

STATE OF RAJASTHAN

v.

BHANWAR SINGH

SEPTEMBER 14, 2004

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

*Penal Code, 1860—Sections 302 and 323—Respondent accused of committing murder—Convicted by Trial Court—Conviction set aside by High Court—On appeal decision of High Court upheld—Probation of Offenders Act, 1958.*

*Evidence:*

*Importance of ocular evidence over medical evidence—Medical evidence totally improbablises the ocular version—Credibility of prosecution case effected.*

**Respondent and five others faced trial for committing homicidal death of the deceased. Respondent was convicted. On appeal by respondent, High Court found infirmities in the prosecution case and set aside the conviction. State has appealed from decision of High Court.**

**Dismissing the appeal, the Court**

**HELD :** That High Court has carefully analysed the factual position. Combined effect of the infirmities noticed by High Court are sufficient to show that the prosecution case has not been established. The presence of three eyewitnesses at the alleged spot of incident has been rightly considered doubtful in view of the categorical statement of the widow of deceased that she sent for these persons to go and find out the body of her husband. The unexplained delay of one day in lodging FIR casts serious doubt on the truthfulness of prosecution version. The mere delay in lodging the FIR may not prove fatal in all cases. But in the circumstances of the present case, certainly it is one of the factors which corrodes the credibility of the prosecution version. Finally, though ocular evidence has to be given importance over medical evidence, where medical evidence totally improbablises the ocular version, as in present case, that can be taken to be a factor to effect credibility of prosecution

**A** version. The view taken by High Court is a possible view. The appeal being one against acquittal, this is not a fit case for any interference. [412-B, C, D, E]

**B** CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 594 of 1999.

From the Judgment and Order dated 1.5.98 of the Rajasthan High Court in D.B. CrI. A. No. 169 of 1995.

Kumar Kartikay and Aruneshwar Gupta for the Appellant.

**C** Ms. Sashi Kiran (A.C.) (NP) for the Respondent.

The Judgment of the Court was delivered by

**D** **ARIJIT PASAYAT, J. :** The respondent Bhanwar Singh (hereinafter referred to as 'the accused') faced trial along with five others for allegedly committing homicidal death of one Kalu Singh (hereinafter referred to as 'the deceased'). The Trial Court found respondent-accused Bhanwar Singh guilty of offence punishable under Section 302 of the Indian Penal Code, 1860 (in short 'the IPC') and sentenced to imprisonment for life. Three other co-accused persons, namely, Moti Singh, Shankar Singh and Bhanwar Singh were convicted in terms of Section 323 IPC and were given benefit of probation under the Probation of Offenders Act, 1958 (in short 'the Probation of Offenders Act'). Two other co accused persons Guman Singh and Nathu Singh were acquitted. Bhanwar Singh questioned legality of his conviction by preferring an appeal before the High Court of Rajasthan. By the impugned judgment, a Division Bench of the said High Court found that prosecution has not been able to establish its accusations.

**E** State has questioned correctness of the said judgment in this appeal.

**F** Background facts in a nut shell are as follows :

**G** A written report was lodged by Gulab Singh, (PW-8) on 27.10.1992 at Udaipur around 7.00 P.M. which was sent to police station Panrawa on 28.10.1992. According to the FIR, deceased had succumbed to the injuries on 27.10.1992 at about 5.00 A.M. The injuries were inflicted on 26.10.1992 at about 4 P.M. On that day in the afternoon, accused Guman Singh and **H** Nathus Singh requested the deceased to go to see a cattle fare. Thanwar

Singh, (PW-3) accompanied the deceased and Shambhu Singh, (PW-4) and Gulab Singh, (PW-8) followed them. When the deceased had reached Birothi, all the six accused persons surrounded him and attacked him with sword and lathis. Accused Bhanwar Singh was carrying a sword with which he inflicted injury on the head of the deceased by the sharp edge. The deceased fell down. PW3- tried to intervene but he also received injuries at the hands of Moti Singh. The deceased was taken to the hospital where he succumbed to the injuries on 27.10.1992 at around 5.00 A.M, as noted above. The Doctor, Anis Ahmad, (PW-15) who conducted the post mortem found one injury, i.e. lacerated wound 5 x 1 cm. bone deep on vertex of skull and fracture on right prieto-frontal bones of skull and right temporal bone. The cause of death was attributed to the head injury. In the evidence in court, the Doctor stated that the injury on the head could not have been caused by a sword and it was only possible by a blunt weapon. The Trial Court placed reliance on the evidence of PWs. 3, 4 and 8 to record conviction and imposed sentenced as noted above. In appeal, the High Court found that the evidence of PWs. 3, 4 and 8 lacked credibility. It was noted that PW-5, the widow for the deceased categorically stated the she heard about the incident from some persons and sent for PWs. 3, 4 and 8 who went to the alleged spot of occurrence to bring the deceased in an injured condition and thereafter he was sent to the hospital. The High Court noticed that though it was accepted by all the witnesses that large number of persons who belonged to the same village were there when the alleged incident occurred, name of no other person could be stated. The High Court also took note of the fact that there was unexplained delay in lodging the report. It found the presence of PWs. 3, 4 and 8 at the alleged spot of occurrence to be improbable. Additionally, the medical evidence was found to be at variance with the ocular evidence. Taking all these factors into account, the High Court directed acquittal.

In support of the appeal, learned counsel for the appellant-State submitted that PW-5's evidence has been un-necessary given importance overlooking the eye-witness version as tendered by PWs. 3, 4 and 8. Merely because PW-5 had stated that she had sent for PWs. 3, 4 and 8 to go and find out the body of her husband, that did not, in any manner, improbableise the eye-witnesses version of the said witnesses. Additionally, since the witnesses were busy for attending to the injured Kalu Singh, the mere delay in lodging the FIR should not have been given undue importance. It was also submitted that the medical evidence shall in no way rules out veracity of the ocular evidence.

A None has appeared to represent the respondent when the matter was called.

B We find that the High Court has carefully analysed the factual position. Though, individually some of the circumstances may not have affected veracity of the prosecution version, the combined effect of the infirmities noticed by the High Court are sufficient to show that the prosecution case has not established. The presence of PWs. 3, 4 and 8 at the alleged spot of incident has been rightly considered doubtful in view of the categorical statement of PW-5, the window that she sent for these persons to go and find out the body of her husband. It is quite unnatural that PWs. 3, 4 and 8 remained silent after witnessing the assaults. They have not given any explanation as to what they did after witnessing the assault on the deceased. Additionally, the unexplained delay of more than one day in lodging the FIR casts serious doubt on the truthfulness of prosecution version. The mere delay in lodging the FIR may not prove fatal in all cases. But on the circumstances of the present case, certainly, it is one of the factors which corrodes credibility of the prosecution version. Finally, the medical evidence was at total variance with the ocular evidence. Though ocular evidence has to be given importance over medical evidence, where the medical evidence totally improbabilises the ocular version that can be taken to be a factor to effect credibility of the prosecution version. The view taken by the High Court is a possible view.

D The appeal being one against acquittal, we do not consider this to be a fit case where any interference is called for. The appeal fails and is dismissed.

E

K.G.

Appeal dismissed.