

PETITIONER:
RAJENDRA RAI

Vs.

RESPONDENT:
STATE OF BIHAR

DATE OF JUDGMENT: 02/02/1999

BENCH:
G.T. Nanavati, & N. Santosh Hegde.

JUDGMENT:

Nanavati, J.

This is an appeal filed by the convicted accused after obtaining leave of this court. Leave was granted limited to the question of sentence only. The appellant has been awarded death sentence and, therefore, what we have now to consider is whether the death sentence is justified in view of the facts and circumstances of this case.

What is found proved against the appelllant is that on 12.10.91 at about 5.30 a.m., in view of the land dispute with deceased Krishnandan Rai, he gave one blow to Krishnandan with 'Hasua' - a sharp edged weapon. It is also held proved that when Bir Bahadur Rai, son of Krishnandan came there running, hearing shouts of his mother, Nagendra Rai. who was with the appellant, caught him and made him bend down and the appellant gave him three or four blows with 'Hasua' and severed his neck.

The Sessions Court considering the facts and circumstances of the case and the role played by the appellant imposed death sentence upon him. The other accused - Nagendra Rai has been sentenced to suffer imprisonment for life. Both the accused challenged their conviction by filing separate appeals. The Sessions Court also made reference to the High Court for confirmation of death sentence. The High Court agreeing with the findings recorded by the trial court confirmed the conviction and also the order of sentence. Accordingly, the appeals filed by the accused were dismissed and the reference was accepted.

What was submitted by the learned counsel for the appellant was that this case cannot be regarded as a rarest of rare case and therefore death penalty should not have been imposed upon the appellant. It was also submitted that there was a land dispute between the deceased and the accused and that had led to the present incident. He also submitted that though an attempt was made to prove conspiracy, pre-meditation and pre-planning, there was no reliable evidence to prove that it was in pursuance of any conspiracy that the appellant had committed murders of Krishnandan and Bir Bahadur.

We have carefully gone through the evidence of the witnesses in order to find out the circumstances under which

the assault on Krishnandan and Sir Bahadur had taken place. From the evidence of Lagan Deo Kumar - P.W.7, son of deceased Krishnandan, it appears that in between the house of the deceased and the accused, there is some vacant land and a dispute regarding the same was going on between the accused and the deceased. An order favourable to the accused was passed by the court but the litigation was still pending. From his evidence and the evidence of the Investigating Officer, it appears that the disputed land is situated between the houses of the accused and the deceased. The evidence of P.W.9 - Ramji Rao, who is an independent witness discloses that while he was sitting near the door of his house on the date of the incident at about 5.30 a.m., he saw the appellant and Nagendra Rai going towards their house from their cattle shed in great fury. The appellant Rajendra Rai was carrying Hasua at that time. He admitted that he had made no attempt to stop Rajendra Rai (the appellant) nor the persons whose houses are in between had tried to do so or follow him. In reply to the question, he further stated that the mood of Rajendra Rai was not good and because of this reason he had followed him. One more significant answer given by this witness in his cross-examination is that the villagers had assembled at the place of the incident just before the assault had taken place. Thus his evidence clearly indicates that the accused while working in the cattle shed saw the deceased tying his buffalo on the disputed land and therefore he went to that place and gave one blow on his back which led to his death.

Bir Bahadur came to be killed as he had gone to that place hearing shouts of his mother. This does not appear to be a case where the murders of Krishnandan and Bir Bahadur were committed because of any pre-meditation and in a cold blooded manner.

Both the Sessions Court and the High Court have failed to consider the above referred facts and circumstances and have erroneously proceeded on the basis that the accused committed the murders in pursuance of a conspiracy, with pre-meditation and in cold blooded manner. Having gone through the evidence, we find that there is no justification for taking such a view. On the contrary, the evidence discloses that the act of Krishnandan in tying his buffalo and using that land had infuriated the appellant and thus the incident had happened all of a sudden.

Considering the facts and circumstances of this case, we are of the view that this case cannot be regarded as a rarest of rare case where the penalty of death would be justified. We, therefore, allow this appeal and modify the order of sentence by reducing it to life imprisonment.