

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 317 of 1994

**Motahar @ Muktar Md. & Anr.
-Vs-
The State of West Bengal & Ors.**

Amicus Curiae : Mr. Kallol Mondal

For the State : Mr. Binay Panda
Ms. Puspita Saha

Heard on : 24.11.2023, 19.01.2024, 23.02.2024, 07.03.2024,
13.03.2024,

Judgment on : 14.08.2024

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against the order of conviction sentencing to suffer substantive rigorous imprisonment of two (2) years and to pay a fine of Rs.5,000/- each, i.e. to R.I. for 6 months under Section 354 of the Indian Penal Code passed against the appellants by the Learned Additional Sessions Judge, Uttar Dinajpur at Raigunj in Sessions Trial No. 17 of 1994 arising out of Sessions Case No. 27 of 1994 (State Vs. Motahar @ Muktar Md. and Ainul Haque).
2. The prosecution case precisely stated on 19.03.1993 two ladies of village Dumuria, P.S.- Raigunj, were returning home by rickshaw of Matahar from

Raigunj and on their way evening crept in. Another person boarded the rickshaw from Panishala between Raigunj and Dumuria. Just before entering the village Dumuria near Para Pukur Bhangra bridge, both the appellants outraged the modesty of the handicapped women against their will and being threatened they could not raise any alarm. Subsequently the incident was informed to the villagers and relatives who did not publicise the same. One Mohan Singh of Raigunj too learnt the occurrence of the incident and escorted the victim to the Raigunj Police Station on 30.03.1991. On the basis of the allegation on 30.03.1991, Raigunj Police Station Case No. 115 of 1991 dated 30.03.1991 under Section 376 of the Indian Penal Code was initiated against the appellants.

3. After completion of investigation, police submitted charge-sheet under Section 376 of the Indian Penal Code against both the appellants. Charges were framed to which the appellants pleaded not guilty and claimed to be tried.
4. The prosecution cited 11 witnesses and exhibited certain documents.
5. The Learned Amicus Curiae representing the appellants submitted that there had been inconsistencies in the evidences of the prosecution witnesses. The complaint was lodged after a delay on 30.03.1991 while the alleged incident occurred on 19.03.1991. The first information report was forwarded to the Learned Magistrate after a delay of 25 days on 24.04.1991 raising a doubt without regard to the actual date of filing the first information report. Such action was violative of the provisions of Section 157(1) of the Criminal Procedure Code. The wearing apparels of the victim claimed to have been

smearred with semen were not seized for examination. The victim ladies were not medically examined on the score of being ravished.

6. All the prosecution witnesses had tried to introduce and/or invent a new story to prove the charge of rape but failed. There was no evidence to bring home the charge under Section 376 and 354 of the Indian Penal Code, yet the Learned Sessions Judge at Raiganj illegally and arbitrarily convicted the appellants under Section 354 of the Indian Penal Code.
7. The instant case was an example wherein the appellants had been convicted devoid of an iota of evidence on record to prove the guilt of the appellants beyond reasonable doubt.
8. The complaint was lodged by PW-1, scribed by PW-11 at Raiganj Police Station inter alia alleging the complainant and her native sister were differently abled. On 19.03.1991 while returning from Raiganj to their village Dumuria, they boarded the rickshaw of the appellant no.1 Motahar Md. @ Mukhtar Md., who after sometime the appellant no.1 permitted his companion unknown to the victims who was later on identified as Ainul Haque, the appellant no.2 to board the rickshaw. When the rickshaw reached near Parapukur Bhangra Bridge the appellants had sexually molested the victims who after returning to their village revealed such subjugation to other co-villagers.
9. There were numerous discrepancies in the versions of the various witnesses viz. PW-1 and PW-2 who were the victim ladies. Their evidence contradicted the deposition of other material witnesses including that of PW-11 upon whose testimony the Learned Trial Court had significantly relied upon

though he was merely a hearsay witness and scribe of the written complaint submitted before the Police Station. PW-1 and PW-2 as well as PW-4 categorically stated during their deposition that they had gone to PW-11, on the next day of the occurrence which was categorically denied by PW-11 who stated that the victim ladies along with their brother had only come to him on 30.03.1991, i.e., after 11 days of the alleged incident and it was only on that day he came to know of the purported offence committed after which he took them to the police station and the instant complaint was lodged. Such contradictions riddled holes in the prosecution story as the PW-3 had also stated that he intimated the alleged offence to PW-11 on the very next day and also intimated the PW-12 after 3 days of the alleged incident as was stated by PW-9 as well which was in turn categorically denied by PW-12 during his deposition. Thus, the reason for delay of 11 days in lodging of the complaint due to the fear of societal rejection was completely shattered and could not be relied upon. Thus, in absence of any clear reasoning for such inordinate delay in lodging of the complaint and the discrepancies in the version of material witnesses in filing the same was bound to be treated as an afterthought as the defence had disclosed the existence of political rivalry between the appellants herein and PW-11, PW-1 and PW-2.

10. Absence of medical report pertaining to the alleged offence being committed demolished the prosecution case as PW-1 and PW-2 as well as the PW-12 had stated that medical examinations of the victim ladies were done but astonishingly the PW- 10, the medical officer had merely conducted an ossification test and no other medical examination was done by him.

11. The Investigating Officer, i.e., PW-12 had also for reasons best known to him did not make any endeavour to collect the wearing apparels of the alleged victim ladies and which further raised doubts in the version of the prosecution case. Though PW-1, during her deposition stated that their wearing apparels were smeared with the semen of the appellants herein but according to PW-12 she did not state the same during the investigation and first time stated such fact before the Learned Trial Court.
12. PW-12 had during his deposition contradicted the contentions of material witnesses during their respective depositions stated for the first time before the Learned Trial Court and not during the purported investigation. PW-12 clearly stated that PW-2 had not informed him that she was hit with fists and blows which caused her to bleed and the victim ladies also did not state anyone regarding the purported incident on the same night itself but PW-1 and PW-2 as well as other witnesses stated that the knowledge of such incident was given to them by the victim ladies on the same night. Furthermore, the purported seizure made by PW-12 was also doubtful as the purported seizure witness PW-6 during his deposition stated that he did not sign the said seizure list and PW-12 also stated that it was in fact signed in the police station itself, not been supported by PW-6. PW- 4 also stated during his deposition that he had intimated PW-12 that the victim ladies had returned home weeping which was denied by PW-12 which was stated for the first time before the Learned Trial Court.
13. The version of PW-2 as stated by her during her deposition that as she received fists and blows by the appellants herein she had suffered bleeding

from her nose was negated from the depositions of the other witnesses as PW- 9, stated that he did not see any external injuries on the person of the victim ladies, after they reached Dumuria. Similarly no other witnesses had stated that they noticed any injury upon PW-2 and even PW-1 stated that only muscle pain was there and no external injury could be seen.

14. Except PW-1 and PW-2 other witnesses in the instant case were merely hearsay witnesses while PW-10 was the medical officer and PW-12 was the Investigating Officer. But even the version of the said victim ladies i.e. PW-1 and PW-2 could not be relied upon as their statements were contradicted several times by various witnesses including the fact that while PW-1 stated that PW-7 had intimated PW-11 of the alleged offence such fact was supported by PW-7 during his deposition as he clearly denied any knowledge when the victim ladies had visited the police station and had also stated that he came to know of the incident from other people.
15. The investigation carried by PW-12 also exhibits shoddy attitude from the fact that though PW-2 stated during her deposition that she had forthwith intimated such alleged incident to one Sailen but surprisingly such vital witness was not examined during the trial by the prosecution and ergo, such non-examination of material witnesses bolstered the defence case and raised doubt regarding the prosecution story.
16. With regard to the appellant no. 2 Ainul Haque though he was not named in the first information report he was arraigned as an accused in the instant case without any factual basis as not even a test identification parade was conducted so that the victim ladies could identify him and only on the dock

was he identified for the first time. Similarly, though it was stated by PW-1 and 2 that they saw the appellant no. 1, for the first time on the date of alleged incident but they could somehow state his village name as 'Chopra' on the first information report without even knowing him previously. Such, facts coupled with the discrepancies probalised the instant case to be an afterthought hatched with an ulterior motive of implicating the appellants in a false and concocted criminal case as they belonged to a rival political party.

17. Though the first information report was lodged on 30.03.1991 but surprisingly the same was forwarded to the Learned Jurisdictional Magistrate after around 25 days on 24.04.1991. Such inordinate and unreasonable delay of 25 days in forwarding of the intimation regarding purported commission of a cognizable offence contravened the provisions of Section 157(1) of the Code of Criminal Procedure, 1973. PW-1 and PW-2 being the victim ladies deposed to have visited the police station the next day after commission of the alleged offence however the first information report was lodged after 11 days of the date of occurrence of the alleged offence which was forwarded to the Learned Jurisdictional Magistrate after 25 days, reasonably diluting the gravity of the offence claimed to have been committed.

18. The depositions of the various witnesses based on hearsay were contradictory and unreliable.

19. The Learned Advocate for the State submitted that the prosecution was able to prove its case and the appeal shall be dismissed.

20. A circumspection of evidence of the prosecution witnesses revealed as follows:

- i. PW-1 one of the victim ladies stated at about 5:30 p.m. while they were returning home after attending a meeting, boarded the rickshaw of Motahar. At Panishala Motahar took another person in his rickshaw. In the midway Motahar and his companion forcibly brought them down from the rickshaw and raped them. Motahar and his companion Animul Haque ravished PW-2 and PW-1 respectively. Thereafter they fled. They returned home and narrated the incident to the localities. On the next day her brother Taresh Barman went to Raigunj and narrated the incident to one Mohan Singh. On the next day she went to the police station and put her left thumb impression on an application. She was in the habit of travelling to Raigunj. On the relevant date she went from Dumuria to Peyada Pukur. She did not remember the names of the person to whom she narrated the fateful incident. On the next day she and her brother along with Mohan Singh went to the police station. Mohan Singh was an R.S.P. party worker. She did not know whether Motahar was a C.P.I. (M) party worker or not. She started her journey from Raigunj just after sunset. She never shouted before or after the incident or raised any hue and cry. She did not know Motahar prior to the incident and was not acquainted with him. She never saw Motahar except on the date of incident and on date of deposing before the Court. She was a R.S.P. party member. Nobody came to the place of incident. The

appellants were prevented but in vain. Neither before the incident nor after the incident she saw the appellant Ainul. She did not reveal appellant Ainul to her brother.

- ii. PW-2 deposed the incident took place 2 years ago. They were asked to get down from the rickshaw in the middle of Kutcha Road and sexually molested against their will. The other man raped PW-1. The appellants inflicted blows and threatened them. After the incident they went home and appellants were examined by doctors. On the next day they went to the police station. Motahar was unknown to PW-2. While they boarded the rickshaw the sun was about to set. They were the members of Mohon Singh's party. Taresh was her own brother. The appellants inflicted blows causing bleeding injury to them. They did not meet anybody on the way home. She never saw Ainul except in Court. Taresh along with Mohan went to the police station.
- iii. The evidence of PW-3 was based on hearsay.
- iv. PW-4 stated PW-1 and PW-2 came home and were crying. On the date of the incident he was informed. PW-4 and PW-1, his sister went to Mohan Singh at Raigunj and thereafter went to the police station.
- v. PW-5 Shyamal Saha submitted the charge-sheet.
- vi. PW-6 Brojen Barman heard about the incident from PW-1 and PW-2. He was a seizure list witness.

- vii. PW-7 Taresh Barman heard about the incident from PW-1 and PW-2 that they were raped at the bank of Pana Pukur by the rickshaw puller.
- viii. PW-8 did not make any statement.
- ix. PW-9 Baikanta Barman heard about the incident from PW-1 and PW-2 on the date of incident at about 9:30 p.m. Thereafter PW-1 went to the police station. They went to Raigunj to attend the meeting of physically handicapped persons. As the bus was crowded they could not board the bus and took a rickshaw.
- x. PW-10 Dr. Pradip Bhattacharjee (Radiologist) held the ossification test on 21.04.1991 and opined that the victims were major.
- xi. PW-11 Mohan Singh heard the incident on 30.03.1991 that PW-1 and PW-2 were ravished on 19.03.1991. He wrote the complaint as per their statement. PW-11 stated that the victim told him that out of fear and shame they did not report to police. He did not mention the same in the complaint. He saw the rickshaw puller. He never saw Motahar before the date of incident. He heard his name from the victims. In his presence Ainul's name was not mentioned. Day after the incident neither the victims nor the brother came to see him.
- xii. PW-12 Abdul Wahab stated on 30.03.1991 at about 12 noon F.I.R. was lodged. Each and every witness stated before him that after /3 days of incident Daroga Babu came to the village. On 30.03.1991 he examined Soven Barman, Sailen Sarkar, Taresh Barman and Gajen Barman at the police station. Each and every witness told him that at

any interval of half an hour upto 7 p.m. in the highest there was bus service. The distance of Dumuria from Raiganj was about 25 k.m. PW-1 told him that at 3 p.m. they boarded the rickshaw, PW-2 stated to him that they boarded the rickshaw at 5.45 p.m. when the sun was about to set. PW-11 told him that about 4 p.m. after finishing the meeting the victim went home by a rickshaw. PW-1 further told him that she never knew Motahar. PW-2 stated that she never saw Motahar before the date of incident. PW-11 stated that the name of the rickshaw puller was Motahar. PW-1, 2, 3, 4, 5, 6, 7 equivocally stated that they were member of R.S.P. and Mohon Singh was their leader.

21. The Hon'ble Supreme Court held the following in ***Sadashiv Ramrao Hadbe v. State of Maharashtra***¹:-

“9. *It is true that in a rape case the accused could be convicted on the sole testimony of the prosecutrix, if it is capable of inspiring confidence in the mind of the court. If the version given by the prosecutrix is unsupported by any medical evidence or the whole surrounding circumstances are highly improbable and belie the case set up by the prosecutrix, the court shall not act on the solitary evidence of the prosecutrix. The courts shall be extremely careful in accepting the sole testimony of the prosecutrix when the entire case is improbable and unlikely to happen.*

10. *In the present case there were so many persons in the clinic and it is highly improbable that the appellant would have made a sexual assault on the patient who came for examination when large number of persons were present in the near vicinity. It is also highly improbable that the prosecutrix could not make any noise or get out*

¹(2006) 10 SCC 92

of the room without being assaulted by the doctor as she was an able-bodied person of 20 years of age with ordinary physique. The absence of injuries on the body improbabilise the prosecution version.”

22. The Hon’ble Supreme Court held the following in **Raju v. State of M.P.**²:-

“10. The aforesaid judgments lay down the basic principle that ordinarily the evidence of a prosecutrix should not be suspected and should be believed, more so as her statement has to be evaluated on a par with that of an injured witness and if the evidence is reliable, no corroboration is necessary. Undoubtedly, the aforesaid observations must carry the greatest weight and we respectfully agree with them, but at the same time they cannot be universally and mechanically applied to the facts of every case of sexual assault which comes before the court.

11. It cannot be lost sight of that rape causes the greatest distress and humiliation to the victim but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The accused must also be protected against the possibility of false implication, particularly where a large number of accused are involved. It must, further, be borne in mind that the broad principle is that an injured witness was present at the time when the incident happened and that ordinarily such a witness would not tell a lie as to the actual assailants, but there is no presumption or any basis for assuming that the statement of such a witness is always correct or without any embellishment or exaggeration.”

23. The Hon’ble Supreme Court held the following in **Manak Chand v. State of Haryana**³:-

²(2008) 15 SCC 133

³2023 SCC OnLine SC 1397

“7. The evidence of a prosecutrix in a case of rape is of the same value as that of an injured witness. It is again true that conviction can be made on the basis of the sole testimony of the prosecutrix. All the same, when a conviction can be based on the sole testimony of the prosecutrix, the courts also have to be extremely careful while examining this sole testimony as cautioned in *State of Punjab v. Gurmit Singh*, (1996) 2 SCC 384:

“If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations.”

8. This was reiterated by this Court in *Sadashiv Ramrao Hadbe v. State of Maharashtra*, (2006) 10 SCC 92:

“It is true that in a rape case the accused could be convicted on the sole testimony of the prosecutrix, if it is capable of inspiring confidence in the mind of the court. If the version given by the prosecutrix is unsupported by any medical evidence or the whole surrounding circumstances are highly improbable and belie the case set up by the prosecutrix, the court shall not act on the solitary evidence of the prosecutrix.”

9. Both the prosecutrix as well as the accused have a right for a fair trial, and therefore when the statement of the prosecutrix does not inspire confidence and creates a doubt, the court must look for corroborative evidence. Relying upon the case of *Gurmit Singh* (supra) this court in *Raju v. State of Madhya Pradesh*, (2008) 15 SCC 133 held as under:

“10. The aforesaid judgments lay down the basic principle that ordinarily the evidence of a prosecutrix should not be suspected and should be believed, more so as her statement has to be evaluated on a par with that of an injured witness and if the evidence is reliable, no corroboration is necessary. Undoubtedly, the aforesaid observations must carry the greatest weight and we respectfully agree with them, but at the same time they cannot be universally and mechanically applied to the facts of every case of sexual assault which comes before the court.

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24. In **Sudarshan v. State of Maharashtra**⁴ the Hon’ble Supreme Court held the following:-

“15. Even after meeting their advocate and his advice that the matter be reported to the police, these persons did not 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

⁴(2014) 12 SCC 312

is proved as Ext. 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 Ext. 213 was sent to the Magistrate. A specific suggestion was put to him that the copy of the FIR was not sent to the Magistrate concerned. 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 emphasised. 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.*

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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 U.P. [(1994) 5 SCC 188 : 1994 SCC (Cri) 1391] , 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. 195-96, 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 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 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 involvement of the appellants in the present case.”

25. The Hon’ble Supreme Court held the following in **State of Rajasthan v.**

Daud Khan⁵:-

“26. The interpretation of Section 157 CrPC is no longer res integra. A detailed discussion on the subject is to be found in Brahm Swaroop v. State of U.P. [Brahm Swaroop v. State of U.P., (2011) 6 SCC 288 : (2011) 2 SCC (Cri) 923] which considered a large number of cases on the subject. The purpose of the “forthwith” communication of a copy of the FIR to the Magistrate is to check the possibility of its manipulation. Therefore, a delay in transmitting the special report to the Magistrate is linked to the lodging of the FIR. If there is no delay in lodging an FIR, then any delay in communicating the special report to the Magistrate would really be of little consequence, since manipulation of the FIR would then get ruled out. Nevertheless, 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 whenever there is some delay in sending the FIR to the Magistrate, the prosecution version becomes unreliable. In other words, the facts and circumstances of a case are important for a decision in this regard.

27. The delay in sending the special report was also the subject of discussion in a recent decision being Sheo Shankar Singh v. State of

⁵(2016) 2 SCC 607

U.P. [Sheo Shankar Singh v. State of U.P., (2013) 12 SCC 539 : (2014) 4 SCC (Cri) 390] wherein it was held that before such a contention is countenanced, the accused must show prejudice having been caused by the delayed dispatch of the FIR to the Magistrate. It was held, relying upon several earlier decisions as follows: (SCC pp. 549-50, paras 30-31)

“30. One other submission made on behalf of the appellants was that in the absence of any proof of forwarding the FIR copy to the jurisdiction Magistrate, violation of Section 157 CrPC has crept in and thereby, the very registration of the FIR becomes doubtful. The said submission will have to be rejected, inasmuch as the FIR placed before the Court discloses that the same was reported at 4.00 p.m. on 13-6-1979 and was forwarded on the very next day viz. 14-6-1979. Further, a perusal of the impugned judgments of the High Court [Sarvajit Singh v. State of U.P., 2003 SCC OnLine All 1214 : (2004) 48 ACC 732] as well as of the trial court discloses that no case of any prejudice was shown nor even raised on behalf of the appellants based on alleged violation of Section 157 CrPC. Time and again, this Court has held that unless serious prejudice was demonstrated to have been suffered as against the accused, mere delay in sending the FIR to the Magistrate by itself will not have any deteriorating (sic) effect on the case of the prosecution. Therefore, the said submission made on behalf of the appellants cannot be sustained.

31. In this context, we would like to refer to a recent decision of this Court in Sandeep v. State of U.P. [Sandeep v. State of U.P., (2012) 6 SCC 107 : (2012) 3 SCC (Cri) 18] wherein the said position has been explained as under in paras 62-63: (SCC p. 132)

“62. It was also feebly contended on behalf of the appellants that the express report was not forwarded to the Magistrate as stipulated under Section 157 CrPC instantaneously. According to the learned counsel FIR which was initially registered on 17-11-2004 was given

a number on 19-11-2004 as FIR No. 116 of 2004 and it was altered on 20-11-2004 and was forwarded only on 25-11-2004 to the Magistrate. As far as the said contention is concerned, we only wish to refer to the reported decision of this Court in *Pala Singh v. State of Punjab* [*Pala Singh v. State of Punjab*, (1972) 2 SCC 640 : 1973 SCC (Cri) 55] wherein this Court has clearly held that (SCC p. 645, para 8) where the FIR was actually recorded without delay and the investigation started on the basis of that FIR and there is no other infirmity brought to the notice of the court then, however improper or objectionable the delay in receipt of the report by the Magistrate concerned be, in the absence of any prejudice to the accused it cannot by itself justify the conclusion that the investigation was tainted and the prosecution insupportable.

63. Applying the above ratio in *Pala Singh* [*Pala Singh v. State of Punjab*, (1972) 2 SCC 640 : 1973 SCC (Cri) 55] to the case on hand, while pointing out the delay in the forwarding of the FIR to the Magistrate, no prejudice was said to have been caused to the appellants by virtue of the said delay. As far as the commencement of the investigation is concerned, our earlier detailed discussion discloses that there was no dearth in that aspect. In such circumstances we do not find any infirmity in the case of the prosecution on that score. In fact the above decision was subsequently followed in *Sarwan Singh v. State of Punjab* [*Sarwan Singh v. State of Punjab*, (1976) 4 SCC 369 : 1976 SCC (Cri) 646], *Anil Rai v. State of Bihar* [*Anil Rai v. State of Bihar*, (2001) 7 SCC 318 : 2001 SCC (Cri) 1009] and *Aqeel Ahmad v. State of U.P.* [*Aqeel Ahmad v. State of U.P.*, (2008) 16 SCC 372 : (2010) 4 SCC (Cri) 11] ”

28. It is no doubt true that one of the external checks against antedating 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. [*Sudarshan v. State of Maharashtra*, (2014)

12 SCC 312 : (2014) 5 SCC (Cri) 94] 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. [Meharaj Singh v. State of U.P., (1994) 5 SCC 188 : 1994 SCC (Cri) 1391] 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. [Rattiram v. State of M.P., (2013) 12 SCC 316 : (2014) 1 SCC (Cri) 635]”

26. The following was observed by the Hon’ble Supreme Court in **Jafel Biswas**

v. State of W.B.⁶:-

“18. In State of Rajasthan [State of Rajasthan v. Daud Khan, (2016) 2 SCC 607 : (2016) 1 SCC (Cri) 793] in paras 27 and 28, this Court has laid down as follows : (SCC pp. 620-21)

“27. The delay in sending the special report was also the subject of discussion in a recent decision being Sheo Shankar Singh v. State of U.P. [Sheo Shankar Singh v. State of U.P., (2013) 12 SCC 539 : (2014) 4 SCC (Cri) 390] wherein it was held that before such a contention is countenanced, the accused must show prejudice having been caused by the delayed dispatch of the FIR to the Magistrate. It was held, relying upon several earlier decisions as follows : (SCC pp. 549-50, paras 30-31)

‘30. One other submission made on behalf of the appellants was that in the absence of any proof of forwarding the FIR copy to the jurisdiction Magistrate, violation of Section 157 CrPC has crept in and thereby, the very registration of the FIR becomes doubtful. The said submission will have to be rejected, inasmuch as the FIR placed before the Court discloses that the same was reported at 4.00 p.m. on 13-6-1979 and was forwarded on the very next day viz. 14-6-1979. Further, a perusal of the impugned judgments of the High

⁶(2019) 12 SCC 560

Court [*Sarvajit Singh v. State of U.P.*, 2003 SCC OnLine All 1214 : (2004) 48 ACC 732] as well as of the trial court discloses that no case of any prejudice was shown nor even raised on behalf of the appellants based on alleged violation of Section 157 CrPC. Time and again, this Court has held that unless serious prejudice was demonstrated to have been suffered as against the accused, mere delay in sending the FIR to the Magistrate by itself will not have any deteriorating (sic) effect on the case of the prosecution. Therefore, the said submission made on behalf of the appellants cannot be sustained.

31. In this context, we would like to refer to a recent decision of this Court in *Sandeep v. State of U.P.* [*Sandeep v. State of U.P.*, (2012) 6 SCC 107 : (2012) 3 SCC (Cri) 18] wherein the said position has been explained as under in paras 62-63 : (SCC p. 132)

“62. It was also feebly contended on behalf of the appellants that the express report was not forwarded to the Magistrate as stipulated under Section 157 CrPC instantaneously. According to the learned counsel FIR which was initially registered on 17-11-2004 was given a number on 19-11-2004 as FIR No. 116 of 2004 and it was altered on 20-11-2004 and was forwarded only on 25-11-2004 to the Magistrate. As far as the said contention is concerned, we only wish to refer to the reported decision of this Court in *Pala Singh v. State of Punjab* [*Pala Singh v. State of Punjab*, (1972) 2 SCC 640 : 1973 SCC (Cri) 55] wherein this Court has clearly held that (SCC p. 645, para 8) where the FIR was actually recorded without delay and the investigation started on the basis of that FIR and there is no other infirmity brought to the notice of the court then, however improper or objectionable the delay in receipt of the report by the Magistrate concerned be, in the absence of any prejudice to the accused it cannot by itself justify the conclusion that the investigation was tainted and the prosecution insupportable.

63. Applying the above ratio in *Pala Singh* [*Pala Singh v. State of Punjab*, (1972) 2 SCC 640 : 1973 SCC (Cri) 55] to the case on hand, while pointing out the delay in the forwarding of the FIR to the Magistrate, no prejudice was said to have been caused to the appellants by virtue of the said delay. As far as the commencement of the investigation is concerned, our earlier detailed discussion discloses that there was no dearth in that aspect. In such circumstances we do not find any infirmity in the case of the prosecution on that score. In fact the above decision was subsequently followed in *Sarwan Singh v. State of Punjab* [*Sarwan Singh v. State of Punjab*, (1976) 4 SCC 369 : 1976 SCC (Cri) 646] , *Anil Rai v. State of Bihar* [*Anil Rai v. State of Bihar*, (2001) 7 SCC 318 : 2001 SCC (Cri) 1009] and *Aqeel Ahmad v. State of U.P.* [*Aqeel Ahmad v. State of U.P.*, (2008) 16 SCC 372 : (2010) 4 SCC (Cri) 11] ”

28. It is no doubt true that one of the external checks against antedating 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. [*Sudarshan v. State of Maharashtra*, (2014) 12 SCC 312 : (2014) 5 SCC (Cri) 94] 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. [*Meharaj Singh v. State of U.P.*, (1994) 5 SCC 188 : 1994 SCC (Cri) 1391] 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. [*Rattiram v. State of M.P.*, (2013) 12 SCC 316 : (2014) 1 SCC (Cri) 635] ”

19. The obligation is on the IO to communicate the report to the Magistrate. The obligation cast on the IO is an obligation of a public duty. But it has been held by this Court that in the event the report is submitted with delay or due to any lapse, the trial shall not be

affected. The delay in submitting the report is always taken as a ground to challenge the veracity of the FIR and the day and time of the lodging of the FIR.

20. *In cases where the date and time of the lodging of the FIR is questioned, the report becomes more relevant. But mere delay in sending the report itself cannot lead to a conclusion that the trial is vitiated or the accused is entitled to be acquitted on this ground.*

21. *This Court in Anjan Dasgupta v. State of W.B. [Anjan Dasgupta v. State of W.B., (2017) 11 SCC 222 : (2017) 4 SCC (Cri) 280] (of which one of us was a member, Hon'ble Ashok Bhushan, J.) had considered Section 157 CrPC. In the above case also, the FIR was dispatched with delay. Referring to an earlier judgment [Rabindra Mahto v. State of Jharkhand, (2006) 10 SCC 432 : (2006) 3 SCC (Cri) 592] of this Court, it was held that in every case from the mere delay in sending the FIR to the Magistrate, the Court would not conclude that the FIR has been registered much later in time than shown.”*

27. The victim ladies being PW-1 and PW-2 though differently-abled were subjected to sexual molestation by the appellants on their return from a meeting as claimed by the same. The Investigating Officer did not endeavour to enquire the veracity of such a claim. A rickshaw being driven by a person can accommodate two adult persons without sufficient space for a third adult person to creep in. Astonishingly the victim ladies allowed the appellant no.2 to board the rickshaw which was exclusively a rickshaw, nowhere cited to be an auto rickshaw to have provided more space to accompany other passengers. The victim ladies did not travel by bus and had boarded the rickshaw to reach their residence evincing the fact of a considerable distance to traverse after being sexually molested. The victims

walked their way home commuting the entire distance weeping being unnoticed by an on-dweller being physically incapacitated preventing normal mobility the appellants were unknown to the victims without a history of acrimony or animosity which should have been immediately addressed for redressal and punishment of the appellants for such an abhorrent act.

28. The inconsistencies in the evidence of PW-1 and PW-2 as aforementioned shirk reliability. The delay in filing the complaint as well as the acquaintance with PW-1 belonging to a rival political party predominated the fact of premeditated false implication.
29. The Investigating Officer did not seize the wearing apparels of the victim nor were they medically examined to unravel their claim of being ravished. Most of the prosecution witnesses heard the incident from the victim ladies. The medical examination was restricted to ossification determining the age of the victim ladies at the time of the fateful incident. The sole evidence of a prosecutrix in the capacity of an injured witness can be exclusively relied upon being devoid of malice, conspiracy, false implication, self-gratification and interest, coercion and prevarication.
30. The conduct of the victim ladies prior to the incident and thereafter cannot in a sacrosanct manner establish or presuppose the occurrence of the alleged offence victimizing them according to their narrative. Since the appellants were unknown to the victims who had not seen them in the interregnum, the Investigating Officer failed in not seeking for a Test Identification Parade.

31. The societal stigma and fear thereof, if initiated at any point of time, will leave far-reaching consequences and impact both the mind and body of an individual girl, child or a woman irrespectively. The victim ladies initially were afraid to expose the incident suffered by them being apprehensive of disgrace and dishonour, however with time they overcame such weakness which can be possible expected in a rustic environment. However, the contradictions, inconsistencies, omissions and embellishments in their evidence do not fortify their claim to be creditworthy and trustworthy.
32. Under the facts and circumstances, the prosecution has failed to establish its case beyond reasonable doubt and as such the criminal appeal is allowed.
33. Accordingly, the instant criminal appeal being CRA 317 of 1994 is disposed of.
34. There is no order as to costs.
35. I record my appreciation for the able assistance rendered by Mr. Kallol Mondal, Learned Advocate as Amicus Curiae in disposing of the appeal.
36. Trial Court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
37. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)