

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.392 of 2024

Arising Out of PS. Case No.-95 Year-2018 Thana- MASHRAK District- Saran

Mithilesh Kumar Madhukar S/o Late Vishwanath Prasad @ Vishwanath Singh R/o Village- Bahrauli, P.O.- Bahrauli, P.S. Mashrakh, District- Saran
... .. Appellant

Versus

1. The State of Bihar
2. Vijay Kumar Singh @ Vijay Kumar @ Munna S/o Shambhu Prasad R/o Village- Bahrauli, Kuer Tola, P.S.- Mashrakh, District- Saran
3. Puja Devi @ Puja Prabhakar D/o Shambhu Prasad R/o Village- Bahrauli, Kuer Tola, P.S.- Mashrakh, District- Saran
... .. Respondents

Appearance :

For the Appellant	:	Mr. Rakesh Kumar Sharma, Advocate
	:	Mr. Saptashwa Singh, Advocate
	:	Mr. S.M. Sudhanshu, Advocate
For the State	:	Mr. Ajay Mishra, APP
For Resp. No. 2&3	:	Mr. Udai Shankar Singh, Advocate
	:	Mr. Jivitesh Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE JUSTICE SMT. SONI SHRIVASTAVA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 15-04-2026

I.A. No. 01 of 2024

This application has been filed seeking condonation of delay of 60 days in filing the present appeal.

2. Reasons have been shown in paragraph no.4 of the application wherein it is stated that due to Durga Puja holidays, the appellant could not obtain the certified copy of the judgment for the purpose of filing this appeal.



3. Taking note of the reasons shown and there being no opposition to the application for condonation of delay, we condone the delay in filing of the appeal.

4. I.A. No. 01 of 2024 is allowed.

Re: Cr. Appeal (DB) No. 392 of 2024

5. Heard learned counsel for the appellant, learned Additional Public Prosecutor for the State and learned counsel for the respondent nos. 2 and 3.

6. The present appeal arises out of the judgment of acquittal dated 18.10.2023 (hereinafter referred to as the 'impugned judgment'), passed by the learned Additional Sessions Judge-IV, Saran at Chapra (hereinafter referred to as 'the learned Trial Court') in Sessions Trial No. 117 of 2020, arising out of Mashrak P.S. Case No. 95 of 2018 dated 06.04.2018, whereby and whereunder the respondent nos. 2 and 3 have been acquitted of the charges levelled against them under Sections 302 and 120B of Indian Penal Code (hereinafter referred to as 'IPC').

Prosecution Case

7. The prosecution case is based on a written information furnished by one Jai Kishore Prasad (PW-3) submitted to the Officer-in-charge, Mashrak Police Station, Saran on 06.04.2018 at 19:00 hours. In his written information (Exhibit



‘P/1’), the informant alleged that his younger brother, namely Vishwanath Prasad @ Bittu is the Headmaster in Middle School, Nanoli under PS Mashrak. On 06.04.2018 at about 6:00 p.m. as usual he left home for school on his motorcycle. The informant stated that he along with his son was on one motorcycle and Mithilesh Kumar Madhukar son of Vishwanath Prasad was on another motorcycle. Both were behind the motorcycle of Vishwanath Prasad at some short distance. As soon as Vishwanath Prasad reached South to Dumduma Pul and North to Khajuri Brahmsthan, from the front three persons, namely Shambhu Prasad, Vijay Kumar and Ajay Kumar, riding on one motorcycle intercepted the motorcycle of Vishwanath Prasad and Vijay Kumar @ Munna having pistol in his hand started abusing him. Ajay Kumar then ordered to shoot him. On which Vijay Kumar @ Munna fired shot on the head of Vishwanath Prasad from behind. Thereafter, Shambhu Prasad fired shot on his back, due to which he fell down, the informant's side and some passersby tried to catch hold of them, then the accused persons started firing in air and fled away in North direction. The informant alleged that due to old enmity, Amit Kumar @ Sanjay Kumar has committed assault to his elder and threatened to kill him. The informant alleged criminal conspiracy by Pooja Devi and daughter of



Sambhu Prasad, Vijay Kumar @ Munna, his wife Chanda Devi, Sanjay Kumar @ Amit Kumar and his wife.

8. On the basis of the aforesaid written information, Mashrak P.S. Case No. 95 of 2018 dated 06.04.2018 was registered under Sections 302, 120(B)/34 IPC and Section 27 of the Arms Act against accused persons, namely, (1) Shambhu Prasad, (2) Vijay Kumar @ Munna, (3) Ajay Kumar, (4) Amit Kumar @ Sanjay Kumar, (5) Pooja Devi, (6) wife of Shambhu Prasad, (7) Chanda Devi wife of Vijay Kumar @ Munna, (8) wife of Sanjay Kumar @ Amit Kumar and (9) wife of Ajay Kumar.

9. Upon completion of the investigation, the police submitted a charge-sheet bearing Charge-sheet No. 217/2018 dated 30.06.2018, against (1) Vijay Kumar Singh @ Munna (respondent no. 2) and (2) Pooja Prabhakar @ Pooja Devi (respondent no. 3) under Section 302 and 120(B)/34 of the IPC and Section 27 of the Arms Act keeping the investigation pending against other accused persons. The learned Magistrate vide order dated 14.09.2018 took cognizance of the offences under Section 302, 120(B)/34 of IPC and Section 27 of the Arms Act. After supply of the police papers, on finding that the charge under Section 302 of IPC was triable by the Court of Sessions, the learned Magistrate committed the records to the Court of Sessions.



In the Court of Sessions, charges were explained to (1) Vijay Kumar Singh @ Munna (respondent no. 2) and (2) Pooja Prabhakar @ Pooja Devi (respondent no. 3) who denied the charges and claimed to be tried. Accordingly, vide order dated 04.03.2024, charges were framed under Sections 302/34, 120(B)/34 IPC and Section 27 of the Arms Act.

10. In course of trial, on behalf of prosecution altogether five witnesses were produced and several documents were exhibited which were marked as Exhibit ‘P/1’ to Exhibit ‘P/10’. On behalf of defence two witnesses were examined and several documents were produced which were marked as Exhibit D-1 to D-16. The description of the prosecution and defence witnesses and the list of documents exhibited on their behalf are being produced hereunder for a ready reference in a tabular form:-

List of Prosecution Witnesses

Prosecution Witness No.	Name of witness	Description
PW-1	Babloo Kumar (Informant’s son & nephew of the deceased)	Eye witness
PW-2	Mithilesh Kumar Madhukar (son of the deceased)	Eye witness
PW-3	Jaikishor Prasad (Brother of deceased)	Eye witness
PW-4	Dr. Ravi Shankar Singh	Doctor who conducted post-



		mortem of the deceased
PW-5	Ajay Kumar Paswan	I.O of the case

List of Exhibits on behalf of Prosecution

Exhibit No.	Description of the Exhibit	Proved by/Attested by
Exhibit ‘P-1’	Written petition to P.S.	PW-3
Exhibit ‘P-2’	Signature of informant on the written petition	PW-3
Exhibit ‘P-3’	Postmortem report	PW-4
Exhibit ‘P-4’	Endorsement on the written petition	PW-5
Exhibit ‘P-5’	Inquest report	PW-5
Exhibit ‘P-6’	Formal charge-sheet	PW-5
Exhibit ‘P-7’	C.C. of formal F.I.R of Mashrakh P.S.- 315/2015	
Exhibit ‘P-8’	C.C. of charge-sheet of Mashrakh P.S.- 315/2015	
Exhibit ‘P-9’	C.C. of formal F.I.R of Mashrakh P.S.- 156/2017	
Exhibit ‘P-10’	C.C. of charge-sheet of Mashrakh P.S.- 156/2017	

List of Defence witnesses

Defence Witness No.	Name of witness	Description
DW-1	Bhageshwar	Co-villager of the



	Rai	accused
DW-2	Braj Kumar Singh	2 nd I.O. of this case

List of exhibits on behalf of defence

Exhibit No.	Description of the Exhibit	Proved by/Attested by
Exhibit ‘D-1’	C.C. of formal FIR of Mashrakh P.S.- 315/15	
Exhibit ‘D-2’	C.C. of charge-sheet of Mashrakh P.S.-315/15	
Exhibit ‘D-3’	C.C. Order Sheet T.S.- 269/14	
Exhibit ‘D-4’	C.C. of plaint of T.S.- 269/14	
Exhibit ‘D-5’	C.C. of written statement in T.S.- 269/14	
Exhibit ‘D-6’	C.C. of written statement of Om Prakash Prabhakar and Mithilesh Kumar Madhukar	
Exhibit ‘D-7’	C.C. of Power of Vishwanath Prasad in T.S.- 269 of 14	
Exhibit ‘D-8’	C.C. of Power of Om Prakash Prabhakar and Mithilesh Kumar Madhukar	
Exhibit ‘D-9’	Order sheet dt. 27.07.18 of LCR	
Exhibit ‘D-10’	Order sheet dt. 06.08.18 of LCR	
Exhibit ‘D-11’	Remarks column in order sheet dt. 27.8.18 of LCR	
Exhibit ‘D-12’	C.C. of petition of accused dt. 04.07.2018	
Exhibit ‘D-13’	Mobile tower location of Airtel with certificate	
Exhibit ‘D-14’	Mobile tower location of Idea-Vodafone with	



	certificate	
Exhibit 'D-15'	Reply under R.T.I. Act of SBI with envelop	
Exhibit 'D-16'	C.C. of deposition of Babloo Kumar in Sessions Trial No. 157/22	

11. Thereafter, the statements of Respondent nos. 2 and 3 were recorded under Section 313 CrPC. They pleaded innocence and stated about false implication.

Findings of the Learned Trial court

12. The learned Trial Court examined the evidences produced in course of trial. On a close scrutiny of the evidences adduced on behalf of parties and upon taking into consideration their respective submissions, the learned Trial Court found that out of five witnesses produced on behalf of prosecution including the Doctor and the Investigating Officer, the three witness are witnesses of fact, who claimed to have seen the occurrence. They are the brother, son and nephew of the deceased. Since, they were the related witnesses and both the parties were admitting prior enmity, the learned Trial Court took a view that the entire prosecution evidence is required to be considered keeping in view the attendant circumstances of the case.

13. The learned Trial Court observed that in such circumstance, the evidence of other witnesses would gain



importance. While analyzing the evidence of the Doctor, the learned Trial Court found that according to the doctor, the rigor mortis was present in all the four limbs. Lacerated wound of 1” diameter with charred and inverted margin over right side of occipital region and a small metallic bullet was recovered after dissecting scalp and handed over to the accompanying chowkidar/constable. Another lacerated wound of ½” diameter with charred and inverted margin over right side of back. All abdominal and thoracic viscera were full of blood and clots. Stomach contained undigested food material. All viscera were intact and pale, both chambers of the heart were empty. Brain paranchyma lacerated. The cause of death was shock and hemorrhage and head injury caused by firearm due to these ante-mortem injuries. The time since death to post-mortem examination was 6 to 24 hours. The learned Trial Court has noticed the submission of learned counsel for the defence and found that in the present case, the deceased had left his house at 6:00 a.m. and reached at the place of occurrence which is at a distance of about 5 kms and after the occurrence, he was taken to Mashrakh Government Hospital where bandage was applied. Then, he was referred to Patna and they started for Patna but the injured died on the way near Dariyapur Block. They reached Dariyapur at about



9:30 a.m. and the post-mortem was conducted at 12:05 p.m. on the same day. The rigor mortis was present in all the limbs. The learned Trial Court observed that as per medical jurisprudence, the rigor mortis will spread all over the body in about 12:00 hours. The other thing was the presence of undigested food material in stomach. The deceased had not eaten anything in the morning, as per evidence of PW-1 and PW-3 and therefore, in such situation, there is no chance of presence of the undigested food in the stomach of deceased at the time of his death. On both these parameters, the learned Trial Court observed that if we go by the statement of the doctor, the death took place between 12:00 p.m. on 05.04.2018 and 6:00 a.m. on 06.04.2018. But the evidence of Doctor is opinionative evidence which needs to be corroborated by other evidences on the record.

14. Thereafter, the learned Trial Court has discussed the evidence of Investigating Officer of the case, namely Sri. Ajay Kumar Paswan (PW-5), who has stated that he got the information of the occurrence at 7:00 PM. He did not write in the diary whether any sign, cartridge, '*khokha*', blood on soil or anything which could be suggestive that any firing was done was there. During investigation, he did not recover any *katta*, cartridge, motorcycle. He did not enquire from anybody near the place of



occurrence during the 10 months when he was the Investigating Officer. He did not enquire about mobile location or tower location of any accused and he did not enquire about the enmity between the parties.

15. The learned Trial Court found that the I.O. had not taken note of any sign of any occurrence at the place of occurrence, though the witnesses said that the police had found and collected *khokha* from the place of occurrence, but the I.O. has specifically denied this. The one bullet was found in the body of the deceased by the doctor during post-mortem, which was also not produced by the prosecution even after specific order dated 19.10.2022 of the Court, rather a letter was sent to the Court saying that there was neither any entry in *Malkhana* register of the police station nor was it present in the *Malkhana*. The learned Trial Court noticed that as per the doctor, the time of death is before 6:00 a.m. but the witnesses have stated that the death of deceased took place at 9:30 a.m.

16. As regards the evidence of the three witnesses of fact, the learned Trial Court found that the witnesses have said that they did not guard or follow the deceased everyday but on the day of occurrence by chance they were going to see an ailing relative through the same way and, thus, they were at the



place of occurrence. This aspect was not investigated by the I.O. whether any such relative was sick or any other reason for presence of the witnesses there. The learned Trial Court noted that the prosecution case as put forth is based on direct evidence. The informant saw that three persons were standing there with a motorcycle and when the deceased reached there, they stopped him. Informant's son saw that three persons on a motorcycle were coming from opposite direction and deceased's son saw that three persons came on motorcycle from opposite direction. About the manner of assault PW-1 said that on order of Ajay Kumar, Vijay Singh shot the deceased in chest and when he tried to flee, he shot at head and then Shambhu Singh shot at his back as a result whereof, he fell down. PW-2 said that on the order of Ajay Kumar, Vijay Kumar shot at his head and Shambhu Prasad shot at his back, PW-3 said that on the order of Ajay Kumar, Vijay Kumar shot in head of Vishwanath Prasad and Shambhu Prasad shot in his back. The learned Trial Court has noticed that as per their statements, PW-1, PW-2 and PW-3 were so near that they could hear the accused talking that Ajay Kumar said that it was he because of whom his sister's life was disturbed but despite this, these witnesses did not even try to save the deceased. After that on *hulla* by witnesses, some



passerby came and they took the injured in a Bolero to Mashrakh Hospital where treatment was done and he was referred to Patna and on the way, he died near Dariyapur Block from where he was brought to Mashrakh. PW-2 did not give any account after shooting in his examination-in-chief but in cross-examination, he said that his father was taken to Mashrakh Hospital in Bolero and bandage was done there and he was referred to Patna and on the way, he stopped breathing near Dariyapur where the doctor at Health Centre declared him dead and they returned to Mashrak Police Station. PW-3 said that on their *hulla*, some passerby came and they took the injured to Government Health Center, Mashrakh where doctor put bandage on the injuries and referred him to Patna. They went to Patna with 'Daroga Ji' and on the way, he stopped breathing and they took him to Dariyapur Health Center where doctor declared him dead from where they came to Mashrakh Police Station. The learned Trial Court wondered as to why the FIR was not lodged even as the deceased's son (PW-2), the informant (PW-3) and deceased's nephew (PW-1) were all present there with the dead-body. The dead-body was sent for post-mortem without even preparing inquest report.



17. The learned Trial Court also found that in the oral evidence, witnesses have stated that they first went to Mashrakh Hospital, police had come but did not take statement of anyone. PW-1 and PW-2 have stated in paragraph nos. 54 and 80 of their deposition respectively that Darogaji accompanied them, when they were going from Mashrakh to Patna. PW-3 has also stated so in paragraph '67' of his deposition. The learned trial court noticed that after death of deceased at Dariyapur, these witnesses returned to Mashrakh Police Station and from there the dead body was taken to Sadar Hospital, Chhapra. All this were done during the period when the witnesses had come across the police many times but neither FIR was lodged nor inquest report was prepared. FIR was lodged on the basis of written petition given by the informant at the police station after about 13 hours of the occurrence and 7 hours of post-mortem. This delay in lodging of the FIR has not been explained at all by the prosecution and that would create doubt.

18. As regards the place of occurrence, the learned Trial Court found that the I.O. had not recorded finding of any blood or blood stained soil at the place of occurrence and this would be casting doubt as to the actual place of occurrence. The I.O. had also not recorded about any sign of cartridge, *khokha* at



the place of occurrence and he had denied the claim of the eye-witnesses that *khokha* was found and was taken to the police station.

19. The learned Trial Court found that there were no evidence at all of any conspiracy and the prosecution had failed to prove any role of Puja Prabhakar except an utterance that the occurrence took place under the conspiracy of all the accused persons including Puja Prabhakar.

20. Having come to a conclusion that on the basis of the whole materials on record and discussions, it would not be safe to convict respondent no. 2 and 3, the learned Trial Court acquitted them and discharged them from their bail bonds and sureties.

Submission on behalf the Appellant

21. Mr. Rakesh Kumar Sharma, learned counsel for the appellant has assailed the impugned judgment. It is submitted that the learned Trial Court has not properly appreciated the evidence of the prosecution witnesses.

22. Learned counsel further submits that the delay in lodging of the FIR may alone cannot be a ground to throw away the whole prosecution case. It is submitted that the three prosecution witnesses are the eye-witnesses of the occurrence,



however, the learned Trial Court has not believed their testimony.

Submission on behalf of the Respondents

23. On the other hand, learned Additional Public Prosecutor for the State as well as learned counsel for the respondents nos. 2 and 3 submit that the learned Trial Court has thoroughly examined the entire evidences available on the record and has rightly concluded that the prosecution had failed to establish the charges beyond all reasonable doubts.

24. Learned counsel for the respondents have drawn the attention of this Court towards the statement of PW-1, who is the nephew of the deceased. He has stated in paragraph '15' of his deposition that police had taken his statement at Mashrak. He has stated that his statement was taken at his home on 06.04.2018 in the morning between 7:00-8:00 a.m. The police had prepared some papers at his residence and had obtained his signature thereon. He has also stated that when his statement was recorded, at the same time, the statements of his brother, Mithilesh Kumar and his father Jai Kishore Prasad were also taken. It is submitted that this witness has made a statement that police had recorded his statement on 06.04.2018 itself between 7:00-8:00 a.m., but the prosecution has suppressed this statement of PW-1 and the present



FIR has been lodged after 13 hours of the occurrence without there being any plausible explanation for the delay.

25. Learned counsel further submits that the defence has brought on record documentary evidences to demonstrate that the deceased was defendant no.13 in Title Suit No.269/2014 (Niyamuddin Miya vs. Madan Miya) which was pending in the Court of Sub-Judge-IIInd, Chapra, Saran. In this regard, Exhibits 'D/5' and 'D/6' have been brought on record to demonstrate that he was on litigating terms with respect to a property which he had purchased at Bahrauli Bazar.

26. Learned counsel further points out from the evidence of PW-2 (paragraph-70) that according to this witness, he had gone to the police station directly from the place of occurrence with his deceased father at around 6:30 a.m. It is, therefore, submitted that according to PW-2, who claims to be an eye-witness, he had gone to the police station directly from the place of occurrence. It shows that the deceased father of PW-2 had already died at the place of occurrence itself and, thereafter, they had gone to the police station at 6:30 a.m. and still no FIR was lodged. The contradictions writ large on the face of the statement of PW-1 and PW-2 as to the recording of the statement by police. One says that statement was recorded at home in Mashrak,



whereas the another says that they had gone to the police station directly from the place of occurrence.

27. Learned counsel submits that in a case of appeal against acquittal, this Court being an Appellate Court, may not interfere with the findings of the learned Trial Court which are so reasoned and based on proper appreciation of the evidences on the record.

Consideration

28. Having considered the rival submissions at the Bar and on going through the evidences available on record, which we have once again examined after hearing learned counsel at length, we are of the considered opinion that in this case, the prosecution witnesses, namely PW-1, PW-2 and PW-3 are highly inconsistent to the extent of making contradictory statements against each other. We have noticed the statement of PW-1 and PW-2 hereinabove as to how they have stated about recording of the statement by police. We have also noticed that both the parties are admitting enmity because of the matrimonial discord between the son and the daughter-in-law of the deceased and that is the reason why the prosecution suspected involvement of the wife of the son of the deceased and her family members.



29. We have further noticed that in this case, the I.O. had not found any sign of occurrence, he had not recorded as to the finding of any blood at the place of occurrence. He had also not found any *Khokha* at the place of occurrence even as the prosecution witnesses claimed so, but the I.O. has empathically denied. The defence documents which are Exhibits 'D-5' and 'D-6' are suggesting that the deceased was one of the defendants in a property suit which was going on with respect of a property which he had purchased at Bahrauli Bazar.

30. In this case, there is a delay of thirteen hours in lodging of the FIR. The occurrence took place at about 6:00 am on 06.04.2018, whereas the police was informed on the same day at 19:00 hours and FIR has been registered at the given time. As regards the delay in lodging of the FIR, the Hon'ble Supreme Court has observed in paragraph '12' of the judgment in case of **Meharaj Singh (L/Nk.) vs. State of U.P.** reported in **(1994) 5 SCC 188** as under:-

"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.”

The same view has been reiterated by the Hon’ble Supreme Court in the case of **Chotkau vs. State of U.P.** reported in (2023) 6 SCC 742. Paragraph ‘69’ of the judgment in the case of **Chotkau** (supra) reads as under:-

“69. On the question of compliance of Section 157(1) along with logical reasoning for doing so, the following



passage from the decision in Jafarudheen v. State of Kerala⁸ may be usefully quoted as under : (SCC p. 462, paras 28-29)”

“28. The jurisdictional Magistrate plays a pivotal role during the investigation process. It is meant to make the investigation just and fair. The investigating officer is to keep the Magistrate in the loop of his ongoing investigation. The object is to avoid a possible foul play. The Magistrate has a role to play under Section 159CrPC.

29. The first information report in a criminal case starts the process of investigation by letting the criminal law into motion. It is certainly a vital and valuable aspect of evidence to corroborate the oral evidence. Therefore, it is imperative that such an information is expected to reach the jurisdictional Magistrate at the earliest point of time to avoid any possible ante-dating or ante-timing leading to the insertion of materials meant to convict the accused contrary to the truth and on account of such a delay may also not only get bereft of the advantage of spontaneity, there is also a danger creeping in by the introduction of a coloured version, exaggerated account or concocted story as a result of deliberation and consultation. However, a mere delay by itself cannot be a sole factor in rejecting the prosecution's case arrived at after due investigation. Ultimately, it is for the court concerned to take a call. Such a view is expected to be taken after considering the relevant materials.”

31. While it is true that the prosecution case cannot be thrown away only on the ground of delay in lodging of the FIR, when we examine this aspect of the matter together with the

8. (2022) 8 SCC 440 : (2022) 3 SCC (Cri) 436]



evidence of the prosecution witnesses, particularly, PW-1, PW-2 and PW-3, we are of the considered opinion that they cannot be put in the category of wholly reliable witnesses. The appreciation of the evidences by the learned Trial Court cannot be said to be perverse. In such circumstance, being an Appellate Court, it would not be appropriate for this Court to take a different view so as to upturn the findings of the learned Trial Court.

32. We find no merit in the appeal. It is dismissed accordingly.

33. Let a copy of the judgment together with the trial court’s records be sent down to learned trial court.

(Rajeev Ranjan Prasad, J)

(Soni Shrivastava, J)

harsh/anand-

AFR/NAFR	
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