

CASE NO.:
Appeal (crl.) 763 of 2004

PETITIONER:
Ramashray Yadav & Ors.

RESPONDENT:
State of Bihar

DATE OF JUDGMENT: 08/11/2005

BENCH:
H.K. Sema & G.P. Mathur

JUDGMENT:
J U D G M E N T

G. P. MATHUR, J.

1. This appeal, by special leave, has been filed against the judgment and order dated 15.1.2004 of Patna High Court, by which the appeal preferred by the appellants was dismissed and their conviction under Section 302 read with Section 34 IPC and Section 27 Arms Act and the sentence of imprisonment for life under the first count and three years R.I. under the second count imposed by Second Additional Sessions Judge, Hilsa, Nalanda, in Sessions Trial No.612 of 1998 were affirmed.

2. The case of the prosecution may be stated in brief. The deceased Ram Parvesh Yadav was carrying on timber business and was running a saw mill at Hilsa. The appellants, Ramashray Yadav (A-1), Tanikan Yadav (A-2) and Rajdeo Yadav (A-3), were bullies or goondas of the locality and they used to demand "rangdari tax" (Goonda Tax) from the deceased, but he refused to pay the same. Due to this reason, the appellants were hostile to the deceased and wanted to teach him a lesson. On 10.4.1998, the deceased Ram Parvesh Yadav along with his brother PW.12 Sidheshwar Prasad and some others went on a tractor trolley to bring timber from village Dabaul. After loading the timber, they returned from there and reached west of village Shekhopur at about 3.30 p.m. Suddenly, the three appellants and two other unknown persons came out from the bushes and started firing with country-made pistol and rifle. The labourers, the driver of the tractor and Ram Parvesh Yadav jumped from the tractor and started running towards eastern side. The accused chased Ram Parvesh Yadav and after covering some distance reached near him and fired number of shots, which hit him and he fell down dead. Sidheshwar Prasad gave his fard bayan to S.I. Deo Nath Bhagat, of Police Station, Hilsa at about 5.00 p.m. The formal FIR of the incident was registered at the Police Station at 7.30 p.m. on the basis of which Crime Case No.139 of 1998 was registered. S.I. Prabhu Nath Singh commenced investigation of the case and after recording statement of witnesses under Section 161 Cr.P.C. and completing other formalities submitted charge sheet against the three appellants. The post-mortem examination conducted on the body of the deceased Ram Pravesh Yadav revealed that he had sustained large number of gunshot injuries.

3. After commitment of the case to the Court of Sessions, the appellants were charged under Section 302 read with Section 34 IPC and Section 27 Arms Act. The appellants pleaded not guilty and claimed to be tried. In order to establish its case, the prosecution examined in all 15 witnesses, out of whom 7 witnesses turned hostile. PW.12 Sidheshwar Prasad, brother of the deceased who had accompanied him on the tractor to village Dabaul for bringing the timber, gave the complete version of the incident in his deposition in Court. PW.3 Karu Beldar was the driver of the tractor. He deposed that he had driven the tractor trolley on which Ram

Parvesh Yadav and Sidheshwar Prasad had gone to village Dabaul for bringing timber. When they were returning to village Hilsa at about 3.00-4.00 p.m. and had reached near village Shekhopur, two-three people whom he could not recognize, came there and started firing upon the tractor. Ram Parvesh Yadav ran towards eastern side, but after receiving gunshot injuries he fell down and died on the spot. When confronted with his statement under Section 161 Cr.P.C., wherein he had mentioned that the three appellants namely, Ramashray Yadav, Tanikan Yadav and Rajdeo Yadav were present amongst the assailants and had fired from country-made pistol and rifle upon the deceased, he denied to have given any such statement, though he admitted that the police had recorded his statement at the police station. He also denied to have stated in his statement under Section 161 Cr.P.C. that the accused appellants used to demand "rangdari tax" (Goonda Tax) from the deceased and on account of non-payment thereof, they had committed his murder. PW.5 Arjun Prasad stated that at about 3.30 p.m. on 10.4.1998, he was returning from village Tamara and when he reached near Lehra Dak river, he heard sound of several gunshots being fired. He along with others rushed towards Mahua Khandha and saw one person lying on the ground who had received large number of injuries. Sidheshwar Prasad was standing nearby and on enquiry he informed him that on account of non-payment of "rangdari tax", Ramashray Yadav, Tanikan Yadav and Rajdeo Yadav had killed his brother Ram Parvesh Yadav by causing gunshot injuries. PW.14 Dr. S.B. Singh had conducted post-mortem examination on the body of the deceased at 7.30 a.m. on 11.4.1998 and had prepared the post-mortem report. In his deposition, he proved the aforesaid report and stated that the deceased had sustained gunshot injuries on his face, mouth, lumber region, arms and hand. Three bullets were found inside the body which were taken out. In his opinion, death had occurred 16 to 24 hours prior to the holding of post-mortem examination.

4. The learned Sessions Judge believed the case of the prosecution and convicted all the three appellants under Section 302 read with Section 34 IPC and Section 27 Arms Act, whereunder sentence of imprisonment for life and a sentence of three years R.I. respectively were awarded. The appellants preferred an appeal before the High Court, which affirmed the findings of the learned Sessions Judge and dismissed the appeal.

5. Learned counsel for the appellants has submitted that as many as 7 witnesses examined by the prosecution had turned hostile. Only PW.12, Sidheshwar Prasad, who is the brother of the deceased, had supported the prosecution case and in these circumstances, it was highly unsafe to record the conviction of the appellants on the solitary testimony of a witness who is an interested witness, being brother of the deceased. Shri B.B. Singh, learned counsel for the State, has, on the other hand, submitted that the testimony of PW.12 Sidheshwar Prasad finds ample corroboration from the testimony of PW.3 Karu Beldar and PW.5 Arjun Prasad, who are independent witnesses. The eye-witness account of the incident is corroborated by the medical evidence and in these circumstances, the trial Court and also the High Court were perfectly justified in recording the conviction of the appellants. Learned counsel has also submitted that conviction can be based on solitary testimony of an eye-witness, if the same inspires confidence and in the present case the evidence of PW.12 Sidheshwar Prasad was of unimpeachable character and there is no reason for discarding the same. It has thus been submitted that there is no valid ground which may warrant interference by this Court under Article 136 of the Constitution with the findings of fact recorded by the two Courts.

6. PW.12, Sidheshwar Prasad is the brother of the deceased Ram Parvesh Yadav. He has deposed that the deceased was carrying on timber business and had also a saw mill. The appellants were bullies or goondas of the locality and they used to demand "rangdari tax" (Goonda Tax) from his brother, but he refused to pay the same and due to this reason, the appellants wanted to teach him a lesson. This shows the motive for commission of crime and also explains the reason why as many as 7

witnesses turned hostile and even PW.3, Karu Beldar who was driving the tractor, did not mention the names of the appellants in his deposition in Court, though they were named and were assigned the specific role of causing gunshot injuries in his statement under Section 161 Cr.P.C. PW.3 Karu Beldar has stated that the deceased Ram Parvesh Yadav and Sidheshwar Prasad had gone to village Dabaul to bring timber and he was driving the tractor. He has further deposed that while returning at about 3.00-4.00 p.m., when they reached near village Shekhopur, two-three people suddenly appeared and started firing from their weapons. He jumped from the tractor and ran away. He also saw that Ram Parvesh Yadav had run towards eastern side, where he received gunshot injuries and fell down dead. Except for mentioning the names of the three appellants, he has completely corroborated the prosecution version of the incident. He corroborates the fact that PW.12 Sidheshwar Prasad had also gone with the deceased Ram Parvesh Yadav to village Dabaul for bringing timber on a tractor of which he was the driver. He corroborates the fact that the incident took place at about 3.00-4.00 p.m. near village Shekhopur when two-three persons suddenly appeared and started firing upon the tractor. He also corroborates the fact that he saw Ram Parvesh Yadav being hit by gunshots and falling down dead towards eastern side of the tractor. He further corroborates the presence of Sidheshwar Prasad at the time when the assailants resorted to firing upon Ram Parvesh Yadav.

7. PW.5 Arjun Prasad has deposed that he was returning from village Tamara at about 3.30 p.m. on 10.4.1998 and when he reached near river Lehra Dak, he heard sound of several gunshots. He along with others ran towards that side and saw a person lying badly injured in Mahua Khandha and PW.12 Sidheshwar Prasad was standing there. On enquiry, he told him that on account of non-payment of "rangdari tax", appellants Ramashray Yadav, Tanikan Yadav and Rajdeo Yadav had killed his brother Ram Parvesh Yadav by firing upon him. PW.5 had not seen the incident but he heard the sound of gunshots and rushed to the place of occurrence where he saw the deceased lying in a badly injured condition and Sidheshwar Prasad who was standing nearby narrated the incident to him. It needs examination whether the testimony of PW.5 Arjun Prasad can be used as a corroborative piece of evidence.

8. Section 157 of the Evidence Act reads as under :
"157. In order to corroborate the testimony of a witness, any former statement made by such witness relating to the same fact, at or about the time when the fact took place, or before any authority legally competent to investigate the fact, may be proved."

The import of this Section was examined and explained in considerable detail in *State of Tamil Nadu v. Suresh & Anr.* (1998) 2 SCC 372 and paragraphs 26 to 28 of the reports are being reproduced below :

"26. The section envisages two categories of statements of witnesses which can be used for corroboration. First is the statement made by a witness to any person "at or about the time when the fact took place". The second is the statement made by him to any authority legally bound to investigate the fact. We notice that if the statement is made to an authority competent to investigate the fact such statement gains admissibility, no matter that it was made long after the incident. But if the statement was made to a non-authority it loses its probative value due to lapse of time. Then the question is, within how much time the statement should have been made ? If it was made contemporaneous with the occurrence the statement has a greater value as *res gestae* and then it is substantive evidence. But if it was made only after some interval of time the statement loses its probative utility as *res gestae*, still it is usable, though only for a lesser use.

27. What is meant by the expression "at or about the time

when the fact took place"? There can be a narrow view that unless such a statement was made soon after the occurrence it cannot be used for corroboration. A broader view is that even if such statement was made within a reasonable proximity of time still such statement can be used for corroboration. The legislature would not have intended to limit the time factor to close proximity though a long distance of time would deprive it of its utility even for corroboration purposes.

28. We think that the expression "at or about the time when the fact took place" in Section 157 of the Evidence Act should be understood in the context according to the facts and circumstances of each case. The mere fact that there was an intervening period of a few days, in a given case, may not be sufficient to exclude the statement from the use envisaged in Section 157 of the Act. The test to be adopted, therefore, is that : Did the witness have the opportunity to concoct or to have been tutored ? In this context the observation of Vivian Bose, J. in *Rameshwar v. State of Rajasthan* AIR 1952 SC 54 is apposite :

"There can be no hard and fast rule about the 'at or about' condition in Section 157. The main test is whether the statement was made as early as can reasonably be expected in the circumstances of the case and before there was opportunity for tutoring or concoction."

(emphasis supplied)"

9. In *Smt. Chander Kala v. Ram Kishan & Anr.* AIR 1985 SC 1268, an incident which took place on 10th March was narrated by the victim to some of her colleagues on 11th March and it was held that the testimony of her colleagues was admissible under Section 157 of the Evidence act and could be used for the purpose of seeking corroboration to the testimony of the victim. Thus, the testimony of PW.5 Arjun Prasad who had reached immediately after the incident had happened and to whom PW.12 Sidheshwar Prasad had narrated the incident and the role played by the three appellants in causing the death of his brother by firing upon him lends complete corroboration to the testimony of PW.12 Sidheshwar Prasad.

10. No infirmity of any kind has been pointed out in the testimony of PW.12 Sidheshwar Prasad, who is the brother of the deceased. His going along with his brother for the purpose of bringing timber is most natural. There is substantial corroboration to his testimony by the statements of PW3 Karu Beldar and PW.5 Arjun Prasad. His version of the incident is consistent with medical evidence on record. In these circumstances, we have no hesitation in holding that the prosecution has established the participation of the appellants in the crime in question beyond any reasonable doubt. We do not find any error or illegality in the findings recorded by the trial Court and also by the High Court. The appeal is accordingly dismissed. The appellants shall undergo the sentences as awarded by the Second Additional Sessions Judge, Hilsa, Nalanda.