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Cr1.A.No. 122 OF 1998
ITEM No.107

Court No. 5

SECTION IIA

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CRIMINAL APPEAL NO.122 OF 1998

Sher Singh and Ors. Appellant(s)

VERSUS

State of Haryana Respondent(s)

(With office report)

Date : 12/02/2004 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DORAISWAMY RAJU
HON'BLE MR. JUSTICE ARIJIT PASAYAT

For Appellant (s)Mr. Manoj Goel,Adv.
Mr. Shuvodeep Roy,Adv.
Mr. Wajeeh Shafiq,Adv.
Mr. Brij Bhushan,Adv.

For Respondent (s)Mr. Vinay Kumar Garg,Adv.
Mr. O.P. Bhadani,Adv.

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

The appeal is allowed in terms of the signed order.

(Neena Verma) (Vijay Aggarwal)
Court Master Court Master

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

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.122 OF 1998

Sher Singh and Ors.
...Appellants

Versus

State of Haryana
...Respondent

O R D E R

Seven persons faced trial for allegedly committing offence punishable under Section 302 read with Section 149 IPC. The Trial Court, in consideration of the evidence, found that the accuse

d were to be convicted in terms of Section 304 (Part-I) read with Section 149 IPC. In appeal by the impugned judgment, the High Court directed acquittal of A-3 and A-6, while maintaining the conviction in respect of the five others.

The prosecution case is that the accused persons formed an unlawful assembly and assaulted the deceased Hari Singh and the other eye-witnesses, who were also injured. The accused persons took the plea that the occurrence did not take place at the location indicated by the prosecution and not in the manner described by it. On the contrary, some of the accused persons were assaulted by the deceased and the injured persons at a different place and in exercise of their right of private defence, they may have inflicted injuries. The Trial Court and the High Court observed that though a plea of right of private defence was available, it was exceeded and, therefore, recorded the conviction, as aforementioned.

In support of the appeal, learned counsel for the appellants submitted that there are several infirmities in the conclusions arrived at by the courts below. Firstly, the place of occurrence is different from the place where the prosecution alleged the assaults took place. The definite case of the prosecution was that the occurrence took place near a Tubewell marked as point 'C' in the site plan prepared by PW-13. According to the accused persons, the occurrence took place at point 'B' where the dead body of deceased Hari Singh was found and it is at a considerable distance from the place where the prosecution alleges the assaults took place. The blood stains were found at point 'B' where the accused persons claimed the occurrence took place. Additionally, it is submitted that the medical evidence clearly rules out the manner of assault, as stated by the prosecution witnesses. The injuries on the accused persons were not explained. They were not of a superficial nature. There was also a considerable delay in lodging the FIR. The courts below did not analyse the evidence in the proper perspective so far as these aspects are concerned.

In response, learned counsel for the respondent-State submitted that both the Trial Court and the High Court have analysed the factual position in great detail and in view of the concurrent findings recorded, it may not be proper to interfere with the orders of the courts below. We notice that though the prosecution itself claimed that the occurrence took place at point 'C' in the site plan, the courts below made out a new case as if the occurrence took place at point 'B' where the blood stains were found. Though strictly speaking, site plan is not the evidence, the evidence of PW-13 shows that he had fixed the points on the basis of his personal observations and the prosecution witnesses accepted that the site plan was in line with what their case is. That being the position, it was not permissible for the courts below to say that the occurrence took place at a different point than where the prosecution witnesses claimed it to have taken place. Further, the medical evidence is at a great variance with the ocular evidence. That may not be a ground for discarding the ocular evidence, in cases where the ocular evidence is found credible, cogent and trustworthy. But in a case of this nature, where the medical evidence completely rules out the manner of assault, as claimed by the prosecution, certainly is a vulnerable aspect so far as the prosecution is concerned. The ocular evidence is also not very specific and is rather vague. Though delay in recording FIR in all cases can be termed as vulnerable, in this particular case, no plausible explanation has been offered as to why there was delay in lodging the FIR. This is an additional factor to render prosecution version weak. The grounds found, though, may not be individually suffice to discard the prosecution version, yet the cumulative effect renders the prosecution version fragile. Looked from any angle, the prosecution has not been able to establish its accusations. The inevitable result is that the appeal deserves to be allowed. The conviction and the consequential sentence are set aside. The bail bonds of the accused, who are on bail, be cancelled.

.....J.

(DORAISWAMY RAJU)

.....J.

(ARIJIT PASAYAT)

New Delhi,
February 12, 2004.

