

STATE OF PUNJAB

v.

GURDIP KAUR

(Criminal Appeal No. 1063 of 2003)

OCTOBER 21, 2008

**[DR. ARIJIT PASAYAT, C.K. THAKKER AND
LOKESHWAR SINGH PANTA, JJ.]**

Penal Code, 1860 – s. 302 r/w s. 34 – Conviction under – Acquittal by High Court on the ground that there was delay in lodging FIR and in dispatching the report to area magistrate, evidence of eye-witnesses incredible and medical evidence at variance with ocular evidence – Interference with – Held: Not called for – From the combined effect of all the factors, it is clear that prosecution failed to establish accusations – Evidence – Criminal trial.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1063 of 2003.

From the final Judgment and Order dated 29.9.1997 of the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No. 169DB/1995.

Kuldip Singh, R.K. Pandey, T.P. Mishra and H.S. Sandhu for the Appellant.

Varinder Kumar Sharma for the Respondent.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Challenge is this appeal is to the judgment of a Division Bench of the Punjab and Haryana High Court of Punjab and Haryana directing acquittal of the respondent. Two appeals were filed before the High Court i.e. Criminal Appeal No. 169-DB of 1995 and Criminal Appeal No.

A 328-DB of 1995. Both the appeals were directed against the
judgment of learned Sessions Judge, Bhatinda holding that
each of the accused persons were guilty of offence punishable
under Section 302 read with Section 34 of the Indian Penal
Code, 1860 (in short 'IPC'). The two appellants in the two
B connected appeals faced trial along with one Bant Singh who
was acquitted by the trial Court.

2. Detailed reference to the factual position is not
necessary in view of the conclusions of the High Court in the
two appeals. Firstly it was submitted that there was
C considerable delay in lodging the first information report and
secondly there was considerable unexplained delay in sending
the report to the Elaka Magistrate. It was concluded by the High
Court that these factors apart from the fact that the evidence
of the so called eye-witness was not credible and cogent and
D also the medical evidence was clearly at variance with the
ocular version rendered prosecution version vulnerable.

3. Learned counsel for the appellant-State submitted that
the factors which have weighed with the High Court to direct
acquittal cannot be maintained. Learned counsel for the
E respondent accused on the other hand supported the judgment.

4. Though it cannot be laid as a rule of universal
application that whenever there is delay in lodging the FIR and/
or there is delay in despatching the report to the Elaka
F Magistrate and/or the medical evidence is at some variance
with the ocular evidence. The prosecution has to fail in the
instant case the combined effect of the three factors leave no
manner of doubt that prosecution has failed to establish the
G accusations. The view taken by the High Court is a possible
view and we do not consider this to be a fit case where any
interference is called for.

5. The appeal is accordingly dismissed.

H N.J.

Appeal dismissed.