

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 1670 OF 2005

VEDPAL & ORS.

.....

APPELLANTS

VERSUS

STATE OF HARYANA

.....

RESPONDENT

O R D E R

We have heard the learned counsel for the parties at length.

The learned counsel for the appellants has raised several issues before us, more particularly, (i) that some of the accused who were similarly placed had been acquitted by the trial court; (ii) that the evidence of the injured eye-witnesses could not be entirely believed; and (iii) that the statements of the eye-witnesses made in Court vis-à-vis their statements under Section 161 of the Code of Criminal Procedure had clear improvements which cast a doubt on the prosecution story; (iv) that the recording of the FIR had been inordinately delayed and the time so taken had been utilised to concoct a false story; and (v) that the non-examination of the Investigating Officer had

caused prejudice to the accused as it had not been possible for them to ascertain from his statement as to why only an empty cartridge case of 12 bore had been recovered from the place of the incident and as to why no efforts had been made to effect recoveries of the weapons used in the incident.

We find that each of these issues has been dealt with by the trial court as well as by the High Court and cogent reasons have been given by both courts as to why the case of the appellants before us and those of the accused who have been acquitted by the trial court were different in their circumstances. We cannot lose sight of the fact that it is the admitted case on all sides that the incident had happened in the residential house of the complainant party and had been precipitated on account of the incident two days earlier wherein P.W. - Rai Singh had been beleaguered as he had misbehaved at the complainant's home after taking excessive drink. The nature of the injuries clearly show that they had been caused by fire arms.

Mr. Sadique, the learned counsel for the appellants has, however, argued that the katta which was allegedly in the hands of two of the appellants would ordinarily use a bullet and not a cartridge and as no bullet wound had been detected or any bullet

recovered from the body, the entire prosecution story stood falsified. We find absolutely no merit in this submission for the simple reason that a katta can fire a cartridge of 12 bore as well and there is universal rule that a rifle cartridge alone can be fired from such a weapon. The medical evidence including a large number of x-rays taken from the body of the deceased and also the injured persons reveals the presence of radio opaque shadows which leads to the only conclusion that a cartridge firing pellets had been used. It is also true that the Investigating Officer had not been examined and no cogent reason had been given for this omission. We find, however, that no prejudice has been caused to the accused on this account as the necessary benefit has been given to the accused party as some of them have been acquitted. The mere fact also that weapon used in the incident had not been recovered does not detract from the evidence of the seriously injured eye-witnesses. In any case, the trial court has separated the grain from the chaff and, granted the benefit to those of the accused persons whose involvement was in doubt.

We, accordingly, dismiss this appeal.

.....J
[HARJIT SINGH BEDI]

.....J
[J.M. PANCHAL]

NEW DELHI
NOVEMBER 04, 2009.



