



2026:AHC:172177-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 1295 of 2001

Bheem Chand Pandey And Others

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s) : Anirudh Kumar Upadhyay, Zafar Abbas
Counsel for Respondent(s) : Govt. Advocate

Court No. - 42

**HON'BLE ATUL SREEDHARAN, J.
HON'BLE ACHAL SACHDEV, J.**

1. Heard Sri Dileep Kumar, learned Senior Advocate, assisted by Sri Sudhanshu Kumar, Sri Yogesh Chandra Dubey, Sri Anirudh Kumar Upadhyay, learned counsel for the appellants and Sri Rishi Chaddha, learned A.G.A-I for the State.

2. The present appeal has been preferred by the appellants who are aggrieved by the judgement of conviction and sentence dated 20.04.2001 whereby the appellants herein were tried and convicted for the murder of Upendra Pandey.

3. The appellants herein are Gautam Pandey, who is the father of appellant nos. 1 and 2, namely, Bheem Chand Pandey and Ishwar Chand, and is the father-in-law of appellant no. 4, Ashok Kumar. On the date of the incident, the appellant nos. 3 and 4, namely, Gautam Pandey and Ashok Kumar were armed with spades, appellant no. 1, Bheem Chand Pandey had a country-made firearm and appellant no. 2, Ishwar Chand was armed with bombs.

4. The genesis of the case is that on 21.09.1997 at 9:00 a.m., the incident had taken place where the four appellants are alleged to have had an altercation with the deceased Upendra, who pushed two

of the appellants down, and upon the instigation of appellant nos. 3 and 4, Gautam Pandey and Ashok Kumar, the appellant no. 1, Bheem Chand Pandey is said to have fired from his country-made firearm, which resulted in one gunshot injury penetrating the heart of the deceased, killing him instantly. The role attributed to appellant no. 2, Ishwar Chand is of having hurled three country-made bombs at the deceased, of which one exploded and two remained unexploded.

5. In this case, the alleged witnesses are only Anil Kumar Pandey, PW-1, who is the step brother of the deceased, is stated to be the informant of the F.I.R. and resides about 2 km away from the scene of occurrence. PW-2 Santosh Kumar Pandey, who is a neighbour, has suffered an injury on his knee allegedly by a spade. This witness has turned hostile and has stated that he has not seen the incident and said that he suffered the injury on his knee after falling down on the ground. PW-3 is Vijay, who is shown to be an eyewitness, but he has also turned hostile.

6. Learned counsel for the appellants submits that the documents which are not on record are the G.D. entry relating to the F.I.R., MLC of PW-2 Santosh Kumar Pandey, request letter for MLC of Santosh sent by the police to the doctor, panchayatnama, though on record of the trial court, was not exhibited as the inquest witnesses were not examined in this. The scribe of the F.I.R./tehrir is Jainath Pandey, who has also not been examined as a prosecution witness. The doctor who prepared the MLC has not been examined as a witness. The doctor who declared the deceased Upendra dead upon arrival was also not examined in this case. Information relating to the incident sent from the hospital to the police station is also not on record. These facts are undisputed.

7. Learned counsel for the State has not offered any explanation.

8. Learned counsel for the appellants submits that in this entire case, the conviction has been based solely on the statement of PW-1 Anil Kumar Pandey, who is a chance witness and was not there at the scene of occurrence, as was stated by the learned counsel for the appellants. In order to substantiate his arguments, he has drawn the attention of this Court to the cross-examination of PW-1, where he says that he was not the person who gave the information at the police station with regard to the incident and neither was it PW-2 Santosh Kumar Pandey. He further says that PW-1 did not give any information to the doctor. In his cross-examination, PW-1 says that he did not take the body to the police station and that he does not know how the body came to the police station from the hospital and has no information as to whether the body of the deceased went from the hospital to the police station. In the panchayatnama, PW-1 is shown as a witness, but the panchayatnama is worthless as it has not been exhibited. The postmortem report shows that there is a single entry wound with blackening around the wound of entry, and the same has penetrated the heart and the deceased died on account of haemorrhagic shock. The recovered bullet undisputedly has not been sent for ballistic verification. No weapon has been seized in this case. Two of the unexploded bombs which were recovered from the scene of occurrence, the seizure memo of which has not been proved in court by the Investigating Officer, and, therefore, the seizure is also under doubt. Ultimately, the Investigating Officer in this case has not been examined at all. The court has recorded in its judgment that despite its best efforts, the Investigating Officer who carried out the investigation, could not be examined in this case as he did not appear.

9. Learned counsel for the State, though has not disputed the absence of the documents and that the same have not been exhibited in the course of the trial, has submitted that though PW-2

has turned hostile, he has not categorically denied the incident itself.

10. However, as regards his submission, PW-2 has been declared hostile and has also stated in his cross-examination that he has not seen the incident. PW-2 in his examination-in-chief denied the presence of appellant no. 1, Bheem Chand Pandey, at the time of occurrence and the gunshot injury is attributed to appellant no. 2, Ishwar Chand. When a witness says that he has not seen the incident, the implication is that he is denying the direct knowledge of the incident itself. Thus, it appears from the evidence on record, it is a singular evidence of PW-1, uncorroborated by any of the documents created by the police during the course of investigation, and most importantly, no G.D. number has been given in the case diary, which could connect the investigation to the registration of the F.I.R. itself, of having commenced from that point of time.

11. Under the circumstances, in view of what has been considered and held hereinabove, the prosecution has not been able to prove its case beyond reasonable doubt.

12. The appeal is **allowed**.

13. The order and judgment of conviction is set-aside. The appellants are on bail. Their bail bonds are discharged.

August 14, 2026

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(Achal Sachdev,J.) (Atul Sreedharan,J.)