

STATE OF U.P.

v.

JAGRAM & ORS.

(Criminal Appeal No. 293 of 2008)

FEBRUARY 12, 2008

[DR. ARIJIT PASAYAT AND P. SATHASIVAM, JJ.]

Penal Code, 1860 – ss. 302 and 324 r/w s.34– conviction by trial Court – Acquittal by High Court – Order of High Court set aside by Supreme Court in an appeal filed by the complainant – On appeal by State, held: In view of the decision of Supreme Court in the appeal filed by the complainant, matter disposed of.

Criminal Appeal No.233 of 2004 decided by Supreme Court on 22.3.2006 – relied on.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 293 of 2008.

From the Judgment and Order dated 11.08.2003 of the High Court of Judicature at Allahabad, Lucknow Bench. Lucknow in Criminal Appeal No. 486 of 1980.

S.R. Singh, T.N. Singh and Anil Kumar Jha for the Appellant.

Sushil Kumar Jain, Puneet Jain, Christi Jain, H.D. Thanvi, Pratibha Jain and Rameshwar Prasad Goyal for the Respondents.

The Judgment of the Court was delivered by

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

A 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
B 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.

C 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
D 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.

K.K.T.

Appeal disposed of.