

State of U.P

v.

Itwari & Others

(Supreme Court Of India)

HON'BLE MR. JUSTICE HARJIT SINGH BEDI HON'BLE MR. JUSTICE C.K. PRASAD

State of U.P v. Itwari & Others

Criminal Appeal No. 1037 Of 2003 | 11-08-2010

1. We have heard the learned counsel for the parties very carefully. In this matter the Trial Court has recorded a conviction against the respondents for an offence punishable under Section 302 read with Section 34 of the IPC in the year of 1980 with respect to an incident of 18th March, 1979. The High Court in appeal in its judgment dated 29th January 2003 reversed the finding of the Trial Court and acquitted the accused. The State of U.P. is before us today after the grant of the special leave.

2. Mr. Pramod Swarup, the learned senior counsel has very vehemently argued that the judgment of the High Court was wrong in law and fact and the finding that there was no light at the place of the incident by which the witnesses could identify the accused was not based on the evidence as a light had been indicated in the site plan prepared contemporaneously. He has also pointed out that the motive, was a dispute between the deceased and some of the accused with respect to a sum of Rs.40/-, had been proved and this too was a corroborating circumstance. He has accordingly submitted that in the light of the categorical statements of the eye witnesses that the accused had caused the injury to the deceased and that too virtually in the middle of the village, the High court judgment was erroneous and needed to be reversed.

3. On the contrary Mr. Ratnakar Das, the learned counsel for the accused-respondent has submitted that the only role attributed to accused Shankar and Chunnu was that they had caught hold of the deceased so as to facilitate the attack by the other accused but even this fact had not been given by the witnesses in their police statements and their involvement was therefore in any case not made out.

4. We also notice that on the date of the incident Itwari and Chunnu were apparently juvenile. We also see from the findings of the High Court that the possibility that the accused may not have been properly identified as the presence of a light at the spot was uncertain, as several of the witnesses had not referred to the presence of a light. The High Court was also deeply influenced by the fact that there were several cases pending against Babu Lal deceased and that he could have been murdered by some unknown persons.

5. Mr. Pramod Swarup has further pointed out that there were a large number of injuries on the person of the deceased. Admittedly that is the position but the question is as to who had caused those injuries.

6. We are of the opinion that in the light of the findings of fact recorded by the High Court which cannot be said to be so palpably erroneous as to call for our intervention, we dismiss the appeal.