

# SUPREME COURT OF INDIA

State of U.P.

Vs.

Rama Kant

Crl.A.No.200 of 2004

(Dr. Arijit Pasayat, D.K. Jain and Dr. Mukundakam Sharma JJ.)

31.03.2009

## JUDGMENT

### **Dr.Arijit Pasayat, J.**

1. Heard learned counsel for the State and learned counsel for the respondents.
2. By the impugned judgment the High Court has directed acquittal of the respondents who faced trial for alleged commission of offences punishable under Section 302 read with Section 149 of the *Indian Penal Code, 1860* (in short 'IPC'), Section 323 read with Section 149 IPC. Some others were also sentenced for offences relating to Section 148 and 147 IPC.
3. The occurrence took place on 23/10/1979.
4. According to the prosecution, the eye witnesses were PW.1, the complainant, PW.4-the mother and PW.5 the wife of the complainant. Though PW.3 was examined as alleged eye witness, he did not support the prosecution version. The defence version was that it was PW.1 who was responsible for causing death of the deceased who happened to be his brother. The trial Court, as noted above, found the evidence to be cogent and credible and recorded conviction. In appeal the stand taken was that the presence of PW.4 was doubtful. In the First Information Report lodged, there was no mention about PW.1 and PW.4 having witnessed the occurrence. Additionally, according to the so-called eye witnesses, large number of injuries were caused by bricks bats and sharp edged weapons. The medical evidence did not disclose injuries which could have been possible by sharp edged weapons and bricks.
5. The High Court found that there were several unexplained circumstances which cast doubt on the credibility of the prosecution version and directed acquittal.
6. Learned counsel for the appellant-State submitted that the evidence of the eye witnesses should not have been discarded by the High Court. Learned counsel for the respondent supported the judgment of the High Court.

7. We find that the High Court has referred to a large number of circumstances as to the credibility of the prosecution version. Firstly, the non-seizure of a blood stained axe belonging to PW.1 at the spot of occurrence was a highly suspicious circumstance. The presence of informant or PW.4 has not been indicated in the First Information Report. The High Court also noticed that it was not the informant but one of the accused persons Jai Narain who had made arrangement for shifting the deceased in injured condition to the hospital.

8. All these circumstances certainly have relevance and the High Court has rightly placed reliance on them to hold that the accused persons were not guilty. In that view of the matter High Court's judgment cannot be said to be perverse to warrant interference.

9. The appeal fails and is dismissed.

10. It is to be noted that accused No.1 has died during the pendency of the appeal before the High Court.

11. The bailable warrants executed in terms of the order dated 9/2/2009 shall stand discharged.