2026:JHHC:31852

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. Appeal (SJ) No. 1255 of 2008

[Against the judgment of conviction and order of sentence dated 27.09.2008 & 30.09.2008 respectively passed by learned 2nd Additional Sessions Judge, Hazaribagh in S.T. No. 285 of 1992]

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1. Shiv Bachan Pandey, son of Sri Nageshwar Pandey
2. Vidya Pandey, son of Basudeo Pandey
3. Sundar Singh, son of Shatrughan Singh

All residents of Village & P.O.-Chak, P.S.-Chauparan, District-Hazaribagh

... ... **Appellants**

Versus

1. The State of Jharkhand
2. Dhalo Pandey, son of Late Kaleshwar Pandey, R/o Mouza Ghosla, P.O. & P.S.-Chauparan, District-Hazaribagh, Jharkhand

… … **Respondents**

P R E S E N T

HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA

For the Appellants : Mr. A.K. Das, Sr. Advocate
For the State : Mr. V.S. Sahay, A.P.P.

JUDGMENT

C.A.V. on 10.08.2026 **Pronounced on 30/10/2026**

1. Heard Mr. A.K. Das, learned senior counsel for the appellants and Mr. V.S. Sahay, learned A.P.P. for the State.

2. It is to be mentioned at the very outset that out of five appellants, appellant No.1, Nageshwar Pandey and appellant No.5, Basant Pandey have died during pendency of this appeal and appeal preferred by above named appellants has been abated. This appeal is heard on behalf of three alive appellants renumbered as above.

3. The instant criminal appeal is directed against the judgment and order of conviction and sentence dated 27.09.2008 & 30.09.2008 respectively passed by learned 2nd Additional Sessions Judge, Hazaribagh in S.T. No. 285 of 1992 whereby and whereunder the appellants have been held guilty for the offences under Section 304

part-II/34 of the I.P.C. and sentenced to undergo rigorous imprisonment for five years each for the offence under Section 304 part-II/34 of the I.P.C.

Factual Matrix

4. Factual matrix giving rise to this appeal in a narrow campus is that marriage ceremony of Kanhai Pandey, son of Bhuneshwar Pandey, resident of Village Deoria, P.S. Chatra, District Hazaribagh (now District Chatra), was scheduled to be solemnized on 05.05.1990 with one Sunita Pandey, daughter of Sri Sarju Pandey, resident of Village Chak. It is alleged that on 06.05.1990, at about 04:00 A.M. when marriage ceremony was going on in presence of bride and groom party members respectively, in the meantime one Basudeo Choubey, member of *baraat* party, threw a chocolate on aiming the woman folk belonging to bride party which led an altercation between both party members, but anyhow the dispute was resolved by pacifying both the parties. It is further alleged that just after conclusion of marriage ceremony rituals *baraat* party members proceeded to *janvasa* situated near Kali Manda of Village-Chak then at about 07:00 A.M. *baraat* party members, namely Gaya Pandey, Bhagwan Pandey (died), Vidya Pandey, Bachan Pandey, Nagi Pandey, Sundar Singh, Raj Karan Singh and Basant Pandey came and surrounded Bhuneshwar Pandey (father of groom) and started assaulting him by slaps and fists. In the meantime, his son Raj Kishore Pandey (since deceased) came to rescue his father but all the accused persons started assaulting to Raj Kishore Pandey mercilessly when he

fell down then thrashed over his chest due to which he became unconscious. It is alleged that several villagers intervened and pacified the matter. The informant Dhalo Pandey (maternal uncle of groom) requested the accused persons with folded hands to stop the scuffle and assault thereafter injured Raj Kishore Pandey under unconscious state was brought to police station thereafter sent to hospital and written report was lodged.

On the basis of above written report, F.I.R. was registered for the offences under Sections 143, 342, 323 & 307 of the I.P.C.

5. In the course of treatment, injured Raj Kishore Pandey succumbed to his injuries. After conclusion of investigation, charge-sheet was submitted against all eight named accused persons for the offences under Sections 147, 148, 149, 323, 307 & 302 of the I.P.C. The case was committed to the Court of Sessions, where S.T. No. 285 of 1992 was registered. Charges were framed against all the accused persons under Sections 147, 323, 302/149 of the I.P.C. The accused persons denied from charges and claimed to be tried.

6. During pendency of the trial, one co-accused Bhagwan Pandey died and proceeding against him was dropped vide order dated 10.06.2008. The rest seven accused persons faced the trial.

7. In the course of trial altogether nine witnesses were examined by the prosecution:-

P.W.-1-Bhuneshwar Pandey (father of deceased)

P.W.-2-Sarju Pandey (father of bride)

P.W.-3-Dhalo Pandey (informant of this case)

P.W.-4-Basudeo Pandey

P.W.-5-Parmeshwar Pandey

P.W.-6-Birju Pandey

P.W.-7-Dr. Shashi Bhushan Singh (Dr. who conducted P.M. Examination)

P.W.-8-Chandra Shekhar Agrawal

P.W.-9-Kundan Kumar (Advocate Clerk)

8. Apart from oral testimony of witnesses following documentary evidence has also been adduced:-

(i) Exhibit-1 to 1/1- Signatures of Bhuneshwar Pandey and Basudeo Pandey on fardbeyan

(ii) Exhibit-1/2-Signature of Dhalo Pandey on fardbeyan

(iii) Exhibit-2 to 2/1-Signatures of Bhuneshwar Pandey and Basudeo Pandey on inquest report

(iv) Exhibit-3-Post-mortem report

(v) Exhibit-4 to 4/1-Injury reports of Kishor Pandey and Bhuneshwar Pandey

(vi) Exhibit-5-Formal F.I.R.

(vii) Exhibit-5/1-Endorsement on the F.I.R.

9. On the other hand, defence has also examined four witnesses, namely D.W.-1, Sakaldeo Singh, D.W.-2, Daya Nand Singh, D.W.-3, Deoki Ram & D.W.-4, Jeevan Krishna Prasad.

Moreover, the following documentary evidences have also been adduced by defence.

(i) Exhibit-A-Signature of Sakaldeo Singh on affidavit

(ii) Exhibit-B-Signature of Dayanand Singh on affidavit

(iii) Exhibit-C-Signature of Deoki Ram on affidavit

(iv) Exhibit-D to D/4-Five affidavits

(v) Exhibit-E-Signature of Arun Kumar Pandey on affidavit

(vi) Exhibit-F-Certified copy of S.T. 129/98

(vii) Exhibit-G-Certified copy of F.I.R.

(viii) Exhibit-H-Certified copy of S.T. 8/85

10. After conclusion of trial, the appellants were held guilty for the offences under Section 304 part-II/34 of the I.P.C. and sentenced as stated above which has been assailed in this appeal.

Submissions on behalf of appellants: -

11. Learned counsel for the appellants has submitted that the impugned judgment of conviction and order of sentence is unsustainable in law as well as on facts and is liable to be set aside, as the learned Court below has failed to appreciate the material contradictions, omissions and improvements in the statements of the prosecution witnesses, particularly with regard to the place, time and manner of occurrence. It has further been submitted that non-examination of the Investigating Officer has seriously prejudiced the defence and that the ocular evidence is not consistent with the medical evidence, as P.W.7 did not find any external injury corresponding to the alleged assault and the extradural haematoma was found on the left parietal region, whereas P.W.8 stated about only a small abrasion on the right side of the head. It has also been submitted that no

specific overt act has been attributed to any particular appellant, the allegations are general and omnibus, and no independent witness has been examined. The prosecution witnesses being closely related and interested, coupled with the admitted previous enmity between the parties, their testimony requires cautious scrutiny. Learned counsel has further submitted that the prosecution has failed to establish any nexus between the alleged assault and the death of the deceased and has failed to prove the case beyond reasonable doubt. Hence, the impugned judgment is liable to be set aside and appellants deserve acquittal from the charges levelled against them, allowing this appeal.

Submissions on behalf of State: -

12. On the other hand, learned A.P.P. has opposed the aforesaid contentions raised on behalf of appellants and submitted that the learned Trial Court has rightly convicted the appellants on the basis of materials available on record, therefore, there is no illegality or infirmity in the impugned judgment of conviction and sentence of the appellants and no merits in this appeal which is fit to be dismissed.

13. I have gone through the record of the case along with the impugned judgment in the light of contentions raised on behalf of both side.

14. The only point for determination in this appeal is **"as to whether the impugned judgment and order of conviction and sentence of the appellants suffers from any serious error of law calling for any interference in this appeal?"**

Analysis, discussions and reasons:-

15. Before imparting my verdict on above point, it is desirable to take brief resume of ocular testimony of witnesses examined in this case.

P.W.-1-Bhuneshwar Pandey is the father of the deceased. He has stated that the marriage ceremony was going on during the night. After the marriage, when the members of Barati party went to the *Janwasa* at about 7:00 a.m., the accused persons, namely, Nagi Pandey, Chowa Pandey, Gayaditya Pandey, Raj Karan Singh, Vidya Pandey, Sundar Singh, Deva Pandey, Bachan Pandey and Basudeo Pandey came there and started assaulting him, his son Raj Kishore Pandey (the deceased) and Basudeo Choubey with fists and slaps. When his son, Raj Kishore Pandey, fell to the ground, Chowa Pandey climbed upon his chest and smashed him. His son became unconscious. He was taken to the hospital, where, during the course of treatment, he died on 07.05.1990 at Sadar Hospital, Hazaribagh. Thereafter, he went to the police station and gave his statement.

P.W.-2-Sarju Pandey, who is the father of bride, has stated that when the Barati party went to the *Janwasa*, he heard a commotion. Thereafter, he went to the *Janwasa* and saw Vidya Pandey carrying a *lathi*, while Basant Pandey was fleeing towards his house. He also saw Gaya Pandey, Bhagwan Pandey, Chowa Pandey, Daya Pandey, Nagi Pandey and others coming out of the *Janwasa*. They were empty-handed. The accused persons had assaulted Raj Kishore Pandey, as a result of which he became unconscious. He was taken to the hospital

and subsequently died at Sadar Hospital, Hazaribagh.

P.W.-3-Dhalo Pandey is the informant in this case. He has stated that an altercation took place during the marriage ceremony over the throwing of a chocolate towards the Mandap. Although, the matter was pacified and the marriage was completed, a quarrel again took place at the *Janwasa* on 06.05.1990 between Bhuneshwar Pandey and his son, Kishor Pandey, on one side and Gaya Pandey, Vidya Pandey, Bhagwan Pandey, Bachan Pandey, Nagi Pandey, Sundar Singh, and Basudeo Pandey on the other. When Kishor Pandey intervened to save Bhuneshwar Pandey, Nagi Pandey, Gaya Pandey, Vidya Pandey and Bhagwan Pandey assaulted him, causing him to fall to the ground. They then mounted upon his chest, as a result of which he became unconscious. He was taken to the hospital, where he died on 07.05.1990.

P.W.-4-Basudeo Pandey has stated that after the marriage ceremony was over, at about 7:30 a.m., the members of Baraati party proceeded to *Janwasa*, where some members of Sarati also arrived. Gaya Pandey started abusing and saying about the incident of throwing chocolates towards girls. Upon this Bhuneshwar Pandey and his son Raj Kishor Pandey were assaulted by Gaya Pandey, Vidya Pandey, Bhagwan Pandey, Sundar Singh, Nagi Pandey, Bachni Pandey and others. Thereafter, Kishore was lifted about ten yards from the *Janwasa* and Vidya Pandey rushed and thrashed Raj Kishor Pandey on the ground. The injured was brought by them to Chauparan Police Station thereafter to Sadar Hospital, Hazaribagh.

P.W.-5, Parmeshwar Pandey has stated that the marriage ceremony was going on during the night. After the marriage ceremony, at about 6:00–7:00 a.m., Bhagwan Pandey, Vidya Pandey, Nageshwar Pandey, Nagi Pandey, Gaya Pandey, Basudeo Pandey and Basuni Pandey went to the Devisthan situated at the *Janwasa*. There, Deva Pandey stated that they were leaving after insulting the honour of their locality and said, “Beat them.” Sundar Singh also said, “Beat them.” Thereafter, all the aforesaid seven persons assaulted Bhuneshwar Pandey and caused injuries to him. When Kishor Pandey went to rescue his father from the aforesaid persons, all the aforesaid seven accused persons assaulted Kishor Pandey with *lathi*, wooden posts, kicks and fists. They also climbed onto his chest and pressed and assaulted him. Kishor Pandey became unconscious at the spot. After the assault, all the accused persons left the place. Kishor Pandey was taken to the hospital at Chauparan, where he was treated. Thereafter, the doctor referred him to Sadar Hospital, Hazaribagh, where Kishor Pandey was died during treatment.

P.W.-6, Birju Pandey has stated that the members of the Sarati party, namely, Nagi Pandey, Gaya Pandey, Chowa Pandey, Vidya Pandey, Sundar Singh, Rajkaran Singh and Vasni Pandey came there and taking out sticks from the *ghoran*, started assaulting Kishor Pandey and Bhuneshwar Pandey. The members of the Sarati party struck Kishor Pandey on kanpati, as a result of which he fell down unconscious. When they reached the spot, they saw the aforesaid persons assaulting Bhuneshwar Pandey and Kishor Pandey with

sticks. They intervened and separated the parties and thereafter, he along with Dhalo and Parmeshwar, took Kishor Pandey to a doctor at Chauparan. On the advice of the doctor, they took him to Sadar Hospital at Hazaribagh, where he subsequently died on 07.05.1990.

P.W.-7-Dr. Shashi Bhushan Singh has deposed that on 07.05.1990, he was posted as C.A.S. at Sadar Hospital, Hazaribagh. On that day, at 02:00 P.M., he has conducted autopsy on the dead body of Raj Kishore Pandey (deceased) and found the following injuries:-

Both eyes opened, mouth partially opened, fist half clinched, left hand old scar of burn.

On external examination:- There was no external mark of injury.

On dissection:- extradural haemotoma over left side on the parietal region. Other visceras (abdominal and others) were intact and pale.

Time since death-within 12 hours. Cause of death due to shock and haemorrhage due to above mentioned injures of brain matters due to extradural haemotoma.

He has proved the post mortem report which is marked as **Exhibit-3**.

P.W.-8-Chandra Shekhar Agrawal has examined Raj Kishore Pandey on 06.05.1990 and found the following injuries:-

(1) Patient was unconscious, restless bleeding from mouth and nose.

(2) Swelling 2" x 2" on right side of scalp.

Simple in nature caused by hard and blunt weapons.

He has opined that age of injury was within 12 hours.

On 13.05.1990, he also examined Bhuneshwar Pandey and found the following injuries:-

(1) An old scratch 1" x 1/2" on the middle of scalp.

(2) Abrasion 1/2" x 1/2" on right iliac crest

(3) Complaint of pain on left thigh.

This witness has opined that the injury was simple in nature, caused by hard and blunt substance and the age of injury is about one week.

He has proved both the injury reports in his handwriting and signature, which is marked as **Exhibit-4 and 4/1** respectively.

P.W.-9-Kundan Kumar is an Advocate clerk. He has stated that the formal F.I.R. is in the handwriting and signature of Shri Shailendra Singh, the then Station House Officer of Chauparan and the same has been marked as **Exhibit-5**. He has further stated that endorsement on F.I.R. is also in the handwriting of Sri Shailendra Singh, the then S.H.O., Chauparan.

On the other hand, **D.W.-1-Sakaldeo Singh** has proved the affidavit which bears his signature, which is marked as **Exhibit- A**.

D.W.-2, Daya Nand Singh has stated that this affidavit was prepared at his instance and bears his signature, which he identifies. The affidavit is marked as **Exhibit-B**.

D.W.-3, Deoki Ram has stated that his niece's wedding took place on 05.05.1990 and Gayaditya Pandey was invited to the

wedding. He was present at his place on the day of the wedding. This affidavit was prepared at his instance and bears his signature, which he identifies. The affidavit is marked as **Exhibit-C**.

D.W.-4, Jeevan Krishna Prasad has stated that this affidavit was written by Sachcho Babu Munshi in his presence. It was written at the instance of the deponent. Thereafter, the deponent signed it. Advocate Shiv Kumar Prasad identified the deponent. The affidavit was sworn before T.N. Sahay, Notary. The affidavit is marked as **Exhibits-D, D/1, D/2, D/3 and D/4**. This document bears the signature of Arun Kumar Pandey. The affidavit is marked as **Exhibit-E**.

16. Having considered the submissions advanced on behalf of the parties and carefully scrutinized the evidence available on record, this Court finds that the incident arose out of an altercation during a marriage ceremony, wherein the deceased, Raj Kishore Pandey, was allegedly assaulted while intervening to rescue his father. However, the allegations against the surviving appellants, Shiv Bachan Pandey, Vidya Pandey and Sundar Pandey are general and omnibus and their specific roles have not been established by cogent and reliable evidence.

17. The medical evidence assumes considerable significance in the present case. P.W.-7, Dr. Shashi Bhushan Singh, who conducted the post-mortem examination, found no external mark of injury on the body of the deceased but detected an extradural haematoma over the left parietal region of the head, which was opined to be the cause of

death due to shock and haemorrhage resulting from the said injury. P.W.-8, Dr. Chandra Shekhar Agrawal, who had examined the deceased earlier, noted swelling measuring 2" x 2" on the right side of the scalp. The medical evidence, therefore, establishes that the deceased sustained a fatal head injury, however, it does not establish the identity of the person who caused the said injury or connect the surviving appellants with the same.

18. The prosecution has alleged that eight accused persons assaulted the deceased and that, after he fell down, they climbed upon his chest and pressed it. However, the post-mortem report does not disclose any injury corresponding to the alleged act of pressing the chest. Further, the medical evidence does not satisfactorily corroborate the allegation of a concerted assault by all the accused persons in the manner alleged by the prosecution. None of the prosecution witnesses has been able to attribute any specific and reliable overt act to the surviving appellants so as to establish their participation in causing the fatal injury. The main allegation regarding the infliction of the stick blow has been attributed to another accused, who died during the pendency of the appeal. In these circumstances, the general allegations against the surviving appellants, without reliable evidence establishing their individual participation are insufficient to sustain their conviction.

19. The possibility of false implication of the surviving appellants on account of the earlier altercation between the two groups cannot be ruled out. Moreover, the non-examination of the Investigating Officer

assumes significance in view of the defence challenge concerning material contradictions, omissions and inconsistencies in the prosecution evidence. Considered cumulatively with the general nature of the allegations, the absence of reliable evidence attributing specific acts to the surviving appellants and the lack of satisfactory corroboration regarding their participation in the alleged assault, these circumstances give rise to a reasonable doubt about their involvement in the commission of the offence.

20. In the present case, the prosecution has failed to establish beyond reasonable doubt that the surviving appellants shared the common intention to commit the offence resulting in the death of the deceased or constituted an unlawful assembly having any common object as contemplated under Section 141 of the I.P.C., in furtherance of which the alleged offence was committed.

21. The prosecution has also failed to establish a consistent and reliable account identifying the person responsible for the fatal head injury or proving the participation of the surviving appellants in the assault in the manner alleged. The general and omnibus allegations, the absence of reliable evidence establishing their specific overt acts, the medical evidence and the other infirmities in the prosecution case, when considered cumulatively, create a reasonable doubt regarding their guilt. This Court, therefore, finds that the learned Trial Court failed to properly appreciate these material aspects while recording their conviction.

22. In view of the above discussion and reasons recorded

hereinabove, this Court holds that the prosecution has failed to prove beyond reasonable doubt the charge under Section 304 Part II read with Section 34 of the I.P.C. against the appellants, therefore, they are entitled to the benefit of doubt.

23. Consequently, the impugned judgment of conviction and order of sentence passed by the learned 2nd Additional Sessions Judge, Hazaribagh, in G.R. Case No. 250 of 2009 is hereby set aside and this appeal is **allowed**.

24. Appellants are on bail, as such they are discharged from the liability of bail bonds and sureties are also discharged.

25. Pending I.A(s), if any, stands disposed of.

26. Let a copy of this judgment along with Trial Court Record be sent back to the court concerned for information and needful.

(Pradeep Kumar Srivastava, J.)

Jharkhand High Court
Dated 30/10/2026
Arpit/ ***N. A. F. R.***
Uploaded on 30/10/2026