Pal Singh And Ors. vs State Of U.P. on 12 January, 1979

Equivalent citations: AIR1979SC1116, 1979CRILJ917, (1979)4SCC345, 1979(11)UJ243(SC)

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Bench: N.L. Untwalia, S. Murtaza Fazal Ali

JUDGMENT

S. Murtaza Fazal Ali, J.

1. This appeal under the provisions of Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, is directed against the order of the High Court dated 10th December, 1971 by which the acquittal of ten accused before the Trial Court was reversed. All the appellants have been convicted under Section 302/149 I.P.C. and have been sentenced to imprisonment of life. Some of them have been convicted under Section 147 I.P.C. and some under Section 148 I.P.C and were sentenced to one year and two years Rule I respectively. The judgment of the High Court gives a detailed narrative of the prosecution case and the circumstances leading to the death of the deceased. We have heard learned Counsel for the parties and have gone through the evidence. The High Court after a very elaborate discussion of the evidence and circumstances of the case rightly pointed out that the judgment of the trial court was both perverse and based on a total misreading of the evidence. The High Court has displaced ail the circumstances and the reasons given by the Sessions Judge which were based on speculations or materials which was against the weight of the evidence on record. Arguments like delay in lodging the F.I.R. or ante timing it or that the occurrence took place not at the time alleged but sometimes later have been fully discussed by the High Court and rejected. We find ourselves in complete agreement with the reasons given and the view taken by the High Court.

2. Mr. D. Mukherjee appearing in support of the appeal tried to raise some paints which had been raised before the High court and rejected. Mr. Mukherjee also submitted that although some eye witnesses were mentioned in the F.I.R. but they were not examined and the High Court, therefore, instead of drawing an adverse inference against the prosecution brushed them aside on the ground that the Trial Court could have enammical them under Section 540 Cr. PC Even if the High Court may not have been wholly correct on this aspect of the matter, the fact remains that after the High Court had believed the eye witnesses Nos. 1 and 2, and having found that their testimony was absolutely credit worthy and truthful, it could not have rejected the prosecution case merely because some of the eye witnesses mentioned in the F.I.R. were rot examined. In such cases, the question which has to be determined is not whether the absence of the examination of the independent witnesses would vitiate the prosecution case by itself but that the evidence actually produced is

reliable or not. Once the Court gives a finding of fact that the evidence led by the prosecution is reliable and trustworthy, the infirmities arising cut of non-examination of witnesses will not be sufficient to put the prosecution out of Court. Lastly it was submitted that the injuries caused to the deceased are inconsistent with the manner in which the deceased is alleged to have been assaulted. For instance, while the accused were armed with kantas and spears, only one punctured wound was found. We might point out that this is a purely artificial argument. The High Court has rightly pointed out that if the accused assaulted with side portion of the blade of the weapons in a slanting fashion, only incised, wounds would be caused. Thus the injuries sustained by the deceased are not inconsistent with the medical report which finds a number of incised wounds inflicted on the deceased. On the findings of fact arrived by the High Court, it is clear that the appellants shared the common object to cause the death of the deceased either by participation or by exhortation.

3. We are, therefore, fully satisfied that this is a case where the judgments of the trial court was perverse and manifestly wrong and not a case where any other reasonable view could have been taken by the trial court. We find no force in this appeal which is accordingly dismissed.