

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL APPEAL (DB) No.202 of 2016

Arising Out of PS. Case No.-37 Year-2000 Thana- CHOUTARWA District- West Champaran

1. Pankaj Kumar Pandey, Son of Late Harimohan Pandey, R/o Village-Patilar,
P.S.-Chautarba, West Champaran.

2. Lal Babu Yadav, Son of Bachchan Yadav, R/o Village-Patilar, P.S.-
Chautarba, West Champaran.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 274 of 2016

Arising Out of PS. Case No.-37 Year-2000 Thana- CHOUTARWA District- West Champaran

Binod Das, Son of Late Kapildeo Das, R/o Village-Khora Parsa, P.S.-Bagaha,
District-West Champaran.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 202 of 2016)

For the Appellant No.1 :	Mr. Jagannath Singh, Adv.
	Mr. Deepak Kumar, Adv.
	Md. Ghulam Mustafa, Adv.
	Mr. Padmanabh Kashyap, Adv.
For the Appellant No. 2 :	Ms. Renu Jha, Adv.
For the State :	Mr. Dilip Kumar Sinha, APP



(In CRIMINAL APPEAL (DB) No. 274 of 2016)

For the Appellant/s : Mr. Milind Kumar Mishra, Adv.
For the State : Mr. Dilip Kumar Sinha, APP

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE JITENDRA KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 03-05-2024

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

2. Pankaj Kumar Pandey and Lal Babu Yadav are the appellants in Cr. Appeal (DB) No. 202 of 2016, whereas Binod Das is the appellant in Cr. Appeal (DB) No. 274 of 2016.

3. Mr. Jagannath Singh and Ms. Renu Jha, the learned Advocates have appeared for appellant No. 1 & 2, namely, Pankaj Kumar Pandey and Lal Babu Yadav [Cr. Appeal (DB) No. 202 of 2016] respectively, whereas appellant/Binod Das [Cr. Appeal (DB) No. 274 of 2016] has been represented by Mr. Milind Kumar Mishra, the learned Advocate.



4. The State, in both the appeals, has been represented by Mr. Dilip Kumar Sinha, the learned APP.

5. All the three appellants have been convicted for the offence under Section 364(A)/34 of the IPC, whereas appellants/Pankaj Kumar Pandey and Lal Babu Yadav have also been convicted for the offence under Section 307/34 of the IPC. Additionally, appellant/Binod Das has been held guilty for the offence under Section 27(1) of the Arms Act. The judgment of conviction has been delivered by the learned Additional Sessions Judge-II, Bagaha, West Champaran on 10.02.2016 in Sessions Trial No. 183 of 2005/SI. No. 837 of 2015 arising out of Choutarwa P.S. Case No. 37 of 2000.

6. The other accused, who was put on Trial along with the appellants, namely, Rajesh Das has been acquitted.

7. By order dated 11.02.2016, all the three appellants have been sentenced to undergo R.I. for life,



to pay a fine of Rs. 5,000/- each and in default of payment of fine, to further suffer R.I. for three months for the offence under Section 364(A)/34 of the IPC. Appellants/Pankaj Kumar Pandey and Lal Babu Yadav have further been sentenced to undergo R.I. for ten years, to pay a fine of Rs. 5,000/- each and in default of payment of fine, to further suffer R.I. for three months for the offence under Section 307/34 of the IPC. Appellant/Lal Babu Yadav has also been sentenced to undergo R.I. for three years, to pay a fine of Rs. 5,000/- and in default of payment of fine, to further suffer R.I. for three months for the offence under Section 27(1) of the Arms Act.

8. The sentences have been ordered to run concurrently.

9. A peculiar case has been lodged by the brother of the victim, namely, Shaukat Ali (P.W. 3) on 11.04.2000. According to the *fardbeyan* lodged by him, his younger brother/victim/Firoz Ali (P.W. 4) had



gone to the market on 10.04.2000 to bring battery. However, he did not return till late in the night. A search was made for him but to no avail. On 11.04.2000, *i.e.*, on the next day at about 09:00 P.M, P.W. 3 heard the cries of his brother/P.W. 4. P.W. 3 was alarmed to hear the voice of P.W. 4. He ran in the direction of the voice and found that his brother/the victim was lying on the ground and his clothes were drenched with blood. He called other members of his family and with their help, took P.W. 4 to hospital on a jeep. On way, P.W. 4 informed him that while he was going to the market and reached near the shop of appellant/Binod Das, he saw appellant/Lal Babu Yadav, who took him to a shop for having food. Along with him, appellant/Pankaj Kumar Pandey was also there. Chicken was purchased for seventy rupees and it was prepared in the shop of appellant/Binod Das. Appellant/Binod Das runs a tailoring shop in the locality. Thereafter, appellant/Lal Babu Yadav took him



towards his house. About hundred meters before the house of Lal Babu Yadav, they stopped and in the meantime, one person came out of the bush and on gun-point took him, Lal Babu Yadav and Pankaj Kumar Pandey inside the wheat field. Five to six miscreants were present there from before. All three of them were tied with a rope. Later, appellants/Pankaj Kumar Pandey and Lal Babu Yadav were released by the miscreants. The brother of P.W. 3 further informed him that he was taken to a sugarcane field and was being pressurized for bringing three lacs rupees as ransom amount. For the whole of the next day, the victim was kept in the field. Finding one opportunity of escaping, P.W. 4 ran out of their captivity, when he was shot at from behind. He could anyhow run towards the village and when he reached near his house, he shouted for help. P.W. 3 has further stated in the *fardbeyan* that the police was immediately informed. His brother (the victim) had told him that he



had identified Sanjay Yadav, Dhananjay Yadav, Lal Babu Yadav and Ramakant Yadav. The victim had also told his brother that Lal Babu Pandey and Pankaj Kumar Pandey, both, had taken part in his kidnapping and they were accompanied by four to five unknown persons.

10. On the basis of afore-noted fardbeyan statement of P.W. 3, a case *vide* Choutarwa P.S. Case No. 37 of 2000, dated 11.04.2000, was registered for investigation under Sections 364(A), 324 and 307 of the IPC and Section 27 of the Arms Act against the appellants and others.

11. However, only the appellants and one Rajesh Das (since acquitted) were put on Trial.

12. The Trial Court, after having examined six witnesses on behalf of the prosecution and one formal witness as a Court witness, convicted and sentenced the appellants as aforesaid.

13. We are absolutely amazed and surprised



at the manner in which this case has been handled by the Trial Court.

14. No independent person has been examined at the Trial and the Court has relied upon the deposition of the brothers and the father of the victim as also the victim, who all have narrated a story which is not worth believing.

15. Neither the I.O. nor the Doctor have been examined at the Trial and there is no explanation whatsoever for their non-examination.

16. All the witnesses, namely, Md. Ali @ Amzad Ali (P.W. 1), who is the brother of the victim; Ushman Mian (P.W. 2), the father of the victim; Md. Idrish Ali (P.W. 5), the uncle of the victim and Lal Babu Ali (P.W. 6), the cousin of the victim, have spoken before the Trial Court what the victim/ Firoz Ali (P.W. 4) had told them.

17. It would, thus, be relevant to refer to the deposition of P.W. 4 only.



18. It appears that P.W. 4 was cross-examined for 7 days and his deposition runs in 112 paragraphs. Nothing relevant appears to have been asked from him either by the defence or by the Court. Nonetheless, we would refer to some part of his deposition, which would make the prosecution story appears like a cock and bull story and nothing more.

19. P.W. 4 has stated before the Trial Court that while going to the market for purchase of battery for his house, he met appellants/Lal Babu Yadav and Pankaj Kumar Pandey, on whose insistence, he went to appellant/Binod Das at his shop for eating non-vegetarian food. One of the co-accused persons, since acquitted, namely, Rajesh Das was also there. After all of them had their food, the victim and the appellants went to see off Rajesh Das. Thereafter, all of them returned to the shop of appellant/Binod Das. Appellant/Lal Babu Yadav then asked all others to leave him to his house. P.W. 4 claims to have gone to the



house of Lal Babu Yadav along with Pankaj Kumar Pandey. Pankaj Kumar Pandey disclosed that he needed to go to the toilet urgently. This sent P.W. 4 suspecting some foul play by the appellants. The three of them, namely, the victim and the appellants/Pankaj Kumar Pandey and Lal Babu Yadav went towards the garden side, when two persons who had masked themselves came and blind-folded the victim. He was taken to some destination. He sensed that he had been brought to a sugarcane field. On the next day, appellants/Lal Babu Yadav and Pankaj Kumar Pandey also arrived. They took him to another destination. They also insisted that he should arrange for Rs. 3,00,000/- as ransom amount, otherwise he would be killed. The victim bargained with them and told them that he could at best make payment of Rs. 20,000/- to 25,000/-. Pankaj Kumar Pandey then is said to have exhorted Lal Babu Yadav to kill him. Lal Babu Yadav fired from his weapon from behind, which hit him in his



back. He fell down on the ground on receiving the gunshot. The appellants, namely, Lal Babu Yadav and Pankaj Kumar Pandey tried to confirm whether he was still alive. His personal belongings were taken away. Ten minutes later, P.W. 4 claims to have got up and tied the wound with his shirt. He left for his village home. He met two persons on way, whom he told that he had received gunshot wounds and that they should help him out and reach him to his home. They were traveling on a bicycle. P.W. 4 was brought on that such bicycle near his house, whereafter those two persons left for their destination. It was at this point of time that he shouted for help. Then his brother P.W. 3 came. Thereafter, other members his family also arrived. He was taken on a jeep to the police station and, thereafter, to Bettiah hospital. His statement was also recorded under Section 164 Cr.P.C.

20. In his cross-examination, he has admitted that he knew all the three appellants. He



could not tell the Court as to the nature of wound received by him or even whether he was admitted in the emergency ward of the hospital or was just given primary treatment. As long as he was in the hospital, no Magistrate or the police came or his statement was recorded by anybody. He had never made any statement before the police.

21. On being further questioned, he again admitted that in front of the house of Lal Babu Yadav, when he first entertained doubt about some foul play, he never shouted for any help. Several suggestions were given to him, especially that two of his maternal uncles were in the habit of committing robbery in different houses and in course of such robbery in which P.W. 4 was also present, he was hit by a bullet and, therefore, for his safety and well-being, he was reached to his house by his two maternal uncles.

22. True it is that such suggestions were vehemently denied by P.W. 4, but the story suggested



by him does not at all inspire confidence that he is telling the truth. This witness have prevaricated and tergiversated a number of times for him to be believed as a reliable witness. He was kidnapped from the village and from in front of the house of appellant/Lal Babu Yadav. It was not an unearthly hour when he was blind-folded and taken to sugarcane field. Nobody noticed it!

23. There is also nothing on record to indicate that there was any demand of ransom from his family. He was not even made to talk to his brothers for arranging Rs. 3,00,000/-. There was no written communication whatsoever. Unless P.W. 4 would have known the appellants from before, he would not have otherwise agreed to go with them at the shop of appellant/Binod Das. The other suggestions which were denied by him were about some rivalry at the hustings where his family members and the family members of the appellants had contested for local body



positions.

24. That apart, it is difficult to accept the story of P.W. 4 that he was hit by a bullet as a result of which he had fallen down and then got up of his own after ten minutes and tied his wound by opening his shirt.

25. The story is not limited to this only. He trudged to some distance and came to the road where he found two persons on bicycle who offered to help. He was brought on a bicycle near his home. Why had those persons left him outside his house also is inexplicable. Their identity also remains completely unknown. If they had helped P.W. 4 in bringing him to his home after knowing that he had a gunshot wound on his body, it would only have been natural for them to have met the family members of P.W. 4. Their running away after reaching P.W. 4, somewhere near his house, raises many eye-brows.

26. The story, therefore, is absolutely



unreliable.

27. The complexity has further been confounded with the non-examination of the I.O. and the Doctor.

28. There is nothing on record to indicate and prove that P.W. 4 was taken to any hospital. In his long cross-examination, he has spoken about his having been treated at Chautarva; MJK Hospital, Bettiah; and for several days at Patna. Without any record of such treatment, such story by P.W. 4 cannot at all be believed. If the deceased was hit in his back from ten meters by appellant/Lal Babu Yadav, he would have bled profusely and would not have been in a position to walk or travel to such great distance. The police was immediately informed after P.W. 4 was brought to the hospital. There was no reason for the police not to have visited the hospital. By this time, the F.I.R. also had been registered. P.W.4, as we have noted, has admitted that he never made any statement before the police;



rather he gave his statement for the first time before the Trial Court. Even otherwise, his statement was necessarily to be recorded as he had never become unconscious.

29. We are somewhat flummoxed to look for the reason for P.W. 4 or his brothers to unnecessarily raise allegations against the appellants, if the prosecution version was to be believed.

30. We do not find any.

31. Nonetheless, with the non-examination of the I.O. and the Doctor and absolute failure of the prosecution to bring on record papers suggesting treatment to P.W. 4, the story of the prosecution must be rejected.

32. The other witnesses, namely, P.Ws. 1, 2, 3, 5 and 6 are all closely related to P.W. 4 and they do not claim to have seen any part of the occurrence and had come to know about it only through the mouth of P.W.4, who, as we have seen, does not appear to be



reliable.

33. We are not happy to note that without the weapon of assault having been recovered and the nature of injury having been brought on record, the Trial Court has recorded conviction against appellant/Lal Babu Yadav under Section 27(1) of the Arms Act as well.

34. This was a farcical trial. The proceedings appear to have been reduced to a burlesque.

35. We are constrained, again, to find that with such exiguous evidence, the appellants, namely, Pankaj Kumar Pandey and Lal Babu Yadav are in jail for approximately eight years.

36. Rejecting the opinion of the Trial Court, we set aside the judgment and order of conviction, referred to above, and acquit the appellants of all the charges levelled against them.

37. Both the appeals stand allowed.

38. Appellant/Binod Das [Cr. Appeal (DB) No. 274 of 2016] is on bail. He is discharged of his



liabilities under the bail-bonds.

39. Appellants/Pankaj Kumar Pandey and Lal Babu Yadav [Cr. Appeal (DB) No. 202 of 2016] are in jail. They are directed to be released forthwith from jail, if not wanted in any other case.

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

41. The records of these cases be returned to the Trial Court forthwith.

42. Interlocutory application/s, if any, in both the appeals, also stand disposed off accordingly.

(Ashutosh Kumar, J)

(Jitendra Kumar, J)

Praveen-II/Ravi

AFR/NAFR	NAFR
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