

Jag Narain Dusadh & Anr.

Vs

The State of Bihar

(G. T. Nanavati, V. N. Khare JJ)

27.11.1997

JUDGMENT

NANAVATI, J.

1. Criminal Appeal No.422/89 has been filed by original accused Nos. 2 and 8 and Criminal Appeal No.423/89 is filed by accused Nos. 2 to 4 and 6 to 8. The accused No.5 had also applied to this Court for leave to appeal but his SLP was dismissed. The original accused No.1 has not filed any appeal against his conviction. Accused No.8 is an appellant in both the appeals.

2 All these 9 accused were tried along with others for causing death of Nanahaku Pandey in prosecution of their common object. The trial court acquitted accused Nos. 10 to 15 and convicted accused Nos. 1 to 9. All of them except accused No.8 were convicted under Section 148 IPC and accused No.8 was convicted under Section 147 IPC. All of them were convicted under Section 302/149 IPC. Accused No.1 Jwala and accused No.5 Hardeo were also convicted under Section 302 read with Section 34 IPC. Accused Nos.1, 2, 3, 5, 6 and 7 were also convicted under Section 27 of the Arms Act. 3 In order to prove its case prosecution had relied upon the evidence of 4 eye witnesses. P.Ws.1, 2, 3 and 4. P.W.1 was the brother of the deceased, P.W. 2 was the father of the deceased and P.Ws 3 and 4 were the near relatives. P.W. 3 was not believed by the trial court and relying upon the evidence of P.Ws 1, 2 and 4 the trial court convicted the accused as stated above. Accused Nos. 9 to 14 who have been referred to in the judgment as Pandey were given benefit of doubt as they were shown as accused on the basis of the only allegation that they were helping and instigating the harijans, accused Nos. 1 to 9, who had on the date of the incident gone to the field of the informant and the deceased and committed the said offence. As there was no evidence to show any participation by them in commission of the offence they were given benefit of doubt. 4. The High Court on reappraisal of evidence of P.Ws 1, 2 and 4 held that their evidence is consistent and does not suffer from any infirmity at all. The said 3 witnesses were in their own field along with the deceased and they were cutting grass when the incident took place. Their evidence clearly establishes the fact that the accused went to that field and told the complainant that they should leave the land as it really belongs to Ambika, accused No.3. On being so told, the deceased replied by saying that the land belonged to them and that this dispute was already settled by the Panch and there was a Sulahanama in that behalf. It was at that time that accused Jwala and accused Hardeo fired shots from their guns and injured Nanahaku. 5 Both the courts below have believed P.Ws. 1, 2 and 4. What is contended by the learned counsel for the appellant is that as the courts have disbelieved their evidence with respect to the other accused, their evidence could not have formed the basis for the conviction of the appellants. We do not find any substance in this contention. As stated earlier the allegation against those accused was that they had colluded with the harijans, that is, accused Nos. 1 to 9 and in pursuance of that collusion the said offence was committed. But there was no evidence to prove that they had gone to the field where the incident had taken place. No other contention was raised by the learned counsel for the appellant As we do not find any substance

in these appeals, they are dismissed The appellants are ordered to surrender to custody to serve out the remaining part of their sentence.