

ASHOK KUMAR MONDAL

v.

SAMIR KUMAR MONDAL & ANR.  
(Criminal Appeal No. 17 of 2002)

OCTOBER 21, 2008

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

*Penal Code, 1860: s.304 Part-II – Conviction under – Acquittal by High Court – On the ground that there was discrepancy between the injuries and also of size of injuries as stated by the doctor, the eyewitnesses were not reliable and genesis of prosecution version was doubtful – Interference with – Held: View taken by High court was possible view – Interference not called for.*

**Prosecution case was that on the morning of occurrence, the wife of deceased was washing utensils. The accused, brother of deceased was cleaning the road with broom. At that time, some dust particles fell on wife of deceased, which resulted in fight between the deceased and accused. The accused hit the head of deceased with a crowbar and as a consequence deceased became unconscious and sustained bleeding injuries. He later succumbed to injuries.**

**The trial Court convicted the accused under s.304 Part II IPC. The High Court found that evidence of witnesses did not inspire confidence and was not reliable and ordered acquittal. Hence the instant appeal.**

**Dismissing the appeals, the Court**

**HELD: The High Court analysed the evidence and came to a categorical conclusion that there was discrepancy between the injuries and also of size of the**

A **injuries as stated by the Doctor. The eye-witnesses were not reliable. The genesis of the prosecution version was doubtful. The view taken by the High Court was a possible view and therefore interference is not called for. [Para 5] [45-E-F]**

B **CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 17 of 2002.**

From the final Judgment and Order dated 21.3.2001 of the High Court of Calcutta in Crl.A. No. 417 of 1990.

C **WITH**

Crl. A. No. 361 of 2002.

Ranjan Mukherjee and Satish Vig for the Appellant.

D Parijat Sinha, Reshmi Rea Sinha, Mrinal Kanti Mandal and Satish Vig for the Respondents.

The Judgment of the Court was delivered by

**DR. ARIJIT PASAYAT, J. 1. Heard.**

E 2. In both these appeals challenge is to the judgment of a Division Bench of the Calcutta High Court directing acquittal of the respondent Samir Kumar Mondal who was convicted by learned Additional Sessions Judge, Birbhum, Rampurhat for offence punishable under Section 304 Part-II of the Indian Penal Code, 1860 (in short 'IPC). He was sentenced to undergo F imprisonment for ten years.

G 3. The prosecution version as unfolded during trial is that on 24.01.1988 in the early morning when Gouri Balal Mondal wife of the deceased was engaged in washing utensils, her husband's elder brother accused Benoy Kumar Mondal (who was acquitted) was cleaning the road with broom stick. At that time, some dust particles fell on the person of Gouri Bala, as a reason whereof, there was exchange of hot words amongst her husband, two sons with the accused and his father. At that time, the accused Samir Kumar Mondal stated to have brought H a crowbar and stuck on the head on Ajit Kumar Mondal,

husband of PW2; as a consequence whereof, father of PW1 A  
became unconscious and sustained bleeding injuries. He was  
taken to the Primary Health Centre but later shifted to Suri  
Sadar Hospital. He succumbed to the injuries. On the next date  
i.e. on 25.01.2008 first information report was lodged at the  
police station. The prosecution relied on the evidence of four B  
persons who are stated to be eye-witnesses. The trial court  
on the basis of evidence brought on record found the  
respondent Samir Kumar Mondal to be guilty as noted above  
and convicted him. In appeal, the High Court found that the  
evidence of the witness do not inspire confidence and not C  
reliable, genesis of the prosecution story was suppressed and  
therefore it was unsafe to rely on the witnesses.

4. Learned counsel for the appellant and learned counsel  
for the State of West Bengal submitted that the reasonings of D  
the High Court are contrary to the evidence and material on  
record. Learned counsel for the respondent supported the  
judgment of the High Court.

5. We find that the High Court has analysed the evidence  
and has come to a categorical conclusion that there was E  
discrepancy between the injuries and also of size of the injuries  
as stated by the Doctor. The eye-witnesses were not reliable.  
The genesis of the prosecution version is doubtful. The view  
taken by the High Court is a possible view and we do not  
consider these appeals to be fit cases where any interference F  
is called for.

6. The appeals are dismissed accordingly.

D.G.

Appeals dismissed.