

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.253 of 1995

Arising Out of PS. Case No.-54 Year-1992 Thana- GOPALPUR District- Gopalganj

Parsuram Pandey Son of Chandradeo Pandey Resident of Village - Chailwan,
P.S.- Gopalpur, Dist.- Gopalganj.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 293 of 1995

Tribhuwan Pandey, son of Ram Chandra Pandey, resident of village
Chailwan, P.S. Gopalpur in the district of Gopalganj

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 253 of 1995)

For the Appellant/s : Mr. Jitendra Kumar Giri, Advocate

For the Respondent/s : Ms. Shashi Bala Verma, APP

(In CRIMINAL APPEAL (DB) No. 293 of 1995)

For the Appellant/s : Mr. Jitendra Kumar Giri, Advocate

For the Respondent/s : Ms. Shashi Bala Verma, APP

CORAM: HONOURABLE MR. JUSTICE A. M. BADAR

and

HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR)

Date : 19-04-2022

Heard the parties.

2. It would be proper to mention here that Cr. Appeal (DB) No. 253 of 1995, vide order dated 05.04.2022, stands abated in respect of appellant nos.2 to 6 (Surendra Pandey, Surendra Rai, Kanchan Rai, Ram Chandra Pandey and Chandradeo Pandey) because they have already died, however, this appeal is proceeded in respect of appellant no.1, namely, Parsuram Pandey.

3. These two appeals have been preferred by the



appellants against the judgment of conviction dated 21.08.1995 and order of sentence dated 22.08.1995 passed by the learned Additional Sessions Judge-I, Gopalganj in Sessions Trial No.249 of 1993/54 of 1993 arising out of Gopalpur P.S. Case No. 54 of 1992 whereby and whereunder the appellant Tribhuan Pandey has been convicted under Section 302 of the Indian Penal Code and Section 27 of the Arms Act and the other accused persons have been convicted for life under Sections 302/149 of the Indian Penal Code. Accordingly, Tribhuan Pandey sentenced to undergo rigorous imprisonment for life under Section 302 of the Indian Penal Code and to undergo three years rigorous imprisonment under Section 27 of the Arms Act and rest of the convicts/appellants are sentenced to undergo R/I for life under Section 302/149 of the Indian Penal Code.

4. As per fardbeyan of the informant, namely, Roshan Kamkar, the prosecution case as recapitulated is in nutshell that on 30.10.1992 at about 2 P.M., this informant (PW-3) along with his son, namely, Nandlal Kamkar had gone to the house of the Mukhia, Shaym Sundar Rai for getting their photographs attested and when they got their photographs attested and were coming back to their house, they suddenly faced in hot exchange with all the accused persons named in the FIR, armed with



country made arms and accused Kanchan Rai, Surendra Rai and Parshuram Pandey caught hold to Nand Lal Kamkar and on the order of Chandra Deo Pandey for murderous assault upon the victim, the accused Tribhuan Pandey opened fire upon Nand Lal Kamkar from his country made Katta (fire arm) from a very close range, this hit the deceased below his left eye brow and under the nose, due to which, Nand Lal cried out and fell down and blood started oozing profusely, thereafter, accused Ram Chandra Pandey, Surendra Pandey and Suresh Chaudhary stood in three directions, i.e., north, south and west and started to threat that whoever will come in front, they will be shot dead. On hearing sound of firing, villagers assembled there and the accused persons fled away from the place of occurrence. The motive behind the occurrence as stated in the FIR was that prior 15 days from 30.10.1992, accused Tribhuan Pandey and Surendra Rai had cut away sugarcane plant from the field of the informant and at that time, the deceased (Nand Lal Kamkar) had made protest for this and there was also exchange of words between the accused and the appellant.

5. After completing the investigation, chargesheet has been submitted against all the FIR named accused persons. Thereafter, the case was committed to the Court of Sessions for



trial and disposal. The charges were read over and explained to the accused persons, to which they pleaded not guilty and claimed to be tried. Their defence is that they have falsely been implicated in this case and claimed to be innocent.

6. To substantiate the charges levelled against the accused persons, altogether eight witnesses have been examined on behalf of the prosecution.

7. PW-7 (Shambhu Kumar Kedia) is the Doctor, who had conducted the postmortem of the deceased and PW-8 (Paras Nath Singh) is the Investigating Officer, who has investigated the case at initial stage.

8. We have gone through the entire prosecution evidence by way of orally as well as documentary for just decision of these appeals.

9. PW-1 is Shyam Sundar Rai, PW-2 is Braj Kishore Prasad, PW-3 is Roshan Kamkar (informant of this case), PW-4 is Sriram Lal, PW-5 is Sarvajeet Sah and PW-6 is Rajdeo Kamkar. Except PW-5, all the witnesses are claimed to be eye witnesses of the occurrence. The name of these witnesses are also arrayed in the fardbeyan as eye witness. The informant in his fardbeyan has also asserted that the occurrence was seen by the informant himself and other these witnesses also.



10. The learned counsel for the appellants have raised three folds submissions - Firstly, the relationship between the deceased and the appellants was cordial before the occurrence. Since the informant himself admitted that there was no enmity between them, so this point is beyond common prudence as to why the appellant would go to the place of occurrence for committing murder of the deceased. So the genesis of the occurrence is doubtful. In this respect, on behalf of the prosecution, PW-5 has been examined, who has been figured as a witness to the occurrence of sugarcane plant cutting by Tribhuan and Surendra Rai. It is apparent in his cross-examination that he had gone to his field though there was no work in his field and he saw the occurrence of cutting of sugarcane plant in the field of Nandlal. The evidence of this witness is affirmed in respect of actual occurrence of cutting of sugarcane plant. The informant (Roshan Lal Kamkar) also admitted in his cross-examination that there was no enmity between his family and the family of the accused persons at the time of occurrence. He has also admitted that he used to meet the accused in village after the occurrence of cutting of plants and there was exchange of greetings also. On this point, the learned trial Court has rightly observed that -



“Human motives move in a very mysterious manner and it is difficult to predict, who will behave in what manner and at what time. A person may choose any particular moment for any offence and he cannot be expected to disclose his inner feelings whenever he meets his prospective victims”.

11. We are of this opinion that the evidence of all PWs on the point of alleged occurrence of shooting at the alleged place of occurrence is consistent and trustworthy. This case is based on direct evidence given by the prosecution witnesses on the point of place of occurrence, manner of occurrence and weapons used by the accused persons in the crime. So the motive in the case which based on direct evidence is not essential and in the case of circumstantial evidence, the motive may be helpful and useful to come to the conclusion by the Court. This contention raised on behalf of the appellants has no merit, while the genesis of the occurrence stands well proved by the PW-5 and other witnesses.

12. Secondly, on behalf of the appellants, the submission is made that the Trial Court has relied upon the evidence of PW-1, who is veteran criminal and accused in several murder cases. PW-1 has inimical relation with the convicts/appellants, therefore, the accused persons appears to have been falsely implicated in this case at the instance of



Mukhiya (PW-1). The place of occurrence situated near the house of this Mukhiya PW-1 and when the informant along with his son was returning back to his house, all the accused persons were involved in the alleged occurrence of confronting with Nandlal near the Bakhar of the Mukhiya (Shyam Sunder, PW-1) and opened fire upon the deceased, resulting his death. This submission is not plausible that why Roshan Kamkar, the informant (PW-3) will offer himself as a pawn in the hands of the Mukhia to wreck his vengeance against the accused persons. There is no possibility to falsely implicate the accused persons at the instance of PW-1 (Shyam Sunder Rai) because all the witnesses happen to be present at the house of the Mukhia for getting the photographs attested because the Mukhiya was authorized for attesting the photographs on the cards, which were used by the farmers to supply the sugarcane to the Sugar mill and the presence of so many persons at the house of Mukhiya on this specific day was a quite natural circumstance. On behalf of the defence, no circumstances has been shown that the convicts/appellants have not committed any offence and committed by any others and also all the witnesses stood firmly in cross-examination made by the defence in respect of commission of the murder of the deceased (Nand Lal Kamkar).



13. Thirdly, on behalf of the appellants, it is argued that the medical evidence in respect of death of the deceased (Nand Lal Kamkar) is not in consonance with the ocular evidence deposed on behalf of the prosecution. As per the evidence of the witnesses examined during the trial, the appellant Tribhuan Pandey had put the muzzle of the barrel of the country made gun on the body of the deceased and opened fire but neither any blackening nor charred injury could be found or detected by the Doctor (PW-7) at the time of conducting the postmortem of the deceased. The doctor PW-7 has categorically stated in his evidence that the injury no.1, which is the wound of entry, did not bear any sign of contact of the barrel of gun with the body of the deceased at the time of firing upon the deceased whereas the prosecution witnesses has said that Tribhuan Pandey fired from his *Katta* by touching the body of the victim.

14. We perused the prosecution evidence in respect of this contention. PW-3, the informant has mentioned in his fardbeyan that Tribhuan Pandey opened fired upon the face of his son Nand Lal Kamkar (deceased) in close range. So the witnesses have used the word 'Satakar' in their deposition and in our opinion, firing was opened from a very close range more than as stated in the FIR. In common practice, the word



‘Satakar’ means nothing more and nothing less than ‘a close range’. Learned counsel has further argued that a bullet has the tendency to travel straight and if so as per the evidence, the victim was hit near the nose, it was not explicable as to how the bullet got enmeshed in the brain, which is at a higher level of the head than the nose region.

15. In this respect, it has rightly observed by the trial Court :- “It is a matter of common knowledge that in the villages, path ways are uneven and so the chances of the deceased standing on a higher level than the assailant cannot be ruled out. So, if the assailant will hit the deceased standing at a lower level, the bullet which entered the body of the victim may travel upto the brain matter. Only one wound of entry was found near the nose under the left eye-brow of the deceased and the bones of the vicinity were fractured. The bullet piece was recovered from the brain matter. The doctor has said that brain matter is semi liquid. So, the chance of the bullet being encaged and stuck up in the liquid portion of the brain is very much there. That will also explain the absence of the exit wound. The learned lawyer also referred to the absence of charring on the face of the deceased. But the learned lawyer missed to note that there were several pin-head size burnt spots on the face of the deceased.



Burnt spots will include charrings. Since the fire arm was used from a very close range, burnt spots on the face was a natural corollary of the injury. I, therefore, find that the doctor's evidence was quite in-confirmity with the oral evidence on the record.”

16. The eye witnesses are found credible and trustworthy and the medical opinion pointing to alternative possibilities cannot be spelled as a conclusive. The ocular testimony of the witnesses has greater evidentiary value vis-a-vis medical evidence. In this case, the doctor opined that the death was caused due to haemorrhage and shock caused by fire arm injury. So we have affirmed view that the evidence of PWs is safe to place reliance upon.

17. After close scrutiny of the available prosecution evidence, it is clear that accused Chandradeo Pandey ordered for murderous assault upon the deceased Nandlal Kamkar and accused/appellants Surendra Pandey, Kanchan Rai and Parshuram Pandey caught hold to the deceased Nandlal Kamkar and the accused/appellant Tribhuwan Pandey opened shot fire upon the deceased. It is obvious that in the evidence, PWs have referred and took some times name of four persons, some times two persons and some times three persons who were catching



hold to the deceased Nandlal Kamkar but the PWs are consistent on this point that all the accused persons had surrounded the deceased Nandlal Kamkar and his father informant (PW-3) when they were proceeding back to their home after getting their photographs attested. It is trite law that the vicarious liability of members of unlawful assembly extends only to:- (1) the acts done in pursuance of the common object of the unlawful assembly, and (2) such offences as the members of the unlawful assembly knew to be likely to be committed in prosecution of that object. Accused person whose case falls u/s 149 of I.P.C. cannot take defence that he did not with own hand, commit the offence in prosecution of the common object of unlawful assembly or for the members of the assembly. He knew that such offence was likely to be committed. It is not necessary such cases that all the persons forming the unlawful assembly must do some overt act. Where the accused had assembled, taking arms weapons and were parties to the assault then the prosecution is not obliged to prove each specific overt act was done by each of the accused. In such circumstances every member of unlawful assembly is responsible for an offence committed by any member or other members in prosecution of the common object of such assembly.



18. So in the case, act of unlawful assembly, it is an immaterial as to who caught hold to the deceased, on what direction the accused persons surrounded the deceased and to which of the accused assaulted. In this case, it is trustworthy evidence that Tribhuan Pandey fired from close range on the order of accused Chandradeo Pandey and all the other accused persons were standing with country made fire arms. However, minor contradictions in consistency or improvement to trivial points, could not be made a ground on which the evidence can be rejected in its entirety. Some variances are natural from the mouth of the witnesses who were deposing after lapse of a year or that may also depend on the loss of memory. There is no reason raise doubt the presence of prosecution witnesses at the place of occurrence.

19. PW-7 is the Investigating Officer who investigated the case at initial stage of the investigation that he visited the place of occurrence and picked up blood stained soil from the spot. So the presence of blood at the spot proves an occurrence and corroborates to the ocular evidence with respect to the participation of the accused in the alleged crime. It is apparent that the second I.O. has not been examined who had recorded the statement of PWs., so the non-examination of the second I.O. did



not affect the prosecution case adversely.

20. In view of the evidence of record as discussed above, we fully endorse the view taken by the learned trial Court. So, these two appeals are devoid of merit and fit to be dismissed.

21. Accordingly, these two appeals stand dismissed.

(Sunil Kumar Panwar, J)

(A.M.Badar, J)

(A.M.Badar, J)

Brajesh Kumar/-

AFR/NAFR	
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