

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.]**

*Penal Code, 1860: s.302 r.w. s.34 – Conviction under, by Trial Court – Acquittal by High Court – On ground of delay in lodging of FIR and in sending report to Elaka Magistrate and also on account of variance between ocular evidence and medical evidence – Interference with – Held: Not warranted, since prosecution failed to establish the accusations – The view taken by High Court was possible view.*

**The Trial Court convicted the respondents under s.302 r.w. s.34 IPC. On appeal, High Court ordered acquittal on the ground that there was delay in lodging FIR and considerable delay in sending report to the Elaka Magistrate and that the ocular evidence was at variance with the medical evidence. Hence the instant appeal.**

**Dismissing the appeal, the Court**

**HELD: There was delay in lodging the FIR and/or there was delay in dispatching the report to the Elaka Magistrate and/or the medical evidence was at some variance with the ocular evidence. The combined effect of the three factors leave no manner of doubt that prosecution had failed to establish the accusations. The view taken by the High Court was a possible view and it is not a fit case where any interference is called for. [Para 4] [39-B-C]**

A CRIMINAL APPELLATE JURISDICTION : Criminal Appeal  
No. 1064 of 2003.

B From the final Judgment and Order dated 29.9.1997 of the  
High Court of Punjab and Haryana at Chandigarh in Criminal  
Appeal No. 328-DB/1995.

Kuldip Singh, R.K. Pandey, T.P. Mishra and H.S. Sandhu  
for the Appellant.

Varinder Kumar Sharma for the Respondent.

C 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  
D 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  
E 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  
F position is not necessary in view of the conclusions of the High  
Court in the two appeals.

G 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.

H 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.

The appeal is accordingly dismissed.

D.G.

Appeal dismissed.