

CASE NO.:
Appeal (crl.) 293 of 2008

PETITIONER:
State of U.P.

RESPONDENT:
Jagram & Ors.

DATE OF JUDGMENT: 12/02/2008

BENCH:
Dr. ARIJIT PASAYAT & P. SATHASIVAM

JUDGMENT:
J U D G M E N T

CRIMINAL APPEAL NO. 293 OF 2008
(Arising out of S.L.P. (Crl.) Nos.1448 of 2005)

DR. ARIJIT PASAYAT, J.

1. Leave granted.

2. Challenge in this appeal is to the judgment and order dated 11.8.2003 passed by the Allahabad High Court, Lucknow Bench, in Criminal Appeal No.486/1990. Four persons had filed the aforesaid appeal questioning their conviction for offences punishable under Sections 302, 324 read with Section 34 of the Indian Penal Code, 1860 (in short 'IPC'). Though the Trial Court had recorded a conviction, the Division Bench of the High Court allowed the appeal and set aside the conviction. It was noted that there were several discrepancies in the evidence of the witnesses and the prosecution version did not inspire confidence.

3. Learned counsel for the appellant submitted that the approach of the High Court is not correct and the analysis of evidence suffers from various infirmities.

4. At this juncture, it needs to be noted that the complainant Usman Ali had filed Criminal Appeal No.233 of 2004 before this Court questioning the correctness of the impugned judgment in the present appeal. This Court by its judgment date 22.3.2006 allowed the appeal with the following observations:

"The evidence of these three eyewitnesses is corroborated by the medical evidence. The High Court has committed an error of record in observing that the injuries found on these witnesses are not consistent with the prosecution case rather from the injuries noted above, it would be clear that the prosecution case is supported by medical evidence. Further their evidence could not have been thrown out merely because they were family members rather they were most competent persons being the inmates of the house especially when the occurrence had taken place in the house itself in the dead of night. This being the position, we do not find any reason to disbelieve their evidence. In our view, the Trial Court was quite justified in placing reliance

upon the evidence of these three eye-witnesses and the High Court has committed error in rejecting the same.

Lastly, the High Court has committed an error in recording acquittal also on the ground that the names of the recording acquittal also on the ground that the names of the accused persons were not mentioned in the inquest report. In our view, this hardly could be a ground to acquit the accused persons. For the foregoing reasons, we are of the view that the Trial Court was quite justified in convicting the respondents and the judgment of acquittal rendered by the High Court suffers from the vice of perversity, as such the same is liable to be set aside.

The appeal is, accordingly, allowed, impugned order of acquittal rendered by the High Court is set aside and convictions of the respondent recorded by the Trial Court are restored. Bail bonds of respondents, who are on bail, are cancelled and they are directed to be taken into custody forthwith to serve out the remaining period of sentence for which compliance report must be sent to this Court within one month from the date of receipt of copy of order by the Trial Court."

5. In this view of the matter, nothing further survives to be done in the present appeal. However, had the parties brought to the notice of the Bench hearing Criminal Appeal No. 233/2004 about pendency of the present appeal, it could have been taken up simultaneously. Apparently, that was not done.

6. The appeal is disposed of accordingly.