

Jagdish Yadav

Vs

State of Bihar

Criminal Appeal No. 637 of 1998

(G. T. Nanavati, N. Santosh Hegde JJ)

27.01.1999

JUDGMENT

G.T. Nanavati J.

1. The appellant has been convicted under Section 396 of the Indian Penal Code and sentenced to death. He has filed this appeal against the order of sentence only in view of the limited leave by this Court.

2. What the prosecution has been able to prove is that during the night between first and second of June, 1989, the appellant along with 30 to 40 other dacoits committed dacoity in the house of deceased Dhaneshwar, that the dacoits killed Dhaneshwar, Surendra, Awadhesh, Kharha and Kanhai and also set on fire some of the articles belonging to the family of the deceased. In all 24 accused were put up for trial out of whose 13 were acquitted by the Trial Court. The other accused were convicted under Section 396 and out of them only appellant Jagdish was sentenced to death. All others were awarded sentence of life imprisonment. The High Court agreed with the findings recorded by the Trial Court after re-appreciating the evidence and, dismissed the appeals and accepted the death reference. While confirming the death sentence the High Court observed as under :-

"In the case before me, it has already been noticed that there are so many as six eye witnesses, including the informant, who have categorically stated that this appellant shot at two innocent and unarmed persons from a close range by rifle with a full determination to commit their murder ..... For the reasons stated above, I have no option but to confirm the death penalty against appellant Jagdish Yadav."

3. It was contended by the learned counsel for the appellant that the High Court wrongly proceeded on the basis that as found by the Trial Court appellant Jagdish had individually killed two innocent persons. That was not the finding recorded by the Trial Court and, therefore, he submitted that confirmation of death sentence by the High Court stands vitiated. Learned counsel also submitted that there was really no special circumstances which differentiated the case of the appellant from that of the other accused who have been awarded only life imprisonment. He lastly submitted that this case cannot be regarded as a rarest of rare case and, therefore, the extreme penalty of death deserves to be set aside.

4. It is true that the Trial court after appreciating the evidence held that it was not proper to hold any individual accused guilty for the murders of Surendra, Awadhesh, Kharha and Kanhai. What the witnesses had deposed regarding which accused had killed whom was based upon what Mithilesh

had told them. Mithilesh, however, was not examined as a witness in the Court as he died during the pendency of the trial. The trial Court, therefore, did not hold appellant Jagdish individually responsible for the death of Awadhesh. Therefore, the High Court was not right in proceeding on the basis that appellant Jagdish had killed two innocent persons. This is not a case where on re-appreciation of the evidence the High Court has recorded a difference finding holding that appellant Jagdish had killed two innocent persons. Therefore, it has to be held that the judgment of the High Court to that extent stands vitiated.

5. Another reasons given by the Trial Court for awarding higher punishment to the appellant is that the appellant was the leader of the dacoits. We have gone through the evidence and we do not find anything on record which would indicate that the appellant was the leader. Shri B.B. Singh, learned counsel for the State also fairly conceded that no such evidence was led by the prosecution. He, however, submitted that there was a long standing enmity between the family of the deceased and the accused and that various cases were filed against each other and they were pending in various Courts. But that cannot lead to an inference that the appellant was the leader of the dacoits. The courts below were, therefore, not justified in differentiating the case of the appellant from that of other accused.

6. Only other circumstances that now remains to be considered is that he had killed Dhaneshwar by firing a shot at him. We have gone through the evidence of P.W.2, 3, 4 and 5 who have deposed about the same. They have stated that Jagdish had fired the shot which killed Dhaneshwar. The evidence as to why Jagdish fired that shot and under which circumstances that shot was fired is not consistent. Their versions differ. Though it stands proved that the appellant killed Dhaneshwar it cannot be said that this case is a rarest of rare case. The facts and circumstances of the case do not justify such an inference. We, therefore, allow this appeal, set aside the sentence of death imposed upon the appellant and reduce the death sentence to imprisonment for life. The appeal is allowed to that extent only.