

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.309 of 1994

(Against the judgment of conviction and order of sentence dated 24th May, 1994 passed by Sri
Dharamdas Topno, learned 1st Additional District & Sessions Judge, Sitamarhi in Sessions
Trial No. 225/92 arising out of Riga P.S. Case No. 124 of 1992)

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Pawan Singh & Ors

Versus

State of Bihar

.... Appellant/s

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
Mr. Ritway Raman, Advocate
For the State : Mr. Ashwini Kumar Sinha, A.P.P.

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

C.A.V. JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA MISHRA)

Date: 28-02-2018

In the present appeal, the appellant Pawan Singh seeks to challenge and set aside the judgment and order of conviction dated 24th May, 1994 passed in Session Trial No. 225 of 1992, whereby and whereunder the Court of 1st Additional District and Sessions Judge, Sitamarhi, has been pleased to convict the appellant No. 1 to 7 under Section 302/149, 435/149, 436/149 and 147 of the Indian Penal Code, and also appellants 8 to 14 were convicted under Sections 302/34, 201/34, 302/149, 435 and 436/139 of the Indian Penal Code and were sentenced to undergo rigorous imprisonment for life, under Sections 302/149 and 302/34 respectively, whereas appellants 8 to 14 were further sentenced to undergo rigorous imprisonment for five years under Sections 201/34. All the appellants were sentenced to undergo



rigorous imprisonment for 10 years under Section 436/149 of the Indian Penal Code, five years under Section 435/149 and appellant Nos. 1 to 7 were convicted for one year under Section 147 of the Indian Penal Code and appellant Nos. 8 to 14 were sentenced to undergo one year under Section 148 of the Indian Penal Code. All sentences referred to above have been ordered to run concurrently against the petitioners.

The prosecution case, in short, is that on 08.10.1992, Informant Shamsul Haque (P.W.-2) went to the shop of Jawahar Gupta for telephonic talk but, the telephonic talk could not materialize and he remained there till 12:00 Noon. By that time, he found that the situation of market was not normal and he also heard rumours that communal riots had spread towards Riga Bazaar and shops have been set on fire. He also saw, that a mob variously armed with weapons was coming from Northern side and started setting fire on the *Parchun* Shop of Jumman Mian and also damaged the shop. Out of the mob numbering 30-35 persons, he identified Tuna Singh, Shanker Singh, Pawan Singh, Hari Ram Singh @ Bhutkun, Vishwanath Mandal, Shivjee Keshari Singh, Manoj Singh and Abhai Singh and they were armed with iron rod, lathis, sword, bhala, barchhi, kirich and farsa etc., who were mainly participating in the riot and were shouting anti-Muslim slogans. In the meantime, shops of the other



Muslims at the Bazar were also damaged by the members of the mob. In the meantime, Jawahar Gupta, Baiju Sah, Madan Jee, Jitendra Prasad and others asked the informant to conceal himself and, thereafter, the informant ran away and entered into his house. In the meantime, the informant also witnessed that arson was taking place at Imali Bazar also and the shops of Sadique Mian were set on fire. The informant identified Hari Ram Singh holding a gallon of K. Oil in the mob at Imali Bazar and also a Kirich in his right hand. In the meantime, those persons who have set fire in the shops of Juman Mian collected at Imali Bazar and others also joined them out of whom the informant identified Parmanand Jha, Astha Jha, Rameshwar Jha, Ashok Rai, Hem Nath Prathhasth, Raj Kishore Prathhasth, Parikshan Kapar, Ram Surat Rout, Shail Singh, Bhola Thakur, Shambhu Singh, Bibhuti Kumar Jha, Ajay Jha, Ramesh Mahto and Sikichand Mahto who were shouting communal slogans. Further, the prosecution case is that he kept himself closed in his house alongwith the family members. At that time, the mob came near the house of the informant and started breaking open the main door and rear door of the informant's house. The rioters also began to break open the house of Md. Munif, brother of the informant, from front and back.

Further, the case of the prosecution is that he peeped from the back door and saw his mother Wahida Khatoon lying in an



injured condition with bleeding injury. Subsequently, he saw that his brother Md. Munif wanted to run away from his house to save himself, but was attacked by Shanker Singh, Hari Ram Singh, Vishwanath Mandal and others by means of Lathi, Bhala, *Kudal* (spade) etc. and he was badly injured and became unconscious. Then the members of the mob lifted him and brought him on the road and threw him on the flame of fire of burning shops. The informant's brother tried to run away but the miscreants again assaulted him and threw him on the flame of fire. He has further stated that in the same flame the informant's bed and other commercial articles, his Hero Honda motorcycle and the articles of his brother's house were thrown by the miscreants. The informant's brother Md. Munif died there. He has further stated in his Fardbeyan that the mob proceeded towards east in the village. The further case of the informant is that he came out of his house later on and saw the houses of Saddique Saheb, Rafique, Sattar and other Muslims have been looted away and set on fire. The house of the informant's brother Habib, Hanif, Jimdar and Munif were also looted away causing loss of properties worth Rs. One Lakh of the informant and his brother. The informant claims to identify the other members of the mob and stated that other persons of the Bazar and other people had also seen the occurrence who would disclose about the names.



Further, the case of the informant is that subsequently, he learnt that some rioters went some yards away from the house of the informant and committed murder of the daughter of Saddique Mian aged about 15-16 Years, namely Sahana Khatoon, and Motifan Khatoon. Besides Khalil Mian, son-in-law of Chhote Mian, was also murdered. Further case of the prosecution is that the rioters looted away the houses of Farman Sahab, Lal Mohammad, Md. Islam, Md. Jalil, Md. Khalil, Md. Wakil, Md. Yasin, Md. Manzoor and others and damaged their houses. The informant gave his fardbeyan on 08.10.1992 at 18 hours at his house at Imali Bazar, Riga before the Officer Incharge of Riga P.S. The fardbeyan is Ext. 5. Ext. 6 is the endorsement of Sri N.D. Khan Officer Incharge, Riga P.S. on the fardbeyan and on the basis of the fardbeyan a formal F.I.R. Ext. 7 was registered.

In pursuance of the aforementioned FIR, after investigation the police submitted charge-sheet in the Court of SDJM, Sitamarhi, who after taking cognizance of the offence committed the case to the Court of Sessions for trial, which subsequently came before the Trial Court for adjudication and determination. Charges as stated above were framed. The accused persons pleaded not guilty and have alleged false implication on account of dirty local politics.



The prosecution has examined altogether 40 witnesses including the I.O. and Doctor, out of which 9 have turned hostile, whereas four have been tendered by the prosecution. The witnesses who have turned hostile and did not support the prosecution case despite cross-examination by the prosecution are Jawahar Prasad Gupta (P.W.-5), Thakur Sah (P.W.- 6), Ramdeo Sahni (P.W.-8), Suman Sahni (P.W.-9), Ramchandra Rout (P.W.-10), Puran Sahhani (P.W.-11), Amirul Haque (P.W.-25), Lal Mohammad (P.W.-26) and Ranjit Singh (P.W.-33). The witnesses who were tendered by the prosecution, for obvious reasons, are Phul Mohammad (P.W.-15), Khairatan Khatoon (P.W.-18), Arun Kumar (P.W.-24), Zafir Alam, (P.W.-27), Wahida Khatoon (P.W.-30), and, thus have stated nothing against the accused persons.

According to the prosecution case altogether 6 persons were done to death in the communal riot dated 08.10.1992 at Riga, Emali Bazar P.S., District Sitamarhi. The names of the deceased are Karim Mian @ Qayum Mian, Leyaquat Mian, Sahana Khatoon, Md. Munsif , Chotte Mian and Motifan Khatoon.

Challenging the judgment and order of conviction learned counsel for the Appellant has stated that the fardbeyan (Ext. 5) with the endorsement (Ext. 6) is that of Shri N.D. Khan, Officer



Incharge (P.W.-39, I.O.) Riga P.S. and on the basis of the same a formal FIR (Ext. 7) was registered on 08.10.1992 at 18:00 hours, at the house of Mohammad Shamsul (PW-2, informant) in Emali Bazar.

Learned counsel for the Appellant further urged that P.W.-5, Informant, in paragraph No. 18, has stated that the Officer Incharge N.D. Khan came to his house in the evening and got his statement recorded and upon which he put his signature but again he has stated that at that time he had not put his signature and again at 1 in the night N.D. Khan came and read over his fardbeyan to him it was only thereafter that he put his signature and he also gave the date as 08.10.1992. Learned counsel for the Appellants, Shri Thakur has however, has drawn our attention to the FIR where the signature does not bear the date. Thus, the Fardbeyan in which the informant has put the date is not on the record of the case.

It was further pointed out the learned counsel for the Appellants that P.W.-39, N.D. Khan, Officer Incharge of Riga P.S., in para 1 of page 214 of the brief has stated that on 08.10.1992 at 06:00 p.m. he came to Imali Bazar along with Ganesh Ram (P.W. 35) and recorded the statement of informant Samsul and fardbeyan was written by Ganesh Ram (P.W.35). This itself goes to show that the present



fardbeyan is not a fardbeyan which was given by Samsul and was recorded by N.D. Khan on which informant claimed that he put his signature at 01:00 A.M. with date. This witness P.W.-39, in para-8 at page 216 of the brief has stated that fardbeyan Ext. 5 is not in his writing and the same is written by either Bharosh or Ganesh Ram ASI and it is wrong to say that the signature of Samsul Haque on blank paper was taken and thereafter through ASI Ganesh Ram the said Fardbeyan was manufactured and it is wrong to say that in the earlier statement which was given by Samsul Haque, none of the accused was named and accordingly the same was changed and another fardbeyan was written, through his junior ASI Ganesh Ram.

Furthermore, Ganesh Ram has been examined as P.W.-35 and he has not stated that he went to Emali Bazar on 08.10.1992 at 06:00 P.M. On the contrary, in his examination in chief which is at page 178 of the brief in para-2 he has stated that he went to the place of occurrence alongwith Officer Incharge on 08.10.1992 at 11:45 (23:45) and saw injured Liyakat Mian, Wahida Khatoon (P.W.30) and Zafir Alam (P.W.27) and recorded the statement of Zafir Alam.

This witness has not stated that he went to the place of occurrence at 06:00 P.M. alongwith S.I. N.D. Khan nor has he stated that he ever recorded the fardbeyan of Samsul Haque (P.W.2) and that



is the reason that suggestions were given to P.W. 39 Mr. N.D. Khan in para-8, that he has obtained the signature of Samsul Haque on plain paper and subsequently got it converted into fardbeyan through ASI Ganesh Ram. This is also apparent from the Fardbeyan which is at page 2-3 of the brief. From page 2-3, the handwriting and the space are in one sequence but the last but one paragraph will go to show that in small words one paragraph has been added because there was no space left on the said blank paper on which the signature of Md. Samsul Haque (P.W.-2) was obtained by Mr. N.D. Khan the Officer Incharge of Riga P.S. Learned counsel for the Appellant thus submitted that if it would have been written in a normal way, then in that case the last paragraph would have been extended to another page in the next page in the normal writing and thereafter the signature of the informant would have been obtained. The informant P.W.-2, in para 31, page 37, has also been suggested that Officer Incharge has taken his signature on blank paper without giving date and, thereafter, with connivance of a leader of particular community subsequently the said fardbeyan was manufactured and he denied the said suggestion.

Learned counsel appearing on behalf of the appellant further pointed out that Md. Islam (P.W.-20) at page 133, at para 10, of his deposition, has categorically stated that the police did not visit his village on the date of occurrence but arrived on the next date in the



evening. However, he has again stated that on the date of occurrence at 08:00 P.M. the police had arrived in his village. Another witness Md. Sadique (P.W.-7), in para 95, of his deposition stated that on the date of occurrence Daroga/police had not arrived in this village and on the next date also the police has not arrived. Md. Israil (PW-12), too at para 10 of his deposition stated that after the occurrence he informed the Surpanch Mukhiya and Chowkidar.

Taibul Nissa (P.W.-14) at para 14 of her deposition also stated that the accused person fled away and when she came out but could not speak to anyone. Further, when the accused had arrived except her, no other Muslim was present and she met the Muslim community the next day and disclosed the name of the accused persons. Furthermore, she has stated in para 12-13 that Daroga jee had recorded at 8:00 A.M. Similarly from the statement of P.W.-17, it would be evident from para 13 that he stayed in the village till 8 pm and in the meantime he neither gave information to Riga police station or sent anyone to the police station and this also goes to show that till 8:00 p.m. on the said date no police has arrived in the village. P.W.19 at para 26 also stated that when he returned back no Muslim was available in his Mohalla and he did not see any person other than the three dead bodies.



Learned counsel for the Appellants further submitted that another witness P.W.-29, namely, Md. Suleman, at para 3 of his deposition has clearly stated that his house is situated on the southern part of the darwaza of Shamshul Haque (PW-2), informant and prior to the date of seizure, he did not say whether the officer in charge arrived or heard about the same. The date of seizure is 14.10.1992. He has further stated that on the date of seizure he was in his house and thereafter he continued to remain in his house. From the date of occurrence till the date of seizure he has not seen any police officer.

Casting a serious cloud on the prosecution story, particularly the First Information Report, learned counsel for the appellants submitted, that the first information report is wholly concocted, inasmuch as the same becomes evident from the statement of P.W. 35 (ASI Ganesh Ram) who in para-2 has stated that he along with officer Incharge (N.D. Khan PW-39) reached at the place of occurrence on 08.10.1992 at 11.45 P.M. where he saw injured Liyakat Mian, Wahida Khatoon (P.W.30) and Zafir Alam (P.W.27). He further stated that Liyakat Mian was unconscious whereas he recorded the statement of Zafir Alam. But, from the statement of P.W.-21 (Dr. Sita Ram Prasad Singh) at page 138, it will be evident that on 08.10.1992, at 11:30, he examined Zafir Alam and in para-3 at page 139 he has stated that the injured persons themselves told him their



names. In para-5, at page 140, he further stated that he asked the name of injured Md. Liyakat Mian and had found out his name and address from him. On the said basis he has mentioned the name of the injured and his address in the injury report, and similarly, he asked the name and address of injured Zafir Alam and on the basis of his disclosure he mentioned his name and address in the injury report.

From the perusal of the aforesaid facts, it is clear that the prosecution had suppressed the earliest version including that of the statement of injured persons, and subsequently manufactured the present fardbeyan and that is for the said reason that the present first information report, although shown to have been instituted on 08.10.1992 at 11:45 P.M., it reached in Court on 13.10.1992.

He further submitted that it is also not clear that whether the present fardbeyan (Ext.5) can be treated to be the First Information Report. In this context he pointed out that P.W. 39 (SI N.D. Khan) in para-10, page 217, 3rd line from the top, has stated that he had sent the injured to Riga Hospital for treatment, and in para-11 he has admitted that his signature was on the forwarding report of the injured which was written by Ram Lali Rai Writer Constable, marked as Ext. A. From the statement of PW 21 Dr. Sitaram Singh at page 138 of the brief, he has stated that, on 08.10.1992 at 03.20 P.M., he examined



one Liyakat Mian, and at page 139 in the same paragraph, 3rd line from the top, he stated that the case was referred to him by Riga Police, and thus from the aforesaid two statements of the aforesaid two witnesses, who were the official witnesses, it is evident that the investigation of the case had proceeded much prior to 3.20 p.m. on 08.10.1992. This further goes to show that Mr. N.D. Khan, P.W. 39, had reached the place of occurrence much prior to 3.20 P.M. on 08.10.1992.

Once, the Investigating Officer reached the place of occurrence, he prepared the injury report of the injured, and alongwith the injury report, he forwarded the injured to hospital for treatment. This itself goes to show that the investigation of the case had already proceeded prior to 3.20 p.m. on 08.10.1992, and thus any fardbeyan allegedly shown to have been recorded after 3.20 p.m. will be hit under Section 162 Cr. P.C. and cannot be treated as First Information Report.

Learned counsel for the appellants Shri Thakur further drew the attention of this Court to the delay in dispatching and receiving of the FIR in the Court. It was submitted that as per the prosecution case, the occurrence took place on 08.10.1992 and the fardbeyan of the case Ext. 5 is alleged to have been recorded on 06:00 P.M. on 08.10.1992 itself while the First Information Report is shown to have been drawn



up on 08.10.1992 at 11.45 P.M. (page 1 of brief). It is shown to have been sent from the police station on 09.10.1992 (all these facts are evident from page 1 of the brief), and thus on the 4th day from the date the F.I.R. was received in Court. This itself speaks a volumes against the prosecution case.

That P.W. 39, N.D. Khan, Officer Incharge, in para -8 and 9 at page 216-217, has been confronted on this matter and he has not given any explanation for the delay in receiving the said First Information Report in Court. He was suggested that the original fardbeyan was removed and in its place, subsequently, another fardbeyan was substituted, which was written in the handwriting of ASI Ganesh Ram, and that is the reason that this anti dated fardbeyan was received in the Court on 13th.

Similarly, Ganesh Ram, P.W.-35, was also confronted in para-37 at page-195 about the delay in receiving the First Information Report in court, in which he had stated that he has no knowledge when the said fardbeyan reached in the Court of Chief Judicial Magistrate because he had not sent the said fardbeyan to Court. In para-46, page 201, he was again suggested that he had prepared anti dated diary under the influence of Officer In charge, N.D. Khan, and fardbeyan was written subsequently and sent to the court on



13.10.1992.

Learned counsel further submitted that the present First Information Report was not in existence is also evident from the statement of Ganesh Ram, P.W.-35 in para-33, page 194, in which he has stated that he arrested accused Abhay Kumar Jha and Mahesh Mandal from his house and their names were not recorded in the First Information Report.

From the statement of P.W. 35, para-50, page 203, he further stated that he arrested Satyadeo Singh, Bacha Bihari Singh and Radhe Shyam Singh from their house on 12.10.1992, and they were also not named in the First Information Report. He produced them in Court on 14.10.1992 and the forwarding letter is not in his writing. He further stated that he does not know that on 13.10.1992, and from 12 to 14.10.1992, they may have been kept in the police hazat and he had no knowledge that on 13.10.1992, all three were not taken into custody by the Chief Judicial Magistrate, and it is wrong to say that on 15.10.1992 they were sent to judicial custody.

From the aforesaid facts, it is clear that the prosecution has not given any explanation, much less a valid explanation, as to why the First Information Report was received in the court belatedly i.e. after such a long lapse of time, although they were confronted by



the accused. Prejudice has been caused to the accused persons from the statement of P.W.-35 i.e. the Investigating Officer Ganesh Ram, in para-2, page 179 (2nd line from top), in which he stated that he recorded the statement of injured Zafir Alam. From his statement made in para-34, page 194, he further stated that he has recorded statement of injured Wahida Khatoon and she has not claimed to have identified any of the accused. Similarly, injured Zafir Alam has also not disclosed the names of any of the accused and this itself goes to show that injured persons, who were the best persons to disclose the names of the accused were unknown on the date of occurrence and they were not the co-villagers. Thereafter, at the instance of Mukhiya, who is a relative of P.W.-1 and 2, fardbeyan was subsequently substituted and that is why the First Information Report was received in court on 13.10.1992.

It has been pointed out further that from the inquest report of the case as well as from the post-mortem report which is on the record, it will be evident that the dead-body and injured were taken to Sitamarhi either on the date of occurrence or on the next date, and post-mortem was held on 09.10.1992 (page 274-280 of the brief).

Shri Ajay Thakur, learned counsel for the appellants, has further submitted that out of the forty witnesses examined by the



prosecution, 8 turned hostile, whereas five were tendered by the prosecution, notably because there were serious contradictions in the statements. Four of the prosecution witnesses being P.W. 21, P.W. 22, P.W. 28 and P.W. 38 are doctors.

P.W.-21 is doctor Sita Ram Prasad Singh who states that, on 08.10.1992, at 03.20 P.M., he was posted as Medical Officer at P.H.C., Riga, and had examined deceased Md. Liyakat Mian of village Riga, and the injury report was prepared by him (Ext. 2). At para 3 he stated that the injured persons “themselves told me their names”, but the same is not noted in the injury report that they told him their names. In his cross-examination, he has reiterated that he had asked the name of the injured Md. Liyakat Mian and his father’s name. Therefore, at the time of examination and recording of injury report, the said Liyakat Mian can be said to be conscious, and from the time of examination i.e., 03.20 p.m. of 08.10.1992, that they had been referred for examination by the Riga police.

P.W.-22 (Dr. Manoj Kumar) has stated that he had also conducted post-mortem examination of Chotan Mian on 09.10.1992 at Sitamarhi Sadar Hospital. Other bodies examined by him were of Motifan Khatoon, Sahana Khatoon, Qayum Mian. He has stated, that the bodies of Chotan Mian and Sahana Khatoon were unidentified and



the age of death could not be ascertained on account of the extent and magnitude of burning on these two skeletons. In his cross examination, he has stated that the skeletons brought to him by the Riga police, were identified by the constables of the Riga Police Stations.

P.W.-28 (Dr. Bharat Singh)- Civil Assistant Surgeon at Sadar Hospital, Sitamarhi, stated that, on 10.10.1992, he conducted the post mortem on the dead-body of one Md. Chottan, son in law of Halim Mian, of village Riga, Emali Bazar and Md. Munif of Riga P.S., Both the bodies were badly burnt and only skeleton and pieces of muscles were present. The bodies had been referred to him by Riga Police and were identified by constable 276-Ranjit Singh. In the cross-examination, he has asserted that the bodies were so badly burnt that they were unidentifiable.

P.W. 38 (Dr. Manoranjan Kumar Srivastava)- has stated that, on 25.10.1992, while posted at S.K.M. College & Hospital, Muzaffarpur, he held the post-mortem examination on the dead-body of Liyakat Mian which indicated a total burn of 95%, and that except the palm and sole, the entire body was charred.

PW-35 and 40 are the investigating Officers and P.W.-39 is the Officer Incharge of Riga Police Station, namely, N.D. Khan,



who has stated, that at the date and time of occurrence, he was the officer Incharge of Riga Police Station which has been marked as Ext.-‘5’. The attestation thereon, Ext. ‘6’, is his own. He further states, that the formal F.I.R. is in the handwriting of Khadakdhari Yadav. On 09.10.1992, he along with the Investigating Officer Ganesh Ram had gone to the place of occurrence for investigation. The leftover witnesses, namely, P.W.-1, P.W.-2, P.W.-3, P.W.-4, P.W.-7, P.W.-12, P.W.-13, P.W.-14, P.W.-16, P.W.-17, P.W.-19, P.W.-20 and P.W.-23 are said to be eye-witnesses, whereas there are two injured witnesses in the present case, namely, P.W.-27, Zafir Alam and P.W.-30 Wahida Khatoon. Their testimonies are written with contradictions, and since it ran contrary to the prosecution case they were tendered by the prosecution. Moreover, neither of them have identified any of the accused facing trial. They have also stated in Court that they had not stated before the police that they had identified any of the accused persons. The statement stands endorsed by P.W.-35, A.S.I. Ganesh Ram, who in paragraph No. 34 of his deposition (at page 194), has admitted that injured Wahida Khatoon, P.W.-30, and Zafir Alam, P.W.-27, have not claimed to identified any of the accused, and this itself goes to show that the accused persons were outsiders and not co-villagers.

Another serious anomaly which was pointed out by



learned counsel for the Appellant is that the prosecution has also not been able to prove the place of occurrence inasmuch as P.W.-39, Officer Incharge, N.D. Khan, I.O., P.W.-35, Ganesh Ram, and the second I.O., P.W.-40 P.K. Srivastava and none of the other investigating officers, found any blood at the place of occurrence. At only one place, P.W.-35 has stated that he found blood and water together, but could not collect the same for examination. This is quite strange, in view of the fact that in the FIR, the informant has stated that he had seen Wahida Khatoon badly injured, and blood was flowing from her. Also, the witnesses had seen deceased Motifan Khatoon being given “kirich” blow on her stomach and that other persons, namely, Chotan Mian, Sahana Khatoon, Qayum Mian and Leyakat Mian were badly injured on account of the so called assault. But, in para 32, A.S.I. Ganesh Ram, has admitted that he did not find blood near the dead body of Qayum Khan or Motifan Khatoon.

The place of occurrence remains to be doubtful as the inquest report of all the deceased clearly goes to show that they have not been able to establish from where the dead-bodies was allegedly found. From the material available on record, it is crystal clear that the police arrived at the place of occurrence prior to 02:30 p.m. on 08.10.1992, but the inquest report, which is available at page 267-272 of the brief goes to show that the dead-bodies were recovered from various



places. The deadbody of Leyakat Mian was found at S.K.M.C.H. on 25.10.1992, where the inquest was prepared whereas the deadbodies of Chotte Mian, Qayun Mian, Sahana Khatoon and Motifan Khatoon were found at P.H.C., Riga, and their inquests were prepared on 09.10.1992. This goes to show that none of the dead bodies were found at the place which has allegedly been described by the prosecution witnesses to be the place of occurrence. Further, there was no occasion to prepare an inquest report on the next day at the P.H.C., Riga, especially when the police are said to have been at the place of occurrence on 08.10.1992 itself.

It was further submitted by learned counsel that the prosecution has tried to prepare the document to show place of occurrence at a belated stage, which is also proved from the fact that P.W.-40, Binod Kumar Srivastava, 2nd I.O., has stated in para-21 that he seized the burnt Salwar of Sahana Khatoon on 16.10.1992. He has clearly stated that on 14.10.92, from 1.45 P.M., he was continuously present at the place of occurrence, but he has not seen any burnt Salwar of Sohana Khatoon during this period till the same was seized on 16.10.92. But, P.W.-7, Sadik Mian, has stated in (para-6) that after six days of the alleged occurrence, the police seized the burnt Salwar of his daughter Sahana Khatoon i.e. on 14.10.92. Neither first I.O. Ganesh Ram nor the Officer Incharge N.D. Khan had either seen or



seized any such Salwar.

As per the fardbeyan Ext. 5, the informant's brother Md. Munif, after being assaulted became unconscious, and was thrown into the burning fire of the shop, whereas during the trial, the witnesses stated that he was thrown onto pitch road itself, where household and other articles of the informant were brought and set on fire.

That, similarly, as per P.W.-16 Farman Mian, P.W.-17, Md. Zalil Mian, P.W.-19, Md. Khalil Mian, and P.W.-20, Md. Islam, Sahana Khatoon, Motifan Khatoon and Chhotan Mian as well as injured Liyakat Mian were assaulted at one and the same place, and were thrown in the same burning fire, but from the place which has been shown to the P.W.-35, ASI Ganesh Ram, as stated in para-10, it is evident that the dead-body of Chotan Mian was in the land, and 10 feet west, the dead body of Motifan Khatoon was found. From the dead body of Motifan Khatoon, about 15 "gaj" west, the dead-body of Sahana Khatoon was found (page-185). As stated above, the Inquest report goes to show that all the deadbodies was found in the P.H.C. Similarly, the prosecution has also failed to fix the place where the so called injured were allegedly assaulted, and as stated above, in none of these places any blood was either found or seized by the police,



which too places a cloud on the prosecution story.

Further, there has been much delay in the examination of witnesses by the Investigating Officer in this case, and most of the witnesses were examined after lapse of six days. There is no explanation for their delayed statement given before the Investigating Officer, and it is for the first time that an explanation was sought to be introduced during the course of trial. This itself goes to show that much time was given for selecting and manufacturing the witnesses.

Delving further, the counsel for the Appellants has doubted the role of the informant, and his presence, has also been questioned as they cannot, with certainty, come to the conclusion that the informant P.W.-2, who is a Bank employee, was in fact present at the place at the time of the alleged occurrence. It has been pointed out that the informant (P.W.-2) is a Bank Employee, and he has stated in his deposition that on 08.10.1992, as the Bank was closed, he was present at his village. He has further stated that he had gone to the shop of Jawahar Prasad Gupta (P.W.-5) for using his telephone at 10:00 A.M., and was present there till 12:00 P.M. However, in para 14 of his deposition, he had stated that he had gone to make a telephone call to Allahabad Bank in which he is posted as a Clerk cum Cashier and simultaneously, in para 10 and 11, he has also stated that



it was a holiday of the Bank. Thus, if it was a holiday, there arose no question of making a telephone call to the Allahabad Bank of Sitamarhi on the said date. This statement, thus, itself appears self-contradictory. Moreover it was rather strange that he would be waiting for two hours at the shop of Jawahar Prasad Gupta for making a telephone call. Moreover, P.W.-5 (Jawahar Prasad Gupta) has been examined at page 51 wherein he has stated that he is running a shop in Riga Bazar, but does not talk about the informant coming to his shop. The story of the informant being at the place of occurrence also stands falsified by the statement of P.W.-8 (Md. Firoz), who is the informant's own nephew. He has stated that Samsul Haque (P.W.-2) was not at his house and that is why the informant, in his cross examination, has stated that the Fardbeyan was given at 1 O' clock in the night on 8-9.10.1992. It is further submitted that the story of P.W.-2 (informant) lacks credence in view of the fact that he himself stated that he and his brother have a single house in which they have separate shares and he has got one room in his share, on the southern side, his uncle Suleman has a share, and on the northern side, Md. Munif (deceased) has a share. On the northern side of Md. Munif, his uncle Farman Mian has his share and at Page-32, 5th line from the bottom, he has stated that when he was standing at the road, accused persons had seen him and when accused persons started coming



towards his house, he closed himself along with his family member inside the house. But it is strange that the accused persons only damaged the room of his brother deceased (Munif) which is in the premises of the same house, and did not assault either the informant or his wife or children. This also makes the presence of informant very doubtful in the present case.

Learned counsel appearing on behalf of the appellant has also stated that the role of P.W.-39, N.D. Khan, Officer Incharge of Riga police station, also appears to be dubious. Though he was the officer Incharge of Riga police station, he appeared to have played a prominent role in the investigation of the case even though he was neither the investigating nor the supervisory officer of the present case. It was submitted that he has not allowed the investigating officer (P.W. 35) to investigate the case independently, and it will be evident from the evidence on record that he acted like an investigating officer, taking undue interest in the investigation of the case. Much of the investigation ensued on his instance as well as at the instance of the local Mukhiya who is the own relative of P.W.-1 and P.W.-2. Thus, the innocent villagers were implicated by fabricating documents and ante dating the fardbeyan, the inquest report and the formal FIR.

He thus argued that the entire conviction of the appellant



was misconceived. The prosecutions have failed hopelessly to prove beyond reasonable doubt the case of the prosecution, especially when it was marred by serious lacunae and discrepancies. Thus, the conviction of the appellant is fit to be set aside and the appeal must succeed on its own merits.

Learned counsel for the State, supporting the conviction, has also pointed out from the several evidences of the prosecution witnesses, and has submitted that the present case is of mass communal riots and the investigation had made substantial effort to prove the prosecution case. Countenanced with the query of the court regarding the FIR, which appears to have reached the court after a lapse of five days, contrary to the provisions of law, learned counsel, appearing on behalf of the State, is unable to connect the series of events and is sceptical about the reasons as to why such a delay ought to have been occasioned in a matter of paramount importance involving the community. He, however, submits that the discrepancies pointed out by the appellants are not such, as to set aside the positive evidence available on record, and negate the role of the appellant in the commission of the heinous crime of arson and loot, leading to the death of several persons of the community. It has been further submitted that all such discrepancies have been given careful consideration by the trial court in arriving at the finding, and cannot



be set to naught on the basis of conjecture and surmises as is being averred to by the appellants to set aside their conviction. As such, there is no infirmity in the judgment and order of conviction of the appellant, and the same is fit to be sustained.

We have heard Shri Thakur, learned counsel appearing on behalf of the appellants, and the counsel appearing on behalf of the State. The records of the trial court have also been placed before us for careful consideration, and we have gone through the deposition of the witnesses, the exhibits, and the discussion of the deposition along with the finding arrived at by the trial court. Admittedly, the matter relates to a communal riot leading to mass arson and loss of lives of a particular community. However, what invokes the conscious concern of this court, is whether there is enough material on the record so as to leave this court to come to a definite conclusion regarding implication of the present appellant, after appreciation of the entire facts and circumstances.

Having considered the rival submissions, the very first suspicion raised in the mind of the court, is with regard to the fardbeyan given by P.W.-2 and recorded by Shri N.D. Khan P.W.-39. The fardbeyan, which is at page 2 of the brief, indicates that it was recorded on 08.10.1992 at 18 hours by the Officer Incharge N.D.



Khan, at the house of the Md. Samsul at Emali Bazar, Riga. On the second page of the FIR, it is clear that the last and the last but one paragraph appear to have been written in smaller letters, giving the names of certain other persons who have been attacked and their houses have been subjected to loot and had been set ablaze. This later portion appears to be an addition in the FIR, and has been inserted later on as an afterthought, and with due deliberation with the avowed motive of implicating the appellant of the case. This makes the fardbeyan and the formal FIR of the case a doubtful document as the same has been placed before the CJM on 13.10.1992 i.e., after a lapse of four days, for which no plausible explanation has been offered by the prosecution.

Moreover, it is clear from the FIR that it was recorded on 08.10.1992 at 18 hours at the house of Md. Samsul in Emali Bazar. But, the statement of P.W. 2, informant, in para 18 of his deposition is that the officer Incharge N.D. Khan came to his house in the evening, when he got his statement recorded by him and put his signature. But later on, he has contradicted his own statement and stated that he had not put his signature at that point of time. The said N.D. Khan apparently, again came at 1 O' clock in the night and it was only thereafter, that the FIR was read over to him and he put his signature and also gave the date as 08.10.1992. However, the records of the case



do not reveal this date and time as is said to have been recorded. The FIR before us does not exhibit the date of the signature put by Md. Samsul Hauque, and, casts a serious cloud on the prosecution story.

Reference in this regard has been made to the case of **Mehraj Singh (L/Nk.) Vs. State of U.P. with Kalu Vs. State of U.P. and Others reported in (1994) 5 Supreme Court Cases 188.**
Paragraph 12 read as follows:-

“12. FIR in a criminal case and particularly in a murder case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstances in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any, used, as also the names of the eyewitnesses, if any. Delay in lodging the FIR often results in embellishment, which is a creature of an afterthought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story. With a view to determine whether the FIR was lodged at the time it is alleged to have been recorded, the courts generally look for certain external checks. One of the checks is the receipt of the copy of the FIR, called a special report in a murder case, by the local Magistrate. If this report is received by the Magistrate late it can give rise to an inference that the FIR was not lodged at the time it is alleged to have been recorded. Unless, of course the prosecution can offer a satisfactory explanation for the delay in despatching or receipt of the copy of the FIR by



the local Magistrate. Prosecution has led no evidence at all in this behalf. The second external check equally important is the sending the copy of the FIR along with the dead body and its reference in the inquest report. Even though the inquest report, prepared under Section 174 Cr.P.C., is aimed at serving a statutory function, to lend credence to the prosecution case, the details of the FIR and the gist of statements recorded during inquest proceedings get reflected in the report. The absence of those details is indicative of the fact that the prosecution story was still in an embryo state and had not been given any shape and that the FIR came to be recorded later on after due deliberations and consultations and was then ante-timed to give it the colour of a promptly lodged FIR. In our opinion, on account of the infirmities as noticed above, the FIR has lost its value and authenticity and it appears to us that the same has been ante-timed and had not been recorded till the inquest proceedings were over at the spot by PW8.

Furthermore, in the case of **Arjun Marik and Others Vs. State of Bihar reported in 1994 Supp (2) Supreme Court Cases 372**. Paragraph 24 read as follows:-

24. The matter does not stop here. There is yet another serious infirmity which further deepens the suspicion and casts cloud on the credibility of the entire prosecution story and which has also been lost sight of by the trial court as well as the High Court and it is with regard to the sending of occurrence report (FIR) to the Magistrate concerned on 22.7.1985 i.e., on the 3rd day of the occurrence. Section 157 of the Code of Criminal Procedure mandates that if, from information received or otherwise, an officer in charge of police station has reason to suspect the commission of an offence which he is empowered under



Section 156 to investigate, he shall forthwith send a report of the same to the Magistrate empowered to take cognizance of such offence upon a police report. Section 157, CrPC thus in other words directs the sending of the report forthwith i.e. without any delay and immediately. Further, Section 159 CrPC envisages that on receiving such report, the Magistrate may direct an investigation or, if he thinks fit, to proceed at once or depute any other Magistrate subordinate to him to proceed to hold a preliminary inquiry into the case in the manner provided in the code of Criminal Procedure. The forwarding of the occurrence report is indispensable and absolute and it has to be forwarded with earliest despatch which intention is implicit with the use of the word “forthwith” occurring in Section 157, which means promptly and without any undue delay. The purpose and object is so obvious which is spelt out from the combined reading of Sections 157 and 159 CrPC. It has the dual purpose, firstly to avoid the possibility of improvement in the prosecution story and introduction of any distorted version by deliberations and consultations and secondly to enable the Magistrate concerned to have a watch on the progress of the investigation.

What is indeed amazing is that there is serious suppression by the prosecution of material evidences which ought necessarily to have been brought on record. For example the (P.W.-39) N.D. Khan officer Incharge of Riga P.S. has categorically stated in para 1 and 6 of his disposition that the formal FIR is in the handwriting of ASI K.D. Yadav (Ext.-7), but, interestingly enough, the said K.D. Yadav has not been brought before the Court for his deposition, which amounts to suppression of material witness



Similarly, one Ram Lalli Rai, who is said to be the author of Ext. 8 to 8/3, and who had prepared the inquest, as has been submitted by (P.W.-39), has also not been examined before the Court. The failure of the prosecution to bring them before the Court, has cast a serious cloud, as there appears, to be clear antedating in the fardbeyan. It also appears that the present First Information Report was not in existence in its present form as Ganesh Ram (P.W.-35) in para-33 of his deposition has stated, that when he arrested accused Abhay Kumar Jha and Mahesh Mandal from his house on 12.10.1992, their names were not recorded in the First Information Report. Moreover, P.W.-30 Ganesh Ram has stated in his deposition, that the hand-writing in the FIR is not in his pen, and that he had taken over investigation at the instance of P.W. 39 N.D. Khan. For the aforesaid reasons also, we find it difficult to place credence on the prosecution story and there being serious infirmities pervasive in the testimonies, the prosecution cannot be said to have proved their case beyond reasonable doubt and in our considered opinion, the conviction of the Appellants cannot be sustained for the aforesaid reason as well.

After scrutiny of the evidence and witnesses we also find and hold that there have been a lot of inconsistencies and contradictions with regard to the manner and commission of crime. The injured witnesses have not named any of the Appellants as the assailants, for



example, P.W. 35 Ganesh Ram has categorically stated that when he examined Wahida Khatoon P.W. 30, she was unable to take the name of any of the accused persons, similarly injured Zafir Alam has also not disclosed the name of any of the accused and, therefore, it can be well said that these witnesses, who were the best persons to have identified the accused but having failed to do so, the conviction of these accused persons cannot be held to be entirely correct on the basis of the statements of the P.W.-35 Ganesh Ram. Thus, it cannot be safely concluded that these appellants have actually participated in the occurrence which makes them entitled to the benefit of doubt.

In support of this submission we can well refer to the case reported in **2001(3) SCC 147 (State of Rajasthan Vs. Teja Singh and Ors.)**, Paragraph Nos. 4 and 5 are being reproduced hereinbelow:-

“4. We have examined the evidence of the three eye-witnesses as also that of Iqbal Singh (PW-10), the Investigating Officer. We have also perused the evidence of Ram Pratap, Sarpanch (DW-1) and we do not find any reason to differ with the finding of the High Court which sitting as the first court of appeal on facts, had every right to re-appreciate the evidence. In our opinion, the High Court, in that process, has not committed any error. As a matter of fact, the explanation put forth by the learned counsel in regard to the delay in the FIR reaching the court is not tenable because assuming that there were some court



holidays that cannot be a ground for the delay in the FIR reaching the Magistrate, because requirement of law is that the FIR should reach the Magistrate concerned without any undue delay. We are of the opinion that the explanation given by the prosecution regarding the delay in the FIR reaching the Magistrate is neither convincing nor acceptable.

5. In regard to the next argument of the appellants counsel that the High Court was wrong in assuming that other villagers were sitting with PWs 6, 7 and 9, assuming that it is an error even then there can be no doubt as could be seen from the prosecution case that other villagers whether sitting with PWs 6, 7 & 9 or not did rush to the scene of occurrence, therefore, it is clear that apart from the said eye-witnesses produced by the prosecution many other villagers would have at least seen the last part of the occurrence including the escape of the accused and the accused not being strangers to those villagers could have easily identified by them. By not examining those independent witnesses, the prosecution has failed to produce the available independent corroborative evidence to support the evidence of interested witnesses, namely, PWs 6, 7 and 9 because of which the High Court was justified in drawing adverse inference against the prosecution. This lack of corroboration of the evidence of PWs 6, 7 and 9, coupled with the fact that PW-6 is admittedly a very old person having problems with his eyes, makes it difficult to believe that he was really in a position to identify the accused persons. The evidence of the eye-witnesses PW-9 also becomes suspect because of the fact that though he was available in the village, his evidence was recorded only after 5 days of the crime for which the explanation given by the investigating officer is not at all satisfactory. The presence of the third eye-witnesses i.e. PW 7, Amrao, is also doubtful



because of the fact that even though she stated that she had lifted the body of the deceased which was bleeding and her clothes had become bloodstained, the investigating officer failed to recover the said clothes giving room to a genuine complaint that her presence is also doubtful. These factors coupled with the evidence of DW-1 Ram Pratap who in his evidence has stated that when he was told about the incident these eye-witnesses did not mention the name of the accused persons to him, also makes the prosecution case doubtful. Therefore, in our opinion, the High Court was justified in not placing any reliance on the evidence of these 3 eye-witnesses without any independent corroboration.”

Apart from the serious anomaly present in the First Information Report, the issue regarding antedating the same becomes more pronounced on consideration of the Inquests which have been placed at pg. 269-270 which are said to have been made on 9/10/1992 at 13:35 hrs and 13:30 hrs and are said to have been made at the Primary Health Centre, Riga. The Inquest does contain the number of the FIR which is said to have been recorded on 8/10/1992 itself. This conclusively proves that on 9/10/1992, when the inquest was prepared, the FIR had not been registered or else the same would have borne the P.S. case number. Similarly, the Postmortem reports at pg. 273-287 are said to have been conducted on 9/10/1992 and also do not contain the case number. We have noticed that the Inquests as well as the Postmortem reports, the number of the FIR has not been recorded and thus the medical evidence goes to prove that the want of details in



the postmortem report and the inquest are indicative of the fact that the prosecution story was still under deliberations and consultations and was then antedated to give it the colour of an authentic FIR. In support of the said contention, the decision of the Apex Court in the case of **Sudarshan & Another V. State of Maharashtra [(2014) 12 SCC 312]**, paragraph Nos. 15, 16 and 21 are being quoted hereunder:-

“15. Even after meeting their Advocate and his advice that the matter be reported to the police, these persons didn't come back to Ballarshah Police Station, which was the proper Police Station for this purpose. Instead, the FIR was lodged in Chandrapur Police Station. Things do not end here. Mr. Umesh, Sub-Inspector, was at Chandrapur Police Station, who had recorded the FIR. He has appeared as PW-12 during trial. The FIR which was lodged with him is proved as Exhibit-213. Column 15 of the FIR pertains to “*date and time of dispatch to the Court*”. This column is left blank, which means that no date and time of the dispatch /delivery of this FIR to the Court concerned is mentioned. In the cross-examination, PW-12 was specifically asked about the requirement of submitting a copy of the FIR to the Magistrate concerned within 24 hours. He replied in the affirmative insofar as this need is concerned. However, at the same time, he was candid in admitting that he was unable to say as to by whom and when the copy of Exhibit-213 was sent to the Magistrate. A specific suggestion was put to him that the copy of the FIR was not sent to the concerned Magistrate. Though he denied, but thereafter no attempt was made to prove as to when and how the copy was sent. The necessity of sending the copy of the FIR to the Magistrate



concerned hardly needs to be emphasized. The primary purpose is to ensure that truthful version is recorded in the FIR and there is no manipulation or interpolation therein afterwards. For this reason, this statutory requirement is provided under Section 157 of the Code of Criminal Procedure, 1973.

16. We, thus, feel that it was a glaring omission on the part of the prosecution which lends credence to the plea of the defence about ante-timing the FIR. It gets strengthened on finding more glaring and intriguing events taking place thereafter, which are described hereinafter.

21. In the aforesaid scenario, we find that the present case is fully covered by the judgment of this Court in *Meharaj Singh v. State of Uttar Pradesh*, wherein the importance of recording of FIR and the requirement of dispatching the copy thereof to the Magistrate within 24 hours with the consequences fraught with danger was highlighted in the following manner:

(SCC pp. 195-196, para 12)

“12. FIR in a criminal case and particularly in a murder case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstance in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any, used, as also the names of the eyewitnesses, if any. Delay in lodging the FIR often results in embellishment, which is a creature of an afterthought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the



introduction of a coloured version or exaggerated story. With a view to determine whether the FIR was lodged at the time it is alleged to have been recorded, the courts generally look for certain external checks. One of the checks is the receipt of the copy of the FIR, called a special report in a murder case, by the local Magistrate. If this report is received by the Magistrate late it can give rise to an inference that the FIR was not lodged at the time it is alleged to have been recorded, unless, of course the prosecution can offer a satisfactory explanation for the delay in dispatching or receipt of the copy of the FIR by the local Magistrate. Prosecution has led no evidence at all in this behalf. The second external check equally important is the sending of the copy of the FIR along with the dead body and its reference in the inquest report. Even though the inquest report, prepared under Section 174 CrPC, is aimed at serving a statutory function, to lend credence to the prosecution case, the details of the FIR and the gist of statements recorded during inquest proceedings get reflected in the report. The absence of those details is indicative of the fact that the prosecution story was still in an embryo state and had not been given any shape and that the FIR came to be recorded later on after due deliberations and consultations and was then ante-timed to give it the colour of a promptly lodged FIR. In our opinion, on account of the infirmities as noticed above, the FIR has lost its value and authenticity and it appears to us that the same has been ante-timed and had not been recorded till the inquest proceedings were over at the spot by PW 8.” Neither the trial court



nor the High Court has appreciated the aforesaid circumstances which go to the root of the matter and raise sufficient doubt about the involvements of the appellants in the present case.”

This also finds support in the case of Mehraj Singh Vs. State of U.P. (1994) 5 SCC 188 para 12.

Thus, the judgments cited at the bar, by the counsel for the appellants, are wholly relevant in the present context, and we find ourselves in agreement with the same. Accordingly, we are of the considered opinion that the prosecution had antedated the FIR, and had made out a case which could rope in co-villagers, and in the garb of communal riots, the names of many such have been brought in whose complicity in the crime could not be proved beyond reasonable doubt.

So far as the delay in the dispatch of the FIR and receipt in the court of CJM is concerned, the trial court has given a total go-by to the other external elements which were noticed and which have been brought to the fore by the appellants before this court. The mere statement that there was curfew could not cover up such a serious lapse at the hands of the prosecution and the court has clearly erred in this matter in justifying the delay. In this context we must notice the judgment in the case of **Arjun Marik and Ors. Vs. State of Bihar** cited in 1994 Supp (2) SCC 372 paragraph Nos. 24 and 25 of which



is quoted hereunder for ready reference:

“24. The matter does not stop here. There is yet another serious infirmity which further deepens the suspicion and casts cloud on the credibility of the entire prosecution story and which has also been lost sight of by the trial court as well as the High Court and it is with regard to the sending of occurrence report (FIR) to the Magistrate concerned on 22-7-1985 i.e. on the 3rd day of the occurrence. Section 157 of the Code of Criminal Procedure mandates that if, from information received or otherwise, an officer in charge of police station has reason to suspect the commission of an offence which he is empowered under Section 156 to investigate, he shall forthwith send a report of the same to the Magistrate empowered to take cognizance of such offence upon a police report. Section 157 Crpc thus in other words directs the sending of the report forthwith i.e. without any delay and immediately. Further, Section 159 CrPC envisages that on receiving such report, the Magistrate may direct an investigation or, if he thinks fit, to proceed at once or depute any other Magistrate subordinate to him to proceed to hold a preliminary inquiry into the case in the manner provided in the Code of Criminal Procedure. The forwarding of the occurrence report is indispensable and absolute and it has to be forwarded with earliest despatch which intention is implicit with the use of the word "forthwith" occurring in Section 157, which means promptly and without any undue delay. The purpose and object is so obvious which is spelt out from the combined reading of Section 157 and 159 CrPC. It has the dual purpose, firstly to avoid the possibility of improvement in the prosecution story and introduction of any distorted version by deliberations and consultation and secondly to enable the Magistrate concerned to have a watch on the



progress of the investigation.

25. But in the present case, admittedly, the report as alleged is said to have been despatched to the Magistrate concerned on 22-7-1985 by a special messenger, vide Ext. 2. It is, thus, clear that the report was not sent forthwith, in other words immediately and without delay as the incident had occurred in the intervening night of 19/20-7-1985 and according to Doman, PW 10 the officer in charge of the police station, the FIR was already recorded in the morning of 20-7-1985. If in fact the FIR was already recorded in the morning of 20-7-1985 there was no reason not to despatch the same to the Magistrate concerned till 22-7-1985. Though there is no material on record to show as to why delayed report was sent to the Magistrate on 22-7-1985 but the learned counsel appearing for the respondent-State submitted at the Bar that the investigating officer remained busy in the investigation on 20-7-1985 which was Saturday and since 21-7-1985 was Sunday the report was sent on Monday, 22-7-1985. He submitted that in Bihar State even in murder cases FIR is never sent to the residence of a Magistrate on Sundays and holidays. If that be so, we are afraid such a practice can never be said to be healthy practice which renders the mandatory provision nugatory. If such a practice is prevalent it must be deprecated and it is high time that the authorities concerned should wake up and see that the provisions of Section 157 CrPC are complied with in letter and spirit.”

Thus, we are in agreement with the submission of the learned counsel for the appellant and hold that the FIR is clearly antedated and having been received in the court after a delay of four days, for which the prosecution has not led any evidence, such



discrepancy cannot be ignored and be held to be inconsequential. It is clear that such a delay casts doubt on the Prosecutions version that the report which was given by the informant at 1 am in the night on 8/10/1992 was never before the court. This finds support in the **Daud Khan Vs. State of Rajasthan [(2016) 2 SCC 607]**, paragraph No. 28 is as follows:-

“28. It is no doubt true that one of the external checks against ante-dating or ante-timing an FIR is the time of its dispatch to the Magistrate or its receipt by the Magistrate. The dispatch of a copy of the FIR “forthwith” ensures that there is no manipulation or interpolation in the FIR. If the prosecution is asked to give an explanation for the delay in the dispatch of a copy of the FIR, it ought to do so. However, if the court is convinced of the prosecution version’s truthfulness and trustworthiness of the witnesses, the absence of an explanation may not be regarded as detrimental to the prosecution case. It would depend on the facts and circumstances of the case.”

It is further evident that the time that it was dispatched to the magistrate has not been specified in the FIR though it is said to have been recorded on 8/10/1992 at 6 p.m. Moreover, the signature of the informant made on 8/10/1992 at 1 a.m., as clearly stated by him in his deposition is not before the court for consideration. This is a clear circumstance which leads us to come to the conclusion after legitimately contemplating that the First Information Report was



prepared later than the stated date and hour, affording sufficient time to the prosecution to introduce improvements and embellishments and set up a distorted version of the occurrence.

We have been further pointed out that the trial court, convicting the appellants, overlooked certain other features of the case apart from the inordinate and unexplained delay in dispatching the first information report to the Magistrate, the differences in the account given by the prosecution witnesses and also notice that an important I.O. of the case namely K.D. Singh, who could have proved to be a material witness, was not examined. Non-examination of this material witness, contradictions in the story of Ganesh Ram (P.W. 35), recording of the Fardbeyan by N.D. Khan, who was the Officer In-charge of the case, clearly establish that the Material Witnesses have been withheld from the Court, which also seriously undermines the strength of the prosecution case and accordingly the benefit thereof must accrue in favour of the Appellant.

In the circumstances, we are of the considered view that the appellants deserve benefit of doubt in this Appeal and the Appeal must succeed for the aforesaid reasons.

In the result, the appeal is allowed. The judgment and order of conviction is set aside and the appellants are acquitted of their



charge. The appellants are discharged from the liabilities of their bail bonds.

(Anjana Mishra, J)

Dr. Ravi Ranjan, J. I agree.

(Dr. Ravi Ranjan, J)

Saif/-

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