *Darogaji* took thumb impression of the said witness and also inquired. At that time, her husband was alive. She further stated, in Para-8, that her statement was recorded by the Police three days after she returned from Sasaram.

23. PW-3 Ram Awadhesh Pandit is the informant. We have already observed hereinabove that there are major contradictions in his deposition. The said witness deposed before the Court, in examination-in-chief, that Lal Babu gave *lathi* blow on his hand. However, in his *fardbeyan*, the said witness had stated that one Bhikhari Pandit gave *lathi* blow on his head. Further, the said witness had not taken any treatment in the hospital. Though, he carried his father to Chenari Hospital and thereafter hospital at Sasaram, there is nothing on record to suggest that the said witness



sustained any injury. Further, the said witness had stated, in the cross-examination, that immediately after the incident, his father was taken to the hospital. However, PW-2, mother of the informant, has deposed before the Court that, from the place of incident, the injured/deceased was firstly taken to the Chenari Police Station and not to the hospital. PW-3 (informant) has further stated that after his father died, Police came to the village and, on various occasions, *Darogaji*/ Police took signature on the papers.

24. PW-4, as stated hereinabove, is the signatory to the Inquest Report and he has identified the signature but he is not an eye-witness.

25. Thus, from the aforesaid deposition given by the prosecution witnesses, it transpires that the prosecution has failed to examine any independent witnesses, Investigating Officer as well as the Doctor who had carried out the *post mortem* of the dead body of the deceased. The person who has recorded the *fardbeyan* is also not examined. Thus, even *fardbeyan*/F.I.R. is also not duly proved. The cause of the death of the deceased was also not proved by the prosecution. As the Investigating Officer was not examined, the prosecution has also failed to prove the manner in which the investigation was carried out by the Investigating



Officer. Even the alleged weapons i.e. *lathi* were not recovered/discovered. It is the specific contention taken by the learned counsel for the appellants that as Investigating Officer was not examined, the defence has lost opportunity to cross-examine him, as a result of which serious prejudice has been caused to the defence.

26. As discussed hereinabove, the prosecution has projected PW-1 to PW-3 as eye-witnesses. It is not in dispute that the aforesaid witnesses are near relatives of the deceased i.e. his sons and wife of the deceased. It is well settled that merely because the witnesses are near relatives of the deceased, their deposition cannot be discarded only on that ground. If the deposition given by the sole witness is of such sterling quality, the same can be relied upon and only relying upon the same without any corroboration, the accused can be convicted. Keeping in view the aforesaid principle of law laid down by the Hon'ble Supreme Court in various decisions, we have examined the deposition given by the so called eye-witnesses and we are of the view that there are major contradictions, inconsistencies and discrepancies in their deposition. Thus, we are of the view that simply relying upon the aforesaid witnesses, without any corroboration, conviction cannot be recorded in the facts of the present case.



27. We have also gone through the reasoning recorded by the Trial Court and we are of the view that the Trial Court has committed serious error while passing the impugned judgment of conviction and order of sentence. We are of the view that the prosecution has miserably failed to prove the case against the appellants/accused beyond reasonable doubt.

28. In view of the aforesaid discussion, the impugned judgment and order passed by the Trial Court is required to be quashed and set aside.

29. Accordingly, the impugned judgment of conviction and order of sentence dated 16.05.2019 passed by learned Presiding Officer, F.T.C. II, Rohtas at Sasaram in Sessions Trial No. 263 of 1996, arising out of Chenari P.S. Case No. 58 of 1995, G.R. No. 1642/1995, is quashed and set aside.

30. All the appellants are acquitted of the charges levelled against them by the learned Trial Court.

31. Appellant No. 2, namely Bhikhari Pandit, has died during the pendency of the present appeal. The present appeal stands abated *qua* appellant No. 2.

32. Appellant Nos. 1 & 3, namely Lalbabu Pandit @ Krishna Patel and Jay Kumar Pandit, are in custody. They are directed to be released from custody forthwith, if their custody is not required in any other case.



33. The appeal stands allowed.

(Vipul M. Pancholi, J)

(Ramesh Chand Malviya, J)

Sachin/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
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