

Awadhi Yadav and Another

Vs

The State of Bihar

Criminal Appeal No. 128 of 1967

(K. S. Hegde, I. D. Dua JJ)

17.08.1970

JUDGMENT

HEGDE, J. -

1. The appellants Awadhi Yadav and Bhulla Yadav are two of the eleven persons tried before the Additional Sessions Judge, Darbhanga. All of them were charged with offences under Sections 302/34, I.P.C. In addition, the appellants as well as A-2 to 4 and A-6 to 8 were also charged with offences under Sections 201/511, I.P.C. The learned Trial Judge convicted accused 1 to 8 both under Sections 302/34 as well as Sections 201/511, I.P.C. Under the former section, he sentenced them to suffer imprisonment for life. He did not impose separate sentence under Sections 201/511, I.P.C. In appeal the High Court of Patna affirmed the convictions of the appellants both under Sections 302/34 as well as Sections 201/511, I.P.C. The other accused were acquitted of the charge under Sections 302/34, I.P.C. For the offence under Sections 201/511, I.P.C. they were sentenced to undergo rigorous imprisonment for 3 1/2 years. Only the appellants have appealed against the decision of the Appellate Court. This Court while granting special leave to appeal to this Court directed that the appeal should be confined to the question of conviction under Section 302 read with Section 34, I.P.C. Therefore, the appellants are precluded from canvassing the correctness of their conviction under Sections 201/511, I.P.C. Hence no arguments were advanced before us on that question.

2. The prosecution case is that the appellants and some others, as a result of bitter enmity between some of the appellants and the deceased, Kishunlal Yadav joined together and murdered him on March 26, 1963 in the village of Basudeopur Tola Arnama and thereafter carried away the dead body of Kishunlal Yadav with the intention of screening the offenders from legal punishment.

3. The case against the appellants in respect of the charge under Sections 302/34, rests on circumstantial evidence. No one has witnessed the murder. That part of the case rests entirely on circumstantial evidence. The High Court has held that the circumstances established are not sufficient to convict the accused persons other than the appellants for offence under Sections 302/34, I.P.C. The question is whether the High Court was justified in holding that the evidence is sufficient to convict the appellants under that charge. Before a person can be convicted on the strength of circumstantial evidence, the circumstances in question must be satisfactorily established and the proved circumstances must bring home the offence to the accused beyond reasonable doubt. If those circumstances or some of them can be explained by any other reasonable hypothesis then the accused must have the benefit of that hypothesis. But in assessing the evidence imaginary possibilities have no place. What is to be considered are ordinary human probabilities.

4. We shall now examine the evidence against the appellants to see what all are the circumstances put forward against them; whether those circumstances are established and further whether the proved circumstances bring home the guilt to the appellants beyond all reasonable doubt.

5. There is no dispute that there was bitter enmity between the appellants and the deceased. This part of the case is admitted. Hence we shall say no more about it.

6. It is also established beyond dispute that the deceased died as a result of injuries inflicted on him by sharp cutting weapons like Bhallas and Parsas. This circumstance is satisfactorily proved by the medical evidence adduced in the case.

7. The appellants and some others were seen carrying the dead body of the deceased at about 8 p.m. P.W. 6 saw them and raised a hue and cry. Then they dropped the dead body and ran away from that place. This part of the prosecution evidence is the main basis for the conviction of the appellants and others under Sections 201/511, I.P.C. That evidence was not challenged nor could it have been challenged in view of the order made by this Court at the time of granting special leave.

8. The appellants have given no explanation as to how they happened to carry the dead body of the deceased.

9. Three of the witnesses namely P. Ws. 4, 5 and 6 who saw the appellants and others carrying the dead body of the deceased have spoken to the fact that at the time they were carrying the dead body of the deceased, the 1st appellant had a Parsa and the second had a Bhalla in his hand. They had given consistent evidence on this point. Their evidence in this regard was not even challenged in cross-examination. As seen earlier all the injuries found on the person of the deceased, according to the medical evidence, could have been caused by Paras and Bhallas. It was urged on behalf of the appellants that we should not accept the evidence of P. Ws. 4 to 6 when they spoke about the appellants having Paras and Bhallas on two grounds namely : (1) that the said fact was not mentioned in the First Information Report and (2) that the witnesses in question had not stated in their depositions that those weapons were stained with blood. So far as the omission in the First Information Report is concerned, it must be remembered that the information was not given by any one of those who had witnessed the occurrence. It was given by a relative of the deceased on the basis of the information given by P.W. 6. Hence that omission has no significance. There is nothing surprising if those witnesses were not able to see any blood-stains on the weapons in question. As mentioned earlier those witnesses saw the appellants and others carrying the dead body at about 8 p.m. On the other hand the appellants have offered no explanation how they happened to carry the weapons mentioned above. In this context it may be mentioned that the prosecution evidence establishes that the deceased must have been murdered shortly before the witnesses saw the appellants and others carrying the dead body.

10. We are satisfied that the circumstances mentioned above have been satisfactorily proved and those circumstances establish beyond reasonable doubt that the appellants were responsible for the murder of the deceased.

11. In the result this appeal fails and the same is dismissed.

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