



REPORTABLE
IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S). 239 OF 2013

DEO PRASAD AND ANR.APPELLANT(S)

VERSUS

STATE OF UTTAR PRADESHRESPONDENT(S)

WITH
CRIMINAL APPEAL NO(S). 237 OF 2013
CRIMINAL APPEAL NO(S). 238 OF 2013
CRIMINAL APPEAL NO(S). 236 OF 2013

J U D G M E N T

Mehta, J.

1. Heard.

BACKGROUND OF THE CASE

2. The appellants herein¹ along with one Ram Dhani² were tried by the learned III Additional

¹ **Appellant-Accused No. 1 (Raj Kishore-** Appellant in Criminal Appeal No. 237 of 2013); **Appellant-Accused No. 2 (Hira Lal-** Appellant in Criminal Appeal No. 238 of 2013); **Appellant-Accused No. 3 (Raj Bux-** Appellant in Criminal Appeal No. 236 of 2013); **Appellant-Accused No. 5 (Deo Prasad-** Appellant No. 1 in Criminal Appeal No. 239 of 2013); and **Appellant-Accused No. 6 (Subedar-** Appellant No. 2 in Criminal Appeal No. 239 of 2013). Collectively, they are being referred to as “accused-appellants”.

² Died during the pendency of appeal before the High Court.

Sessions Judge, Gonda³, in Sessions Trial No. 242 of 1978 for the offences punishable under Sections 147, 148 and 302 read with 149 of the Indian Penal Code, 1860.⁴ *Vide* judgment of conviction and order of sentence dated 3rd June, 1981, the trial Court convicted the appellant-Accused Nos. 1, 2 and 3 for the offences punishable under Sections 148 and 302 read with 149 of IPC, and Ram Dhani, appellant-Accused Nos. 5 and 6 for the offences punishable under Sections 147 and 302 read with 149 of IPC and sentenced them in the terms indicated below: -

appellant-Accused No. 1, appellant-Accused No. 2 and appellant-Accused No. 3	
Section	Sentence
Section 148 IPC	Rigorous Imprisonment of 3 years
Sections 302 read with 149 of IPC	Life Imprisonment
Ram Dhani, appellant-Accused No. 5 and appellant-Accused No. 6	
Section 147 IPC	Rigorous Imprisonment of 2 years
Sections 302 read with 149 of IPC	Life Imprisonment

³ Hereinafter, being referred to as 'trial Court'.

⁴ For short, 'IPC'.

3. Being aggrieved, the accused-appellants preferred an appeal⁵ to the High Court of Judicature at Allahabad, Lucknow Bench⁶, for assailing their conviction and the sentences awarded to them. The learned Division Bench of the High Court, *vide* judgment and order dated 20th November, 2011, dismissed the appeal preferred by the accused-appellants and affirmed the judgment of conviction and order of sentence passed by the trial Court. However, the appeal in respect of co-accused, Ram Dhani stood abated, as he expired during the pendency of appeal before the High Court. The said judgment of the High Court is the subject matter of challenge in the present appeals by way of special leave.

4. At the outset, it may be noted that this Court granted bail to appellant-Accused Nos. 5 and 6 *vide* order dated 29th April, 2011 and to appellant-Accused Nos. 1 and 3 *vide* order dated 1st February, 2013. However, the prayer for suspension of sentence made on behalf of appellant-Accused Nos. 2 was

⁵ Criminal Appeal No. 418 of 1981.

⁶ Hereinafter, referred to as 'High Court'.

rejected *vide* order dated 1st February, 2013, in view of the fact that the role attributed to him was graver.

5. It is also relevant to note that Raj Kishore (appellant-Accused No. 1) and Deo Prasad (appellant-Accused No. 5) passed away during the pendency of the present appeals before this Court. In view thereof, Criminal Appeal No. 237 of 2013, preferred on behalf of Raj Kishore (appellant-Accused No. 1), and Criminal Appeal No. 239 of 2013, insofar as it pertains to Deo Prasad (appellant-Accused No. 5), stand abated.

FACTUAL MATRIX

6. Succinctly, the story of the prosecution as adumbrated in the First Information Report⁷ is that in the intervening night of 27th/28th June, 1977, a man intending to commit theft was apprehended at the house of the complainant, Raghav Ram (PW-1)⁸, situated in village Lalemau Pure Pundit, Police Station Colonelganj, District Gonda. The complainant (PW-1) along with the apprehended suspect proceeded to the police station in the

⁷ FIR No. 157 of 1977.

⁸ Hereinafter, being referred to as 'complainant (PW-1)'.

company of Ram Nath (PW-2), Badri Prasad, Ishwar Saran and Baksha Ram (the village *chowkidar*). After lodging the report, Badri Prasad, Ishwar Saran and the *chowkidar* returned home, while the complainant (PW-1) and Ram Nath (PW-2) proceeded towards *Bardhai Bazar* (cattle fair), where they met Harihar Saran, Babu Ram and Nand Lal Singh (PW-4).

7. Thereafter, at about 4:00 p.m., all of them started their return journey and around 4:30 p.m., they reached the western border of village Kanchanpur. At that time, the accused-appellants and Ram Dhani, armed with '*kanta*', '*ballam*' and '*lathi*', emerged from the side of the road where they were lying in ambush under a *bail* tree challenging the complainant party and raising cries of "*Mar lo saale ko*". The complainant (PW-1) and his companions raised an alarm and attempted to flee from the spot, but Harihar Saran⁹ could not escape and fell into the clutches of the assailants. It is alleged that the accused-appellants assaulted the deceased-victim with '*kanta*', '*ballam*' and '*lathi*'. Though the complainant (PW-1) and others

⁹ Hereinafter, being referred to as 'deceased-victim'.

attempted to rescue the deceased-victim, they could not succeed. In the meantime, villagers from Kanchanpur gathered at the spot, whereupon the accused-appellants along with Ram Dhani fled away towards the western side. When the villagers reached the spot, they found the deceased-victim lying on the roadside. Two bicycles allegedly belonging to the accused-appellants and Ram Dhani were found abandoned under the *bail* tree.

8. Pursuant thereto, on the dictation of Raghav Ram (PW-1), a written complaint¹⁰ was scribed by Ram Nath (PW-2) at the place of occurrence itself and the same was presented at Police Station Colonelganj at about 07:00 p.m. on the same day. Based on the said complaint, an FIR bearing Crime No. 157 of 1977 was registered against the accused-appellants and Ram Dhani for the offences punishable under Sections 147, 148, 149 and 302 of the IPC.

9. The investigation of the case was taken up by Sub-Inspector, Ram Shanker Dwivedi (PW-10), the first Investigating Officer¹¹, who was the first to reach

¹⁰ Exhibit Ka-1.

¹¹ Hereinafter, being referred to as 'first Investigating Officer (PW-10)'.

the place of occurrence. The dead body of Harihar Saran (deceased-victim) was located and inquest proceedings were commenced but could not be completed due to insufficient light. On the following morning, the inquest proceedings were completed and necessary documents including the inquest report¹², photo *lash*, challan *lash*, letter to the Chief Medical Officer, etc., were prepared. The dead body of Harihar Saran (deceased-victim) was subjected to autopsy by Dr. H.C. Srivastava (PW-3), who proved the post-mortem report¹³ noting details of the *ante-mortem* injuries found on the body. He opined that the cause of death was shock and haemorrhage as a result of the *ante-mortem* injuries and also gave the probable time of death and the nature of weapons which could have caused such injuries.

10. During the course of investigation, two bicycles allegedly belonging to the accused-appellants and one belonging to the deceased-victim were recovered from the spot.¹⁴ Blood-stained soil¹⁵ and plain soil

¹² Exhibit Ka-6.

¹³ Exhibit Ka-2.

¹⁴ Exhibit Ka-3 to Ka-5 and Material Object Nos. 1 to 3.

¹⁵ Material Object No. 4.

(*sada mitti*)¹⁶ were collected and a site plan¹⁷ was prepared. Statements of the witnesses were recorded. The first Investigating Officer (PW-10) was transferred in the meantime and thus, further investigation was entrusted to Shivdas Singh Sachan, the second Investigating Officer (PW-6)¹⁸, who recorded the statements of the remaining witnesses and upon completion of the investigation, submitted a chargesheet against the accused-appellants and Ram Dhani for the aforesaid offences in the Court of the jurisdictional Magistrate.

11. Since the case was exclusively triable by the Sessions Court, the Chief Judicial Magistrate, Gonda *vide* order dated 17th October, 1978 committed the case to the trial Court, which framed charges against the accused-appellants and Ram Dhani, to which they pleaded not guilty and claimed to be tried. In order to prove its case, the prosecution examined ten witnesses, exhibited 16 documents and 5 material objects. Raghav Ram (PW-1; Complainant), Ram Nath (PW-2; scribe of the FIR) and Nand Lal Singh (PW-4)

¹⁶ Material Object No. 5.

¹⁷ Exhibit Ka-11.

¹⁸ Hereinafter, being referred to as 'second Investigating Officer (PW-10)'.

were projected as eye-witnesses to the occurrence. Ram Khilawan (PW-5), father of the deceased-victim, was examined to establish the motive for the offence. Shivdas Singh Sachan, the second Investigating Officer (PW-6) proved the chargesheet and the investigation conducted by him. Ram Vilas (PW-7) proved the recovery of bicycles and seizure of blood-stained earth and was also a witness to the inquest proceedings. Constable Suresh Chandra Yadav (PW-8) proved the general diary entries¹⁹ and the *chik* FIR²⁰. Head Constable Brij Bihari Pandey (PW-9) proved the deposit and production of the bicycles. Ram Shanker Dwivedi, the first investigating Officer (PW-10) deposed about the steps of investigation conducted by him.

12. By resorting to the procedure under Section 313 of the Code of Criminal Procedure, 1973,²¹ the accused-appellants and Ram Dhani were questioned and confronted with the incriminating circumstances appearing against them in the case put up by the prosecution. All the accused-persons denied the

¹⁹ Exhibit Ka-12 and Ka-13.

²⁰ Exhibit Ka-14.

²¹ For short, "CrPC".

correctness of the prosecution case and claimed that they had been falsely implicated owing to prior enmity. Appellant-Accused No. 6 (Subedar) claimed to be related to appellant-Accused No. 5 (Deo Prasad). Appellant-Accused No. 5 (Deo Prasad) stated that his father had contested the elections for village *pradhan* against the deceased-victim. The deceased-victim lost the election due to which, he had been falsely implicated in the present case. Accused-Ram Dhani (deceased) stated that he had enmity with Shiv Saran, the brother of Raghav Ram (PW-1; Complainant) and Ram Khilawan (PW-5; father of the deceased-victim). Appellant-Accused No. 1, 2 and 3 (Raj Kishore, Hira Lal and Ram Bux) also took similar pleas of false implication due to animosity.

13. In defence, the accused persons examined 1 witness, Badal (DW-1), who claimed that on the morning of the incident, he had seen 10 to 15 persons standing near the pathway looking at the dead body of deceased-victim and that no one from the family of the deceased-victim was present at the spot. Two court witnesses, Amresh Singh (CW-1) and Vishwanath (CW-2), were also examined to establish

the ownership of the bicycles recovered from the place of occurrence.

14. The trial Court, upon appreciating the arguments advanced by the learned Public Prosecutor and the defence counsel and upon detailed analysis of the oral and documentary evidence available on record, found the accused-appellants as well as Ram Dhani guilty of the charges framed against them and convicted and sentenced them *vide* judgment of conviction and order of sentence dated 3rd June, 1981, in the terms indicated *supra*.

15. Dissatisfied with the judgment of conviction and order of sentence passed by the trial Court, the accused-appellants along with Ram Dhani preferred an appeal under Section 374(2) CrPC to the High Court challenging their conviction and sentences awarded to them. During the pendency of the said appeal, Ram Dhani expired and consequently, the appeal in respect of the said co-accused stood abated. The appeal in respect of the accused-appellants was dismissed by the High Court *vide* judgment and order dated 20th November, 2011, which is the subject

matter of challenge in the present appeals by way of special leave.

SUBMISSIONS ON BEHALF OF THE ACCUSED-APPELLANTS

16. Learned counsel representing the accused-appellants assailed the impugned judgment of the High Court as well as the judgment of conviction and order of sentence passed by the trial Court on the following grounds: -

- a.** That the High Court failed to consider, or rather omitted to consider, that the alleged occurrence is stated to have taken place in the late hours of the day and even the inquest proceedings were carried out on the next morning. It was urged that the FIR was actually not registered at the projected time and the entire prosecution story was developed *ex post facto* after conducting the investigation, thereby creating serious doubts about the genuineness of the FIR and the involvement of the accused-appellants. It was further submitted that, despite the alleged occurrence having been reported on 28th June, 1977, neither the family members of the deceased-victim nor the police

authorities took any steps to safeguard the dead body, which remained lying exposed at the place of occurrence throughout the intervening night. Considering the rural and orthodox background of the parties, it is wholly unnatural that the victim's close family members neither checked on his condition nor took steps to secure the dead body from exposure to the elements and animals throughout the night, thereby lending credence to the defence plea that the incident did not occur at the time and in the manner alleged by the prosecution.

- b.** That the High Court failed to appreciate that even the police officials to whom the occurrence was allegedly reported on 28th June, 1977 did not take any steps to safeguard the dead body or preserve the scene of occurrence. It was further submitted that no police guard was posted near the dead body despite the seriousness of the alleged offence. Considering the proximity of the police station to the place of occurrence, which was situated at a distance of merely 3½ miles, it is wholly inexplicable that no effort was made to remove the dead body to the hospital mortuary, and that it

was allowed to remain unattended at the spot throughout the intervening night. Such inaction is wholly inconsistent with the routine police procedure and natural conduct, and casts serious doubt on the prosecution version regarding the time and manner of occurrence, and so also the registration of the FIR, thereby supporting the defence plea that the FIR was registered post investigation after due deliberation and consultation. The delay in carrying out post-mortem which was conducted as late as on 30th June, 1977 further fortifies the fact of the FIR being registered much after the investigation had already been conducted.

- c. That the High Court failed to appreciate that there existed deep-rooted political rivalry and animosity between the accused-appellants and the deceased-victim inasmuch as father of appellant-Accused No. 5 had contested the election of village *Pradhan* against the deceased-victim, who had lost the election. This political enmity provided the complainant party ample motive for false implication. It was further submitted that the other accused persons also had long-standing

prior enmity with Shiv Saran, the brother of Raghav Ram (PW-1; Complainant) and Ram Khilawan (PW-5; father of the deceased-victim). These crucial circumstances, clearly demonstrating the existence of animosity between the parties, were noticed by the trial Court but were completely ignored by the High Court while affirming the conviction.

- d.** That the High Court failed to appreciate that the prosecution story regarding the presence of the so-called eye-witnesses at the crime scene is highly improbable, unnatural, and inherently unbelievable. It was urged that the post-mortem examination of the deceased was conducted only on 30th June, 1977, and the symptoms noticed by the medical jurist, Dr. H.C. Srivastava (PW-3), on the dead body clearly support the defence case that the incident had, in fact, occurred much later than alleged and that the prosecution story was subsequently orchestrated to establish the presence of the so-called eye-witnesses at the place of occurrence. The medical jurist admitted that the death could have occurred between one and a half to two and a half days prior to the post-

mortem, thereby creating serious doubt regarding the date and time of the incident as stated in the FIR. The conduct attributed to the alleged eye-witnesses is equally unnatural, inasmuch as despite claiming to have witnessed a fatal assault upon a close associate, they neither took effective steps to secure the dead body nor did the police officials ensure the prompt initiation of the investigative formalities, both being strong indicators casting grave doubt upon their claimed presence at the place of occurrence and substantially undermine the credibility of the prosecution case.

- e. That the High Court completely glossed over the material inconsistencies and contradictions in the testimony of prosecution witnesses. The witnesses of fact examined by the prosecution are interested and partisan witnesses and no independent, credible or neutral witness has been produced to establish the presence of the accused-appellants at the place of occurrence. The trial Court itself entertained doubts regarding the prosecution version and yet proceeded to convict the accused

on such flimsy ocular testimony of interested witnesses.

- f.** That the High Court failed to appreciate that the prosecution has not been able to establish any logical or convincing motive for the alleged offence. No credible explanation has been offered as to why the accused-appellants would commit such a grave offence in broad daylight in the presence of several witnesses, thereby rendering the prosecution story inherently doubtful. It was further submitted that the prosecution version itself indicates that the complainant party comprised several persons accompanying the deceased-victim and, therefore, it is inherently improbable that the accused-appellants would selectively target only the deceased-victim while leaving the others completely unharmed. This circumstance strikes at the very genesis of the prosecution narrative and renders the alleged manner of occurrence doubtful.
- g.** That the High Court failed to appreciate that no recovery of any weapon was effected from the accused-appellants or from the place of occurrence. Though it was alleged that the

accused-appellants were armed with '*kanta*', '*ballam*' and '*lathi*', no such weapon was recovered. No injury on the body of the deceased-victim could have been caused by a *lathi*. On the contrary, the medical jurist, Dr. H.C. Srivastava (PW-3) admitted that all the injuries to the deceased-victim were caused by sharp-edged weapons, which were never recovered by the Investigating Officers.

- h.** That the High Court failed to consider that the recovery of three bicycles from the spot does not incriminate the accused-appellants in any manner. It was further urged that the prosecution's attempt to attribute ownership of the bicycles to the accused-appellants is wholly speculative and unsupported by reliable evidence, as no witness examined during the investigation could establish, even with a semblance of certainty, that the bicycles belonged to them. Significantly, the ownership and role of the person to whom the third bicycle allegedly belonged were never investigated, thereby rendering the alleged recovery meaningless, devoid of evidentiary value, and wholly unreliable.

- i. That the High Court failed to appreciate that the appellant-Accused No. 6, i.e., Subedar, was a minor at the time of the alleged incident and was therefore entitled to the benefit of the Juvenile Justice Act. The High Court completely overlooked this crucial legal issue and mechanically affirmed the conviction of the said accused without examining the plea of juvenility, which goes to the very root of the matter. The sentence imposed upon the appellant-Accused No. 6 is thus illegal, void and unsustainable in law.
- j. That the High Court failed to appreciate that the investigation itself was tainted, highly biased and unreliable. Multiple case diaries were prepared and the investigation appeared to have been manipulated for the purpose of *ante-dating* the proceedings, which completely erodes the credibility of the prosecution's case. It was further submitted that despite the incident having occurred at about 04:00 p.m. in broad daylight during peak summer, with sufficient time and visibility, no plausible explanation was offered for not conducting the inquest immediately and for delaying the post-mortem examination till the

third day. Such unexplained and inordinate delay in undertaking crucial stages of investigation, including the preparation of *Panchayatnama*, demonstrate non-adherence to due procedure and lack of scientific investigation, and therefore, the benefit of such serious lapses ought to have been extended to the accused-appellants. It was further urged that had the occurrence been reported at the time alleged by the prosecution, there was no justification whatsoever for postponing the inquest proceedings till the next day and for allowing the dead body to remain unattended at the crime scene throughout the night. These circumstances lend credence to the defence plea that the FIR was *ante-timed* and that the prosecution version was subsequently tailored to fit the investigation.

- k.** That the High Court failed to appreciate that the medical evidence does not corroborate the ocular version and does not rule out the possibility that the murder took place much later in the darkness of night rather than at the time alleged by the prosecution. The post-mortem findings, including absence of food in the alimentary canal and presence of faecal matter in the large intestine,

clearly indicate that the deceased-victim had remained in a state of repose for several hours after his last meal. These facets, considered in conjunction with the opinion of Dr. H.C. Srivastava (PW-3), probabalize the defence version that the occurrence took place in the wee hours of the morning and not during afternoon as alleged by the prosecution. Such contradictions strike at the very root of the prosecution case and entitles the accused-appellants to the benefit of doubt.

1. That the High Court failed to appreciate that the cumulative effect of the unnatural conduct of the alleged eye-witnesses, the failure to secure the dead body, the unexplained delay in conducting the inquest proceedings, the doubtful timing of the FIR and the inconsistencies emerging from the medical evidence create a serious dent in the prosecution case. These circumstances, viewed holistically, render the prosecution version highly doubtful and entitle the accused-appellants to the benefit of doubt in accordance with the settled principles of criminal jurisprudence.

On these grounds, learned counsel representing the accused-appellants submitted that the impugned judgment passed by the High Court, as well as the judgment of conviction and order of sentence passed by the trial Court, are vitiated as the same suffer from non-consideration and misappreciation of material evidence on record and have resulted in grave miscarriage of justice, and therefore, deserve to be set aside.

SUBMISSIONS ON BEHALF OF THE RESPONDENT-STATE: -

17. Mr. Namit Saxena, learned counsel for the respondent-State of Uttar Pradesh supported the impugned judgment and urged that the same does not call for any interference by this Court, *inter alia*, on the following grounds: -

- a.** That the impugned judgment is well-reasoned and unassailable both on facts and in law, inasmuch as the prosecution case is fully supported by reliable ocular as well as medical evidence. The testimonies of Raghav Ram (PW-1; Complainant), Ram Nath (PW-2) and Nand Lal Singh (PW-4), who were named in the promptly lodged FIR, are

consistent, natural and cogent and clearly describe the entire occurrence and specifically highlight the participation of the accused-appellants in the alleged offence.

- b.** That the medical evidence fully corroborates the ocular version. Dr. H.C. Srivastava (PW-3) proved the post-mortem report and categorically deposed that the deceased-victim had sustained as many as 17 *ante-mortem* injuries on various parts of his body, including contusions, punctured wounds and abrasions. The internal examination revealed multiple fractures of the skull, particularly on the right side of the head, with brain matter protruding through a punctured wound. The medical jurist, Dr. H.C. Srivastava (PW-3), opined the cause of death to be shock and internal haemorrhage resulting from the said *ante-mortem* injuries.
- c.** That the significant number, nature and distribution of injuries on different parts of the deceased-victim's body unmistakably indicate a brutal and concerted heinous assault involving multiple assailants, thereby fortifying the prosecution case. The medical jurist, Dr. H.C.

Srivastava (PW-3), did not rule out the use of the weapons suggested by the prosecution, namely a blunt object resembling a '*lathi*', a penetrating sharp-edged weapon similar to a '*ballam*', and a sharp-edged pointed weapon like a '*kanta*'. Though, he initially expressed doubt regarding the '*kanta*', he subsequently acknowledged the possibility of injuries being caused by a sharp-edged pointed weapon. The ocular testimony of Raghav Ram (PW-1; Complainant), Ram Nath (PW-2) and Nand Lal Singh (PW-4), consistently establishes that the injuries were inflicted by the weapons attributed to the accused persons, leaving no room for doubt that Harihar Saran was the victim of a deliberate and coordinated act of violence leading to his death.

- d.** That the recovery of two bicycles belonging to the accused-appellants from near the dead body of the deceased-victim lends further credence to the prosecution story and constitutes an important incriminating circumstance. The said recoveries were duly proved through Ram Vilas (PW-7) and Constable Suresh Chandra Yadav (PW-8) and were accepted by the trial Court as well as affirmed by

the High Court, thereby establishing the presence of the accused-appellants at the place of occurrence.

- e. That the plea of political rivalry raised by the accused-appellants is wholly irrelevant to discard the otherwise trustworthy evidence of the prosecution witnesses. Existence of prior enmity, far from weakening the prosecution case, in fact provides motive for the crime and cannot by itself be a ground to reject truthful testimony of eye-witnesses, particularly in a serious offence like murder.
- f. That both the trial Court and the High Court have meticulously appreciated the entire evidence on record and recorded well-reasoned concurrent findings of guilt against the accused-appellants. No perversity, illegality or miscarriage of justice has been demonstrated which would warrant interference by this Court in exercise of its jurisdiction under Article 136 of the Constitution of India.

On these grounds, learned counsel for the respondent-State prayed that the present appeals be dismissed.

18. However, upon being specifically queried by this Court with regard to the claim of juvenility raised on behalf of appellant–Accused No. 6, namely Subedar, learned counsel for the respondent–State fairly conceded that as per the custody certificate placed on record, the said accused was below the age of 18 years on the date of the alleged occurrence.

DISCUSSION AND ANALYSIS

19. We have given our anxious and thoughtful consideration to the submissions advanced at the Bar and have carefully perused the impugned judgments and the material available on record.

20. Before proceeding to deal with the rival contentions advanced on behalf of the parties on merits, it would be appropriate to briefly advert to and undertake a conspectus of the testimonies of the material prosecution witnesses, in order to assess the credibility of their versions and the veracity of the case set up by the prosecution.

I. Ocular Testimony and witnesses of fact

A. Raghav Ram (PW-1; Complainant)

21. Raghav Ram (PW-1; Complainant), in his examination-in-chief, stated that on the day of the

incident, he had initially gone to the police station in the morning along with Ram Nath (PW-2), Badri Prasad, Baksha Ram (*chowkidar*) and Ishwar Saran to lodge a report regarding a thief who had been apprehended from his house during the previous night. After returning from the police station, he and Ram Nath (PW-2) proceeded to the cattle fair held near the police station, where they met Nand Lal Singh (PW-4), Babu Lal and the deceased-victim, and thereafter all of them went to Colonelganj market for purchasing household articles. While returning to their village on foot at about 4:30 p.m., the deceased-victim was walking slightly ahead of them with his bicycle. When they reached near village Kanchanpur, the accused persons namely Raj Kishore (appellant-accused No.1), Hira Lal (appellant-accused No.2), Ram Dhani (accused No.4), Raj Bux (appellant-accused No.3), Deo Prasad (appellant-accused No.5), and Subedar (appellant-accused No.6), who were lying in ambush under a *bail* tree, raised a war cry to kill (*maro-marro*) and rushed towards them. Out of fear, the complainant (PW-1) and the others fled from the spot, but the deceased-victim, being bogged down by the bicycle, could not escape and was belaboured

by the accused persons with '*kanta*', '*ballam*' and '*lathi*'. The complainant (PW-1) stated that Raj Kishore and Raj Bux were armed with '*kanta*', Hira Lal was carrying a '*ballam*', and the remaining accused were armed with '*lathis*'. He further stated that upon hearing their hue and cry, villagers gathered at the spot, whereupon the accused persons fled away. Shortly thereafter, he returned to the place of occurrence and found the deceased-victim lying prone without any signs of life. He then went to the police station along with Ram Nath (PW-2), got the written report scribed on his dictation and lodged the FIR.

22. In his cross-examination, the complainant (PW-1) admitted that Shiv Saran, is his real brother and that about three months prior to the present incident, criminal proceedings had been initiated between appellant-Accused No. 1 (Raj Kishore) and Ram Khilawan (PW-5; father of the deceased-victim), who is his brother-in-law. He stated that in the said case, both sides had lodged reports against each other and that several persons including his brother Shiv Saran and witness Ram Nath (PW-2) were named as accused in the report lodged by appellant-Accused

No. 1, while in the cross-case filed by Ram Khilawan (PW-5), appellant-Accused No. 1 (Raj Kishore), appellant-Accused No. 2 (Hira Lal), appellant-Accused No. 3 (Raj Bux), and Ram Dhani (accused No. 4) were named as accused persons. He further admitted that both the said cases were still pending before the Court. He also acknowledged that he had dictated the complaint which was scribed by Ram Nath (PW-2) and that copy of the report was not furnished to him at the police station. He admitted that he was not aware of the exact contents or the language used therein and conceded that he was unable to either speak or write in such formal manner. He further stated that only Ram Nath (PW-2) had accompanied him, and that Ram Gopal and Ram Achhaiver had not gone with him. He expressed his inability to explain how their names had been recorded as his companions in the records of the Police Station. He admitted that he had dictated the facts relating to their visit from the cattle fair to Colonelganj market and the purchase of household goods, as well as the fact that the deceased-victim was carrying a bicycle, but expressed his inability to explain why these details did not find mention in the

FIR. He further stated that the police did not record his statement at the spot and that he was unsure about the timing of the inquest proceedings and arrival of the police. However, he emphatically denied the suggestion that he had not witnessed the incident or that the murder took place during the night. He reaffirmed that he had seen the accused persons assaulting the deceased-victim with his own eyes.

B. Ram Nath (PW-2)

23. The testimony of Ram Nath (PW-2) is broadly on the same lines as that of Raghav Ram (PW-1). He deposed that on the day of the incident, he had accompanied the complainant (PW-1) to the police station in the morning in connection with an incident of theft and thereafter both of them went to the cattle fair, where they met Nand Lal Singh (PW-4), Babu Lal and the deceased-victim. From there, all of them proceeded to Colonelganj market where they purchased household articles and were returning to their village on foot at about 04:30 p.m. When they reached near village Kanchanpur, the accused persons namely Raj Kishore, Hira Lal, Raj Bux, Ram Dhani, Subedar and Deo Prasad, who were sitting

under a *bail* tree, suddenly rushed towards them raising an exhortation to kill the deceased-victim. The witness (PW-2) stated that Raj Kishore and Raj Bux were armed with '*kanta*', Hira Lal was carrying a '*ballam*', and the remaining accused were armed with '*lathis*'. Out of fear, he and the others ran away, but the deceased-victim could not escape and was belaboured by the accused persons. On hearing their hue and cry, villagers gathered and the accused fled away, leaving two bicycles at the spot. Thereafter, he accompanied the complainant (PW-1) to the police station and scribed the written complaint on the dictation of the complainant (PW-1), which he identified as Exhibit Ka-1.

24. In his cross-examination, the witness (PW-2) admitted that he had scribed the report precisely as dictated by the complainant (PW-1) and had not added any facts on his own. He stated that he knew how to read and write and that this was the only report he had ever written. The facts regarding the deceased-victim having a bicycle had not been written in the complaint since the complainant (PW-1) had not dictated the same. He admitted that his statement was not recorded by the first Investigating

Officer (PW-10) on the night of the occurrence and that the inquest proceedings were conducted on the next morning. He further stated that he never told the first Investigating Officer (PW-10) that the complainant (PW-1) had gone alone to the police station to lodge the report and expressed his inability to explain why the said officer recorded such fact in the case diary. He also stated that he could not explain why the fact relating to the accused persons having left their bicycles at the spot was not mentioned in his statement recorded by first Investigating Officer (PW-10). However, he categorically denied the suggestion that no bicycles were left by the accused at the place of occurrence or that he was deposing about the said fact on suggestion of someone else. He also admitted that criminal proceedings had earlier taken place between Ram Khilawan (PW-5; father of the deceased-victim) and appellant-Accused No. 1, in which he had also sustained injuries. However, he denied the suggestion that the incident had taken place during the night or that the FIR was drafted later on the instructions of the police. He emphatically denied that he was deposing falsely due to enmity and

reaffirmed that he had personally witnessed the assault on the deceased-victim.

C. Nand Lal Singh (PW-4)

25. The testimony of Nand Lal Singh (PW-4) is broadly on the same lines as that of Raghav Ram (PW-1). He deposed that on the day of the incident, he had gone alone to the cattle fair where he met the deceased-victim, complainant (PW-1), Ram Nath (PW-2) and Babu Lal. Thereafter, all of them proceeded to Colonelganj market for purchasing household articles and after taking refreshments, they started returning towards their village at about 04:00-04:30 p.m. The deceased-victim was pulling a cycle with a jackfruit placed on it, while the rest were walking on foot. When they reached near village Kanchanpur, the accused persons, namely, Hira Lal, Raj Kishore, Raj Bux, Deo Prasad, Subedar and Ram Dhani, were seen sitting under a *bail* tree with two bicycles lying nearby. The witness (PW-2) stated that Raj Kishore and Raj Bux were armed with '*kanta*', Hira Lal was carrying a '*ballam*', and the remaining accused were armed with '*lathis*'. The accused persons exhorted by saying that "*he is the Harihar*

Saala who implicates all of us in all cases (sic) and implicates thieves also” and saying so, they started assaulting the deceased-victim. Being unarmed, the witness (PW-4) and the others stepped back out of fear and raised an alarm. Upon hearing their cries, villagers gathered, whereupon the accused persons fled away. The witness (PW-4) returned to the spot and found the deceased-victim lying dead. He further stated that he remained at the place of occurrence thereafter, while Raghav Ram (PW-1) and another person, whom he initially identified as Maharaj Ram, left for lodging the report.

26. In his cross-examination, the witness (PW-4) admitted that there was long-standing enmity between the family of the deceased-victim and the accused persons, including previous criminal litigation and rivalry over village elections. He stated that he was aware of these disputes as their villages were adjacent to one another. He admitted that he had not personally witnessed the earlier quarrels and was aware of them only through hearsay. He further stated that he could not recall when his statement was recorded by the police and that he had not volunteered certain details such as taking

refreshments or the deceased-victim purchasing a jackfruit, since the second Investigating Officer (PW-6) had not specifically asked him about these facts. He also admitted that he had not mentioned before the police the exact words allegedly used by the accused persons while assaulting the deceased-victim. However, he denied the suggestion that he was not present at the spot and categorically maintained that he had witnessed the assault on the deceased-victim with his own eyes.

D. Ram Khilawan (PW-5; father of the deceased-victim)

27. Ram Khilawan (PW-5; father of the deceased-victim), in his examination-in-chief, stated that there existed long-standing enmity between his family and the accused persons. He deposed that elections for the post of village *Pradhan* had taken place in which Ram Karan, father of appellant-Accused No. 5 (Deo Prasad), was a candidate and that his son (deceased-victim) had lost the election, which led to political rivalry between the parties. He further stated that earlier also, criminal proceedings had been initiated between him and Ram Karan, which further

aggravated the hostility. He also referred to another incident involving one Jagannath Shukla, wherein the accused persons had assaulted the deceased-victim and Jagannath Shukla. His son (deceased-victim) was a witness in that case, due to which the accused persons bore deep grudge against his son. He stated that these prior instances gave motive to the accused persons who had killed his son.

28. In his cross-examination, the witness (PW-5) admitted that his son had lost elections on more than one occasions and that no election petition was filed by him. He acknowledged that criminal proceedings had indeed been initiated between him and Ram Karan nearly two to three decades prior, in which they were initially convicted but later acquitted in appeal. He further denied that his son was managing the business of one Malkhan Singh or that any money orders were being received in his son's name. He stated that he had no knowledge about the personal affairs of Malkhan Singh or his family members and denied the suggestion that the daughter of Malkhan Singh had mourned at the dead body of his son (deceased-victim). He further stated that the Investigating Officer had not recorded his

statement and denied the suggestion that he was deposing falsely due to enmity.

E. Ram Vilas (PW-7)

29. Ram Vilas (PW-7), in his examination-in-chief, stated that he was present at the place of occurrence on the western side of village Kanchanpur, from where the first Investigating Officer (PW-10) recovered the bicycle of the deceased-victim. He deposed that several articles including a jack-fruit, a bag, a lock, a *kurta* and a bottle of medicine were found on the bicycle and the same were taken into custody by the first Investigating Officer (PW-10), who prepared the recovery memo in his presence and obtained his signatures thereon. He further stated that plain soil and blood-stained soil were also recovered from the spot and sealed in boxes in his presence. He identified his signatures on the recovery memos. He also stated that two other bicycles were found lying beneath the *bail* tree, which were seized by the first Investigating Officer (PW-10) and memos were prepared. He further deposed that he acted as a *panch* witness during the inquest proceedings and that the inquest report, photo *lash*, challan *lash*,

letter to the Chief Medical Officer and the sample seal were prepared in his presence and signed by him. He also stated that the site plan was prepared before him by the first Investigating Officer (PW-10) and he identified the same.

30. In his cross-examination, the witness (PW-7) stated that he resided about 5-6 miles away from the place of occurrence and that no one had called him, but he had himself reached the spot on hearing about the incident. He admitted that he is the nephew of Nand Lal Singh (PW-4) and had good relations with the deceased-victim and that several persons including his uncle had also reached the spot. He stated that the first Investigating Officer (PW-10) did not record his statement during investigation. **He also stated that the dead body was moved after about 2-3 hours and that he left the place of occurrence around noon.** However, he denied the suggestion that he had not gone to the place of occurrence or that his signatures were taken at the police station.

II. Medical Jurist

F. Dr. H.C. Srivastava (PW-3)

31. Dr. H.C. Srivastava (PW-3; Medical Officer, District Hospital, Gonda), in his examination-in-chief, stated that he had conducted the post-mortem examination on the dead body of the deceased-victim at about 01:30 p.m. on 30th June, 1977. He found that *rigor mortis* had passed off and the body was swollen. He noticed as many as 17 *ante-mortem* injuries on various parts of the body including abrasions, contusions, lacerated and punctured wounds, particularly on the skull, face, chest, back, arms and thighs. On internal examination, he found multiple fractures of the skull bones, with brain matter protruding through some of the punctured wounds. Fractures of ribs and rupture of the right lung were also noticed. The stomach and small intestine were empty, while faecal matter was present in the large intestine. In his opinion, the cause of death was shock and haemorrhage as a result of the aforesaid *ante-mortem* injuries. He further stated that the death could have occurred about two days prior to the post-mortem and that such injuries could have been caused by weapons like '*lathi*' and '*ballam*', and also by a '*kanta*' if it was sharp and pointed and used with sufficient force.

32. In his cross-examination, the medical jurist (PW-3) stated that the punctured wounds on the skull were more likely with a sharp and pointed weapon and that multiple fractures could not ordinarily be caused by a sharp cutting weapon alone. He admitted that he could not give a definite opinion regarding the exact time taken in digestion of food, though he stated that normally vegetarian food remains in the stomach for about 4 to 6 hours and in the small intestine for 6 to 12 hours. He further admitted that the death could have occurred within a range of one and a half to two and a half days prior to the post-mortem. He also stated that some of the punctured wounds might have been caused by a blunt pointed weapon and that it was possible that a single weapon could have caused multiple punctured injuries on the skull and ear.

III. Investigating Officers and Police Witnesses

G. Shivdas Singh Sachan (PW-6; second Investigating Officer)

33. Shivdas Singh Sachan (PW-6; second Investigating Officer), in his examination-in-chief, stated that the investigation of the case was assigned

to him on 6th August, 1977. He deposed that upon taking over the investigation, he recorded the statement of Nand Lal Singh (PW-4) and noted the conclusion of the post-mortem in the case diary. He further stated that after recording the statements of two accused persons, namely appellant-Accused No. 5 (Deo Prasad) and appellant-Accused No. 6 (Subedar), he forwarded the chargesheet.

34. In his cross-examination, second Investigating Officer (PW-6) stated that he had recorded the statement of only one witness, namely, Nand Lal Singh (PW-4). He denied the suggestion that the statement of Nand Lal Singh (PW-4) recorded by him was fabricated or falsely entered in the case diary.

H. Constable Suresh Chandra Yadav (PW-8)

35. Constable Suresh Chandra Yadav (PW-8), in his examination-in-chief, stated that he was posted at Police Station Colonelganj and was familiar with the handwriting and signatures of Head Constable Keshri Nandan. He proved the General Diary entries dated 28th June, 1977 and 29th June, 1977, including the relevant *rapat* entries and the *chik* FIR, and identified the handwriting of the concerned police

officials. He also produced the sealed boxes containing plain and blood-stained soil from the *malkhana*.

36. In his cross-examination, the witness (PW-8) stated that the arrival and departure entries of the first Investigating Officer (PW-10) and the seized cycle were recorded in the General Diary. He admitted that no document was prepared in his presence but denied that the General Diary entries were fabricated.

I. Head Constable Brij Bihari Pandey (PW-9)

37. Head Constable Brij Bihari Pandey (PW-9), in his examination-in-chief, stated that he was carrying the *malkhana* register of Police Station Colonelganj and that two broken bicycles were deposited in the *malkhana* in connection with Case Crime No. 157 of 1977. He identified the relevant *malkhana* register entries and produced both bicycles before the court.

38. In his cross-examination, the witness (PW-9) stated that the bicycles were already in a damaged condition when they were deposited and handed over to him. He admitted that no entry was made in the handwriting of the first Investigating Officer (PW-10)

but denied the suggestion that recovery was fabricated or planted.

J. Ram Shanker Dwivedi (PW-10; first Investigating Officer)

39. Ram Shanker Dwivedi (PW-10; first Investigating Officer), in his examination-in-chief, stated that on 28th June, 1977, he was posted as Sub-Inspector at Police Station Colonelganj and had taken up the investigation of the case on the same day. He deposed that he reached the place of occurrence at about 09:00 p.m. but due to lack of illumination, he could not conduct the inquest proceedings and therefore, completed the inquest the following morning. He stated that he prepared the inquest report, seized the bicycle of the deceased-victim along with articles found on it, recovered blood-stained and plain soil, seized two bicycles allegedly left by the accused persons, got taken the photo *lash*, prepared the challan *lash*, sample seal, letter for post-mortem and the site plan, and proved all the material documents prepared by him. He further stated that he arrested some of the accused persons, namely, appellant-Accused Nos. 1, 2 and 3

as well as Ram Dhani and recorded their statements before being transferred.

40. In his cross-examination, the first Investigating Officer (PW-10) admitted that in the General Diary entry regarding lodging of the case, made by Head Constable Keshri Nandan, only the arrival of Ram Gopal (father-in-law of deceased-victim) and Ram Achhaiver (brother of deceased-victim), resident of village Lalemau, along with the complainant, was recorded. He further admitted that except for the complainant (PW-1), no other eye-witness met him at the spot. He also admitted that he did not record the statements of some persons whose names appeared in the FIR and that certain statements were recorded in different case diaries. He stated that he did not mention about the deceased-victim's bicycle in the site plan but only in the recovery memo. However, he denied the suggestion that he had not visited the place of occurrence or that the FIR, inquest report and recoveries were fabricated. He categorically denied the suggestion that the deceased-victim had been killed during the darkness of the night.

41. Having undertaken a comprehensive examination of the testimonies of the material prosecution witnesses, we shall now proceed to evaluate the rival submissions advanced on behalf of the parties. At this stage, it may be noted that the conviction of the accused-appellants and Ram Dhani rests substantially on the ocular account furnished by Raghav Ram (PW-1), Ram Nath (PW-2) and Nand Lal Singh (PW-4), which, according to the prosecution, stands corroborated by the medical evidence and material collected during investigation. The defence, however, has questioned the very genesis of the prosecution case and has urged that the occurrence did not take place at the time and in the manner alleged; that the FIR was *ante-timed*; and that the presence of the so-called eye-witnesses at the place of occurrence is highly doubtful. It is in the backdrop of these rival contentions that the evidence on record is required to be scrutinized so as to determine whether the prosecution has succeeded in establishing the guilt of the accused-appellants beyond reasonable doubt.

42. At first blush, the evidence of the eye-witnesses, namely, Raghav Ram (PW-1), Ram Nath (PW-2) and

Nand Lal Singh (PW-4), appears consistent on the broad features of the occurrence and may create an impression that they were present at the spot and witnessed the assault on the deceased-victim. However, the defence has come out with a fervent and persistent plea that none of these witnesses were actually present at the place of occurrence; that the incident did not take place at the time and in the manner alleged by the prosecution; and that the FIR was *ante-timed* and the prosecution story was subsequently developed so as to falsely implicate the accused persons.

43. In order to test the correctness of the defence plea and verify whether the FIR was in fact registered at the time alleged by the prosecution, it is necessary to scrutinize the FIR itself and the sequence of events immediately following the occurrence so as to ascertain whether any suspicious circumstances surround its registration. This issue assumes significance because, according to the prosecution, the incident took place at about 04:30 p.m. on 28th June, 1977; the FIR was registered at about 07:10 p.m. on the same day; the inquest proceedings were conducted on 29th June, 1977; and the post-mortem

examination was ultimately conducted on 30th June, 1977 at about 01:30 p.m.

44. A striking and glaring circumstance that unmistakably emerges from the record of the case is that neither the family members of the deceased-victim nor the police officials took any meaningful steps to preserve the dead body, which admittedly remained lying at the place of occurrence throughout the intervening night. As per the prosecution case, information regarding the incident had already reached the police station by 07:10 p.m. on 28th June, 1977. The police station was situated at a distance of merely about 3½ miles from the place of occurrence. Admittedly, the police officers reached the crime scene soon after registration of the FIR. Even if it is accepted that the inquest proceedings could not be conducted on account of paucity of light, there is no explanation whatsoever, nor any rhyme or reason, as to why the police authorities did not shift the dead body to a secure place or make arrangements for its preservation. Equally inexplicable is the conduct of the family members and villagers who, according to the prosecution itself, had gathered at the spot soon after the incident but

showed no interest whatsoever in guarding the dead body of a close relative.

45. The situation becomes even more doubtful, and lends further credence to the defence theory, when it is noticed that although the inquest proceedings were conducted on 29th June, 1977, the post-mortem examination of the deceased-victim was carried out only on 30th June, 1977 at about 01:30 p.m. The record is conspicuously silent, and there is no discernible justification, as to why almost two days elapsed and why the Investigating Officer took nearly 48 hours to get the post-mortem examination conducted on the dead body, despite the incident having allegedly been reported on 28th June, 1977 itself. No plausible explanation for such inordinate delay has been forthcoming from the prosecution. This circumstance, when considered alongside the unusual manner in which the dead body was left unattended throughout the night, lends considerable support to the defence plea that the prosecution version regarding the time of occurrence is not free from doubt.

46. Another glaring inconsistency, which goes to the root of the prosecution case, concerns the circumstances surrounding the lodging of the FIR. The testimonies of Raghav Ram (PW-1), Ram Nath (PW-2) and Nand Lal Singh (PW-4) indicate that Raghav Ram (PW-1) and Ram Nath (PW-2) had gone to the police station for registration of the FIR. More significantly, Raghav Ram (PW-1), in his cross-examination, categorically stated that only Ram Nath (PW-2) had accompanied him to the police station and specifically denied that Ram Gopal or Ram Achhaiver had gone with him. He further expressed complete inability to explain how their names came to be recorded as his companions in the police records.

47. However, the testimony of Ram Shanker Dwivedi (PW-10), the first Investigating Officer, presents an entirely different picture. In his cross-examination, he admitted that the General Diary entry pertaining to the registration of the case, as recorded by Head Constable Keshri Nandan, reflected the arrival of Ram Gopal (father-in-law of the deceased-victim) and Ram Achhaiver (brother of the deceased-victim), along with the complainant,

Raghav Ram (PW-1). Thus, the contemporaneous documentary record maintained at the police station stands in direct contradiction to the testimony of complainant (PW-1) himself. This material inconsistency strikes at the very genesis of the prosecution case and casts a grave doubt not only on the manner and time at which the FIR came to be lodged, but also on the identity of the persons who actually approached the police station for its registration.

48. An even more significant and startling circumstance emerging from the record, which lends considerable support to the defence contention that the prosecution sought to manipulate the time and place of occurrence, is that the FIR, though purportedly lodged and registered on 28th June, 1977, reached the Court of the jurisdictional Magistrate only on 30th June, 1977. This fact is borne out from the endorsement and seal affixed upon the *chik* FIR (Exhibit Ka-14), which clearly indicates that the complaint allegedly registered as a formal FIR on 28th June, 1977, a Tuesday, was received in the Magistrate's Court only on 30th June, 1977. Significantly, although this aspect neither appears to

have been highlighted by the parties nor engaged the attention of the trial Court or the High Court, verification of the original record leaves no manner of doubt on this score. This unexplained delay in the FIR reaching the Magistrate assumes great significance and, when all the pieces of the puzzle are put together and viewed in conjunction with the other attendant circumstances on record, the sequence of events becomes clear as daylight, thereby lending substantial credence to the defence plea that the prosecution version was developed subsequently and is not a truthful account of the occurrence and that the FIR was as a matter of fact registered post investigation.

49. Another circumstance which merits notice is the manner in which the contemporaneous police records relating to the registration of the FIR were proved. The *chik* FIR as well as the relevant General Diary entries were admittedly recorded by Head Constable Keshri Nandan. Since the said official had expired by the time the trial commenced, the prosecution examined Constable Suresh Chandra Yadav (PW-8), who stated that he was acquainted with the handwriting and signatures of Head

Constable Keshri Nandan and, on that basis, proved the relevant entries and documents. However, the witness (PW-8) admittedly had no personal involvement in, or direct knowledge of, the preparation of these records and candidly stated in his cross-examination that no document had been prepared in his presence. Thus, while the documents were formally exhibited in evidence, the prosecution was unable to adduce any direct evidence regarding the circumstances in which the FIR and the corresponding General Diary entries came to be recorded. This aspect assumes added significance in the peculiar facts of the present case where the defence has consistently alleged *ante-timing* and subsequent manipulation of time of registration of the FIR. In such circumstances, the contemporaneous police records, instead of dispelling the cloud of suspicion, fall short of providing the degree of assurance necessary to conclusively establish that the FIR was recorded at the time and in the manner projected by the prosecution.

50. The significance of delay in forwarding the FIR to the jurisdictional Magistrate has repeatedly been

considered by this Court. In ***Pala Singh v. State of Punjab***²², this Court observed that though delayed receipt of the FIR by the Magistrate may be improper or objectionable, such delay by itself would not necessarily render the prosecution case doubtful if the FIR had in fact been promptly recorded and the investigation had commenced thereupon. Relevant extract from the aforesaid judgment is reproduced hereinbelow: -

“8. [.....] Section 157 CrPC requires such report to be sent forthwith by the police officer concerned to a Magistrate empowered to take cognizance of such offence. This is really designed to keep the Magistrate informed of the investigation of such cognizable offence so as to be able to control the investigation and if necessary to give appropriate direction under Section 159. But when we find in this case that 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 our notice, then, however improper or objectionable the delayed receipt of the report by the Magistrate concerned it cannot by itself justify the conclusion that the investigation was tainted and the prosecution insupportable. It is not the appellant's case that they have been prejudiced by this delay.”

[Emphasis supplied]

²² (1972) 2 SCC 640.

51. More recently, in ***Jafarudheen v. State of Kerala***²³, this Court reiterated that prompt transmission of the FIR to the jurisdictional Magistrate is not a mere procedural formality but a vital safeguard intended to ensure fairness and transparency in the investigative process. The Court observed that the FIR is the document which sets the criminal law in motion and constitutes a valuable piece of evidence for corroborating the prosecution version. Prompt forwarding thereof to the Magistrate serves the salutary purpose of eliminating the possibility of *ante-dating*, *ante-timing*, embellishment or subsequent interpolation of facts and enables the Magistrate to effectively exercise the supervisory jurisdiction contemplated under the CrPC. It was further held that although mere delay in forwarding the FIR is not, by itself, fatal to the prosecution case, such delay assumes significance where the surrounding circumstances indicate the possibility of manipulation, deliberation, consultation or introduction of a coloured version of events. In such cases, the effect of the delay has to be assessed

²³ (2022) 8 SCC 440; 2022 SCC OnLine SC 495.

cumulatively along with the other attendant circumstances appearing on record. Relevant extract from the aforesaid judgment is reproduced hereinbelow: -

“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.”

[Emphasis supplied]

52. We are in respectful agreement with the aforesaid principles. Mere delay in forwarding the FIR to the Magistrate cannot, by itself, be treated as fatal to the prosecution case nor can such delay, in isolation, be made the sole basis for discarding an otherwise credible prosecution version. However, where allegations of *ante-timing*, *ante-dating* and fabrication are not merely speculative but find substantive support from attendant circumstances appearing on the record, and are coupled with surrounding facts generating genuine suspicion regarding the fairness and integrity of the investigation, such delay acquires considerable significance. In such a situation, the delay ceases to be a mere procedural irregularity and assumes substantive importance in evaluating the authenticity of the prosecution narrative, the spontaneity of the FIR and the possibility of subsequent embellishment or manipulation. The Court is then required to assess the effect of such delay not in isolation but cumulatively with the other circumstances brought on record while testing the overall credibility of the prosecution case.

53. Applying the aforesaid principles to the facts of the present case, we find that the delayed transmission of the FIR to the Magistrate does not stand in isolation. It is accompanied by a series of highly unusual circumstances, namely, the admitted fact that the dead body of the deceased-victim remained lying at the place of occurrence throughout the intervening night without any effort either by the family members or the police authorities to preserve its sanctity; the inquest proceedings being postponed to the next day; the post-mortem examination being conducted after a delay of about 48 hours without any plausible cause; contradictions regarding the persons who accompanied the complainant (PW-1) to the police station; and the absence of any satisfactory explanation for these lapses.

54. These circumstances assume even greater significance when viewed in the backdrop of the defence plea that the FIR was *ante-timed* and the prosecution story was subsequently tailored to create the presence of the alleged eye-witnesses at the crime scene. Viewed cumulatively, these circumstances are not mere procedural irregularities but constitute serious infirmities affecting the very genesis and

credibility of the prosecution case. They create a substantial dent in the prosecution version and render the defence plea not only plausible but reasonably probable.

55. If these circumstances are cumulatively considered, two possibilities emerge. The first possibility is that the assault on the deceased-victim did not take place on 28th June, 1977 and occurred at a later point of time. The second possibility is that, even if the occurrence did take place on 28th June, 1977, none of the so-called eye-witnesses were present at the place of occurrence when the deceased-victim was assaulted, and the incident came to light only subsequently, upon the discovery of the dead body lying at the scene on the following day.

56. In our considered opinion, either of the two possibilities cannot be ruled out in the facts and circumstances of the present case as narrated above. If the so-called eye-witnesses had in fact witnessed the assault in the manner alleged by the prosecution, and if the police had indeed been informed within three hours of the occurrence, there was no

conceivable reason for the dead body to remain abandoned at the place of occurrence throughout the night. The conduct attributed to the prosecution witnesses, family members of the deceased-victim, villagers, and even the investigating agency is wholly inconsistent with ordinary human behaviour and normal investigative procedure. It is quite probable that the incident took place during the intervening night of 28th and 29th June, 1977, and the dead body lying abandoned at the crime scene was discovered by the villagers only on the following morning, whereafter the prosecution story was developed to project that the deceased-victim, the alleged eye-witnesses and others had returned together from the market and that the assault had taken place in their presence on 28th June, 1977.

57. Indeed, the combined effect of the circumstances discussed above leaves little room for accepting the prosecution version regarding the manner and timing of the occurrence. The delay in conducting the inquest proceedings, the unexplained delay in undertaking the post-mortem examination, the material contradictions regarding the circumstances in which the FIR came to be lodged,

and, most importantly, the fact that the *chik* FIR, though purportedly registered on 28th June, 1977, reached the Court of the jurisdictional Magistrate only on 30th June, 1977, collectively cast a serious cloud of doubt over the prosecution narrative. The facts taken together convince us that the FIR (Exhibit Ka-14) is a post investigation document. These circumstances are, by themselves, sufficiently clinching to establish that the prosecution version of the occurrence having taken place on 28th June, 1977 was a subsequent fabrication devised to lend credibility to the prosecution case and to support the cooked-up story that Raghav Ram (PW-1), Ram Nath (PW-2) and Nand Lal Singh (PW-4) had actually witnessed the incident.

58. In the face of these infirmities, we find ourselves unable to place implicit reliance on the testimony of the alleged eye-witnesses. The defence plea that the occurrence did not unfold in the manner projected by the prosecution cannot be brushed aside as fanciful or speculative. On the contrary, the circumstances noticed above substantially undermine the prosecution's assertion that Raghav Ram (PW-1), Ram Nath (PW-2) and Nand Lal Singh (PW-4)

witnessed the assault and narrated the occurrence in a spontaneous and consistent manner immediately thereafter. Equally unconvincing is the prosecution story regarding the alleged recovery of two bicycles from beneath the *bail* tree, purportedly belonging to the accused persons. The theory of such recovery is, in our view, wholly flimsy. No cogent or reliable evidence has been adduced to establish the ownership of the bicycles. The evidence of the two Court Witnesses examined in this regard does not conclusively prove that the bicycles belonged to any of the accused persons. Apart from the alleged recovery itself, there is no independent evidence connecting the bicycles with the accused persons. Significantly, there were six accused, yet the prosecution has failed to establish which particular accused, if any, was the owner of or in possession of either bicycle.

59. No other reliable evidence has been brought on record to bring home the charges against the accused-appellants. Having regard to the cumulative effect of the discussion made above, we are persuaded to hold that the prosecution has failed to establish beyond reasonable doubt that the

occurrence took place in the afternoon of 28th June, 1977 or in the manner alleged by the so-called eye-witnesses. Consequently, their presence at the crime scene becomes not merely doubtful but highly improbable, and the prosecution case cannot be sustained on such uncertain and unreliable evidence.

60. Once a reasonable doubt arises regarding the presence of the alleged eye-witnesses and the truthfulness of the prosecution version regarding the genesis and timing of the occurrence, the very substratum of the prosecution case stands eroded. The entire edifice of the prosecution story, being founded upon the testimony of these witnesses, stands breached and cannot be sustained. The trial Court as well as the High Court fell in error in overlooking these vital infirmities and in relying upon the highly doubtful testimony of the so-called eye-witnesses to affirm the guilt of the accused-appellants. Consequently, we are of the considered view that the prosecution has failed to establish the guilt of the accused-appellants beyond reasonable doubt and they are entitled to the benefit thereof.

61. As an upshot of the above discussion, the impugned judgment passed by the High Court and the judgment of conviction and order of sentence passed by the trial Court do not stand to scrutiny and, therefore, deserve to be set aside.

62. Since we are extending the benefit of doubt to the accused-appellants by disbelieving the prosecution case on material aspects, it is not necessary for us to examine the plea of juvenility raised on behalf of appellant-Accused No. 6 (Subedar).

63. Resultantly, Criminal Appeal No. 239 of 2013, to the extent it relates to appellant-Accused No. 6 (Subedar), Criminal Appeal No. 238 of 2013 and Criminal Appeal No. 236 of 2013, are allowed. The judgment of conviction and order of sentence dated 3rd June, 1981 passed by the trial Court, as affirmed by the judgment dated 20th November, 2011 passed by the High Court are hereby set aside.

64. The surviving accused-appellants, i.e., Accused No. 2 (Hira Lal), Accused No. 3 (Raj Bux) and Accused No. 6 (Subedar) are acquitted of all charges. Since appellant-Accused No. 3 (Raj Bux) and

appellant-Accused No. 6 (Subedar) are already on bail, their bail bonds shall stand discharged and they shall not be required to surrender. Insofar as appellant-Accused No. 2 (Hira Lal) is concerned, he has already been released pursuant to remission granted by the competent authority and, therefore, no further directions are called for in respect of the said accused.

65. Pending application(s), if any, shall stand disposed of.

.....**J.**
(VIKRAM NATH)

.....**J.**
(SANDEEP MEHTA)

NEW DELHI;
JULY 15, 2026.