

STATE OF M.P.  
v.  
WAZIR KHAN & ANR.  
(Criminal Appeal No. 1510 of 2004)

OCTOBER 16, 2008

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

*Penal Code, 1860 – ss. 302 r/w 34 – Acquittal by High Court – Challenge to – Held: Not sustainable, in view of the discrepancies in evidence – Credibility of the prosecution version was affected by the opinion of Doctor as also several other factors such as delayed presentation of FIR and delayed despatch to the Elaka Magistrate.*

According to the prosecution, a petrol bomb was thrown at the deceased by the accused-Respondent. Respondent was convicted by the Trial Court under s.302 r/w s.34 IPC. High Court set aside the conviction of Respondent holding that the prosecution case was belied by the medical evidence and that the scenario presented by the prosecution was not believable.

In appeal to this Court, the conviction of Respondent was challenged on the ground that the High Court passed the order of acquittal in a very cryptic manner and proceeded on basis of the hypothetical answer given by the Doctor overlooking the evidence of the eye witnesses.

Dismissing the appeal, the Court

**HELD:** 1. There is substance in the stand of the appellant that the judgment of the High Court is very cryptic. But when the materials on record and the discrepancies in evidence as pointed out by accused

A persons are taken into account, the inevitable  
conclusion is that the High Court's ultimate conclusion  
directing acquittal is in order. It is not only the opinion of  
the Doctor which affects credibility of the prosecution  
version. There are several other factors which were  
B highlighted by the trial court- i.e. the delayed presentation  
of the FIR and the delayed despatch to the Elaka  
Magistrate. [Para 6] [300-E, F]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal  
C No. 1510 of 2004.

From the final Judgment and Order dated 29.11.2003 of  
the High Court of Judicature of Madhya Pradesh Bench at  
Gwalior in Criminal Appeal No. 71 of 1995.

D Siddhartha Dave, Jentiben AO and Vibha Datta Makhija  
for the Appellant.

Jai Prakash Pandey for the Respondents.

The Judgment of the Court was delivered by

E **DR. ARIJIT PASAYAT, J.** 1. Heard learned counsel for the  
appellant-State and learned counsel for the respondents. The  
High Court by its impugned judgment directed acquittal of the  
respondent who faced trial for alleged commission of offence  
punishable under Section 302 read with Section 34 of the  
F Indian Penal Code, 1860 (in short 'IPC').

2. The prosecution version as unfolded during trial in a  
nutshell is as follows:-

G In the night of 3.9.1993 at about 8:45 respondent No. 1  
had thrown a petrol bomb on Saheed Khan (hereinafter  
referred to as 'deceased') after igniting the petrol bottle with  
match stick. According to the prosecution Wairkhan had a  
petrol bomb in his hand. Hanifignited the petrol bomb with  
H match stick and Wazirkhan threw the said bottle filled with petrol

at Saheed. The bomb burnt instantly which resulted into the death of deceased by burning. After filing FIR, charges were framed. Respondents were tried and convicted for the offence. An appeal was filed against the order of conviction. Respondents submitted before the High Court that nature of evidence adduced against the respondents is not reliable and prosecution story itself demonstrates that the story is not reliable. Respondents invited attention to the evidence of PW-2, Ashok. This witness had deposed that Wazirkhan was holding bomb in his hand which was ignited by Hanif by match stick and then the said bomb was thrown on deceased Saheed and Saheed started burning. He came out of the shop and rushed to inform Abdul Khalil, uncle of Saheed. This witness in para 6 has deposed that after climbing the stairs, bomb was thrown in the shop. Similar statement was given by PW3 Sattar Khan that Wazirkhan had thrown the petrol bomb which hit the head of Saheed and he was burnt. He chased the accused but he could not catch them. Thereafter he returned back and deceased was taken by Matador to hospital. Mehboob Khan PW4 had deposed that Hanif had ignited the bomb by match stick and thrown at Saheed. This witness had deposed that burning petrol bomb fell on the deceased and he was burnt alive. Dr. Vinod Lahiri PW12 had deposed that deceased was having second and third degree burn injuries. The burns were dry. The percentage of burn was 90%. He admitted that the injury can be caused if petrol is poured over the body and body is ignited by fire. He further deposed that if some bottle or bag filled with petrol is thrown at any person and fire ignited then the person cannot receive the injuries as are received by the deceased. If a glass bottle filled with petrol is ignited and thrown at the deceased will have injuries by glass pieces but no injuries by glass pieces were found.

3. It was noted as follows:-

In the light of evidence of doctor and eye witness it was held that the prosecution has failed to prove its case beyond

A reasonable doubt. Case of the prosecution that the bomb was thrown at the deceased is belied by the medical evidence and the fact that no injury by glass pieces was found on the body of the deceased. We hold that the prosecution has failed to prove its case beyond reasonable doubt.

B 4. The High Court with reference to the evidence of the Doctor found that the scenario as presented is not believable. Accordingly, the appeal filed by the respondent questioning correctness of their conviction as was done by learned Additional Sessions Judge-IIInd, Gunna was allowed and the conviction of the respondents was set aside.

C 5. Learned counsel for the appellant-State submitted that the High Court in a very cryptic manner passed the order of acquittal. It has proceeded on the basis of hypothetical answer D given by the Doctor overlooking the evidence of eye-witnesses. Learned counsel for the respondent supported the judgment of the High Court.

E 6. We find substance in the stand of learned counsel for the appellant that the judgment is very cryptic. But when the materials on record and the discrepancies in evidence as pointed out by accused persons are taken into account, the inevitable conclusion is that the High Court's ultimate conclusion directing acquittal is in order. It is not only the opinion of the Doctor which affects credibility of the prosecution version.

F There are several other factors which were highlighted by the trial court- i.e. the delayed presentation of the FIR and the delayed despatch to the Elaka Magistrate.

G 7. In that view of the matter, we do not consider this to be a fit case for consideration. Hence the appeal fail and is dismissed accordingly.

B.B.B.

Appeal dismissed.