

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1295 of 2019

Arising Out of PS. Case No.-18 Year-1986 Thana- SHIVSAGAR District- Rohtas

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Gopal Dubey Son of Late Ramji Dubey Resident of Village - Badki Khudnu
Kala, P.S.- Chenari, District - Rohtas.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 1379 of 2019

Arising Out of PS. Case No.-18 Year-1986 Thana- SHIVSAGAR District- Rohtas

=====

Rajvansh Pandey @ Ram Chandra Pandey S/O Late Jagdeo Pandey R/O
Village- Sonhar, P.S.- Shivsagar, District- Rohtas

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

=====

Appearance :

(In CRIMINAL APPEAL (DB) No. 1295 of 2019)

For the Appellant/s : Mr. Sanjay Singh, Sr. Adv.
Mr. Rudrank Shivam Singh, Adv.
Mr. Ranveer Pratap Singh, Adv.

For the State : Ms. Km. Shashi Bala Verma, APP

(In CRIMINAL APPEAL (DB) No. 1379 of 2019)

For the Appellant/s : Mr. Jitendra Singh, Sr. Adv.
Mr. Tej Pratap Singh, Adv.
Mr. Yash Singh, Adv.
Mr. Snehil Pratik, Adv.

For the State : Mr. Saurabh Kumar, Adv.
Mr. Dilip Kumar Sinha, APP

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI

and

HONOURABLE MR. JUSTICE RANA VIKRAM SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI)

Date : 03-07-2026

Heard the parties.

2. Both the aforementioned appeals challenged the



judgment of conviction dated 24.09.2019 passed in Sessions Trial No. 317 of 1992 by 3520/2013 passed by Fast Track 1st Court at Rohtas, Sasaram whereby and whereunder both the appellants were sentenced to suffer imprisonment for life for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code. They were also sentenced to suffer imprisonment for three years each for the offence punishable under Section 452/34 of the Indian Penal Code. Since two appellants above named have filed the aforementioned two appeals, we propose to hear out the appeals together and pass the following judgment.

3. The appellant in Criminal Appeal (DB) No. 1295 of 2019 was represented by Mr. Sanjay Singh, the learned Senior Counsel and appellant, Rajvansh Pandey @ Ram Chandra Pandey in Criminal Appeal (DB) No. 1379 of 2019 was represented by Mr. Jitendra Singh, the learned Senior Counsel. The State is represented by Ms. Sashibala, learned Public Prosecutor In-Charge.

4. As per the FIR, the incident took place on 4th March, 1986 at about 10:00/11:00 P.M. One, Suresh Pandey made a statement before the on duty police officer on 05.03.1986 at about 8:00 A.M. in the jurisdictional police station stating *inter alia* that on 4th March, 1986 at about 10:00/11:00



P.M. he was lying in his room. His father and two younger brothers were lying in the *domuha* of the house (front room having two doors, one being entrance door and on the opposite side there was a door to go inside the house leading to the courtyard of the house). Another brother of the informant, namely, Narayan Pandey was sleeping in his room. The wives of the informant and Narayan Pandey were on the courtyard when they found some sound of breaking of tiles of the roof. They initially thought that some mischief was done by some cats and the said two women made some sounds so that the cats might go away from the place, however, such sound was persisting. The informant came out of his room with a torch and under torchlight found one Ramji Dubey armed with Gadasa, Gopal Pandey with a knife in his hand, Rajvansh Pandey with a country-made gun and a knife and Ajay Kumar Pandey with a Bhala in his hand were standing on the tiled roof of the house of the informant. Immediately, they appeared on the courtyard. Seeing them, the informant threatened them with dire consequence if they tried to proceed towards the house. Then, the above named accused persons entered inside *domuha* from the door leading to the courtyard. After few minutes they came out and left the place. The informant and his brother, Narayan and other family members went to *domuha* and found their



father, Kapil Deo Pandey and one of the brother, Mithilesh Pandey were murdered causing sharp-cutting injury on their necks.

5. On the basis of the said complaint, Police registered Shivsagar P.S. Case No. 18/1986 dated 05th March, 1986 under Section 452/302/34 Indian Penal Code against FIR named accused persons.

6. Investigation culminated in filing charge-sheet only against the above named two appellants showing Ramjee Dubey as absconder and Ajay Kumar Pandey being juvenile. It would not be out of place to mention that a separate charge-sheet was filed against Ajay Kumar Pandey before the Juvenile Justice Board and his trial was separated. During trial, prosecution examined ten witnesses. The inquest report of the dead body and the post-mortem reports were marked exhibits. The accused persons were examined under Section 13 of the Code of Criminal Procedure. The defence did not leave any evidence in support of their case. Finally, the learned Trial Judge passed the order of conviction and sentenced as aforesaid.

7. It is submitted at the outset by Mr. Sanjay Singh, the learned Senior Counsel on behalf of the appellant, Gopal Dubey that the Trial Court laid much stress on the motive of the accused persons. It is not in dispute that the accused



persons/appellants are related to the deceased and his family members. While Gopal Dubey is an agnate, another appellant is a relative of the deceased. The Trial Court held that there was a long-standing land dispute between the parties which operated as motive for causing death of the above mentioned two unfortunate persons. This finding of the Trial Court was vehemently challenged by the learned counsel for the appellant. In support of his contention he refers to a family chart of the deceased, Kapil Deo Pandey. It is submitted by him that Kapil Deo had five sons, namely, Ram Narayan Pandey who has been depicted as Narayan Pandey in *fardbeyan* (PW-2), Nirmal Pandey (PW-3), Suresh Pandey (PW-5) as well as two pre-deceased sons, namely, Mithilesh Pandey and Munna Pandey. It is also submitted by Mr. Sanjay Singh that Kapil Deo had two brothers, namely, Baijnath Pandey and Butan Pandey. Thus, Kapil Deo were in all three brothers. Baijnath died issueless while Butan had two daughters, namely, Gangarati and Jamunarati. Son of Gopal Dubey is the son of Jamunarati. Jamunarati was the wife of Gopal Dubey.

8. It is also contended by Mr. Singh that way back in 1952 a *taksisnama* (deed of partition) was executed for amicable partition of the properties of the family. In the said *taksisnama*, one Parvati, daughter of Kapil Deo was shown as



the daughter of Baijnath. Thus, after the death of Baijnath, his share devolved upon Parvati and through Parvati ultimately to Kapil Deo. This led to filing of a Title Suit between the contesting parties which was registered as Title Suit No. 181 of 1981, namely, for the following reliefs:-

(i) for declaration that the alleged *taksisnama* is an illegal and void document as it was instituted on misrepresentation and mistake of fact.

(ii) for declaration that Parvati was not daughter of Baijnath and the property left by Baijnath be decreed in favour of Gangarati and Jamunarati in half share being the daughters of his full brother. The said suit was decreed on 7th January, 1994. No appeal was filed by the respondents and the judgment passed by the Trial Court lists its finality. During the pendency of the suit the names of Kapil Deo and Jagdev were deleted due to their demise.

9. Thus, it is stated by the learned Senior Counsel that the land dispute had been set at rest by a decree passed by a competent Civil Court and there is no dispute on the date of commission of the alleged offence between the parties. Secondly, it is submitted by Mr. Singh that appellant Gopal Dubey filed a criminal case alleging commission of dacoity against P.W.-5, Suresh; P.W.-2, Ramnarayan and P.W.-3, Nirmal.



In the said suit an order of conviction and sentence was passed against the accused persons.

10. We have duly considered the submission made by the learned Senior Counsel for the appellants. In order to establish that, motive was wrongly placed against the accused persons by the Trial Court.

11. We are not, however, in agreement that the learned Senior Counsel on behalf of appellant, Gopal Dubey, only for the reason that Kapil Deo Pandey and one of his sons were murdered on 4th March, 1986. The suit for declaration was decreed on 7th January, 1994. So, the suit for declaration that *taksisnama* was illegal and inoperative, was very much pending on the date of commission of murder of Kapil Deo and one of his sons. Therefore, the family dispute with regard to the property and efficacy and correctness of the partition deed was very much in existence on the date of commission of offence. As a result, therefore, we are of the view that the appellants had grudge, enmity and a specific motive against the deceased. Now, let us apprise the evidence on record independently on our own.

12. We have already stated that there were ten witnesses examined by the prosecution, amongst them PW-5 is the informant, PW-1, Nago Devi alias Nagwali Devi is the wife of the informant. PW-2, Ram Narayan Pandey who was



described in the *fardbeyan* as Narayan Pandey is the brother of the informant; PW-3, Nirmal Pandey is another brother of the informant; PW-4, Vindhyachal Devi is the wife of PW-2; PW-7, Babban Pandey is a witness to the inquest report and PW-8 Bhikhari Singh is a local villager who saw the dead body of Kapil Deo and one of his son. PW-9, Ayodhya Pandey and PW-10, Kedar Singh are also villagers.

13. So far as, the evidence of PW-8, PW-9 and PW-10 are concerned they did not see the occurrence. Hearing hue and cry they went to the house of Kapil Deo Pandey and saw the dead bodies of Kapil Deo and Mithilesh. Same is the evidence of PW-9 and PW-10. Beside the above named witnesses all witnesses are family members being the sons and son's wives of Kapil Deo Singh.

14. From the evidence of PW-1, Nago Devi and PW-4, Vindhyanjali Devi, this Court finds that on the date of occurrence at about 10/11 P.M., PW-1 first came to the courtyard followed by PW-4 to attend nature's call. After easing out, they found some sound coming from the tiled roof of their house. Initially, they found that some cats might have climbed on the tiled roof and they started to make sound to drive them away. Hearing this, PW-5, Suresh Pandey, came out of his room with a torch. Under the torchlight he found the accused persons.



Thereafter, the accused persons came to the courtyard. PW-5 threatened them with dire consequence if they tried to come forward. Then, they entered inside *domuha* and committed murder of Kapil Deo and one of his sons, namely, Mithilesh. After they left the house, the family members went inside *domuha* and found the dead bodies of Kapil Deo and Mithilesh having sharp-cutting deep wound on their necks.

15. The question that arises for adjudication at this stage, is as to whether the witnesses or any of them saw the actual incident or not. In other words, did anyone of the sons or son's wives see the appellants actually committing murder of the father and brother of the informant. From the cross-examination of PW-1, it appears that she clearly stated,

“आदमी को देखकर मैं घर में जाकर केवाड़
सटा दिया, अंदर से बंद नहीं किया।”.

This statement of PW-1 suggests that seeing the accused persons on the courtyard, she rushed to her room and closed the door, but, it was not bolted from inside. The learned Senior Counsel on behalf of the appellants raises a pertinent question as to whether PW-1 saw the incident or not.

16. Again, he refers to the evidence of PW-4, Vindhyanchal Devi. From the evidence of PW-4 it appears that after he saw the accused persons, he rushed to her room where



her husband was sleeping. Thereafter her version is as follows:-

‘मैं अपने घर में जाकर पति को जगाई मेरे पति कोटा पर चढ़ गये। मेरे। पति टार्च जलाये और हल्ला किये। उपरोक्त आदमी आंगन में कूद गये। वे लोग मेरे दो मूँहा कोठरी में गये। मेरे ससुर और देवर मिथलेश पाण्डे वहाँ सोये थे।’

Thus, there was obviously some time gap between seeing the appellants on the tiled roof of the house by PW-4, their appearance on the courtyard by jumping from the roof, PW-4's coming to their room and calling her husband, her husband's going to the roof and seeing the appellants under a torchlight. A reasonable suspicion appears as to whether the appellants who came to commit murder of Kapil Deo Singh would stand and wait on the courtyard till PW-3, Ram Narayan Pandey climbed up to the roof and saw them under the torchlight. It is also found from the cross-examination of PW-4 that before the incident, her father-in-law and elder brother-in-law were arrested in connection with a criminal case of committing murder of one Murli Shaw of the same village. They were also convicted in the said criminal case and few days before the incident they were relieved from the jail. Thus, there was enmity between the deceased, his family members and the appellants. It is an established principle of law that animosity



between the parties is a double-edged weapon. Animosity in some cases may be found to be the reason for committing offence, again in some other cases animosity is the boon for false implication of the appellants. It is our duty to find out in which direction the animosity between the party flows to arrive at the ultimate decision.

17. We have already stated that PW-5, Suresh Pandey is the informant of this case. From paragraph 2 of the examination in check of PW-5 it appears thus:-

“2. मेरे पत्नी और भव ने 5-6 आदमी को खपड़ा पर देखे। दोनों ने हल्ला किया। मैं दरवाजा से निकल कर टार्च जलाया। टार्च के रोशनी में गोपाल दूबे, राजवंश पाण्डे, रामजी दूबे, अजय पाण्डे को देखा और एक आदमी और थे उसे मैं नहीं पहचाना। गोपाल दूबे के हाथ में छूरा, राजवंश के हाथ में देशी बंदूक और छूरा था, अजय पाण्डेय हाथ में भाला, रामजी के हाथ में गड़ासा था।”

His evidence also follows as hereunder:-

“4. मेरा भाई नारायण पाण्डे कोठा पर चढ़कर हल्ला किया। हल्ला पर गाँव के आदमी आ गये। हमलोग निकल कर दोमूहाँ में गया और देखा कि मेरे) पिता और भाई का गर्दन काटकर हत्या कर



दिया गया है।”

On perusal of these two paragraphs we find two important things. Both Gopal Dubey and Rajvansh Pandey were armed with a country-made gun and knife respectively. They were not armed with either Gadasa or Bhala. It is needless to say that knife is a sharp-cutting light weight weapon made of iron. While Gadasa and Bhala are sharp-cutting weapons made of heavy metal. PW-6, Dr. Naresh Prasad Rai who conducted post-mortem examination over the dead bodies of Kapil Deo Pandey and Mithilesh Pandey found two injuries each on the muscles of the deceased. In case of Gopal Pandey, he found the following injuries:-

*“I. Injury no.- 1 sharp cutting- injury 6"x 2"x 3" at upper part of neck on left side extending to ear and left side of chick. Fracture of chick bone and cutting vertabra, muscles, and vessels at left side of neck.
II. Injury No. 2 sharp cutting- Injury 8"x 4" at left side of neck 2" below the first injury and extending to the angle of mandibule with fracture of mandibule cutting or vertabra muscles and vessals of left side.”*

and in case of Mithilesh Pandey he found the following injuries:-

“I. Injury no. 1- Sharp cutting injury 5"x 2"x 4" upper part of neck cutting the spinal chord at level of second verebra in back of



neck extending to the left side of neck and left ear. The spinal chord at level of second vertebra. The spinal chord part of larynx oesophagus muscle and vessals were found cut.

II. Sharp cutting injury 4"x 2"x 3" at upper part of neck in left side 1" below the first injury extending to the angle of mouth cutting the muscles trachea oesophaguses and vessals of neck and 1" of illegible of muscles and skin were found intact near the angle of Mandibule."

18. In cross-examination, he clearly opined that the injuries found on the body of both the deceased were caused by heavy sharp-cutting weapon. Thus, it is clear that the injuries were either caused by Gadasa or Bhala and none of the appellants were carrying those weapons. This is the dichotomy between the ocular evidence and the medical evidence on record.

19. PW-2, Ram Narayan Pandey stated in his evidence that on the date of occurrence at about 10:00/11:00 P.M. he was on the roof of his room. He heard the sound of his wife and sisters-in-law from the roof, then he saw Rajvansh Pandey, Gopal Dubey and Ramjee Dubey jumped on the courtyard of their house from the tiled roof. Both his wife and sister-in-law raised hue and cry and they went inside the room and closed the door. Thus, if the statement of PW-2 is believed



to be true then, PW-1 and PW-4 did not see any occurrence, again PW-4 is accepted as a truthful witness, the evidence of PW-2 remains doubtful, because according to PW-4 he was sleeping in his room and only after being called by his wife, he woke up. In his examination-in-chief, he saw all the accused persons, namely, Rajvansh Pandey, Ajay Kumar Pandey, Gopal Dubey and Ramjee Dubey assaulting his father and brother with the help of knives. However, from cross-examination in paragraph-7 and paragraph-8 it is not possible for him to see what had happened inside *domuha* of their house. From the evidence of PW-3, Nirmal Pandey, it was clear that he has not claimed himself to be an eye-witness, because he clearly stated in examination-in-chief that out of fear he took shelter on the western side of the room and when the appellants left, he came out and found the dead bodies of the deceased. Mr. Jitendra Singh, the learned Senior Counsel while adopting the argument of Mr. Sanjay Singh, further refers to a few judgment, first he refers to the decision of the Hon'ble Supreme Court in ***Md. Jabbar Ali & Ors. v. State of Assam*** reported in **(2023) 19 SCC 672**. Relying on the decision of the Hon'ble Supreme Court in ***Raju @ Balachandran & Ors. v. State of Tamil Nadu, (2012) 12 SCC 701***, the Hon'ble Court observed as hereunder:-

“29.The sum and substance is that the



evidence of a related or interested witness should be meticulously and carefully examined. In a case where the related and interested witness may have some enmity with the assailant, the bar would need to be raised and the evidence of the witness would have to be examined by applying a standard of discerning scrutiny. However, this is only a rule of prudence and not one of law, as held in Dalip Singh [(1953) 2 SCC 36 : AIR 1953 SC 364 : 1953 Cri LJ 1465 : 1954 SCR 145] and pithily reiterated in Sarwan Singh [(1976) 4 SCC 369 : 1976 SCC (Cri) 646] in the following words: (Sarwan Singh case [(1976) 4 SCC 369 : 1976 SCC (Cri) 646] , SCC p. 376, para 10)

“10. ... The evidence of an interested witness does not suffer from any infirmity as such, but the courts require as a rule of prudence, not as a rule of law, that the evidence of such witnesses should be scrutinised with a little care. Once that approach is made and the court is satisfied that the evidence of interested witnesses have a ring of truth such evidence could be relied upon even without corroboration.” ”

20. Thus, the rule of appreciation of evidence of a related witness or an interested witness does not mean that their evidence is required to be discarded outright. As a rule of caution and prudence the evidence of interested witnesses are advised to be meticulously and carefully examined. In a case where the related and interested witnesses may have some enmity with the assailant, the bar would need to be raised and



the evidence of witness would have to be examined by applying standard of discerning scrutiny.

21. While scrutinizing the evidence on record of the above named interested witnesses we find several discrepancies as stated above in their evidence. These discrepancies can only be dispelled out by the Investigating Officer. However, unfortunately enough, the Investigating Officer has not been examined. The rule of Investigating Officer in the instant case is utterly unfortunate, if not callous. During investigation, he did not seize the torchlights from the possession of PW-5 and PW-2. He did not seize the blood stained wearing apparels. He also did not try to seize the offending weapons. No sketch map of the place of occurrence was prepared. Even broken tiles were also not seized by him. It is true that evidence of Investigating Officer is formal in nature, in many cases if the Investigating Officer is not examined, the Court can come to a finding on the basis of evidence available on record as to the fate of the case itself. Further, where there are discrepancies, where there are lack of proper investigation, examination of the I.O. is a must. Mr. Jitendra Singh, the learned Senior Counsel refers to a decision of the Hon'ble Supreme Court in the case of ***Munnalal v. State of Uttar Pradesh*** reported in ***(2023) 18 SCC 661***. Paragraph 38, 39 and 40 are relevant for our purpose and quoted



below:-

“ 38. First, statement of PW 3 under Section 161CrPC was recorded nearly 24 days after the incident. Since the investigating officer did not enter the witness box, the appellants did not have the occasion to cross-examine him and thereby elicit the reason for such delay. Consequently, the delay in recording the statement of PW 3 in course of investigation, is not referred to and, therefore, remains unjustified. The possibility of PW 3, being fixed up as an eyewitness later during the process of investigation, cannot be totally ruled out.

39. Secondly, though PW 4 is said to have reached the place of occurrence at 1.30 p.m. on 5-9-1985 and recovered a bullet in the blood oozing out from the injury at the hip of the dead body, no effort worthy of consideration appears to have been made to seize the weapons by which the murderous attack was launched. It is true that mere failure/neglect to effect seizure of the weapon(s) cannot be the sole reason for discarding the prosecution case but the same assumes importance on the face of the oral testimony of the so-called eyewitnesses i.e. PW 2 and PW 3, not being found by this Court to be wholly reliable. The missing links could have been provided by the investigating officer who, again, did not enter the witness box. Whether or not non-examination of a witness has caused prejudice to the defence is essentially a question of fact and an inference is required to be drawn having regard to the facts and circumstances obtaining in each case. The reason why the investigating officer could not depose as a witness, as told by PW 4, is



that he had been sent for training. It was not shown that the investigating officer under no circumstances could have left the course for recording of his deposition in the trial court. It is worthy of being noted that neither the trial court nor the High Court considered the issue of non-examination of the investigating officer.

40. In the facts of the present case, particularly conspicuous gaps in the prosecution case and the evidence of PW 2 and PW 3 not being wholly reliable, this Court holds the present case as one where examination of the investigating officer was vital since he could have adduced the expected evidence. His non-examination creates a material lacuna in the effort of the prosecution to nail the appellants, thereby creating reasonable doubt in the prosecution case.”

In the instant case non-examination of the Investigating Officer proves to be fatal for the prosecution.

22. The Trial Court convicted the appellants under Section 302/34 of the I.P.C. Now, as a result of the application of principles enunciated in Section 34, when an accused is convicted under Section 302 read with Section 34, in law it means that the accused is liable for the act which caused death of the deceased in the same manner as if it was done by him alone. The provision is intended to meet a case in which it may be difficult to distinguish between acts of individual members of a party who act in furtherance of common intention of all or to



prove exactly what part was taken by each of them. In order to bring home the charge of common intention, the prosecution has to establish by evidence that there was a plan or meeting of mind on all accused persons to commit the offence for which they are charged with the aid of Section 34, be it clearance or in the spur of the moment, but it must necessarily be before the commission of the crime. It is not necessary that the acts of several persons charged with commission of offence jointly must be the same or identically similar. The acts may be different in character, but, must have actuated by one and same common intention in order to attract the provision. The decision of the Hon'ble Supreme Court in ***Janak Singh & Anr. vs. The State of U.P.*** reported in ***AIR 2004 SC 2495*** may be relied on in this regard.

23. The words in furtherance of common intention of all have been introduced as an essentially part of the section, the element of common intention prescribing the condition under which each might be criminally liable when there are several actress. Common intention is not an intention to commit the crime actually committed and each accused persons can be convicted of that crime, only if he has participated in the common intention. Common intention implies pre-arranged plan and acting in the concerned pursuant to the pre-arranged plan.



24. In the instant case as appellant Gopal Dubey and Rajvansh Pandey were armed with knives and it is found from the medical evidence that the injuries sustained by the deceased could not be committed by knife, then we have no other alternative, but, to hold that these appellants did not take part in committing physical injury to the deceased. Secondly, from the evidence of the witnesses we find that some of them only claimed that the accused persons entered inside *domuha*, but, what they did, whether they had common intention to commit murder of Kapil Deo and Mithilesh and whether death was caused in furtherance of common object of all the persons have not been true. We are not unmindful to note that one of the accused was a minor and he was acquitted from the charge. He was also one of the members of the assembly who entered inside the *domuha*. Thus, when common intention was found to be not proved in case of one accused, sharing of common intention or in furtherance of common intention cannot be held to be proved against these accused persons also.

25. In view of the above circumstances we are of the view that the appellants are entitled to get benefit of doubt.

26. As a result, both the appeals are allowed on contest.

27. The appellants be released at once if they are in



custody and not wanted in any other case.

28. Issue release order at once.

(Bibek Chaudhuri, J)

(Rana Vikram Singh, J)

Supratim/Smriti-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	08.07.2026
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