

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.334 OF 2002**

STATE OF U.P.

Appellant (s)

VERSUS

MANGAL SINGH & ORS.

Respondent(s)

JUDGMENT

DR. ARIJIT PASAYAT, J.

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.

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.

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. Hence, the appeal stands abated so far as respondent No.3 is concerned.

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 innocence, trial was held and, as noted above, the trial court found them guilty and convicted them.

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.

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.

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

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.

.....J.
(Dr. Arijit Pasayat)

.....J.
(Asok Kumar Ganguly)

New Delhi;
April 16, 2009.