

A.F.R.

Court No. - 4

Case :- CRIMINAL APPEAL No. - 757 of 2011

Appellant :- Shyam Singh @ Kala Nad Others

Respondent :- State Of U.P.

Counsel for Appellant :- Anurag Pathak, Mohit Kumar, Noor Mohammad

Counsel for Respondent :- Govt. Advocate

Hon'ble Bala Krishna Narayana, J.

Hon'ble Prakash Padia, J.

Per Hon'ble B. K. Narayana, J.

Heard Sri Noor Mohammad, learned counsel for the appellants and Smt. Manju Thakur, learned A.G.A.-I for the State.

This criminal appeal has been preferred by the appellants Shyam Singh @ Kala (A1), Suresh @ Sonu (A2), Manoj @ Monu (A3) and Jony (A4) against the judgement and order dated 27.01.2011 passed by Additional Sessions Judge, Court No. 2, Saharanpur in S.T. No. 150 of 2009, 'State Versus Shyam Singh @ Kala and others' arising out of Case Crime No. 289 of 2008, P.S.- Fatehpur, District- Saharanpur, by which all the four appellants have been convicted and sentenced to imprisonment for life and a fine of Rs. 5000/- each in case of default in payment of fine, six months additional simple imprisonment u/s 302 r/w 34 I.P.C., six months rigorous imprisonment and a fine of Rs. 1,000/- each and in case of default in payment of fine, 45 days additional simple imprisonment u/s 323 r/w 34 I.P.C.

Facts of the case are briefly stated hereinbelow :-

One P.W.3 informant Bhopal Singh gave a written report at P.S.- Fatehpur, District- Saharanpur (Ext.Ka.1) on 10.11.2008 at about 16.45 hours stating therein that on 09.11.2008 at about 8 p.m., his nephew

Ravindra Pratap Singh was belaboured by Shyam Singh @ Kala (A1) son of Beeru, Suresh @ Sonu (A2) son of Mamchand, Manoj @ Monu (A3) son of Mamchand and Jony (A4) son of Mamchand by 'danda', shears and iron rods with the intention of causing his death near the shop of 'Chauhal' on the road in village- Bahera Kala, P.S.- Fatehpur, District- Saharanpur. When P.W.1 Brijpal Singh son of Balveer Singh and P.W.2 Rajendra Singh son of Roop Singh reached the place of occurrence to save him, the aforesaid accused exhorting that they were also sympathizers of Ravindra Pratap Singh, attacked them also with their weapons with the object of causing their death and inflicted injuries on them. On hearing the noise, P.W.4 Sarve Singh son of Gulab Singh, Rampal Singh son of Lekhraj and several other villagers arrived at the place of incident and witnessed the occurrence in the moonlight and with great difficulty managed to save Ravindra Pratap Singh, P.W.1 Brijpal Singh and P.W.2 Rajendra Singh. He took the injured with the help of villagers to the Government Hospital, Saharanpur where the doctors considering the serious condition of Ravindra Pratap Singh, referred him for treatment to higher centre while admitted P.W.1 Brijpal Singh and P.W.2 Rajendra Singh. The entire incident was narrated to him by the villagers and the witnesses and he made a prayer in the written report that appropriate action be taken against the accused.

On the basis of the written report of the occurrence (Ext.Ka.1), Case Crime No. 289 of 2008 u/s 307/323 I.P.C. was registered against all the accused-appellants.

The injuries of Ravindra Pratap Singh (deceased), P.W.1 Brijpal Singh and P.W.2 Rajendra Singh were examined at S.B.D. Hospital, Saharanpur on 09.11.2008 at 10.05 p.m., 10.15 p.m. and 10.25 p.m. respectively by P.W.5 Dr. Naresh Chand, Medical Officer, S.B.D. Hospital, Saharanpur who also prepared their injury reports (Exts.Ka.3, Ka.4 and Ka.5).

The injury report of Ravindra Pratap Singh (deceased) indicated

following injuries on his person :-

(1) L.W. 5 cm x 1.5 cm x bone deep, 5 cm above rt. ear on rt. side head. Advised x-ray of skull.

(2) L.W. 6 cm x 0.5 cm x bone deep, left side front of head 6 cm above left eyebrow. Advised x-ray.

The injury report of P.W.1 Brijpal Singh indicated following injuries on his person :-

(1) T.S. 6 cm x 4 cm on left side head 9 cm above left ear. Advised x-ray of skull.

(2) Red abraded contused swelling 6 cm x 5 cm back of and middle of rt. forearm. Advised x-ray of rt. forearm.

(3) L.W. 2.5 cm x 1 cm x bone deep on outer aspect of rt. thigh and lower part. Advised x-ray of rt. thigh and knee joint.

(4) L.W. 1 cm x 0.5 cm x bone deep front and middle of left leg. Advised x-ray of left leg.

The injury report of P.W.2 Rajendra Singh indicated following injuries on his person :-

(1) L.W. 1.5 cm x 1 cm x bone deep in medial end of rt. eyebrow. Advised x-ray of skull.

(2) L.W. 1.5 cm x 0.5 cm x skin deep on rt. side face, 1.5 cm below rt. eye.

Supplementary report of P.W.2 Rajendra Singh (Ext.Kha.1) dated 24.12.2008 indicates that no abnormality was found in his skull. His injury no. 1 which was kept under observation was found to be simple in nature. Similarly, the supplementary report of P.W.1 Brijpal Singh (Ext.Kha.2) dated 24.12.2008 also indicates that no abnormality was found in any of the four injuries received by them and his injuries were opined to be simple in nature.

The investigation of the case was entrusted to P.W.9 S.I. Rampal Singh Pawar who started the same on 11.11.2008 and after recording the statement of the author of check F.I.R. (Ext.Ka.16), arrested the accused-appellant Shyam Singh @ Kala (A1), Suresh @ Sonu (A2) and Jony (A4) on the same day and thereafter inspected the place of occurrence at the instance of P.W.3 informant Bhopal Singh and prepared its site plan

(Ext.Ka.16). During the course of investigation, he also recovered two sticks, one iron rod and one 'palta' from the front room of house of Shyam Singh @ Kala (A1) hidden behind the door and prepared its recovery memo (Ext.Ka.2). In the meantime, Ravindra Pratap Singh died on 16.11.2008 as a result of the injuries received by him in the occurrence, intimation whereof was given to the concerned police station vide Death Intimation Slip (Ext.Ka.22) on which his case was converted to one u/s 302 I.P.C. He also recorded the statement of Manoj @ Monu (A3) on 18.11.2008 who had surrendered himself before the trial court.

Postmortem on the body of deceased Ravindra Pratap Singh was conducted by P.W.8 Dr. Parveen Kumar Jha, Senior Eye Surgeon, State Hospital, Gautam Buddh Nagar on 16.11.2008 at 5 p.m. who also prepared his postmortem report (Ext.Ka.15). He noted following ante-mortem injuries on the person of Ravindra Pratap Singh :-

- (1) Stitched wound in the area 8 cm x 3 cm on the top of rt. side head (no. of stitches- 7).*
- (2) Stitched wound 6 cm in length (no. of stitches- 9) on the left side fore of scalp, 6 cm above the left eyebrow.*
- (3) Chest tube burnt on the rt. side front of chest 2 cm x 1 cm at 5 cm lateral to rt. mammary gland.*

According to P.W.8 Dr. Parveen Kumar Jha, the cause of death of Ravindra Pratap Singh was a result of excessive bleeding due to ante-mortem injuries.

On 19.11.2008, the investigation of the case was transferred to P.W.7 S.I. Subhash Chand Rathore who took possession of the blood-stained clothes of injured Ravindra Pratap Singh, P.W.1 Brijpal Singh and P.W.2 Rajendra Singh on 23.11.2008 and prepared their recovery memos (Exts.Ka.9, Ka.10 and Ka.11) respectively. On 28.11.2008, he obtained police custody of Manoj @ Monu (A3) from District Jail and got his statement recorded in the police station on 29.11.2008. On the same day, P.W.7 S.I. Subhash Chand Rathore went to the house of his brother Suresh

@ Sonu (A2) and recovered one blood-stained 'saria' like piece of iron from the north-west corner of the house, hidden under domestic items on the pointing out of Manoj @ Monu (A3) and prepared its recovery memo (Ext.Ka.12). He also prepared the site plan of the place of recovery of the iron rod as (Ext.Ka.13).

After completing the investigation, P.W.7 S.I. Subhash Chand Rathore filed charge-sheet (Ext.Ka.14) against all the accused-appellants before Chief Judicial Magistrate, Saharanpur.

Since the offences mentioned in the charge-sheet were triable exclusively by the Court of Sessions, Chief Judicial Magistrate, Saharanpur committed the accused for trial for the offences u/s 302, 323, 307 I.P.C. on 02.03.2009 to the Court of Sessions Judge, Saharanpur where Case Crime No. 289 of 2008 was registered as S.T. No. 150 of 2009, 'State Versus Shyam Singh @ Kala and others' and made over for trial from there to the Court of Additional Sessions Judge, Court No. 2, Saharanpur who on the basis of material collected during the investigation and after affording opportunity of hearing to the prosecution as well as the accused on the point of charge, framed charge u/s 302/34 & 307/34 I.P.C. against all the four accused-appellants who abjured the charges framed against them and claimed trial.

The prosecution in order to prove its case against the accused-appellants examined as many as nine witnesses of whom P.W.1 Brijpal Singh, P.W.2 Rajendra Singh, P.W.3 informant Bhopal Singh and P.W.4 Sarva Singh were examined as witnesses of fact while P.W.5 Dr. Naresh Chand who had examined the injuries of the injured, prepared and proved their injury reports as (Exts.Ka.3 to Ka.5), P.W.6 Dr. Rajan Dang who had admitted the injured to the District Hospital, Saharanpur on 09.11.2008 and proved their bed head tickets (Exts.Ka.6 to Ka.8) during the trial, P.W.7 S.I. Subhash Chand Rathore, the second Investigating Officer of the case who had completed the investigation and filed charge-sheet (Ext.Ka.14) against all the accused-appellants, P.W.8 Dr. Parveen Kumar

Jha who had conducted postmortem on the body of deceased and prepared his postmortem report (Ext.Ka.15) and P.W.9 S.I. Rampal Singh Pawar, the first Investigating Officer of the case who had recorded the statement of author of check F.I.R. (Ext.Ka.16) and had prepared the site plan of the place of occurrence (Ext.Ka.16), were produced as formal witnesses.

The accused-appellants in their statements recorded u/s 313 Cr.P.C. denied the prosecution case as false and alleged false implication due to previous enmity.

Learned Additional Sessions Judge, Court No. 2, Saharanpur, after considering the submissions advanced before him by the learned counsel for the parties and scrutinizing the evidence on record, by the impugned judgement and order, convicted all the four appellants and awarded aforesaid sentences to them.

Hence, this appeal.

Sri Noor Mohammad, learned counsel for the appellants submitted that considering the fact that the incident had taken place in the night and there being inordinate and unexplained delay of almost 20 hours in the lodging of the F.I.R., without any satisfactory explanation for the same, possibility of no one having either seen the incident or the incident having not taken place in the manner as alleged in the F.I.R. or the appellants not being the perpetrators of the crime and the written report of the incident was prepared after due deliberations with the ulterior intention of falsely implicating the appellants in consultation with the police, cannot be ruled out. It is further contended that the injury reports and the supplementary reports of the injured fully establish that the injuries which were allegedly inflicted on them by the appellants were found to be simple in nature and hence, the recorded conviction of the appellants u/s 302/34 I.P.C. and the sentence of life imprisonment awarded to them cannot be sustained.

It is next contended by the learned counsel for the appellants that in view of the injuries allegedly sustained by the deceased Ravindra Pratap

Singh in the incident and considering the fact that he had died after more than seven days after the incident, even if the entire prosecution case and the evidence adduced during the trial for proving the charges framed against the appellants are believed to be true, the offence, if any, committed by the appellants does not travel beyond Section 304 (II) I.P.C. and hence, it is a fit case where this Court, if it comes to the conclusion that the prosecution has been able to prove the involvement of the appellants in this occurrence to convert the recorded conviction of the appellants by the trial court u/s 302/34 I.P.C. to one u/s 304 (II) I.P.C. and to palliate the sentence of life imprisonment awarded to the appellants to the period already undergone by them. He lastly submitted that the irreconcilable discrepancy between the medical evidence and the ocular version renders the ocular version wholly unreliable and the impugned judgement and order is liable to be set-aside.

Per contra Smt. Manju Thakur, learned A.G.A.-I appearing for the State made her submissions in support of the impugned judgement and order. She submitted that the complicity of the appellants in committing the crime in question stands fully established from the evidence of the two injured witnesses, P.W.1 Brijpal Singh and P.W.2 Rajendra Singh whose presence at the place of incident cannot be doubted even for a moment. She next submitted that from the medical evidence on record, it is established beyond all reasonable doubts that the deceased had died as a result of ante-mortem injuries and hence, there is no merit in the submission made by learned counsel for the appellants that the offence, if any, committed by the appellants, in view of the facts on record, does not travel beyond Section 304 (II) I.P.C. She further submitted that the delay in lodging the F.I.R. cannot be made a basis for doubting the prosecution story specially when the three witnesses of fact have fully supported the prosecution case as spelt out in the F.I.R. She lastly submitted that this appeal lacks merit and is liable to be dismissed.

We have very carefully heard the learned counsel for the parties and

perused the entire lower court record.

The only question which arises for our consideration in this appeal is that whether the prosecution has been able to prove its case against the accused-appellants beyond all reasonable doubts or not ?

Record shows that the incident had taken place on 09.11.2008 at about 8 p.m. in which three persons namely deceased Ravindra Pratap Singh, P.W.1 Brijpal Singh and P.W.2 Rajendra Singh had allegedly received injuries. Record further indicates that all the three injured were admitted to S.B.D. District Hospital on the same day at about 10.05 p.m., 10.15 p.m. and 10.25 p.m. respectively as is evident from their bed head tickets (Exts.Ka.6 to Ka.8) which were proved by P.W.6 Dr. Rajan Dang in his evidence tendered during the trial.

We have already referred to the injury reports of the deceased Ravindra Pratap Singh, P.W.1 Brijpal Singh and P.W.2 Rajendra Singh and the supplementary reports of P.W.1 Brijpal Singh and P.W.2 Rajendra Singh which were proved by P.W.5 Dr. Naresh Chand as (Exts.Kha.2 and 1 respectively).

Deceased Ravindra Pratap Singh was referred for better treatment to Higher Centre on 16.11.2008 at 4 a.m. where he died on the same day at 11.10 a.m. as is evident from the death intimation slip (Ext.Ka.22) which was sent to the concerned police station by the Casualty Medical Officer, P.W.8 Dr. Parveen Verma.

The inquest on the body of deceased Ravindra Pratap Singh was conducted on 16.11.2008 between 13.45 p.m. and completed at 15 hours. His inquest report has been brought on record as (Ext.Ka.17). The postmortem on the body of deceased Ravindra Pratap Singh was conducted by P.W.8 Dr. Parveen Kumar Jha who also prepared and proved his postmortem report as (Ext.Ka.15).

P.W.5 Dr. Naresh Chand on page 56 of his cross-examination has admitted that the injuries which he had found on the person of P.W.1 Brijpal Singh and P.W.2 Rajendra Singh were simple in nature.

P.W.8 Dr. Parveen Kumar Jha who had conducted postmortem on the body of deceased had categorically deposed on page 67 of the paper book in his cross-examination that the internal damage which was caused to the deceased was a result of injury no. 1 and as far as injury no. 2 is concerned, the same did not cause any internal damage.

The medical evidence on record which comprises of the injury reports of deceased Ravindra Pratap Singh, P.W.1 Brijpal Singh and P.W.2 Rajendra Singh (Exts.Ka.3 to Ka.5) and the supplementary reports of P.W.1 Brijpal Singh and P.W.2 Rajendra Singh (Exts.Kha.2 and Kha.1), statements of P.W.5 Dr. Naresh Chand, P.W.6 Dr. Rajan Dang and P.W.8 Dr. Parveen Kumar Jha, it is proved that the injuries which the injured had allegedly sustained in the occurrence, were simple in nature.

As regards deceased Ravindra Pratap Singh, we find that it is admitted case of the prosecution that he had died after eight days of the incident. Undoubtedly both the injuries suffered by him were on his head. It has been argued by the learned counsel for the appellants that the injury report of the deceased has been tampered with as initially only one injury was noted by P.W.5 Dr. Naresh Chand on his skull but for the reasons best known to him, later he made an interpolation in it by recording the second injury in the injury report by a thin pencil.

In his cross-examination on page 56 of the paper book, P.W.5 Dr. Naresh Chand stated that he could not notice the second injury on account of the blood oozing out from the injury no. 1 but when he noted the same, he recorded it in the injury report but he had neither mentioned the aforesaid fact nor the fact that the first injury was bleeding so profusely that he could not notice the same at the time when he had examined the deceased. He in his cross-examination further very candidly admitted that the injury no. 2 noted by him in the injury report (Ext.Ka.3) was skin deep and superficial and the injury no. 1 could also be caused if the deceased's head was banged against a wall.

Thus, from the perusal of the injury report of the deceased

(Ext.Ka.3) and the evidence of P.W.5 Dr. Naresh Chand, we have no hesitation in holding that the deceased had received only one injury described as injury no. 1 in his injury report (Ext.Ka.3) and the ante-mortem injury no. 1 in the postmortem report (Ext.Ka.15). Even P.W.8 Dr. Parveen Kumar Jha who had conducted the autopsy on the deceased's body, prepared and proved its postmortem report as (Ext.Ka.15), had categorically deposed on page 67 of the paper book that internal damage to the deceased's body was caused by injury no. 1. He had not recorded in the postmortem report that injury no. 2 had caused any internal damage.

Thus, upon a careful scrutiny of the medical evidence on record which comprises of the injury report (Ext.Ka.3) and postmortem report of the deceased (Ext.Ka.15), it transpires that the deceased had received only one injury in the occurrence and the second injury recorded in the injury report appears to have been interpolated later. The postmortem report of the deceased indicates fracture of right side temporal bone.

As far as the injuries of the other two injured, P.W.1 Brijpal Singh and P.W.2 Rajendra Singh, are concerned, we have already recorded that their injuries were simple and superficial.

We now proceed to examine whether the medical evidence on record corroborates the ocular version or not ?

The prosecution in order to prove its case against the accused-appellants, examined as many as four witnesses of fact namely P.W.1 Brijpal Singh, P.W.2 Rajendra Singh, P.W.3 informant Bhopal Singh and P.W.4 Sarva Singh.

P.W.1 Brijpal Singh in his examination-in-chief stated that accused-appellants Shyam Singh @ Kala (A1), Suresh @ Sonu (A2), Manoj @ Monu (A3) and Jony (A4) who were present in the Court, were the residents of his village and were well-known to him. Suresh @ Sonu (A2), Manoj @ Monu (A3) and Jony (A4) were real brothers and Shyam Singh @ Kala (A1) was their uncle. The incident had taken place on 09.11.2008 at about 8 p.m. when they were returning after attending a

marriage ceremony. When they reached near the tea shop of 'Chauhal', all the four accused-appellants, Shyam Singh @ Kala (A1) and Jony (A4) armed with sticks and Suresh @ Sonu (A2) and Manoj @ Monu (A3) armed with iron rods and shears, started beating Ravindra Pratap Singh with their weapons. In the meantime, someone snatched the shears from the hands of Manoj @ Monu (A3) on which he picked up the iron rod lying there and all the four accused-appellants first inflicted injuries on the head of Ravindra Pratap Singh with their weapons on account of which he fell down on the ground. Then the accused-appellants also inflicted injuries on his chest with the object of causing his death and when he and his companions tried to save him from the accused-appellants, they also beat them and in the incident, he and P.W.2 Rajendra Singh also received injuries. The incident was witnessed by P.W.4 Sarva Singh, Rampal Singh and his brother Kushal Pal who took the injured for treatment to Saharanpur Hospital where he and the other injured were medically examined and their injuries were x-rayed. Later Ravindra Pratap Singh was referred for treatment to Delhi where he was admitted in Kailash Hospital, NOIDA where he died during treatment. He and P.W.2 Rajendra Singh remained admitted in hospital for 3-4 days and their injuries were also x-rayed.

P.W.2 Rajendra Singh and P.W.4 Sarva Singh in their evidence corroborated the evidence of P.W.1 Brijpal Singh on all material particulars. However, there are glaring contradictions in their statements with regard to the source of light in which they had seen and identified the accused. While P.W.1 Brijpal Singh and P.W.2 Rajendra Singh had stated that they had identified the accused in the moonlight, P.W.4 Sarva Singh has stated in his examination-in-chief that the place of occurrence was illuminated with streetlight and he was also carrying a torch with him and he had seen the occurrence in the light of the torch and streetlight.

P.W.3 informant Bhopal Singh is admittedly not an eye witness of the occurrence. He in his evidence tendered before the trial court proved

the written report of the incident which was scribed by him and tendered at P.S.- Fatehpur (Ext.Ka.1). He in his cross-examination on page 42 of the paper book has deposed that since after the incident, he had stayed back with the two injured in the hospital for looking after them, he could not lodge the F.I.R. of the incident before 10.11.2008.

After going through the oral evidence on record, we find that although all the three witnesses of fact have deposed in unison that all the four accused-appellants had assaulted and caused injuries to the deceased by their weapons on his head and chest but the injury report of the deceased (Ext.Ka.3) indicates only two injuries, both on his head and out of the aforesaid two injuries, we found injury no. 2 could be fabricated as it was recorded in the injury report by P.W.5 Dr. Naresh Chand subsequently. If we believe the prosecution story to be true then the deceased could not have escaped with only one injury on his head. The absence of any injury which could have been inflicted on the deceased's chest by the weapons which the appellants were carrying, is another circumstance which belies the claim of P.W.1 Brijpal Singh, P.W.2 Rajendra Singh and P.W.4 Sarva Singh of being the eye witnesses of the occurrence. The aforesaid irreconcilable conflict between the ocular version and the medical evidence on record, in our opinion, totally belies the prosecution story. It is true that there is evidence of P.W.1 Brijpal Singh and P.W.2 Rajendra Singh on record who according to the prosecution version, had received injuries in the same incident.

It is undisputed that the evidence of an injured witness stands on a higher level but at the same time, it is equally true that receiving the injuries in an incident is a fact which merely proves the presence of the injured witness at the place of incident but the same is no guarantee of the fact that whatever the injured witness deposes is gospel truth.

However, since the medical evidence on record indicates that the injuries allegedly received by them were superficial and simple in nature, the possibility of the same being received by them in the same incident in

which the deceased had received injury at the hands of the appellants considering the nature of weapons with which they had allegedly assaulted the injured, are too faint and remote. There are, further discrepancies in the evidence of P.W.1 Brijpal Singh and P.W.2 Rajendra Singh and P.W.4 Sarva Singh with regard to the source of light in which they had seen the occurrence and identified the accused.

The medical evidence on record does not support the prosecution version of the incident according to which the deceased had been belaboured with sticks, iron rods and shears by all the four appellants and consequently rendering the eye witness account of the occurrence narrated by P.W.1 Brijpal Singh, P.W.2 Rajendra Singh and P.W.4 Sarva Singh in their statements recorded before the trial court, unreliable and untrustworthy.

The credibility of the prosecution case has also been assailed by the learned counsel for the appellants on the ground of there being an inordinate delay in the lodging of the F.I.R.

The issue whether prosecution case is liable to be thrown out merely on the ground of inordinate delay in lodging the F.I.R is no longer res integra and stands settled by a catena of a decision of the Apex Court :

The Apex Court in the case of **Apren Joseph alias Current Kunjukunju and others Vs. State of Kerala** reported in **AIR 1973 Supreme Court 1**, has observed as hereunder:-

"Delay in lodging the first information report quite often results in embellishment which is a creature of afterthought. On account of delay, the report not only gets bereft of the advantage of spontaneity, danger creeps in of the introduction of coloured version exaggerated account or concocted story as a result of deliberation and consultation. It is, therefore, essential that the delay in lodging of the first information report should be satisfactorily explained."

The Apex Court in the case of **Ravinder Kumar and another Vs. State of Punjab** reported in **AIR 2001 SC 3576**, has observed as hereunder:-

"The attack on prosecution cases on the ground of delay in lodging FIR has almost bogged down as a stereotyped redundancy in criminal cases. It is a recurring feature in most of the criminal cases that there would be some delay in furnishing the first information to the police. It has to be remembered that law has not fixed any time for lodging the FIR. Hence a delayed FIR is not illegal. Of course a prompt and immediate lodging of the FIR is the ideal as that would give the prosecution a twin advantage. First is that it affords commencement of the investigation without any time lapse. Second is that it expels the opportunity for any possible concoction of a false version. Barring these two plus points for a promptly lodged FIR the demerits of the delayed FIR cannot operate as fatal to any prosecution case. It cannot be overlooked that even a promptly lodged FIR is not an unreserved guarantee for the genuineness of the version incorporated therein.

In **State of Himanchal Pradesh Vs. Gian Chand** reported in **AIR 2001 (1) SC 2075**, the Apex Court reiterated as hereunder:-

"Delay in lodging the FIR cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same solely on the ground of delay in lodging the first information report. Delay has the effect of putting the Court in its guard to search if any explanation has been offered for the delay, and if offered, whether it is satisfactory or not. If the prosecution fails to satisfactorily explain the delay and there is possibility of embellishment in prosecution version on account of such delay, the delay would be fatal to the prosecution. However, if the delay is explained to the satisfaction of the court, the delay cannot by itself be a ground for disbelieving and discarding the entire prosecution case."

Thus, the legal position which emerges after going through the gamut of authorities on the issue referred to hereinabove is that it is settled principle of criminal jurisprudence that mere delay in lodging the F.I.R. may not prove fatal in all cases, but in the given circumstances of the case, delay in lodging the F.I.R. can be one of the factors which may erode the credibility of the prosecution version but delay in lodging the F.I.R. cannot be a ground itself for throwing away the entire prosecution version as given in the F.I.R. and later substantiated by the evidence, unless there are indications of fabrication. The Court has further to seek explanation for delay and check the truthfulness of the version to inquire and if the court is satisfied, then the case of prosecution cannot fall on this

ground alone.

We now proceed to test the credibility of the F.I.R. in this case on the touch stone of the aforesaid principles and evaluate and scrutinize the oral evidence on record with the object of assessing whether the delay in lodging of the F.I.R. has been satisfactorily explained.

We have very carefully gone through the evidence of P.W.3 informant Bhopal Singh in this case but we are constrained to observe that he has failed to come up with any satisfactory explanation for the delay of 20 hours in lodging the F.I.R. As already noted with regard to the explanation for the delay in lodging of the F.I.R., P.W.3 informant Bhopal Singh, in his examination-in-chief had deposed that after the incident, he had taken all the three injured namely deceased Ravindra Pratap Singh, P.W.1 Brijpal Singh and P.W.2 Rajendra Singh to the hospital from where Ravindra Pratap Singh was referred to a Higher Centre on which other persons who were accompanying him, had left for NOIDA along with Ravindra Pratap Singh while he had stayed back with the other two injured, P.W.1 Brijpal Singh and P.W.2 Rajendra Singh, who were admitted to the hospital and as such he could not lodge the F.I.R. before 10.11.2008 at 16.45 hours. By deposing the aforesaid fact, P.W.3 informant Bhopal Singh wanted to give an impression that after his companions had taken the deceased Ravindra Pratap Singh to NOIDA for better treatment on the same day, he had stayed back in the District Hospital, Saharanpur for looking after the other two injured and hence, he was left alone. However, the fact stated by P.W.3 informant Bhopal Singh in his examination-in-chief that his companions had left for NOIDA with the deceased Ravindra Pratap Singh on the same day on which his injuries were examined in the District Hospital, Saharanpur, stands totally falsified from the recitals contained in the Death Intimation Slip of deceased Ravindra Pratap Singh (Ext.Ka.22) issued by the Casualty Medical Officer of Kailash Hospital and Heart Centre, NOIDA to the effect that Ravindra Pratap Singh was admitted to Kailash Hospital, NOIDA on

16.11.2008 at 4 a.m. and he expired on the same day at 11.10 a.m. Since, it is established from the perusal of the Death Intimation Slip (Ext.Ka.22) that deceased Ravindra Pratap Singh was admitted to Kailash Hospital, NOIDA on 16.11.2008 at 4 a.m., the fact deposed by P.W.3 informant Bhopal Singh in his examination-in-chief that he was left alone in the hospital for looking after the other two injured as the persons who had accompanied him to the District Hospital, Saharanpur, had left for NOIDA along with Ravindra Pratap Singh for better treatment, stands totally belied and it is proved that he had deposed incorrect facts before the trial court for justifying the inordinate delay on his part in lodging the F.I.R. of the incident.

Thus, we find that the explanation given by P.W.3 informant Bhopal Singh for the inordinate delay of about 20 hours in lodging the F.I.R., neither inspires confidence nor the same is true.

The delay of almost 20 hours in lodging the F.I.R., under the facts and circumstances of the case, for which no satisfactory explanation has been furnished by the prosecution, rather a false explanation was given by P.W.3 informant Bhopal Singh in his statement, in our opinion, shatters the credibility of the prosecution case. The credibility of the F.I.R. itself being under a heavy cloud, in our opinion, it would not be safe to uphold the recorded conviction of the appellants and confirm the sentence of life imprisonment awarded to them on the basis of the prosecution story narrated therein. The deceased had received only one injury on his head, author whereof is not known, and no injury on his chest, although the prosecution case is that all the four accused-appellants had assaulted him with their weapons causing injuries on his head and chest. The injury report of the deceased (Ext.Ka.3) does not disclose any injury on his chest. The postmortem report of the deceased however indicates an injury on his chest which has been described as 'chest tube burn on the right side front of chest' which could not have been caused by any of the weapons with which the accused were allegedly armed with at the time of the

assault and the same may have been caused during his treatment. The possibility of the second injury found on the head of the deceased being fabricated also cannot be ruled out under the facts and circumstances of the case and the evidence on record.

Another aspect of the matter which has intrigued us is that although the deceased after receiving the injuries in the occurrence, had remained alive for almost eight days but no effort was made to record his statement as is evident from the facts deposed by P.W.6 Dr. Rajan Dang in his cross-examination as his statement would have been the best piece of evidence corroborating the ocular version as deposed by the three so-called eye witnesses of the occurrence.

Thus, upon a wholesome consideration of the facts of the case, attending circumstances and a threadbare evaluation of the evidence on record, we do not find that the prosecution has been able to prove its case against the accused- appellants beyond all reasonable doubts and they are entitled to benefit of doubt.

The appeal succeeds and is accordingly **allowed**. The impugned judgement and order are hereby set-aside.

Shyam Singh @ Kala (A1), Suresh @ Sonu (A2), Manoj @ Monu (A3) and Jony (A4) are in jail. They shall be released forthwith unless they are wanted in any other case subject to their complying with the provisions of Section 437-A of Cr.P.C.

There shall however, be no order as to costs.

Order Date :- 19.9.2019

KS