

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 132 of 2013

- M. John S/o M. Kruparao Aged About 26 Years R/o Panchsheel Nagar, House No 15A, Road No 6, P.S. Pulgaon, Distt. Durg (C.G.)

---- Appellant

Versus

- State Of Chhattisgarh Through - The District Magistrate, Durg, Distt. Durg (C.G.)

---- Respondent

For Appellant	:	Shri Amiyakant Tiwari, Advocate.
For Respondent/State	:	Shri Vaibhav Goverdhan, Panel Lawyer.

CRA No. 256 of 2013

- R. Samuel S/o R.C. Ratnam Aged About 26 Years R/o Hospital Sector, Road - 11 , Block - 3, Room - 1, Bhilainagar , P.S. Bhilai, Distt. Durg (C.G.)

---- Appellant

Versus

- State Of Chhattisgarh Through - The P.S. Bhilainagar, Distt. Durg (C.G.)

---- Respondent

For Appellant	:	Shri Jaydeep Singh Yadav, Advocate.
For Respondent/State	:	Shri Vaibhav Goverdhan, Panel Lawyer.

CRA No. 408 of 2013

- K.Benjamin @ Benji S/o K. Yesudas Aged About 36 Years R/o Hospital Sector Street No 6 Room 06 SHA Road Bhilai, P.S. Bhilai, Distt. Durg C.G. Revenue and Civil Distt.Durg.

---- Appellant

Versus

- State Of Chhattisgarh Through - P.S. Bhilai Nagar , Durg (C.G.)

---- Respondent

For Appellant	:	Shri Akash Pandey, Advocate.
For Respondent/State	:	Shri Vaibhav Goverdhan, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Sanjay Agrawal

Judgment On Board By Justice Pritinker Diwaker

25/01/2018

As all the above three appeals arise out of a common judgment of conviction and order of sentence dated 8.1.2013 passed by the First Additional Sessions Judge, Durg in S.T. No.183/2010, they are being disposed of by this common judgment.

By the said judgment, appellants R. Samuel and K. Benjamin have been convicted under Sections 302/34 & 201 of IPC and sentenced to undergo imprisonment for life, fine of Rs.2000/- & RI for five years and fine of Rs.1000/- with default stipulations respectively whereas appellant M. John has been convicted under Section 302/34 of IPC only and sentenced to undergo imprisonment for life and fine of Rs.2000/- with default stipulation.

02. In the present case, name of the deceased is Rakesh Kumar Rajwade @ Rocky. It is alleged that on 16.7.2010 Rakesh Kumar had left his house and when he did not return in time, at about 11.15 pm his brother Nogesh (PW-9) called him on his cell phone, to which Rakesh Kumar replied that he would be returning soon. When even after some time Rakesh Kumar did not return, PW-9 and his brother Mukesh (PW-

7) went in search of Rakesh Kumar and near Sector-9 Hospital, SHA road, they saw the accused persons assaulting Rakesh Kumar by knife and rod. According to the prosecution, accused John caught hold of Rakesh Kumar whereas accused Samuel was assaulting him with knife and accused Benjamin by a rod. After seeing PW-7 and PW-9, the accused persons fled from the spot. Injured Rakesh Kumar was taken to hospital in a motorcycle, which was being ridden by PW-7 Mukesh Kumar and PW-9 Nagesh was sitting as pillion rider holding his brother injured Rakesh Kumar. In the hospital, Rakesh Kumar was declared brought dead. On 17.7.2010 at 0.30 hours FIR (Ex.P/18) was lodged by PW-9 Nagesh against all the three accused/appellants under Section 302/34 of IPC. Immediately thereafter at 0.40 hours merger intimation Ex.P/17 was registered at the instance of PW-9. Further case of the prosecution is that from hospital information was given to the family members of PW-7 & PW-9 and then PW-6 Usha Devi, PW-8 Annapurna Devi and PW-10 Sheetal also reached the hospital. Inquest over the dead body was performed on 17.7.2010 vide Ex.D/3 and thereafter, the body was sent for postmortem which was conducted on 18.7.2010 vide Ex.P/15 by PW-5 Dr. A.K. Mishra who noticed incised wounds on neck and left wrist, multiple abrasions on left forehead, abdomen, chest, elbow, cheek and left pelvis region. In his opinion, the cause of death was shock and hemorrhage as a result of antimortem stab injury and that the nature of death was homicidal. On 18.7.2010 memorandum of accused/appellant R. Samuel was recorded vide Ex.P/3, based on which seizure (Ex.P/5) of knife was made. Likewise, memorandum (Ex.P/4) of accused/appellant K. Benjamin recorded on the same day led to seizure of one iron pipes and clothes vide Ex.P/6.

As per FSL report, though blood was found on the seized articles except iron pipe, however, there is no serological report to confirm origin and group of the blood so found. While framing charges, the trial Judge framed charges under Sections 302/34 and 201 of IPC against the appellants.

03. So as to hold the accused/appellants guilty, the prosecution examined 12 witnesses in all. Statements of the accused were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the appellants as mentioned above.

05. Counsel for the appellants submits as under:

(i) that as per prosecution case, FIR has been lodged by PW-9 Nogesh whereas PW-9 has denied lodging of FIR and according to PW-7 Mukesh Kumar it is he who lodged the FIR.

(ii) that at the place of occurrence there was no source of light, which is evident from the spot map prepared by Patwari, and as such, the question of seeing the incident by anyone does not arise.

(iii) that two important prosecution witnesses PW-1 Manjeet Singh and PW-2 Sameer Ahmed have not supported the prosecution and have turned hostile.

(iv) that as per PW-7 & PW-9 when deceased did not return, PW-9

had talk with deceased on his cell phone and thereafter both PW-7 & PW-9 went in search of the deceased and saw the accused persons assaulting him. However, PW-6 Usha Devi has categorically stated that at the time of incident, both PW-7 & PW-9 were at home and there all the family members received information from PW-2 Samir about the deceased being beaten by someone. Thus, in view of statement of PW-6, the credibility of PW-7 & PW-9 becomes doubtful. Even PW-9 has also admitted the fact that at the time of occurrence of incident he was at home along with other family members.

(v) that as per prosecution case, the place of incident is Hospital Sector, Block-1 whereas document and evidence suggest that the incident occurred at Block-5, SHA Road. Once the prosecution could not prove the very fact of the place of occurrence, the entire case becomes doubtful as against the appellants.

(vi) once PW-9 denies lodging of FIR on 17.7.2010 and the report says that it was lodged on that day at 0.30 hours, it is quite apparent that the report is either anti-timed or anti-dated. Furthermore, there is no evidence on record to show that copy of the FIR was sent to the nearest Magistrate and it was received by the Magistrate.

(vii) that the prosecution has not made any effort to collect the call details of PW-9 and the deceased. Had proper evidence been adduced by the prosecution in this respect, had there been seizure of cell phones of these two persons, it could have been ascertained as to whether any call was made by PW-9 to the deceased as claimed by him.

(viii) though on certain seized articles blood has been found as per FSL report Ex.P/29, but in absence of serological report, the same is not of much consequence.

(ix) that as per prosecution case, it is PW-7 & PW-9 who took injured Rakesh Singh to hospital on a motorcycle where he was declared brought dead. However, no such clothes of these witnesses have been seized by the prosecution and rather they have stated that the police had asked them to burn their clothes. In these circumstances, it can safely be inferred that these witnesses had not taken injured Rakesh Kumar to hospital.

(x) that the deceased had only one motorcycle which was found parked opposite to the house of accused Benjamin and in the entire family, there was no other two wheeler and thus the question of PW-7 & PW-9 reaching the place of occurrence on motorcycle and taking injured Rakesh Kumar to hospital on that motorcycle does not arise.

(xi) that the deceased and his family members were hard core criminals and number of cases were registered against them. Suggestion was also put to the witnesses by the defence that the deceased had stolen Rs.25 lacs and a pistol from a liquor contractor and thus, the possibility of killing of the deceased by some third person cannot be ruled out.

(xii) that the investigating officer (PW-11 Smt. C. Tirkey) has admitted the fact that prior to lodging of FIR, she had received information from the hospital about death of the deceased. In fact, recording of such information in the form of even unnumbered merg was mandatory on

the part of the prosecution and that document could have been treated as first document regarding death of the deceased. However, suppression of said document coupled with denial of PW-9 of being lodger of FIR and PW-7 claiming himself to be the lodger of FIR and further, non-sending of copy of the FIR to the Magistrate, creates a reasonable doubt as to the authenticity of the FIR.

(xiii) in respect of injuries allegedly sustained by accused/appellants M. John and R. Samuel, it has been argued that the treating doctor has not been examined in the Court and as such, the appellants had no opportunity to cross-examine him and explain the said injuries. In their statements under Section 313 CrPC, they have categorically stated that they sustained these injuries on account of being beaten by the police. Most importantly, the investigation officer has admitted the fact that in the arrest memo, there is no mention of any such injury on the person of these appellants and had such injuries been there on their person, the same would have been mentioned in the arrest memo.

06. On the other hand, State counsel opposing the submission of the appellants and supporting the impugned judgment submits as under:

(i) that the FIR was lodged very promptly at 0.30 hours on 17.7.2010 itself i.e. just after an hour of the incident.

(ii) that statement of PW-9 that he did not lodge the FIR is of no help to the defence because undisputedly FIR (Ex.P/18) is there on record, which bears the signature of PW-9 and the investigating officer has categorically stated about lodging of the same on 17.7.2010 at 0.30 hours and proved it.

(iii) that copy of the FIR was immediately forwarded to the Magistrate. This fact is evident from Rojnamchasanha and corresponding entry in the case diary dated 17.7.2010 and 18.7.2010. Though these documents were not filed along with charge sheet but they are available in the case diary. State counsel, however, fairly admits that there is no document on record to show that copy of the FIR was received by the Magistrate.

(iv) that as per requirement of Section 157 of CrPC, only sending of copy of the FIR to the Magistrate is to be proved and not its receipt.

(v) in respect of minor contradictions in the statements of PW-7 & PW-9 it has been argued that they are uneducated rustic persons and therefore, if there is some variation in their statements as to who lodged the FIR, it hardly makes any difference.

(vi) that PW-7 & PW-9 are the chance witnesses and there is no reason for this Court to disbelieve the natural version given by them.

(vii) that there was no occasion for these witnesses to falsely implicate the accused persons.

(viii) that in the said incident, accused/appellants M. John and R. Samuel also suffered injuries and the said injuries have not been explained by them satisfactorily.

07. Heard counsel for the respective parties and perused the material on record.

08. PW-9 Nogesh Kumar Rajwade, brother of deceased and lodger of FIR (Ex.P/18) and merged intimation (Ex.P/17) has stated that on

16.7.2010 he called up his brother Rakesh Kumar (deceased) and enquired about him and thereafter waited for 10-15 minutes for his return. When deceased did not return, he along with PW-7 Mukesh Kumar went in search of the deceased and at about 11.15 pm when he reached near SHA road, he saw accused persons beating his brother Rakesh Kumar. Rakesh Kumar was immediately taken to Sector-9 Hospital where doctor declared him dead. He states that he gave information about death of his brother to Sector-6 Kotwali and on that basis FIR and merg intimation were registered. He states that inquest on the dead body was conducted vide Ex.D/3 in his presence and it bears his signature and likewise spot map Ex.P/20 also bears his signature.

In cross-examination he has admitted the fact that few cases are registered against him and likewise, cases are also registered against PW-7 Mukesh and his other family members. He states that cell phone from which he had called up his brother Rakesh Kumar was not seized by the police and he is not aware as to how the deceased reached the place of occurrence which is about 300 meter from his house. His statement was recorded by the police after three days of death of his brother whereas record shows that his statement under Section 161 of CrPC was recorded on 17.7.2017 itself. He states that cell phone of the deceased was in his pocket and after the incident throughout the night he stayed in the hospital and did not go anywhere. He further states that he did not go to police station for lodging FIR and if timing of lodging of FIR as 0.30 hours has been mentioned, the same is incorrect. He never went to police station for lodging any report. In

respect of discrepancy of mentioning the place of occurrence, he states that he never informed the police that the incident occurred at Block-1. He has denied the fact that about a month prior to the incident the deceased was brutally beaten by liquor mafia and then states that his brother was beaten by one Nitin.

In para-21 he has reiterated that after death of deceased he stayed the entire night in the hospital as his mother was unconscious and was hospitalized. In para-22 he admits that at the time of occurrence of the incident, he, PW-7, his mother, father and other family members were at home. In para-24 he states that he speaks truth as well as lie, however, he is not aware whether his mother speaks truth or lie. He further states that on the date of incident his brother, mother, father and maternal grand-mother were at home, they had not taken their meals and at that time, one boy came to their house and informed about Rocky being beaten at Street-11. In para-26 he states that it was dark in the night and then he has clarified that street lights were on. However, at the time of preparation of spot map Ex.P/20, he did not inform that there was any street light nor he informed anything to the police as to from where he had seen the incident.

09. PW-7 Mukesh Kumar, brother of deceased and PW-9, states that he accompanied PW-9 on a motorcycle for searching his brother Rakesh Kumar and near SHA road saw accused John holding deceased, accused Benjamin assaulting him and accused Samuel gave a knife blow to the deceased and seeing them, the accused persons fled from there. He states that when he reached the spot along

with PW-9, Sameer (PW-2) also reached there who enquired from them about the incident and then he told Samir to go and inform to his family members. Accordingly, Samir went to his house and informed about the incident to his family members. He states that from the hospital he also gave information to his mother. He admits that as deceased was working as driver with a liquor contract, most of the time he used to remain out and at the time of occurrence of incident, he was living with him as he had sustained injuries. He further admits that number of cases were registered against the deceased. He states that his brother had a motorcycle and that there is no other motorcycle in his family, though they have a car. He further states that his diary statement was recorded by the police after 13th day ceremony of his brother whereas as per record Ex.D/2 i.e. diary statement of this witness, was recorded on 18.7.2010. He further admits that on the fateful night he was in his house along with PW-9, his mother, father and maternal grand-mother and at about 2.30 deceased left his house in the company of Tinku @ Manjit and thereafter did not return. The statement made by this witness in paras 11 and 12 runs contrary to his diary statement (Ex.D/2) on material particulars. In para-13 he states that it hardly take 7-8 minutes to reach the place of occurrence from his house if one goes on foot and it takes 5 minutes if one goes by any vehicle. He states that the police had asked him to burn his bloodstained clothes. In para-32 he states that it is he who lodged the FIR, police had given him copy of the same free of cost and at the time of lodging of FIR he being stricken by grief could not mention the name of Manjit. It is relevant to mention here that as per this witness, it is he who lodged the FIR whereas record shows that it is lodged by PW-9

Nogesh.

10. PW-6 Usha Devi, mother of the deceased, PW-7 & PW-9 has stated that on the date of incident when she was cooking food in her house, PW-2 Samir came to her house and informed that deceased Rakesh Kumar is being assaulted by accused Samuel, Benjamin and John by knife and he requested for saving him. Thereafter she immediately woke up her husband and mother and then she met one Tinku @ Manjit who informed her that accused Samuel, Benjamin and John had taken her son towards Street-11 and assaulting him with knife and that he had run away from there out of fear. She states that she searched her son near the house of Benjamin and at that time she received a call from PW-7 Mukesh to immediately come to Sector-9 Hospital. However, when she reached there, she found her son Rakesh Kumar dead.

In cross-examination she admits that on the date of incident PW-7, PW-9, her husband, mother were along with her in the house and there information was given that her son is being beaten and before that no information was there about him. She further states that after receiving said information, first her sons ran towards the place of occurrence and thereafter, the other members followed. She has denied the suggestion that the deceased had committed theft of Rs.25 lacs and a pistol and for that he was earlier beaten. She admits that some cares are also pending against PW-7 Mukesh.

11. PW-8 Annapurna Devi, maternal grand-mother of PW-7, PW-9 and the deceased, has stated that on the date of incident someone came to her house and informed that one boy is being beaten and then

other boy informed that it is Rocky who is being assaulted by knife. Having received said information, her children ran towards the place of occurrence and later she came to know that it was her grand-son Rakesh who was being assaulted. She admits that criminal cases are also registered against her including that of 302 of IPC. In para-7 she states that after receiving information she followed her daughter and son-in-law.

12. PW-1 Manjit Singh, eyewitness to the incident has not supported the prosecution case and has been declared hostile. PW-2 Samir is the boy who is alleged to have given information about the incident to family members of the deceased. He has also been cited as an eyewitness to the incident. However, he has not supported the prosecution case and has been declared hostile. PW-3 P. Velu Gopal Rao has also turned hostile. PW-4 Nandkumar, Patwari, prepared the spot map Ex.P/14. He states that in the spot map he has not mentioned about street light near the place of occurrence because no such street light was seen by him there. PW-5 Dr. AK Mishra conducted postmortem on the body of the deceased on 18.7.2010 vide Ex.P/15 and noticed incised wounds on neck and left wrist, multiple abrasions on left forehead, abdomen, chest, elbow, cheek and left pelvis region. In his opinion, the cause of death was shock and hemorrhage as a result of antimortem stab injury and that the nature of death was homicidal.

13. PW-10 Sheetal is the neighbour of the deceased. She has stated that on the date of incident in the night at about 11, someone knocked at the door in a perplexed condition and informed her mother that the

deceased has been surrounded by accused persons and that he has been threatened away by them by showing knife. She states that the deceased had a motorcycle CBZ which was parked near the house of accused Benjamin and from there they had gone to hospital and saw dead body of the deceased. He states that when she went to SHA road it was dark.

14. PW-11 Smt. C. Tirkey, investigating officer, while supporting the prosecution case has stated that the FIR was lodged by PW-9 Nogesh and not by PW-7 Mukesh as stated by these two witnesses. She states that she does not remember as to whether she received any information from the mother of the deceased over phone about the incident and had it been so, she would have immediately rushed to the spot and would have recorded the said information. She further states that as per statements of PW-7 & PW-9, the place of occurrence was Block-1. In para-36 she admits the fact that in column No.15 of Ex.P/18 there is no mention that copy of FIR was promptly forwarded to the Magistrate and she reached the place of occurrence on 17.7.2010 i.e. the next day. She has further admitted the fact that neither cell phone of the deceased nor of any of the witnesses was seized or any investigation was done by her in this regard. She has denied the fact that she had ever asked PW-7 to destroy his bloodstained clothes. In para-41 she has stated that in the arrest memo Ex.P/10 & P/11, there is no mention of any injury being found on the person of the accused whereas it is mandatory to be mentioned if any injury is noticed on the person of the accused. She has further clarified that as the accused persons were sent for medical examination, therefore, the said fact was not mentioned in their arrest memo, and has denied the fact that

those injuries were caused to the accused due to beating by the police.

15. PW-12 Sanjay Pundir is a police inspector who after transfer of PW-11 carried out further investigation. He admits that no vehicle was seized by him. In para-10 he has admitted the fact that after receiving information about the incident, PW-6 Usha Devi informed him that PW-7, PW-9 and her husband had left the house of PW-8 and that is why the same has been recorded in the document of Ex.D/1.

16. Close scrutiny of the evidence makes it clear that there are as many as four eyewitnesses to the incident namely PW-1 Manjeet Singh, PW-2 Sameer Ahmed, PW-7 Mukesh Kumar and PW-9 Nogesh Kumar. PW-1 & PW-2 are independent eyewitnesses whereas PW-7 & PW-9 are brothers of the deceased. Both the independent eyewitnesses (PW-1 & PW-2) have not supported the prosecution case and have been declared hostile. As per statement of PW-6 Usha Devi when she was in her house along with her husband, mother, PW-7 & PW-9, at that time PW-2 Sameer came to her house and informed that beating is being given to the deceased and then all of them rushed to the spot. Further, according to PW-8 Annapurna Devi, maternal grandmother of PW-7, PW-9 and the deceased, on the date of incident one boy came to her house and informed about the incident and thereafter only all the family members including PW-7 & PW-9 rushed to the spot. The statements of PW-6 & PW-8 run contrary to the statements made by PW-7 & PW-9. According to PW-7 & PW-9 it is PW-9 who had a talk with deceased on phone and it was told by the deceased that he would be returning very soon and when the deceased did not return for quite some time, both of them went in search of him and near SHA road,

they saw the accused persons assaulting the deceased. Thus, in view of statements made by PW-6 & PW-8, the credibility of PW-7 & PW-9 appears to be doubtful, especially when in para-22 PW-9 has admitted the fact that at the time of incident he along with other family members was at home. Once these witnesses i.e. PW-7 & PW-9 were at home at the time of incident and rushed to the spot after coming to know about the incident, the question of their witnessing the incident, as claimed by them, becomes highly doubtful.

17. Yet another important aspect of the case which is required to be considered by this Court is that as per prosecution case, a prompt report was lodged by PW-9 Nogesh at 0.30 hours on 17.7.2010 itself whereas PW-9 states that throughout the night on the relevant date he stayed in the hospital, he did not go to police station and never lodged any such report. Furthermore, it is PW-7 Mukesh Kumar who claims himself to be the lodger of FIR whereas the FIR bears signature of PW-9 Nogesh. Thus, the very basis of the investigation i.e. FIR itself is in dispute. What further weakens the prosecution case is that the prosecution has not filed any document to show that copy of the FIR was promptly forwarded to the Magistrate. Though in the case diary, there is Rojnamchasanha entry that copy of the FIR was sent to the Magistrate, however, there is no counter slip showing receipt thereof.

18. In the matter of ***Shivlal and another Vs. State of Chhattisgarh***, reported in **(2011) 9 SCC 561**, it has been observed as under:

“18. This Court in *Bhajan Singh @ Harbhajan Singh & Ors. v. State of Haryana*, (2011) 7 SCC 421, has elaborately dealt with the issue of sending the copy of the FIR to the

Illaq Magistrate with delay and after placing reliance upon a large number of judgments including [Shiv Ram v. State of U.P.](#), AIR 1998 SC 49; and [Arun Kumar Sharma v. State of Bihar](#), (2010) 1 SCC 108 came to the conclusion that [Cr.P.C.](#) provides for internal and external checks: one of them being the receipt of a copy of the FIR by the Magistrate concerned. It serves the purpose that the FIR be not ante-timed or ante-dated. The Magistrate must be immediately informed of every serious offence so that he may be in a position to act under [Section 159](#) Cr.P.C., if so required. The object of the statutory provision is to keep the Magistrate informed of the investigation so as to enable him to control investigation and, if necessary, to give appropriate direction. However, it is not that as if every delay in sending the report to the Magistrate would necessarily lead to the inference that the FIR has not been lodged at the time stated or has been ante-timed or ante-dated or investigation is not fair and forthright. In a given case, there may be an explanation for delay. An unexplained inordinate delay in sending the copy of the FIR to Illaq Magistrate may affect the prosecution case adversely. However, such an adverse inference may be drawn on the basis of attending circumstances involved in a case.

19. In the instant case, copy of the FIR was not sent to the Magistrate at all as required under [Section 157](#) (1) [Cr.P.C.](#) In such a case, in absence of any explanation furnished by the prosecution to that effect, would definitely cast shadow on the case of the prosecution. This Court dealt with the issue in Criminal Appeal No. 1062 of 2003 in [State of Madhya Pradesh v. Kalyan Singh](#), (2011) 9 SCC 569 wherein this Court was informed by the Standing counsel that in Madhya Pradesh, police is not required to send the copy of the FIR to the Illaq Magistrate, but it is required to be sent to the District Magistrate. It was so required by the provisions contained in Regulation 710 of the Madhya Pradesh Police

Regulations. This Court held that Regulation 710 cannot override the statutory requirements under [Section 157\(1\)](#) Cr.P.C. which provide for sending the copy of the FIR to the Illaqa Magistrate.

20. The instant appeal has come from Chhattisgarh which has been carved out from the State of Madhya Pradesh. Learned Standing counsel for the State, is not in a position to throw any light on this issue at all. Thus, in such a fact-situation, we can simply hold that in spite of the fact that any lapses on the part of the I.O., would not confer any benefit on the accused, the case of the prosecution may be seen with certain suspicion when examined with other contemporaneous circumstances involved in the case.

21. In State by Inspector of Police, Tamil Nadu v. N. Rajamanickam & Ors., (2008) 13 SCC 303, this Court dealt with a similar case wherein a lot of lapses had been noted on the part of the prosecution. In the said case, originally 16 persons were named in the chargesheet out of which one had died, one had absconded and the rest 14 persons faced trial. The Trial Court convicted only six out of them. Those six persons preferred the criminal appeal and the High Court found that there were certain vital factors which rendered the prosecution version improbable. One of the factors noted was delay in dispatch and receipt of the FIR and connected documents in the court of Magistrate. The factional village rivalry was shown to be the cause of concern therein also. The High Court found that evidence of some of the prosecution witnesses lacked credibility and credence and, thus, all the persons were acquitted. This Court dismissed the appeal of the State observing as under: (N. Rajamanickam case, SCC p. 304, para 9)

"Delay in receipt of the FIR and the connected documents in all cases cannot be a factor corroding the credibility of the prosecution version. But that is not the only factor which weighed with

the High Court. Added to that, the High Court has noted the artificiality of the evidence of PW 1 and the non-explanation of injuries on the accused persons which were very serious in nature. The combined effect of these factors certainly deserved consideration and, according to us, the High Court has rightly emphasised on them to hold that the prosecution has not been able to establish the accusations. *Singularly, the factors may not have an adverse effect on the prosecution version.* But when a combined effect of the factors noted by the High Court are taken into consideration, the inevitable conclusion is that these are cases where no interference is called for."

19. If the above proposition of law is considered in the present case, no such document was filed by the prosecution along with the Challan nor there is any exhibited document to show that copy of the FIR was forwarded to the Magistrate promptly. True it is that merely non-forwarding of copy of the FIR will not *ipso facto* render the whole prosecution case doubtful unless some prejudice is shown to have been caused thereby, however, present is a case where the FIR itself is in question, as has been discussed above. Furthermore, as per PW-6 Usha Devi she had informed the investigating officer (PW-11) on phone about the incident, however, no such entry was made by the investigating officer or any police officer in any of the documents. Thus, considering all these things together, we find it doubtful whether FIR (Ex.P/18) was lodged at the instance of PW-9 and being so, its benefit has to go to the appellants.

20. So far as injuries on the person of the accused John and Samuel is concerned, we find force in the argument of counsel for the appellants that the treating doctor has not been examined by the prosecution and as such, the appellants were not afforded opportunity to put forth their defence in this regard by his cross-examination. They

have stated in their statements under Section 313 of CrPC that these injuries were the result of beating by the police. Even from the MLC of these accused/appellants (annexed with Ex.P/25 & P/27), the duration of the injuries is not consistent with the prosecution case. According to the medical reports, the injuries were 72 days old whereas the incident occurred on 16.7.2010 and the accused were arrested on 18.7.2010. Thus, the argument advanced by the State counsel in this regard is required to be noted and rejected.

21. According to the prosecution it is PW-9 Nogesh who had called the deceased on his cell phone soon before the incident and after about 15 minutes when the deceased did not return, he along with PW-7 Mukesh went to search him on motorcycle; on the way they saw the deceased being beaten by accused persons, seeing them the accused persons fled from the spot and these witnesses then took the deceased on motorcycle in injured condition to hospital. However, no effort has been made by the prosecution to prove the call details of PW-9 and the deceased. The investigating officer has admitted this fact. PW-9 has also admitted that his phone was not seized by the police. Furthermore, if these witnesses had taken the deceased in injured condition to hospital on motorcycle, their clothes would also have stains of blood but no such seizure of their clothes or said motorcycle was made by the police. Rather PW-7 states that the police had asked him to burn his bloodstained clothes. All this causes a serious doubt on the prosecution case.

22. Though on the memorandum of accused/appellant Samuel and Benjamin, certain articles were seized and as per FSL report blood was

also found thereon, however, this circumstance is also not proved to the hilt as there is no serological report to confirm origin of blood and its group to connect the appellants with the crime in question. In ***Kansa Behera Vs. State of Orissa, AIR 1987 SC 1507*** while dealing with recovery of bloodstained articles the Supreme Court held as under:

“11. As regards the recovery of a shirt or a dhoti with blood stains which according to the serologist report were stained with human blood but there is no evidence in the report of the serologist about the group of the blood and therefore it could not positively be connected with the deceased. In the evidence of the Investigating Officer or in the report, it is not clearly mentioned as to what were the dimensions of the stains of blood. Few small blood stains on the cloths of a person may even be of his own blood especially if it is a villager putting on these clothes and living in villages. The evidence about the blood group is only conclusive to connect the blood stains with the deceased. That evidence is absent and in this view of the matter, in our opinion, even this is not a circumstance on the basis of which any inference could be drawn.”

23. As per the FIR, there was light at the place of occurrence whereas according to Patwari (PW-4 Nandkumar) who prepared the spot map Ex.P/14, there was no street light at the place of occurrence and further, PW-10 Sheetal, neighbour of the deceased, also states that after coming to know about the incident when she went to the place of occurrence, it was dark there. In these circumstances, seeing of the occurrence by any witness also appears to be doubtful.

24. For the aforesaid discussions, we are of the opinion that the

prosecution has miserably failed to prove involvement of the accused/appellants in commission of the crime beyond all reasonable doubt and as such, the findings of guilt recorded by the trial Court are liable to be set aside. The appellants are entitled to be acquitted of the charges by giving them benefit of doubt.

25. In the result, the appeals are allowed. The impugned judgment is hereby set aside, acquitting the appellants of all the charges by extending them benefit doubt. The appellants are reported to be in jail, therefore, they be set free forthwith if not required to be detained in connection with any other offence.

Sd/

(Pritinker Diwaker)

Judge

Sd/

(Sanjay Agrawal)

Judge