

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

CRIMINAL APPEAL No. 591 OF 2003

STATE OF RAJASTHAN

... Appellant(s)

Versus

ASHFAQ AHMED

... Respondent(s)

J U D G M E N T

Dr.ARIJIT PASAYAT,J.

Heard.

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 'IPC'). Learned Additional Sessions Judge No. 3, Kota found the respondent accused guilty and convicted him for offence punishable under Section 302 IPC and sentenced him to undergo imprisonment for life.

The High Court by the impugned order directed acquittal.

The High Court noticed that the Parcha bayan (Ext. P1) purported to have been recored by the Investigating

Officer Shri Rajendra Prasad (PW-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 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 who was attending the patient. Unfortunately the said Doctor Shri Laxmi Nath Meena who was examined PW1 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 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. PW 1 stated that the condition of the deceased was serious and therefore he was referred to Kota hospital and he reached the hospital after PW-23 had reached the hospital and started recording the statement of the deceased. 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

-3-

directing acquittal. We find no infirmity in the judgment of the High Court to warrant interference. The appeal fails and dismissed.

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

.....J.
(HARJIT SINGH BEDI)

.....J.
((ASOK KUMAR GANGULY)

New Delhi,
March 04, 2009.