

SUPREME COURT OF INDIA

Rampukar Yadav

Vs.

State of Bihar

(G.T. Nanavati and S.N. Phukan JJ.)

08.02.2000

JUDGMENT

G.T. NANAVATI, J.

1. Both the appellants have been convicted under Section 302 and 302 read with 149 IPC for causing death of Madhusudan Choudhary on 14.10.1993 at 7.45 a.m.

2. In order to prove its case the prosecution had examined as many as six eye witnesses: Kishore Kumar Choudhary (P.W. 1), Bharat Choudhary (P.W. 2), Krishna Kumar Choudhary (P.W. 3), Rajendra Choudhary (P.W. 4), Kishav Kumar Choudhary (P.W. 5) and Suraj Narain Choudhary (P.W. 6). The accused had led the evidence of three witnesses in support of their defence that there were only five assailants of the deceased and they were all chased by the village people and killed at a place far from the place where Madhusudan was killed and that the appellants were falsely involved by the prosecution witnesses because their relations were inimical with them.

3. The learned trial Judge disbelieved the evidence of defence witness Amarnath Singh (D.W. 3) who was the Police Station In charge of Bakhtiyarpur Police Station and who investigated the offence relating to the murders of those five assailants as his evidence was contradicted by his own case diary (Ext. 7) which had disclosed that about 10-12 persons had gone to assault Madhusudan.

4. The evidence of Sudama Mistry (D.W. 2) was disbelieved by the trial court because he had admitted in cross examination that after hearing the sound of gunfire he got frightened and, therefore, he had closed his shop and concealed himself in the house. Only when the mob had gone away he had come out. The trial court held that in view of his admission it was doubtful if D.W. 2 had really come out of his shop and seen any part of the incident.

5. The trial court disbelieved the evidence of Dr. Madan Mohan Prasad (D.W. 1) because his presence was not referred to by Sudama Mistry (D.W. 2) and also subsequently by Amarnath Singh (D.W. 3) when he had visited the place where Madhusudan was killed. The trial court disbelieved the defence witnesses and held that the prosecution has established its case beyond any reasonable doubt.

6. The High Court after re-appreciating the evidence of six eye-witnesses came to the conclusion that evidence of all the eye-witnesses except that of Bharat Choudhary (P.W. 2) is believable in spite of the fact that they are interested witnesses being relatives of the deceased. The High Court

confirmed the conviction of the accused.

7. What is contended by the learned Counsel for the appellant is that the evidence of the eye-witnesses ought not to have been believed as they are all related witnesses and their relations with the accused were inimical. The incident had taken place where Madhusudan was staying for sometime. It was not a public place. Therefore, at the time when the incident took place it was quite natural that only his relatives or the persons who were close to him were present along with him. All the witnesses have stated why they were present at the place of incident. Both the courts below have believed their evidence.

8. As regards the defence evidence we are of the opinion that good reasons have been given by the trial court and the High Court for disbelieving it.

9. Dr. Madan Mohan Prasad (D.W. 1), who claimed to be an eye-witness, was not cited as an eye-witness by the prosecution. It was suggested by the defence that he was not cited as an eye-witness because he had named only five persons as the assailants of deceased Madhusudan. That suggestion was denied by the investigating officer and he further stated that he was not cited as eye-witness as he had not identified the assailants.

10. The evidence of Dr. Madan Mohan Prasad also stands contradicted by his earlier version before the other investigating officer who had investigated the other case, wherein he had stated that 10-12 persons were the assailants of the deceased.

11. We do not find any infirmity in the judgments of the Courts below. No interference is called for and this appeal is, therefore, dismissed.