

PETITIONER:
PRATAP SINGH

Vs.

RESPONDENT:
STATE OF HARYANA

DATE OF JUDGMENT 07/12/1990

BENCH:
KULDIP SINGH (J)
BENCH:
KULDIP SINGH (J)
RAMASWAMY, K.

CITATION:
JT 1990 (4) 781 1990 SCALE (2) 1242

ACT:

Indian Penal Code, 1860: Sections 302, 326/34.
Code of Criminal Procedure, 1973: Section 173.

Criminal Trial--Accused charged under Sections 302 and 326 vicariously with the aid of Section 34--On the date of charge-sheet no material with the prosecution to show that the accused actually participated in crime and gave knife injury--During trial accused confronted with evidence accusing him of substantive charges under both offences i.e. inflicting knife injuries to the deceased and prosecution witness--Trial held prejudicial to the accused--Benefit of doubt given to the accused.

HEADNOTE:

The appellant and his co-accused were convicted by the Additional Sessions Judge under Sections 302, 326 read with section 34 of the Indian Penal Code and were sentenced to rigorous imprisonment for life and four years respectively. On appeal the High Court acquitted the co-accused but upheld the conviction and sentence of the appellant.

In appeal to this Court it was contended on behalf of the appellant (i) that the appellant was convicted for an offence for which he was not chargesheeted because in the charge-sheet he was charged vicariously with the aid of section 34 for both the offences i.e. under sections 302 and 326, but at the trial contrary to charge-sheet he was confronted with evidence accusing him of the substantive charge under section 302 for causing death of the deceased and under section 326 for causing grievous hurt to the prosecution witness; (ii) the co-accused having been acquitted by the High Court, part of the testimony has been proved to be false and as such cannot be relied upon to support the conviction of the accused.

Allowing the appeal, this Court,

HELD: 1. The charge against the appellant was framed on the basis of the material collected during the investigation by the prosecution. On the date of the charge-sheet there was no material with the prosecution to show that it was the appellant who gave knife injury to

503

the deceased and the prosecution witness. Even otherwise when the police report under Section 173 of the Code of Criminal Procedure, which is the basis of the chargesheet,

implicated the appellant vicariously with the aid of Section 34, I.P.C., it is difficult to rule out prejudice when at the trial, evidence was led to show that he actually participated in the crime and inflicted injuries to the deceased and grievous hurt to prosecution witness. In any case this cannot be certified as a fair-trial. The infirmities pointed out on behalf of the appellant when examined in the light of the charge framed against the appellant will show that it is difficult to carry the conviction of the appellant beyond reasonable doubt. Accordingly the appellant-accused is given the benefit of doubt and acquitted. The conviction and sentence is set aside. [507C-F]

2. When the Trial Court and the High Court on appreciation of the evidence have believed the eye-witnesses and have based the conviction of the appellant on their testimony. It is not for the Supreme Court to reappraise the evidence. [505E]

JUDGMENT: