

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CRIMINAL APPEAL NO(s). 304 OF 2006

PANNEY @ PRATAP NARAIN SHUKLA & ANR. Appellant (s)

VERSUS

STATE OF U.P. Respondent(s)

Date: 09/12/2009 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE HARJIT SINGH BEDI
HON'BLE MR. JUSTICE J.M. PANCHAL

For Appellant(s) Mr. Ajay Veer Singh,Adv.
Mr. B.S.Jain,Adv.
Mr. S.N.Shukla,Adv.
Mr. Nitin Jain,Adv.
Mohd.Irshad Hanif,Adv.

For Respondent(s) Mr. Prashant Chaudhary,Adv.
Mr. S.K.Dwivedi,Adv.
Mr. Garvesh Kabra,Adv.
Mr. Shrish Kumar Misra,Adv.

UPON hearing counsel the Court made the following
O R D E R

The Appeal is dismissed.

[SUMAN WADHWA]
COURT MASTER

[VINOD KULVI]
COURT MASTER

Signed order is placed on the file.

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 304 OF 2006

PANNEY @ PRATAP NARAIN SHUKLA
& ANR. .. APPELLANT(S)

vs.

STATE OF U.P. .. RESPONDENT(S)

O R D E R

This appeal arises out of the following facts:

About a month before the incident Shivdhari, son of
(Ram Awadh Yadav) PW.1, the first informant, had purchased
some land from Rudra Narain Shukla. The execution of the

sale annoyed the accused appellants as they too were interested in the land.

At about 7.00 p.m. on 7th November, 2003, Shivdhari had gone to the house of Shyam Kunwar of village Bhedi and on exhortation of the accused Harihar Shukla, & Panney @ Pratap Narain Shukla hurled a bomb on Shivdhari which fell on his abdomen and exploded, whereas Channey @ Prabhu Narain Shukla thereafter fired from a country made pistol of 12 bore on the abdomen of Shivdhari and Vishwajit, the absconding accused, cut his neck with a Gandasi. Shivdhari died immediately on the spot. On hearing the sound of the explosion Ram Awadh Yadav and his sons Ramdhari, Tilakdhari and Dalsingar rushed to the spot, flashed a torch and saw the accused running away. Ram Awadh Yadav thereafter rushed to the police station at a distance of one furlong and lodged the report. Pursuant to the report, the S.H.O. Chandra Bali Yadav (PW.5), reached the place of incident, made the necessary inquiries, picked up the spent cartridges and also recovered the splinters of the bomb which had been hurled at the deceased. He also recorded the statements of some of the witnesses under Section 161 of the Cr.P.C. but not of Tilakdhari whose statement was recorded after a gap of 8 days.

On the completion of the investigation, the accused Harihar Shukla, Panney and Channey were charged for an offence punishable under Sec.302 of the IPC and as they pleaded not guilty, they were brought to trial. The trial Court in the course of its judgment dated 10th December, 2004 acquitted Harihar Shukla on the ground that he had not participated in the murder and awarded a sentence of death to the other two accused. The matter was then referred to the High Court for confirmation of the death sentence, whereas the accused also filed an appeal challenging their conviction. The murder reference was declined and the appeal too was dismissed.

This appeal by way of special leave has been filed by Panney and Channey, the two convicted accused.

Mr. Ajay Veer Singh, the learned counsel for the appellants has raised several arguments during the course of hearing. He has first pointed out the medical evidence contradicted the ocular testimony inasmuch that had the bomb been hurled on the deceased from a very close range as suggested the witnesses who had seen the incident from a distance of four or five feet would have suffered injuries as well and as this had not happened a doubt was cast on the story. He has also pleaded that from the medical evidence it appeared that there were three explosive wounds with charred and blackened margins, but the splinter injuries beyond the primary wounds had no such markings on the dead body which again falsified the prosecution story and suggested the use of more than one bomb. He has further pointed out that no pellets had been recovered from the body and the use of the country made 12 bore pistol was thus in doubt. It has finally been submitted that the incident had allegedly happened at 7.00 p.m. on 7th November, 2003, but from the evidence of the eye-witnesses it appeared that it had happened in the early hours of 8th November, 2003, which falsified the presence of the eye witnesses.

The learned State counsel has, however, supported the judgment of the trial Court.

It is true, as has been contended by Ajay Veer Singh that the bomb had exploded a short distance away from the witnesses and in normal circumstances some injuries would have been received by them as well. We are, however, of the opinion that the bomb used was a country made one, with uncertain content and performance. The ocular evidence further falsifies the argument that the bomb had exploded 4 feet away from the witnesses. It is clear from the evidence that the eye witnesses were

standing at a distance of 4-5 steps away from the site of the explosion. This would ordinarily be about 20 feet in which case the possibility of the bomb causing any injury to the witnesses would be rather remote.

It has come in

the evidence of the Investigating Officer that splinters had been picked up within a radius of about 4 feet from the site of the explosion meaning thereby that no damage could be expected beyond that distance more particularly as the bomb was a crude home made one, with uncertain performance.

Mr. Ajay Veer Singh's argument that three separate bombs had been used is again falsified by the medical evidence. We see from the post-mortem report that the explosive injuries were on the lower chest and the abdomen in an area of about 20 cm x 8 cm. and the injuries beyond that area were caused by stray splinters. Merely because the Doctor recorded three separate injuries would not, therefore, lead to the conclusion that three bombs had been used.

The learned counsel has also submitted that the incised injuries found on the dead body had not been explained is also not acceptable for the reason that in Modi's Medical Jurisprudence and Toxicology page 741 it has been indicated that in a case of injuries by a bomb explosion, incised wounds are clearly possible.

It has been submitted by Mr. Ajay Veer Singh that the behaviour of the witnesses was abnormal inasmuch that they did not interfere at the time of the attack on Shivdhari. This submission is unacceptable in the light of the brutality and ruthlessness of the attack inasmuch that a bomb and pistol had been used and the neck of the deceased had also been severed in this eventuality the eye witnesses would have stayed far away from the accused, fearing a similar fate.

Mr. Ajay Veer Singh has also emphasized that from the evidence it appeared that the prosecution itself was

uncertain about the time of the incident.

He has pleaded

that as per the prosecution story the incident had happened

at about 7.00 p.m. on the 7th November 2003 but from the

statement of PW.2 it looks as if

it had happened in the

early hours of the next morning. It is true that PW.2 had

stated at one stage that the incident had happened in the

morning a shortwhile before the police had arrived. It is,

however, not clear as to whether this was the first visit

of the Police Officer or a subsequent one as the police

station was only one furlong away from the place of

incident. Moreover, the story that the incident had

happened in the early hours on 8th November, 2003, is not

spelt out by the medical evidence.

The Doctor opined that

the deceased had taken his last meal

three hours before

his death.

We are of the opinion that if that be so and

the story of the defence is to be believed the murder would

then have been committed at about three or four a.m. which

would be highly probable, as the last meal would then have

to be taken at about 1.00 a.m.

The prosecution story is,

however, consistent with the medical evidence in that the

deceased had died at 7.00 p.m. and the food would have

taken three or four hours before death which would be

normal human behaviour. Moreover as two courts have found

against the appellants on a clear cut discussion, we would

be hesitant to interfere with the findings of fact

recorded.

The appeal is dismissed accordingly.

.....J.
(HARJIT SINGH BEDI)

.....J.
(J.M. PANCHAL)

New Delhi,
December 9, 2009.