

A STATE OF RAJASTHAN  
v.  
ASHFAQ AHMED  
(Criminal Appeal No. 591 of 2003)

B MARCH 04, 2009  
[DR. ARIJIT PASAYAT, HARJIT SINGH BEDI AND  
ASOK KUMAR GANGULY, JJ.]

*PENAL CODE, 1860:*

C *s. 302 – Conviction by trial court – Acquittal by High Court – HELD: High Court rightly held that the only evidence relied upon by trial court, purported to have been recorded by IO was not a dying declaration – There was no evidence to show that the victim was in a condition to make a statement*  
D *– There is no infirmity in the judgment of High Court to warrant interference – Constitution of India, 1950 – Article 136.*

**The instant appeal was filed by the State Government against the judgment of the High Court by which it set  
E aside the conviction and the sentence imposed upon the accused by the trial court.**

**Dismissing the appeal, the Court**

F **HELD: The only evidence on which the trial court recorded the conviction was Ext. P-1 purported to have been recorded by the Investigating Officer (PW-23). The High Court held that Ext. P-1 was not a dying declaration and was not sufficient to hold the accused guilty, particularly, when the father of the deceased, who was  
G examined as PW 5, categorically stated that the deceased was not in a condition to make any statement. PW-23 admitted that there was no record to show that the doctor opined that the deceased was in a condition to make a statement. PW-23 only stated that he had taken the oral**

consent of the doctor (PW-1) who was attending the patient, but PW1 has not indicated anything about the condition of the deceased to make a statement or about the so-called oral consent. On the contrary, one of the doctors comprising the Medical Board categorically stated that when they examined the deceased, the condition of the patient was so critical that it was even impossible to examine his injuries medically. That was the only evidence on which the conviction was recorded by the trial court. The High Court was, therefore, justified in reversing the judgment of conviction and directing acquittal. There is no infirmity in the judgment of the High Court to warrant interference. [Para 3 and 4] [308-B-G]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 591 of 2003.

From the Judgment & Order dated 18.7.2002 of the High Court of Judicature for Rajasthan Bench at Jaipur in D.B. Criminal Appeal No. 125 of 1997.

Dr. Manish Singhvi, AAG and Milind Kumar for the Appellant.

Sushil Kumar, Pratibha Jain and Puneet Jain for the Respondents.

The Judgment of the Court was delivered by

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

1. The present appeal is filed by the State of Rajasthan questioning the order passed by a Division Bench of the Rajasthan High Court, Jaipur Bench directing acquittal of the respondent. The respondent Ashfaq Ahmed faced trial for alleged commission of offence punishable under Section 302 of the India Penal Code, 1860 (in short 'I PC'). Learned Additional Sessions Judge No. 3, Kota found the respondent accused guilty and convicted him for offence punishable under

A Section 302 I PC and sentenced him to undergo imprisonment for life.

2. The High Court by the impugned order directed acquittal.

B 3. The High Court noticed that the Parcha bayan (Ext. P1) purported to have been recored by the Investigating Officer Shri Rajendra Prasad (P W- 23) was not a dying declaration and was not sufficient to hold the accused guilty particularly when the father of the deceased who was examined as P W 5  
C categorically stated that the deceased was not in a condition to make any statement. P W-23 admitted that there was no record to show that the Doctor opined that the deceased was in a condition to make a statement. P W- 23 only stated that he had taken the oral consent of the Doctor who was attending  
D the patient. Unfortunately the said Doctor Shri Laxmi Nath Meena who was examined P W 1 has not indicated any thing about the condition of the deceased to make a statement or about the so-called oral consent. On the contrary Dr. G.S. Bishnar who was a member of the Medical Board categorically  
E stated that when the Medical Board examined the deceased, the condition of the patient was so critical that it was even impossible to examine his injuries medically. P W 1 stated that the condition of the deceased was serious and therefore he was referred to Kota hospital and he reached the hospital after P  
F W- 23 had reached the hospital and started recording the statement of the deceased.

4. Since that was the only evidence on which the conviction was recorded by the trial court, the High Court was justified in reversing the judgment of conviction and directing acquittal. We  
G find no infirmity in the judgment of the High Court to warrant interference. The appeal fails and dismissed.

R.P.

Appeal dismissed.