

STATE OF PUNJAB
v.
AVTAR SINGH
(Criminal Appeal No.1064 of 2003)

OCTOBER 21, 2008

**[DR. ARIJIT PASAYAT, C.K. THAKKER AND
LOKESHWAR SINGH PANTA, JJ.]**

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Challenge is this appeal is to the judgment of a Division Bench of the Punjab and Haryana High Court of Punjab and Haryana directing acquittal of the respondent. Two appeals were filed before the High Court i.e. Criminal Appeal No. 169–DB of 1995 and Criminal Appeal No. 328–DB of 1995. Both the appeals were directed against the judgment of learned Sessions Judge, Bhatinda holding that each of the accused persons were guilty of offence punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860 (in short 'IPC'). The two appellants in the two connected appeals faced trial along with one Bant Singh who was acquitted by the trial Court. Detailed reference to the factual position is not necessary in view of the conclusions of the High Court in the two appeals.

2. Firstly it was submitted that there was considerable delay in lodging the first information report and secondly there was considerable unexplained delay in sending the report to the Elaka Magistrate. It was concluded by the High Court that these factors apart from the fact that the evidence of the so called eye–witness was not credible and cogent and also the medical evidence was clearly at variance with the ocular version rendered prosecution version vulnerable.

3. Learned counsel for the appellant–State submitted that the factors which have weighed with the High Court to direct acquittal cannot be maintained. Learned counsel for the respondent accused on the other hand supported the judgment.

4. Though it cannot be laid as a rule of universal application that whenever there is delay in lodging the FIR and/or there is delay in

despatching the report to the Elaka Magistrate and/or the medical evidence is at some variance with the ocular evidence. The prosecution has to fail in the instant case the combined effect of the three factors leave no manner of doubt that prosecution has failed to establish the accusations. The view taken by the High Court is a possible view and we do not consider this to be a fit case where any interference is called for.

5. The appeal is accordingly dismissed.