

A

STATE OF RAJASTHAN

v.

MOHAN LAL AND ORS.

(Criminal Appeal No. 822 of 2003)

B

APRIL 15, 2009

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

C

*Penal Code, 1860: s. 302 – Appeal against acquittal by High Court – High Court directing acquittal on the ground that evidence of eyewitnesses was not credible – On appeal, held: View of High Court was plausible, hence no interference called for – Conduct of eyewitnesses was unnatural – Their presence at the spot was also doubtful – Also there was variation in their statement made during investigation and made in the court.*

D

The respondents were convicted under s.302 r.w. s.34 IPC. High Court found that the evidence of eyewitnesses was not credible and ordered acquittal. Hence the appeal.

E

**Dismissing the appeal, the Court**

F

**HELD:** The conduct of the so-called eye-witness was absolutely unnatural. Through in all cases the conduct of persons would not be determinative, it would depend on several factors. The four persons who claimed to have witnessed the occurrence did not make any effort to save the deceased from the assaults made by the accused persons. PW1 was the son of the deceased. The High Court noticed that the presence of so-called eye witnesses was practically not acceptable because of the various variations in the statement made during investigation and made in the court. The High court found that the conduct was not only unnatural but also

G

H

proved that their presence at the place of occurrence doubtful. The view taken by the High Court is plausible one, and there is no reason to interfere. [Paras 5, 6 and 7] [144-D-G]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.822 of 2003.

From the Judgment & Order dated 30.07.2002 of the High Court of Judicature for Rajasthan, Jaipur Bench, Jaipur in D.B. Criminal Appeal No. 71 of 1997.

Manish Singhvi, AAG and Milind Kumar for the Appellant.

S.R. Bajwa, Puneet Jain, Archana Tiwari, Sushil Kumar Jain and Pratibha Jain for the Respondent.

The Judgment of the Court was delivered by

**DR. ARIJIT PASAYAT, J.** 1. Heard learned counsel for the appellant-State and learned counsel for the respondents.

2. Challenge in this appeal is to the judgment of a Division Bench of the Rajasthan High Court, Jaipur Bench directing acquittal of the respondents who faced trial for alleged commission of offence punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860 (in short 'IPC'). Originally five persons faced trial and out of them two accused persons namely Moti Ram and Ramji Lal were acquitted by judgment of learned Sessions Judge, Jhunjhunu. By the judgment which was impugned before the High Court, the present respondents were found guilty of offence punishable under Section 302 read with Section 34 of the IPC.

3. The prosecution version in a nutshell that on 4.11.1995 Balusingh (hereinafter referred to as the deceased) was assaulted by the present respondents and the two acquitted accused persons and in the process Balu Singh lost his life. Information was lodged by Madan Singh Yadav (PW9) who was the son of the deceased. After investigation, charge sheet was filed and since the accused persons pleaded innocence, trial

A was held. As noted above, the present respondents were found guilty of offence punishable under Section 302 read with Section 34 IPC. The convicted person preferred an appeal before the High Court which as noted above directed their acquittal. The High Court found the evidence of so-called eye-witness PW1, 2,5 and 9 to be not credible and cogent and therefore directed the acquittal.

4. In support of the appeal learned counsel for the appellant stated that since four eye-witnesses were there, there evidence should not have been discarded to direct acquittal. Learned counsel for the respondent supported the judgment of the High Court submitting that the view taken by the High Court is a possible view and has been arrived at after analysing the evidence of eye-witness.

5. It is to be noted that the conduct of the so-called eye-witness was absolutely unnatural. They did not make any effort to either save the deceased when he was being assaulted or when the accused persons purportedly took away the dead body of the deceased.

6. Though in all cases the conduct of persons would not be determinative, it would depend on several factors. In the present case undoubtedly four persons who claimed to have witnessed the occurrence did not make any effort to save the deceased from the assaults made by the accused persons. PW1 was the son of the deceased. The High Court noticed that the presence of so-called eye witnesses was practically was not acceptable because of the various variations in the statement made during investigation and made in the court.

7. The High Court found that the conduct was not only unnatural but also proved that their presence at the place of occurrence doubtful. The view taken by the High Court is a plausible one, we find no reason to interfere in this appeal which is accordingly dismissed.

H D.G.

Appeal Dismissed.