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Cr1.A.No. 1082-1083 OF 1997  
IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 1082-1083 OF 1997

STATE OF U.P. . . . .APPELLANT(S)

VERSUS

ALEY NABI & ANR. . . . .RESPONDENT(S)

O R D E R

These are the appeals preferred by the State of U.P. challenging the acquittal of two accused persons by the High Court of Allahabad. The two appellants Aley Nabi and Salamat alias Chhatta were found guilty by the Sessions Court for having caused the death of Arshad on 24.12.1979.

The prosecution case is that the deceased Arshad had a quarrel with the respondent Aley Nabi and Salamat in the morning of 23.12.1979. The respondents as well as the deceased Arshad were plying cycle rickshaw near the vicinity of the Rampur bus stand. The accused Aley Nabi and Salamat quarreled with the deceased alleging that he had lured away their customers. On the very same day, Arshad

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reported the matter to PW6, the owner of the cycle rickshaw and also his father PW1. In the evening of 23.12.1979, Arshad was surrounded by the accused but he managed to escape. On 24.12.1979 at about 9.00 P.M., PW1, Munney Khan, the father of the deceased Arshad, PW2 Salamat and PW 4 Shaukat were travelling in the cycle rickshaw of Arshad. They were on their way back after having gone for purchase of a buffalo. When the cycle rickshaw reached near Agarwal's Dharmshala, the accused Aley Nabi and Salamat came in a cycle rickshaw and tried to attack the deceased Arshad and Arshad ran away leaving the cycle rickshaw and others and the accused chased him and caused incise injuries on him with knife. Arshad died on the spot. PW1, Munney Khan leaving the body of Arshad under the supervision of PW2 and PW4 went to the police station to lodge a report.

The police registered a case and taken charge of the dead body and the body was sent for post mortem. The body contained four incised injuries.

The main accused examined by prosecution was PW1, Munney Khan, PW3 Salamat Khan and PW 4 Shaukat. PW 4 Shaukat

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did not support the prosecution. The High Court disbelieved PW1 and PW3 mainly on the ground that these two witnesses could not have been present at the time of the incident and the High Court was of the view that travelling in the cycle rickshaw of the deceased at 9 O' Clock in the night and to purchase for a buffalo was invented story just to make believe their presence at the scene of occurrence. It was observed by the High Court that PW1 Munney Khan did not mention in his F1 Statement that he had gone for purchase of buffalo. The evidence of PW3 was also disbelieved. Though he was the son-in-law of PW1, Munney Khan, he denied this fact. The High Court, after considering the evidence of PW1 and PW3 held that these two witnesses could not have been present at the time of the incident. Having regard to the broad probabilities of the case, we do not think that the view taken by the High court is either perverse or unreasonable. Moreover, PW4, Shaukat though admitted his presence at the time of the incident but stated that he had no acquaintance with the accused and could not identify them.

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As the High Court has taken a reasonable view of the evidence and this being an appeal against the acquittal, we are not inclined to set aside the same. The appeals are, accordingly, dismissed.

. . . . .J.  
(K.G.BALAKRISHNAN)

.....J.  
(Dr. AR. LAKSHMANAN)

NEW DELHI;  
AUGUST 12, 2004

ITEM NO.102                      COURT NO.7                      SECTION II  
S U P R E M E                      C O U R T                      O F                      I N D I A  
Record of Proceedings

Criminal Appeal Nos. 1082-1083 of 1997

State of U.P.Appellant (s)

VERSUS

Aley Nabi & Anr.Respondent(s)

Date :12/8 /2004 These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE K.G. BALAKRISHNAN  
HON'BLE DR. JUSTICE AR. LAKSHMANAN

For Appellant (s)  
Mr. N.S. Gahlot, Adv.  
Mr. J.K. Bhatia, Adv.

For Respondent (s)  
Mr. B.S. Banthia, Adv. (A.C.)

UPON hearing counsel, the Court made the following  
O R D E R

The Criminal Appeals are dismissed in terms of the signed order.

(SUKHBIR PAUL KAUR)(VEERA VERMA)  
COURT MASTER      COURT MASTER

(Signed Order is placed on the file)