MUNSHI PRASAD AND ORS.

v.

STATE OF BIHAR

OCTOBER 10, 2001

[UMESH C. BANERJEE AND K.G. BALAKRISHNAN, JJ.]

Code of Criminal Procedure, 1973 :

Appeal against conviction—Offence of Murder—Concurrent finding of fact—Interference—When called for—Held, when finding suffers from some vice and violative of fundamental rules or there is definite procedural injustice which goes to the root of the prosecution case—Penal Code, 1860—Section 302.

Section 154—FIR—Delay in filing—Effect of—Held, delay not fatal if there is plausible explanation for delay.

Section 157—Delay in sending report of FIR to Magistrate—Effect of—Held, it would not vitiate trial if delay is reasonable and there is acceptable explanation for it.

Criminal Trial :

Technical plea—Trustworthy and credible evidence on record—Court convinced about truthfulness of prosecution case—Held, technicality ought not to outweigh the course of justice if technicality does not go to root of prosecution case.

Appreciation of Evidence—Principles—Interested Witness—Credibility of evidence—Held, duty of court to be more careful in scrutiny of evidence of such witnesses—If evidence found trustworthy, rejection not justifiable—Minor variations and discrepancies in evidence—Effect of—Held, court should not reject such evidence if not affecting the core of prosecution case—Treatment of witnesses—Held, defence witnesses entitled to equal respect and treatment as that of prosecution.

Post-mortem report and Inquest report—Difference between—Held, discrepancy between them neither fatal nor even a suspicious circumstance—Both reports cannot be termed basic or substantive evidence.

Words & Phrases—'Alibi'—Meaning of in common parlance.

A Prosecution alleged that informant (PW1) and his brother, the deceased, were returning to their village on bicycles, when they were surrounded by appellants-accused who were armed and hiding in bushes and sugar cane fields. However, informant extricted himself and ran away from the place of incident raising an alarm and witnessed the assault and B killing of his brother by the appellants from some distance. Other witnesses (PW1-PW4) also arrived at the place of incident and saw the appellants running away from the place of incident. Trial court convicted the appellants for committing murder and sentenced them to rigorous imprisonment for life which was upheld in appeal by the High Court. Hence the present appeals by the accused persons.

C

Appellants contended that specific evidence tendered by defence witnesses presented an alibi in their favour; that there is some difference between inquest report and post-mortem report creating suspicious circumstance warranting a benefit of doubt in their favour; that adverse D presumption should have been drawn against the prosecution for non - production of sanah being the basic information sheet; that delay in filing FIR was fatal to prosecution case; that it was a case of blind murder not witnessed by any person, prosecution case is fabricated and they have been falsely implicated by reason of enmity and hostile relationship between the family of informant and the appellants; that PWs 1 to 5 are interested E witnesses as they belong to the same village and are related to each other; that no independent witnesses have been examined; and that delay in sending FIR to Magistrate under Section 157 of Criminal Procedure Code, 1973 vitiated the trial.

F Dismissing the appeals, the Court

HELD : 1. It is now a well-settled principle of law, that in an appeal against conviction for the offence of murder, Supreme Court would be rather slow to intervene, in the event of there being a concurrent finding of fact, unless of course, the finding reached suffers from some vice and G thus violative of fundamental rules or even a definite procedural injustice going to the root of the prosecution case. [29-H; 30-A]

Arjun Marik and others v. *State of Bihar,* [1994] Suppl. 2 SCC 372, relied on.

H 2.1. The word 'alibi', a latin expression means and implies in

common acceptation 'elsewhere'. It is a defence based on the physical impossibility of participation of a crime by an accused in placing the latter in a location other than the scene of crime at the relevant time, shortly put the presence of the accused elsewhere when an offence was committed. Distance thus would be a material factor in the matter of acceptability of the plea of alibi. [30-C; D; F]

2.2. In the instant case, the place of occurrance was 400-500 yards from the place of Panchayat. A distance of 400-500 yards cannot possibly be said to be 'presence elsewhere' - it is not an impossibility to be at the place of occurrence and also at the panchayat meet, the distance being as noticed above. The evidence on record itself negates the plea of alibi. [31-D; E]

Dudh Nath Pandey v. *State of U.P.,* AIR (1981) SC 911, relied on.

3. There is some difference between the inquest report and the post-mortem report having due regard to the injuries as found on the body of the deceased. A mere omission of a particular injury or indication therein of an additional one cannot however invalidate the prosecution case. Preparation of an inquest report is a part of the investigation within the meaning of the Criminal Procedure Code and neither the inquest report nor the post-mortem report can be termed to be a basic evidence or substantive evidence and discrepancy occurring therein can neither be termed to be fatal nor even a suspicious circumstance, which would warrant a benefit to the accused and the resultant dismissal of the prosecution case. It is the doctor's statement in Court, which has the credibility of a substantive evidence and not the post-mortem report. [31-H; 32-A; 34-E; F]

Balaka Singh and Ors. v. *The State of Punjab*, AIR (1975) SC 1962, cited.

4. Non-production of a substantive piece of evidence can under certain circumstances bring forth an adverse inference, but not in the present context. Technicality ought not to outweigh the course of justice on the face of trustworthy credible evidence on record and more so when the failure to produce does not go to the root of the prosecution case. [35-A]

5. It is well settled that mere delay in filing FIR cannot be said to be fatal to a criminal prosecution. First Information Report cannot but be termed to be the starting point and thus sets in motion a criminal

A prosecution. Strictly speaking it is of no consequence in the event the FIR has been delayed with a plausible explanation though on the factual score it is not even so. [35-B; C; 36-B]

Apren Joseph alias Current Kunjukunju & Ors. v. *The State of Kerala,* AIR (1973) SC 1 relied on.

B

6.1. It is the predominant duty of Court to be more careful in the matter of scrutiny of the evidence of interested witnesses and if on such a scrutiny it is found that the evidence on record is otherwise trustworthy, question of rejection of the same on the ground of being interested witnesses would not arise. It is the totality of the evidence, which matters and if the same creates a confidence of acceptability of such an evidence, question of rejection on being ascribed as 'interested witness' would not be justifiable. [40-F; G; H]

C

6.2. Records depict that PWs 1 and 2 are independent witnesses. The corss-examination of these two witnesses, though effected extensively, has not yielded any benefit to the appellants and the evidence remained totally unshaken and thus worthy of acceptance by a Court of law. The evidence of PWs 3, 4 and 5 stands corroborated by two independent witnesses. The evidence on record is worth its credence and trustworthy, as such creates a confidence in the mind of the Court. [38-B; D; E]

D

E

7. It is the quality of the evidence and not the quantity, which is required. If the evidence on record is otherwise satisfactory in nature and can be ascribed to be trustworthy, an increase in number of witnesses cannot be termed to be a requirement for the case. [40-D; E]

F

8. While appreciating the evidence of a witness, minor discrepancies on trivial matters without affecting the core of the prosecution case, ought not to prompt the court to reject evidence in its entirety. If the general tenor of the evidence given by the witness and the trial court upon appreciation of evidence forms opinion about the credibility thereof, in the normal circumstances the Appellate Court would not be justified to review it once again without justifiable reasons. [38-F]

G

State of U.P. v. *M.K. Anthony,* [1985] 1 SCC 505 and *Leela Ram* v. *State of Haryana,* [1999] 9 SCC 525, relied on.

H

9. The evidence tendered by the defence witnesses cannot always be

termed to be a tainted one by reason of the factum of the witnesses being examined by the defence. The defence witnesses are entitled to equal respect and treatment as that of the prosecution. The issue of credibility and the trustworthiness ought also to be attributed to the defence witnesses at par with that of the prosecution-a lapse on the part of the defence witness cannot be differentiated and be treated differently than that of the prosecutors' witnesses. [31-F; G]

10. While it is true that Section 157 of the Criminal Procedure Code, 1973 makes it obligatory on the Officer Incharge of the Police Station to send a report of the information received to a Magistrate forthwith, but that does not mean and imply to denounce and discard an otherwise positive and trustworthy evidence on record. Technicality ought not to outweigh the course of justice- if the Court is otherwise convinced and has come to a conclusion as regards the truthfulness of the prosecution case, mere delay, which can otherwise be ascribed to be reasonable, would not by itself demolish the prosecution case. The statutory obligation warrants utmost promptitude and in the event of availability of some explanation therefore, which is otherwise acceptable as well, question of prosecution being trainted would not arise. FIR sets the investigation rolling and in the event of there being some delay somewhere and as noticed above with the acceptable explanation, the delay cannot be said to vitiate the trial by reason therefor. [42-G; H; 43-A; 44-F; G]

Shiv Ram and Anr. **v.** *State of U.P.*, **[1998] 1 SCC 149 and** *State of Karnataka* **v.** *Moin Patel and Ors.*, **AIR (1996) SC 3041, relied on.**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 491-492 of 2000.

From the Judgment and Order dated 28.7.90 of the Patna High Court in Crl. A.No. 590 and 686 of 1984.

R. Venkataramani and Satya Mitra Garg for the appellants.

Saket Singh for B.B. Singh for the Respondent

The Judgment of the Court was delivered by

BANERJEE, J. It is now a well-settled principle of law, that in an appeal against conviction for the offence of murder, Supreme Court would be rather

A slow to intervene, in the event of there being a concurrent finding of fact, unless of course, the finding reached suffers from some vice and thus violative of fundamental rules or even a definite procedural injustice going to the root of the prosecution case. (See in this context, the decision of this Court in *Arjun Marik and others* v. *State of Bihar*, [1994] Suppl. 2 SCC p.372. It is on this B perspective that the present appeal against the common judgment dated 28th July, 1999 passed by the High Court of Patna in Crl. A.No. 590 of 1984 and 686 of 1984 shall have to be considered. Before adverting to the contentions in support of the appeal, in the matter in issue, a note of caution shall have to be kept in mind, as has been administered by this Court from time to time, that scrutiny of evidence in a murder trial should be effected with more than C ordinary care so as not to affect 'dispassionate judicial scrutiny'.

The judgment under appeal stands criticised on three major counts: the first of the three counts relate to the plea of alibi. The word 'alibi', a Latin expression means and implies in common acceptation 'elsewhere' : It is a D defence based on the physical impossibility of participation of a crime by an accused in placing the latter in a location other than the scene of crime at the relevant time, shortly put the presence of the accused elsewhere when an offence was committed. This Court in *Dudh Nath Pandey* v. *State of U.P.*, AIR (1981) SCC 911 has the following to state in regard to the plea of alibi :

E "...The plea of alibi postulates the physical impossibility of the presence of the accused at the scene of offence by reason of his presence at other place. The plea can therefore succeed only if it is shown that the accused was so far away at the relevant time that he could not be present at the place where the crime was committed..."

F — Distance thus would be a material factor in the matter of acceptability of the plea of alibi. Interestingly this plea as raised by Mr. Venkararamani, learned senior counsel appearing in support of the appeal has been by reason of specific evidence as tendered before the Court by the defence witnesses. On assumption of the factum of the evidence being otherwise truthful, there appears to be some G difficulty, however, in the matter of acceptance of submission of Mr. Venkataramani. The evidence on record as tendered by Raj Narain Prasad (defence witness No. 2) was to the following effect .

"2. On 27.6.80 at 12 P.M. a panchayat was held in the garden of H Yogendra Prasad. I went to Panchayat and told the head that I came

to know that a murder was committed in Nakka Tola. At that time it was not known to me as to who is murdered. A

3. At that time there were Bose Sahib, Manglue Sahani, Dasai Sahni, Naga Mehto, Hira Sahni, Multan Mian and Raghnath Mehto etc. in the Panchayat. B

4. When I reported then they became worried and all of them left with Head Mukhiaji. I also went.

5. On the western side of the road 25-30 yards towards East there was a dead body in the sugar cane field. There I also asked the people but I was not known as to who had killed.*The dead body was at four-five hundred yards from this place of panchayat, we stayed there near the dead body till 5-5, 1/2 o'clock. Jamadar Sahib came there after we reached there." (Emphasis supplied).* C

Without attributing any motive and taking the evidence on its face value, therefore, it appears that the place of occurrence was at 400 - 500 yards from the place of panchayat and it is on this piece of evidence, the learned Advocate for the State heavily relied upon and contended that the distance was far too short so as to be an impossibility for the accused to be at the place of occurrence - we cannot but lend concurrence to such a submission : A distance of 400-500 yards cannot possibly be said to be 'presence elsewhere'- it is not an impossibility to be at the place of occurrence and also at the panchayat meet, the distance being as noticed above : The evidence on record itself negates the plea and we are thus unable to record our concurrence as regards acceptance of the plea of alibi as raised in the appeal. Before drawing the curtain on this score however, we wish to clarify that the evidence tendered by the defence witnesses cannot always be termed to be a tainted one by reason of the factum of the witnesses being examined by the defence. The defence - witnesses are entitled to equal respect and treatment as that of the prosecution. The issue of credibility and the trustworthiness ought also to be attributed to the defence witnesses at par with that of the prosecution - a lapse on the part of the defence witness cannot be differentiated and be treated differently than that of the prosecutors' witnesses. D E F G

Adverting to the second count of submissions raised by Mr Venkataramani, it appears that there is existing some difference between the inquest report and H

A the post-mortem report having due regard to the injuries as found on the body of the deceased. For convenience sake, the same is tabulated hereinbelow :

Inquest Report - Injuries noted	*Post Mortem Report - injuries noted*
B 1. The nech cut with some sharp edged weapon. The neck slightly attached to the body. Rest of the neck cut.	*Externally :-*
	1. One incised wound on skull on left side 4" above left ear 8" x 2" x Brain deep. There was clot under scalp and brain. Left Parietal a part of frontal and occipital bone were cut. Brain matter was lacerated.
C 2. On left side of the head, cut with some sharp-edged weapon.	*Internally :-*
3. On the left hand below the elbow and forearm, cut with some sharp-edged weapon.	2. One incised wound on the front of neck cutting nuscles, trachea, large vessels and nerves on both sides and oesophagus vertebrae colurnnal (IV survical) and spinal chord.
D 4. On the left foot the wounds of spear at three places.	(i) One incised wound in the front of left arm 3"x3"x muscle deep
5. On the right foot three wounds inflicted with a sharp edged weapon.	(ii) One incised wound in the back of left arm 4"x3"x bone deep. All mussels and both radium and ulna were cut.
E 6. A wound on the cheek below right eye.	(iii) There were three penetrating wounds on left shoulder 1-1/2" x 1-1/2" each (penetrating the mussels upto bone.)
F	(iv) Three incised wound on right shoulder 2" x 1/2" x mussels deep each.
G	(v) One penetrating wound below right eye 1/2" x 1/2" x 1/2".
H	

On the basis of the aforesaid, it has been rather emphatically contended in support of the appeal that by reason of the difference as noticed above, between the inquest report and post-mortem report, the prosecution's case suffers from a very serious suspicion warranting in any event a doubt in favour of the accused persons. It is in support of the contention that Mr. Venkataramani placed reliance on the decision of this Court in the case of *Balaka Singh and others* v. *The State of Punjab*, AIR (1975) SC 1962 wherein this Court observed :

> "... In these circumstances, therefore, the High Court was fully justified in holding that the omission of the names of the four accused acquitted by the High Court in the inquest report was a very important circumstance which went in favour of the four accused. This omission has a twofold reaction. In the first place it throws doubt on the complicity of the four accused acquitted by the High Court and secondly it casts serious doubt on the veracity and authenticity of the F.I.R. itself. It is not understandable as to why the four accused who are alleged to have taken an active part in the assault on the deceased were not at all mentioned in the inquest report and in the brief statement of the very person who had lodged the F.I.R. four hours before. Counsel for the State tried to justify this omission on the ground that in the inquest report Ext. P.H. the names of all the nine accused appear to have been mentioned at the top of that document. There is, however, no column for mentioning the names of the accused and, therefore, there was no occasion for the Investigating Officer to have mentioned the names of the accused in that particular place.
>
> Finally the Investigating Officer P.W. 23 Teja Singh admitted in his evidence that he had prepared the inquest report and that he had read out the same to Banta Singh and Harnam Singh P.Ws. but later tried to say that he did not read out the inquest report to Banta Singh and Harnam Singh before getting their thumb impressions on the inquest report. This circumstance speaks volumes against the prosecution case. If, therefore, it is once established that the names of the four accused were deliberately added in the inquest report at the instance of the prosecution there is no guarantee regarding the truth about the participation in the assault on the deceased by the appellants."

A Let us, however, examine the omissions in either of the documents as produced before the Court and consider for ourselves as to whether there is any material difference which would otherwise affect the trial by reason of a doubt as regards the reliability of the prosecution case. Item Nos. 4 and 5 in the inquest report are the two basic items, which are said to be missing in B the post-mortem report, as such the contention of existence of suspicious nature of prosecution. We, however, cannot lend our concurrence thereto. There may or may not be injuries on the left or the right foot but the fact remains that there is no mention of the same in the post-mortem report - does it otherwise affect the credibility of the prosecution case? Post-mortem report is prepared by the doctor, who held the post-mortem examination on the body of the C deceased Indrasan Prasad and his findings have been recorded therein. The document by itself is not a substantive evidence but it is the doctor's statement in Court, which has the credibility of a substantive evidence and not the report, which in normal circumstance ought to be used only for refreshing memory of the doctor witness or to contradict whatever he might say from the witness D box. In this context reference may be made to a decision of the Madras High Court in *Re. Ramaswami,* AIR (1938) Madras 336. In the similar vein the inquest report also cannot be termed to be a basic or substantive evidence being prepared by the police personnel being a non-medical man and at the earliest stage of the proceedings. On the wake of the aforesaid, a mere omission of E a particular injury or indication therein of an additional one cannot however invalidate the prosecution case. The evidential value of inquest report cannot be placed at a level as has been so placed by the appellant. preparation of an inquest report is a part of the investigation within the meaning of the Criminal procedure Code and as noticed above neither the inquest report nor the post-mortem report can be termed to be a basic evidence or substantive evidence F and discrepancy occurring therein can neither be termed to be fatal nor even a suspicious circumstance, which would warrant a benefit to the accused and the resultant dismissal of the prosecution case. On the factual score Mr. Venkataramani relied heavily on the evidence of PW-7 being the Jagdishpur Police Camp-in-charge. In his evidence, PW-7 stated that the inquest report G was prepared on the basis of the information contained in Sanah No. 306 and since the Sanah has not been produced, it has been contended that Sanah being the basic information sheet, non-production thereof would entail the consequences of adverse presumption as regards the involvement of the accused persons. Obviously, thus it has been contended that nobody had any H clue as to how the incident had occurred. Eloquent as always, Mr. Venkataramani

has, in our view, over-emphasised the issue. Non-production of a substantive piece of evidence can under certain circumstances bring forth an adverse inference, but not in the present context. Technicality ought not to outweigh the course of justice on the face of trustworthy credible evidence on record and more so when the failure to produce does not go to the root of the prosecution case. Situations, obviously would entail such consequences but in the present context, one cannot possibly stretch it that far.

Fabricated and delayed FIR as a matter of fact has been the basic submission in support of the appeal. It is now, however, well settled and we need not dilate on this score over again that mere delay cannot be said to be fatal to a criminal prosecution. First Information Report cannot but be termed to be the starting point and thus sets in motion of a criminal investigation. In this context the observation of this Court in *Apren Joseph alias Current Kunjukunju & others* v. *The State of Kerala*, AIR (1973) SC 1 seems to be rather apposite. In paragraph 11 of the report this Court stated as below :

> "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, Cr.P.C. As observed by the *Privy Council in Emperor* v. *Khwaja*, ILR 1945 Lah 1=AIR (1945) PC 18 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 eyewitness. First information report under S. 154 is not even considered a substantive piece of evidence. It can only be used to corroborate or contrdict 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 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

A plausibility of the explanation forthcoming for such delay accordingly must fall for consideration on all the facts and circumstances of a given case."

It is thus strictly speaking of no consequence in the event the FIR has been delayed with a plausible explanation though on the factual score it is not B even so. Let us, therefore, refer to the factual score briefly at this juncture:

The occurrence in this case is said to have taken place on 27th June, 1980 at a place near village Jagdishpur, Nauka Tola, about 20 Kms. North-East of the Police Station, Nautan at about 3.00 PM in the afternoon. It appears C that the informant Laxuman Prasad (PW5) had gone to Bettiah on the alleged date of occurrence alongwith his brother Indrasan Prasad from where they had returned by bus to Jagdishpur stand and after alighting from the bus, both of them took tea near the bus stand and thereafter both of them started for their village on bicycles. When they proceeded further, they saw Nathuni Prasad (PW-3) and Bhagwat Prasad (PW-4) coming behind them at some distance. D When the informant and his brother (deceased) came to a place at some distance ahead of village Jagdishpur Nauka Tola, all of a sudden the accused persons, namely, Nagendra Mahton @ Naga Mohton, Kamal Mahton, Raghu Sah, Shankar Raut, Munshi Mahton, Ganga Bishun Mahton and Nathuni Raut emerged from the bushes and fields of sugarcane nearby and they surrounded E the informant and his brother. They had weapons like Bhala : Farsa and Dabia in their hands. However, the informant as the evidence records, extricated himself and started running away and raised alarm. He stood at some distance from the P.O. and saw that all the above named accused persons surrounded his brother deceased Indrasan Prasad, who was also trying to run away. F According to the informant, Ganga Bishun Mahton and Nathuni Raut assaulted the victim with Bhala on his back and Raghu Sah caught hold of the victim by his waist and felled him on the ground. Thereupon Munshi Prasad ordered to kill him and Naga Mahton started hitting the victim with Dabia in his hand when the victim was trying to wriggle out and other accused over-powered him and his neck was cut. In the meanwhile, two other witnesses, i.e., Nathuni G Prasad and Bhagwat Prasad also arrived and they saw the culprits running away. Later, some other persons also arrived which included Laxmi Mahton (PW-2) and Nayak Mahto(PW-1) and they also saw the culprits running away. According to the informant, the accused persons had previous enmity with the family of the informant and, therefore they intercepted the brother of the H informant and brutally killed him. After this incident the informant (PW-5)

went to the out-post at Jagdishpur where he met ASI Abhay Kumar Singh (PW-7) and gave his statement in the Fard Beyan which was recorded at 4.30 PM. The ASI thereafter came to the P.O. and he prepared the inquest report and sent the dead-body for Postmortem Examination who also inspected the P.O. and made some seizures and also recorded the further statement of the informant. The Fard Beyan was sent to the Police Station at nautan from Jagdishpur O.P. where the case was registered. However, the investigation was taken up by the ASI Abhay Kumar Singh (PW-7) who did preliminary investigation and subsequently he made over the charge to the Officer-in-charge of nautan P.S. who on completing investigation submitted chargesheet in the case. the deadbody was carried to M.G.K. Hospital by a constable No. 214 Bhuneshwar Singh and Dafadar and some others and there the Postmortem Examination over the dead-body was held by Dr. Ansuman Shukla (PW-6) on 28th of June, 1980. Subsequently, the case, after the cognizance was taken, was committed to the court of Sessions. The session's case was registered and the sessions case was entrusted to Addl. Sessions Judge II, Bettiah where the charges were framed against the accused persons on 16th of August, 1983 and after the evidence was recorded on behalf of the prosecution, the statements of the accused persons were recorded under Section 313 Cr.P.C. and some defence witnesses were also examined and the trial concluded.

Altogether seven appellants in both the appeals have been convicted and have been sentenced to undergo rigorous imprisonment for life by the 2nd Additional Sessions Judge, West Champaran, Bettiah. An appeal thereform however resulted in an Order of dismissal and hence the appeal before this court upon grant of Special Leave.

It is on the above factual score, Mr. Venkataramani strongly contended that the proceedings initiated in the matter cannot but be ascribed to be a case of blind murder, which has not been witnessed by any person. It has been contended that the prosecution story is a fabricated one as regards the involvement of the accused persons and the case of blind murder has been converted into one of the involvement of the accused by reason of enmity and hostile relationship between the family of PW-5, the brother of the deceased and the accused persons. The enmity aspect will be dealt with at a later stage in this Judgment but presently it would be convenient to not the submissions in support of the appeal as regards the happenings of the event of blind murder-the circumstances relied upon are, however, as follows :- (i) PWs 1 to 5 are supposedly interested witnesses by reason of the factum that they belong to

A the same village and are related to each other. Strong criticism has been levelled on the evidence of PWs. 3, 4 and 5, who claimed to be eye-witnesses and in the similar vein criticism has also been levelled against the evidence of PWs. 1 and 2, who claimed to have heard the shouting from a distance of about 700 to 800 yards. Let us thus analyse the evidence of prosecution witnesses
B - records depict that PWs 1 and 2 are independent witnesses, who have stated that while they were proceeding towards Jagdishpur Market and when they reached near the place of occurrence, they saw the appellants running away with Dabia in their hands and it is only on seeing the accused persons running away with weapons, they came at the place of occurrence and saw the dead body of the deceased lying there. It is this evidence which has been attributed
C to be highly improbable by Mr. Venkataramani since they were carrying a load of about 15 Kgs. of vegetables on their shoulders - a rustic villager growing vegetables and selling it to the market place obviously will carry the load on their shoulders. Weight of 15 Kgs. may be of some consequence to a sophisticated *city baboo* but the same may not be so to a village peasant or
D even a trader. The cross-examination of these two witnesses, though effected extensively, has not yielded any benefit to the appellants and the evidence remained totally unshaken and thus worthy of acceptance by a Court of law. The evidence of PWs 3, 4 and 5 stands thus corroborated by two independent witnesses and it is on the evidence of the other three prosecution witnesses,
E the main plank of submission of Mr. Venkataramani is that a contradiction in the evidence is the only merit in the *story* made out by the prosecution.

Incidentally, be it noted that while appreciating the evidence of a witness, minor discrepancies on trivial matters without affecting the core of the
F prosecution case, ought not to prompt the court to reject evidence in its entirety. If the general tenor of the evidence given by the witness and the trial court upon appreciation of evidence forms opinion about the credibility thereof, in the normal circumstances the Appellate Court would not be justified to review it once again without justifiable reaons. It is the totality of the situtation, which has to be taken note of, and we do not see any justification to pass a contra
G note, as well, on perusal of the evidence on record. In this context reference may be made to two decisions of this Court. The first being the *State of U.P.* v. *M.K. Anthony*, [1985] 1 SCC 505 as also a later one in the case of *Leela Ram* v. *State of Haryana*, [1999] 9 SCC 525. Needless to record that difference in some minor detail, which does not otherwise affect the core of the
H prosecution case, may be there but that by itself would not prompt the Court

to reject the evidence on minor variations and discrepancies. In Leela Ram (supra), this Court observed in paragraph 9 of the report :

> "24. When an eyewitness is examined at length it is quite possible for him to make some discrepancies. No true witness can possibly escape from making some discrepant detail. Perhaps an untrue witness who is well tutored can successfully make his testimony totally non-discrepant. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence. But too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny."

This Court further observed : (SCC pp. 656 - 57, paras 25-27)

> "25. It is a common practice in trial courts to make out contradictions from the previous statement of a witness for confronting him during cross-examination. Merely because there is inconsistency in evidence it is not sufficient to impair the credit of the witness. No doubt Section 155 of the Evidence Act provides scope for impeaching the credit of a witness by proof of an inconsistent former statement. But a reading of the section would indicate that all inconsistent statements are not sufficient to impeach the credit of the witness. The material portion of the section is extracted below :
>
> '155. Impeaching credit of witness - The credit of a witness may be impeached in the following ways by the adverse party, or with the consent of the court, by the party who calls him (1) - (2).
>
> (3) by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted;'
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> 26. A former statement though seemingly inconsistent with the evidence need not necessarily be sufficient to amount to contradiction. Only such of the inconsistent statement which is liable to be 'contradicted' would affect the credit of the witness. Section 145 of the Evidence Act also enables the cross-examiner to use any former

A statement of the witness, but it cautions that if it is intended to 'contradict' the witness the corss-examiner is enjoined to comply with the formality prescribed therein. Section 162 of Code also permits the cross-examiner to use the previous statement of the witness (recorded under Section 161 of the Code) for the only limited purpose i.e. to B 'contradict' the witness.

27. To contradict a witness, therefore, must be to discredit the particular version of the witness. Unless the former statement has the potency to discredit the present statement, even if the latter is at variance with the former to some extent it would not be helpful to C contradict that witness (vide *Tahsildar Singh* v. *State of U.P.*, AIR (1959) SC 1012".

The issue, therefore, is whether the evidence available on record is otherwise trustworthy and an acceptable piece of evidence : In the contextual facts the answer is in the affirmative and both the trial court and the High Court D have also considered the same to be so.

(ii) A complaint focussed that except the interested witnesses none else from the nearby residential areas have been examined - this is so : It is the quality of the evidence and not the quantity, which is required. The crux of E the issue being has the prosectution been able to bring home the charges with the evidence available on record - if the evidence on record is otherwise satisfactory in nature and can be ascribed to be trustworthy, an increase in number of witnesses cannot be termed to be a requirement for the case. The two independent witnesses have also been grouped in the group of interested F witnesses, which is neither acceptable nor worthy of acceptance and in any event the same does not have the support from the available records. Apart there from PWs. 1, 2 and 3, they may be related to each other but that does not mean and imply total rejection of the evidence : interested they may be but in the event they are so - it is the predominant duty of Court to be more careful in the matter of scrutiny of the evidence of these interested witnesses G and it on such a scrutiny it is found that the evidence on record is otherwise trustworthy, question of rejection of the same on the ground of being interested witnesses would not arise. As noticed above, it is the totality of the evidence, which matters and if the same creates a confidence of acceptablity of such an evidence, question of rejection on being ascribed as 'interested witness' H would not be justifiable. On the wake of the aforesaid thus the second plea

of rejection of evidence of prosecution witnesses cannot be sustained.

(iii) It is on the third count that the appellants contended that since there is no evidence on record to show that the accused person had the knowledge about the movement of the deceased on that day, it is well-neigh impossible to accept that any of the witnesses have really seen the occurrence, which has led to the death of the deceased and the resultant effect would be the entitlement of benefit of doubt in favour of the accused persons. On the nature of the evidence as is available on record and as noted above, question of any entitlement of benefit of doubt would not arise; The evidence on-record is worth its credence and trustworthy, as such creates a condifence in the mind of the Court.

(iv) On the next count it has been contended that since it was a market day, it is highly improbable that the accused would have taken a risk of committing the offence in the manner and at the place as stated by the prosecution witnesses. We have already noticed hereinabove that the tenor of evidence tendered by the prosecution witnesses creates confidence in the mind of the Court by reaon wherefor the correctness of the statements made shall have to be ascribed to them : as such whether the day was a market day or not, it really does not make a dent to the prosecution case worthy of detailing out.

(v) Lastly, the availability of the defence witnesses has been very strongly argued and non-reliance thereon has been severly criticised by the appellants. This aspect of the matter has already been dealt with while dealing with the plea of alibi and as such we need not repeat ourselves. Suffice it to record that the evidence tendered by the defence witnesses cannot outweigh the trustworthiness of the prosecution witnesses.

Turning attention on to other counts of submission in support of the appeal as regards false implication, the appellants contended that there has been a series of litigation between the parties, in particular, PW-5 and as such the accused persons were meant to suffer the litigation process in a heavy way : unfortunately, however, there is no evidence to the effect as is now being stated before this Court. On the contrary the prosecution alleged a definite motive and a grudge against the accused persons and the same would be evident from the observations of the High Court in that regard. The High Court in paragraph 16 of the Judgment stated as below :

A "16. So for as the motive for occurrence is concerned, several documents have been filed and it has been pointed out that because there was a series of litigation between the two parties and in some of the cases filed on behalf of the informant, some of the accused and their relations were also convicted, they have grudge against the B family of the informant. It is, therefore, clear that the appellants in this case had strong motive for committing the murder of the brother of the informant in this case. However, it has been submitted on behalf of the appellants that it is strange that when the informant himself was the informant in the cases in which the appellants were either convicted or they were facing trial and when the informant was also C surrounded by them why did they spare the informant and killed his brother. In this connection, it has been submitted on behalf of the State that from the evidence of the informant (PW-5), it becomes clear that when the accused persons were surrounding him alongwith his brother deceased, he fled away from the ring of the accused persons. D PW-5 has also clearly stated that when he ran to some distance he stopped and started looking at the P.O. and he found that his brother was surrounded and was being assaulted by the accused persons. It appears that because of the smartness and presence of mind the informant succeeded in extricating himself from the clutches of the E assailants and as his brother could not be so prompt in taking care and he was surrounded and attacked. If the accused persons had grievance against the informant and his family, it is not surprising that they chose the brother of the informant to kill him when the informant escaped. Therefore, there is nothing unnatural in it."

F By reason of the above, we are unable to record our concurrence in the matter of even raising a plea of enmity by the defence. As a matter of fact there is no evidentiary support as such the same does not call for a detailed discussion in this Judgment.

G In support of the appeal, a further submission has been made pertaining to the First Information Report (FIR). On this score the appellants contended that delayed receipt of the FIR in the Court of the Chief Judicial Magistrate cannot but be viewed with suspicion. While it is true that Section 157 of the Code makes it obligatory on the Officer Incharge of the Police Station to send a report of the information received to a Magistrate forthwith, but that does H not mean an imply to denounce and discard an otherwise positive and

trustworthy evidence on record. Technicality ought not to outweigh the course of justice - if the Court is otherwise convinced and has come to a conclusion as regards the truthfulness of the prosecution case, mere delay, which can otherwise be ascribed to be reasonable, would not by itself demolish the prosecution case. The decision of this Court in *Shiv Ram and another* v. *State of U.P.*, [1998] 1 SCC 149 lends support to the observation as above.

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This Court further in *State of Karnataka* v. *Moin Patel and others*, AIR (1996) SC 3041 stated vis-a-vis the issue of delay in despatch of FIR as below:

> "The matter can be viewed from another angle also. It has already been found by us that the prosecution case is that the FIR was promptly lodged at or about 1.30 AM and that the investigation started on the basis thereof is wholly reliable and acceptable. Judged in the context of the above facts the mere delay in despatch of the FIR - and for that matter in receipt thereof by the Magistrate - would not make the prosecution case suspect for as has been pointed out by a three Judge Bench of this Court in *Pala Singh* v. *State of Punjab*, AIR (1972) SC 2679, the relevant provision contained in Section 157 Cr.P.C. regarding forthwith dispatch of the report (FIR) is really designed to keep the Magistrate informed of the investigation of a cognizable offence so as to be able to control the investigation and if necessary to give proper direction under section 159 Cr.P.C. and therefore if in a given case it is found that FIR was recorded without delay and the investigation started on that FIR 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 unsupportable".

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Let us, however, at this stage, consider the view as expressed by the High Court in the matter under consideration. The High Court in paragraph 13 of the Judgment stated as below :

> "13. It has been submitted on behalf of the STATE in this regard that it is clear from the evidence of the I.O. (P.W. 7) that the informant of this case had arrived at the out post at 4.30 PM and he had given the statement which was recorded in the Fard Beyan (Ext. 1). This fact was also noted in the station diary and thereafter the Investigating Officer proceeding for the P.O. and it appears that he had prepared

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A the inquest report (Ext. 5) at 5.30 PM and has obtained the signatures of the witnesses on it and then he sent the deadbody for Postmortem Examination. He also made some seizures at the P.O. and prepared the seizure list (Ext. 4) at the place of occurrence at 17.15 hours and he sent the deadbody for Postmortem Examination through a constable B by preparing a forwarding report (Ext. 6). Moreover, according to PW 7 he had made over charge of the investigation to another Police Office PW 8 on 28th June 1980 and then on taking up the investigation PW 8 Arun Kumar Singh had also inspected the P.O. and also recorded the statments of PW 6. So, it is obvious that not only the Fard Beyan was prepared; rather the entries were made in the station C diary also at the Police Station and subsequently after taking over the charge from the first I.O. (PW-7), PW 8 also took up further investigation on 28.6.1980. It is, therefore, clear that the investigation was promptly taken up and the investigation promptly proceeded. It is also significant to note that PW 8 happended to be the Officer D Incharge of the Police Station and it was his duty to send the FIR to court, but as he had proceeded for the place of occurrence on 28th and he remained there till 29.6.80, as stated by him, the FIR could not be dispatched in time. In this view of the matter, simply because the FIR in this case was received in the court of the Chief Judicial E Magistrate with delay it cannot be said that the FIR in this case is not genuine or that it is tainted or that the prosecution case should be viewed with suspicion."

As noticed above, the statutory obligation warrants utmost promptitude and in the event of the delay not being unreasonable one and in the event of F availability of some explanation therefore, which is otherwise acceptable as well, question of prosecution being tainted would not arise. FIR sets the investigation rolling and in the event of there being some delay somewhere and as noticed above with the acceptable explanation, the delay cannot be said to vitiate the trial by reason therefor. On the wake of the aforesaid, we are G thus unable to record our concurrence to the submissions in support of the appeals.

The appeals thus have no mierit and hence are dismissed.

A.K.T. Appeals dismissed.