

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.823 of 2019

Arising Out of PS. Case No.-33 Year-2006 Thana- CHAND District- Kaimur (Bhabua)

NIRAJ PANDEY Son of Tarkeshwar Nath Pandey Resident of Village-
Lohdan, P.S.- Chand, District- Kaimur at Bhabua.

... .. Appellant/s

Versus

1. The State of Bihar
2. Sunil Paswan Son of Late Ramrup Paswan Resident of Village- Basaha,
P.S.- Chand, District- Kaimur at Bhabua.
3. Nathuni Sharma Son of Late Vishwanath Sharma Resident of Village-
Lohdan, P.S.- Chand, District- Kaimur at Bhabua.
4. Nandkishore Paswan Son of Markandey Paswan Resident of Village-
Lohdan, P.S.- Chand, District- Kaimur at Bhabua.
5. Yamuna Paswan Son of Dasarath Paswan @ Sikhari Paswan Resident of
Village- Lohdan, P.S.- Chand, District- Kaimur at Bhabua.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr.Rajani Kant Pandey, Adv.
For the Respondent/s	:	Mr.Manish Kumar No2, APP
		Mr.Rakesh Kumar Mishra, Adv.

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE NAWNEET KUMAR
PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAWNEET KUMAR PANDEY)

Date : 08-01-2025

Heard the learned counsel for the
appellant as well as the learned counsel for the
respondent nos. 2 to 5.

2. This appeal has been preferred on
behalf of the appellant for setting aside the
judgment and order dated 10.05.2020 passed by



Fast Track Court-1st, Kaimur at Bhabua in Sessions Trial No. 91 of 2007, Trial No. 89 of 2017, arising out of Chand P.S. Case No. 33 of 2006, whereby the respondent nos. 2 to 5 have been acquitted of the charges under Sections 324/34, 307/34 of the IPC and Sections 3/4/5 of Explosive Substance Act.

3. P.W. 13, Nigam Pandey, the injured, was found lying in a drain. Allegedly, he had suffered bomb splinter injuries. Niraj Pandey is his brother and the informant. He has been examined as PW-12.

4. On the basis of fardbeyan of Niraj Pandey, Chand P.S. Case No. 33 of 2006 was registered under Sections 307/34 of the IPC and Sections 3/4/5 of Explosive Substance Act.

5. As per allegation made in the FIR, on 07.07.2006, at about 7 p.m., when the informant was present near the pond situated in the village, he heard the cries of someone. He ran to the drain near the house of Gullu Gosai. He found his brother Nigam Pandey in an injured condition. He was shouting that some miscreants had just fled away



after throwing bomb on him. A piece of semi-burnt cloth of shirt of the injured was found from the drain and also a live bomb, wrapped in a polythene. Nigam Pandey had suffered injuries in his back and he was not able to move. He was brought to Bhabua wherefrom he was referred to Varanasi for better treatment. The informant has stated categorically in his fardbeyan that neither the injured spoke out the names of any of the miscreants nor the informant had seen the miscreants.

6. The learned counsel for the appellant has submitted that the learned court below committed an error in ignoring the evidences of the eye-witnesses and without assigning any cogent reason, the respondent nos. 2 to 5 have been acquitted. The learned counsel has also submitted that the place of occurrence is not disputed in this case, as such, the non-examination of the Investigating Officer would not go to the root of the matter. He submitted that the place of occurrence and the manner of occurrence have



been proved and the eye-witnesses, who saw the accused persons fleeing away from the scene of occurrence, but the learned court below did not consider their evidences.

7. Per contra, the learned counsel for the respondent nos. 2 to 5 has submitted that the prosecution has miserably failed to substantiate the charges levelled against respondent nos. 2 to 5. The prosecution could not substantiate the charges levelled against respondent nos. 2 to 5. The learned court below did not commit any illegality in acquitting the respondents. By drawing our attentions towards the contradictions in the evidences of the witnesses, the learned counsel for the respondent nos. 2 to 5 has submitted that the informant, PW-12, has categorically mentioned in his *fardbeyan* that he did not see any of the miscreants nor his brother (the injured) had told the names of any of the miscreants. But during his deposition, this witness has stated that he saw Yamuna Paswan, Nand Kishore and Nathuni Sharma fleeing away from the scene of occurrence.



Further, he has stated during his deposition that the injured Nigam Pandey told this witness that Yamuna Paswan had thrown bomb upon him. This witness has also stated that one of the papers on which the police obtained his signature was blank. He could not see what was written on that paper.

The learned counsel for the respondent nos. 2 to 5 has also submitted that the injured/ Nigam Pandey was examined as PW-13. He deposed that Yamuna Paswan, Nand Kishore and Nathuni Sharma were standing near the house of Gullu Sharma and they threw bomb upon him. Having suffered the injuries, this witness became unconscious and he regained his consciousness in Hospital in Varanasi. The learned counsel has also submitted that if the assertion of this witness is assumed to be true, then the statement of his brother, PW-12 is rendered false. It has also been submitted that the injured, in his deposition has said that he was treated in Singh Hospital, Varanasi whereas his brother, PW-12, has stated that the injured was treated at BHU, Varanasi. The



innumerable contradictions, as per submissions of the learned counsel, make the prosecution case doubtful and it is not safe to base conviction on such a shaky and doubtful evidence.

8. We have gone through the entire evidence available on the record, and have given our thoughtful consideration to the rival submissions of the parties.

9. Out of 13 witnesses examined on behalf of the prosecution, PWs 5, 6 and 7 have become hostile. They did not support the prosecution case.

10. PWs 8 and 9 are the witnesses of seizure list. PW-8 has stated that nothing was recovered in his presence. Similar is the statement of PW-9, who stated that his signature was obtained on a blank piece of paper.

11. PWs 2 and 4 are the uncle and father of the injured, respectively. They claim to have reached the place of occurrence on hearing the sound of explosion and saw the accused person fleeing away from the scene of occurrence. These



witnesses are not the eye-witnesses.

12. PW-10, Dr. Amarnath, is a doctor, who examined the injured and found injuries on his person. Multiple bruises and burn injuries were found on back of the injured and those injuries, in opinion of the doctor, were caused by explosive objects.

13. It appears that except the injured PW-13 and the informant PW-12, none of the prosecution witnesses have claimed to be the eye-witness.

14. PW-12, in his *fardbeyan*, has stated that he did not see the miscreants nor the injured told him the names of the miscreants. Contrary to that, during his deposition, he named three miscreants fleeing away from the scene of occurrence by stating that he had seen them fleeing away. He also deposed that his brother/ Nigam Pandey had told him that Yamuna Paswan, Nand Kishore and Nathuni Sharma had participated in the occurrence.

These contradictions in deposition of the



informant are fatal to the prosecution case and do create a serious doubt on it. P.W. 12 has also stated that the *fardbeyan* was not read over to him and his signature was obtained on a blank paper but the scribe of the *fardbeyan* was not examined by the prosecution. Further, PW-12, the informant, has mentioned in his *fardbeyan* that his brother was speaking that someone had made him injured. Contrary to that, during his deposition, he has stated that the injured told him the names of three persons namely Yamuna Paswan, Nand Kishore and Nathuni Sharma.

15. There are some material contradictions also in the deposition of PW-12, the informant and PW-13(the injured). PW-12 deposed that his brother Nigam Pandey had told the names of three miscreants, whereas PW-13 deposed that after suffering the injuries, he became unconscious and he regained his consciousness in Varanasi Hospital.

16. In our opinion, the contradictions in the deposition of the witnesses has cast a serious



doubt on the prosecution case. As such, the learned trial court did not commit any illegality, irregularity or impropriety in acquitting the respondent nos. 2 to 5 in Sessions Trial No. 91 of 2007, Trial No. 89 of 2017, arising out of Chand P.S. Case No. 33 of 2006 vide judgment and order dated 10.05.2020 passed by Fast Track Court-1st, Kaimur at Bhabua.

17. Accordingly, the appeal is dismissed.

(Nawneet Kumar Pandey, J)

(Ashutosh Kumar, J)

HR/-

AFR/NAFR	NA
CAV DATE	N/A
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