

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL No. 17 OF 2002

ASHOK KUMAR MONDAL

... Appellant(s)

Versus

SAMIR KUMAR MONDAL & ANR.

... Respondent(s)

WITH CrI. A. No. 361/2002

J U D G M E N T

Dr. ARIJIT PASAYAT,J.

Heard.

In both these appeals challenge is to the judgment of a Division Bench of the Calcutta High Court directing acquittal of the respondent Samir Kumar Mondal who was convicted by learned Additional Sessions Judge, Birbhum, Rampurhat for offence punishable under Section 304 Part-II of the Indian Penal Code, 1860 (in short 'IPC). He was sentenced to undergo imprisonment for ten years.

The prosecution version as unfolded during trial is that on 24.01.1988 in the early morning when Gouri Balal Mondal wife of the deceased was engaged in washing utensils, her husband's elder brother accused Benoy Kumar Mondal (who was acquitted) was cleaning the road with broom stick. At that time, some dust particles fell on the person of Gouri

Bala, as a reason whereof, there was exchange of hot words amongst her husband, two sons with the accused and his father. At that time, the accused Samir Kumar Mondal stated to have brought a crowbar and stuck on the head on Ajit Kumar Mondal, husband of PW2; as a consequence whereof, father of PW1 became unconscious and sustained bleeding injuries. He was taken to the Primary Health Centre but later shifted to Suri Sadar Hospital. He succumbed to the injuries. On the next date i.e on 25.01.2008 first information report was lodged at the police station. The prosecution relied on the evidence of four persons who are stated to be eye-witnesses. The trial court on the basis of evidence brought on record found the respondent Samir Kumar Mondal to be guilty as noted above and convicted him. In appeal, the High Court found that the evidence of the witness do not inspire confidence and not reliable, genesis of the prosecution story was suppressed and therefore it was unsafe to rely on the witnesses.

Learned counsel for the appellant and learned counsel for the State of West Bengal submitted that the reasonings of the High Court are contrary to the evidence and material on record. Learned counsel for the respondent supported the judgment of the High Court.

We find that the High Court has analysed the evidence and has come to a categorical conclusion that there

was discrepancy between the injuries and also of size of the injuries as stated by the Doctor. The eye-witnesses were not reliable. The genesis of the prosecution version is

doubtful. The view taken by the High Court is a possible view and we do not consider these appeals to be fit cases where any interference is called for.

The appeals are dismissed accordingly.

**.....J.
(Dr. ARIJIT PASAYAT)**

**.....J.
(C.K.THAKKER)**

**.....J.
(LOKESHWAR SINGH PANTA)**

**New Delhi,
October 21, 2008.**