PETITIONER:
SIDDIQUE & ORS.

Vs.

RESPONDENT:
STATE OF U.P.

DATE OF JUDGMENT: 15/04/1999

BENCH:
D.P.Mkohapatra, S.S.M.Quadri

JUDGMENT:

Six appellants in this appeal challenge the judgment and order of the High Court of Judicature at Allahabad dismissing their appeal, Criminal Appeal No.1504 of 1980, on 23.12.1997 and confirming their conviction and sentence awarded by the Additional District & Sessions Judge - VII, Farrukhabad at Fatehgarh. The gravamen of the charge against the appellants is that on the intervening night of June 25th and 26th, 1979, the deceased Sayeed, his father Waheed Bux (PW 4), servants Lalla Rm (PW 2) and Shri Krishna (not examined) were sleeping in the mango grove of Rameshwar Dayal, the appellants -- A-1, A-4 and A-6 were armed with Lathi, A-2 and A-3 were armed with Kanta and A-4 was armed with knife - attacked Sayeed and caused injuries with the weapons they were carrying. When his father Waheed Bux (PW 4) tried to save him he was also given blows causing as many as a dozen injuries to him. When his servant Lalla Ram (PW 2), tried to intervene he was also beaten up causing simple injuries to him. Dr.Arjun Kumar (PW 3) who examined PWs 2 and 4 on the next day of the incident, found that two injuries inflicted on PW 2 were simple and were caused by blunt object and opined that three of the eleven injuries inflicted on PW 4 were caused by sharp edged weapon and rest were caused by blunt object. Dr.A.C.Goyal (PW 5) conducted autopsy on the dead body of Sayeed. He found as many as twelve injuries on the body of the deceased. He opined that all the injuries were ante-mortem and that he died due to shock and haemorrhage. On the basis of the evidence on record, the learned VIIth Additional District & Sessions Judge, Farrukhabad convicted the appellants under Sections 302 and 149 I.P.C. and sentencecd them to undergo life imprisonment and pay a fine of Rs.1,000 each. A-1, A-4 and A-6 were convicted under Sections 147 and 323 read with Section 149 I.P.C. and were sentenced to undergo rigorous imprisonment for one year and six months rigorous imprisonment under Sections 323/149 I.P.C. A-2, A-3 and A-5 were convicted under Section 148 I.P.C. and Section 324/149 I.P.C. and were sentenced to undergo rigorous imprisonment for two years under Section 148 I.P.C. and one years rigorous imprisonment under Section 324/149 I.P.C. All the sentences were directed to run concurrently. Against the said judgment of the learned Trial Judge, the appellants had preferred an appeal before the High Court of Allahabad. The High Court having considered the depositions of the injured eye witnesses PWs 2 and 4 and the statement of the complainant, PW 1, recorded the findings that PWs 4 and 2

were fully corroborated by medical evidence and by no stretch of imagination presence of those witnesses would be doubted. The High Court also held that the statement of Dulhey Miyan (PW 1), who was the brother of the deceased and had come running from the grove of Brij Bahadur, which was at a distance of 300 yards from the scene of occurrence was quite natural and probable and was rightly believed by the Trial Court. The High Court also noted that PW 1 had taken the injured witnesses, PWs 2 and 4 in a tonga to the Police Station which was about two miles from the place of occurrence and that on their way they got the complaint drafted by Ramesh and lodged the FIR promptly. In that view of the matter the High Court has confirmed the conviction and sentences awarded to the appellants by the Trial Court. Mr.Salman Khurshid, the learned senior counsel appearing for the appellants, laid stress on the question of identity of the appellants. He argued that admittedly it was a dark night and according to the prosecution the appellants were identified with the help of torch light but the story of the witnesses having torches is highly doubtful. He submitted that no torch was carried by PW 1 to the Police Station and that the torch of PW 4 was admitted to be not in working condition so the existence of the only source of light to identify the appellants, not having been proved the case of the prosecution ought to have been rejected by the Trial Court as well as by the High Court. We are afraid that we cannot accede to the contention of the learned counsel. We have perused the statement of PW 1 and the FIR. It is mentioned therein that PW 1 was carrying the torch with him and that he and other persons have seen and identified clearly the appellants in the torch light. It is not disputed that all the accused were named in the FIR. The FIR also contains the recital as to the weapons carried by each of the appellants. It is no doubt true that PW 2 has stated that when he and PW 4 were being beaten, PW 2 was not able to flash light from the torch and that the torch was left with the other servant Shri Krishna. PW 4 stated that he and Krishna had torches with them and that on hearing the voice of Sayeed he saw that the accused persons with the help of the torch light who were following Sayeed and that Sayeed was saying that they were beating him and was crying to save him. He also started shouting for help and that on hearing his voice PW 1 came to the spot. In the cross examination he admitted that the night when the occurrence took place was dark and that he could not take the torch which has slipped from his hand and fallen at a distance of 4-5 steps of the site. A plain reading of the statements of PWs 1, 2 and 4 it is clear that in the beginning when the deceased was coming towards PW 4 asking for his help and saying that they were beating him, PW 4 lighted the torch and saw the appellants who were following the deceased duly armed with the weapons noted above. It is also clear that when PW 4 and PW 2 were being beaten they were unable to light the torch as the torch slipped out of his hands and became defective. Far from making the identification of the appellants doubtful the statements of PWs 1, 2 and 4 establish their identity. PW 1 saw the accused persons with the help of the torch which he was carrying with him. Further it may also be pointed out that in that night when the accused persons were able to single out the deceased from among various persons sleeping in the Mango grove and dealt blows to him, followed him giving blows with the weapons carried by them, the version that the accused were identified with the help of the torch held by the said witnesses has to be given due credence. Further the

appellants, the deceased and injured witnesses were not strangers to each other as they belonged to the same village. They knew each other very well as they were competors in the business of obtaining the lease of Mango grove and in the business of hides and skins of the animals. Having gone through the evidence of PWs 1, 2 and 4 which is corroborated by the medical evidence of PWs 3 and 5, we are of the view that the Trial Court as well as the High Court rightly relied upon their testimony. The judgment and order under appeal does not warrant interference. In the result, we find no merit in the appeal. It is accordingly dismissed.

JUDIS