SUDARSHAN AND ANR. A

v.

STATE OF MAHARASHTRA

(Criminal Appeal No. 1118 of 2014)

MAY 23, 2014 B

[DR. B. S. CHAUHAN AND A. K. SIKRI, JJ.]

Penal Code, 1860 – s. 302 rw s. 34 – Murder and common intention – Complainant, his friends and deceased persons gathered at a place to celebrate – Two appellants along with others went to that place – Two appellants armed with weapons assaulted the deceased persons which resulted in their death – Appellants were known to the complainant – FIR lodged – Conviction u/s.302/34, by courts below – Correctness of – Held: FIR appears to be ante-timed which gets strengthened on the glaring and intriguing events taking place thereafter – Facts sufficient to hold that appellants may have been roped in falsely at a later point of time – Courts below did not appreciate the circumstances which go to the root of the matter and raise sufficient doubt about the involvements of the appellants – Thus, appellants entitled to benefit of doubt – Case against them not proved beyond reasonable doubt so as to uphold their conviction – Conviction of the appellants set aside. C D E F

The complainant along with his friends went to place 'J', holiday resort to celebrate his new acquisition, a motorcycle. They reached around afternoon and started preparing meals. The two deceased persons reached later and started playing cards at some distance. Thereafter, 8-10 persons reached the spot. The appellants, armed with weapons assaulted the deceased persons, resulting in their death. Thereafter, the appellants and others fled away. The complainant threw G

 H

A away all the eating material and rushed to the brother of 'B', who attended the party. Subsequently, the complainant and his friends went to the house of advocate 'R' at place 'C' and on his advise the FIR was registered against the appellants and others, at place 'C' B police station. The appellants were known to the complainant. Since the place of incident was not within the jurisdiction of 'C' police station, intimation was given at place 'B' police station and FIR was registered therein. The appellants were convicted and sentenced u/s. 302 rw C s. 34 IPC by the courts below. Others-A3 to A13 were acquitted of all the charges. Hence, the instant appeal.

Allowing the appeal, the Court

D HELD: 1.1. There is sufficient merit in the submission that the FIR itself was ante-timed with sole intention to rope in the appellants; that the conduct of the complainant to go to the house of Advocate 'R' at place 'C' after the incident, instead of heading to the Police E Station to report the incident, depicted an abnormal behaviour which was enough to ring alarm on the genuineness of prosecution story. It was pointed out that on the purported advice of the said Advocate, FIR was lodged with Police Station 'C', which was not the F concerned Police Station within whose jurisdiction the incident had occurred. The concerned Police Station was at place 'B' Police Station; that no doubt, the Police Officer who registered the FIR at place 'C' called the concerned officer from place 'B' Police Station, who took G over the matter and conducted the inquest proceedings, the entire sequence was shrouded in mystery and the FIR was ante-timed, which could be inferred from other various circumstances. These facts are sufficient to hold that the appellants may have been roped in falsely at a

H

later point of time, which entitles them to be given the benefit of doubt. [Paras 8, 9] [446-H; 447-A-F]

1.2. No doubt, different persons may react differently to the same situation. However, at the same time, it appears very improbable that when there were as many as 15 to 20 persons, namely, the complainant and his friends, none of them even thought of going to the Police Station to report the matter, which is odd and out of ordinary behaviour in such cases. Instead, they chose to go to an Advocate, who was staying at a distance of 15 kms. The persons who were allegedly very scared would not take the risk of going a distance of 15 kms. rather than approaching the nearby Police Station within the jurisdiction of the area where the incident had taken place. The High Court has downplayed this unusual and abnormal conducts in a cavaliar manner [Para 12, 13] [448-E; 449-E-G]

1.3. Strangely, in the process of defending the said conduct of the complainant and his friends, the High Court became presumptuous as it itself gave an imaginary story that there was a possibility that these persons had consumed liquor and the material thrown by them included liquor as well. It was not even the case of the prosecution, probable or otherwise. [Para 14] [449-G-H; 450-A]

1.4. Not reporting to the Police and going straightaway to an Advocate could have been because of the reason that all these persons were very scared, had it been a standalone fact. However, when this fact is examined in conjunction with other circumstances, approaching an Advocate instead of going to the Police Station to report the matter, was not that innocent a step as the prosecution has made to believe. [Para 15] [450-B-C]

A 1.5. Even after meeting their Advocate and his advise that the matter be reported to the police, these persons didn't come back to place 'B' Police Station, which was the proper Police Station for this purpose. Instead, the FIR was lodged in place 'C' Police Station. Things do not B end here. 'U'-Sub-Inspector was at place 'C' Police Station, who had recorded the FIR. He appeared as PW-12 during trial. The FIR which was lodged with him is proved as an Exhibit. Column 15 of the FIR pertains to *'date and time of dispatch to the Court'*. This column is C left blank, which means that no date and time of the dispatch/delivery of this FIR to the concerned Court is mentioned. In the cross-examination, PW-12 was specifically asked about the requirement of submitting a copy of the FIR to the concerned Magistrate within 24 D hours. He replied in the affirmative insofar as this need is concerned. However, at the same time, he was candid in admitting that he was unable to say as to by whom and when the copy of FIR was sent to the Magistrate. A specific suggestion was put to him that the copy of the E FIR was not sent to the concerned Magistrate. Though he denied, but thereafter, no attempt was made to prove as to when and how the copy was sent. The necessity of sending the copy of the FIR to the concerned Magistrate hardly needs to be emphasized. The primary F purpose is to ensure that truthful version is recorded in the FIR and there is no manipulation or interpolation therein afterwards. For this reason, this statutory requirement is provided under Section 157 of the Code of Criminal Procedure, 1973. [Para 16] [450-D-H; 451-A]

G

1.6. It was a glaring omission on the part of the prosecution which lends credence to the plea of the defence about ante-timing the FIR. It gets strengthened on finding more glaring and intriguing events taking H place thereafter. D, who was attached to 'C' Police

Station, sitting as PSO on that day, was produced as PW-21. He stated in his deposition that he was informed by PSI-S about the incident and, accordingly, he recorded the report as per the say of the complainant. After recording the statement, he reached the spot of incident and by that time PSO of the place 'B' Police Station had also reached the spot. Curiously, this witness did not even disclose the names of the accused persons to P.I. 'K', who had come from place 'B' Police Station. Thus, it becomes apparent that though as per the FIR, names of the assailants, i.e. the appellants, were stated to PW-12 or PW-21, but PW-21 did not disclose these names to PW-22, who is the Investigating Officer. In the inquest report prepared by PW-22, no names are mentioned even when the complainant and two or three friends of his were present on the spot. All these factors throw suspicion about the recording of the FIR at the time stipulated in the FIR. There are circumstances galore which indicate that the FIR was ante-timed and the names of these two appellants were incorporated later but showing them to be at the time when the statement was made by the complainant on the basis of which the FIR was registered. [Para 17, 18, 20] [451-B-E; 452-G-H; 453-A-B]

1.7. There were a number of persons, almost 100. The Police did not make any effort to join independent persons in the investigation. The entry to place 'J' which is a jungle area, is by tickets. However, no efforts were made to take the connecting evidence of this nature. [Para 21] [453-C]

1.8. Neither the trial court nor the High Court appreciated the said circumstances which go to the root of the matter and raise sufficient doubt about the involvements of the appellants in the instant case. Therefore, the appellants are entitled to the benefit of

A **doubt and the case against them is not proved beyond reasonable doubt so as to uphold their conviction into a serious charge of murder under Section 302 read with Section 34 of IPC. The conviction of the appellant under the said provisions is set aside. [Para 22, 23] [454-G-H;**
B **455-A-B]**

Meharaj Singh v. *State of Uttar Pradesh* **(1994) 5 SCC 188 – relied on.**

Case Law Reference:

C

(1994) 5 SCC 188 Relied on Para 22

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1118 of 2014.

D From the Judgment and Order dated 27.07.2011 of the High Court of Judicature at Bombay Nagpur Bench, Nagpur in Criminal Appeal No. 1 of 2006.

Sushil Kumar, Vinay Arora, Aditya Kumar, Sudarshan
E Singh Rawat for the Appellants.

Anirudhha P. Mayee for the Respondent.

The Judgment of the Court was delivered by

F **A.K. SIKRI, J.** 1. The two appellants herein are aggrieved by the judgment of the High Court pronounced on July 27, 2011, whereby their conviction under Section 302 read with Section 34 of the Indian Penal Code, 1860 (for short, 'IPC'), as recorded by the Magistrate, has been upheld and their sentence to
G undergo life imprisonment with fine is also confirmed thereby.

2. The prosecution case, on the basis of which the appellants along with eleven other persons were charged for committing offences of different nature, is stated by the High
H Court in para 5 of the impugned judgment. There is no dispute

that the prosecution version, as recorded therein, suffers from any inaccuracies. Therefore, in order to have a glimpse of the prosecution case, we would take the facts as narrated in para 5 of the impugned judgment:

3. The complainant, appellants and other accused persons are residents of Chandrapur. Complainant – Manoj Bhaskar Ugade knew both the appellants. The incident had occurred on November 17, 2002. The complainant had bought new motorcycle and with a view to celebrate the occasion, he had arranged a party at Junona in Ballarshah Tehsil. Junona is a forest place and it appears that there is some Holiday Resort also. It is a picnic place which is normally crowded to some extent on holidays. The said party arranged by Manoj was attended by his friends, including the two deceased, Vinod Channewar and Chandu Prakash Dongre. In addition to the above deceased, the said party was attended by Golu Ramteke, Jivan Mahadolé, Anil Tajne, Sahilesh Gujarkar, Dilip Pradhan, Shankar Thakre, Vinod Shende, Santosh Kashti and Bahadur Hajare. The food was to be prepared on the spot. Therefore, raw material was taken to the spot of party in a Maruti van. The complainant and his friends reached the spot at about 12.00 noon and they started preparing meals. Since meals were not ready, the deceased had gone little away from the place of party to buy *Gutka.* They returned to the spot at about 12.30 p.m. The meals were still not ready. They, therefore, started playing cards at some distance from the place where the complainant was preparing *roties.* While the complainant was busy in his work, suddenly 8 to 10 persons reached the spot. The deceased, Vinod and Chandu, started running after witnessing them. However, the said 8 to 10 persons followed the deceased. The two appellants before us were holding swords. It is alleged that both of them started assaulting deceased Vinod with the swords in their hands, while rest of the persons followed Chandu. The complainant could not

A see as to what happened to Chandu. However, after the culprits fled away, it was seen by the complainant that there were severe injuries on the head of deceased Vinod. His brain material had come out. Obviously he was dead. Deceased Chandu was found at some distance in the same condition. The B complainant, therefore, threw away all the eating material and immediately rushed to the brother of Bahadur Hajare. It may be stated that Bahadur Hajare was one of the persons who had attended the party. Thereafter, the complainant along with his friends had gone to the house of Advocate Rangari at C Chandrapur to take his advice as to what they should do further in the matter. Advocate Rangari advised him to report the matter to the police. The matter was reported to City Police Station, Chandrapur. They had registered an offence vide Crime No. 00/02 under Section 302 read with Section 34 of D IPC and Section 4 read with Section 25 of the Arms Act against the appellants and others. Since the place of incident was not within the jurisdiction of City Police Station, intimation was given to Ballarshah Police Station regarding the incident. Upon receiving the intimation, Ballarshah Police Station E registered FIR No. 220 of 2002 and investigation was taken up by P.I. Mr. Kshirsagar, who visited the spot. Two of the witnesses were called, who had indentified the bodies lying on the spot. Inquest was done on the spot. Both the bodies were referred to General Hospital, Chandrapur for post-mortem F examination. Rest of the *panchnama* was drawn on the next day as it was dark. During the course of investigation, it was revealed that one motorcycle was used by the appellants, which belonged to one Amarpur. The said motorcycle was also seized. Other accused were arrested from time to time during the G course of investigation. Weapons and clothes were also seized and after completion of investigation chargesheet was filed in the court of Magistrate. It appears that during the course of investigation, provisions of the Maharashtra Control of Organised Crime Act, 1999 (hereinafter referred to as 'MCOC H Act') were also applied and further investigation was carried

out by the Deputy Superintendent of Police, Mr. Sardeshpande. However, since Inspector General of Police rejected the proposal for prosecuting the appellants and others in MCOC Act, the accused were tried by the ad-hoc Additional Sessions Judge at Chandrapur.

4. The appellants herein were the main accused persons and described as Accused No.1 and Accused No.2 (A-1 and A-2). In fact, A-1 to A-8 were charged under Section 302 as well as Sections 147 and 148 read with Section 149 of the IPC. A-9 to A-11 were charged under Section 212 of the IPC, whereas A-12 and A-13 were charged only under Section 120-B of the IPC. Prosecution examined 22 witnesses in support of its case. There was no dispute about the cause of death of the two persons, namely, Vinod Channewar and Chandu Prakash Dongre. As per the post-mortem report, the two had suffered multiple head injuries and these injuries led to their death.

5. The trial court, on the basis of the testimonies of the prosecution witnesses as well as documents produced before it, found A-1 and A-2 (the appellants herein) guilty of the offence punishable under Section 302 read with Section 34 of IPC. They were acquitted of charges under Sections 147, 148 and 149 of IPC. A-3 to A-8 were held not guilty. Likewise, it was held that no case under Section 212 of the IPC was made out against A-9 to A-11. The trial court also discarded the theory of conspiracy allegedly hatched by the accused persons to murder the deceased persons, thereby acquitting A-12 and A-13 of the charge under Section 120-B of IPC (*strangely even it was alleged that all the accused persons had conspired together to kill the deceased persons, the charge under this Section was framed only qua A-12 and A-13*). Since only the appellants were held guilty of murdering the deceased with common intention and given life imprisonment by the trial court,

A these two appellants challenged the said verdict by approaching the High Court of Judicature at Bombay (Nagpur Bench).

6. The High Court, on re-appreciation of evidence, held
B that it could not be proved as to who killed Chandu Prakash Dongre. However, the finding of the Sessions Judge holding the appellants guilty of murdering Vinod Channewar is affirmed. Thus, even when these appellants are acquitted of the charge of murdering Chandu Prakash Dongre, the final result remains
C the same, i.e. Dismissal of their appeal on finding them guilty of committing the murder of Vinod Channewar.

This is how the two appellants are before this Court.

7. Mr. Sushil Kumar, learned senior counsel appearing for
D the appellants, submitted that the trial court, or for that matter the High Court, could not see through and appreciate the glaring infirmities and loopholes in the prosecution case. He submitted that the foundational facts injected by the prosecution provide unhelpful ambiguity which manifest hollowness of the
E prosecution case and a vivid look thereof was sufficient to discard the prosecution story implicating the appellants in the entire episode. He pointed out those aspects which we shall refer hereinafter. He also pointed out that a reading of the judgment of the High Court would demonstrate that the High
F Court has indulged into the guesswork and became too presumptuous in drawing certain inferences, without any material on record. He also submitted that most of the arguments raised by the appellants before the High Court are either glossed over or dealt with casually and/or in a perfunctory
G manner, which is against all cannons of criminal jurisprudence that mandates guilt to be proved beyond reasonable doubt.

8. Neat submission of Mr. Sushil Kumar, in this behalf, was that the FIR itself was ante-timed with sole intention to rope in

H

the appellants. He also argued that the conduct of the complainant to go to the house of Advocate Rangari at Chandrapur after the incident, instead of heading to the Police Station to report the incident, depicted an abnormal behaviour which was enough to ring alarm on the genuineness of prosecution story. However, it has been brushed aside by the High Court. Mr. Kumar had also pointed out that on the purported advice of the said Advocate, FIR was lodged with Police Station Chandrapur, which was not the concerned Police Station within whose jurisdiction the incident had occurred. The concerned Police Station was Ballarshah Police Station. He submitted that no doubt, the Police Officer who registered the FIR at Chandrapur called the concerned officer from Ballarshah Police Station, who took over the matter and conducted the inquest proceedings, the entire sequence was shrouded in mystery and the FIR was ante-timed, which could be inferred from other various circumstances.

9. We find sufficient merit in the aforesaid submissions of Mr. Sushil Kumar and are convinced about the unnatural behaviour of the complainant in approaching Advocate Rangari and lodging the FIR at Chandrapur and also convinced that FIR appears to be ante-timed. As discussed in detail hereinafter, according to us, these facts are sufficient to hold that the appellants may have been roped in falsely at a later point of time, which entitles them to be given the benefit of doubt.

10. We now proceed to discuss these circumstances and our reasons hereinafter.

11. As noticed, while stating the case of the prosecution, the complainant, along with his friends, had gone to Junona in Ballarshah Tehsil, where a party was arranged by him to celebrate his new acquisition in the form of a motorcycle. There were many friends of his along with him. They had decided to prepare the food on the spot, for which they took raw material

A with them in a Maruti van. Though the complainant and his friends had reached that place at about 12.00 noon and had started preparing meals, as far as the two deceased persons are concerned, they had reached later. Awaiting the preparation of meals, they had started playing cards at some distance. It B is at that time, 8 to 10 persons reached the spot. As per the prosecution, the two appellants were holding swords and chased Vinod Channewar and started assaulting him, while the other accused had followed Chandu Prakash Dongre. After the incident, as per the prosecution, the complainant threw away C all the eating materials and immediately rushed to the brother of Bahadur Hajare, who had also attended the party. Thereafter, the complainant and his friends went to the house of Advocate Rangari at Chandrapur.

D 12. During the arguments, we were informed that Chandrapur, where Rangari lived and these persons went, is about 15 kms. It appears to be a very strange behaviour on the part of the complainant and so many of his friends who were with him to go to an Advocate, that too 15 kms. away, rather E than approaching the Police Station to report the matter. The High Court has downplayed this unusual and abnormal conducts in a cavaliar manner by observing that the complainant and his friends were so scared that they had no sense of stopping at the Police Station and, therefore, they had F straightaway gone to the house of the said Advocate. This aspect is dealt with by the High Court in the following manner:

> "21...However, it may be stated here that it is possible that some other persons could have behaved in a different G manner than P.W. Nos. 1 and 3 have behaved. Reaction of witnesses to a particular incident is not necessarily similar. It depends upon the nature of the incident, place of incident and the nature of the witness himself. In the present case it appears that, in all probabilities, P.W. 1 H and his friends had carried some liquor also with them.

Though there is no evidence to that effect, the possibility of their carrying liquor could not be ruled out, considering the fact that on most of such occasions, liquor has become an integral part of the celebrations. This view is taken by us because P.W. 1 had thrown away all the material before going to the Police. He had not given description of the material thrown away by him. Therefore, possibility of they carrying liquor also could not be ruled out. The learned counsel for the appellants wanted to capitalize this situation also. We, however, are not inclined to accept the argument that P.W. 1 and others had taken drinks to a large extent and there was a quarrel between members of the same group. Possibility of P.W. 1 and others drinking liquor is not ruled out. At the same time, it can be said that since they might have consumed liquor they were afraid of approaching the police immediately. This does not make any plus point in favour of the appellants."

13. No doubt, different persons may react differently to the same situation. However, at the same time, as mentioned above, it appears very improbable that when there were as many as 15 to 20 persons, namely, the complainant and his friends, none of them even thought of going to the Police Station to report the matter, which is odd and out of ordinary behaviour in such cases. Instead, they chose to go to an Advocate, who was staying at a distance of 15 kms. The persons who were allegedly very scared would not take the risk of going a distance of 15 kms. rather than approaching the nearby Police Station within the jurisdiction of the area where the incident had taken place.

14. Strangely, in the process of defending the said conduct of the complainant and his friends, the High Court became presumptuous as it itself gave an imaginary story that there was a possibility that these persons had consumed liquor and the

material thrown by them included liquor as well. It was not even the case of the prosecution, probable or otherwise.

15. We may have agreed with the High Court that not reporting to the Police and going straightaway to an Advocate could have been because of the reason that all these persons were very scared, had it been a standalone fact. However, when this fact is examined in conjunction with other circumstances, which we narrate hereinafter, we find that approaching an Advocate instead of going to the Police Station to report the matter, was not that innocent a step as the prosecution has made us to believe.

16. Even after meeting their Advocate and his advise that the matter be reported to the police, these persons didn't come back to Ballarshah Police Station, which was the proper Police Station for this purpose. Instead, the FIR was lodged in Chandrapur Police Station. Things do not end here. Mr. Umesh, Sub-Inspector, was at Chandrapur Police Station, who had recorded the FIR. He has appeared as PW-12 during trial. The FIR which was lodged with him is proved as Exhibit-213. Column 15 of the FIR pertains to *'date and time of dispatch to the Court'*. This column is left blank, which means that no date and time of the dispatch/delivery of this FIR to the concerned Court is mentioned. In the cross-examination, PW-12 was specifically asked about the requirement of submitting a copy of the FIR to the concerned Magistrate within 24 hours. He replied in the affirmative insofar as this need is concerned. However, at the same time, he was candid in admitting that he was unable to say as to by whom and when the copy of Exhibit-213 was sent to the Magistrate. A specific suggestion was put to him that the copy of the FIR was not sent to the concerned Magistrate. Though he denied, but thereafter no attempt was made to prove as to when and how the copy was sent. The necessity of sending the copy of the FIR to the concerned

Magistrate hardly needs to be emphasized. The primary purpose is to ensure that truthful version is recorded in the FIR and there is no manipulation or interpolation therein afterwards. For this reason, this statutory requirement is provided under Section 157 of the Code of Criminal Procedure, 1973.

17. We, thus, feel that it was a glaring omission on the part of the prosecution which lends credence to the plea of the defence about ante-timing the FIR. It gets strengthened on finding more glaring and intriguing events taking place thereafter, which are described hereinafter.

18. Mr. Dilip, who was attached to the Chandrapur Police Station, sitting as PSO on that day, was produced as PW-21. He stated in his deposition that he was informed by PSI Sayyad about the incident and, accordingly, he recorded the report as per the say of the complainant, which he proved as Exhibit-114. After recording the statement, he reached the spot of incident and by that time PSO of the Ballarshah Police Station had also reached the spot. Curiously, this witness did not even disclose the names of the accused persons to P.I. Kshirsagar, who had come from Ballarshah Police Station. This is what he said in the cross-examination:

> "2)...I had not disclosed names of accused persons to P.I. Kshirsagar on the spot. I can not assign any reason as to why I had not disclosed the names of accused to P.I. Kshirsagar though I was knowning the names of accused. It is not true to say that at that time I was not knowing the names of the assailants and therefore I have not given that information to P.I. Kshirsagar. It is not true to say that the portion in front of entry No. 38 and 39 of the station diary was kept blank as per the direction of Superintendent of Police. It is not true to say that thereafter on the next day I have filled these entries. It is not true to say that thereafter I have prepared forged report. It is not true to say that I have

A not sent the report and printed F.I.R. to P.S. Ballarpur on the day of incident at about 4.45 p.m. on the day of incident..."

19. This is even accepted by the Investigating Officer Mr. B Jiwan from Police Station Ballarshah, who had reached the spot, in the following words:

"19...P.I. Tidke had been to the spot of incident when I was drawing inquest panchanama. Jiwan Mahadole and Bahadur Hazare had been to the spot before arrival of P.I. C Tidke. I can not say as to whether Manoj Ughade had also reached the spot or not. It did not happen that Manoj Ughade had identified one dead body. It is true to say that P.I. Tidke had not disclosed me the names of the assailants. It is true to say that the witnesses Jiwan D Mahadole and Bahadur Hazare had not disclosed me the names of assailants on the spot. It is not true to say tha Manoj Ughade was also present on the spot but he had not disclosed me the names of the assailants. Article C and D about the report to be forwarded to the Civil Surgeon E with dead bodies sent for post-mortem examination now shown to me are bear my signature. Their contents are correct. They are Exhs. 278 and 279. I did not received the case diary on that day up to 8.00 p.m. I was on the spot up to about 9.30 p.m. Thereafter I visited Chandrapur City F P.S. It is true to say that on the day of incident I was not knowing the names of assailants till 8.00 p.m. and therefore in the document prepared by the time I have mentioned the names of assailants as unknown persons."

G 20. It, thus, becomes apparent from the aforesaid that though as per the FIR, names of the assailants, i.e. the appellants herein, were stated to PW-12 or PW-21, but PW-21 did not disclose these names to PW-22, who is the Investigating Officer. In the inquest report prepared by PW-22, H

no names are mentioned even when the complainant and two or three friends of his were present on the spot. All these factors throw suspicion about the recording of the FIR at the time stipulated in the FIR. There are circumstances galore which indicate that the FIR was ante-timed and the names of these two appellants were incorporated later but showing them to be at the time when the statement was made by the complainant on the basis of which the FIR was registered.

21. At this juncture, we would like to point out that there were a number of persons, almost 100. The Police did not make any effort to join independent persons in the investigation. The entry to Junona, which is a jungle area, is by tickets. However, no efforts were made to take the connecting evidence of this nature.

22. In the aforesaid scenario, we find that the present case is fully covered by the judgment of this Court in *Meharaj Singh* v. *State of Uttar Pradesh,* (1994) 5 SCC 188, where the importance of recording of FIR and the requirement of dispatching the copy thereof to the Magistrate within 24 hours with the consequences frought with danger was highlighted in the following manner:

> "12. 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 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. 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

A 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
B 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
C delay in despatching or receipt of the copy of the FIR by the local Magistrate. Prosecution has led no evidence at all in this behalf. 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
D 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
E 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 ante-timed to give it the colour of a promptly lodged FIR.
F In our opinion, on account of the infirmities as noticed above, the FIR has lost its value and authenticity and it appears to us that the same has been ante-timed and had not been recorded till the inquest proceedings were over at the spot by PW 8."

G

Neither the trial court nor the High Court has appreciated the aforesaid circumstances which go to the root of the matter and raise sufficient doubt about the involvements of the appellants in the present case.

H

23. We are, therefore, of the opinion that the appellants are entitled to the benefit of doubt and the case against them is not proved beyond reasonable doubt so as to uphold their conviction into a serious charge of murder under Section 302 read with Section 34 of IPC. A

B

24. The appeal is, accordingly, allowed and the conviction of the appellants under the aforesaid provisions is set aside. The appellants, who are in custody, shall be released forthwith, if not required in any other case.

C

Nidhi Jain Appeal allowed.