BALO YADAV AND OTHERS

v.

STATE OF BIHAR

APRIL 29, 1997

[G.N. RAY AND K.T. THOMAS, JJ.]

Indian Penal Code, 1860 : Section 302 read with Sections 148 & 149 : Rioting and murder—Conviction by trial court—Uncorroborated evidence of eye-witness not acted upon by High Court—Acquittal of some of the accused by High Court—Appeal by convicts pleading that evidence not relied upon as regards acquitted accused should not be relied upon against them also—Held: Corroborated evidence not stigmatised and liable to be rejected—Torchlight used by eye witnesses to identify assailants not a material object of evidence and failure to seize the torchlight could not be ground for impairment of testimony—Incised wounds on dead body of victim and perforated vital organs not incompatible with sharp edged pointed weapons identified with assailants.

The victim was assaulted with sharp-edged weapons, while asleep in a field in the mid of night, by appellants and few others. His son, PW 8, who was sleeping in the adjacent field and was woken up by commotion, rushed to the site with his torchlight and saw the assailants attack his father. By then a few of the neighbouring cultivators had also rushed to the scene. The assailants fled the place. The victim died of extensive wounds on the spot itself.

The Sessions Court found the evidence of eye-witnesses PW 5, PW 6 and PW 8 reliable and indicted all the 14 accused for rioting and murder. The High Court did not act on the evidence of PW 6. It chose to confirm the conviction only as against the appellants sine the version of PW 8 was corroborated by PW 5 only in respect of them.

In appeal to this Court, it was contended for the appellants that as the High Court did not rely on the evidence of PW 8 in respect of the acquitted accused, it should have spurned his evidence in regard to the appellants as well; that the failure of the police to seize the torchlight, which the eye witnesses claimed to have flashed for witnessing the occurrence had impaired the testimony of eye witnesses; and that weapons which the eye witnesses identified in the hands of the appellants were totally incompatible

A **with the injuries found on the deceased.**

Dismissing the appeal, the Court

HELD : 1. The evidence of PW 8, (son of the victim) in regard to the appellants could not be stigmatised. Though the High Court was not in-
B **clined to base a conviction on his evidence without corroboration from other materials, it has observed in clear terms that there was no reason to reject his evidence. The Court only wanted reassurance from other sources. The corroboration is what the Court required as a matter of prudence and as a step of caution. [1074-D-E]**

C **2. Non-seizure of the torchlight cannot be considered a lapse on the part of the investigating officer, much less a ground for impairment of the testimony of eyewitness concerned. If the accused had used a torchlight or if the victim had a torchlight with him during the occurence, it could be insisted that the investigating officer should have seized it as the same could**
D **be used as a material object during trial. But a torchlight used by the witness to see the occurence cannot be equated with the torchlight used by the victim or the assailants in the encounter for evidentary purpose. [1074-F-G]**

3. The weapons identified in the hands of the appellants could not be said to be incompatible with the injuries found on the dead body of the
E **deceased. All the injuries on the deceased were incised wounds and two of them had penetrated into the body and perforated some of the vital organs. The weapons used by the appellants were sharp cutting weapons. One of them could have been a sharp and pointed weapon. The doctor who conducted the autopsy has said in evidence that the injuries which he noticed**
F **could have been caused with those weapons. [1075-A-B]**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 324 of 1987.

From the Judgment and Order dated 28.11.87 of the Patna High
G Court in Crl.A. No. 189 of 1983.

S.B. Sanyal and Rajesh Prasad Singh for the Appellants.

Anil Kumar Jha for the Respondent.

H The Judgment of the Court was delivered by

THOMAS, J. The six appellants before us were among the 14 accused arrayed in the Sessions Court indicted for the murder of one Ramdeo Yadav during the wee hours on 30th October, 1975. Although the Sessions Court convicted all the thirteen accused of the offences of rioting and murder (with the aid of section 149 IPC) the High Court confirmed the conviction only in respect of the seven appellants before us. They have been sentenced to imprisonment for life for the offence of murder and to rigorous imprisonment for two years for the offence under section 148, Indian Penal Code.

Facts are simple : Deceased Ramdeo Yadav and his son Gajendra Yadav (PW 8) after their dinner at home went to a nearby field presumably for watching the crop thereon. Deceased went to sleep on a wooden plank in one field while his son (PW 8) slept in the adjoining field. Some time after midnight these appellants and few others came to this place armed with lethal weapons such as spears (bhala) and gupti and surrounded Ramdeo Yadav, dragged him out and showered bloody assault on him with the weapons. Gajendra Yadav (PW 8) on hearing the sound of a commotion woke up and rushed to the scene with his torchlight and saw the assailants attacking his father. He made a hue and cry, but somebody among the assailants snatched away his torchlight. By then a few of the neighbouring cultivators rushed to the scene. The assailants who succeeded in inflicting large number of injuries on the deceased fled from the place with the weapons. Ramdeo Yadav who sustained extensive wounds died on the spot.

Gajendra Yadav went to the local Police Station and lodged the complaint on the basis of which FIR was registered. After completing investigation the case was charge-sheeted against the fourteen accused.

There is no dispute that Ramdeo Yadav was murdered at the time and place mentioned by the prosecution. The large number of anti- mortem injuries observed by the doctor who conducted the autopsy have been detailed in the post-mortem certificate. Some of the injuries have perforated his vital organs and without difficulty we could observe that deceased would have died instantaneously.

Among the eye-witnesses examined by the prosecution the evidence of PW 5 - Sipehi Yadav, PW 6 - Harilal Yadav and PW 8 - Gajendra Yadav was found reliable by the Sessions Court But High Court did not act on

A the evidence of Harilal Yadav (PW 6). However, the evidence of PW 8 was found quite reliable, yet the High Court chose to confirm the conviction only as against the appellants since the version of PW 8 was corroborated by PW 5 only in respect of them.

Learned senior counsel confined his arguments to assailing the
B evidence of PW 5 and PW 8 and contended that the said evidence should not have been relied on due to certain drawbacks high-lighted before us. According to the learned counsel, as the High Court did not rely on the evidence of PW 8 in regard to the acquitted accused it should have been a logical step to spurn down his evidence even in regard to the appellants
C as well.

This is not a case where the High Court declined to act on the testimony of PW 8. In fact, High Court has observed in clear terms that there is no reason to reject the evidence of PW 8, though High Court was not inclined to base a conviction on his evidence without corroboration
D from the other materials. If the High Court thought it unsafe to convict any of the accused on the uncorroborated evidence of a single eye-witness it does not mean that the evidence of the witness stands castigated. It is no stigma against the evidence of any eye-witness if the Court only wanted re-assurance from yet other sources. The corroboration is what the court
E required as a matter of prudence and as a step of caution. The premise of the contention of the learned counsel that evidence of PW 8 has been stigmatised is therefore, erroneous.

Another point upon which learned counsel harped heavily was the failure of the investigating officer to seize the torchlight which the eye-wit-
F nesses claimed to have flashed for witnessing the occurrence. We are unable to appreciate this argument. If the accused had used a torchlight or if the victim had a torchlight with him during the occurrence there would be much force in insisting that the investigating officer should have seized it as the same could be used as a material object during trial but a
G torchlight used by the witness to see the occurrence cannot be equated with the torchlight used by the victim or the assailants in the encounter for evidentiary purposes. Non-seizure of such a torchlight cannot, therefore, be considered as a lapse on the part of any investigating officer, much less a ground for impairment of the testimony of the eye-witness concerned.

H It was lastly contended that the weapons which the eye-witnesses

identified in the hands of the appellants are totally incompatible with the injuries found on the dead body of the deceased. Apparently, those were sharp cutting weapons. One of them could have been a pointed and sharp weapon. All the injuries of the deceased were incised wounds and two of them had penetrated into the body and perforated some of the vital organs. The doctor who conducted the autopsy has said in evidence that injuries which he noticed could have been caused with those weapons. A B

None of the points raised before us by the learned counsel for the appellants is capable of changing the conclusion reached by the High Court against the appellants. Accordingly, we dismiss the appeal.

V.S.S. Appeal dismissed. C