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CrI.A.No. 717 OF 2004
ITEM No.102

Court No. 5

SECTION II

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

CRIMINAL APPEAL NO.717 OF 2004

BALI SINGH & ANR.

Appellant (s)

VERSUS

STATE OF U.P.

Respondent (s)

(With appln.(s) for bail and bail)

Date : 15/02/2005 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ARUN KUMAR
HON'BLE MR. JUSTICE B.N. SRIKRISHNA

For Petitioner (s)Mr. Anis Ahmed Khan, Adv.

For Respondent (s)Mr. Ravi Prakash Mehrotra, Adv.
Mrs. Deepti R. Mehrotra, Adv.
Mr. Garvesh Kabra, Adv.

UPON hearing counsel the Court made the following
O R D E R

The Appeal is dismissed in terms of the signed order.

(K.K.Chawla)
Court Master

(Veera Verma)
Court Master

[Signed order is placed on the file]
IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.717 OF 2004

BALI SINGH & ANR.

Appellant (s)

VERSUS

STATE OF U.P.

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O R D E R

Five accused namely, Gajadhar, Chhatrapal, Jasi Ram, Bali Singh and Mahendra were tried for the murder of three persons, namely, Asha Ram, Parsuram and Nripat. The trial court convicted all the five accused persons under Section 302 read with 149 of the Indian Penal Code and sente

nced them to undergo rigorous imprisonment for life. They were also convicted under Section 307 read with Section 149 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for seven years. They were also convicted under Section 148 of the Indian Penal Code and sentenced to two years rigorous imprisonment.

They filed an appeal before the High Court and the High Court by its order dated 13th December, 2002 completely acquitted accused Gajadhar. Accused Chhatrapal, Jasiram, Bali Singh and Mahendra were acquitted of the charge under Section 148 of the Indian Penal Code. But the High Court maintained their conviction under Section 302 read with Section 34 and under Section 307 read with Section 34 of the Indian Penal Code. The other charges against the accused persons were set aside.

Special Leave Petition was filed by the convicted accused. However, at the admission stage this Court was pleased to reject the Special Leave Petition of Chhatrapal and Jasiram and leave was granted only qua Bali Singh and Mahendra.

All the four accused are similarly placed. Yet leave was granted to accused Bali Singh and Mahendra. It appears that leave to appeal was granted in favour of these accused because of the plea raised by the counsel for the Appellants that they were minors at the time of the incident. In the Special Leave Petition it has been stated in ground 'O' that the Appellants Bali Singh and Mahendra were 15 and a half years old at the time of the incident. Reliance has been placed by the counsel for the Appellants on Annexure P-2 (Page-59 of the Paper Book) which is an order dated 2nd June, 1981 passed by the Second Upper Sessions Judge, Hamirpur, directing that accused Bali Singh and Mahendra be sent to Children Jail.

At the time of hearing of the present Appeal, learned counsel for the Appellants made a feeble attempt to urge that the said two persons were minors at the time of the incident and, therefore, the entire proceedings against them are vitiated. Strangely, no material has been placed on record in support of this plea. The records show that neither in the trial court, nor before the High Court nor before this Court any material other than the order referred to above has been placed in support of this plea. The learned counsel fairly conceded that this point was never urged in any proceedings earlier.

We put it to the learned counsel for the Appellant that could he produce any school leaving certificate or birth certificate or any other cogent proof which could show that these two accused persons were minors at the time of the incident. He, however, showed his inability to do so.

On the other hand, our attention has been drawn by the learned counsel for the Respondent to several pages in the proceedings of the courts below which militate against the plea that the said two accused persons were minors at the time of incident. Particularly, our attention has been drawn to the statements of the accused persons recorded under Section 313 of the Code of Criminal Procedure where their ages are mentioned and that does not suggest that they were minors at the time of the incident. This plea raised for the first time at this stage is totally without any basis and has to be rejected.

This brings us to the merits of the case. The record shows that there is no difference between the role of the two accused persons who are stated to be minors at the time of the incident qua whom leave has been granted and that of the other convicted accused persons whose prayer for grant of special leave to appeal was rejected. When that is so, there is no reason to entertain this Appeal on behalf of the two accused persons named above. In any case we have been taken through the records by the learned counsel for the parties. It is a case of direct ocular evidence. Besides there is a dying declaration made by one of the victims. There is no reason to disbelieve either of them. Nothing has been urged to challenge the dying declaration. The ocular evidence is also corroborated by the medical evidence on record according to which gun shots were found on all the three deceased persons. The case of prosecution is that the accused fired gun shots at all the victims which resulted in their death. The trial court as well as the High Court accepted this evidence and based their findings on the same. We have no reason to differ with those findings of the courts below. Accordingly, the Appeal is dismissed.

.....J.
(Arun Kumar)

.....J.

(B.N. Srikrishna)
New Delhi;
February 15, 2005.