

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.877 of 2015**

Arising Out of PS. Case No.-86 Year-2004 Thana- PIRO District- Bhojpur

Vijay Sharma son of Samhut Sharma Resident of Village -Piro, Police
Station-Piro, District Bhojpur Ara. Appellant

Versus

The State Of Bihar Respondent

with

CRIMINAL APPEAL (DB) No. 891 of 2015

Arising Out of PS. Case No.-86 Year-2004 Thana- PIRO District- Bhojpur

Lambu Sharma @ Sachitanand Sharma son of Samhut Sharma, Resident of
Village- Piro, Police Station- Piro, District- Bhojpur, Ara. Appellant

Versus

The State Of Bihar Respondent

Appearance :

(In CRIMINAL APPEAL (DB) No. 877 of 2015)

For the Appellants : Mr. Ansul, Advocate
Mr. Rajiva Ranjan, Advpcate

For the Respondent : Mr.S.B.Verma, Addl. APP.

(In CRIMINAL APPEAL (DB) No. 891 of 2015)

For the Appellant : Mr. Ansul, Advocate

For the Respondent : Mr.S.B.Verma, Addl. APP.

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and**

HONOURABLE MR. JUSTICE SHAILENDRA SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 03-05-2024

These two appeals have been preferred for setting aside
the judgment of conviction and order of sentence dated 27.08.2015
and 01.09.2015 respectively passed in Sessions trial no. 659 of
2008 by learned 1st Additional Sessions Judge, Bhojpur, Ara
(hereinafter referred to as the learned trial court).

2. By the judgment under appeal (hereinafter referred to as the impugned judgment), the learned trial court has convicted the appellants for the offences under Section 302/34 of the Indian Penal Code (in short 'IPC') and both the appellants have been sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 1,00,000/- each for the offence under section 302/34 of IPC and in default of payment of fine, they have been directed to undergo further six months rigorous imprisonment.

Prosecution story

3. The prosecution case is based on the fardbeyan (Exhibit-2) of Kamlesh Singh (PW-8) which was recorded by S.I. Anil Kumar Karan (officer-in-charge) of Piro police station on 06.05.2004 at 11:00 P.M., in which the informant alleged that on 05.05.2004 in the evening, he along with his brothers Dilip Singh (deceased), Jitendar Singh and two co-villagers Dhanji Singh and Bir Bahadur Choudhary had gone to Piro market. It is alleged that at about 5:00-5:30 P.M., when they reached at Lohiya Chowk, all of sudden, Lambu Sharma (appellant) came there and slapped Dhanji Singh and on intervention, Lambu Sharma fled away. It is further alleged that at about 7:15 P.M., when the informant along with other persons returning and reached at Gandhi Chowk when Dilip Singh and Dhanji Singh were going ahead, in the meantime,

Vijay Sharma, Shambhu Sharma, both brothers of Lambu Sharma and his father Samhut Sharma shouted that “मोहन टोला वाला आ गया।” and caught hold of Dilip Sharma and Lambu Sharma having knife in his hand stabbed Dilip Sharma. They reached there by running then all the accused persons fled away. It is stated that Dilip was taken to Piro hospital from where seeing his condition, he was referred to Sadar Hospital, Ara and then P.M.C.H., Patna. Today, on 06.05.2004 in the morning, during treatment Dilip died. It is stated that due to treatment, the beyan was not given and after returning from Patna he is giving his statement.

4. On the basis of above fardbeyan, Piro P.S. Case No. 86 of 2004 dated 06.05.2004 under Section 302/34 of IPC has been registered against four accused persons.

5. After completion of investigation, police has submitted chargesheet against three persons namely Lambu Sharma, Vijay Sharma and Shambhu Sharma, the learned Chief Judicial Magistrate took cognizance of the offence under Section 302/34 of IPC on 23.11.2006. Finding the accused Shambhu Sharma juvenile, the learned trial court sent his case to the Juvenile Justice Board vide order 05.10.2012 and committed the records of other accused to the court of Sessions.

6. In the trial court charges were explained to both accused persons to which they pleaded not guilty and claimed to be tried.

7. On behalf of the prosecution altogether, 15 witnesses were examined who are as under :-

1. Md. Istekhar Ahmad Khan (X-ray technician)
2. Vinay Kumar (Shop-keeper of readymade garments)
3. Dina Nath Choudhary (shop-keeper)
4. Mohammad Naimuddin Sidaque (compounder)
5. Jitendra Singh (Advocate in civil court)
6. Dhanji Singh (Farmer)
7. Bir Bahadur Choudhary
8. Kamlesh Singh (Informant)
9. Yunush Raeen
10. Durga Raj
11. Md. Jamail Khan
12. Raj Grihi Prasad
13. Md. Walliullah Khan (**I.O. of the case**)
14. Awadhesh Prasad Singh
15. Dr. Pankaj Kumar (conducted post-mortem)

8. On behalf of the prosecution the following documents were marked exhibits : -

- Exhibit 1 : - Inquest report
- Exhibit 2 : - Fardbeyan
- Exhibit 3 : - Formal FIR
- Exhibit 4 : - Para 1 to 52 of the case diary
- Exhibit 5 : - Post-mortem report

On behalf of defence, one witness has been examined

DW 1 :- Raj Kumar Singh

9. Following documents has been exhibited by defence :

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Ext. A : - Handwriting and signature on the admission register Page no. 81, serial no. - 351

Ext. B : - Transfer certificate

Ext. C :- Family members certificate by C.O.

Findings of the learned trial court

10. Learned Trial Court found that PW-1, PW-2, PW-3, PW-4, PW-7, PW-9, PW-10, PW-11 and PW-12 have not supported the prosecution story and on the request of learned APP these prosecution witnesses have been declared hostile and cross-examined by the learned APP.

11. The learned Trial Court analysed the evidence of PW-5, PW-6, PW-8, PW-13, and PW-14. Out of these witnesses, the three witnesses namely Jitendra Singh (PW- 5) Dhanji Singh (PW-6) and Kamlesh Singh (PW-8) have deposed as eye witness to the occurrence. They have stated that after purchasing made in the Piro Bazar when they were returning home, Dilip Singh and Dhanji Singh were going ahead to them and reached near Gandhi Chowk. According to this witness Sambhu Sharma shouted by saying “मोहन टोला वाला आ गया।” after that Sambhu Sharma, Vijay Sharma, Lambu Sharma and Samhut Sharma reached there and

caught hold of Dilip Singh and Lambu Sharma stabbed into the stomach of Dilip Singh. These witnesses had taken Dilip Singh to Piro Hospital from where he was referred to Ara Sadar Hospital and then he was referred to Patna Medical College Hospital, Patna (P.M.C.H) where on the following day i.e., on 06.05.2004 at 10:00 A.M. he died.

12. PW-5 and PW-6 have stated in course of trial that Dilip Singh (deceased) remained in conscious condition during his treatment but PW-8 has stated that Dilip Singh had become unconscious after he failed down on receiving the stab injury. PW 6 had admitted that Police had recorded his statement at P.M.C.H, Patna.

13. The learned Trial Court held that from the ocular evidence available on the record the place of occurrence, date and time of occurrence as also the identification of the accused have been fully established. The Trial Court rejected the contention of the defence that the prosecution side did not inform the occurrence to Piro Police Station even though the place of occurrence is situated nearby. The learned Trial Court held that no doubt in this case the FIR has been lodged after more than 24 hours but considering that the life of the injured was more precious and it was first and foremost important to save him, the prosecution side

brought Dilip Singh to Piro Hospital, they took him to Ara Sadar Hospital and from Sadar Hospital to P.M.C.H, Patna, therefore this lacuna would not create any doubt regarding the occurrence.

14. Learned Trial Court rejected the contention of the defence that no prosecution witness has stated anywhere related to means of identification of the accused persons at the time and place of occurrence and the I.O. had not seized the object by which the deceased Dilip Singh has been stabbed to connect the said occurrence with accused Lambu Sharma. The learned Trial Court held that in this case the I.O. had not taken any trouble to collect the bloodstained mud from the place of occurrence and had not sent the same for clinical examination to the Forensic Science Laboratory, Patna but the ocular evidence in this regard remained intact. The trial court held that non-collection of bloodstained mud from the place of occurrence would not give any benefit to the defence.

Submission of learned Counsel for the appellant

15. Mr. Ansul, learned counsel for the appellants would submit that in this case out of 15 prosecution witnesses, 9 have been declared hostile. It is submitted that the occurrence took place on 05.05.2004 at about 7:00 - 7:15 P.M. at a busy place near Gandhi Chowk in Piro Bazar. The prosecution witness Jitendra

Singh PW-5 has stated in paragraph '9' of his deposition that he reached the place of occurrence after the occurrence, he came running with Kamlesh Singh (PW-8) and Bir Bahadur Choudhary (PW-7). Thus, PW-5 cannot be said to be an eye-witness to the occurrence.

16. Learned counsel submits that according to the prosecution story the first occurrence of *marpit* between Lambu Sharma and Dhanji Singh (PW-6) had taken place at Lohiya Chowk, Piro Bazar but that was resolved. This first occurrence was not reported to the police station and in his deposition Dhanji Singh (PW 6) has not whispered a single word about this occurrence.

17. Learned counsel submits that even though the occurrence at Lohiya Chowk/Gandhi Chowk took place at 5:30 P.M and the place of occurrence is surrounded by shops and people remained there in huge numbers, no independent witness has come to support the occurrence. The occurrence was not reported to Piro police station even as PW-5 states in paragraph '31' of his deposition that distance between place of occurrence and police station is only 350 yards.

18. Learned counsel submits that according to the prosecution witnesses blood had fallen on the earth and spread

over the earth at the place of occurrence but the I.O. (PW -14) had not collected the blood soaked mud. The submission is that in the kind of the evidences available on the record, place of occurrence has not been duly proved and it remains doubtful.

19. Learned counsel relied upon the judgment of the Hon'ble Supreme Court in the case of **Suchand Pal V. Phani Pal and Anr.** reported in **(2003) 11 SCC 527 (para 9)** to submit that the prosecution case succeed by substantially proving the version it alleges and it must stand on its own legs and cannot take advantage of the weakness in the defence case. It is his submission that if a defence witness has stated about the same place of occurrence, the prosecution cannot take advantage of the same.

20. Learned counsel has further relied upon yet another judgment of the Hon'ble Supreme Court in the case of **Laxmi Singh and Others Vs. State of Bihar** reported in **(1976) 4 SCC 394 (Para 14 and 17)** to submit that when the genesis and origin of the occurrence appears to be shrouded in deep mystery and where it is not possible to distinguish the truth from falsehood, to sift the grain from the chaff and the truth and falsehood are so inextricably mixed together that it is difficult to

separate them, the court cannot reconstruct a new case for the prosecution.

21. Learned counsel relied upon the judgment of the Hon'ble Allahabad High Court in the case of **Shubrati and Others vs. State** reported in **1958 SCC OnLine All 239** to submit that when the evidence of both the parties is thoroughly unreliable and cannot be accepted even in part with safety, it is not open to the court to make out a third case which is different from the case set up by both the parties.

22. Reliance has also been placed on the judgment of the Hon'ble Bombay High Court in the case of **Shripati Kashinath Ambede and Others vs. The State of Maharashtra** reported in **1996 SCC OnLine Bom 342 (para 38 to 41)** to submit that an accused can be convicted only when on the evidence produced the court is in a position to come to a definite conclusion beyond the possibility of reasonable doubt that the accused committed the offence with which he stood charged. No conviction can be passed on mere possibility.

23. Learned counsel submits that Dhanji Singh (PW-6) claims his presence at the place of occurrence. He has stated in paragraph '31' of his deposition that Jitendra Singh (PW-5), Kamlesh Singh (PW-8) and Bir Bahadur Choudhary (PW-7)

reached at the place of occurrence 3 minutes after the accused persons had fled away and he had told them about the name of the persons, who fled away. This witnesses has stated that distance between place of occurrence and police station is 10 steps. In paragraph '43' of his deposition, he has stated that till Dilip Singh was brought to hospital at Ara, he was speaking. Learned counsel submits that even though the victim was conscious and speaking till he was brought to the hospital at Ara, his statement was not recorded and no information was given to police either at Piro or at Ara. It is submitted that the I.O. (PW-14) has stated that he had received the fardbeyan of Dhanji Singh recorded at PMCH, Patna with the inquest report in the police station on 28.05.2004 and the same were entered in the case diary but surprisingly the fardbeyan of Dhanji Singh has not been treated as first information report and it has not been exhibited in order to suppress the first version of the prosecution side.

24. Learned counsel further submits that Kamlesh Singh (PW -8) got recorded his fardbeyan on 06.05.2004 at 11:00 P.M. at Mohan Tola. His fardbeyan was recorded by Sub-inspector of police namely, Anil Kumar Karn, who has not been examined in course of trial. It is not known how the S.I. reached Mohan Tola on 06.05.2004 at 11:00 P.M., it is not known who informed him. The

I.O. (PW-14) has stated in paragraph '12' of his evidence that at the time of getting the fardbeyan of Kamlesh Singh, he came to know that fardbeyan of Dhanji Singh was recorded at Patna. The fardbeyan of Dhanji Singh has been suppressed by the prosecution.

25. Learned counsel further submits that the informant (PW -8) has stated that Dilip Singh died on 06.05.2004 at 10:00 A.M. in course of his treatment. He has stated that Daroga Ji had come in PMCH, Patna and had prepared the inquest report on which he and Dhanji Singh (PW-5) had put their signatures. On his identification the inquest report has been marked as Exhibit '1'. Learned counsel submits that PW-8 has stated that after the death of Dilip Singh in PMCH, Patna he had not deliberated upon the desirability to lodge the case. He has stated in paragraph '20' of his deposition that after returning from Patna and reaching his village he has deliberated others to lodge the FIR. According to this witness, Jitendra Singh (PW-5) was present in PMCH then police had come but he had not given any information to Pirbahore police station at Patna. In paragraph '22' however he states that he is aware that the information is required to be given to police.

26. Learned counsel submits that the conduct of the informant (PW 8) may be noticed by this Court. He was though aware that the occurrence was required to be reported to police but

did not inform the police station either at Piro, Ara or at Patna. It appears that the prosecution witnesses were waiting for the death of Dilip Singh and only after his death, the prosecution side concocted a story and lodged the FIR on 06.05.2004 at late night (11:00 P.M.) after deliberation among themselves.

27. Learned counsel relied upon the judgment of the Hon'ble Supreme Court in the case of **Thulia Kali vs. The State of Tamil Nadu** reported in (1972) 3 SCC 393 to submit that delay in lodging the first information report would raise considerable doubt regarding the veracity of the prosecution story.

28. Learned counsel further relied upon the judgment of the Hon'ble Supreme Court in the case of **Chotkau vs. State of Uttar Pradesh** reported in (2023) 6 SCC 742 to support his contention that the delay in transmitting the FIR to the Jurisdictional Magistrate may vitiate the prosecution case. It is submitted that in this case, the FIR has been seen by the learned Chief Judicial Magistrate only on 10.05.2004, therefore, there is delay of a four days in sending the first information report to the Jurisdictional court.

Submission on behalf of the State

29. On the other hand, Ms. Shashi Bala Verma, learned Additional Public Prosecutor submits that so far as the delay in

lodging of the first information report is concerned, it would be evident from the prosecution story that Dilip Singh was stabbed at about 7:15 P.M. on 05.05.2004 near Lohiya Chowk/Gandhi Chowk in Piro Bazar. His family members namely PW-5, PW-6, PW-7 and PW-8 took him to Piro Hospital from where he was referred to Sadar Hospital, Ara. The prosecution witnesses had no time to rush to the police station to lodge a first information report as it was more important to save the life of the injured. Thus, the conduct of the prosecution witnesses in taking the victim to the nearest hospital and then on being referred, taking him to Sadar Hospital, Ara and from Ara to PMCH, Patna are bonafide conduct. These are natural conduct of human being in such circumstances, therefore, the submission of the defence that because of non-reporting of the occurrence to the Piro police station, the whole prosecution story would come under scanner are liable to be rejected.

30. Learned APP further submits that Dilip Singh died in PMCH, Patna on 06.05.2004 at about 10:00 A.M., the police had arrived there and had recorded the fardbeyan of Dhanji Singh (PW-6). Police had also prepared the inquest report but the fardbeyan of Dhanji Singh with the inquest report was received by post in Piro police station only on 08.05.2004. On 06.05.2004, when PW-8 returned his village, on information gathered by

police, the S.I. from Piro police station came at about 11:00 P.M. and recorded the fardbeyan of PW-8. Learned APP further submits that the Investigating Officer had recorded the fardbeyan and inquest report in the case diary and he disclosed it in course of his evidence. Since the defence found that the fardbeyan of Dhanji Singh was disclosing the same place of occurrence, manner of occurrence and identity of the accused, the defence did not think it just and proper to draw the attention of either Dhanji Singh (PW-5) or the Investigating Officer (PW-14) towards the statement recorded in the case diary as the defence found that no contradiction may be found.

31. Learned APP further points out that so far as the place of occurrence is concerned, all the prosecution witnesses are consistent with regard to the place of occurrence. The Investigating Officer has given description of the place of occurrence in paragraph '2' of his examination-in-chief and he had found blood stains at the place of occurrence but those were not in a position to be lifted for the purpose of examination. It is submitted that in fact, the defence examined Raj Kumar Singh as DW-1 and from the evidence of DW-1, it would appear that he has also given description of the place of occurrence. DW-1 has given the same place of occurrence stating that his telephone booth is

situated in the house of one Anil Upadhaya which is close to Piro Gandhi Chowk. He has stated that on 05.05.2004 at about 7:00 P.M. in the west side of his booth, Dilip Singh had a quarrel with a person in drunken condition and they were physically involved. This witness stated that he and other persons had got the quarrel stopped and this witness has further stated that in the said quarrel, on physical push, Dilip Singh had sustained injury. Thus, learned APP submits that the defence witness not only corroborated the place of occurrence but has also corroborated that Dilip Singh had received injury in the said scuffle.

32. Learned APP submits that the learned trial court has rightly appreciated the entire evidence on the record and no fault may be found with the same.

Consideration

33. We have heard learned counsel for the appellants and learned Additional P.P. for the State as also perused the records.

34. The prosecution case as disclosed in the fardbeyan of Kamlesh Singh (PW-8) has been supported by PW-5 and PW-6. PW-8 is himself the informant of the case and he has also deposed in support of his fardbeyan. A perusal of evidence of PW-5, PW-6 and PW-8 would show that as regards the place of occurrence they are consistent. PW-5 has stated in paragraph '6' of his deposition

that Dilip Singh and Dhanji Singh were going ahead while he and Bir Bahadur Choudhary were at some distance behind them. In paragraph '7', he has stated that when they reached near Piro Gandhi Chowk, Shamhut Sharma shouted that “मोहन टोला वाला आ गया।” whereafter the accused persons namely Shambhu Sharma, Vijay Sharma, Lambhu Sharma and Samhut Sharma came running and caught hold of Dilip Singh (deceased). This witness has stated in paragraph '8' that Lambu Sharma was holding dagger in his hand and he penetrated the dagger in the stomach of Dilip Singh. In paragraph '9' this witness has stated that thereafter, he, Kamlesh and Bir Bahadur Choudhary came running to the place of occurrence. It is this statement of PW-5 which has been read out by Mr. Ansul, learned Advocate to submit that PW-5 and PW-8 cannot be said to be an eye witness but we are not persuaded to accept this submission for the reason that what have been stated in paragraph '9' of deposition of PW-5 are to be read together with his statement made in paragraph '6', '7' and '8'. On a composite reading of entire evidence of PW-5, it would appear that Dilip Singh, Dhanji Singh, Jitendra Singh and Kamlesh Singh were moving together at some distance. This witness has stated that when all of them reached near Piro Gandhi Chowk, Shamhut Sharma shouted “मोहन टोला वाला आ गया।”. Thus, the presence of

this witness near Piro Gandhi Chowk cannot be doubted. In cross-examination this witness has stated that he was at a distance of 100 yards towards west of place of occurrence from Dilip Singh.

35. This Court further finds that PW-6 has fully supported the prosecution case, he was accompanying Dilip Singh at Gandhi Chowk when Lambu Sharma had penetrated the dagger into the stomach of Dilip Singh. He has given consistent statement with regard to the time and place of occurrence. He has stated that in Piro Hospital, the name of Dilip Singh was entered in the register and on the advice of the doctor in Piro Hospital, he was taken to Ara Hospital and from there the doctor referred him to Patna Medical College and Hospital, Patna. This witness has stated that they reached PMCH, Patna at about 10-11 P.M and till that time Dilip Singh was talking.

36. Learned counsel for the appellants has submitted that police was not informed about the occurrence till Dilip Singh was alive and the prosecution side were waiting for the death of Dilip Singh because they did not want the truth to be spoken but this Court finds that this submission of learned counsel for the appellants has no basis. According to PW-5 and PW-6, Dilip Singh was conscious while PW-5 has stated that he was talking till he reached Ara, PW 6 has stated that he was talking till he reached

PMCH but PW 8 has stated that after receiving the Dagger Blow Dilip Singh had become unconscious. This Court therefore, finds that as regards the claim of the defence that Dilip Singh was in conscious condition, there are some inconsistencies in the statement of the prosecution witnesses but that cannot be allowed to conclude that the prosecution side did not want recording of the statement of Dilip Singh by Police.

37. To this Court, it appears that right from 7:15 pm till 11:00 pm on 05.05.2004 Dilip Singh was being shifted from Piro to Ara and then Ara to Patna and these prosecution witnesses were carrying him all the way, they had no time to think of getting recorded the statement of Dilip Singh even if he was in a position to speak. Not much may be inferred from this.

38. The I.O. (PW-14) has given the description of the place of occurrence and his description in Paragraph '3' fully corroborated the description of place of occurrence as disclosed by PW-5, PW-6 and PW-8. PW-14 has stated in Paragraph '3' that in the eastern side of the place of occurrence there is a *Khaprail* house of Anil Upadhaya in which there is a telephone booth. We find that the prosecution has successfully proved the place of occurrence and the defence is unable to create a reasonable doubt as regards the place of occurrence. In fact It is this telephone

booth which is owned by Raj Kumar Singh (DW-1) who has deposed for the defence and has stated that he had seen the occurrence in which Dilip Singh was assaulted. The only thing that DW-1 says that Dilip Singh was physically pushed by a person in a drunken condition. DW-1 has not disclosed the identity of that person. From the evidence of the prosecution witnesses and the I.O. this Court finds that the place of occurrence is fully established in this case. On the face of the deposition of DW-1, the appellant would not be able to contend much less create a reasonable doubt in respect of place of occurrence.

39. As regards the delay in sending the FIR to the Court to learned Chief Judicial Magistrate, this Court finds that the defence has not cross-examined the I.O. on this point.

40. The Hon'ble Supreme Court has while dealing with Section 157(1) of the Code of Criminal Procedure (Cr.P.C.) pointed out that Section 157(1) of Cr.P.C. requires the Officer-Incharge of the Police Station to send the FIR "forthwith". In the case of **Brahm Swaroop vs. State of U.P.** reported in **(2011) 6 SCC 288**, the Hon'ble Supreme Court was considering a case where there was a delay of five days in sending the report to the Magistrate and observed in Paragraph 21 as follows:-

"21. In the instant case, the defence did not put any question in this regard to the investigating officer, Raj Guru (PW 10), thus, no

explanation was required to be furnished by him on this issue. Thus, the prosecution had not been asked to explain the delay in sending the special report. More so, the submission made by Shri Tulsi that the FIR was ante-timed cannot be accepted in view of the evidence available on record which goes to show that the FIR had been lodged promptly within 20 minutes of the incident as the police station was only 1 km away from the place of occurrence and names of all the accused had been mentioned in the FIR”.

41. In the case of **Balram Singh vs. State of Punjab** reported in **(2003) 11 SCC 286**, three judges bench of the Hon’ble Supreme Court rejected the contention with regard to delay in transmitting the FIR to the Magistrate on the ground that “10.... while considering the complaint of the appellants in regard to the delay in the FIR reaching the Jurisdictional Magistrate, we will have to also bear in mind the creditworthiness of the ocular evidence adduced by the prosecution and if we find that such ocular evidence is worthy of acceptance, the element of delay in registering a complaint or sending the same to the Jurisdictional Magistrate by itself would not in any manner weaken the prosecution case.”

42. From the judgment of the Hon’ble Supreme Court in the case of **Chotkau** (supra), it would appear that the Hon’ble Supreme Court has discussed the previous case laws on the subject and noticed that in the case of **State of Rajasthan vs. Daud Khan** reported in **(2016) 2 SCC 607**, It has been held that the prosecution should explain the delay in transmitting the special

report to the Magistrate, however, if no question is put to the Investigating Officer concerning the delay, the prosecution is under no obligation to give an explanation. There is no universal rule that when there is some delay in sending the FIR to the Magistrate, the prosecution version becomes unreliable. In other words, the facts and circumstances of the case are important for a decision in this regard.

43. Ratio of the judgment in the case of **Thulia Kali** (supra) remains the same.

44. In the light of the case laws discussed hereinabove when we examine the facts of this case and the evidences on the record which have been brought to prove the facts in issue, we find no contradiction in the statement of the prosecution witnesses namely, PW-5, PW-6 and PW-8, as regards the place of occurrence, date, time and place of occurrence. There is also no contradiction as regards the manner of occurrence.

45. The inquest report (Exhibit '1') has been proved by PW-8. As regards the cause of death, it is stated in Ext. '1' that "छुरा मारने के कारण मृत्यु होना बताया गया ।"

46. The Doctor (PW-15) who conducted the post mortem on the body of the deceased has noted the following injuries:-

“1. One stitched wound 7” long in right Faramedian region of abdomen $\frac{3}{4}$ ” right from umblicus, $4\frac{1}{2}$ ” below xipristernem.

One abdominal tube was present on right side of abdomen $4\frac{1}{2}$ ” from umblicus.

On dissection - stomach was found stitched $2\frac{1}{2}$ ” long, 2” proximal to the duodenum, blood clot was found over the mesentry of large intestine and blood clot was found over right kidney.

Time since death - within 12 hours approx.

Cause of death - Haemorrhage and shock.

Nature of violence - could not be ascertained due to surgical interference. Can be obtained from surgeon concerned.”

47. The evidence of PW-15 would show that the deceased had one stitched wound 7” long in right duodenum region of abdomen, $\frac{3}{4}$ ” right from umblicus, $4\frac{1}{2}$ ” below hip xipristernem.

48. PW 15 could not observe the nature of violence leading to death of Dilip Singh due to surgical interference and he was of the view that it may be ascertained from the surgeon concerned.

49. Learned counsel for the appellant has relied upon the judgment of the Hon’ble Supreme Court in the case of **Laxmi Singh** (supra) (para 14 & 17). In the said case upon analysis of the evidence of the eye witnesses it was held that there were certain circumstances which completely falsified the evidence of the eye witnesses. The Hon’ble Supreme Court observed that the genesis

and origin of the occurrence in the said case appears to be shrouded in deep mystery. The dramatic manner in which the assault is said to have started and the appearance of the accused were shown and they were said to have assaulted on the persons against whom they had neither any concern or animus introduces an element of inherent improbability in the case. Thus, it appears to this Court that the judgment in the case of **Laxmi Singh & Others** (supra) were rendered in a completely different facts situation.

50. Learned counsel has further relied upon the judgment of the Hon'ble Supreme Court in the case of **Suchand Pal** (supra) to submit that the prosecution must stand on its on leg. In the said case the Hon'ble Supreme Court was considering a challenge to the judgment of the Division Bench of the Hon'ble Calcutta High Court directing acquittal of respondent no.1 who was the accused in the case. The Additional Sessions Judge, 3rd Court, Midnapore had found the accused guilty of the offence punishable under Sections 302 and 307 of the IPC and also under Section 25 of the Arms Act, 1959. It was found that two factors weighed with the Hon'ble High Court. The first was that the gunshot injuries as were received by the deceased were not possible as suggested by the prosecution. The medical evidence

clearly indicated that the injuries indicated marks of tattooing and scorching which were possible only when the gunshot was made from a close range. Secondly, the Hon'ble High Court found that the so-called dying declaration on which reliance was placed by the prosecution was not acceptable inasmuch as there was clear admission by the person who recorded the dying declaration that the deceased only affirmed what her husband stated in response to the queries put by the officer recording the dying declaration. That being so, the High Court found the prosecution version to be untrustworthy and not capable of acceptance.

51. In this background the Hon'ble Calcutta High Court held that there was no embargo on the appellate court reviewing the evidence upon which an order of acquittal is based. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. It has been held in this case that the trial court appeared to have discarded the defence version highlighting the unacceptability of the prosecution version. It is in this background that the Hon'ble High Court observed:-

“.....The High Court was right in disapproving the course adopted by the trial court. It is an established

position in law that the prosecution can succeed by substantially proving the version it alleges. It must stand on its own legs and cannot take advantage of the weakness in the defence case. The court cannot on its own make out a new case for the prosecution and convict the accused on that basis. Only when a conclusion is arrived at on the evidence and the substratum of the case is not changed, such a course is permissible....”

52. On going through the judgment of the Hon’ble Calcutta High Court in the case of **Suchand Pal**, we find that so far as the observation of the Hon’ble Supreme Court that the prosecution can succeed by substantially proving the version as it alleges are concerned, there is no quarrel with the said proposition. It has to be applied in the facts of the case to find out whether the prosecution is standing on its own evidence or not. In this case, we have no doubt that the prosecution has been able to withstand that test and the defence has failed to create a reasonable doubt on the prosecution case.

53. Similarly, we find that the judgments of the Hon’ble Bombay High Court and Hon’ble Allahabad High Court in the case of **Shripati Kashinath Ambede** and in the case of **Shubrati and Others** respectively were rendered in a different facts situation.

54. This Court is of the view that in this case on the face of the ocular evidence which are trustworthy and credible piece of evidence, the prosecution has been able to establish the guilt of the appellants beyond all reasonable doubts.

55. We, therefore, do not find any reason to interfere with the impugned judgment of the learned trial court.

56. The appeals are dismissed.

(Rajeev Ranjan Prasad, J)

(Shailendra Singh, J)

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