A AMAR SINGH

v.

BALWINDER SINGH AND ORS.

JANUARY 31, 2003

B

[S. RAJENDRA BABU AND G.P. MATHUR, JJ.]

Penal Code, 1860—Section 302 read with Section 34 and Section 307—Conviction—High Court acquitting the accused—On appeal held order of C *High Court perverse and illegal since it failed to consider the testimony of eye-witnesses and reasons given for discarding the prosecution case are not sustainable in law—Hence acquittal set aside.*

Code of Criminal Procedure, 1973:

D *Section 386—Power of Appellate Court—Appeal from conviction—Case based on eye witness account—High Court failing to consider testimony of eye-witnesses and acquitting accused—Leads to infraction of Section 386.*

Section 174—Inquest report—Non-mentioning of facts about occurrence—Effect of—Held, such omission does not affect the prosecution E *case since the purpose of the report is to report regarding the apparent cause of death.*

Criminal Trial:

FIR—Inordinate delay in lodging—Evidentiary value of—Held: It F *depends on facts and circumstances of the case whether such delay casts doubt about the veracity of the prosecution case—On facts, delay satisfactorily explained, thus no adverse inference can be drawn against the prosecution case.*

Investigating Officer—Failure or omission in investigation—Effect of— G *When prosecution case is fully established by testimony of eye-witnesses and corroborated by medical evidence—Held, such failure does not render prosecution case doubtful.*

Examination of all eye-witnesses—Necessity of—Discussed—Evidence H *Act, 1872—Section 134.*

According to the prosecution, accused party armed with guns fired shots at appellant, his sons and two others, and ran away. It is alleged that there was dispute going on between accused and appellant. Thereafter, injured persons were taken to hospital. Among them one of the son of appellant succumbed to his injuries and one sustained injuries dangerous to his life. Sub-Inspector recorded the statement of appellant-informant. FIR was lodged the next day. Trial Court convicted and sentenced the accused for the offence committed. However, High Court acquitted them. Hence the present appeal.

Allowing the appeal, the Court

HELD: 1. Order of acquittal passed by the High Court is wholly perverse and illegal inasmuch as it completely failed to consider the testimony of the eye-witnesses and the reasons given for discarding the prosecution case are also unsustainable in law. Hence the acquittal order is set aside. [769-G, H; 770-A]

2. Under Section 386 Cr.P.C. it is mandatory for the appellate court to peruse the testimony of the eye witnesses. In a case based upon direct eye-witness account the testimony of eye-witnesses is of paramount importance and if the appellate court reverses the finding recorded by trial court and acquits the accused without considering or examining the testimony of the eye-witnesses, it will be a clear infraction of Section 386 Cr.P.C. In the instant case trial court placed reliance on the testimony of eye witnesses and convicted the accused. However, High Court failed to consider the testimony of eye witnesses and acquitted the accused, which was violation of Section 386 Cr. P.C.

Biswanath Ghosh v. *State of West Bengal and Ors.*, AIR [1987] SC 1155 and *State of U.P.* v. *Sahai and Ors.*, AIR (1981) SC 1442, referred to.

3.1. There is no hard and fast rule that any delay in lodging the FIR would automatically render the prosecution case doubtful. It necessarily depends upon facts and circumstances of each case whether there has been any such delay in lodging the FIR which may cast doubt about the veracity of the prosecution case and for this a host of circumstances like the condition of the first informant, the nature of injuries sustained, the number of victims, the efforts made to provide medical aid to them, the distance of the hospital and the police station, etc. have to be taken into consideration. There is no mathematical formula by which an inference

A may be drawn either way merely on account of delay in lodging of the FIR. [764-B, C]

3.2. In the instant case the period which elapsed in lodging the FIR of the incident has been fully explained from the evidence on record and no adverse inference can be drawn against the prosecution merely on the B ground that the FIR was lodged after 26 hours. High Court failed to take all this into consideration. Thus the view taken by High Court that there was inordinate delay in lodging FIR and delay in sending the Special Report of the occurrence to Judicial Magistrate is not correct and does not render the prosecution case doubtful. [763-D, E; 764-A, B]

C *Tara Singh and Ors.* v. *State of Punjab,* AIR (1991) SC 63; *Zahoor and Ors.* v. *State of U.P.,* AIR (1991) SC 40 and *Jamna and Ors.* v. *State of Uttar Pradesh,* AIR (1994) SC 79, referred to.

4. The provision for holding of an inquest and preparing an inquest D report is contained in Section 174 Cr.P.C. The basic purpose is to report regarding the apparent cause of death namely, whether it is suicidal, homicidal, accidental or by some machinery etc. describing the wounds as may be found on the body and weapon or instrument by which they appear to have been inflicted and this has to be done in the presence of two or more respectable inhabitants of the neighbourhood. It does not E contemplate that the manner in which the incident took place or the names of the accused should be mentioned in the inquest report. Therefore, High Court erred in holding that as the details about the occurrence were not mentioned in the inquest report, it showed that the investigating officer was not sure of the facts when the inquest report was prepared. [765-F; 766-A-C]

F *Podda Narayana and Ors.* v. *State of Andhra Pradesh,* AIR (1975) SC 1252; *Khuji alias Surendra Tiwari* v. *State of Madhya Pradesh,* AIR (1991) SC 1853 and *Shakila Khadar* v. *Nausher Gama and Anr.,* AIR (1975) SC 1324, referred to.

G 5. High Court's holding that the investigation was tainted since the investigating officer failed to take in his possession the wire gauze of the window from where one of the accused is alleged to have fired from his gun, his failure in sending the fire arms and the empties to the Forensic Science Laboratory for comparison and certain omissions in the Daily H Diary Register (DDR) are not of any substance on which such an inference

could be drawn. In the instant case where the prosecution case is fully established by the direct testimony of the eye-witnesses, which is corroborated by the medical evidence, any failure or omission of the investigating officer cannot render the prosecution case doubtful or unworthy of belief. [767-B; 768-C]

Karnel Singh v. *State of M.P.*, **[1995] 5 SCC 518;** *Paras Yadav and Ors.* v. *State of Bihar*, **[1999] 2 SCC 126 and** *Ram Bihari Yadav* v. *State of Bihar*, **[1998] 4 SCC 517, referred to.**

6. Section 134 of the Evidence Act provides that no particular number of witnesses shall in any case be required for the proof of any fact. In the instant case the prosecution having examined three eye-witnesses, there was no necessity of multiplying the number of witnesses and no adverse inference could be drawn against the prosecution merely on the ground that two were not examined. If the incident had not taken place as suggested by the prosecution but had happened in a different manner, there was no impediment in the way of the accused-respondents to examine the aforesaid persons as defence witnesses, but they did not chose to do so. [769-B; 769-F, G]

State of U.P. and Anr. v. *Jaggo alias Jagdish and Ors.*, **AIR (1971) SC 1586;** *Vadivelu Thevar* v. *State of Madras*, **AIR (1957) SC 614 and** *Ramratan and Ors.* v. *State of Rajasthan*, **AIR (1962) SC 424, referred to.**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1671 of 1995.

From the Judgment and Order dated 26.9.1991 of the High Court of Punjab and Haryana in Crl. A. No. 305 of 1989.

O.K. Khullar and R.C. Kohli for the Appellants.

Ashwani Kumar, Ms. Prem Malhotra, Rishi Malhotra, Bimal Roy Jad, and Ms. Sunita Pandita for the Respondent.

The Judgment of the Court was delivered by

G.P. MATHUR, J. This appeal has been preferred by the complainant (first informant) against the judgment and order dated 26.9.1991 of High Court of Punjab & Haryana by which the appeal preferred by the accused-respondent was allowed and the judgment and order dated 28.7.1989 of

A Additional Sessions Judge, Sangrur by which they had been convicted and sentenced was set aside. The learned Additional Sessions Judge had convicted accused Surjit Singh under Section 302 IPC and the remaining three accused, namely, Balwinder Singh, Avtar Singh and Mal Singh under Section 302 read with Section 34 IPC and had sentenced each of them to imprisonment for life and a fine of Rs. 5,000 and in default to undergo six months rigorous B imprisonment. The accused were further convicted under Section 307 IPC and were sentenced to rigorous imprisonment for four years and a fine of Rs. 500 each and in default to undergo two months rigorous imprisonment. All the sentences were ordered to run concurrently.

C The case of the prosecution, in brief, is that at about 7.00 p.m. on 23.5.1987 the complainant, Amar Singh along with his sons Lakha Singh, Gurbachan Singh and Bhan Singh and two others namely, Kashmira Singh and Pritam Singh, was coming towards his outer house after having unloaded the trolley of wheat straw. When they were at a distance of about 5-6 karams from the Baithak of Gurdial Singh, they saw that accused Balwinder Singh D (A-1) and Avtar Singh (A-2), armed with SBBL guns and accused Surjit Singh (A-3) and Mal Singh (A-4) armed with DBBL guns were standing there. A-1 entered the Baithak and fired a shot towards them through the iron gauze of the window which hit Kashmira Singh. Surjit Singh (A-3) fired a shot which hit Lakha Singh on his face and left side of the neck and right E hand and a second shot which hit Amar Singh. A-4 fired a shot which hit Bhan Singh and a second shot which hit Gurbachan Singh. A-2 fired a shot which hit Pritam Singh. Thereafter the accused ran away. Amar Singh then carried Lakha Singh to his outer house and all the injured persons also reached there. The injured persons were then taken to bus stand, Sangrur, in the tractor trolley of Major Singh, where they hired two taxies on which they F proceeded to Christian Medical College, Ludhiana where they were admitted at about 11.30 p.m. on the same night. Lakha Singh succumbed to his injuries at about 8.00 a.m. on 24.5.1987. Information was then sent from the hospital to S.H.O. Division No.3, Ludhiana and thereafter PW 14 Sardara Singh, S.I. Police Station, Sangrur came there and recorded the statement of Amar Singh. G This was sent to PS, Sangrur through Joga Singh, Constable and a formal FIR was recorded at 9.20 p.m. After investigation, charge sheet was submitted against the four accused-respondents and in due course they were committed to the Court of Sessions.

During the course of trial the prosecution examined in all 17 witnesses H including three eyewitnesses of the occurrence and filed some documentary

evidence. The accused in their statement under Section 313 Cr.P.C. denied the case of the prosecution and pleaded that they had been falsely implicated. The defence of A-3 was that there was some dispute regarding passage between Amar Singh and Sadhu Singh and in the said case his father had appeared as a witness against the former. He further pleaded that he had contested the election for the office of Sarpanch against Hari Singh in which A-1 was polling agent of Hari Singh and that A-1 was removed from service on his complaint regarding embezzlement. He thus submitted that he had strained relations with A-1 and A-2 and as such he could not have joined with them in the commission of the crime. The accused examined three witnesses, namely, DW-1 Sadhu Singh, DW-2 Ram Singh and DW-3 Pritam Singh in their defence.

A B C

The learned Sessions Judge believed the case of the prosecution and convicted and sentenced the accused as mentioned earlier. The appeal preferred by the accused-respondents was allowed by the High Court and their conviction and sentence was set aside. The main grounds which weighed with the High Court in allowing the appeal are that there was delay in lodging the FIR; that two injured persons and one Ramesh whose name is mentioned in the FIR were not examined as witnesses by the prosecution and that the investigation of the case was tainted.

D

Before examining the contention raised by learned counsel for the parties, it is necessary to briefly refer to the evidence, which has been adduced by the prosecution. PW5 Dr. D.S. Mohan, Medical Officer, CMC Hospital, Ludhiana admitted all the injured, namely Amar Singh, Bhan Singh, Gurbachan Singh, Pritam Singh and Kashmira Singh in the casualty ward on 23.5.1987. PW1 Dr. William F. Masih, Registrar, Department of Surgery, CMC, Ludhiana, medically examined PW7 Bhan Singh at 11.30 p.m. on 23.5.1987 and found multiple pellet injuries 14 in number on lower abdomen and also multiple pellet injuries on right fore-arm and right leg. On internal examination, he found multiple small holes in the terminal ileum and perforation in Caecum. Bhan Singh was discharged from hospital on 8.6.1987 after a surgery had been performed. The same doctor medically examined PW8 Gurbachan Singh at 12.45 a.m. in the night of 23/24.5.1987 and found pellet injuries on right hand and on epigastrium region. In the opinion of the doctor the injuries no.4 and 5 of PW7 Bhan Singh were dangerous to life and duration of injuries sustained by both the injured was fresh. PW18 Dr. A.S. Cherian has proved the injury report of Lakha Singh, who was admitted in the casualty ward at 11.30 p.m. on 23.5.1987 and also the injury report of PW4 Amar Singh. PW3

E F G H

A Dr. George T. Abraham examined Pritam Singh and Kashmira Singh from 12.45 a.m. onwards in the night of 23/24.5.1987. Pritam Singh had sustained three gun shot injuries on left thigh while Kashmira Singh had sustained a gun shot wound on his right fore-arm. PW13 Dr. Varun Satija, Radiologist conducted X-ray examination of the injuries of the injured Amar Singh, Lakha Singh, Bhan Singh, Gurbachan Singh, Pritam Singh and Kashmira B Singh and has proved the X-ray examination reports prepared by him. Lakha Singh succumbed to his injuries at about 8.00 a.m. on 24.5.1987. PW2 Dr. Virinder Kappal, Medical Officer, Civil Hospital, Ludhiana conducted post-mortem examination on the body of the deceased at 3.15 p.m. on 25.5.1987 and found 16 gun shot wounds on different parts of the body. The internal C examination showed that injury no.1 had perforated the frontal bone and a pellet was recovered from right cerebral cortex. One pellet had entered through the angle of mandible and had fractured brain stem entering the skull and it was found embedded in the brain matter. There was laceration of the durameter and the brain matter. Pellets had also entered the chest wall and were found in the lower lobe of right lung. According to doctor the death had occurred D due to injuries on vital organs namely brain and lung and they were sufficient in the ordinary course of nature to cause death individually and collectively. Thus, the medical evidence on record shows that six persons received gun shot injuries in the incident out of whom the injuries to Lakha Singh proved fatal and the injuries sustained by PW7 Bhan Singh were dangerous to life. E He was operated upon and was discharged from the hospital after 16 days on 8.6.1987.

Coming to the ocular testimony, the prosecution examined three injured witnesses, namely PW4 Amar Singh, PW7 Bhan Singh and PW8 Gurbachan Singh. In his statement in Court PW4 Amar Singh corroborated the version F given by him in the FIR and stated that Jangir Dass Sadh had previously given his land for cultivation to A-1 and A-2 on crop sharing basis but last year he gave his land to him due to which the accused were aggrieved. He has further stated that at about 7.00 p.m. on 23.5.1987 he was coming to his inner house after unloading the trolley of wheat straw along with his sons Lakha Singh, Gurbachan Singh and Bhan Singh and also Kashmira Singh G and Pritam Singh. When he was at a distance of 5-6 karams from the Baithak of Gurdial Singh, he saw accused A-1 and A-2 armed with SBBL guns and A-3 and A-4 armed with DBBL guns standing in front of the Baithak of Gurdial Singh. A-1 then entered the Baithak and fired a shot through the iron gauze of the window which hit Kashmira Singh. The first shot fired by A-H 3 hit Lakha Singh on his face and the second shot fired by him hit him on

his arm and head. A-4 fired a shot which hit Bhan Singh and another shot fired by him hit Gurbachan Singh. Thereafter, A-2 fired a shot which hit Pritam Singh. After causing the injuries, the accused ran away. Lakha Singh had fallen down and was removed to the house. All the injured were brought to bus stand Sangrur by Major Singh in a tractor trolley, where they hired two taxies and proceeded to CMC, Ludhiana, where they were admitted in the night. PW7 Bhan Singh and PW8 Gurbachan Singh have given similar version of the incident and have fully corroborated the testimony of PW4 Amar Singh. DW1 Sadhu Singh and DW2 Ram Singh have deposed that S.I. Sardara Singh took away their guns and DW3 Pritam Singh has merely stated that Panchayat election is held under his supervision.

The learned Sessions Judge after placing reliance on the testimony of the eye-witnesses and the medical evidence on record was of the opinion that the case of the prosecution was fully established. Surprisingly the High Court did not at all consider the testimony of the eye witnesses and completely ignored the same. Section 384 Cr.P.C. empowers the Appellate Court to dismiss the appeal summarily if it considers that there is no sufficient ground for interference. Section 385 Cr.P.C. lays down the procedure for hearing appeal not dismissed summarily and sub-section (2) thereof casts an obligation to send for the records of the case and to hear the parties. Section 386 Cr.P.C. lays down that after perusing such record and hearing the appellant or his pleader and the Public Prosecutor, the Appellate Court may, in an appeal from conviction, reverse the finding and sentence and acquit or discharge the accused or order him to be re-tried by a Court of competent jurisdiction. It is, therefore, mandatory for the Appellate Court to peruse the record which will necessarily mean the statement of the witnesses. In a case based upon direct eye-witness account the testimony of the eye-witnesses is of paramount importance and if the Appellate Court reverses the finding recorded by the Trial Court and acquits the accused without considering or examining the testimony of the eye-witnesses, it will be a clear infraction of Section 386 Cr.P.C. In *Biswanath Ghosh* v. *State of West Bengal and Ors.*, AIR (1987) SC 1155 it was held that where the High Court acquitted the accused in appeal against conviction without waiting for arrival of records from the Sessions Court and without perusing evidence adduced by prosecution, there was a flagrant mis-carriage of justice and the order of acquittal was liable to be set aside. It was further held that the fact that the Public Prosecutor conceded that there was no evidence, was not enough and the High Court had to satisfy itself upon perusal of the records that there was no reliable and credible evidence to warrant the conviction of the accused. In *State of UP* v.

Sahai and Ors. AIR (1981) SC 1442 it was observed that where the High Court has not cared to examine the details of the intrinsic merits of the evidence of the eye-witnesses and has rejected their evidence on the general grounds, the order of acquittal passed by the High Court resulted in a gross and substantial mis-carriage of justice so as to invoke extra-ordinary jurisdiction of Supreme Court under Article 136 of the Constitution.

In the present case, the incident took place at about 7.00 p.m. on 23.5.1987. On 23rd May the sun sets fairly late and there is good light at 7.00 p.m. and as such the witnesses must have seen and identified the assailants who were all residents of the same village Chatha Sekhwan and were very well known to them. The three eye-witnesses examined by the prosecution, namely, PW4 Amar Singh, PW7 Bhan Singh and PW8 Gurbachan Singh are injured witnesses and, therefore, no doubt can be raised about their presence on the spot. They have given a consistent version that A-1 and A-2 were armed with SBBL guns and A-3 and A-4 were armed with DBBL guns and that all the accused fired from their respective weapons causing injuries to them and also to Kashmira Singh, Pritam Singh and the deceased Lakha Singh. Thus, the evidence on record fully establishes the case of the prosecution.

The main reason given by the High Court for disbelieving the prosecution case is that though the incident took place at 7.00 p.m. on 23.5.1987 but the FIR was recorded at 9.20 p.m. on 24.5.1987 at the Police Station and the Special Report reached the Magistrate at 11.45 p.m. and as the distance of the Police Station Sangrur from the place of occurrence is only 4 kilometers, there was inordinate delay in lodging the FIR which rendered the prosecution case doubtful. In our opinion, in the facts and circumstances of the case the view taken by the High Court that there was inordinate delay in lodging the FIR is not correct. In the incident in question, besides the first informant Amar Singh, his three sons, namely, Lakha Singh, Bhan Singh and Gurbachan Singh and two others Kashmira Singh and Pritam Singh had received injuries. The condition of Lakha Singh was serious as he had received injuries on his chest, neck and brain and the injuries received by Bhan Singh were also grievous and dangerous to life. Naturally, the first anxiety of the injured would have been to rush to the hospital to get immediate medical aid and to save their life. PW4 has stated that Sangrur is 7-8 Kilometers from his village and he reached the bus stand, there at about 9.00 p.m. on the tractor of Major Singh and from there he hired two taxies for going to Ludhiana. He reached Ludhiana which is 60 kilometers from Sangrur at about 11.00 p.m. and all

the injured were admitted in the hospital at about 11.30 p.m. Though medical aid was provided to his son Lakha Singh, but he died at about 8.00 a.m. on 24.5.1987. The condition of his another son PW7 Bhan Singh was also serious. PW1 Dr. William F. Masih has stated that injuries no.4 and 5 of Bhan Singh were dangerous to life. His statement also shows that Bhan Singh was operated upon and ultimately he was discharged from the hospital on 8.6.1987. The record shows that some information was sent from CMC hospital to Police Division No.3 in Ludhiana, which is at a distance of about 3 kilometers after the death of Lakha Singh in the morning of 24.5.1987. Thereafter, a wireless message was sent to Police Station Sangrur. Sardara Singh, SI then proceeded from Sangrur for Ludhiana at about 10.30 a.m. and after reaching the hospital, he moved an application before the CMO, CMC hospital, requesting that it may be informed whether statement of the witnesses can be recorded. Dr. Koshi George then gave in writing that Amar Singh was in fit condition to give his statement. It was thereafter that PW14 Sardara Singh, S.I., recorded the statement of Amar Singh at about 5.30 p.m. This statement in writing was sent to PS Sangrur through Constable Joga Singh on the basis of which PW17 Om Prakash, SHO, Kotwali Sangrur, recorded the FIR, Exh. PJ/2 at 9.20 p.m. on 24.5.1987. The High Court merely said that as the place of occurrence is only 4 kilometers from the Police Station and the FIR was lodged after 26 hours, the delay in lodging thereof has rendered the prosecution case doubtful. The sequence of events and the manner in which the FIR was lodged have not at all been taken into consideration. It is quite likely that Amar Singh was too shocked to think about the lodging of the FIR. His only anxiety must have been to anyhow rush to the hospital to save the lives of his sons. It is noteworthy that he did not go to any nearby dispensary or an ordinary hospital, but went to a good medical college hospital, which was at Ludhiana to get the best possible treatment. In the night he and his other relations must have been too involved in looking after the injured persons, some of whom were fighting for their life. Time must have been taken by both PW14 Sardara Singh, SI to reach Ludhiana from Sangrur and thereafter by Joga Singh, Constable in carrying the statement of Amar Singh from CMC Ludhiana to PS Sangrur. In these circumstances, there was hardly any delay in lodging of the FIR at the Police Station. The Special Report of the occurrence was sent to CJM, Sangrur within two hours and 20 minutes of the lodging of the FIR. The Special Report was, therefore, sent very promptly and it cannot be said by any stretch of imagination that there was any delay in sending the same.

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The High Court has went to the extent of observing that the delay of H

A 26 hours in sending the Special Report by itself was enough to allow the appeal and to set aside the conviction of the accused. In our opinion, the period which elapsed in lodging the FIR of the incident has been fully explained from the evidence on record and no adverse inference can be drawn against the prosecution merely on the ground that the FIR was lodged at 9.20 p.m. on the next day. There is no hard and fast rule that any delay B in lodging the FIR would automatically render the prosecution case doubtful. It necessarily depends upon facts and circumstances of each case whether there has been any such delay in lodging the FIR which may cast doubt about the veracity of the prosecution case and for this a host of circumstances like the condition of the first informant, the nature of injuries sustained, the number C of victims, the efforts made to provide medical aid to them, the distance of the hospital and the police station, etc. have to be taken into consideration. There is no mathematical formula by which an inference may be drawn either way merely on account of delay in lodging of the FIR. In this connection it will be useful to take note of the following observation made by this Court in *Tara Singh and Ors.* v. *State of Punjab*, AIR (1991) SC 63 :

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> "The delay in giving the FIR by itself cannot be a ground to doubt the prosecution case. Knowing the Indian conditions as they are, one cannot expect these villagers to rush to the police station immediately after the occurrence. Human nature as it is, the kith and kin who have E witnessed the occurrence cannot be expected to act mechanically with all the promptitude in giving the report to the police. At times being grief-stricken because of the calamity it may not immediately occur to them that they should give a report. After all it is but natural in these circumstances for them to take some time to go the police station for giving the report. Of course, in cases arising out of acute F factions there is a tendency to implicate persons belonging to the opposite faction falsely. In order to avert the danger of convicting such innocent persons the Courts should be cautious to scrutinise the evidence of such interested witnesses with greater care and caution and separate grain from the chaff after subjecting the evidence to a G closer scrutiny and in doing so the contents of the FIR also will have to be scrutinised carefully. However, unless there are indications of fabrication, the Court cannot reject the prosecution version as given in the FIR and later substantiated by the evidence merely on the ground of delay. These are all matters for appreciation and much depends on the facts and circumstances of each case."

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In *Zahoor and Ors.* v. *State of U.P.*, AIR (1991) SC 40, it was held that mere delay by itself is not enough to reject the prosecution case unless there are clear indications of fabrication. This was reiterated in *Jamna and Ors.* v. *State of Uttar Pradesh,* AIR (1994) SC 79 (para 4) that delay by itself is not a circumstance to doubt the prosecution case. In the present case the High Court did not at all take into consideration the fact that the first informant Amar Singh and his three sons besides two others had received injuries and they had first gone to Sangrur from their village on a tractor trolley and from there to CMC, Ludhiana on taxies which is about 60 kilometers and further that all the six injured had been admitted in the hospital where one of them died next morning and another, namely, PW7, Bhan Singh had sustained serious injuries which were dangerous to life and he had to be operated upon and in such circumstances he could not have left the hospital for going to PS Sangrur for lodging the FIR. The High Court also failed to take into consideration the fact that the FIR was lodged after PW 14 Sardara Singh, S.I. of Police Station Sangrur had come to the hospital and had recorded the statement of Amar Singh after seeking opinion of the Doctor in writing and thereafter, the said statement was sent through Constable Joga Singh to the Police Station Sangrur. We are, therefore, clearly of the opinion that in the facts and circumstances of the case there was no delay in either lodging of the FIR or in sending the Special Report to the CJM and the view to the contrary taken by the High Court is absolutely incorrect.

The High Court has also held that the details about the occurrence were not mentioned in the inquest report which showed that the investigating officer was not sure of the facts when the inquest report was prepared and this feature of the case carried weight in favour of the accused. We are unable to accept this reasoning of the High Court. The provision for holding of an inquest and preparing an inquest report is contained in Section 174 Cr.P.C. The heading of the Section is *"Police to enquire and report on suicide, etc."* Sub-section (1) of this Section provides that when the officer in charge of a police station or some other police officer specially empowered by the State Government in that behalf receives information that a person has committed suicide, or has been killed by another or by an animal or by machinery or by an accident, or has died under circumstances raising a reasonable suspicion that some other person has committed an offence, he shall immediately give information to the nearest Executive Magistrate and shall proceed to the place where the body of such deceased person is, and there, in the presence of two or more respectable inhabitants of the neighbourhood, shall make an investigation, and draw up a report of the

A apparent cause of death describing such wounds, fractures, bruises, and other marks of injury as may be found on the body and stating in what manner, or by what weapon or instrument (if any), such marks appear to have been inflicted. The requirement of the section is that the police officer shall record the apparent cause of death describing the wounds as may be found on the body and also the weapon or instrument by which they appear to have been B inflicted and this has to be done in the presence of two or more respectable inhabitants of the neighbourhood. The Section does not contemplate that the manner in which the incident took place or the names of the accused should be mentioned in the inquest report. The basic purpose of holding an inquest is to report regarding the apparent cause of death, namely whether it is C suicidal, homicidal, accidental or by some machinery, etc. The scope and purpose of Section 174 Cr.P.C. was explained by this Court in *Podda Narayana and Ors.* v. *State of Andhra Pradesh,* AIR (1975) SC 1252 and it will be useful to reproduce the same.

> "The proceedings under Section 174 have a very limited scope. D The object of the proceedings is merely to ascertain whether a person has died under suspicious circumstances or an unnatural death and if so what is the apparent cause of the death. The question regarding the details as to how the deceased was assaulted or who assaulted him or under what circumstances he was assaulted is foreign to the ambit E and scope of the proceedings under Section 174. Neither in practice nor in law was it necessary for the police to mention those details in the inquest report.
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> It is therefore not necessary to enter all the details of the overt acts in the inquest report. Their omission is not sufficient to put the F prosecution out of Court."

In *Khujji alias Surendra Tiwari* v. *State of Madhya Pradesh,* AIR (1991) SC 1853 (para 8), this Court, after placing reliance upon the above quoted decision, rejected the contention raised on behalf of the accused that the evidence of eye-witnesses could not be relied upon as their names did not G figure in the inquest report prepared at the earliest point of time. In *Shakila Khadar* v. *Nausher Gama and Anr.* AIR (1975) SC 1324 (para 5), it was held that an inquest under Section 174 Cr.P.C. is concerned with establishing the cause of the death only. The High Court was, therefore, clearly in error in holding that as the facts about the occurrence were not mentioned in the inquest report, it would show that at least by the time the report was prepared H the investigating officer was not sure of the facts of the case.

The third and the last reasoning given by the High Court in acquitting the accused is that the investigation of the case was tainted and for coming to this conclusion three circumstances have been taken into account. The first circumstance is that PW17 Om Prakash, Inspector, Police Station Sangrur did not take into possession the wire gauze of the window of the Baithak of Gurdial Singh from where A-1 is alleged to have fired his gun. The second circumstance is that the investigating officer did not send the fire arms and the empties recovered from the spot for comparison to the Forensic Science Laboratory and the third is that in the Daily Diary Register (DDR), the names of the witnesses, weapons of offence and the place of occurrence were not mentioned.

Coming to the last point regarding certain omissions in the DDR, it has come in evidence that on the basis of the statement of PW4 Amar Singh, which was recorded by PW14 Sardara Singh, S.I. in the hospital a formal FIR was recorded at the Police Station at 9.20 p.m. In accordance with Section 155 Cr.P.C. the contents of the FIR were also entered in the DDR, which contained the names of the witnesses, weapons of offence and place of occurrence and it was not very necessary to mention them separately all over again. It is not the case of the defence that the names of the accused were not mentioned in the DDR. We fail to understand as to how it was necessary for the investigation officer to take in his possession the wire gauze of the window from where A-1 is alleged to have fired. The wire gauze had absolutely no bearing on the prosecution case and the investigating officer was not supposed to cut and take out the same from the window where it was fixed. It would have been certainly better if the investigating agency had sent the fire arms and the empties to the Forensic Science Laboratory for comparison. However, the report of the Ballistic Expert would in any case be in the nature of an expert opinion and the same is not conclusive. The failure of the investigating officer in sending the fire arms and the empties for comparison cannot completely throw out the prosecution case when the same is fully established from the testimony of eye-witnesses whose presence on the spot cannot be doubted as they all received gun shot injuries in the incident. In *Karnel Singh* v. *State of M.P.*, [1995] 5 SCC 518 it was held that in cases of defective investigation the court has to be circumspect in evaluating the evidence but it would not be right in acquitting an accused person solely on account of the defect and to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective. In *Paras Yadav and Ors.* v. *State of Bihar,* [1999] 2 SCC 126 while commenting upon certain omissions of the investigating agency, it was held

A that it may be that such lapse is committed designedly or because of negligence and hence the prosecution evidence is required to be examined *de hors* such omissions to find out whether the said evidence is reliable or not. Similar view was taken in *Ram Bihari Yadav* v. *State of Bihar,* [1998] 4 SCC 517 when this Court observed that in such cases the story of the prosecution will have to be examined *de hors* such omissions and contaminated conduct of
B the officials, otherwise, the mischief which was deliberately done would be perpetuated and justice would be denied to the complainant party and this would obviously shake the confidence of the people not merely in the law enforcing agency but also in the administration of justice. In our opinion the circumstances relied upon by the High Court in holding that the investigation
C was tainted are not of any substance on which such an inference could be drawn and in a case like the present one where the prosecution case is fully established by the direct testimony of the eye-witnesses, which is corroborated by the medical evidence, any failure or omission of the investigating officer cannot render the prosecution case doubtful or unworthy of belief.

D Another reason given by the High Court for acquitting the accused-respondents is that two other injured witnesses, namely, Kashmira Singh and Pritam Singh and one Ramesh, whose name was mentioned in the FIR, were not examined. Shri Ashwani Kumar, learned senior counsel appearing for the accused-respondents has vehemently urged that the purpose of a criminal
E trial is not to support the prosecution theory but to investigate the offence and to determine the guilt or innocence of the accused and the duty of the public prosecutor is to represent the administration of justice and therefore the testimony of all the available eye witnesses should be before the Court and in support of this contention he has placed reliance on *State of U.P. and Anr.* v. *Jaggo alias Jagdish and Ors.,* AIR (1971) SC 1586. It is true that the
F witnesses essential to the unfolding of the narrative on which the prosecution is based must be called by the prosecution, whether effect of their testimony is for or against the case of the prosecution. However, that does not mean that everyone who has witnessed the occurrence, whatever their number be, must be examined as a witness. The prosecution in the present case had
G examined three eye-witnesses who were all injured witnesses. The mere fact that Kashmira Singh and Pritam Singh were not examined cannot lead to an inference that the prosecution case was not correct. The aforesaid two witnesses had been given up by the prosecution on the ground that they had been won over by the accused. These two persons are not family members of the first informant Amar Singh and it is quite likely that they did not want to get
H involved in any dispute between the first informant and his sons on the one

hand and the accused on the other hand as they had no interest in the land belonging to Jangir Dass Sadh which was being earlier cultivated by Gurdial Singh, father of A-1 and A-2 but had been taken an year earlier by the first informant Amar Singh. The contention raised by learned counsel fails to take notice of Section 134 of the Evidence Act which provides that no particular number of witnesses shall in any case be required for the proof of any fact. A similar contention has been repelled by this Court in a very illustrating judgment in *Vaḍivelu Thevar* v. *State of Madras,* AIR (1957) SC 614 and it will be useful to take note of para 11 of the report, which reads as under :

> ".....The contention that in a murder case, the court should insist upon plurality of witnesses, is much too broadly stated. The Indian Legislature has not insisted on laying down any such exceptions to the general rule recognised in S.134, which by laying down that "no particular number of witnesses shall, in any case, be required for the proof of any fact" has enshrined the well recognised maxim that "Evidence has to be weighed and not counted." It is not seldom that a crime has been committed in the presence of only one witness, leaving aside those cases which are not of uncommon occurrence, where determination of guilt depends entirely on circumstantial evidence. If the Legislature were to insist upon plurality of witnesses, cases where the testimony of a single witness only could be available in proof of the crime, would go unpunished....."

The above quoted principle was laid reiterated in *Ramratan and Ors.* v. *State of Rajasthan,* AIR (1962) SC 424.

The prosecution having examined three eye-witnesses, in our opinion, there was no necessity of multiplying the number of witnesses and no adverse inference could be drawn against the prosecution merely on the ground that Kashmira Singh or Pritam Singh were not examined. If the incident had not taken place as suggested by the prosecution but had happened in a different manner, there was no impediment in the way of the accused-respondents to examine the aforesaid persons as defence witnesses, but they did not chose to do so.

Having given our careful consideration to the submissions made by learned counsel for the parties, we are of the opinion that the judgment and order of the High Court is wholly perverse and illegal inasmuch as it completely failed to consider the testimony of the eye-witnesses and the reasons given for discarding the prosecution case are also unsustainable in

A law.

In the result, the appeal succeeds and is hereby allowed. The judgment and order dated 26.9.1991 of the High Court is set aside and that of the learned Additional Sessions Judge, Sangrur is restored. The accused-respondents shall surrender forthwith to undergo the sentences imposed upon B them by the learned Additional Sessions Judge. The Chief Judicial Magistrate, Sangrur shall take immediate steps to take the accused-respondents in custody and for realisation of fine.

N.J. Appeal allowed.