GIRISH YADAV AND ORS. ETC. A

v.

STATE OF MADHYA PRADESH

MARCH 29, 1996

[DR. A.S. ANAND AND S.B. MAJMUDAR, JJ.] B

Indian Penal Code, 1860 : Sections 302 read with 148 and 149.

Murder—Unlawful assembly—Conviction for—Validity of.

Constitution of India, 1950 : Article 136.

C

Appeal by special leave—Concurrent findings of facts by Courts below—Power of Supreme Court to interfere with—Held not to be interfered with unless found unreasonable or shown against weight of evidence.

Code of Criminal Procedure, 1973 :

Section 154—F.I.R.—Delay in lodging of—Ante timed F.I.R.—Checks for determination of—On facts held F.I.R. was promptly lodged—Evidentiary value of promptly lodged F.I.R.—Non-mentioning of names of accused in post-mortem requisition—Held not by itself a circumstance ruling out prompt lodging of F.I.R. D

Section 174—Investigation—Duty of police to send copy of F.I.R. to concerned Magistrate—Investigation triggered off immediately after lodgment of F.I.R.—Held copy of F.I.R. was sent to Magistrate as a matter of fact and not by way of only presumption. E

Section 319—Murder—Eight accused—Charge sheet filed by Police only against four—Evidence against other four accused found by trial court prima facie sufficient enough supporting their involvement in the commission of offence—Process against other four accused issued by Court held justified. F

Criminal trial—Witnesses—Version of—Consistent with medical evidence—Held established on facts—Version of eye witnesses found sufficient to establish the prosecution case—Non-examination of neighbours as witnesses held not fatal. G

Criminal trial—Murder—Investigation—Site Plan Recitals in—Evidentiary value of.

The appellants (eight accused) were prosecuted under section 302 read with sections 148 and 149 of the Indian Penal Code 1860. The prosecu- H

A tion story was that on 4th September 1982 at about 4.30 P.M. seven accused, appellant 1 and appellants 3 to 8, armed with deadly weapons chased one G; surrounded him and then assaulted him severely with their weapons as a result of which G fell down on the ground. The incident was witnessed by the younger brother of the deceased; PW-2, as well as by PW-1 and PW-5. The evidence of these witnesses show that each one of them had come on his own B to the spot. They had seen the incident when they were very near the deceased. Their version was that after the attack the accused persons ran away with their weapons. Immediately after witnessing the attack on his brother by seven persons, PW-2 rushed to the Police Station for lodging the F.I.R. After the departure of PW-2 from the scene of the incident, appellant C 2 was alleged to have arrived on the scene of the incident who asked other appellants to move away and then threw a bomb towards the fallen G. The bomb exploded and whole of the back of deceased 'G' was injured with burns and glass pieces. In the F.I.R. names of the seven accused were mentioned except that of the eighth accused viz. appellant-2. After the F.I.R. was recorded its contents were also recorded in 'Rojnamcha Sanha' maintained D by police. It furnished a contemporaneous record of what was mentioned in the F.I.R. This document also contained the recital that a copy of the F.I.R. was being sent by the police station to the concerned Magistrate. The Investigating Officer who visited the scene of offence prepared the Panchnama of the dead body as well as the site map. The site map contained names of only three accused. The dead body of the deceased was sent for post mortem. In E the requisition for post mortem, names of seven accused were not mentioned. A weapon with a broken handle which was used for committing the offence was recovered by the Investigation Officer at a little distance from the place where dead body was found.

F On conclusion of investigation charge-sheet was filed only against appellants 1 to 4. Appellants 4 to 8 were not charge-sheeted on the ground that no case was found to be *prima facie* proved against them. However, on application from the complainant the Trial Judge exercised his powers under section 319 of the Code of Criminal Procedure, 1973 holding that appellants 4 to 8 were also *prima facie* guilty of the alleged offences. On revision G preferred by appellants 4 to 8, the High Court remanded the matter to Trial Court for reconsideration in the light of the evidence that may be recorded by the Court. Once again the Trial Judge came to the conclusion that there was enough involvement of these four accused in the commission of the offence and consequently re-issued the process against them.

H The Trial Court convicted all the eight accused of the offences charged

and sentenced them respectively to two years' rigorous imprisonment each and imprisonment for life. A Division Bench of the M.P. High Court dismissed their appeal.

The Trial Court as well as the High Court placed implicit reliance on eye-witness account of prosecution witnesses PW-1, PW-2 and PW-5.

In appeals to this Court an attempt was made by the appellants to challenge the concurrent findings of fact recorded by both the courts below against them.

On behalf of the appellants it was also contended that (i) F.I.R. was not promptly lodged and was ante-timed; non-mentioning of names of the accused was a circumstance in support of the appellants; (ii) Copy of the F.I.R. was not sent immediately to the nearest Magistrate as required under Section 174 Cr. P.C.; (iii) the medical evidence does not support the prosecution version regarding inflicting of injuries by the accused on the deceased; (iv) the version of eye witness that after inflicting injuries on the deceased the accused ran away with their weapons was not reliable because a 'Banka' with broken handle was fround by the Investigation Officer at a little distance from the place were dead body was found; (v) presence of all the three eye-witnesses simultaneously at the time of occurrence was not possible; (vi) the spot map contains names of only three accused, other accused were planted subsequently by the prosecution; (vii) as the Police had not submitted charge-sheet against accused No. 5 to 8 the Court should not have roped them in; (viii) as the accused resided in different areas of the town they could not have collected at a time on the spot to belabour the deceased; and (ix) the residents of the locality who might have gathered on spot as the evidences of police witnesses show, were not examined.

Dismissing the appeals, this Court

HELD : 1. The prosecution case against the accused has stood well established on the evidence on record as accepted by both the courts below and has remained fully reliable. No case is made out in these appeals for interference by this Court. [1041-F]

2. This Court in appeals against conviction recorded by the Trial Court and as confirmed by the High Court usually and as a matter of course does not interfere with concurrent findings of fact based on appreciation of relevant prosecution evidence. In the present case both the courts, the Trial Court as well as the High Court, have placed implicit reliance on eye-witness account of prosecution witnesses PW-1, PW-2 and PW-5. Consequently un-

A less the concurrent findings of fact reached by both the courts below are found to be unreasonable or are found to involve any error of law or they are shown to be against the weight of evidence, they would not be lightly interfered with by this Court in appeals on special leave. In this case the conviction rendered and the sentence imposed on all the 8 appellants by the Trial Court and as confirmed by the High Court are well sustained on record and
B call for no interference in these appeals. [1029-H, 1030-A-B-F]

Chinta Pulla Reddy & Ors. v. *State of Andhra Pradesh,* [1993] Supp. 3 SCC 134, referred to.

3. The evidence in this case which has stood the test of cross examina-
C tion clearly indicates that the police was promptly informed by PW-2 and, therefore, it cannot be said that the F.I.R. was ante-timed or was a doctored one. [1023-E]

4. All the requirements of Section 154 Cr. P.C. were complied with strictly. As per witness PW-2 he had left the place of crime and reached the
D Police Station for lodging the report immediately after he witnessed the attack on his deceased brother by appellants 1 and 3 to 8 and that accused No. 2 is said to have come thereafter on the scene of offence and had hurled bomb on the deceased. If the F.I.R. was not promptly recorded and was ante-timed then the name of accused No. 2 would have been reflected in the F.I.R. This circumstance lends credence to the prosecution case that the
E informant, PW-2 promptly got recorded the F.I.R. by going to the Police Station immediately after he saw the attack by the concerned seven accused on his brother. This circumstance which is well established on record and which is accepted by the High Court clearly negates the defence version that the FIR was not promptly recorded at the Police Station. [1031-D-F]

F 5. The checks laid down by this Court in *Maharaj Singh's* case* for determination of prompt lodging of F.I.R. do not reflect an exhaustive list of external checks. There may be other external checks also which may get well established on record and may lend credence to the prosecution case about the prompt recording of the F.I.R. In the present case two such external
G checks are clearly established. One such check consists of the site map which was prepared on spot after the recording of the F.I.R. In the presence of the first informant the site map was prepared on spot after the case was already registered. The other external check is found from the 'kaimisanha' which is the copy of the original 'sanha' entry maintained by the Police in the Police Station. That entry shows that immediately after the FIR was
H recorded all the relevant contents were thereafter also recorded in this book.

It furnishes a contemporaneous record of what was mentioned in the F.I.R. Therefore, it is evident that the FIR was promptly recorded at the Police Station almost hot on the heels of the incident. [1033-E-F, 1034-A-B] A

Maharaj Singh (L/Nk.) Etc. v. *State of U.P. Etc.,* [1994] 5 SCC 188, referred to.

6. Once it is found that the FIR was promptly lodged after the incident it must be held that the contents of the FIR would reflect the first hand account of what had actually happened on spot and who were responsible for the offence in question. It is in the light of the prompt lodging of the FIR in the present case that the version of the eye-witness account supporting the prosecution case as revealed in the FIR has to be appreciated. Both the courts have placed implicit reliance on the testimonies of PW-1, PW-2 and PW-5. Their evidence has well stood the test of cross examination. They have clearly implicated all the eight appellants in connection with the crime of murder. They could not be treated as chance witnesses. Their names were already revealed in the FIR. Consequently no infirmity can be found in the findings reached by both the courts below on the basis of the eye-witness account of these witnesses. [1036-C, E-F] B C D

State of Punjab v. *Surja Ram,* AIR (1955) SC 2413, referred to.

7. The 'Kaimisanha' entry which was a contemportaneous record of the lodging of the FIR itself mentions that the copy of the FIR was being sent by the Police Station to the concerned Magistrate. Investigation viz. drawing inquest report, Panchnamas of recoveries etc. started soon after the lodging of the FIR. Hence the absence of positive proof regarding the receipt of a copy of FIR by the Magistrate at the earliest would pale into insignificance on the facts of the case. In fact there is ample evidence on record of this case from which inference can be drawn that copy of the FIR must have been sent to the concerned Magistrate as a matter of fact and not by way of only a presumption to be drawn under Section 114 of the Indian Evidence Act. [1034-H, 1035-E-G] E F

Bir Singh & Ors. v. *The State of Uttar Pradesh,* AIR (1978) SC 59 and *Arjun Marik & Ors.* v. *State of Bihar,* JT (1994) 2 SC 627, referred to. G

8. It is difficult to appreciate how in the requisition application for post mortem as addressed by witness, Station Officer, to the Medical Officer there was any occasion for him to mention the names of the accused. The information which was to be sent to the doctor was regarding the homicidal death of the person concerned whose body was sent for post mortem. Non- H

A mentioning of the names of the accused in that request would not by itself be a circumstance to rule out the prompt filing of the First Information Report which has stood well established on record of the case. [1034-E-F]

9. It is not possible to agree with the contention that the medical evidence does not support the prosecution version regarding inflicting of B injuries by the accused on deceased. [1037-C]

10. Merely because one 'banka' was found with loose handle a little away from the place of occurrence it could not be said that the eye-witness account of the assault by the accused on the deceased was in any way rendered suspect. Both the Courts, therefore, were right in not placing any C implicit reliance on this circumstance. [1037-H, 1038-A]

11. The recitals in the map would remain purely heresay and could not be read as evidence in the case. The person who is said to have given information recorded in the map has not been examined in the case. Consequently whatever he might have dictated on the spot when the map was prepared D would remain a mere hearsay and that would not detract from the eye-witness account or even from the recitals in the FIR which had clearly involved all the accused. [1038-E-G]

12. There is enough power with the Court in a proper case to exercise its jurisdiction under Section 319 Cr. P.C. In the present case the High E Court had remanded the matter for reconsideration in the light of the evidence that may be recorded by the Court and that is how after recording the evidence of eye-witnesses process was re-issued against appellants 4 to 8. As the evidence recorded by the court showed that there was enough involvement of these accused in the commission of the offence, and therefore, they stood on the same pedestal as appellants 1 to 4, they could not be said to F have been wrongly proceeded against as accused under Section 319 Cr. P.C. [1038-A, 1039-A-B]

13. It is easy to visualise that when it is the prosecution case that these accused had collected together having formed an unlawful assembly, it was not difficult for them to assemble at a spot where the deceased was found G moving and to belabour him in furtherance of their common object and for that purpose they may as well come from different parts of the city where they were staying. [1040-F-G]

14. If the eye-witness account of the three witnesses was found acceptable by both the courts below and when that eye-witness account has well H stood the test of cross-examination, non-examination of other witnesses

would pale into insignificance. It is also easy to visualise that witnesses who are not concerned with the deceased may like to safely keep away from police proceedings or proceedings before the court and only those who feel aggrieved by the assault of the accused on the deceased may be bold enough to come forward to offer themselves as witnesses. Non-examination of neighbours as witnesses, therefore, cannot be fatal to the prosecution case as it stands fully supported by acceptable eye-witness account. [1040-H, 1041-A]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 318 of 1988 Etc.

From the Judgment and Order dated 27.2.88 of the Madhya Pradesh High Court in Crl. A. No. 908 of 1986.

Rajender Singh, S.C. Dutta, K. N. Shukla, Vivek Gambhir, S.K. Gambhir, C.L. Sahu, Sakesh Kumar, Uma Nath Singh for the appearing parties.

R.C. Verma and S.P. Khera, for the complainant.

The Judgment of the Court was delivered by

S.B. MAJMUDAR, J. These three criminal appeals have been filed by in all 8 accused who have felt aggrieved by their conviction and sentence recorded by Additional Sessions Judge, Jabalpur in Sessions Case No. 56 of 1983 by his judgment dated 8th August 1986 convicting them under Section 148 and Section 302 read with Section 149, Indian Penal Code (I.P.C.) and sentencing them respectively to two years' rigorous imprisonment each and imprisonment for life. Sentences were ordered to run concurrently. They have also felt aggrieved by the dismissal of their Criminal Appeal No. 908 of 1986 by a Division Bench of the Madhya Pradesh High Court at Jabalpur on 26th February 1988. Though all the 8 appellants had filed one criminal appeal before the High Court, in this Court they have filed separate appeals by obtaining special leave to appeal. Criminal Appeal No. 318 of 1988 is moved by accused nos. 6, 7, 8 and 5 respectively. Criminal Appeal No. 501 of 1988 is filed by accused no. 2 while Criminal Appeal No. 63 of 1991 is filed by accused nos. 1, 3 and 4.

Facts leading to these appeals

On 4th September 1982 at about 4.30 p.m., according to the prosecution story, in a narrow lane of Budhaiya Mohalla near Lal Chabutra in the

A city of Jabalpur, deceased Gudda alias Narayan Tiwari was chased by the appellants-accused and murdered. The appellants Chandu Patel, Ganesh Patel, Bhagwandas Yadav and Girish Yadav are alleged to have armed themselves with 'bankas', appellant Jaggu Yadav with 'pharsa' and appellants Rajjan Yadav and Rikhilal with iron rods. While deceased Gudda Tiwari was being allegedly chased by these, appellants on Mirzapur road, he entered a B narrow lane to escape but was over-powered by the appellants. The appellants are also alleged to have shouted that 'Kill Gudda Tiwari and he should not escape today'. In the lane in front of the house of Jamna Maharaj, it is alleged that the appellants who were armed with these deadly weapons surrounded Gudda Tiwari and assaulted him severely with their weapons, as a C result of which Gudda Tiwari fell down on the ground. The incident was witnessed by Indu Tiwari, P.W. 2 - younger brother of the deceased who shouted for help but none came forward to save deceased Gudda Tiwari. This incident was also witnessed at the same time by Badri Prasad, P.W.1, Ganesh Patel, P.W. 5 and Balkrishna, D.W. 1. When Indu Tiwari, P.W. 2 the younger brother of the deceased, perceived from a distance that Gudda D Tiwari had fallen on the ground and appeared to him to be dead, he rushed to Police Station Gohalpur on foot after abandoning his motor-cycle and lodged the First Information Report (Ex. P-1) which was recorded by S.R. Tandan, P.W. 11 who was then posted as Town Inspector. After departure of Indu Tiwari from the scene of the incident, the appellant Vijay Patel who is alleged to have arrived on the scene of the incident, asked other appellants E to move away and then threw a bomb towards the fallen Gudda Tiwari. It is alleged that the bomb exploded and whole of the back of the deceased Gudda Tiwari was injured with burns and glass pieces.

After recording the FIR, the police machinery immediately moved and while S.R. Tandon, P.W. 11 was proceeding towards the place of the incident F he perceived that one of the alleged assailants Chandu Patel was proceeding towards the Police Station on a bicycle hence he was apprehended then and there and taken to Police Station. When the police arrived on the scene, a huge excited crowd had gathered there by the time. Shri T.C. Usrey, P.W. 13 prepared a map of the spot (Ex. P-15) and recovered the blood-soaked earth, G different parts of a 'banka abandoned there and also prepared the inquest report (Ex. P-11) on the spot. Subsequently T.C. Usrey, P.W. 13 sent the dead body of Gudda Tiwari for post mortem examination. Post mortem examination was conducted by Dr. A.K. Yadav, P.W. 6 on 5.9.1982 at about 11.15 a.m.

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P.W. 13, T.C. Usrey concluded the investigation, arrested appellant nos. 1, 2, 3 and 4 and filed the chargesheet against these four persons only, in the Committal Court. According to Shri Usrey he filed the chargesheet only against appellants 1, 2, 3 and 4 namely Chandu Patel, Vijay Patel, Ganesh Patel and Bhagwandas and not against appellants No. 5 Rikhilal, No. 6 Girish Yadav, no. 7 Jaggu Yadav and no. 8 Rajjan Yadav, because in the opinion of his superior officers, no case was found to be prima facie proved against them during investigation. These four appellants Chandu Patel, Vijay Patel, Ganesh Patel and Bhagwandas were committed to stand trial in the Court of Sessions. The learned Trial Judge, on application from the complainant, exercised his powers under Section 319 Code of Criminal Procedure (Cr. P.C.) and proceeded against appellant nos. 5, 6, 7 and 8 who appeared to the Trial Judge to be prima facie guilty of the commission of the alleged offence.

Appellant nos. 5 to 8 challenged that order in the High Court. A learned single Judge of the High Court allowed the Criminal Revision Application filed by them and remanded the matter to the Trial Court with a direction to record the statements of prosecution witnesses and then to decide whether these accused should be proceeded with as per Section 319, Cr. P.C. Thereafter the learned Sessions Judge recorded the statements of witnesses Badri, P.W. 1 and Indu Tiwari, P.W. 2 and found that there was *prima facie* case against these appellants and, therefore, Once again exercising his powers under Section 319 Cr. P.C. proceeded against them as accused. That is how along with original accused nos. 1 to 4, these accused nos. 5 to 8 also stood their trial for the offences with which they were charged. After recording the evidence offered by the prosecution and also after recording evidence led on behalf of the Defence the learned Sessions Judge came to the conclusion that all these accused were guilty of having committed murder of deceased Gudda Tiwari and, therefore, they were convicted and sentenced as aforesaid. As noted earlier they failed in their appeal before the High Court in convincing the High Court about their innocence. Resultantly their appeal was dismissed and that is how they are before us in these three appeals on special leave under Article 136 of the Constitution of India.

As these are appeals pursuant to the leave granted under Article 136 of the Constitution of India and as an attempt is made in these appeals by learned senior counsel for the appellants to challenge concurrent findings of fact recorded by both the courts below against the appellants, it has to be kept in view that this Court in appeals against conviction recorded by the

A Trial Court and as confirmed by the High Court usually and as a matter of course does not interfere with concurrent findings of fact based on appreciation of relevant prosecution evidence. In the present case both the courts, the Trial Court as well as the High Court, have placed implicit reliance on eye-witness account of prosecution witnesses Badri P.W. 1, Indu Tiwari, P.W. 2 and Ganesh Patel, P.W. 5 Consequently unless the concurrent findings of fact reached by both the courts below are found to be unreasonable or are found to involve any error of law or they are shown to be against the weight of evidence, they would not be lightly interfered with by this Court in appeals on special leave. In the case of *Chinta Pulla Reddy & Ors.* v. *State of Andhra Pradesh*, 1993 Supp. (3) SCC 134 one of us (Dr. A.S. Anand, J.) speaking for the Division Bench consisting of himself and N.P. Singh J., has observed in this connection as under :

> "Though generally speaking the Supreme Court does not reappreciate the evidence in an appeal, on special leave being granted, under Article 136 of the Constitution of India where two courts have appreciated the evidence and recorded concurrent findings, but since the High Court acquitted A-3 and A-6, we have, with the assistance of learned counsel for the parties, ourselves appreciated the material evidence in the case, with a view to determine whether the conviction and sentence recorded against the three appellants is justified or not."

Therefore, with a view to ascertaining whether the conviction against the appellants as rendered by the Trial Court and as confirmed by the High Court is well sustained on evidence, we went through the relevant evidence on record with the assistance of learned senior counsel for the appellants as well as learned counsel for the respondent-State. Having given our anxious consideration to the submissions made by learned senior counsel for the appellants we have reached the conclusion that the conviction rendered and the sentence imposed on all the 8 appellants by the Trial Court and as confirmed by the High Court are well sustained on record and call for no interference in these appeals.

We may now proceed to deal with the main grievance voiced by the learned senior counsel for the appellants against the impugned judgments. In the first place it was submitted that the FIR, Ex. P-1 was ante-dated or ante-timed. In this connection it was urged that though prosecution has alleged that the incident had occurred on 4th September 1982 at about 4.30 p.m. the evidence on record showed that the FIR was not promptly recorded

but saw the light of the day later on and, therefore, what is stated in the FIR should not be taken as gospel truth. So far as this grievance is concerned it was examined by both the courts below. So far as the High Court is concerned it has noted that such a suggestion was not even pointed out to witness Indu Tiwari, P.W. 2 who gave the First Information Report nor to S.R. Tandon, P.W. 11, Town Inspector who had recorded the FIR after the incident. Not only that but the defence had also examined Bhawani Prasad, Head Constable as P.W. 4 who stated that after the FIR was recorded, it was registered in 'Rojnamacha Sanha' at No. 285, Ex. P-26. That document contained summary of the FIR, the names of seven appellants, Chandu Patel. Ganesh Patel, Bhagwandas. Rikhilal, Girish Yadav, Jaggu Yadav and Rajjan Yadav, except that of appellant no 2 Vijay Patel, who is said to have come on the scene and hurled the bomb after the complainant Indu Tiwari had left the scene of offence. The High Court in paragraph 12 of its judgment has noted that witness Bhawani Prasad. Head Constable, P.W. 4 had proved a copy of the book maintained by the Police Station in which the contents of the FIR were recorded. This document also contained the recital that a copy of the FIR was being sent by the Police Station to the concerned Magistrate. And thus all the requirements of Section 154, Cr. P.C. were complied with strictly. It is also pertinent to note that as per witness Indu Tiwari, P.W. 2 he had left the place of crime and reached the Police Station for lodging the report immediately after he witnessed the attack on his deceased brother Gudda Tiwari by appellants 1 and 3 to 8 and that accused no. 2 Vijay Patel is said to have come thereafter on the scene of offence and had hurled bomb on the deceased. If the FIR, Ex. P-1 was not promptly recorded and was ante-timed then the name of accused no. 2 would have been reflected in the FIR. This circumstance lends credence to the prosecution case that the informant, P.W. 2 Indu Tiwari promptly got recorded the FIR by going to the Police Station immediately after he saw the attack by the concerned seven accused on his brother. This circumstance which is well established on record and which is accepted by the High Court, in our view, clearly negates the defence version that the FIR was not promptly recorded at the Police Station. It is true, as learned senior counsel for the appellants submitted before us that Police Sub-Inspector T.C. Usrey, P.W. 13 had deposed before the Trial Court that no 5th September 1982 he was posted as Sub- Inspector of Police at Police Station Gohalpur and that after the report of the incident was made he had gone to the spot of occurrence along with town Inspector, S.R. Tandon and other police sub-inspector. But it appears that the mentioning of the date 5th September 1982 is not accurate as the other evidence which we will presently refer to, shows that the police had gone on spot immediately after

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A lodging of the FIR on 4th September 1982 itself. This is clearly borne out from the evidence of P.W. 9, S.R. Kinkar who was sub-Inspector attached to Gohalpur Police Station. He had stated that he had sent the body of deceased Gudda alias Narayan Prasad Tiwari to Medical College for post mortem on 4.9.82. The prescribed form, Ex. P-12 was filled in by him. That the dead body was lying at the site of crime and on getting information he, B accompanied by Inspector Tandon and Sub-Inspector Usrey, had reached the site. Similar is the evidence of P.W. 11 S.R. Tandon who had written down the FIR when witness P.W. 2 came to the Police Station immediately after the incident. Shri Tandon, P.W. 11 stated in his evidence that on 4.9.82 he was posted as Town Inspector at Gohalpur Police Station. The witness C stated that on 4.9.82 complainant Indu Tiwari had reported at Police Station. This report, Ex. P-1 was written by him. It was signed by Indu Tiwari and by him. On the basis of this report he registered a case under Crime No. 420/82 and under Section 302 read with Sections 148 and 149, IPC. This report was scribed by him as dictated by Indu Tiwari. After registering the crime he went to the site of crime with stamp. On reaching the site he found the dead D body lying in the 'Kulia'. It was of Gudda Tiwari. He has further stated that sub-Inspector Usrey was also with him. He asked him to prepare Panchnama after examining the body After preparing the Panchnama Usrey Informed him that the Panchnama of the dead body was complete. After that the dead body was sent for post mortem. This evidence which has stood the test of E cross examination clearly indicates that the incident occurred in the afternoon of 4th September 1982 and the police was promptly informed by P.W. 2 Indu Tiwari and, therefore, it cannot be said that the FIR was ante-timed or was a doctored one. Learned senior counsel for the appellants invited our attention to the decision of this Court in the case of *Meharaj Singh (L/Nk.) Etc.* v. *State of U.P. Etc.*, (1994) 5 SCC 188 wherein one of us Dr. A.S. Anand, F J. sitting with Faizan Uddin, J. had to consider a similar grievance regarding the alleged ante-timing of FIR. In this connection the following pertinent observations were made in paragraph 12 of the Report:

> "FIR in a criminal case and particularly in a murder case is a vital and valuable piece of evidence for the purpose of appreciating the G evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstance in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any, used, as also the names of the eyewitnesses, if any H Delay in lodging the FIR often results in embellishment, which is

a creature of an afterthought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story. With a view to determine whether the FIR was lodged at the time it is alleged to have been recorded, the courts generally look for certain external checks. *One of the checks is the receipt* of the copy of the FIR, called a special report in a murder case, by the local Magistrate. If this report is received by the Magistrate late it can give rise to an inference that the FIR was not lodged at the time it is alleged to have been recorded, unless, of course the prosecution can offer a satisfactory explanation for the delay in despatching or receipt of the copy of the FIR by the local Magistrate. *The second external check* equally important is the sending of the copy of the FIR along with the dead body and its reference in the inquest report. Even though the inquest report, prepared under Section 174 CrPC, is aimed at serving a statutory function, to lend credence to the prosecution case, the details of the FIR and the gist of statements recorded during inquest proceedings get reflected in the report. The absence of those details is indicative of the fact that the prosecution story was still in an embryo state and had not been given any shape and that the FIR came to be recorded later on after due deliberations and consultations and was then antetimed to give it the colour of a promptly lodged FIR."

Now it is no doubt true that the external checks indicated in the said decision would lend credence to the prosecution case that the FIR was promptly recorded but what is enumerated in the said decision is not an exhaustive list of external checks. There may be other external checks also which may get well established on record and may lend credence to the prosecution case about the prompt recording of the FIR. In the present case two such external checks are clearly established. One such check consists of the site map, Ex. P-15 which was prepared on spot after the recording of the FIR. Witness P.W. 13 T.C. Usrey stated in his evidence that on visiting the scene of offence after the recording of the FIR the Panachnama of the dead body was prepared on spot which is Ex. P-11 and at the same time he prepared the map of the spot of occurrence which is Ex.P-15. When we turn to Ex. P-15 we find that the site map of the crime was prepared in presence of the Panchas in Crime Case no. 420/82 under Sections 148/149, 302 IPC and it was prepared while Shri Indu Tiwari was present. Thus, in the presence of the first informant the site map was prepared on spot after the case was already registered as Crime Case No. 420/82. We have already noted the evidence of Shri S.R. Tandon, P.W. 11 who had stated that he had written down the report Ex. P-1

A as dictated to him by P.W. 2 Indu Tiwari and had given the crime No. 420/82. This clearly shows that the FIR was recorded almost on the heels of the incident promptly and thereafter the site map was prepared on spot. When the site map mentions the Crime Case No. 420/82 it lends credence to the prosecution case that the FIR was already recorded at that serial number in the Police Station Before the police machinery was put into action. The other B external check is found from the 'kaimisanha' Ex. P-27A which is the copy of the original 'sanha' entry maintained by the police in the Police Station. That entry shows that immediately after the FIR was recorded all the relevant contents were thereafter also recorded in this book. It furnishes a contemporaneous record of what was mentioned in the FIR. In the light of this C clinching evidence, therefore, it is not possible for us to agree with the contention of the learned senior counsel for the appellants that the FIR was ante-timed. We entirely agree with the findings reached by the Trial Court as well as by the High Court that the FIR was promptly recorded at the Police Station almost hot on the heels of the incident in the afternoon of 4th September 1982 and it reflects prompt and timely account of what had taken place on D spot on that fateful afternoon and who were the assailants of deceased Gudda Tiwari. In this connection learned senior counsel for the appellants also submitted that if the investigation on spot was done after the recording of the FIR there was no reason why in the requisition for post mortem Ex. P-12 names of seven accused were not mentioned and it was recited that on 4th September 1982 Gudda alias Narayan Tiwari died due to some old enmity E and his enemies inflicted injuries on his body. It is difficult to appreciate how in the requisition application for post mortem as addressed by witness S.R. Kinkar, Station Officer to the Medical Officer there was any occasion for him to mention the names of the accused. The information which was to be sent to the doctor was regarding the homicidal death of the person concerned whose body was sent for post mortem. Non-mentioning of the names of the accused F in that request would not by itself be a circumstance to rule out the prompt filing of the First Information Report which was stood well established on record of the case as seen earlier. Consequently even this aspect cannot advance the case of the appellants for showing that the FIR would not have been recorded prior to the preparation of the inquest. Panchnama and the application for post mortem Ex. P-12.

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It was next contended by learned senior counsel for the appellants relying on Section 174 Cr. P.C., that it is the duty of the police to immediately give information regarding the commission of offence to the nearest Executive Magistrate empowered to hold inquest and that in the present case such evidence is lacking. It is not possible to agree with this contention for the H simple reason that the 'kaimisanha' entry Ex. P-27A which was a contem-

poraneous record of the lodging of the FIR itself mentions that the copy of the FIR was being sent by the Police Station to the concerned Magistrate. It is true that the Dak Book or the Outward Register which would have shown the sending of the FIR to the Magistrate could not be produced by the prosecution as it was destroyed after lapse of three years as mentioned by the Head Constable Bhawani Prasad, P.W. 4 in his evidence, but that would not detract from the veracity of the entry made in the 'kaimisanha' which was maintained at the Police Station in the usual course of business. The witness had stated that at 1710 hrs. of 4th September 1982 the case under Section 302 was registered on the report of Indu Tiwari. It is also pertinent to note that investigation viz. drawing inquest report Panchnamas of recoveries etc. started soon after the lodging of the FIR, as seen earlier. Hence the absence of positive proof regarding the receipt of a copy of FIR by the Magistrate at the earlier would pale into insignificance on the facts of the case. In this connection we may also refer to the evidence of D.W. 4 V.V. Srivastava. This witness who was examined on behalf of the defence to show that the copy of the FIR must not have reached the Magistrate promptly could not help the defence. The witness stated that he had assumed the charge as Reader in the court of Chief Judicial Magistrate since October 1982 and he did not know that Police Station Gohalpur was under the jurisdiction of which Judicial Magistrate and he was also not aware if any report's copy lodged in September 1982 at Police Station Gohalpur under Crime No. 420/82 was received in CJM Court or not. He could not bring the record of 1982 in court as it was not traceable. Under these circumstances, therefore, it could not be assumed that the report would not have been sent to the concerned Magistrate promptly especially when the investigation appears to have been triggered of promptly after the lodgment of the FIR at the Police Station and when inquest Panchnama and drawing up of site map was done on the scene of offence at the earliest after the lodgment of the FIR in the Police Station as seen earlier. Learned senior counsel for the appellants in this connection invited our attention to two judgments of this Court. In the case of *Bir Singh & Ors.* v. *The State of Uttar Pradesh*, AIR (1978) SC 59,. It was observed in paragraph 11 of the Report by S. Murtaza Fazal Ali, J., speaking for this Court that in that case the High Court indulged in another conjecture that the FIR must have been sent to the P.P. and to the Elaqa Magistrate. But this was however a matter which had to be proved like any other fact. As we have seen earlier there is ample evidence on record of this case from which inference can be drawn that copy of the FIR must have been sent to the concerned Magistrate as a matter of fact and not by way of only a presumption to be drawn under Section 114,Indian Evidence Act. Learned senior counsel for the appellants then invited our attention to a decision of this Court in the case of *Arjun Marik and Ors.* v. *State of Bihar*, JT (1994) 2 SC 627

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A wherein one of us Dr. A.S. Anand, J., sitting with Faizan Uddin, J., had to consider the necessity of forwarding the report to the Magistrate as per Section 157 and 159, Cr. P.C. Faizan Uddin, J., speaking for this Court in that case observed that though the incident had occurred in the intervening night of 19/20th July 1985 the report was despatched to the Magistrate on 22nd July 1985. Thus on the facts of that case it was found that the FIR was not B promptly despatched to the Magistrate and consequently it was found that the lodging of the FIR in the morning of 20th July 1985 remand doubtful. As we have already discussed earlier, on the facts of the present case, in the light of the external checks well established on record, it could not be said that the recording of FIR would remain doubtful or that copy thereafter was not shown to have been promptly sent by the concerned Police Station to the C Magistrate or that there was any breach of Section 174, Cr. P.C.

Once it is found that the FIR was promptly lodged after the incident by witness P.W. 2 Indu Tiwari, and that set in motion the police machinery which started investigation on spot immediately thereafter, it must be held that the contents of the FIR would reflect the first hand account of what had D actually happened on spot and who were responsible for the offence in question. In this connection learned counsel for the respondent rightly invited our attention to a decision of this Court in the case of *State of Punjab* v. *Surja Ram*, AIR (1995) SC 2413 wherein M.K. Mukherjee, J., Speaking for this Court observed that the FIR which was promptly lodged and which contained detailed outline of the prosecution case clearly corroborates eye-E witness account.

It is in the light of the prompt lodging of the FIR in the present case that the version of the eye-witness account supporting the prosecution case as revealed in the FIR has to be appreciated. As noted earlier both the courts have placed implicit reliance on the testimonies of Badri, P.W. 1 Indu Tiwari, F P.W. 2 and Ganesh Patel, P.W. 5. We have carefully gone through their evidence and we find that their evidence has well stood the test of cross examination. They have clearly implicated all the eight appellants in connection with the crime of murder of deceased Gudda Tiwari. They could not be treated as chance witnesses. Their names were already revealed in the FIR Ex.P-1. In fact the version found in the FIR fully corroborates the eyewitness G account of these witnesses. It is true that the name of accused no.2 Vijay Patel is not mentioned but that omission also is well explained by P.W. 2 Indu Tiwari who stated that he left the scene of offence after seeing the attack on his brother by these seven accused and it is also in evidence of other prosecution witnesses that accused no. 2 came latter and hurled a bomb on the deceased Consequently no infirmity can be found in the findings reached by H both the courts below on the basis of this eye-witness account of these wit-

nesses. Learned senior counsel for the appellants tried to urge that the injuries deposed to by these witnesses as allegedly inflicted by the appellants on the deceased do not fit in with the medical evidence. It is difficult to agree. Once we turn to the medical evidence we find that Dr. A.K. Yadav who had performed post mortem on deceased Gudda Tiwari has found 12 incised wounds on different parts of his body and there were burning injury on the back of the deceased. The whole back had turned black, black soot came out on rubbing by cotton. The eye- witness account clearly showed that the accused who had armed themselves with Sharp cutting weapons like 'banka' and 'pharsa' had caused these injuries and the bomb injury which were caused by accused no. 2 is found to have left the burning injuries on the back of the deceased. It is, therefore, not possible to agree with the contention of learned senior counsel for the appellants that the medical evidence does not support the prosecution version regarding inflicting of injuries by the accused on deceased.

It was next contended that the eye-witness account shows that after inflicting injuries on the deceased the accused ran away with their weapons while the evidence of P.W. 13 T.C. Usrey shows that he found at a distance of 36 ft. from the place where dead body was lying a 'banka' with a broken wooden handle and that it was not the prosecution case that one of the 'bankas' was thrown by any of the accused. In our view this circumstance in no way detracts from the reliability of the eye-witness account of these witnesses. P.W. 1 Badri had clearly deposed that while the witness was going in Bandhiya Mohalla he saw deceased Gudda Tiwari Running from the main road and seven persons Bhagwandas, Jaggu, Girish, Rikhi Lal, Rajjan, Chandu and Ganesh were chasing Gudda tiwari. Jaggu was holding a 'pharsa' in his hand and Girish had a 'bakka'. Ganesh had also a 'Bakka'. Rikhi Lal was holding an iron rod and Rajjan was also holding an iron rod. These people surrounded Godda Tiwari and Jaggu hit him with 'pharsa' on his head from back side. The other persons also attacked him with weapons they were holding. Gudda Tiwari having been beaten fell down on the ground on his stomach.

When Gudda was being assaulted, Balkrishan was following the witness 3-4 steps behind. Indu Tiwari who is the younger brother of Gudda came from main road side. Binda Chaudhry and Gunnu were seen. Indu Tiwari cried for help. When Gudda tiwari fell down Indu Tiwari left the scene. After Gudda fell down on the ground Vijay came there. He shouted, you go back I am throwing a bomb. Hearing this all the accused went back and Vijay threw a bombay on Gudda which exploded and hit Gudda's back. This version of the witness was fully corroborated by P.W. 2 Indu Tiwari and P.W. 5 Ganesh.

A Merely because one 'banka' was found with loose handle 36 ft. away from the place of occurrence it could not be said that the eye-witness account of the assault by the accused on the deceased was in any way rendered suspect. Both the courts, therefore, were right in not placing any implicit reliance on this circumstance. It would also be possible to infer that once the accused ran away with the weapons one of the 'bankas' might have been thrown aside by B the fleeing accused. It is not as if any 'banka' was found lying on spot near the dead body.

It was next contended by learned senior counsel for the appellants that it is not possible to believe that all the three eye-witnesses would have an occasion to come on spot simultaneously when the accused were to mount C the attack on the deceased. The evidences of these witnesses show that each one of them had come of his own on the spot. The witnesses were residing in the same locality and merely because they were known to complainant P.W. 2 Indu Tiwari it could not be said that they would depose falsely only on that ground. Nothing was alleged in their cross examination to suggest that they were in any way inimical to the accused. They had no axe to grind against the D accused so that they would falsely implicate them in the incident.

It was next contended that the spot map Ex. P-13 recited that accused Chander, Ganesh and Vijay had assaulted Gudda Tiwari at the site indicated in the map and this showed that the names of other accused are subsequently planted by the prosecution in connection with the incident. It is difficult to E appreciate this contention. The recitals in the map would remain purely heresay and could not be read as evidence in the case. In this connection we may profitably refer to a decision of this Court wherein one of us Dr. A.S. Anand, J., sitting with M.K. Mukherjee, J., while deciding Criminal Appeal No.489 of 1985 on 12th March 1996 held that recitals in the map would remain heresay evidence in the absence of examination of the person who is F alleged to have given information recorded in the map. Same is the position in the present case. The person who is said to have given information recorded in the map Ex. P-13, namely, Mukesh Kumar is not examined in the case. Consequently whatever he might have dictated on the spot when the map was prepared would remain a mere heresay and that would not detract from the eye-witness account or even from the recitals in the FIR, Ex. P-1 G which had clearly involved all the seven accused.

It was next submitted by learned senior counsel for the appellants that once the police had not submitted chargesheet against accused nos. 5 to 8 the court ought not to have roped them in. It is not possible to agree with this contention also. There is enough power with the court in a proper case to H exercise its jurisdiction under Section 319 Cr. P.C. In the present case as we

have seen earlier, the High Court had remanded the matter for reconsideration in the light of the evidence that may be recorded by the court and that is how after recording the evidence of eye-witnesses process was re-issued against these appellants. As the evidence recorded by the court showed that there was enough involvement of these accused in the commission of the offence and, therefore, they stood on the same pedestal as accused 1 to 4 they could not be said to have been wrongly proceeded against as accused under Section 319 Cr. P.C.

It was next contended that the courts below had erred in placing implicit reliance on the eye witness account of the witness Badri P.W. 1 as he himself has signed an affidavit Ex. D-1 showing that he was not present on the scene of offence at the relevant time. This submission is stated to be rejected for the simple reason that witness P.W. 1 when confronted with this alleged affidavit Ex. D-1 candidly stated that it was got signed from him under influence of liquor. It has to be kept in view that the incident occurred as early as on 4th September 1982. Statement of the witness was recorded by the police during investigation while the so-called affidavit Ex. D-1 is said to have been sworn by the witness on 3.12.1983. It, therefore, appears that after the lapse of about one year and three months the accused seem to have tried to temper with this witness. The witness was honest enough to admit in the court at the stage of trial that the so-called affidavit was got signed from him under influence of liquor. It is also interesting to note that the stamp paper of this affidavit was purchased on 3.12.1983 and it was allegedly sworn by the witness before Notary on 4.12.1983 but the notarial seal and endorsement bear the date 10.11.1983. Thus, the affidavit was sworn about 26 days before the stamp paper was even purchased! To say the least such a document cannot be touched by a pair of tongs and was rightly discarded by the Trial Court and the High Court.

It was then contended that accused no. 5 Rikhi Lal and accused no. 8 Rajjan are alleged to have armed themselves with iron rods and had bet the deceased but no contuse lacerations were found on the dead body of the deceased, that P.W. 2 had deposed that these accused had given blows with iron rods on the hands of the deceased but the doctor did not find any such injury by hard blunt substance. Even this contention cannot advance the case of the appellants for the simple reason that P.W. 1 and P.W. 5 had deposed that these accused had given blows on the deceased but had not indicated that those blow were given only on the hand. The medical evidence in this connection showed that Dr. Yadav P.W. 6 who performed the post mortem noted that whole of the back of the deceased had turned black, black soot came out on rubbing by cotton. There were eight superficial incised wounds situated between two shoulder blades in upper part of back measuring from

A 1/2 to 1 c.m. in length, 1/2 c.m. wide and 1/2 c.m. deep. Few pieces of glass were removed from these wounds. These wounds were having clean cut margins and were black in colour. Thus when the whole back of the deceased had turned black because of the bomb injury it was possible that the contusion because of the iron rod injury might not have been detected. So far as the injuries on the hand are concerned, there were incised wounds on the B palm of the deceased being injury no. 10 and there were incised wounds on the right forearm and right upper arm being injuries nos. 11 and 12 as noted by Dr. Yadav, P.W. 6 at the time of post mortem. In view of these incised wounds it was just possible that the contusions on the arm or palm might not have been noticed by the doctor. But that would not mean that the eye-witness account only on that score should be discarded. The High Court had, C therefore, rightly brushed aside this objection on the part of the appellants.

It was next contended that the eye-witness account does not deserve to be accepted as these witnesses had a soft corner for P.W. 2 Indu Tiwari, P.W. 1 and P.W. 5 were known to the first informant, P.W. 2. We fail to appreciate how merely because they were known to PW.2 they would go out of their way D to depose falsely against the accused in connection with what they saw on spot. It was then submitted that these witnesses could not have seen the incident of assault on the deceased when the narrow lane was having a winding gredient and the Lal Chabutara from where they have alleged to have seen the incident was not near the place of the incident. Even this contention cannot help the appellants for the simple reason that the case of E the eye-witnesses is that they saw the incident in the lane when they were very near the deceased and Lal Chabutara by itself was not located near the place of incident itself and, therefore, it was not found mentioned in the site map.

It was next contended that the accused did not reside in the same area. They resided in different areas of the town and how they could have collected F at a time on the spot to belabour the deceased. It is easy to visualise that when it is the prosecution case that these accused had collected together having formed an lawful assembly, it was not difficult for them to assemble at spot where the deceased was found moving and to belabour him in furtherance of their common object and for that purpose they may as well come from different parts of the city where they were staying. It was next contended that G the residents of the locality who might have gathered on spot as the evidences of police witnesses show were not examined. This contention is not well sustained. Even if other witnesses are not examined if the eye-witness account of the three witnesses referred to earlier was found acceptable by both the courts below and when that eye- witness account has well stood the test of cross examination, non-examination of other witnesses would pale into H insignificance. It is also easy to visualise that witnesses who are not con-

cerned with the deceased may like to safely keep away from police proceedings or proceedings before the court and only those who feel aggrieved by the assault of the accused on the deceased may be bold enough to come forward to offer themselves as witnesses. Non-examination of neighbours as witnesses, therefore, cannot be fatal to the prosecution case as it stands fully supported by acceptable eye-witness account as seen earlier.

It was next contended that even though the FIR mentioned the name of witness D.W. 1 Balkrishna Chaube he had not supported the prosecution. On the contrary he had supported the defence. A look at the evidence of D.W. 1 shows that he was aged 23 and was a student at the time when he gave his deposition. He himself made it clear in the first line of his deposition that earlier he was serving with the J.K. Roadways and that J.K. Roadways belonged to P.W.2 Indu Tiwari. It is not in dispute that P.W. 2 was brother of the deceased Gudda Tiwari. Evidence of this witness shows that by the time he deposed on behalf of the defence he was no longer in the service of Indu Tiwari. Under these circumstances even if he had not supported the prosecution case and appeared to have joined hands with the defence after he left service of Indu Tiwari, it could not be said that what he deposed as a defence witness was necessarily false. But even accepting his version at the trial for not supporting the prosecution rules out his alleged eye-witness account during investigation, that does not mean that when the other eye- witnesses had seen and deposed to would in any way get whittled down by the absence of further support to be derived by the prosecution from the version of D.W. 1 Balkrishna Chaube.

These were the only contentions canvassed by the learned senior counsel for the appellants in support of the appeals and as in our view these contentions do not shake the core of the prosecution case against the accused and as the prosecution case against the accused has stood well established on the evidence on record as accepted by both the courts below and which in our view was rightly accepted and has remained fully reliable, no case is made out in these appeals for our interference.

In the result these appeals fail and are dismissed. The accused were on bail pending these appeals. Their bails bonds are ordered to be cancelled and they are directed to surrender to custody for serving out the remaining part of their sentence.

T.N.A. Appeals dismissed.