

CASE NO.:
Appeal (crl.) 577-578 of 1995

PETITIONER:
STATE OF U.P.

RESPONDENT:
JAGDEO AND OTHERS

DATE OF JUDGMENT: 10/12/2002

BENCH:
S. RAJENDRA BABU & ARUN KUMAR.

JUDGMENT:

J U D G M E N T

ARUN KUMAR, J.

These appeals arise from a judgment of the High court dated 24th February, 1994 acquitting all the accused persons of the charge of committing murder of Ram Lachhan and Rajendra. As a matter of fact, ten persons, namely, Bhola, Lallan, Jagdeo, Sumer, Amardeo, Babban, Shrikishun, Jagdish, Deep Chaudhary and Sheoji were charged for offences under Sections 302/149/148/147 IPC for the murder of the said two persons. Out of the ten accused, two accused, namely, Jagdish and Deep Chaudhary were discharged under Section 227 of the Criminal Procedure Code while the remaining eight were tried. The trial court convicted all the accused persons. Accused Bhola, Lallan, Jagdeo, Sumer, Amar Deo, Babban, Shrikishun and Sheoji were each sentenced by the trial court to undergo imprisonment for life under Sections 302/147 IPC. They were further sentenced to undergo rigorous imprisonment for five years each under Section 307 read with Section 149 IPC. Accused Bhola, Lallan, Amardep, Babban and Sheoji were sentenced to undergo rigorous imprisonment for two years each under Section 148 IPC and accused Jagdeo, Sumer and Srikishun were sentenced to undergo rigorous imprisonment for one year each under Section 147 IPC. All the sentences of the accused persons were directed by the Sessions Court to run concurrently.

According to the prosecution case, the accused persons formed an unlawful assembly on 10th July, 1978 at about 9.00 p.m. at the tube well of P.W.1 Ramraj in village Amghat, Police Station Bansdih Road with the common object of murdering family members of Ramraj. Accused Bhola and Lallan were said to be armed with guns, accused Babban and Sheoji were armed with revolvers while Amardeo had spear. Rest of the accused had lathis with them. In furtherance of the common object of the unlawful assembly, Ram Lachhan father of Ramraj P.W.1 and Rajendra son of P.W.4 (Sudama) were murdered. Sudama P.W.4 also received gun-shot injuries. Deceased Ram Lachhan alongwith his four sons P.W.1 Ramraj, P.W.4 Sudama, Sudarshan and Ram Nath was residing in a house in village Amghat. The house of Ram Lachhan was surrounded on three sides by the houses of the accused persons. The house of accused Lallan and Jagdeo adjoins the court yard of the house of the deceased Ram Lachhan towards the east. The cause of trouble between the accused persons and the family of the victim is said to be that some of the accused were extending their houses so as to encroach on the court yard of Ram Lachhan deceased. Members of the family of Ram Lachhan were objecting to

this. About 15 days before the incident, a quarrel had taken place between the families on this score. As a result of this, the efforts of Lallan and Jagdeo to encroach towards the house of the deceased could not fructify. Gangadhari, brother of accused Bhola was arrested in some other matter. However, the accused had the feeling that he had been arrested on account of the dispute between the two families referred to above. At the time of arrest of Gangadhari, he and his brother Bhola had threatened the family of the deceased to take revenge.

On the night of 10th July, 1978 at about 9.00 p.m., P.W.1 Ramraj and his brother Sudarshan and Ram Nath were sleeping on the roof of the tube well about three furlongs away from their house. Deceased Ram Lachhan and Rajendra alongwith P.W.4 Sudama father of Rajendra were also lying on cots in the open space towards the east of the tube well room. There were three electric bulbs fixed at the tube well and in the adjoining court yard. The bulbs were of 100 watts strength and were lightened at the time of incident. All the accused persons came armed as mentioned earlier. They asked as to where P.W.1 Ramraj was. Bhola remarked that these persons had got his brother arrested for which he would teach them a lesson. Sudama replied back that they had no hand in the arrest of Bhola's brother Gangadhari. However, Bhola exhorted the other accused to kill the persons of victim's family and see that none of them escaped. Thereupon, the accused started firing with their fire arms injuring Rajendra, Sudama and Ram Lachhan. Hearing noise of gun fire, P.W. 1 Ramraj and his two brothers silently crept down the roof of the tube well. The noise attracted P.W.2 Firangi from the neighbourhood who came with lathi and torch. He saw the incident and raised an alarm. The accused thereupon ran away towards the south-west corner. P.W. 1 Ramraj and P.W.2 Firangi came near the injured. Ram Lachhan was already dead. Rajendra also died a few moments later. Sudama was lying on the ground in a seriously injured condition. P.W.1 prepared written report and signed the same. He arranged a cot for Sudama and sent Sudama to Bansdih Road Police Station with Sudarshan. The written report reached the police station at 10.15 p.m. Formal FIR was drawn on the basis of the written report and was registered. The Investigating Officer tried to record the statement of Sudama in which he succeeded only partly. Sudama was thereafter sent to hospital in a jeep. The Investigating Officer came to the spot at 11.00 p.m. and took the statement of Ramraj P.W.1. The dead bodies were sent for post-mortem. The statement of P.W.2 Firangi was also recorded. The Investigating Officer inspected the spot and prepared the site plan. He collected blood from the spot. He found pellets and bullets at the spot and collected them. Memos were prepared with respect to all these. During the course of investigation, the electric bulbs were found to be in working condition. The accused persons were untraceable. Accused Bhola was arrested next day while other accused could not be arrested immediately. Ultimately, all the accused except Sheoji surrendered in court. They were charge sheeted. Sheoji was declared as an absconder. During night at about 11.30 p.m., Sudama P.W.4 was examined by the Investigating Officer. Five injuries of serious nature were found on his body. The injuries were fresh. The injury report is Ex. Ka.2. The doctor gave the opinion that these injuries could have been caused on the same night at about 9.00 p.m. According to the doctor, the condition of the injured was precarious. The injured was sent to Varanasi for treatment. Doctor S.R. Sanyal Medical Superintendent, District Hospital, Ballia P.W.9 performed the autopsy on Rajendra and Ram Lachhan on 11th July, 1978. The post-mortem reports gave details of injuries found on the dead bodies of Ram Lachhan and Rajendra. It is a long list which need not be reproduced. The injuries were found sufficient to cause death.

On appreciation of the entire evidence including medical evidence and the evidence of the eye-witnesses, the Sessions Court found that the case of the prosecution stood established and the eight accused persons were fully responsible for commission of the crime. The FIR had been promptly lodged and the contents of the FIR tallied with the facts found in the course of the investigation. There could be no doubt about presence of the eye-witnesses at the time of occurrence. The main eye-witnesses, that is, Ramraj P.W.1 and Sudama- P.W.4 belonged to the same family. Ram Lachhan deceased is the father of Ramraj P.W.1, while Rajendra deceased is the son of Sudama P.W.4. Sudama himself received gun shot injuries during the incident for which he had to be hospitalised for a long time. The presence of the eye-witnesses was therefore fully established. The evidence of the eye-witnesses is consistent and is natural. Therefore, there is no reason to doubt the same. The defence raised flimsy arguments in a bid to dislodge the prosecution case. It was argued :

1. Investigation was faulty.
2. The Incident is said to have taken place at 9.00 p.m. in the night. There was no sufficient light at that time. Therefore the eye-witnesses could not have seen the occurrence.
3. Doubt has been thrown about the presence of the eye-witnesses.

The Sessions Court in its well considered judgment found these arguments flimsy and untenable and rejected the same. However, the High Court in a highly cursory and cavalier fashion, totally ignoring the evidence of eye-witnesses, set aside all the conviction merely on the ground that investigation was faulty pointing out some minor discrepancies in the evidence.

We fail to appreciate the manner in which the High Court has dealt with such a serious case like the present one where at least eight accused persons formed an unlawful assembly and armed with lithal weapons committed the murder of two persons belonging to same family and seriously injured a third person. The motive of the crime is also explained on the record which is land dispute between the family of the victim and the accused persons. The houses of the accused persons surround the house of the victim's family. The accused persons were gradually trying to extend their houses so as to encroach on the house and court yard belonging to the victims' family to which the latter objected. This was the cause of friction between the two groups which resulted in quarrels and ultimately led to the ghastly crime.

There are three eye-witnesses of the incident, that is, P.W.1 Ramraj son of the deceased Ram Lachhan, P.W.2 Firangi and P.W.4 Sudama, who is an injured witness and whose son Rajendra is the other deceased. The High Court doubted the evidence of these eye-witnesses merely on the ground that they had motive in supporting the prosecution case. Legally speaking, we are unable to accept this reasoning. Most of the times eye-witnesses happen to be family members or close associates because unless a crime is committed in a public place, strangers are not likely to be present at the time of occurrence. Ultimately, eye-witnesses have to be persons who have reason to be present on the scene of occurrence because they happen either to be friends or family members of the victim. The law is long settled that for the mere reason that an eye-witness can be said to be an interested witness, his/her testimony need not be rejected. For the interest which an eye-witness may have, the court can while considering his or her evidence exercise caution and give a reasonable discount, if required. But this surely cannot be reason to ignore the evidence of eye-witnesses. The High Court was clearly in error in not considering the evidence of eye-witnesses at all in the present case for the reason that they were interested witnesses. As seen earlier, one of the eye-witnesses in an injured person who received injuries in the incident

itself. He was rather seriously injured. If he was not present at the time of occurrence, wherefrom he received the injuries, would be an obvious question. In fact, P.W.4 is also the father of the deceased Rajendra. It is common in villages that male members of a family sleep together in the open during summer season. Sleeping near the tube-well is understandable because that would lend some coolness to the atmosphere. The High Court totally ignored the other aspect of the evidence of the eye-witnesses. That is, the evidence was consistent and the version of the witnesses tallied with each other. In our view, there was no reason to discard the evidence of the eye-witnesses. This evidence is clinching and it clearly implicates the accused persons. There is no reason to doubt the veracity of the evidence of at least P.W.1 and P.W.4 and that is sufficient to convict the accused persons.

Coming to the aspect of the investigation being allegedly faulty, we would like to say that we do not agree with the view taken by the High Court. We would rather like to say that assuming the investigation was faulty, for that reason alone the accused persons cannot be let off or acquitted. For the fault of the prosecution, the perpetrators of such a ghastly crime cannot be allowed to go scot free. All the accused persons were armed with deadly weapons and they attacked the members of the victims' family who were totally unarmed and were sleeping at night in the open. The High Court has expressed a doubt about the FIR being lodged at the time alleged by the prosecution and the manner in which it is so stated by the prosecution. The question however is: is it sufficient to acquit all the persons? The trial court had discussed all the elements leading to the brutal murder in this case and found them against the accused persons. Unfortunately, the High Court remained on the periphery and never attempted to grapple with the substance of the evidence on record. This peripheral approach of the High Court led to the impugned judgment of acquittal being passed. In the presence of such a strong evidence on record implicating the accused persons, things like alleged improper recording of time of lodging of FIR are not sufficient to dislodge the verdict of convictions passed by the Sessions Court. In our considered view the evidence of the eye-witnesses in the present case completely proves the prosecution case. The doubt thrown by the High Court on the presence of the eye-witnesses at the time of occurrence is totally unacceptable. The impugned judgment of the High Court whereby all the accused persons have been acquitted is hereby set aside. These appeals are allowed and the judgment of the Sessions Court is hereby restored. The accused persons shall be taken into custody to serve the remaining sentence as imposed on each of them by the Sessions Court.