

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.847 of 2018

Arising Out of PS. Case No.-71 Year-1994 Thana- DUMRAO District- Buxar

1. Krishan Chandra Pandey @ Bombai Pandey
2. Ramesh Pandey Both are S/o Late Ramniwash Pandey, R/o Vill.- Chilhari,
P.S.- Dumraon, District- Buxar.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 1452 of 2018

Arising Out of PS. Case No.-71 Year-1994 Thana- DUMRAO District- Buxar

Dhananjay Pandey Son of Late Ramniwash Pandey Village P.O.-Chilhari,
P.S.-Bhojpur O.P.Dumraon, District-Buxar.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 847 of 2018)

For the Appellant/s : Mr. Akhilesh Pandey, Advocate
Mr. Sanjay Kumar Pandey, Advocate

For the Respondent/s : Mr. Binod Bihari Singh, APP

For the Informant : Mr. Gajendra Kumar Singh, Advocate

(In CRIMINAL APPEAL (DB) No. 1452 of 2018)

For the Appellant/s : Mr. Anirudh Mishra, Advocate

Mr. Sumeet Kumar Singh, Advocate

For the Respondent/s : Mr. Binod Bihari Singh, APP

For the Informant : Mr. Gajendra Kumar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 17-10-2024

Both the appeals have been heard together and
are being disposed of by this common judgment.



2. We have heard Sri Akhilesh Pandey and Anirudh Mishra, learned Advocates for the three appellants in the two appeals and Sri Binod Bihari Singh, learned APP for the State. The informant has been represented by Sri Gajendra Kumar Singh, learned Advocate.

3. Appellant/Krishna Chandra Pandey @ Bombai Pandey has been convicted under Sections 302, 307/34 and 380 of the IPC vide judgment dated 15.05.2018 passed by the learned Presiding Officer, Fast Track Court-II, Buxar in Sessions Trial No. 94 of 1995 in connection with Sessions Trial No. 94 of 1995, arising out of Dumrao P.S. Case No. 71 of 1994. By the same judgment appellant/Dhananjay Pandey has been convicted under Sections 302 and 307/34 of the IPC. Likewise appellant/Ramesh Pandey has been convicted under Sections 302/34 and 307/34 of the IPC. Both appellants/Dhananjay Pandey and Ramesh Pandey have been but acquitted of the charge under Section 380 of the IPC. By order dated 17.05.2018 appellant/Krishna



Chandra Pandey @ Bombai Pandey [Cr. App (DB) No. 847 of 2018] has been sentenced to undergo life imprisonment, to pay a fine of Rs. 2 lakhs and in default of payment of fine to further suffer S.I. for five years for the offence under Section 302 of the IPC; to undergo R.I. for five years, to pay a fine of Rs. 50,000/- and in default of payment of fine to further suffer S.I. for one year under Section 307/34 of the IPC; to undergo R.I. for six months under Section 380 of the IPC. Appellant/Dhananjay Pandey [Cr. App (DB) No. 1452 of 2018] has been sentenced to undergo imprisonment for life, to pay a fine of Rs. 2 lakhs and in default of payment of fine to further suffer S.I. for five years under Section 302 of the IPC; to undergo R.I. for five years, to pay a fine of Rs. 50,000/- and in default of payment of fine to further suffer S.I. for one year under Section 307/34 of the IPC. Appellant/Ramesh Pandey [Cr. App (DB) No. 847 of 2018] has been sentenced to undergo imprisonment for life, to pay a fine of Rs. 2 lakhs and in default of payment of fine



to further suffer S.I. for five years under Section 302/34 of the IPC; to undergo R.I. for five years, to pay a fine of Rs. 50,000/- and in default of payment of fine to further suffer S.I. for one year under Section 307/34 of the IPC.

4. One Lallan Pandey is alleged to have been stabbed to death by the appellants. Two of his sons viz. Satya Narayan Pandey (P.W. 1) and Lakshmi Nivas Pandey (P.W. 3) are also said to have been injured.

5. The occurrence took place on 28.04.1994 in the courtyard of the appellants and the deceased. The fight took place because of the appellants having installed a hand-pump inside the common courtyard which was objected to by the deceased and his family.

6. The fardbeyan was lodged by the deceased himself on 28.04.1994 at Buxar hospital in front of the police officer of Buxar police station. According to him, when he came back home after his official work, the appellants and others were sitting there. No sooner was he spotted by appellant/Krishna Chandra Pandey, he ordered



his other associates/family members to kill him. On his orders, appellant/Dhananjay Pandey gave three knife blows on him which hit him in his stomach and back. He has also alleged that appellant/Krishna Chandra Pandey had also assaulted him by knife. Later, when Lakshmi Nivas Pandey and Satya Narayan Pandey (P.Ws. 3 and 1 respectively) came to his rescue, they too were assaulted by Akhilanand (since dead) and appellant/Ramesh Pandey respectively resulting in injuries to them as well. The deceased thereafter claims to have fallen on the ground severely injured. In the meantime, the accused persons entered the house of the deceased and divested his wife of her personal belongings. Some gold ornaments are also said to have been taken away.

7. On the basis of the aforementioned fardbeyan of the deceased Buxar P.S. Case No. 71 of 1994 was registered for investigation.

8. It appears from the records that the two injured persons and the deceased were first taken to



Pratap Sagar hospital and from there to Buxar hospital, where the two injured persons viz. P.Ws. 1 and 3 were treated. The deceased also was given preliminary treatment there but considering the injuries on his person to be grievous, he was referred to P.M.C.H.m where he died. The inquest and the post-mortem examinations were held at the P.M.C.H.

9. At the Trial, ten witnesses each on behalf of prosecution and defence respectively were examined.

10. There was a counter version of the occurrence also in which the witnesses of this case viz. P.Ws. 1 and 3 were made accused but they were acquitted by giving them the benefit of doubt.

11. However, the defence in the present Trial has brought on record the injuries on three of the persons from their side in the same transaction in which the deceased is said to have been killed.

12. The primary plank of the argument of the appellants is that no doubt the deceased died of knife



injuries said to have been inflicted by one of the appellants (Dhananjay Pandey), but there does not appear to be any intention to kill the deceased even by resorting to Section 300 (thirdly).

13. The reason for this submission is that there was no such kind of enmity between the brothers, who all shared a common courtyard. A private partition had taken place amongst seven brothers, all of whom got one room each in the said partition. The courtyard remained common. The hand-pump was installed only two to three days ago, which had not caused any immediate backwash. However, according to the witnesses, there was some objection raised at the time of installation of the hand-pump.

14. In this background, there could have been some grievance of the appellants but not to the extent of eliminating the life of one of the members of the family.

15. Building up the argument further, Mr. Pandey has urged that though the counter case has ended in



acquittal, giving benefit of doubt to the accused persons therein, but the very factum of the Trial in the counter case and the injuries on three of the persons on the side of the appellants having been brought on record in the present Trial as also as defence exhibits, what stands established is that the assault was not a one sided affair. May be for the reason *viz.* of installation of hand-pump, there was a fight amongst brothers and nephews in which appellant/Dhananjay chose to inflict knife blows on the deceased which proved fatal.

16. Under such circumstances, the filtrate of the argument of the appellants is that the individual acts of the appellants need to be looked into rather than bringing all the appellants under the mischief of Section 302 with the aid of Section 34 of the IPC.

17. To further strengthen this argument, it has been urged before us that the appellants were sitting along with P.Ws. 1 and 3 from before. If the enmity was so compelling so as to kill the deceased, even P.W. 1 and



P.W. 3 were the targets as they are the sons of the deceased. The deceased was perhaps working as an Amin and therefore, for any action of installing a hand-pump in the courtyard, the blame would have fallen on P.Ws. 1 and 3 also.

18. Under such circumstances, it has been argued that the conviction of all the appellants under Section 302 with the aid of Section 34 of the IPC is unwarranted.

19. As opposed to the aforementioned contention, the learned APP as also the learned Advocate for the informant have submitted that through and through injuries of knife on the person of the deceased and simple injuries of P.Ws. 1 and 3 coupled with the acquittal of the accused persons in the counter case, it stands established that there was an intention to kill the deceased or at least cause such harm which would give them the satisfaction of avenging their enmity.

20. All the appellants waited for the main person of the house viz. the deceased to come for ventilating their



grievance. It is in this context that the accusation against the appellants need to be analyzed.

21. Only on the orders of appellant/Krishna Chandra Pandey, Dhananjay Pandey swung into action and gave three blows repeatedly on the person of the deceased which proved fatal. The fight and the attack did not remain limited to the deceased only. Lakshmi Nivas Pandey and Satya Narayan Pandey (P.Ws. 3 and 1 respectively) were also assaulted.

22. In that circumstance, the mischief of Section 302 with the aid of Section 34 of the IPC looms over all the appellants, notwithstanding the fact that the prosecution has not been able to prove to the hilt any overt act on the part of appellant/Krishna Chandra Pandey and Ramesh Pandey so far as the deceased is concerned.

23. We have analyzed the evidence of the prosecution as also of the defence witnesses.

24. We must straightway indicate that the counter case has ended in acquittal but we have also taken into



account that such acquittal was not based on merits simplicitor but the accused persons were given benefit of doubt.

25. What stands admitted on record is that three persons from the side of the appellants received injuries, two of whom have received grievous injuries. If seen from this angle, it cannot be postulated that there was a one sided attack on the deceased and the injured persons.

26. What could then have happened?

27. As we have already noted, the family property was partitioned and the appellants as also the opposite side were staying in the same household with different rooms earmarked for them in partition and a common courtyard.

28. We have also noted the findings of the investigator that where the hand-pump was installed, there was a kind of depression, capable of accumulating water. Evidence has also come forth that because of the flow of water towards the side of the appellants, some objection



was raised with respect to digging and installing of hand-pump in the courtyard.

29. The hand-pump had been installed about three days ago. There is no reference of any dispute at the time of installation of the hand-pump. Obviously, therefore, it could be presumed that over a passage of two days, it was realized that the installation of the hand-pump in the courtyard by the appellants and his family caused some disturbance to the other side for which an objection was raised. It is not very unusual that such dispute would occur in a joint family or a big family living under one roof.

30. We do not find anything in evidence to indicate that there was any dispute with respect to the other parts of the family property. Thus, it is difficult to presume that only for the hand-pump, the enmity would run so deep so as to convince the appellants of forming a group; conspiring, and then executing the murder of the main person *i.e.* the deceased. For sure, there would have



been verbal duel followed by attack from both sides. It is only unfortunate that the deceased died.

31. With this background fact, we have proceeded to dissect the evidence to come to a definite conclusion.

32. Satya Narayan Pandey (P.W. 1) has supported the prosecution version in its entirety but with a specific accusation of appellant/Krishna Chandra Pandey also having assaulted the deceased in his stomach by knife.

33. We have already noted that there are only three knife injuries on the body of the deceased, which are clearly attributable by all the witnesses including the deceased himself when he made the fardbeyan, to Dhananjay Pandey.

34. It was only on the orders of appellant/Krishna Chandra Pandey that according to the prosecution, the fight had started. He claims to have been injured by brick-bats and fisticuffs by Ramesh Pandey. He admits of all the injured persons and the deceased having been taken to



Pratap Sagar hospital and then to Buxar hospital. It was at Buxar that the fardbeyan of his father (deceased) was recorded which was counter-signed by his brother and his uncle (P.W. 8). He and his brother (P.W. 3) were treated at Buxar hospital, whereas his father (deceased) was sent to P.M.C.H. He and his brother also left for Patna by jeep.

35. On 29.04.1994, the deceased succumbed to the injuries and therefore the post-mortem was held at Patna only. The dead body was brought back home thereafter.

36. With respect to the cause of occurrence, there is no dispute in the version of anyone of the witnesses including P.W. 1. He has, like other witnesses, admitted that there had been a partition in the family long before and that a hand-pump at the behest of the appellants was installed in the courtyard only a couple of days ago.

37. The deceased and his family were not agreeable for such installation of hand-pump in the common area. In his cross-examination, P.W. 1 has



admitted that in the counter case lodged by Akhilanand Pandey, he and others from his side were also made accused. At the time of his deposition, the Trial of the counter case was still continuing. Apart from this, P.W. 1 had nothing to offer.

38. The wife of the deceased viz. Lalita Devi has been examined as P.W. 2. She does not appear to be a witness to the assault. However, she has accused the appellants of having pilfered the family ornaments. She claims to have seen the deceased in an injured condition only after the occurrence was over. She also has alleged that the other members of her family and the deceased also, while still struggling for life, had given the details of the specific assaults perpetrated upon him by each of the accused persons. Within a short span of time, with the help of villagers, the deceased was taken to hospital on a cot.

39. Similar deposition has been made by Lakshmi Nivas Pandey (P.W. 3), another son of the deceased.



40. Nothing else is noticeable in his deposition except the fact that he was not aware whether at the time of recording of the statement of his father (deceased), any doctor was available, who could have certified that with such injuries on his person, he could have made a detailed statement regarding the assault and attributing accusations against the accused persons including the appellants.

41. Apart from these three witnesses, the person who claims to have witnessed the assault and had accompanied the deceased to the hospital is Ram Chandra Pandey (P.W. 8). The same story has been narrated by him as by his nephews *viz.* P.Ws. 1 and 3.

42. The investigator of this case *viz.* Md. Asrar Khan (P.W. 7) had nothing specific to offer except the topography of the P.O., as also of the common house of the appellants and the deceased. He had recorded the statements of the witnesses, all of whom had supported the prosecution case in his presence.



43. Now coming to the evidence of the doctor who had examined P.Ws. 1 and 3, we find that doctor Rajiv Ratan (P.W. 5) had found three injuries on the person of the deceased. The intestines had come out because of those injuries. It was clear that such injuries were caused by a sharp pointed object.

44. Along with the deceased, who then was alive; P.Ws. 1 and 3 were also examined by him. Satya Narayan Pandey had three injuries on his person; one of which was on the occipital region. It was a lacerated wound. The other noticeable wound was on his right knee which was muscle deep. Apart from these two injuries, there were swelling on the little finger. The injuries were found to be simple and caused by hard and blunt substance like a brick.

45. Lakshmi Nivas Pandey (P.W. 3) had only one injury near his right eye, which was bone deep. This was assessed to be grievous in nature for the reason of its



impact. This injury also was found to have been caused by a sharp pointed weapon like a dagger.

46. Lakshmi Nivas Pandey (P.W. 3) is alleged to have been injured by Akhilanand Pandey, who did not face Trial as he died.

47. The post-mortem on the deceased was performed by Doctor A.P.N. Deo (P.W. 9), who found three stitched wounds; two of which were on the scapular region whereas one was in the abdomen. The ante-mortem injuries found on the person of the deceased clearly matched the description of injuries on his person while he still survived. It was absolutely clear that his death was homicidal and was the outcome of the three through and through knife injuries on his person.

48. There is no dispute except for the version of the defence witnesses with respect to the genesis of the occurrence. If the evidence of the defence witnesses, which also are required to be accorded similar importance,



is to be believed, then perhaps the aggressors were the deceased and his sons.

49. However, such story having been disbelieved with the acquittal of the accused persons of the counter case, we do not deem it appropriate to refer to such deposition in detail.

50. We have but taken into account that there was a fight between the brothers and the nephews in which there were injuries on both sides.

51. Times without number, the Supreme Court has laid stress on the fact that if the injuries on the accused is not explained, it is capable of several inferences; one being that the case is false or, that the prosecution has not come with the correct and uncontaminated version. [Refer to ***Laxmi Singh and Ors. vs. The State of Bihar (1976) 4 SCC 394; Ramanand @ Nand Lal Bharti vs. The State of Uttar Pradesh (2022) SCC Online 1396.***]



52. Acquittal in the counter case would not obliterate the fact that persons from the side of the appellants also were injured.

53. Thus, we would not be far off the line in holding that because of the hand-pump, there was a fight in which persons from both sides were injured.

54. But would it signify and indicate towards clear intention to cause murder of anyone of the family members.

55. This poser is with respect to the accusation against two of the appellants viz. appellants/Krishna Chandra Pandey and Ramesh Pandey. So far as appellant/Dhananjay Pandey is concerned, the evidence is consistent that on the orders of appellant/Krishna Chandra Pandey, he gave three knife blows to the deceased.

56. Thus, whether he intended or not, he would have surely known the outcome of his act, bringing his case clearly within the mischief of Section 300 (thirdly) of the IPC.



57. We have specified the above noted reasoning to clearly spell out that in a fight of this kind, the individual acts of the accused persons would be relevant in determining their guilt.

58. As we have already noted, the background facts do not convince us that the enmity would have been so strong so as to propel a concerted attack against the family of the deceased or the deceased himself. The free fight between the parties within the confines of the courtyard clearly indicates to us that it was only the act of Dhananjay Pandey which led to the death of the deceased.

59. Whether it was the direct result of the orders given by appellant/Krishna Chandra Pandey still remains in the arena of doubt.

60. Though both the sons of the deceased have attributed the role of order giver to appellant/Krishna Chandra Pandey but the background facts do not convince us that appellant/Krishna Chandra Pandey had ordered for killing the deceased. That he had asked his sons to kill the



deceased was perhaps only a bluster. If that were not so, the two soft targets viz. P.Ws. 1 and 3 were present at the house in the company of the accused persons. Not beginning the fight before the deceased arrived at the scene makes us doubt whether the prosecution has come out with correct version of how the fight started.

61. Under the aforementioned circumstances and taking into account the embellishment in the prosecution case of the appellants having ransacked the inner apartments of the house of the deceased, having been found to be incorrect by the Trial Court, we find that appellant/Dhananjay Pandey only is to be blamed for the death of the deceased.

62. His individual action is to be accounted for.

63. Thus, we approve of his conviction and sentence under Section 302 of the IPC.

64. We have already noted that there were injuries on both sides and the only grievous injury on the



person of P.W. 3 is not attributable to anyone of the appellants but to one Akhilanand Pandey who is dead.

65. Under such circumstances, we find that the rest of the appellants are liable under Section 323 of the IPC.

66. Thus, the appeal of Dhananjay Pandey [Cr. App (DB) No. 1452 of 2018] is dismissed.

67. Whereas the appeal of appellants/Krishna Chandra Pandey and Ramesh Pandey [Cr. App (DB) No. 847 of 2018] is partially allowed.

68. Their conviction under Sections 302/34 and 307/34 of the IPC are set aside.

69. They stand convicted under Section 323 of the IPC.

70. They, like Dhananjay Pandey, are in custody for the last seven years.

71. In our estimation, this period of custody would meet the ends of justice with respect to the accusation against them under Section 323 of the IPC.



72. Appellants/Krishna Chandra Pandey and Ramesh Pandey [Cr. App (DB) No. 847 of 2018] are directed to be released from jail forthwith, if not required or detained in any other case.

73. Appellant/Dhananjay Pandey [Cr. App (DB) No. 1452 of 2018] shall serve out the sentence.

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

75. The records of this case be returned to the Trial Court forthwith.

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

(Ashutosh Kumar, J)

(Rajesh Kumar Verma, J)

krishna/nitesh

AFR/NAFR	AFR
CAV DATE	NA
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