

PETITIONER:
BALO YADAV AND OTHERS

Vs.

RESPONDENT:
STATE OF BIHAR

DATE OF JUDGMENT: 29/04/1997

BENCH:
G.N. RAY, K.T. THOMAS

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

Thomas, J.

The six appellants before us were among the 14 accused arrayed in the Sessions court indicted for the murder of one Ram deo Yadav during the wee hours on 30th October, 1975. Although the Sessions Court convicted all the thirteen accused of the offences of rioting and murder (with the aid of section 149 IPC) the High Court confirmed the conviction only in respect of the seven appellants before us. They have been sentenced to imprisonment for life for the offence of murder and to rigorous imprisonment for two years for the offence under section 148, Indian Penal Code.

Facts are Simple : Deceased Ram deo Yadav and his son Gajendra Yadav (PW 8) after their dinner at home went to a nearby field presumably for watching the crop thereon. Deceased went to sleep on a wooden plank in one field while his son (PW 8) slept in the adjoining field. Some time after midnight these appellants and few others came to this place armed with lethal weapons such as spears (bhala) and gupti and surrounded Ram deo Yadav, dragged him out and showered bloody assault on him with the weapons. Gajendra Yadav (PW 8) on hearing the sound of a commotion woke up and rushed to the scene with his torchlight and saw the assailants attacking his father. He made a hue and cry, but somebody among the assailants snatched away his torchlight. By then a few of the neighbouring cultivators rushed to the scene. The assailants who succeeded in inflicting large number of injuries on the deceased fled from the place with the weapons. Ramdeo Yadav who sustained extensive wounds died on the spot.

Gajendra Yadav went to the local Police Station and lodged the complaint on the basis of which FIR was registered. After completing investigation the case was charge-sheeted against the fourteen accused.

There is no dispute that Ram deo Yadav was murdered at the time and place mentioned by the prosecution. The large number of anti-mortem injuries observed by the doctor who conducted the autopsy have been detailed in the post-mortem certificate. Some of the injuries have perforated his vital organs and without difficulty we could observe that deceased

would have died instantaneously.

Among the eye-witnesses examined by the prosecution the evidence of PW5 - Sipehi Yadav, PW6 - Harilal Yadav and PW8 - Gajendra Yadav was found reliable by the Sessions Court. But High Court did not act on the evidence of Harilal Yadav (PW 6). However, the evidence of PW 8 was found quite reliable, yet the High Court chose to confirm the conviction only as against the appellants since the version of PW 8 was corroborated by PW 5 only in respect of them.

Learned senior counsel confined his arguments to assailing the evidence of PW 5 and PW 8 and contended that the said evidence should not have been relied on due to certain drawbacks high-lighted before us. According to the learned counsel, as the High Court did not rely on the evidence of PW 8 in regard to the acquitted accused it should have been a logical step to spurn down his evidence even in regard to the appellants as well.

This is not a case where the High Court declined to act on the testimony of PW 8. In fact, High Court has observed in clear terms that there is no reason to reject the evidence of PW 8, though High Court was not inclined to base a conviction on his evidence without corroboration from other materials. If the High Court thought it unsafe to convict any of the accused on the uncorroborated evidence of a single eye-witness it does not mean that the evidence of the witness stands castigated. It is no stigma against the evidence of any eye-witness if the Court only wanted reassurance from yet other sources. The corroboration was what the court required as a matter of prudence and as a step of caution. The premise of the contention of the learned counsel that evidence of PW 8 has been stigmatised is, therefore, erroneous.

Another point upon which learned counsel harped heavily was the failure of the investigating officer to seize the torchlight which the eye-witnesses claimed to have flashed for witnessing the occurrence. We are unable to appreciate this argument. If the accused had used a torchlight or if the victim had a torchlight with him during the occurrence there would be much force in insisting that the investigating officer should have seized it as the same could be used as a material object during trial but a torchlight used by the witness to see the occurrence cannot be equated with the torchlight used by the victim or the assailants in the encounter for evidentiary purposes. Non seizure of such a torchlight cannot, therefore, be considered as a lapse on the part of any investigating officer, much less a ground for impairment of the testimony of the eye-witness concerned.

It was lastly contended that the weapons which the eye-witnesses identified in the hands of the appellants are totally incompatible with the injuries found on the dead body of the deceased. Apparently, those were sharp cutting weapons. One of them could have been a pointed and sharp weapon. All the injuries of the deceased were incised wounds and two of them had penetrated into the body and perforated some of the vital organs. The doctor who conducted the autopsy has said in evidence that the injuries which he noticed could have been caused with those weapons.

None of the points raised before us by the learned counsel for the appellants is capable of changing the conclusion reached by the High Court against the appellants. Accordingly, we dismiss the appeal.