

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.810 OF 2007

STATE OF RAJASTHAN

Appellant (s)

VERSUS

AFZAL

Respondent(s)

WITH

CRIMINAL APPEAL NO.809 OF 2007

O R D E R

These appeals have been filed against the judgment and order dated 11th May, 2006, passed by the Rajasthan High Court in D.B. Criminal Appeal Nos.993 and 1063 of 2001, reversing the judgment and order of the Trial Court by which the respondents had been convicted for the offences punishable under Sections 302/34 and 394/34 of the Indian Penal Code, 1860 (in short IPC).

It is mainly a case of circumstantial evidence. Alleged eye witness Badri Prasad (PW-10), the brother of the deceased Ramji Lal, has stated that on the date of incident, he had gone along with his cousin Ramso (Ram Sahay) to purchase the fertilizer to city Hindaun. However, during the course of trial, Ramso (Ram Sahay) did not say that he had gone to Hindaun along with Badri Prasad and also turned hostile.

The High Court found the evidence of Badri Prasad  
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(PW-10) to be doubtful and observed as under:

"Having closely scrutinized the testimony of Badri Prasad, we find him highly unreliable. His presence at the place of incident is unnatural and doubtful. Neither did he see the assailants inflicting blows on the person of victim nor he saw the victim. While fleeing away he had occasion to meet many persons but he did not inform about the incident to anybody. He also did not go to the police station. Gullu Khan IO (PW-26) recorded his statement under Section 161 Cr.P.C. after five days of the incident. Investigation in the instant case appears to be tainted and unfair. Even the recovery of Iron-patti (Gupti type) has been effected in the suspicious circumstances. When the IO searched the house of appellant Salim on October 4, 1996

nothing incriminating was found but no weapon of offence was found. It is admitted fact that since then appellant Salim did not go to his house till it was searched on October 6, 1996. Strangely on October 6, 1996 when second search of the house was made recovery of Iron-patti (Gupti type) got effected. This only shows that entire recovery of Iron-patti at the instance of appellant Salim is a myth. In a similar situation Hon'ble Supreme Court observed as under:-

"...Admittedly the flat of the appellant was searched in the night between 4.9.1980 and 5.9.1980 by the police after breaking open its lock. At that time except a pair of trousers, nothing incriminating was found by the police, much less seized. It is also admitted case of the prosecution that after the flat was searched it was locked again and the keys were kept with none other than the brother-in-law of the appellant the reasons for which we are unable to fathom. Be that as it may, it is also and admitted fact that since then the appellant had not access to his flat till it was searched on 9.9.1980. If in spite of these tell-tale circumstances a lot of articles-containing Group A block - was found inside that flat on 9.9.1980 - it only shows that the entire story of search and recovery of the articles is a myth."

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We have gone through the evidence and considered the submissions made by learned counsel for the parties. We do not see any cogent reason to interfere with the well reasoned judgment of the High Court.

There is no merit in the appeals and the same are, accordingly, dismissed.

.....J.  
(Dr. B.S. CHAUHAN)

.....J.  
(SWATANTER KUMAR)

New Delhi;  
June 16, 2011.  
CrI.A. No.809 & 810/2007

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