

A

STATE OF U. P.

v.

MANGAL SINGH & ORS.

(Criminal Appeal No. 334 of 2002)

B

APRIL 16, 2003

**[DR. ARIJIT PASAYAT AND ASOK KUMAR  
GANGULY, JJ.]**

C

*Penal Code, 1860.— ss. 302 r/w 149 and 148 – Three members of a family done to death – Death caused due to gun-shot injuries – At the relevant time, deceased and PW1 were travelling in a bullock-cart – Trial Court convicted the accused-respondents – Conviction set aside by High Court on the premise that the evidence of PWs did not inspire*

D

*confidence – Justification of – Held: On facts, justified – From evidence of PWs, it is clear that they could not have witnessed the occurrence as claimed and they also changed the place of occurrence and the manner in which the alleged occurrence took place – The witnesses were shifting their*

E

*version almost at every stage – Veracity of the prosecution version was doubtful – If PW 1 was driving the bullock cart, as claimed, it remained unexplained as to how he did not suffer any injury while those sitting behind him in the bullock-*

F

*cart sustained serious injuries resulting in their death – Judgment of High does not suffer from any infirmity to warrant interference.*

G

**According to the prosecution, three members of a family were done to death by the accused-respondents. The respondents allegedly fired gun-shots at the deceased while they alongwith PW1 were travelling in a bullock-cart. The trial court convicted the respondents under ss.148 and 302 r/w s.149 IPC. On appeal, the High Court set aside the conviction on the premise that the evidence of PWs1 and 3 did not inspire confidence.**

H

Hence the present appeal.

Dismissing the appeal, the Court

HELD: 1. From the evidence of PWs 1 and 3, it is clear that they could not have witnessed the occurrence as claimed and they also changed the place of occurrence and the manner in which the alleged occurrence took place. The witnesses were shifting their version almost at every stage. [Para 5] [391-A, B]

2. The High Court noted various factors like changing the place of occurrence and the manner in which the alleged occurrence took place. This itself was sufficient to doubt the veracity of the prosecution version. In addition, the High Court noted several other factors like PW1 not sustaining any injury when persons sitting behind him received gun shot injuries and lost their lives. It is the prosecution version that the accused persons indiscriminately started firing which resulted in the death of the deceased persons. If PW 1 was driving the bullock cart, as claimed, it remains unexplained as to how he did not suffer any injury while those sitting behind him in the bullock cart sustained serious injuries resulting in their death. In this view of the matter, the judgment of the High Court does not suffer from any infirmity to warrant interference. [Para 8] [391-E, F]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 334 of 2002.

From the Judgment & Order dated 09.08.2001 of the High Court of Judicature at Allahabad in Criminal Appeal. No. 2309 of 1980.

S.R. Singh, Sandeep Singh and Anil Kumar Jha for the Appellants.

A S.K. Dubey, P.C. Agarwal, Dr. Sushil Balwada and Yogesh Tiwari for the Respondents.

The Judgment of the Court was delivered by

B **DR. ARIJIT PASAYAT, J.** 1. Challenge in this appeal is to the judgment of a Division Bench of the Allahabad High Court directing acquittal of the respondents who faced trial for alleged commission of offences punishable under Sections 148 and 302 read with Section 149 IPC.

C 2. The accused nos. 7 and 8 faced trial for offences punishable under Section 147, 302 read with Section 149 IPC. It is to be noted that 8 persons faced trial and were convicted by the learned IVth Additional Sessions Judge Jalaun.

D 3. During the pendency of the matter before the High Court three of them i.e. accused No.1, Jagmohan, accused No.2 Kishan Dutt and accused No.7 Ram Kumar have died and, therefore, the High Court noted that the appeals stood abated so far as they are concerned. During the pendency of the matter before this Court, respondent No.3 Kanahai (A.5) has died.  
E Hence, the appeal stands abated so far as respondent No.3 is concerned.

F 4. In the present case, three persons lost their lives. The occurrence took place on 22.3.1979 and prosecution version in a nutshell is that the deceased and PW.1 were travelling in a bullock cart while PW.3 was following them. The accused persons were holding several weapons and fired gunshots at the deceased persons as a result of which they lost their lives. PW.3 filed FIR. Investigation was undertaken and on completion thereof, charge sheet was filed and as the accused pleaded  
G innocence, trial was held and, as noted above, the trial court found them guilty and convicted them.

H 5. In appeal, the High Court by the impugned Judgment has set aside the conviction. The reasoning indicated by the

High Court for directing acquittal is that the evidence of PW.1 and PW.3 do not inspire confidence. On a reading of their evidence it is clear that they could not have witnessed the occurrence as claimed and they also changed the place of occurrence and the manner in which the alleged occurrence took place. It was noticed that the witnesses were shifting their version almost at every stage.

6. It was submitted by learned counsel for the appellant-State that minor variations and discrepancies in evidence of the eye witnesses have been magnified by the High Court and it has directed acquittal in a case where three members of a family were done to death.

7. Learned counsel for the respondents, on the other hand, supported the judgment of acquittal passed by the High Court.

8. We find that the High Court has noted various factors like changing the place of occurrence and the manner in which the alleged occurrence took place. This itself was sufficient to doubt the veracity of the prosecution version. In addition, the High Court has noted several other factors like PW.1 not sustaining any injury when persons sitting behind him received gun shot injuries and lost their lives. It is the prosecution version that the accused persons indiscriminately started firing which resulted in the death of the deceased persons. If PW.1 was driving the bullock cart, as claimed, it remains unexplained as to how he did not suffer any injury while those sitting behind him in the bullock cart sustained serious injuries resulting in their death. In this view of the matter, the judgment of the High Court does not suffer from any infirmity to warrant interference. The appeal fails and is, accordingly, dismissed.

B.B.B.

Appeal dismissed.