

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1266 OF 2009

KAMTA YADAV & ORS.

.....APPELLANT(S)

VERSUS

STATE OF BIHAR

.....RESPONDENT(S)

J U D G M E N T

A.K. SIKRI, J.

Five appellants, who were tried for offence under Section 302 read with Section 149 of the Indian Penal Code and convicted by the trial court, have approached this Court after their conviction was upheld by the High Court as well vide impugned judgment dated September 28, 2007. During the pendency of this appeal, one of the accused persons, namely Hiralal Yadav, expired and the appeal *qua* him stood abated. The validity of the judgment of the High Court in respect of the remaining four appellants is the subject matter of this appeal.

- 2) To trace out the prosecution case in brief, it may be mentioned that on November 16, 1991, at about 9:00 am, Ajodhaya Yadav, armed with a *lathi*, and other four appellants armed with *bhala*, were ploughing a field belonging to the informant while Kashinath Yadav exhorted others to kill the informant Ramji Yadav. Hiralal Yadav caused a bleeding injury on the head of the informant with a *bhala*. The informant in order to save his life shouted on which his uncle Ramayan Yadav (deceased), his father Dharichhan Yadav (PW-1) and his brother Bir Bahadur Yadav (PW-3), came in order to save him. Hiralal Yadav then caused a *bhala* injury on the chest and abdomen of the deceased who fell down and became unconscious. PW-1 also fell down as he was assaulted with *bhala* by Kashinath Yadav and Kamta Yadav causing injuries on his abdomen, back of the body and hand. PW-3 was also assaulted by Ajodhaya Yadav with *lathi* and also by Bhim Yadav with *bhala* on head causing bleeding injury. On the shouts raised by the informant and his party, Dudhnath Yadav (PW-2) and Jagdish Yadav came and saved them. Other persons from the village also came and thereafter the accused persons stopped assaulting and fled away. The reason for the occurrence was said to be a dispute over the land and litigation in the past which had resulted in filing of a court case also.

- 3) First Information Report (FIR) was registered after recording *fardbayan* (Exhibit – 4) and this FIR was proved during trial as Exhibit – 5. This FIR shows that the police station was situated very close to the place of occurrence, i.e. about 300 yards on the west. It further shows that formally Section 302 was not added by the Investigating Officer (PW-9). By way of correction in the FIR, this provision was added after obtaining permission for the same from the Court of the Magistrate on November 16, 1991 itself by informing that uncle of the informant, i.e. Ramayan Yadav, died on way to Bihia Hospital. The Investigating Officer inspected the place of occurrence; prepared Inquest Report (Exhibit – 3); sent the body for postmortem examination and obtained postmortem report; recorded the statement of witnesses, including further statement of the informant; and submitted charge-sheet for the offence under Section 302 and other provisions of the IPC. After taking cognizance, the Magistrate committed the case to the Court of Sessions where charges were framed for various offences, including Section 302 IPC. The appellants pleaded 'Not Guilty' to the charges. After the trial, accused persons were found guilty by the trial court for offence under Section 302 IPC and were awarded imprisonment for life.

- 4) The judgments of the Courts below reflect that the prosecution, in order to prove its case, examined nine witnesses. PW-1, Dharichhan Yadav, is the father of the informant. He also sustained injuries and claimed to be an eye witness to the occurrence, as mentioned in the FIR itself. He has fully supported the prosecution case. PW-2, Dudhnath Yadav, is the brother of PW-1, who came on the shouts raised, and has claimed to have seen the occurrence. PW-3, Bir Bahadur Yadav, is the son of the deceased Ramayan Yadav. Like PW-1, he is also an injured eye witness to the incident. He has fully supported the prosecution case. Sonia Devi (PW-4) and Munesari Devi (PW-5) are mother and wife respectively of the informant. PW-4 has claimed to have gone to the place of occurrence on hearing the shouts and also claimed to have seen the occurrence, whereas PW-5 stated that she was on the roof of her house and from there she saw the entire occurrence as the place of incident was close to her house. Ramji Yadav (PW-6) is the informant, who also suffered injuries and as claimed by him in the *fardbayan* as well as in his deposition in the Court, he saw the entire occurrence from beginning till end. Dr. Rajesh Kumar Singh (PW-7) held the autopsy on the dead body of the deceased. He has proved the

postmortem examination report as Exhibit – 1. According to him, the postmortem examination was held on November 17, 1991 at 8:00 am. He found the following eight injuries on the dead body of the deceased:

“(i) Incised wound with clean cut edges 1” x 2/10”x whole thickness of the pina of right ear.

(ii) Incised wound 1½” x ½” x 2/10” on the upper portion of the right arm.

(iii) Incised wound 1” x 2/10” x 2/10” on the back of the scalp left side.

(iv) Incised wound 1/10” x 1/10” x 1/10” on the front of right shoulder.

(v) Incised wound 1” x 1/2”x abdominal cavity deep on the right side of abdomen upper portion.

(vi) Swelling 2” x 2” on the left side of back of scalp.

(vii) Penetrating wound with cut edges 1” x ½”x chest cavity deep on the right side of chest. 2½” away from midline almost in the middle.

(viii) Incised wound ¾” x 1/10”x skin deep on the middle finger of right hand.”

In his opinion, all the injuries were ante mortem caused by sharp cutting pointed instruments and the time elapsed since death was within 36 hours of postmortem examination. He found the cause of death to be injury No. (vii), a penetrating wound 1” x ½” chest cavity deep on the right side of chest. He has further opined that the injuries could be caused by *bhala*. However, injury No. (vi)

could be caused by *lathi* also. The stomach of the deceased contained undigested food material and the bladder was empty.

- 5) PW-8 examined the injuries of PW-1, PW-3 and PW-6 on November 16, 1991 at Bihia Block Hospital between 12:30 pm to 1:15 pm. He found six injuries on the person of PW-1. He found all the injuries simple in nature but injury No.2 and 3 were penetrating wounds on chest, right side of back and lower part of right arm above elbow joint. On PW-3, he found two injuries, one was incised wound over front portion of head 3" x ½" skin deep and the other was penetrating wound on the right side of abdomen ½" x ¼" x ¾". The injuries were found to be simple. On PW-6, the informant, he found three injuries. One was a lacerated wound on the left side of head ¼" x ¼" x scalp deep upto bone, the second injury was also lacerated wound on left side near middle of head 1" x ¼" x 1/6". The third injury was a swelling 3" x 2" on left buttock. The injuries were simple. Some of the injuries on PW-1 and PW-3 were by sharp weapons like *bhala*, but in case of PW-6, the doctor opined that the injuries were by hard and blunt substance like *lathi*. The age of injuries in respect of all the three injured was found to be within six hours. The injury reports of the three injured were proved by PW-8 as Exhibits – 2, 2/1 and 2/2 respectively.

- 6) The investigation was done by Surajdeo Ram (PW-9), Investigating Officer, as pointed out earlier. During inspection, he found the place of occurrence to be a field belonging to the informant in which potato crop had already been planted. He found that potato crop marks of three rounds of ploughing were visible. He also seized blood stained earth from the place of occurrence. He has stated in his cross-examination that report of the occurrence was first received by him from Chowkidar and on that basis a Station Diary Entry was made but he did not record the statement of Chowkidar. He has admitted that he has written the Case Diary in a systematic manner, as the events unfolded, and the *fardbayan* is mentioned in paragraph 1 of the Case Diary. He has also stated that after the *fardbayan*, further statement of the informant was recorded and the place of occurrence was inspected and only thereafter formal FIR was instituted. According to his statement in the cross-examination, in respect of the earlier statements made by PWs 1, 2 and 3 under Section 161 of the Code of Criminal Procedure, 1973, there was virtually no difference in what they had stated regarding the occurrence in Court. As far as PW-4 is concerned, she has deposed that she had not told him in clear terms, in her earlier statement, as to

which of the accused persons were having *bhala* and who was ploughing and that Hiralal had assaulted on head with *bhala* and the deceased had received injury on head with *bhala*. She had also not stated on what part her husband (PW-1) had received injuries by *bhala* and that the accused persons fled away on arrival of Jagdish and Dudhnath Yadav. No contradiction was sought in respect of the statement of PW-5.

- 7) Various contentions were raised before the High Court with an endeavour to find loopholes in the judgment of the trial court regarding conviction of the appellants. It was argued that the time of offence had not been proved by the prosecution beyond reasonable doubt because the Doctor had opined, while conducting the postmortem examination on November 17, 1991 at 8:00 am, that the death of the deceased appeared within 36 hours, whereas according to the prosecution case, death had taken place within 23 hours. It was also argued that the nature of injuries found on the deceased and injured persons did not support the prosecution case. Another submission was that though the Investigating Officer (PW-9) had admitted in his cross-examination that information of the occurrence was first given by a Chowkidar, which was incorporated in his Station Diary

Entry as well, FIR was not registered on the basis of said information and that Chowkidar was not even produced as a prosecution witness.

- 8) All the aforesaid arguments have been rejected by the High Court as without any substance. It is not necessary to reproduce the discussion of the High Court on these arguments as before us the learned counsel pressed only last of the aforesaid arguments, in addition to couple of other submissions.
- 9) In the first instance, the learned counsel drew our attention to the FIR and referred to the following column regarding the place of incident:

Place of incident & distance from the Police Station & Side
2.
Villate Tiar, about 300 sq. yds. West from Police Station Circle No. 4

It was submitted that when the place of incident was 300 sq. yds. away, it was impossible for the witnesses to see the occurrence clearly and identify the accused persons.

This argument appears to be an argument of desperation as the place of occurrence is shown to be at a distance of 300 sq. yds. from the Police Station in West direction. It is nowhere

stated that those who were eye witnesses to the incident had seen the occurrence from a distance of 300 sq. yds. When confronted with this position, the learned counsel accepted the inaccuracy of his argument.

- 10) It was further argued that no independent witnesses were examined in the present case. However, in the cross-examination or otherwise it has not even been brought out by the defence that there were other persons at the scene of occurrence who were independent persons. The learned counsel also could not point out as to how, in these circumstances, non-examination of independent persons acted to the prejudice of the appellants.
- 11) We have already narrated the deposition of the witnesses in brief. There are six eye witnesses and three of them are injured eye witnesses, which is a weighty factor to show the actual presence of these witnesses at the scene of occurrence. Moreover, the credibility and trustworthiness of all these eye witnesses could not be shaken by the accused persons. Once it is found that these witnesses, who are eye witnesses, were present and they have truthfully narrated the incidence as it happened and their depositions are worth of credence, conviction can be based on their testimonies even if they were related to the deceased. The

only requirement, while scrutinising the interested witnesses, is to examine their depositions with greater caution and deeper scrutiny is needed, which exercise has been done by both the courts below. In fact, when the learned counsel for the appellants was confronted with the aforesaid factual and legal position, he could not even provide any answer to the same.

- 12) Coming to the last submission that Chowkidar, who was the first informant, was not examined by the prosecution, it would be apt to reproduce the following discussion in the impugned judgment of the High Court, with which we fully agree:

“10...It is worth pointing out that in cross examining the IO the defence has not elicited either the number and time of the station diary entry nor the time when the choukidar allegedly gave some information whose substance was entered in some station diary entry. The name of the Choukidar has also not been elicited. This was an extraction or revelation of a fact which had never been put before the material witnesses like the informant and the injured witnesses who had been examined before the IO. Even the limited information given by the IO is cross examination is insufficient and it was not possible for the prosecution to produce the alleged station diary entry whose number, date and time was not elicited from the IO. It was also not possible to examine the Choukidar who had allegedly given the information because his name was also not elicited. The prosecution is thus being blamed for suppressing the contentions of a station diary entry whose details are absolutely vague and missing and the defence never requisitioned any station diary entry to be produced during trial. Further, the IO has stated in the same paragraph that Fardbeyan of the informant is mentioned in the

13) We, thus, do not find any merit in this appeal, which is accordingly dismissed.

.....J.
(N.V. RAMANA)