

**State Vs. Ali Rather and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/900246](http://sooperkanoon.com/900246)

**Court :** Jammu and Kashmir

**Decided On :** Jul-26-2002

**Reported in :** 2003(1)JKJ134

**Judge :** Syed Bashir-Ud-Din and; Muzzaffar Jan, JJ.

**Acts :** Ranbir Penal Code (IPC) - Section 436; ;Evidence Act - Section 3

**Appeal No. :** Cr. Acquittal Appeal No. 43/81

**Appellant :** State

**Respondent :** Ali Rather and ors.

**Advocate for Pet/Ap. :** J.A. Kawoosa, AAG and; Omkar Singh, Adv.

**Disposition :** Appeal dismissed

**Judgement :**

Syed Bashir-Ud-Din. J.

1. Respondents-accused Ali Rather and Mohd. Rather were booked for the offence of committing mischief by fire to complainant's residential house at Ichhgam District Budgam. This occurrence is stated to have taken place on the night intervening 10/11th of September, 1992. On full dress trial, while evidence was led by the parties, after hearing the accuseds have been acquitted by District & Session Judge (Special Judge) for the offence under Section 436 RPC.

2. Against this judgement state of J & K has filed this acquittal appeal mainly on the ground that the prosecution evidence has not been properly appreciated. The eye witness account by the witness has been erroneously not believed. Against occurred there is sufficient and direct evidence. There has not been delay in lodging FIR.

3. Mr. Kawoosa submits that the accused AH Rather as verified by Mr. J.A. Kawoosa, AAG is dead so appeal against him abates within the meaning of Section 431 Cr.P.C. The appeal is taken up against the other accused Mohd. Rather .

4. We have heard the Counsel for the parties, perused the record and consider the matter .

5. Prosecution has examined besides the complainants seven witnesses and the accuseds whose defence is one of the denial has examined three witnesses in defence. We find from record that all the witnesses including complainant are closed relations & Partison witnesses except Head Constable who is just a formal witness. There is evidence to show that there was dispute between the parties earlier to the occurrence & have ambitered relations. Parties did expect some mischief from each other. It is in this background that all the relation witnesses have spoken differently with regard to the identity of the accused at the time of occurrence. It is in evidence that night of occurrence 10/11th Sept., 1992 was a dark night and the light had gone out. Thiugh four persons were occurred & named in the occurred FIR, against only two accuseds challan was produced in court. Independent eye witnesses have not been examined. Neighbourers of compliantant the eye witnesses to the occurrence named so by compliant and the prosecution witnesses as Ali Gadda, Hassan Gadda, Abdullah Nanwai and Mohd. Nanwai have not been produced in court and their evidence is not at all tendered during trial. It is not explained how the witnesses and compliantant woke up in the mid of the night only to see that the complainant's house is set on fire. The compliantant's theory of honking of horn by a Taxi as the cause of the awakening, appears improbable in the totality of facts and circumstances and in any case is a suspicious circumstance. The delay in lodging FIR has not been as well

satisfactorily explained. Apart from the genuineness of the defence taken, evidence adduced by prosecution with regard to its theory is neither cogent nor sufficient. In the context of partisan relation witnesses, it has been observed in *Masalti v. State of Uttar Pradesh* (AIR 1965 SC 202).

6. '..... there is no doubt that when a criminal court has to appreciate evidence given by witnesses who are partisan or interested, it has to be very careful in weighing such evidence. Whether or not evidence strikes the court as genuine, whether or not the story disclosed by the evidence is probable, are all matters which must be taken into account. But it would, we think be unreasonable to contend that evidence given by the witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses. Often enough, where factions prevail in villages and murders are committed, as a result of enmity between such factions, criminal court have to deal with evidence of a partisan type. The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. No hard and fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct.....'

7. In result, on the aforesaid view, we have taken of the matter, there is no merit in this criminal acquittal appeal, which is accordingly dismissed.