

**HIGH COURT OF TRIPURA
A_G_A_R_T_A_L_A**

Crl. A(J) No. 13 of 2025

Nur Mohammad Khadim (aged 60 years), son of late Churat Ali Khadim, village Khilpara, Jora Dighir Par, P.O. R. K. Pur, Udaipur, District: Gomati Tripura.

.....Appellant

-VERSUS-

State of Tripura, notice to be served through learned Public Prosecutor, High Court of Tripura.

..... Respondent.

**B_E_F_O_R_E
HON'BLE JUSTICE DR. T. AMARNATH GOUD
HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA**

For Appellant(s)	:	Mr. T. D. Majumder, Sr. Advocate. Mr. D. Kalai, Advocate.
For Respondent(s)	:	Mr. R. Datta, P.P.
Date of hearing and Delivery of judgment and order	:	25.03.2026
Whether fit for reporting	:	NO

JUDGMENT & ORDER [ORAL]

[Dr. T. Amarnath Goud, JJ]

[1] Heard Mr. T. D. Majumder, learned senior counsel assisted by Mr. D. Kalai, learned counsel appearing for the appellant also heard Mr. R. Datta, learned P.P. appearing for the respondent-State.

[2] This is an appeal filed under Section-374 of Criminal Procedure Code, 1973 against the judgment and order of conviction dated 20.12.2024 and sentence dated 20.12.2024 passed by the learned Sessions Judge (Court No.1), Gomati Judicial district in connection with case No.ST/37 of 2022 Type-I under Section-302 of Indian Penal Code, 1860 and sentenced him to suffer rigorous imprisonment for life and to pay a fine of Rs.20,000/- for commission of offence under Section-302 of IPC and in default to suffer rigorous imprisonment for one year.

[3] The genesis of the case of the prosecution can be traced back to the lodging of a written ejahar by P.W.1 Jahir Hossain Khadim alleging, *inter-alia* that there was long land dispute between his father Titu Miah Khadim (now deceased) and his uncle Nur Mohammad Khadim, the appellant herein, and with a view to resolve the dispute his another uncle Jethu Soharab Ali Khadim (P.W.1) arranged for a meeting in his house on 01.10.2021 at around 5 p.m. in the afternoon and the meeting was attended by his father Titu Miah Khadim, accused Nur Mohammad Khadim, P.W.2 Soharab Ali Khadim and respectable persons of village and that at the beginning of the meeting there was hot altercation between his father Titu Miah Khadim and accused Nur Mohammad Khadim @ Nomad and that at that time accused Nur Mohammad Khadim brought out a knife from his waist and attacked his father by inflicting blows on his stomach and other parts of the body causing severe bleeding injuries and that accused Titu Miah Khadim was taken to hospital where he was declared dead by the attending doctor. It is alleged by the informant that accused Nur Mohammad Khadim brutally killed his father and that one of his uncle also got severely injured by knife when he went for rescue of Titu Miah Khadim.

[4] On the basis of such information, O/C, R. K. Pur P.S. registered FIR No. 151 of 2021 dated 01.10.2021 under Sections 302/326 of IPC and endorsed the case to SI Debabrata Biswas for investigation. The I/O on completion of investigation submitted charge-sheet vide No.46 of 2022 dated 30.06.2022 against the appellant alleging commission of offence punishable under Sections 302/324/201 of IPC.

[5] After taking cognizance of offence punishable under Sections 302/324/201 of IPC, the case was committed and framed charge vide order dated 29.08.2022 under Sections-302/201/324 of IPC against the accused appellant and the contents of the charges were read over and explained to him to which he pleaded not guilty and claimed to be tried.

[6] In course of the trial, to prove the charge, the prosecution examined as many as 14 (fourteen) witnesses. Upon closure of prosecution

evidence, the accused person was examined under Section-313(1)(b) of Cr.P.C. to which he pleaded his innocence and expressed his willingness to adduce defence evidence. Thereafter, accused was examined as DW.1. In support of his defense, two witnesses namely Biswajit Islam @Rana Miah and Kaji Sahin Ahammed were also examined as DW.2 and DW.3

[7] Having heard both the parties and on perusal of the material evidence on record, the learned Court below has observed as under:

“81. In view of the aforesaid discussion and analysis, it is held that the prosecution has successfully proved the charge for commission of offence punishable under Sec. 302 IPC by the accused Nur Mohammad Khadim and so the accused Nur Mohammad Khadim is found guilty. Accordingly the accused Nur Mohammad Khadim is convicted for commission of offence punishable under Sec. 302 of IPC. However due to lack of evidence, the accused Nur Mohammad Khadim is acquitted of the charges framed under Sec. 201/324 of IPC. Consequently, the accused Nur Mohammad Khadim is taken into custody. He will be heard today itself on sentence.

[3] Thus the convict Nur Mohammad Khadim is sentenced to Rigorous Imprisonment for life and to pay a fine of Rs. 20,000/- (rupees twenty thousand) for commission of offence punishable under Sec. 302 IPC and in default of payment of fine, he shall suffer Rigorous Imprisonment for one year.

[4]. In the event of deposit of fine, the same shall be paid to the legal heirs of the deceased Titu Miah Khadim.

[5] The period of detention, if any, undergone by the convict during investigation, inquiry and trial shall be set off from the substantive period of sentence.

[6] The surety of the convict stands discharged. However, the bond submitted as per provision under Sec. 437A, Cr.P.C. shall remain in force for a period of six months from today.

[7] Copy of this judgment shall be delivered to the convict free of cost as per provision of section 363 of the Code of Criminal Procedure.

[8] A copy of this judgment be also forwarded to the District Magistrate, Gomati, Tripura as per provision of section 365 of the Code of Criminal Procedure.

[9] The convict is informed about his right to appeal before the Hon'ble High Court of Tripura and right of legal aid.

[10] The seized alamats, except article no.4 of the charge-sheet, be destroyed after expiry of the period of appeal. However, article no.4 of the charge-sheet shall be disposed of in the event of making of any claim, after expiry of the period of appeal.”

[8] Being aggrieved by and dissatisfied with the same, the present appeal has been preferred by the appellant before this Court for ends of justice.

[9] Mr. Majumder, learned senior counsel appearing for the appellant has submitted that the learned Court below has failed to exercise jurisdiction when there has been existence of evidence of multiple FIRs for the same incident involving cognizable offences. The legal principles and judicial precedents has been given a goodbye while specific law in the precedents has been shown to the learned Court on how such situation should be handled, ignored by the Court below. The principle laid down in *TT Antony v. State of Kerala*, reported in (2001) 6 SCC 181 which was relied on and pressed for on specific point that there can be no second FIR where the information concerns the same cognizable offences, reported to P.S. vide GD Entry No.29 dated 01.10.2021.

[10] The Officer-in-charge of the PS is duty bound to investigate not only the cognizable offence disclosed to them, reported in the GD Entry No.29 but also other connected offences found during the same transaction or occurrence. Any further information or evidence, collected during the investigation can be added to the existing investigation without registering a fresh FIR or ignoring the earlier information of cognizable offence. This is the cardinal principle of law that has been adhered to by the learned Court below and punished the appellant most erroneously.

[11] In the present case subsequent FIR is not a counter complaint or presents a rival version of a set of facts, in reference to which an earlier FIR already stand lodged. The learned Court should have inferred from the conduct of the appellant qua the P.W. 1 (son of the deceased), PW 2(Elder Brother of deceased) and 8(Naxal Leader), deposed to before the learned Court to show that he was absolutely straight-forward in his dealings while PW-1, PW-2 and PW- 8 there was inconsistency relating to their evidence. The prosecution case rests on the non-cross examination of PWs-4, 5 & 11 by the accused; therefore it is proved that death was homicidal in nature. But

the cardinal principle of law that prosecution must prove its case to the hilt. In the case in hand, the learned Court did not follow the cardinal principle of law as such findings of him is perverse and liable to be set aside.

[12] The I/O of the case had prepared inquest report wherein in the report it was specially spoken of three nos. of injuries, specifically stated 3 Nos. of injuries, particularly in the neck, left side of the chest, and right side of the waist, while the post mortem report would show 6 nos. of injuries. These vital contradiction on physical injuries found on the body of the deceased soon after death does no match with the post mortem examination report as exhibited. XII) For that the Ld. Sessions Court failed to appreciate that failure on the part of the accused to cross-examine PWs-4, 5 & 11 cannot result automatically acceptance of evidence against the accused without scrutiny of Exhibit-3 & 4.

[13] The learned Court below reading to his findings on the basis of arguments of the defense that exhibit P1 could not be treated as FIR, as complaint was already taken note of in the GD entry of R.K Pur P.S GDE No.29 dated 01.10.2021 reported at 06:00 PM disclosing cognizable offence. The learned Court below has given stress on the testimony of PW-14 who had once stated that contents of GD Entry No.29 did not reveal cognizable offence without looking to the next sentence which runs as “*I have mentioned in my CD that by peruse of GDE No.29 dated 01.10.2021, cognizable offence is revealed on the spot, after revealing of the commission of cognizable offence I was asked to investigate by the O/C at the spot. The time was 18.20 hrs. on 01.10.2021. Thereafter, I have started investigation on the advice of the O/C.*”

[14] The learned Court below has completely taken a side by accepting delay in examining material witnesses, after a long delay when those witness available with police officer soon after incident without any reasons, therefore, could not appreciate decision in State of U.P Vs Satroghan @ Satroghan Singh in (2005) 4 SCC 117 in this regard. Delay has not been caused by any justifiable reason or by deliberate to affect the

fairness of the trial. But in the case in hand the prosecution admitted the presence of PW-2 before the I/O at 6:20 PM on the day of incident at place of occurrence, Rana Miah DW-1 at 06:20 PM making his seizure list witness at 19:05 hrs. but, I/O did not give any sort of explanation as to why he has not examined Rana Miah, the first informer of the cognizable offence despite his availability, no explanation has been coming on record from the I/O as to why he did not examine PW-2 on 01.10.2021 despite presence before the I/O at 06:20 PM. There was no explanation as to why PW-1 who was available near the place of occurrence on 01.10.2021 at the time of commission of crime was not examined by the I/O on that day itself.

[15] The learned Court below has failed to give any weightage for non-examination of inmates of PO such as mother of the victim, wife, adult son & daughter of PW-2 by the I/O of case, which cast serious doubt of the facts presented by the Prosecution. The injured eyewitness i.e. DW-3 was withheld by the prosecution without any reasons but, the learned Court below recorded these witness were gained over by the accused without any supporting materials. So, recording of such unsubstantiated allegation against the accused and favoring the prosecution has resulted serious miscarriage of justice.

[16] It has been further contended that the learned Court below has failed to look into the reasons to withheld prosecution material eye witness, named in the charge-sheet without any ostensible reasons including non-examination of presiding member of the meeting by IO of the case has serious cascading affect on the finding recorded. There was no appreciation of evidence by the learned Court below when vital contradiction about information received of the death of Titu Miah Khadim by the PW-1 from PW-2 over the phone and later would deny passing of such information to PW-1. There is no ascertainment of the fact as to how PW-1 got information of death of his father.

[17] Mr. Majumder, learned senior counsel has submitted that the alleged place of occurrence is surrounded by dense population but strangely

enough the I/O of the case did not find any witnesses of the locality to support prosecution case, rather prosecution has withheld the relative witness being material eye witnesses who were withheld without any ostensible reason. The learned Court below only to punish the appellant banking up on PW-8 who happens to be not an eye witness of the occurrence but closely associated with PW-2 who has come on being called.

[18] No documentation of meeting was forth coming in evidence to justify the presence of PW-8 who had no business in an alleged family dispute of Mohamadan Community. The presence of PW-8 is highly suspicious when the DW-1 deposed that he had seen PW-8 at Ramesh Choumohani at 05:10 PM igniting his motor cycle, which is also visible from the evidence of PW-1 who deposed the presence of others being heard from PW-2 excluding PW-8 in the meeting. This vital aspect has been intentionally ignored without any ostensible reasons by the learned Court below causing serious threat to the delivery system causing and irreparable prejudice to the accused. The appearance of the PW-8 in the scene and he was introduced by PW-2 after seven days of the occurrence and he was not even examined by the police soon after the incident when story is he was available with police in presence of PW2.

[19] Advancing the argument further, learned senior counsel argued that the knowledge of PW-1, as reflected in Exbt.P1 FIR, from PW-2 was without any basis because PW-2 in his cross-examination specifically stated that he did not inform PW.1 about any incident and thus evidence of PW-1 could not be taken into consideration. Further it was argued that except PW-2 none of the witnesses stated about the presence of PW-8 in the meeting and submitted that the evidence of PW-8 could not be relied upon. It was again pointed out that even though PW.3 in his evidence stated that on 01-10-2021 PW-7 informed him that accused stabbed Titu Miah and killed him but PW-7 in his evidence did not state that he informed PW-3 regarding stabbing of Titu Miah by the accused.

[20] Mr. Majumder, learned senior counsel in support of his arguments, has placed reliance on some decisions of the Hon'ble Apex Court in *State of UP v. Satish*, reported in (2005) 3 SCC 114, In *Balakrushna Swain v. State of Orissa*, reported in (1971) 3 SCC 192, In *Ganesh Bhavan Patel and Another v. State of Maharashtra*, reported in (1978) 4 SCC 371, In *Takhaji Hiraji v. Thakore Kubersing Chamansing and Others*, reported in (2001) 6 SCC 145 and in *Surajit Sarkar v. State of West Bengal*, reported in (2013) 2 SCC 146.

[21] Arguing the case for the prosecution, Mr. R. Datta, learned PP appearing for the respondent-State has submitted that the prosecution remained successful in proving the charge under Section-302 of IPC against the accused person. Learned PP, during argument, had drawn the attention of this Court to the evidence of the prosecution witnesses. It was submitted that the star witnesses of the prosecution were PW-2, PW-4 and PW-8 and such witnesses in their evidence very specifically brought out the incriminating evidence against the accused.

[22] It was pointed out that PW-2 and PW-8 were the eye witnesses and that PW-2 and PW-8 saw the accused stabbing the deceased and that PW-2 and PW-4 saw the accused cleaning a blood stained knife with a gamcha, which was the sufficient evidence to bring home the guilt of the accused. It was further submitted that the defence did not dispute that the deceased died due to injuries caused by sharp weapon and it was pointed out that the defence declined cross-examination of PW-5, PW-6, PW-11, PW-12 and PW-13 who were the medical officer and expert witnesses.

[23] It was further submitted that the evidence of the prosecution witnesses very specifically revealed the motive of the accused behind the commission of offence charged. Learned PP also submitted that the accused after commission of crime, fled away and concealed himself and after about 07 months the accused could be arrested from another place under Jatrapur PS and the same, revealed the subsequent conduct of the accused. Learned

P.P. submits that the appellant killed his own brother in cold blood without any genuine reason and so the convict may be sentenced appropriately.

[24] The learned PP on the point of defence evidence submitted that, the evidence of defence witnesses could not have any effect over the evidence of prosecution witnesses because, as per evidence of the accused as DW-1 he met PW-8 at Ramesh Chowmuhani while returning from the house of PW-2 but, no such suggestion was put to PW-8 by the defence. It was again submitted that DW-2 and DW-3 though were cited as witnesses in the charge-sheet but they were not examined by the prosecution when they were found gained over by the prosecution and so, the evidence of DW-2 and DW-3 could not be said to have any effect on the evidence of the prosecution witnesses and prayed to affirm the judgment of the learned Court below.

[25] Mr. R. Datta, learned P.P. in support of his case has placed reliance on certain judgments of the Hon'ble Apex Court most importantly on the point that if the weapon of offence is not recovered, it cannot be fatal the case of the prosecution and the accused can be convicted. In Goutam Joardar v. State of West Bengal and ors reported in (2022) 17 SC 549, In Baban Shankar Daphal and Others v. State of Maharashtra, reported in (2025) SCC Online 137, In Ghanshyam Mandal and Others v. State of Bihar (now Jharkhand) reported in (2026) SCC Online SC 307 and In State through the Inspector of Police v. Laly alias Manikandan and Another, reported in (2022) SCC Online SC 1424 and in Harivadan Babubhai Patel v. State of Gujarat, reported in (2013) 7 SCC 45.

[26] Having heard the learned counsel appearing for the parties and perusal of the observation made by the learned Court below, before deciding the case, it would be apposite to discuss the evidence on record once again.

[27] PW-1 is the informant as well as son of deceased Titu Miah Khadim. According to his evidence, the appellant is the elder brother of his father and they had a property dispute. On 01.10.2021 another uncle

Soharab Ali Khadim (PW.2) called a mediation meeting in his house at around 5 p.m. to settle the dispute between his father and appellant. The meeting turned hostile and there was a heated argument between his father and accused who brandished a knife and assaulted his father in his stomach and other parts of the body and his father suffered fatal injuries and was rushed to the hospital by other villagers present in the meeting. His father succumbed to his injuries in the hospital. He learnt the incident from his uncle PW-2 and lodged the complaint to the O/C, R.K. Pur P/S narrating the incident.

[28] PW-2 Sohorab Ali Khadim is the brother of accused and the deceased and also the uncle of PW-1. In his evidence has stated that the deceased and the accused are his younger brothers and both of them had some property dispute. On 01.10.2021 he called for a mediation meeting in his house to settle the dispute between his brothers and in the meeting his cousin brother Ahamed Ullah @ Madhab, cousin brother Setu Miah Sarkar, cousin Kaji Sahin Ahmed (DW-3), Mohan Miah (PW-7), Nurul Islam Khadim (PW-4) and Partha Karmakar (PW-8) were present. During meeting accused started the discussion in high and aggressive tone and he was not amiable for any resolution and when he was about to leave, the deceased requested him to solve the dispute in presence of him (PW-2) and suddenly accused brought out a meat cutting knife and lunged it in the stomach and neck of Titu Miah. He quickly intervened to stop further blows. DW-3 also received cut injuries while trying to intervene. Accused went to the courtyard and cleaned the knife with a 'gamcha' and commented that why the victim was still alive. In the mean time they collected a car and tried to rush the victim to the hospital but he died before reaching the hospital. On the same date police came and seized some blood stain from the floor of his dwelling house and he signed the seizure list and also signed the inquest report as witness.

[29] PW.3 Amir Hossain in his evidence stated that accused and the deceased were his maternal uncles and on 01.10.2021 his cousin brother

PW-7 informed him that accused has stabbed Titu Miah Khadim and killed him and on hearing the incident he went to the hospital and saw the dead body of Titu Miah Khadim and on the next day he signed the inquest report as witness.

[30] PW.4 Nurul Islam Khadim in his evidence stated that the deceased and accused were his younger brothers and both of them had property dispute and that about one year and two months back a mediation meeting was called in the house of his elder brother PW-2 and to settle the dispute between the brothers. He further stated that in the meeting there was hot altercation between the accused and the deceased and that the accused was not agreeing to any solution and he (PW-4) therefore, left the meeting but within a minute heard uproar from that house and went back and saw that the deceased was lying with bleeding injuries in the room while the accused was cleaning a blood stained knife with a 'gamcha'. He also stated that the deceased told him that he was stabbed by accused with a sharp knife.

[31] PW-7 Mohan Miah Chowdhury stated in his evidence that the incident took place on 01.10.2021 at around 4.30 to 5 p.m. and on that day on call he went to the house of PW-2 for preparation of some documents as he worked as advocate's Clerk and in that house he attended a meeting where discussion between the brothers were going on in a room and he also attended the meeting and suddenly he came out of the room to attend natural call and heard hue and cry and returned to the meeting hall and saw that Titu Miah Khadim was in bleeding and with the help of the bothers of Titu Miah he took Titu Miah to Tepania Hospital where he was declared dead by the doctor.

[32] PW-8 Partha Karmakar stated in his evidence that the incident took place on 01.10.2021 and that he had good relation with the Khadim family and he was informed by PW-2 that there was a dispute between accused and the deceased Titu Miah Khadim for property and on request he attended a meeting fixed at 5 p.m. called by PW-2 in his house where the

relatives of Khadim family and other local persons were present and that he sat in the back side of the meeting hall and in the meeting discussion started with cordial relationship between the brothers but in the mean time a hot discussion started between the accused and the deceased and they started to push each other in presence of the relatives and that sitting in the back side he was not of the view that a brother could attack another brother and in a very short span of time the incident happened and the relatives were trying to capture accused from attacking on his brother and it was noticed that Titu Miah had fallen on the ground and Nurul Islam Khadim started to cry and asked for bringing Titu Miah to hospital. He also stated that Titu was attacked by accused and noticed that blood was oozing from Titu and that he also went to the hospital and came to know from the doctor that Titu Miah Khadim had been brought dead due to oozing of blood.

[33] PW.13 Dr. Subhankar Nath, Dy. Director, SFSL, Tripura has examined the exhibit-D (blood stain collected from the body of the deceased) and his observation was that partial male genetic profile was generated from Exhibit-D, and concluded that the blood belonged to human male. He has also examined the exhibit-E (blood stain collected from the alleged PO) and his observation was that partial male genetic profile was generated from Exhibit-E, and concluded that the blood belonged to human male. He prepared the report and on identification the report was marked as Ext.P/10.

[34] In view of overall discussions, it is undisputed position that Titu Miah Khadim (deceased) died because of injuries sustained by sharp cutting weapon. P.W-5 and P.W-6 the doctors, who conducted P.M. examination over the dead body of Titu Miah Khadim found stab wound (02x0.5x cavity deep) cm on chest 25 cm below the left shoulder top and 14.5 cm lateral to midline, incised wound (6.5x02x skin deep) cm on medial aspect of left elbow, stab wound (2.6x01x3.5) cm on upper anterior chest at the level of suprasternal notch and medially touching the midline, contusion of underlying tissue and injury to neck vessels, incised wound (4.3x0.4x

skin deep) on right side of anterior abdomen and situated 11 cm above right anterior superior iliac spine and 08 cm lateral to midline, about 500 ml of liquid blood in left pleural cavity and contusion with one puncture wound (0.5x0.2x0.2) cm in lateral aspect of lower lobe of left lung and in their opinion, the cause of death was due to shock and hemorrhage due to multiple homicidal injuries caused by the impact of hard and sharp force.

[35] The defence also did not dispute the evidence of P.W.4, P.W.5 and P.W.11 in cross-examination. Though the prosecution argued that the wearing apparels of the deceased were not seized and because of such non seizure of the wearing apparels of the deceased, it would not be possible to presume the kind of injuries sustained by the deceased but such argument cannot be sustained because it is the case of defence that Titu Miah Khadim was killed by some unknown miscreants.

[36] The IO i.e., PW.14 admitted the receipt of telephonic information, on 01-10-2021 at 06:00 pm, about stab injury at Khilpara resulting death of Titu Miah Khadim. According to his evidence, such information was entered in GDE bearing GDE No. 29, dated 01-10-2021 and to verify the information he along with others went to the spot and after observation of the PO, it was found that there was commission of cognizable offence and so as per direction of the OC PS, he took the self investigation.

[37] From the cross-examination of PW.14 it is also evident that from 1820 hours to 1905 hours he did the acts such as cordoning of PO, sending of requisition to the SFSL team, seizure of blood stain from the PO. Cross-examination of PW.14 also reveal that SFSL team with dog squad reached the spot at 1900 hours and after arrival they started their work. Again the cross-examination of PW.14 further reveals that he left the PO at 2330 hours and thereafter went to District Hospital, Tepania and reached there at 2340 hours. As per the prescribed form of FIR i.e., Exbt.P11 the First Information was received at PS at 2214 hours. Thus from the above, it is unequivocally clear that on reaching the spot, PW.14 was busy in taking

the steps as reflected above and he did not examine any witness in the nature of examination as is required under section-161 Cr.P.C.

[38] Law is well settled that there cannot be more than one FIR in respect of the same occurrence. However law also says that a cryptic telephonic information cannot be treated as FIR. The Ld. Defence Counsel relied upon the decision of “Lalita Kumari v Govt. of UP and others, 2014(2) SCC 1”, “T.T. Antony v State of Kerala, 2001(6) SCC 181” and there is no dispute in the law declared therein.

[39] In *State of UP v. Satish*, reported in (2005) 3 SCC 114, the Hon’ble Apex Court has held as under:

“As regards delayed examination of certain witnesses, this Court in several decisions has held that unless the Investigating officer is categorically asked as to why there was delay in examination for the witnesses the defence cannot gain any advantage therefrom. It cannot be laid down as a rule of universal application that if there is any delay in examination of a particular witness the prosecution version becomes suspect. It would depend upon several factors. If the explanation offered for the delayed examination is plausible and acceptable and the court accepts the same as plausible, there is no reason to interfere with the conclusion [See *Ranbir and Ors. v. State of Punjab*, AIR (1973) SC 1409, *Bodhraj @ Rodha and Ors. v. State of Jammu and Kashmir*, [2002] 8 SCC 45 and *Banti @ Guddu v. State of M.P.*, [2004] 1 SCC 414.]”.

[40] In *Balakrushna Swain v. State of Orissa*, reported in (1971) 3 SCC 192, the Hon’ble Apex Court has observed as under:

“5. It has been contended before us that the evidence of P.W. 5 is also not reliable, in that he is inimically disposed to the deceased and was an interested witness inasmuch as he was the brother of Sundari whose side he was taking to obtain for her the status of a wife. In fact according to the submission of the learned Advocate the Appellant had not killed the deceased but the rafter had fallen while they were all quarrelling in the house of the deceased injuring the deceased and P.W. 5 as a result of which injury the deceased died. Thereafter there was a conference between P.W. 1, P.W. 5 and others all night in that house as to what should be done with the dead body and ultimately it was decided to remove the dead body to the paddy field put it on a bamboo platform which was to be built for this purpose and implicate the accused. Accordingly P.W. 1 was sent to give a report. As we said earlier the High Court did not rely on the evidence of P.W. 1 and P.W. 2 as in its view they could not have witnessed the occurrence. It was also observed that P.W. 1 was an interested witness being the sister's son of the deceased and also that he could not have seen the actual murder and assault as on his own showing he was proceeding to P.W. 2's house when the deceased who had gone to ease himself was assaulted while he was on his way to join him, P.W. 2's evidence was not relied on although he is stated to have been assaulted by (the accused)

the Appellant, Pranakrushna Swain because there was no mark of injury on his person nor was he medically examined P.W. 19, the Investigating Officer admitted that although he had seen P.W. 2 in the Village from January 7 to January 13, 1966 he found no marks of assault on him nor did P.W. 2 consent for being sent to medical examination. As we have pointed out earlier P.W. 2 was also declared hostile and the prosecution allowed to cross-examine, him. In these circumstances their evidence was rightly not relied upon to support the prosecution case as to who and in what circumstances the occurrence took place. The only other evidence is that of P.W. 5 who was not examined till the 15th January i.e. till after 10 or 11 days of the incident. There was no reason why P.W. 19 could not have examined him because on his own showing P.W. 19 had met P.W. 5 while he was going to the Village when P.W. 5 was being taken to the Hospital. No doubt P.W. 19 says that P.W. 5 was not in a condition, for him, to record his statement but apart from his saying so he does not tell us in what condition P.W. 5 was. P.W. 5 went to the Ersama Primary Health center where Dr. Kanungo P.W. 22 who was then the Medical Officer In-charge had examined him on receiving a requisition Ex. 11 from the Police. According to the Doctor, P.W. 5 was under his treatment from 7-1-1966 to 12-1-1966. On examination he found four wounds:

- 1) One contused wound with, blood clot over the injury over the surrounding tissues, extending to face. The margins were rough and regular.

The size of injury was 1 1/2" x 1/4". As the injury was bleeding I could not measure its depth, but the injury had a depth. The injury was on the left side head.

- 2) One contused wound with blood clot, with haematoma of mucous surface on right side upper lip. The size of the injury was 1/4" x 1/4" The colour of the injury was black.

- 3) One bruise with swelling 3" x 1 1/2" on the left fore-arm dorsal aspect-close to elbow joint.

- 4) One bruise with swelling 2" x 1" on left side back over scapula.

In cross-examination the Doctor admitted that P.W. 5 was not treated as an emergency patient and since there were only 2 beds for emergency cases he did not admit him as Indoor patient and that P.W. 5 was making his own arrangement for his stay and attending the Primary Health center daily for his treatment. P.W. 5 however states that he was admitted as an indoor patient for 12 days which cannot be accepted in view of the Doctor's evidence. While noting this divergence in the evidence of P.W. 19 and P.W. 5 the High Court seems to accept an explanation given by the Public Prosecutor that because P.W. 5 was being seen by the P.W. 19 everyday, P.W. 5 may have made arrangements for his stay in the Hospital premises but this is no-one's case. P.W. 19 says that P.W. 5 was coming everyday for treatment but there is no evidence as to whether P.W. 5 was staying in the Hospital premises or elsewhere, as such we find no justification in accepting the statement of P.W. 5 which in our view is a falsehood. In answer to a question by the Additional Sessions Judge P.W. 22 says he found a laceration in injury No. 1 although he did not mention the word laceration. He however admitted that in a contused wound there is always a laceration but the margins are regular. In further cross examination the Doctor said that since the margins of injury were regular he mentioned it as a contused wound instead of a lacerated wound and

noted accordingly in his report Ex. 11/1. He further states that by a lathi no incised wound can be caused. Incised wounds have always some depth. In injury No. 1 also he found a depth but says that in contused wound also there can be some depth. This evidence clearly shows that P.W. 5 was not certainly, in a condition where his statement could not have been taken. The statement by P.W. 5 that he was an indoor patient was an attempt to support P.W. 19's explanation for not recording his statement earlier. That there was no valid reason for P.W. 19 not to record his statement earlier when he met P.W. 5 on the 7th itself is clear from his admissions that after he received the injuries he did not lose his senses and in fact sat at the place where the incident took place for two ghadis. The High Court itself has commented on the lapses in investigation and the delay in examination of P.W. 5 who was a material witness; none-the-less it merely says "even so the evidence of Chakradhar P.W. 5 cannot be rejected on account of his delayed examination by the investigating officer. In our opinion the delayed examination does not affect the veracity of Chakradhar Swain". Why when a similar statement made by P.W. 1 regarding the occurrence is not relied on, the statement of P.W. 5 should be relied particularly when such a long delay in his not being examined earlier is not explained. The High Court said that the Doctor P.W. 22 had not mentioned that there was a bleeding injury on the right side forehead in certificate Ex. 11/1 although such an injury was mentioned in the Police requisition Ex. 11 of 7-1-66. This comment we may observe is not warranted because the Doctor was not cross-examined in respect of these discrepancies. The mere fact that P.W. 19 had given a requisition to examine P.W. 5 for an injury on the right side does not necessarily establish that the injury was on the right side. A good deal of cross-examination was directed in respect of the Report Ex. 11/2 given by him but nowhere was he asked as to whether there was an injury on the left side and why he had omitted to mention it. It is no one's case that there were two wounds one on the left side and the other on the right side. What P.W. 5 says is that Laxmidhar gave him four lathi blows as a result of which he had bleeding injury on the nostril and on the left side of head and he fell down because of this assault. The Doctor however said that this injury was on the right side. While there could have been a mistake whether the injury was on the right side as spoken by the Doctor or on the left side as spoken by the injured, there could be no mistake as to whether there could be one wound or two wounds because the witness does not speak about his having two wounds one on the left side and the other on the right side. Further P.W. 5 says that the Doctor gave him a discharge slip on the day he was discharged but later took it back after consultation with the Thana Babu and thereafter he did not give him any discharge slip. P.W. 5's blood stained clothes were also seized on the 15th about 10 days after the incident. The witness wants us to believe that for these 10 days he was wearing these blood stained clothes without removing them.

6. In view of all these Incongruities we think there is justification in the comment of the learned Advocate for the accused that the delayed examination of P.W. 5 by P.W. 19 would give an opportunity to P.W. 5 to concoct a different version than what actually took place."

[41] In *Ganesh Bhavan Patel and Another v. State of Maharashtra*, reported in (1978) 4 SCC 371, the Hon'ble Apex Court observed as follows:

“15. As noted by the Trial Court, one unusual feature which projects its shadow on the evidence of P.Ws., Welji, Pramila and Kuvarbai and casts a serious doubt about their being eyewitnesses of the occurrence, is the undue delay on the part of the investigating officer in recording their statements. Although these witnesses were or could be available for examination when the investigating officer visited the scene of occurrence or soon thereafter, their statements under Section 161 Cr. P.C. were recorded on the following day. Welji (P.W. 3) was examined at 8 a.m., Pramila at 9.15 or 9.30 a.m., and Kuvarbai at 1 p.m. delay of a few hours, simpliciter, in recording the statements of eyewitnesses may not, by itself, amount to a serious infirmity in the prosecution case. But it may assume such a character if there are concomitant circumstances to suggest that the investigator was deliberately marking time with a view to decide about the shape to be given to the case and the eyewitnesses to be introduced. A catena of circumstances which lend such significance to this delay, exists in the instant case.

18. In this connection, the second circumstance, which enhances the potentiality of this delay as a factor undermining the prosecution case, is the order of priority or sequence in which the investigating officer recorded the statements of witnesses. Normally, in a case where the commission of the crime is alleged to have been seen by witnesses who are easily available, a prudent investigator would give to the examination of such witnesses precedence, over the evidence of other witnesses. Here, the natural order of priorities seems to have been reversed. The investigating officer first recorded the statement of Ravji, in all probability, between 12.45 and 3 a.m. On the 30th, of Constable Shinde, at 4 a.m., and thereafter of Walji, Kanjibhai (P.W. 7), Santukbai (P.W. 6), Pramila, and Kuvarbai, between 8 a.m. and 1 p.m.

19. The investigating officers made a futile attempt to explain away their conduct in not promptly recording the statements of the alleged eyewitnesses. Inspector Tipnis and Sub-Inspector Pathak stated that after the completion of the panchnamas at the spot, they made efforts to contact the material witnesses, including Pramila, Santukbai and Kuvarbai. Santukbai was actually questioned by the investigating officers, but they did not then record her statement, because she was in an anguished state of mind and was wailing.

20. With regard to Pramila and Kuvarbai, the investigators said that these girls were then asleep, and therefore, they did not think it proper to disturb them. Inspector Tipnis tried to give an additional reason for delaying the examination of these witnesses till the following day. He stated that he did not want the girls and the women-folk to be present in the Police Station at that hour of the night. The Trial Judge rejected this explanation, and we think rightly. Santukbai herself had knocked the bottom out of these 'explanations'. She stated that she was questioned by the investigating officers during the night and she had answered all their questions. Even if she was then in a state of anguish, it is not understandable why the answers given by her to the questions of the investigating officer, were not recorded. If she answered those questions, which, even according to S.I. Pathak, she did, it could not be said that she was not in a position to make a statement.

21. Ravji (P.W.1) further falsified the 'explanations' given by the investigating officers. He stated that Pramila, Kuvarbai and Santukbai, all the three, were actually called out and questioned during the night, by the investigating officers.

22. If the untruth of any aspect of these 'explanations' remained in the penumbral zone, hidden from judicial scrutiny, the same was fully exposed by Constable Kakde (P.W. 18) of this very Police Station.

23. In cross-examination, Kakde let the cat out of the bag in as much as he stated that about 2.30 a.m. he had seen P.Ws. Pramila, Kuvarbai, Santukbai, Kanjibai and Ravji in the Police Station.

24. A third circumstance to be noted in the context, which enhances the suspicion about Welji, Pramila and Kuvarbai having been introduced as 'eye-witnesses' at a late stage of the case, is, that their names as such witnesses were not mentioned anywhere in the investigation record before the morning of the 30th November. In this connection, it may be mentioned that Ravji and Shinde reached the scene of crime soon after its commission. Ravji came a few moments earlier than Constable Shinde. Damji was then alive and lay injured at the spot. It was Constable Shinde who, accompanied by Ravji, removed the injured in a taxi, first to the Police Station and from there to the Sion Hospital.

25. At the trial. Shinde stated that on reaching the Police Station, he had reported "the matter" to S.I. Patil, who was incharge of the Police Station. Shinde did not say that he had mentioned the names of the assailants of Damji or the witnesses to the Sub-Inspector on this occasion. Further, Shinde did not vouch that Ravji had made any report about the incident to S.I. Patil.

26. S.I. Patil (P.W. 21), also, did not say that Shinde had told him that Damji had been, according to his information, assaulted by the accused, Ganesh and Dana. Nor did Patil say that Shinde had mentioned the names of the witnesses of the occurrence. All that Patil stated on this point was that at about 7.30 a.m., Constable Shinde came to the Police Station and informed the witness that one person who had been assaulted by two others with knives, was lying injured in a Taxi outside, and that he was accompanied by Ravji. In variance with Shinde's version, however, S.I. Patil stated that he had questioned Ravji on this occasion and the latter told him that Damji had been assaulted with knives by Ganesh and Dana accused. Ravji directly contradicted S.I. Patil on this point, and stated that on this occasion he was not at all questioned by S.I. Patil; nor did the witness himself give any information about the incident to the Sub-Inspector. Ravji had no motive to tell a lie on this point. He was a "would-be" son-in-law of the deceased. He was in no way hostile to the prosecution. on the contrary, he was playing the active role of a "complainant" in this case. The Trial Court was, fully justified in accepting his testimony on this point, in preference to the bare oral word of S.I. Patil, particularly, when Ravji's version was, and Patil's was not, consistent with the surrounding circumstances and probabilities of the case.

27. The most important of these circumstances is the conduct of S.I. Patil in not recording that "first information" allegedly given by Shinde and Ravji on that occasion. S. I. Patil admitted that he did not record the information given to him by Shinde and Ravji about the occurrence on that occasion. The information, which he then received, was about the commission of a cognizable offence. It was, therefore, the duty of S.I. Patil (who was incharge of the Police Station) to record it in accordance with the provisions of Section 154 Cr. P.C., but he did not do so. The explanation given by him was that it was the practice of his Police Station not to record such information until a message was received from the Hospital with regard to the condition of the

injured person. This explanation of Patil's failure to do what was his statutory duty, was mere moonshine and was rightly repelled by the learned trial Judge.

28. It will bear repetition that the learned Judges of the High Court have disbelieved Ravji and accepted S.I. Patil's bare word of mouth, both with regard to the time of recording Ravji's statement and Ravji's having informed Patil in the Police Station at 7.30 p.m. about the accused being the assailants of the deceased, when Ravji and Shinde took the injured there in a taxi. As noticed already, one of the reasons given by the High Court for rejecting Ravji's testimony on this point, is that he was a mere labour boy having no sense of time. With respect, this reason appears to us manifestly, unsound. Labourers, masons and artisans who work on daily wages for fixed hours, have an acute sense of time. There was nothing indefinite or unbelievable in Ravji's version to the effect that his statement was recorded by the Police Sub-Inspector between 12 midnight and 1 a.m., while his signature was obtained on that statement probably at 3 a.m. No question was put to him to test his 'sense of time'. Nor was any attempt made in re-examination to elicit a clarification, if one was needed, with a view to reconcile this version of the witness with that of the prosecution case, as laid by S.I. Patil, about the time of recording Ravji's statement, treated as the F.I.R.

29. Thus considered in the light of the surrounding circumstances, this inordinate delay in registration of the 'F.I.R.' and further delay in recording the statements of the material witnesses, casts a cloud of suspicion on the credibility of the entire warp and woof of the prosecution story."

[42] Mr. R. Datta, learned P.P. in support of his case has placed reliance on certain judgments of the Hon'ble Apex Court most importantly on the point that if the weapon of offence is not recovered, it cannot be fatal to the case of the prosecution and the accused can be convicted. In ***Goutam Joardar v. State of West Bengal and ors*** reported in (2022) 17 SC 549, In ***Baban Shankar Daphal and Others v. State of Maharashtra***, reported in (2025) SCC Online 137, In ***Ghanshyam Mandal and Others v. State of Bihar (now Jharkhand)*** reported in (2026) SCC Online SC 307 and In ***State through the Inspector of Police v. Laly alias Manikandan and Another***, reported in (2022) SCC Online SC 1424 and in ***Harivadan Babubhai Patel v. State of Gujarat***, reported in (2013) 7 SCC 45.

[43] In ***Goutam Joardar v. State of West Bengal and Ors.*** reported in (2022) 17 SC 549, the Hon'ble Apex Court has observed thus:

"20. The submissions on behalf of the accused that as the original informant Mahendran has not been examined and that the other independent witnesses have not been examined and that the recovery of the weapon has not been proved and that there is a serious doubt about the timing and place of the incident, the accused are to be acquitted cannot be accepted. Merely because

the original complainant is not examined cannot be a ground to discard the deposition of PW-1. As observed hereinabove, PW1 is the eye witness to the occurrence at both the places. Similarly, assuming that the recovery of the weapon used is not established or proved also cannot be a ground to acquit the accused when there is a direct evidence of the eye witness. Recovery of the weapon used in the commission of the offence is not a sine qua non to convict the accused. If there is direct evidence in the form of eye witness, even in the absence of recovery of weapon, the accused can be convicted. Similarly, even in the case of some contradictions with respect to timing of lodging the FIR/complaint cannot be a ground to acquit the accused when the prosecution case is based upon the deposition of eye witness.”

[44] In *Baban Shankar Daphal and Others v. State of Maharashtra*, reported in (2025) SCC Online 137, the Hon’ble Apex Court has observed thus:

“27. One of the contentions of the learned counsel for the appellants is that the eyewitnesses to the incident were all closely related to the deceased and for prudence the prosecution ought to have examined some other independent eyewitness as well who were present at the time of the unfortunate incident. This was also the view taken by the Trial Court, but the High Court has correctly rejected such an approach and held that merely because there were some more independent witnesses also, who had reached the place of incident, the evidence of the relatives cannot be disbelieved. The law nowhere states that the evidence of the interested witness should be discarded altogether. The law only warrants that their evidence should be scrutinized with care and caution. It has been held by this Court in the catena of judgments that merely if a witness is a relative, their testimony cannot be discarded on that ground alone.”

31. Further, the High Court rightly rejected the Trial Court's conclusion that the eyewitness accounts were unreliable. The Trial Court based its findings on perceived inconsistencies between the testimony of the eyewitnesses and the medical evidence. Specifically, the Trial Court found fault with the eyewitness account of multiple stick blows to the victim's head, contending that the post-mortem report did not show multiple head injuries. However, the High Court, after analysing the evidence holistically, pointed out that minor inconsistencies in eyewitness accounts do not render their testimony unreliable, especially when they pertain to incidents involving sudden and brutal violence.”

[45] In *Ghanshyam Mandal and Others v. State of Bihar (now Jharkhand)* reported in (2026) SCC Online SC 307, the Hon’ble Apex Court has observed as under:

“7. It was urged on behalf of the appellants that in the absence of recovery of any weapons of assault, the prosecution had failed to establish the guilt of the appellants. It is true that the Investigating Officer failed to bring on record any material indicating recovery of the weapons of assault that were described by the eye-witnesses. However, this aspect cannot enable the appellants to seek any benefit in the light of the fact that the version of the eye-witnesses as

regards the assault has been found to be reliable. It may be observed that recovery of the weapons of assault is not the sine qua non for convicting an accused as the entire evidence on record is required to be taken into consideration. In this regard, we may refer to the decision in Rakesh and anr. Vs. State of U.P. and anr.⁸. In paragraph 11, it has been observed as under:

“11. Now so far as the submission on behalf of the accused that as per the ballistic report the bullet found does not match with the fire arm/gun recovered and therefore the use of gun as alleged is doubtful and therefore benefit of doubt must be given to the accused is concerned, the aforesaid cannot be accepted. At the most, it can be said that the gun recovered by the police from the accused may not have been used for killing and therefore the 2021 INSC 321 recovery of the actual weapon used for killing can be ignored and it is to be treated as if there is no recovery at all. For convicting an accused recovery of the weapon used in commission of offence is not a sine qua non. PW1 & PW2, as observed hereinabove, are reliable and trustworthy eyewitnesses to the incident and they have specifically stated that A1-Rakesh fired from the gun and the deceased sustained injury. The injury by the gun has been established and proved from the medical evidence and the deposition of Dr. Santosh Kumar, PW5. Injury no.1 is by gun shot. Therefore, it is not possible to reject the credible ocular evidence of PW1 & PW2 – eye witnesses who witnessed the shooting. It has no bearing on credibility of deposition of PW1 & PW2 that A1 shot deceased with a gun, particularly as it is corroborated by bullet in the body and also stands corroborated by the testimony of PW2 & PW5. Therefore, merely because the ballistic report shows that the bullet recovered does not match with the gun recovered, it is not possible to reject the credible and reliable deposition of PW1 & PW2.”

8. We may also refer to a recent decision in Om Pal and Ors. Vs. State of U.P. (now State of Uttarakhand)⁹. In paragraphs 49 and 50 thereof, it has been observed as under:

“49. Another contention raised by the appellants was that the weapons used during the incident were never recovered from the site. However, this Court has many a times reiterated that non- recovery of the weapons cannot be considered fatal to the case of the prosecution if there is consistent medical and ocular evidence. This Court in the case State of Rajasthan vs. Arjun Singh & Ors.¹⁶ held as under:

“18. As rightly pointed out by the learned Additional Advocate General appearing for the State that mere nonrecovery of pistol or cartridge does not detract the case of the prosecution where clinching and direct evidence is acceptable. Likewise, absence of evidence regarding recovery of used pellets, bloodstained clothes, etc. cannot be taken or construed as no such occurrence had taken place. As a matter of fact, we have already pointed out that the gunshot injuries tallied with medical evidence. It is also seen that Raghuraj Singh and Himmat Raj Singh, who had died, received 8 and 7 gunshot wounds respectively while Raj Singh (PW

2) also received 8 gunshots scattered in front of left thigh. All these injuries have been noted by the doctor (PW 1) in his reports, Exts. P-1 to P-4.” (Emphasis supplied)

50. Also in Nankaunoo vs. State of Uttar Pradesh¹⁷, this Court held that where in light of unimpeachable oral evidence is corroborated by the medical

evidence, non-recovery of murder weapon does not materially affect the case of the prosecution. Any omission on the part of the investigating officer cannot go against the prosecution's case. Story of the prosecution is to be examined de hors such omission by the investigating agency. Otherwise, it would shake the confidence of the people not merely in the law enforcing agency but also in the administration of justice." From the aforesaid, it is clear that the absence of recovery of the weapons of assault would not weaken the case of the prosecution in the presence of other evidence on record that is found reliable."

[46] In *Harivadan Babubhai Patel v. State of Gujarat*, reported in (2013) 7 SCC 45, the Hon'ble Apex Court observed thus:

"20. In the case at hand, the factum of information related to the discovery of the dead body and other articles and the said information was within the special knowledge of the present appellant. Hence, the doctrine of confirmation by subsequent events is attracted and, therefore, we have no hesitation in holding that the recovery or discovery in the case at hand is a relevant fact or material which can be relied upon and has been correctly relied upon.

24. In *State of H.P. v. Gian Chand* it has been opined that "14.....Non-examination of a material witness is again not a mathematical formula for discarding the weight of the testimony available on record howsoever natural, trustworthy and convincing it may be. The charge of withholding a material witness from the court levelled against the prosecution should be examined in the background of the facts and circumstances of each case so as to find whether the witnesses are available for being examined in the court and were yet withheld by the prosecution."

The three Judge Bench further proceeded to observe that the court is required first to assess the trustworthiness of the evidence available on record and if the court finds the evidence adduced worthy of being relied on, then the testimony has to be accepted and acted upon though there may be other witnesses available who could also have been examined but were not examined.

26. In *Dahari v. State of U.P* while discussing about the non-examination of material witnesses, the Court expressed the view that when he was not the only competent witness who would have been fully capable of explaining the factual situation correctly and the prosecution case stood fully corroborated by the medical evidence and the testimony of other reliable witnesses, no adverse inference could be drawn against the prosecution. Be it noted, the Court also took note of the fact that during the cross-examination of the investigating officer, none of the accused persons had voiced their concerns or raised any apprehension regarding the non-examination of the material witness therein.

27. In the case at hand, it was A-1 who had announced that he was taking the deceased to the house of Gulia. On a search being conducted, nothing has been found from the house of Gulia. There has been no cross-examination of the investigating officer about the non-examination of Gulia. On the contrary, it was A-1 who had led to the discovery of the dead body and other articles.

Thus, when the other evidence on record are cogent, credible and meet the test of circumstantial evidence laid down in *Sharad Birdhichand Sarda v. State of Maharashtra*, *State v. Saravanan*, *Sunil Kumar Sambhudayal Gupta v. State of Maharashtra* and further reiterated in *Jagroop Singh v. State of Punjab*, there is no justification to come to hold that the prosecution has deliberately withheld a witness that creates a concavity in the concept of fair trial.

28. Another facet is required to be addressed to. Though all the incriminating circumstances which point to the guilt of the accused had been put to him, yet he chose not to give any explanation under Section-313 Cr. P.C. except choosing the mode of denial. It is well settled in law that when the attention of the accused is drawn to the said circumstances that inculpated him in the crime and he fails to offer appropriate explanation or gives a false answer, the same can be counted as providing a missing link for building the chain of circumstances. (See *State of Maharashtra v. Suresh*). In the case at hand, though a number of circumstances were put to the accused, yet he has made a bald denial and did not offer any explanation whatsoever. Thus, it is also a circumstance that goes against him.”

[47] Thus in view of the aforesaid case laws, the non-treating of information noted in GDE No.29(Exbt.P.15) as FIR and treating of Exbt.P1 information by P.W.1 cannot be said to have suffered from any illegality and so plea of defence that Exbt.P1 information would be hit by the provision of S.162 Cr.P.C falls flat. Here in the instant case there is nothing on record that more than one FIR was lodged in connection with the murder of the deceased Titu Miah Khadim.

[48] It is quite illogical to expect from a person like PW.1 to chronologically disclose the information to police immediately on receipt of information because a son on hearing the information about the killing of his father might not be in a stable position to decide the course of action to be adopted immediately and it is quite probable that in such a situation a son like PW.1 was under immense mental shock and agony, as is revealed from the answer of PW.1 in cross examination that “on that evening I did not have any conversation with anyone at the home of Soharab Ali Khadim since I was mentally devastated” and thus non disclosure of information received by PW.1 to PW.14 immediately cannot be held to be so fatal to the case of the prosecution.

[49] Regarding the argument of the learned senior counsel that there was delay in examination of witnesses by the IO and that the same provided

the scope for manipulation of evidence thereby prejudicing the accused, this Court is of the view that delay in the examination of witnesses by the investigating officer (IO) can raise questions about the fairness of the investigation, but not every delay necessarily vitiates the entire investigation unless there is no prejudice to the accused or the integrity of the investigation is not compromised. The Hon'ble Apex Court ruled that delay in the examination of witnesses does not automatically vitiate an investigation unless the delay has caused prejudice to the accused and that it is important to examine whether the delay was caused by valid reasons or was deliberate to affect the fairness of the trial.

[50] Now turning to the evidence, it appears that the informant P.W-1 had no personal information and as per his evidence, he got the information about the alleged incident from his uncle PW-2 and he stated that in the mediation meeting called by PW-2 in his house to settle the dispute between the accused and the deceased, accused assaulted his father with knife in stomach and other parts of body. PW-2, whose presence on the place of occurrence is not disputed by the defence, stated that on 01.10.2021 he called for a mediation meeting in his house to settle the property dispute between his two younger brothers i.e.; accused and the deceased and that accused started discussion on high and aggressive tone and was not amiable for any solution and so when he was about to leave, the deceased requested him to resolve the dispute in his(PW-2) presence and suddenly accused brought out a meat cutting knife and lunged it in the stomach and neck of the deceased. He further stated that he intervened to stop further blows and his cousin Sahin Ahamed i.e., DW-2 also sustained cut injuries. He again stated that the accused went to the courtyard and cleaned the knife with a gamcha and commented that why the deceased was still alive.

[51] Now let's see whether the evidence of PW-2 gets corroboration from any other witness. PW-2 in his evidence made it clear that in the meeting his cousin brother Ahamed Ullah @ Madhab, cousin brother Setu Miah Sarkar, cousin Kaji Sahin Ahamed (DW-2), Mohan Miah (PW-7),

Nurul Islam Khadim (PW-4), and Partha Karmakar (PW.8) were present. As per evidence of PW.4, deceased and accused are his younger brothers and they had property dispute and about one year back, in a mediation meeting held in the house of PW.2 to settle the dispute between the accused and the deceased, there was hot altercation between the deceased and the accused, who was not agreeable to any solution, and so he left the meeting but within a minute he heard uproar and so went back and found that the deceased was lying with bleeding injuries in the room while the accused was cleaning a blood stained knife with a gamcha.

[52] The aforesaid evidence goes to show that the evidence of PW-2 gets corroborated by PW-4, PW-8 and to some extent by PW-3. The aforesaid witnesses were thoroughly cross-examined by the defence and now it is to be seen whether the defence could shake the evidence of prosecution witnesses or could impeach the credibility of such witnesses. It was pointed out that the evidence of P.W.2 and P.W.8 were not corroborated by other prosecution witnesses such as P.W.3, P.W.4, P.W.7 and that there were inconsistencies and contradictions in their evidence and thus according to the defence, the evidence of prosecution witnesses could not be relied upon. Now on this point the law is well-settled that inconsistencies in the testimony of witnesses do not automatically render the evidence inadmissible or unreliable.

[53] It was argued by the defence that the prosecution withheld the evidence of D.W.2 and D.W.3 to screen the evidence of innocence of accused but such evidence cannot be accepted here because it is clearly revealed that the evidence of DW-2 and DW-3 were afterthought and subsequent creation and so their non-examination by the prosecution cannot be said to have any impact on the case of the prosecution.

[54] The defence further agitated during argument that SFSL team and dog master were not examined either by the IO or by the prosecution. From the evidence of prosecution witnesses it is not revealed that the action of the dog squad revealed any relevant material supporting the case of the

prosecution. Again the defence did not dispute the evidence of expert witness such as PW-11, PW-12 and PW-13. Thus non examination of SFSL team or dog master is non-consequential.

[55] Here in the case at hand, we have discussed the evidence on record of the prosecution in detail. Now we are to conclude our decision on the basis of material evidence on record as well as the observations made by the learned Court below. In our ultimate analysis, it is crystal clear that there is no reason as to why the continuity of the chain of circumstances and the complaint made against the appellant to be disbelieved. The witnesses supported the entire case of the prosecution with regard to the commission of offence by the appellant herein and furthermore, we find that the statement made by the witnesses needs no interference. Consequently, we find no reason to interfere with the observations made by the learned Court below and thus, the same is affirmed. However, the reliance as has been placed on certain judgments of the Hon'ble Apex Court by the learned senior counsel appearing for the appellant has no relevance to the facts and circumstances of the present case.

[56] In the result, the appeal stands dismissed. As a sequel, miscellaneous applications pending, if any, shall stand closed. Send down the LCRs forthwith.

S. DATTA PURKAYASTHA, J

DR.T. AMARNATH GOUD, J

A.Ghash

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