NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1034 OF 2013

State of M.P. .. Appellant

Versus

Ratan Singh & Ors. .. Respondents

J U D G M E N T

Mohan M. Shantanagoudar, J.

1. This appeal is directed against the judgment dated 03.02.2010 passed by the High Court of Madhya Pradesh, Bench at Gwalior in Criminal Appeal No. 599 of 2001. The High Court while allowing the appeal had acquitted the accused and set aside the judgment dated 07.11.2001 passed by the Additional Sessions Judge, Sironj, District Vidisha in Sessions Trial No. 73/92 convicting the four respondents for the offences punishable under Sections 302, 324 and 323 read with Section 34 of the Indian Penal Code (for short 'the IPC').

2. The case of the prosecution in brief is that there was a dispute in respect of a pathway between the deceased (Devi

Singh) and Salag Ram. In order to resolve the dispute, the jurisdictional Tehsildar with the help of others got measured the place and found that the deceased had closed the way and consequently the way was got opened. However, the misunderstanding in respect of the earlier dispute continued. At about 9.00 am on 30.08.1991, 18 persons including the respondents, formed themselves into an unlawful assembly and broke into the residential house of the complainant - Khilan Singh in order to cause injury to Devi Singh. The accused were carrying *farsi* (sharp edged object), *lathis* and other weapons. They dealt blows on the head of Khilan Singh, as a result of which he fell down. At that juncture, the deceased, Devi Singh, intervened and he was also assaulted by the accused persons with *farsi* and *lathis*, as a result of which the deceased fell down on the ground. The First Information Report (for short 'the FIR') came to be lodged at about 8.30 pm on 30.08.1991. The charge-sheet was filed for various offences including the offence under Section 302 read with Section 149 of the IPC. As mentioned supra, the Trial Court convicted the respondents/four accused, namely, Ratan Singh S/o Gulab Singh, Chandan Singh S/o Gulab Singh, Salag Ram S/o Mohan Singh and Ramesh S/o Aman Singh for charges levelled against them and sentenced

them to undergo imprisonment for life. The appeal filed by the convicted accused before the High Court was allowed and they were acquitted vide the impugned judgment. Hence, this appeal by the State.

3. Learned Advocates on both sides argued in support of their respective contentions. Both of them have taken us through the evidence on record. In order to satisfy our conscience and as there were divergent findings, the evidence on record is considered at length.

4. To begin with, though the incident has taken place at about 9.00 am on 30.08.1991 and though the names of all the 18 persons were known to the complainant - Khilan Singh, absolutely no valid reason was forthcoming on record as to why there was a delay in lodging the FIR. The Courts generally will not disbelieve the version of the eye witnesses even if there is some delay in lodging the FIR, if the versions of the eye witnesses are reliable and trustworthy. However, the delay needs to be explained. This Court, in *Apren Joseph v. State of Kerala*, (1973) 3 SCC 114, emphasised that since a promptly filed FIR reflects reduced chances of embellishment, fabrication or distortion in memory, in cases of delay in filing the FIR it is important to assess the explanation therefore, to look for possible ulterior

motives, and to assess its effect on the credibility of the prosecution version. The following observations of the Court are pertinent in this regard:

> "**11.** Now first information report is a report relating to the commission of an offence given to the police and recorded by it under Section 154, CrPC As observed by the Privy Council in K.E. v. Khwaja, [AIR 1945 PC 18 : ILR 1945 Lah 1 : 71 IA 203] the receipt and recording of information report by the police is not a condition precedent to the setting in motion of a criminal investigation. Nor does the statute provide that such information report can only be made by an eye witness. First information report under Section 154 is not even considered a substantive piece of evidence. It can only be used to corroborate or contradict the informant's evidence in court. **But this information when recorded is the basis of the case set up by the informant. It is very useful if recorded before there is time and opportunity to embellish or before the informant's memory fades. Undue unreasonable delay in lodging the FIR, therefore, inevitably gives rise to suspicion which puts the court on guard to look for the possible motive and the explanation for the delay and consider its effect on the trustworthiness or otherwise of the prosecution version.** In our opinion, no duration of time in the abstract can be fixed as reasonable for giving information of a crime to the police, the question of reasonable time being a matter for determination by the court in each case. Mere delay in lodging the first information report with the police is, therefore, not necessarily, as a matter of law, fatal to the prosecution. The effect of delay in doing so in the light of the plausibility of the explanation forthcoming for such delay accordingly must fall for consideration on all the facts and circumstances of a given case."
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> (emphasis supplied)

From the observations quoted above, it is also evident that there is no hard-and-fast rule which can be applied to determine the effect of delay in filing the FIR, and the Court is duty-bound to determine whether the explanation afforded is plausible enough based on the given facts and circumstances of each case. A similar view was taken by this Court in *Ram Jag v. State of U.P.*, (1974) 4 SCC 201, wherein this Court observed as follows:

> "**16.** … **It is true that witnesses cannot be called upon to explain every hour's delay and a common sense view has to be taken in ascertaining whether the first information report was lodged after an undue delay so as to afford enough scope for manipulating evidence. Whether the delay is so long as to throw a cloud of suspicion on the seeds of the prosecution case must depend upon a variety of factors which would vary from case to case.** Even a long delay in filing report of an occurrence can be condoned if the witnesses on whose evidence the prosecution relies have no motive for implicating the accused. On the other hand, prompt filing of the report is not an unmistakable guarantee of the truthfulness of the version of the prosecution."
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> (emphasis supplied)

5. In the matter on hand, the distance of the Police Station from the house of the complainant is only 5 kms. PW-9, Gangola, the Chowkidar of the village was present in the village. Patwari was also present in the village. From the

evidence of the eye witnesses we found that the FIR was lodged after due consultation and deliberations among the witnesses. PW-9 admits in Paragraph-7 of his cross-examination that the FIR came to be lodged by Khilan Singh after due consultation with him and others in the village. He admits in the evidence that the deceased, Devi Singh, was very much alive at least till 8.30 pm on that day and his information was recorded by the Police prior to the FIR on hand (Ext.D/3). The FIR lodged by Devi Singh, which was prior in time and which we feel, would have been the most important document in this case, has been suppressed by the prosecution. The prosecution should have come before the Court with clean hands. Since, Ext. D/3 lodged at 8.30 pm on the date of the incident was later in point of time as compared to the suppressed information lodged by Devi Singh before his death, Ext.D/3 cannot be considered as the FIR. At the most, it can be considered as a statement of Khilan Singh recorded under Section 161 of the Code of Criminal Procedure. It is a clear case of suppression of earliest information which was of vital importance. As emphasised by this Court in *Amitbhai Anil Chandra Shah v. Central Bureau of Investigation*, (2013) 6 SCC 348, only the earliest or the first information in regard to the commission of a cognizable offence

satisfies the requirements of Section 154, and consequently there cannot be a second FIR. Rather it is absurd or ridiculous to call such information as second FIR. In the case of *Subramaniam v. State of T.N.*, (2009) 14 SCC 415, this Court observed that if an FIR is filed after recording the statement of the witnesses, such second information would be inadmissible in evidence. Moreover, in *Nallabothu Ramulu v. State of A.P.*, (2014) 12 SCC 261, the Court was of the view that the non-treatment of statements of injured witnesses as the first information cast doubt on the prosecution version.

Thus, not only was there a delay in filing of the FIR (which remained unexplained) which was taken as the basis of the investigation in this case, but also there was a wilful suppression of the actual first information received by the police. These factors together cast grave doubts on the credibility of the prosecution version, and lead us to the conclusion that there has been an attempt to build up a different case for the prosecution and bring in as many persons as accused as possible.

6. Additionally, the so-called eye witnesses to the incident have described different places as the scene of offence. None of the eye witnesses are consistent so far as the scene of offence is

concerned. This means that each of the eye witness must have allegedly seen the incident at different places and happening in a different manner. The suppression of the actual FIR, coupled with the conflicting versions of the so-called eye witnesses relating to different scenes of offence and different stories collectively would reveal that the prosecution wanted to suppress and has suppressed the real incident and culpability of real culprits. The origin and genesis of the prosecution is clearly suppressed in the case.

7. All the eye witnesses have deposed that 18 accused have assaulted the deceased mercilessly by using *farsi* and *lathis*. Curiously, the deceased had sustained only the following injuries:

> "(i) Incised wound on the left parietal region of skull size 2 ½ x ½ x ½ inches.
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> (ii) incised wound on the right leg size 1 1/3 x 1/3 inches;
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> (iii) an abrasion on left forearm size 1 ½ x 1 inches; and
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> (iv) haematoma size 9 x 7 inches".

The same is clear from the evidence of the Doctor, PW-25, who conducted the autopsy. If really 18 persons had caused injuries on the deceased by deadly weapons like *farsi, lathis* etc., certainly umpteen injuries should have been received by the

deceased. But, except the aforementioned four injuries, no other injury has been found on his body. Out of the four injuries sustained by the deceased, only one is on a vital portion of the body, i.e. on the head, i.e. an incised wound on the left parietal region measuring 2 ½ x ½ x ½ inches. The other three injuries are simple in nature. The Trial Court has disbelieved the version of the eye witnesses and has acquitted 14 persons out of the 18 accused. Surprisingly, the Trial Court has equated the number of accused persons to the number of injuries, inasmuch as it has found that the existence of four injuries implies the involvement of four assailants, which view cannot be sustained. The Trial Court has also not assigned any reason as to why it has concluded only against the four respondents herein and as to why it has acquitted the remaining 14 accused. No specific acceptable reasons are assigned by the Trial Court, for convicting four respondents herein. The evidence of the eye witnesses appears to be uniformly ambiguous and highly vague with respect to all the accused. As mentioned supra, each of the eye witnesses have deposed about a different scenes of offence and different stories, though the incident has taken place at only one place.

8. The High Court in its judgment has detailed a number of contradictions in the evidence of the eye witnesses and major omissions which were overlooked by the Trial Court.

9. For example, PW-21, the wife of the informant, has deposed that all the accused persons caused injuries to the deceased Devi Singh and the complainant Khilan Singh. However, in the next paragraph itself, she has deposed that she was inside her house when the incident took place. Later she came out of the house and saw the incident thereafter. She has denied the suggestion that the incident occurred inside her house and specified that she never gave such a statement before the Police. Said contradiction is marked as Ext.D/11. Marshalling her evidence, the High Court, in our considered opinion, rightly disbelieved the version of PW-21 by describing her as untrustworthy.

10. PW-18, Prem Singh, has deposed that the informant and the deceased were lying in an injured condition on the floor at the door of the house of the informant. He came to know about the incident only after he arrived at the house of Khilan Singh and saw the dead body lying just outside the door. This is at odds with the deposition of PW 22, according to whom the incident has occurred inside her house. Lastly, in Paragraph 8 of his evidence, PW -18 has deposed that he did not see the incident

which occurred inside the house of Khilan Singh. Said contradiction is marked as Ext.D/10. The High Court has meticulously evaluated the evidence of the other eye witnesses, namely, PW-11, 12, 8 and 22 also. The contradictory versions of all the eye witnesses have been highlighted by the High Court, while coming to its conclusion.

11. The sum and essence of the case of the prosecution as found in the charge-sheet was that the incident happened inside the house of the complainant Khilan Singh. However, the witnesses have tried to improve the case of the prosecution by deposing that the incident has occurred outside the house of Khilan Singh and that they have seen the incident. PW-12 has gone to an extent of deposing that none of the accused including the respondents entered the house of Khilan Singh.

12. Thus, on a re-evaluation of the material on record by us, we find that the High Court being the First Appellate Court, by meticulously scanning all the evidence in great detail, has rightly concluded that the prosecution has not proved its case beyond reasonable doubt against the respondents. The evidence of the prosecution is full of embellishment, fabrication, distortion and suppression of true story.

13. We find that the view taken by the High Court is one of the possible views in the facts and circumstances of the case. There is no reason to disagree with the reasons assigned and the conclusions arrived at by the High Court, more particularly when the evidence of all the eye witnesses is inconsistent, not cogent and unreliable. Hence, no interference is called for.

14. Before parting with the matter, we would also like to observe that though the Trial Court framed charges against the accused, it has at the same time committed an error by framing issues for determination, which is solely in the realm of civil matters. Under S. 228 of the Code of Criminal Procedure, upon being satisfied of the existence of ground for presuming that the accused has committed an offence exclusively triable by the Sessions Court, the Sessions Judge is required to frame in writing a charge against the accused. If the concerned offence is not exclusively triable by the Sessions Court, the Judge may frame the charge and transfer the case for trial by the appropriate Magistrate. On the other hand, framing of issues is required to be done by the Civil Court at the first hearing of a suit, as detailed in O. XIV, R. 1 of the Code of Civil Procedure. This has to be done after determining the material propositions of fact or law upon which

the parties are at variance, having gone through the plaint and written statement, if any.

Thus, there is no scope for framing of issues in a criminal trial. Ordinarily, such conduct of the Trial Court would necessitate remanding the matter for trial, but given that in the instant matter, the Court also proceeded to frame charges against the accused and to give findings on the same in order to record a conviction, and given that we are inclined to affirm the decision of the High Court on merits, to set aside the conviction of the respondents, we do not find it necessary to remand the case back for trial.

15. The appeal is accordingly dismissed.

.....J.
[N.V. RAMANA]

.....J.
[MOHAN M. SHANTANAGOUDAR]

New Delhi;
September 05, 2018.