

CASE NO.:
Appeal (crl.) 271 of 2003

PETITIONER:
Karan Singh & Ors.

RESPONDENT:
State of Madhya Pradesh

DATE OF JUDGMENT: 26/09/2003

BENCH:
K. G. Balakrishnan & B.N. Srikrishna.

JUDGMENT:
J U D G M E N T

K.G. BALAKRISHNAN

Appellants challenge their conviction and sentence for the offences punishable under Sections 148 and 307 of Indian Penal Code. Appellant Karan Singh was convicted for the offences punishable under Section 148 and 307 IPC without the aid of Section 149 whereas the other appellants were convicted for the offences punishable under Section 148 and Section 307 read with Section 149. The prosecution case was that these appellants were on inimical terms with PW-1 Hari Singh, and that on 29.11.1981 at about 10 A.M., when Hari Singh was returning from his well to his house, the appellants attacked him and caused injuries. Appellant Karan Singh was armed with a 'Pharsa' whereas the other appellants were armed with 'Lathis'. PW-1 Hari Singh suffered serious injuries and his left hand was cut off from the body just above the wrist joint. He suffered three other incised injuries and three lacerated wounds. Altogether, Hari Singh had 12 injuries on his body when he was examined by PW-12 and PW-13. PWs 2, 3 and 4 were examined as eye witnesses. Though PW-2 and PW-3 fully supported the prosecution version, PW-4 did not support the prosecution case. The Sessions Judge found that the prosecution had succeeded in proving the case against the appellants and his findings were affirmed by the High Court. Appellants Karan Singh and Banab Singh on being questioned under Section 313 Code of the Criminal Procedure, stated that they were attacked by PW-2 and PW-3 and contended that whatever they had done was done by way of self-defence. The other appellants stated that they were falsely implicated in the case. The sessions court as well as the High Court found that the plea of alibi raised by these appellants was not true and held that there was no attack initiated from the side of PW-1 to PW-3.

Shri Sushil Kumar, the learned senior counsel appearing on behalf of the appellants contended that the place of incident is very near to the house of the appellants and PW-1 to PW-3 had come to the place of incident fully armed and attacked Karan Singh and Banab Singh and that the other appellants were falsely implicated in the case. In order to substantiate this contention, the counsel drew our attention to Exh. D-4, which is the statement of PW-1 Hari Singh, recorded by the Dr. Jain, who had first examined him. The Exh. D-4 is to the following effect :

"How this incident happened: I had gone to the Well. Was coming back. On the way by catching me Girdhari Singh and his sons, by dragging me took to the room. There beat me with Farsi, Luhogi, brought me outside by dragging."

It is true that PW-12 while giving evidence admitted that he had recorded the aforesaid Exh. D-4 statement of PW-1.

Relying on the above statement, the learned counsel for the appellants submitted that the incident happened inside the house of the appellants when PW-1 and others came there to attack the appellants. The counsel for the appellants also contended that in Exh. D-4 statement, injured had stated only about Girdhari Singh and his sons and did not name all the appellants and this indicated that the two sons of Girdhari Singh were being falsely implicated.

A similar plea was raised by the appellants before the sessions court as well as the High Court. The High Court brushed aside that plea by stating that Exh. D-4 statement was not put to PW-1 when he was examined as a witness. This observation by the Division Bench regarding Exh. D-4 is partially correct. In fact, when PW-1 was cross-examined, his attention was drawn to Exh. D-4, but it is incorrect to say that the said witness was confronted with Exh. D-4 statement as such during cross-examination. PW-1, when asked whether he had given any statement to the doctor in the hospital, said he did not remember to have given any statement.

When a previous statement is to be proved as an admission, the statement as such should be put to the witness and if the witness denies having given such a statement, it does not amount to any admission and if it is proved that he had given such a statement, the attention of the witness must be drawn to that statement. Section 145 of the Evidence Act is clear on this aspect. The object is to give the witness a chance of explaining the discrepancy or inconsistency and to clear up the particular point of ambiguity or dispute. In the instant case, the Exh. D-4 statement as such was not put to the witness nor the witness was given an opportunity to explain it. Therefore, D-4 statement, even if it is assumed to be a statement of PW-1 Hari Singh, that is of no assistance to the appellants to prove their case of private defence.

The contention of the appellants that PW-1 and others came and attacked the appellants Karan Singh and Banab Singh is not supported by any evidence or circumstance. These two appellants put forward the plea of self-defence based on the fact that they had sustained some injuries. It is pertinent to note the injuries sustained by these two appellants. Karan Singh had a minor lacerated injury on the left ring finger, a minor injury on the right palm and another minor injury on the right little finger. All these injuries were on the palm and the fingers of right hand. Appellant Banab Singh had also a small lacerated injury on the right index finger. According to the prosecution, these appellants were wielding 'Farsa' and 'Lathies'. The injuries of these two appellants would only probabalise the prosecution case that they had used the weapons of offence with full force. Had there been an assault on these appellants by a group of persons as alleged by them, they would certainly have sustained some serious injuries. Minor injuries sustained by these appellants do not advance the case that PW1 to PW3 attacked them, and in all probability, they must have sustained these injuries when they used the weapons of offence in assaulting Hari Singh.

The appellants' counsel urged before us that the incident happened very near to the house of the appellants. The learned counsel stated that PWs 1, 2 and 3 must have come there to attack the appellants and that the well spoken of by PW-1 in his evidence was the well close to the house of the appellants. This contention is not correct. The houses of the appellants and PW-1 are in the same locality and it appears that even the properties of these two groups were lying contiguously. The evidence of PW-1 clearly shows that the well referred to by him in his evidence was close to his own house. He deposed that he was attacked when he was going from the well to his house. He also stated that the house of the accused was about one and half furlong away from that place. From this fact also, it is not possible to assume that PW-1 and others came to the appellant's house and attacked them and the appellants had only acted in private defence.

It is proved satisfactorily that the appellants had caused grievous injuries to PW-1 Hari Singh and the sessions court as well as the High Court rightly found

the appellants guilty of the offences punishable under Section 148 and 307. Considering the grievous nature of the injuries sustained by Hari Singh, we do not see any reason to take a lenient view in the matter of sentence awarded to the appellants. The appeal, therefore, fails and is dismissed.

JUDIS