

STATE OF HARYANA

v.

KRISHAN

(Criminal Appeal No. 915 of 2003)

NOVEMBER 7, 2008

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

*Penal Code 1860- s. 302 – Conviction under – Acquittal by High Court – On the ground that illaqua Magistrate received FIR after a long delay; and ocular evidence at variance with medial evidence – Interference with – Held: Not called for – Cumulative effect of factors highlighted by High Court made prosecution case unreliable – Evidence.*

*Code of Criminal Procedure, 1973 – s.386 – Appeal against acquittal – Interference with – Scope of – Explained.*

According to the prosecution case, the appellant caused lathi blow on the head of the deceased resulting in his death. Trial court convicted the appellant u/s 302 IPC and imposed rigorous imprisonment for 10 years. High Court set aside the conviction and acquitted the appellant on the ground that illaqua Magistrate received FIR after a long delay; and that the ocular evidence was at variance with medical evidence. Hence the present appeal.

Dismissing the appeal, the Court

**HELD:** 1.1 There is no embargo on the appellate court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web

A of administration of justice in criminal cases is that if two  
views are possible on the evidence adduced in the case,  
one pointing to the guilt of the accused and the other to  
his innocence, the view which is favourable to the  
accused should be adopted. The paramount  
B consideration of the court is to ensure that miscarriage  
of justice is prevented. A miscarriage of justice which may  
arise from acquittal of the guilty is no less than from the  
conviction of an innocent. In a case where admissible  
evidence is ignored, a duty is cast upon the appellate  
C court to re-appreciate the evidence where the accused  
has been acquitted, for the purpose of ascertaining as to  
whether any of the accused really committed any offence  
or not. The principle to be followed by the appellate court  
D considering the appeal against the judgment of acquittal  
is to interfere only when there are substantial reasons for  
doing so. If the impugned judgment is clearly  
unreasonable and irrelevant and convincing materials  
have been unjustifiably eliminated in the process, it is a  
substantial reason for interference. [Para 5] [956-E-H;  
957-A, B]

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1.2 Though some of the factors highlighted by the  
High Court may not create a dent in the prosecution  
version but the cumulative effect certainly casts a shadow  
upon the credibility of the prosecution version. The view  
F taken is a possible view. Therefore, no interference is  
called for. [Para 6] [957-E]

G *Bhagwan Singh v. State of M.P.* 2003 (3) SCC 21; *Shivaji  
Sahabrao Bobade v. State of Maharashtra* 1973 (2) SCC  
793; *Ramesh Babulal Doshi v. State of Gujarat* 1996 (9)  
SCC 225; *Jaswant Singh v. State of Haryana* 2000 (4) SCC  
484; *Raj Kishore Jha v. State of Bihar* 2003 (11) SCC 519;  
*State of Punjab v. Karnail Singh* 2003 (11) SCC 271; *State  
of Punjab v. Phola Singh* 2003 (11) SCC 58; *Suchand Pal  
v. Phani Pal* 2003 (11) SCC 527; *Sachchey Lal Tiwari v.  
H State of U.P.* 2004 (11) SCC 410, relied on.

**Case Law Reference :**

<b>2003 (3) SCC 21</b>	<b>Relied on.</b>	<b>Para 5</b>	<b>A</b>
<b>1973 (2) SCC 793</b>	<b>Relied on.</b>	<b>Para 5</b>	
<b>1996 (9) SCC 225</b>	<b>Relied on.</b>	<b>Para 5</b>	<b>B</b>
<b>2000 (4) SCC 484</b>	<b>Relied on.</b>	<b>Para 5</b>	
<b>2003 (11) SCC 519</b>	<b>Relied on.</b>	<b>Para 5</b>	
<b>2003 (11) SCC 271</b>	<b>Relied on.</b>	<b>Para 5</b>	<b>C</b>
<b>2003 (11) SCC 58</b>	<b>Relied on.</b>	<b>Para 5</b>	
<b>2003 (11) SCC 527</b>	<b>Relied on.</b>	<b>Para 5</b>	
<b>2004 (11) SCC 410</b>	<b>Relied on.</b>	<b>Para 5</b>	<b>D</b>

**CRIMINAL APPELLATE JURISDICTION :** Criminal Appeal No. 915 of 2003.

From the final Judgment and Order dated 15.1.2003 of the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No. 374-SB-1989.

Rajeev Gaur 'Naseem' and T.V. George for the Appellant.

Rishi Malhotra and Prem Malhotra for the Respondent.

The Judgment of the Court was delivered by

**DR. ARIJIT PASAYAT, J.** 1. Challenge in this appeal is to the judgment of a learned Single Judge of the Punjab and Haryana High Court holding that the respondent deserves to be acquitted and the judgment of conviction and sentence as recorded by learned Additional Sessions Judge, Bhiwani is not correct. It is to be noted that learned Sessions Judge had found

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A the respondent guilty of offence punishable under Section 304 of the Indian Penal Code, 1860 (in short the 'IPC') and was sentenced him to rigorous imprisonment for 10 years and fine with default stipulation. However the two co-accused persons Jai Bhagwan and Anant Ram were acquitted.

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2. Background facts as projected by the prosecution are as follows:

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On 22.3.1989, it was PHAG festival. PW-4 Sher Singh, brother of Nafe Singh (PW-3) had gone to the Bazar for playing PHAG. However, Nafe Singh (PW-3) and his father Chandgi Ram (hereinafter referred to as the 'deceased') remained at the house.

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Naresh Kumar, nephew of Nafe Singh, visited them at about 3 pm and informed that Sher Singh (PW 4) had been beaten by carpenters of their village. On receipt of this information, PW-3 Nafe Singh alongwith his father Chandgi Ram went towards the houses of carpenters. His father was ahead of him, while he was following him. When they reached near the shop of Jai Singh, then he started talking with Jai Singh while Chandgi Ram went ahead. Chandgi enquired from the carpenters about the whereabouts of Sher Singh, PW-4, upon which carpenters lost temper. Anant Ram and Jai Bhagwan, accused (now acquitted) caught hold of Chandgi Ram from his arms while Krishan, appellant, inflicted a Lathi blow, on the head of Chandgi Ram. On receipt of the Lathi blow, he fell down and the appellant alongwith co-accused ran away. The occurrence was witnessed by Nafe Singh and Jai Singh.

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G In the meantime, Harish also appeared. Chandgi was put into a tempo and was taken to civil hospital, Dadri, where he was admitted and was medico-legally examined. The police reached the hospital. Nafe Singh made statement, Ex.PL, to Inder Singh Saini, Sub Inspector (PW-5) which was signed after

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admitting the same to be correct. Inder Singh Saini (PW-5) A made endorsement Ex.PL/1 and sent it to the police station for registration of the case, on the basis of which formal FIR, Ex.PL/ 2 was recorded by Dalip Singh, Sub Inspector.

Inder Singh Saini SI (PW-5), then went to the place of B occurrence but none was found there and he stayed in the village. On the next day i.e. on 23.3.1989, he called Chowkidar and Jai Singh also came there and on the pointing out of Jai Singh, he took blood stained earth from the spot after making it into a sealed parcel vide memo Ex.PM attested by the C witnesses. He also recorded the statement of Sher Singh (PW-4) who had come there and sent him for his medico-legal examination to Civil Hospital Dadri.

At about 8 a.m., he received Ruqa through constable Ram D Pal, informing him about the death of Chandgi and then he converted the offence into 302 IPC. He went to Civil Hospital, Dadri, and prepared inquest report, Ex.PG, and got conducted E postmortem on the dead body of Chandgi. Head constable Parkash Chand handed over one packet to him, which he took into possession vide Memo Ex.PM. He recorded the statements of the witnesses. He apprehended the appellant and his two F companions on 27.3.1989. He interrogated the appellant and in pursuance of his disclosure statement, Ex.PQ, recovered Lathi, Ex.P3, which was made into a sealed parcel and was taken into possession. Before taking into possession, he prepared rough sketch of the Lathi, Ex.PS and also a site plan of the place of recovery, Ex. PT.

As the accused persons pleaded innocence, trial was G held. Prosecution examined six witnesses. One Jai Singh was given up as he was supposed to won over. The trial court placed reliance on the evidence of PW 3 and directed conviction as recorded above.

In appeal the High Court found that there were several H factors which made the prosecution version unreliable. It was

A noted that the First Information Report was purportedly lodged  
on 22.3.1989 but the same was received by the Illaqa  
magistrate after a long time i.e. on 24.3.1989 though the court  
of the Illaqa magistrate was situated at less than half a  
kilometer. Additionally the number of injuries as stated by the  
B so called eye witness, PW3 was at great variance with the  
medical evidence. It also noted that the medical examination  
conducted at 3.30 P.M. by Dr. M.M. Sharma, PW 1 showed that  
the injuries were caused within a duration of 6 to 12 hours. His  
C specific evidence was that the deceased could have received  
the injuries at about 10 AM on 22.3.1989 and he had not  
received injuries within six hours. According to the prosecution  
version the occurrence took place at 3.30 PM and the medico  
legal examination was done at 5.30 pm.

D 3. Learned counsel for the appellant State submitted that  
the factors highlighted by the High Court to direct acquittal have  
no foundation.

4. Learned counsel for the respondent on the other hand  
supported the judgment of the High Court.

E 5. There is no embargo on the appellate court reviewing  
the evidence upon which an order of acquittal is based.  
Generally, the order of acquittal shall not be interfered with  
because the presumption of innocence of the accused is further  
strengthened by acquittal. The golden thread which runs through  
F the web of administration of justice in criminal cases is that if  
two views are possible on the evidence adduced in the case,  
one pointing to the guilt of the accused and the other to his  
innocence, the view which is favourable to the accused should  
be adopted. The paramount consideration of the court is to  
G ensure that miscarriage of justice is prevented. A miscarriage  
of justice which may arise from acquittal of the guilty is no less  
than from the conviction of an innocent. In a case where  
admissible evidence is ignored, a duty is cast upon the  
appellate court to re-appreciate the evidence where the  
H accused has been acquitted, for the purpose of ascertaining

as to whether any of the accused really committed any offence or not. (See *Bhagwan Singh v. State of M.P.*, 2003 (3) SCC 21). The principle to be followed by the appellate court considering the appeal against the judgment of acquittal is to interfere only when there are substantial reasons for doing so. If the impugned judgment is clearly unreasonable and irrelevant and convincing materials have been unjustifiably eliminated in the process, it is a substantial reason for interference. These aspects were highlighted by this Court in *Shivaji Sahabrao Bobade v. State of Maharashtra* (1973 (2) SCC 793), *Ramesh Babulal Doshi v. State of Gujarat* (1996 (9) SCC 225), *Jaswant Singh v. State of Haryana* (2000 (4) SCC 484), *Raj Kishore Jha v. State of Bihar* (2003 (11) SCC 519), *State of Punjab v. Karnail Singh* (2003 (11) SCC 271), *State of Punjab v. Phola Singh* (2003 (11) SCC 58), *Suchand Pal v. Phani Pal* (2003 (11) SCC 527) and *Sachchey Lal Tiwari v. State of U.P.* (2004 (11) SCC 410).

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6. Though some of the factors highlighted by the High Court may not create a dent in the prosecution version but the cumulative effect certainly casts a shadow upon the credibility of the prosecution version. The view taken is a possible view. Therefore no interference is called for.

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7. Appeal is dismissed.

N.J.

Appeal dismissed.