

STATE OF U.P.  
v.  
MUTAHIR MIAN  
(Criminal Appeal No. 1053 of 2002)

SEPTEMBER 25, 2008

[DR. ARIJIT PASAYAT AND DR. MUKUNDAKAM  
SHARMA, JJ.]

*Penal Code, 1860: s.302 – Conviction under – Acquittal by High Court – Justification of – On facts, held: Justified – The evidence was properly analysed by High Court – View of High Court was possible and not irrational or perverse – Cumulative effect of infirmities pointed out by High Court probabalised the defence version.*

The prosecution case was that on the fateful day at 9.30 A.M., when the informant along with his brother, (deceased) and another person was on the way, the accused challenged them. When deceased questioned him, accused stabbed him thrice. The informant in order to save his brother, attacked the accused with a knife, resulting in several injuries on the person of accused.

The trial court believed the version of prosecution and convicted accused under s. 302 IPC. On appeal, High Court directed acquittal on the grounds that the prosecution version that the first information report was lodged at 10.15 A.M. was not proved; that the memo which was stated to have been received from the Civil Hospital was not brought on record; that the existence of the FIR at 10.15 A.M. was belied by the fact that after about six hours, the copy of the FIR was reached to the Doctor who has conducted the post mortem; that so called eye-witnesses were not believable and that the serious injuries on the accused were not explained. Aggrieved, State filed the instant appeal.

A **Dismissing the appeal, the Court**

HELD : The High Court analysed the evidence in great detail to conclude about the non acceptability of the prosecution version. The conclusions of the High Court cannot be termed as irrational or perverse. The view expressed by the High Court is a possible view. The cumulative effect of the infirmities pointed out, probabalise the defence version. [Para-7] [12-D]

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C **CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1053 of 2002**

From the final Judgment and Order dated 7.9.2001 of the High Court of Judicature at Allahabad in Criminal Appeal No. 2937 of 1980

D **T.N. Singh, Rajeev Dubey and Kamendra Mishra for the Appellant.**

**Jetendra Singh and S.K. Sabharwal for the Respondent.**

**The Judgment of the Court was delivered by**

E **DR. ARIJIT PASAYAT, J. 1.** Heard learned counsel for the parties.

F **2.** Challenge in this appeal is to the judgment of a Division Bench of the Allahabad High Court directing acquittal of the respondent who faced trial for alleged commission of offence punishable under Section 302 of the Indian Penal Code, 1860 (in short 'the Act'). The learned Sessions Judge, Rampur in S.T. No.30 of 1980 found him guilty and convicted him for offence punishable under Section 302 IPC and sentenced him to suffer imprisonment for life.

G **3.** In appeal, the High Court found certain vital discrepancies in the prosecution version and directed acquittal.

H **4.** The prosecution version, as unfolded during trial is as follows.

4. On 04.11.1979 at about 9.30 A.M. when the informant Zahidullah along with his brother Sajidullah (hereinafter referred to as 'deceased') and Shakirullah were returning via triangular crossing at Majar Khurmewali, they were accosted at that crossing by accused Mutahir Mian, who challenged them by saying "Bahadur Aa rahe hain". On this the deceased questioned him. Immediately thereon, he was stabbed thrice by the accused. His brother Zahidullah, in order to save his brother from any further assault, attacked the accused with a knife, resulting in several injuries on the person of accused. Finding the condition of the injured grave, leaving him in the custody of his brother-in-law Yakub Khan and younger brother Shakirullah with the instruction to carry him to the hospital, Zahidullah immediately proceeded to the police station for reporting the matter. The report was got scribed from Rajendra Prakash Saxena (PW-9) and the same was lodged by him at the police station Kotwali, Rampur, at about 10.15 A.M. The FIR was marked as Ext.Ka.1. The chick report is Ext. Ka-3 and copy of the G.D entry was marked as Ext.Ka.4. The investigation of the case was taken over by S.I. Iqtadar Hussain Rizvi (PW-8).

5. After completion of the investigation, charge sheet was filed and the accused faced trial. The Trial Court, as noted above, found the prosecution version to be cogent and recorded conviction. In appeal, the High Court directed acquittal on three grounds: Firstly, it was held that the prosecution version that the first information report was lodged at 10.15 A.M., has not been proved. Secondly, the memo which was stated to have been received from the Civil Hospital was not brought on record. It was found that the existence of the FIR at 10.15 A.M. is belied by the fact that after about six hours, the copy of the FIR was reached to the Doctor who has conducted the post mortem. Apart from that, thirdly, the so called eye-witnesses were not believable. It was also noticed that serious injuries on the accused were not explained.

6. Learned counsel for the appellant – State submitted that the conclusions of the High Court to direct acquittal are not sus-

A tainable. Great emphasis is laid on the evidence of PW-7, the Head Constable, who is stated to have recorded the original FIR. According to him, based on the written report Ext.Ka.1, the FIR was registered in relation to offence punishable under Section 307 IPC. Subsequently, on receipt of the memo from the hospital, it was altered to Section 302 IPC. It was also submitted that merely because there was some delay in sending copy of the FIR to the Doctor, i.e. for about six hours, that cannot be a ground for acquittal. Finally, it was submitted that the evidence of the witnesses was clear and cogent.

C 7. We find that the High Court has analysed the evidence in great detail to conclude about the non acceptability of the prosecution version. The conclusions of the High Court cannot be termed as irrational or perverse. The view expressed by the High Court is a possible view. The cumulative effect of the infirmities pointed out, probalilise the defence version.

D 8. We find nothing infirm in the conclusions of the High Court to warrant interference. The appeal fails and is dismissed.

D.G.

Appeal dismissed.