

AFR**HIGH COURT OF MADHYA PRADESH, JABALPUR**

Criminal Appeal No.	1485 of 1994
Parties Name	<p>1.Mansingh, S/o Rooplal, aged about 36 years, Occupation Pan Shop, R/o Dhobighat, P.S. Cantt, District Jabalpur(M.P.)</p> <p>2.Ramesh, S/o Premlal, aged about 36 years, Occupation Cycle Shop, R/o Dhobighat, P.S. Cantt, District Jabalpur(M.P.)</p> <p>3.Ashok, S/o Narbadaprasad, aged about 35 years, Occupation Milk Vender, R/o Dhobighat, P.S. Cantt, District Jabalpur (M.P.)</p> <p style="text-align: center;">-Versus-</p> <p>State of Madhya Pradesh</p>
Bench Constituted	Hon'ble Shri Justice Hulluvadi G. Ramesh & Hon'ble Shri Justice B.K. Shrivastava
Judgment delivered by	Hon'ble Shri Justice B.K. Shrivastava.
Whether approved for reporting	Yes/No
Name of counsels for parties	<p>For appellants : Shri S.C. Datt Senior Advocate with Shri Siddharth Datt, Advocate.</p> <p>For respondent/State : Shri Shamim Ahmad Khan, GA.</p> <p>For Objector : Shri Ahadulla Usmani, Advocate</p>
Law laid down	<p>S. 157, Cr.P.C. is designed to keep the Magistrate informed of the investigation of a cognizable offence so as to be able to control the investigation and if necessary to give proper direction under S. 159, Cr. P. C. It is the only external check on the working of the police agency, imposed by law which is required to be strictly followed.</p> <p>(ii). A little delay should not be viewed from an unrealistic angle. Delay in dispatch of FIR by itself is not a</p>

	<p>circumstance which can throw out the prosecution's case in its entirety, particularly when it is found on facts that the prosecution had given a very cogent and reasonable explanation for the delay in dispatch of the FIR.</p> <p>(iii) Every delay in sending FIR to the Magistrate under S. 157, Cr. P. C., would not necessarily lead to the inference that the F. I. R. has not been lodged at the time stated or has been ante-timed or antedated or that the investigation is not fair and forthright. The delay in sending the copy of the report to the Magistrate cannot by itself justify the conclusion that the investigation was tainted and the prosecution insupportable.</p> <p>(iv) Where the FIR was promptly lodged and the investigation started promptly on the basis of the FIR , the mere delay in dispatch of the F. I. R. to the Magistrate would not make the prosecution case suspect.</p> <p>(v). If chances of embellishments and concoctions stands ruled out than only delay of few days will not fatal to prosecution case. An unexplained inordinate delay in sending the copy of the FIR to Magistrate may affect the prosecution case adversely and it would definitely cast shadow on prosecution case.</p> <p>(vi). On delayed dispatch of F.I.R., some prejudice have to be proved by accused. Mere delay in sending the report itself cannot lead to a conclusion that the trial is vitiated or the accused is entitled to be acquitted on this ground.</p>
Significant paragraphs numbers	47.

J U D G M E N T**(11 .04.2019)**

1. This criminal appeal has been filed on 05.12.1994 under Section 374 (2) of Cr.P.C. against the judgment dated 29.11.1994 passed by the Second ASJ, Jabalpur in Sessions Trial No.125/1992. By the impugned judgment, the learned lower Court convicted the appellants for the offence under section 302/34 of IPC and sentenced them to undergo life imprisonment.

2. As per prosecution case, Mahendra Kumar Yadav (Pw4) aged about 20 years, was doing the business of milk [Milkman]. On 21.08.1991 he had gone to distribute the milk in the TCC Colony, Jabalpur. At about 10.15 a.m., when he was returning back and reached to Gorabajar, he met his father Lakhan Lal Yadav who was on the scooter, while the complainant Mahendra was on cycle. The complainant was going behind his father. When his father Lakhan Lan crossed the Nala of Gorabajar and reached near the Pump House, at that time accused/ appellants Ashok, Mansingh and Ramesh Yadav came in front of Lakhan Yadav. Ashok was holding Farsa and Mansingh and Ramesh both were holding Swords. They put the cycle in front of the scooter of Lakhan to stop him. Thereafter Mansingh attacked on Lakhan by Sword and Ashok assaulted by Farsa. When the Lakhan fled away, leaving his scooter and went towards the temple, then all three accused followed him. Lakhan fell in the mud and thereafter all three accused assaulted upon him by Farsa and Sword. Lakhan cried to save him by saying “बचाओ बचाओ”, but no body helped him. The complainant Mahendra tried to save his father but the accused persons also tried to attack him, therefore, he could not save his father and Lakhan expired on the spot.

3. The incident took place at about 10:15 a.m. on 21.08.1991. Mahendra Yadav (son of the deceased) went to the Police Station Gorabajar and lodged the FIR Ex. P-7 at 10.25 a.m.. Police registered the Crime No. 0/91 under Section 302 of IPC. Upon the basis of aforesaid report, original Crime No. 279/91 was registered at Police Station Cantt. As per telephonic

information received from Police Choki, Gorabajar, Marg Ex. P-17 was also registered at Police Station, Cantt. On the same day at about 10:40 a.m. Mansingh and Ashok reached to the police station, Cantt. holding Farsa and Sword in their hands and told Shankarlal, Head Constable that they are coming after committing the murder of Lakhan. The Head Constable prepared memo and seized a Farsa vide Ex. P-8 & a Sword vide Ex. P-9. In addition to aforesaid seizure, the head constable also seized a shirt of Mansingh and Kurta of Ashok vide Ex. P-10 and Ex. P-15. Thereafter, he arrested both the accused.

4. On the other side, police reached to the spot and issued notice to the witnesses Ex.P-2. Thereafter, in presence of witnesses, inquest Panchanama Ex. P-3 was prepared by police. The police visited the scene of crime and prepared a spot map Ex. P-4 and seized the blood strain earth and plain earth from the spot vide Ex.P-5. Scooter of deceased, cycle and shoes were also seized from the spot vide Ex. P-6. Police recorded the statements of various witnesses and after investigation, came to the conclusion that present appellants and Gulab Chand and Vishwanath entered in a conspiracy. Thereafter, three appellants committed the murder of Lakhan. After investigation, police filed the Challan No. 279/91 on 15.10.1991 before the JMFC, Jabalpur who registered the Criminal Case No. 4154/91. At the time of filing of challan, one accused Vishwanath was absconded, therefore, the Magistrate issued arrest warrant against him. After arresting the accused, the Magistrate committed the case to the Court of Sessions on 27.01.1992.

5. On 07.02.1992, the case was received by Sessions Judge, Jabalpur who registered S.T. No. 125/92 and made over the case to the Court of Second ASJ, Jabalpur on 11.02.1992. On 26.02.1992 the trial Court framed the charges under Section 302/34 of IPC against the present appellants namely Ashok, Mansingh and Ramesh and the charges under Section 120-B of IPC against Gulab Chand and Vishwanath. The accused persons denied the charges and demanded for trial. Thereafter, prosecution examined 15

witnesses in support of its case. Appellants also examined 5 witnesses in their defence.

6. After concluding the trial, the trial court acquitted accused Gulabchand and Vishwanath for the offence under Section 120-B of IPC and convicted the present accused / appellants for the offence under Section 302/34 of IPC and sentenced them to undergo life imprisonment.

7. It is submitted by the counsel for the appellants that the conviction and sentence of the appellants is bad, improper and illegal. The court did not appreciate the evidence in proper way. The trial Court convicted the appellants only upon the basis of testimony of Mahendra Kumar Yadav PW4 and Bharat Prasad PW-5. Mahendra Kumar Yadav PW4 is the son of the deceased and PW-5 is also a close relative of the deceased. The case was not supported by any independent witness. The presence of PW-5 Bharat is doubtful because he was an employee in Ordinance Factory, Khamaria and it was proved by defence evidence that he was present on his duty when the incident took place. Therefore, the aforesaid witness cannot be believed. Mansingh also said in his evidence that Bharat was present at the time of incident. Because the presence of Bharat is doubtful therefore the testimony of Mahendra also cannot be believed. It is also argued that the conduct of aforesaid witness Bharat is also doubtful because he admitted in his statement that his close relative was expired on the said date. In this condition, it cannot be believed that he will go to perform his duty. The defence also argued that the compliance of Section 157 of Cr.P.C. has not been made in this case. Therefore, prosecution case becomes doubtful. Therefore, it is argued that because the judgment is not sustainable, hence appeal be allowed and the appellants be acquitted from the charges.

8. On the other side, learned counsel for the State has strongly opposed the appeal. It is submitted that the conviction of appellants is based upon strong reliable evidence. PW5 Bharat was present at the spot. He explained the entire position in his statement. The defence witnesses are not reliable. It

is also transpired from the evidence of defence witness that it was possible to reach on the duty after lunch period. The witness Bharat was present on the spot. Mahendra, the son of deceased, was also present. His evidence cannot be thrown out only upon the basis that he is the son of the deceased. His presence is proved by the strong evidence. Therefore, the trial court did not commit any mistake by convicting the appellants for the offence under Section 302/34 of IPC.

9. The question arises before this Court whether the trial court committed any mistake by convicting the appellants under Section 302 of IPC ?

10. The trial court mainly based the conviction of appellants upon the testimony of Mahendra PW-4 and Bharat PW-5. It is submitted by the defence counsel that as per evidence of defence witness No. 2 to 5, Bharat PW-5 was present on his duty at Ordinance Factory, Khamariya, therefore, the aforesaid witness cannot be relied. Bharat and Mahendra both witnesses supported the presence of each other at the time of incident. As per defence counsel because Bharat is not reliable witness, therefore, the testimony of Mahendra cannot be relied. The learned defence counsel draws our attention towards *Dudh Nath Pandey Vs. State of Uttar Pradesh (1981)2 SCC 166 and Bibi Parwana Khatoon Alias Parwana Khatoon Vs. State of Bihar (2017)6 SCC 792*. in which the Supreme Court said that the same response should be given to the defence witness in comparison to prosecution witness. By citing *Bhagwan Das and another Vs. State of Rajasthan AIR (1957) SC 589* it is argued that the statement of PW-5 is not reliable because his presence on the spot is doubtful, therefore, the statement of PW-4 is also become doubtful.

11. Mahendra Kumar(PW-4) is the son of the deceased. The witness said that on 21.08.1991 he went to distribute milk in TTC Colony at about 08:00 a.m.. and when he was coming back and reached Gorabajar, he met with his father Lakhan who was on his Scooter. The witness was on cycle. Father was

going ahead to the witness because he was on scooter. Witness was going slowly. About the incident, the witness said that when his father reached near the Pump House after crossing the Nala, all three accused came out from the side of Pump House holding Sword, Farsa etc. in their hands. Ramesh pushed the cycle in front of the scooter of father of the witness. When the father stopped the scooter, Mansingh assaulted him by Sword upon his hand and when after leaving his Scooter father ran away towards temple, but there was fencing. The father came in the contact of fencing and fell down into the mud. In the meantime accused Ashok attacked on him by Farsa and caused injury in the leg . Thereafter, all three accused assaulted him by means of Sword and Farsa. The witness said that he was only 50 feet away from the place of incident. The accused persons also ran to assault the witness, therefore, the witness fled away towards Gorabazar Chowki. He also said that he lodged the FIR Ex.P-7. In para 9, the witness specifically said that when the incident took place, at that time Bharat PW-5 was also present just behind the witness and he also saw the incident. In Para-27, he again said that Bharat was standing near 4 to 6 feet upon his Luna.

12. The witness Mahendra Kumar(PW-4) has been cross-examined by the defence at length, but he explained each and every circumstances. In his cross examination he said that he distributes the milk in 2 to 3 families in the TTC Colony and 12 to 14 families in MES Colony. On the date of incident, he distributed milk to the 15-16 customers. The aforesaid colony is 5 to 6 km away from the house of the witness and only half an hour time is required to reach the aforesaid colony. The witness again said that on the date of incident he leave his house at about 08:00 a.m. in the morning and at the time of incident (at about 10.15 a.m.) he was returning from there. The witness is doing the business of distribution of milk and as per para 30 he was having 4 to 5 befallows and 5 cows. It is well known fact that the milk is distributed in the morning. The witness definitely left his house at about 08;00 a.m. and after distribution of the milk he returned at about 10:15 a.m. when the incident took place. The witness also said that he lodged the report Ex, P-7 in the Police Station, Gorabazar. In para-35 he said that his report

was written by Akhilesh Mishra, Inspector and after lodging the report, the Inspector sent a constable with the witness and the witness reached to the spot. The witness again said that after sometime, the Inspector Akhilesh Mishra also reached to the spot.

13. Akhilesh Mishra (PW-9) also supported the aforesaid fact. The witness was Chowki In-charge of Gorabazar Police Station, Cantt. He said that Mahendra lodged the FIR Ex. P-7 upon which the witness registered the crime at "O" number. He again said that the aforesaid report was sent for registration of original crime to the police Station Cantt. through constable. Thereafter, the witness proceeded to the place of incident.

14. The witness Mahendra also said that police issued the notice Ex. P-2 and prepared the inquest Panchnama Ex. P-3. Thereafter, the police seized sleeper and cycle from the place of incident vide Ex. P-6. He also said that the police seized the blood stained and plain soil from the spot vide Ex. P-5.

15. Another witness Fakirchand Yadav (PW-2) also supported the notice Ex. P-2, spot map Ex. P-4, seizure memos Ex. P-5 and P-6. No any question has been asked to this witness in the cross examination, therefore, the aforesaid documents may be treated as admitted documents and it is found proved that the police reached on the spot and thereafter the notice Ex. P-2 was issued. In the presence of witnesses, inquest Panchnama Ex.P3 was prepared. The police also prepared spot map and seized the blood earth and plain earth from the spot and also seized scooter, cycle and shirt etc Ex. P-6. Charan Singh (PW-15) who is the station In-charge of Police Station, Cantt, prepared the aforesaid documents. He also said that after inquest Panchnama, he forwarded the dead body to the medical hospital by Ex. P-8.

16. D.K. Sakelley (PW-8) is the Medical Officer posted at Medical Collage who conducted the Postmortem of the deceased Lakhan. As per his statement, he found the following 9 injuries upon the dead body of Lakhan:-

“(1) कटी हुई चोट, दाहिने पैर पर सामने की ओर मौजूद थी यह चोट 3 इंच लंबी डेढ़ इंच चौड़ी थी पूरा पैर कट गया था, अस्थियां भी कट गई थी ।

(2) कटी हुई चोट दाहिनी हथेली पर बाहरी हिस्से में 3”X 2”X 3/4” नाप की मौजूद थी । इस चोट पर तीसरे चौथे एवं पाचवे नंबर की अंगुली की अस्थि कटी हुई थी ।

(3) कटी हुई चोट दाहिनी हथेली पर कलाई से आगे की ओर मौजूद थी। यह 4 1/4” लंबी एवं 3/4 इंच चौड़ी थी यह चोट तीसरे एवं चौथे नंबर की उंगली के बीच में थी । इस पर अस्थियां कट गई थी ।

(4) एक कटी हुई चोट सिर पर पीछे की ओर, मौजूद थी यह चोट आड़ी थी, एवं इस चोट में गर्दन भी शामिल थी इस चोट की लंबाई 6 1/2” थी बाया कान कट गया था, सिर के पीछे की अस्थि थोड़ी सी कट गई थी। एवं रीढ़ की पहली अस्थि भी कटी थी जिसके साथ में रीढ़ की नली का ऊपरी हिस्सा (मेडूला) कट गया था । इसकी गहराई 4” इंच थी ।

(5) कटी हुई चोट चोट नं0 4 से डेढ़ इंच नीचे गर्दन की पांचवी नंबर की अस्थि के समान मौजूद थी । इसकी लंबाई 5” चौड़ाई 2” इंच थी पांचवे नंबर की गर्दन की अस्थि रीढ़ की नस के साथ कट गई थी ।

(6) एक कटी हुई चोट सिर पर बायीं ओर स्थित थी जो 3” इंच लंबी 1/2” इंच गहरी एवं आधा इंच चौड़ी थी उसके नीचे पैराइटल एवं टेम्पोरल अस्थि डेढ़ इंच x 1 ” हिस्से में तिरछी कट गई थी । अंदर मस्तिष्क के ऊपर की झिल्ली कट गई थी एवं मस्तिष्क हिस्से में 1” x 3/4” इंच x 1/2 ” इंच हिस्से में कट गया था ।

(7) एक सतही कटी हुई चोट बायें पक्ष पर 4”x 1/8” x 1/8” इंच मौजूद थी ।

(8) एक कटी हुई चोट दाहिने पक्ष पर 3/4” x 1/2” x 1/2 ” इंच नाप की स्थित थी इसके किनारों की पूरी कटी हुई लंबाई 8” इंच थी जो सतही थी ।

(9) एक भौकी हुई चोट पेट पर दाहिनी ओर पीछे की ओर स्थित थी यह मध्य रेखा से 3 इंच दाहिनी ओर आखरी पसली के सामानांतर थी यह पौने 2 इंच लंबी आधा इंच चौड़ी थी । इसकी दिशा अंदर की ओर एवं नीचे की ओर थी । इसकी गहराई ढाई इंच थी एवं दाहिन किडनी आधा इंच गहराई में बीच वाले हिस्से में कट गई थी । यह चोट लाल रंग की थी, इनके किनारे साफ कटे हुए एवं अंतर नोकदार थे इनके ऊपर रक्त जमा हुआ था ।’

17. Dr. D.K. Sakelley gave the opinion that the death was committed within 12 hours and injuries were caused by sharp cutting objects. All injuries were antemortem. The cause of death was injury No. 4 in which the head was separated from the neck. He proved his report Ex. P-11 and also said in para-6 of cross-examination that the injury No. 5 was also sufficient to cause the death. Therefore, it appears that the **death was homicidal** and

was the result of injuries caused by sharp cutting objects. Therefore, the statement of Mahendra also found support from the statement of the doctor.

18. Bharat Prasad (PW-5) also supported the incident and the statement of Mahendra. The witness categorically explained the entire episode. The witness said that he is serving in Ordnance Factory, Khamariya. On the date of incident i.e. on 21.08.1991 he left his house at about 06:30 a.m. and was going to factory. He said that when he reached Gorabazar and stopped for sometime in beetle shop, he saw that the Vishwanath and Gulabchand were talking about Lakhan. The witness left the place and reached Ranjhi. When he stopped at another beetle shop situated near the chungi chowki, at that time one person informed him that his relative (Samadhi) Todiram has been expired in the night. In para-14 he explained that his nephew Raju was standing there who informed the death of Todiram. The witness again said that when he received information regarding the death of Todiram then he did not go to his duty and he sent the information through another employee, to his office that he will come after lunch and also told him to marked his attendance. The witness again said that after sending the information to the office through co-worker, he reached Gorabazar and gave information about the death of Todiram to some relatives. Thereafter, he reached the house of Todiram situated in front of Maihar Raja Kothi in Railway Quarter. He stayed there at about 09:30 a.m.. Thereafter he came to know that the Railway truck will be available at about 12:00 p.m. for carrying the dead body for funeral, therefore, the witness had gone to his residence for bringing other family members.

19. He again said that when he was going towards his house from Gorabazar, at that time Lakhan crossed him by scooter. The witness again said that he saw that Lakhan was lying with his scooter and Mansingh, Ramesh and Ashok were beating him. Lakhan was tried to save himself and jumped the fencing, but at the moment when he crossed the fencing, he fell down into the mud. Thereafter, the accused persons assaulted Lakhan till his death. In para-6, the witness clearly explained that the Ashok was holding

Farsa and Mansingh & Ramesh were holding sword, therefore, the he could not try to intervene and came back to the Gorabazar and reached to the house of Todiram. He informed the relatives about the murder of Lakhan. In para-7, the witness again said that he did not go for the funeral of Todiram and he reached to attend his duty in the ordnance factory. In para-9, the witness said that he is working in QCF-1 Section of Ordnance Factory, Khamariya, having Ticket No. 302 and S.A. Kumar is the Section In-charge who is a chargeman. Witness said that S.A. Kumar is also in-charge of attendance. The time of the factory starts from 07:30 a.m. and the attendance may be marked upto 08:30 a.m.. The witness said in Para-10 that on the date of incident, he joined his duty about 12:40 p.m. and during the lunch period i.e. 12:30 to 01:30, no application is required to leave the office. He also admitted that the full day attendance has been marked for the said date.

20. Upon the basis of evidence of defence witness Krishna Murti Sharma (DW-2), Omprakash (DW-3), Sunil Anant Kumar (DW-5) and B. Bhaskar Rao (DW-4) it is argued by the defence counsel that it has been proved by the statement of aforesaid witnesses that the PW-5 Bharat was on duty on the date of incident. The trial Court discussed the aforesaid entire evidence in para 25 to 30. This Court is also agree with the aforesaid observation of the trial Court. In para-27 the trial court also mentioned that DW-5 admitted in Para-13 that on 20.07.1992 attendance of Bharat has been marked in the factory but on the said date, the witness was present in the Court. Therefore, this example is sufficient to discard the evidence of defence witness.

21. Looking to the entire evidence of witness, it can be gathered that there are possibility of marking of attendance without reaching to the factory. If an employee sends his token through another employee and that employee hang his token on the prescribed board, then the attendance in-charge will mark the attendance upon the basis of token, without physical verification of the presence of said employee. In this case, the witness also sent information through his colleague by sending his token who hang the token of witness, therefore, his attendance was marked. It is also come in the evidence that

the tokens are kept in the factory, therefore, it may be possible that upon oral information given by the witness, his colleague took his token from the factory and put it to the prescribed board.

22. **Looking to the entire evidence of the witness PW-5, it appears that definitely this witness was present on the spot.** No any doubt is created upon his presence. His evidence is also having similarity with the testimony of Mahendra PW-4. Statements of both witnesses supported each other. Only upon the ground of relationship, testimony of any witness cannot be disbelieved.

23. Another point was also raised by the defence that the conduct of Bharat PW-5 is doubtful. His relative (Samadhi) was expired, therefore, it cannot be expected that after receiving the information, witness will join his duty. This argument is also having no force. PW-5 has explained the position. He informed the Officer-in-charge through his colleague. In para-13 he explained that Todiram was not his real Samadhi but he was the Samadhi of his brother Ram Singh. Therefore, looking to the aforesaid distant relationship, the conduct of this witness cannot be doubted.

24. The appellant placed reliance upon a decision rendered in the case of *Dilli Vs. State of M.P., 1971 MPLJ 667* and argued that the witness P.W.5 is not present at the place of occurrence because he was on duty, therefore, he is not reliable. It appears from evidence that in this case the presence of P.W.5 is proved beyond reasonable doubt. He was not on his duty and he was present on the spot at the time of incident.

25. It is also argued by the defence that P.W.4 and P.W.5 are the chance witnesses. In this regard he placed reliance upon *Bahal Singh Vs. The State of Haryana (1976) 3 SCC 564 = Ismail Ahmed Peepadi Vs. Momin Bibi and others, AIR 1941 Privy Council 11*. In the present case P.W.4 and P.W.5 are not the chance witnesses. It appears from their evidence that their presence on the spot is natural. P.W.4 is the milkman, who distributes the milk in the morning. Therefore, his presence on the spot at 10:15 a.m. is

possible and natural. P.W.5 was also going to his duty but he received some information regarding the death of his relative, therefore he became late and reached on the spot. Hence his presence is also found reliable.

26. The defence also cited *Ram Ashrit Ram and others Vs. State of Bihar, (1981) 2 SCC 60* which is related to the “interested witnesses”, but in this case the evidence of P.W.4 and P.W.5 is found reliable from all corners. Even they are relative to the deceased but no any ground is found in their entire cross-examination to discard their testimony. No any doubt is created upon the testimony of aforesaid witnesses. They were definitely present on the spot at the time of incident.

27. Shankarlal(PW-1) is also an important witness. This witness was posted at Police Station Gorabazar, Cantt. as Head Constable. He said that **on 21.08.2019 at about 10:40 A.M, Mansingh and Ashok came to the Police Station holding Sword and Farsa in their hands and told that they committed the murder of Lakhani**. The witness again said that he noted down the memorandum of Ashok Ex.P-5 and seized a Farsa from Ashok vide Ex.P-8. In reference to Mansingh, the witness said that Mansingh came with Sword and the witness seized sword vide Ex.P-9. He further said that he seized the shirt of Maansingh vide ExP-10 and Kurta of Ashok vide Ex.P-15. Thereafter he arrested both the accused and prepared the arrest memos. In the cross-examination this fact has not been challenged by the defence that Ashok and Maan Singh reached to Gorabazar Chowki with Sword and Farsa and the aforesaid articles were seized from their possession. Only formal suggestion was given, which has been denied by the witness.

28. Charansingh (PW-15) is the Station-in-Charge of Police Station Cantt. He said that on 27.09.1991 he interrogated Ramesh who gave the information about the Sword Ex.P-12. Thereafter in furtherance to the aforesaid information, the witness reached to the house of Ramesh situated

at Dhobhi Ghat and seized the Sword given by Ramesh in presence of Tulsi and Rajju vide Ex-P-14.

29. The witness PW-15 said that the seized article were sent for FSL vide P-18 and the report Ex.P-15 was received from FSL. **As per FSL report, blood was found upon the Sword of Maansingh, Farsa of Ashok, Kurta of Ashok and Sword of Ramesh.** Therefore, this report is also supported the prosecution case.

30. Another argument has been advanced regarding the compliance of Section 157 of Cr.P.C. It is argued by the learned counsel that the prosecution did not prove that copy of FIR was sent to the Magistrate in compliance with the S.157 of Cr.P.C. This fact was required to be proved by the prosecution. The defence placed reliance upon *Thanedar Singh Vs. State of M.P.(2002) 1 SCC 487* and *Budh Singh and others Vs. State of Uttar Pradesh(2006) 9 SCC 731*.

31. Section **157 of Cr.P.C.** reads as under:-

"(1) If, from information received or otherwise, an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered under section 156 to investigate, **he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report** and shall proceed in person, or shall depute one of his subordinate officers not being below such rank as the State Government may, by general or special order, prescribe in this behalf, to proceed, to the spot, to investigate the facts and circumstances of the case, and, if necessary, to take measures for the discovery and arrest of the offender;

Provided that-

(a) when information as to the commission of any such offence is given against any person by name and the case is not of a serious nature, the officer in charge of a police station need not proceed in person or depute a subordinate officer to make an investigation on the spot;

(b) if it appears to the officer in charge of a police station that there is no sufficient ground for entering on an investigation, he shall not investigate the case.

Provided further that in relation to an offence of rape, the recording of statement of the victim shall be conducted at the residence of the victim or in the place of her choice and as far as practicable by a woman police officer in the presence of her parents or guardian or near relatives or social worker of the locality.

(2) In each of the cases mentioned in clauses (a) and (b) of the proviso to sub-section (1), the officer in charge of the police station shall state in his report his reasons for not fully complying with the requirements of that sub-section, and, in the case mentioned in clause (b) of the said proviso, the officer shall also forthwith notify to the informant, if any, in such manner as may be prescribed by the State Government, the fact that he will not investigate the case or cause it to be investigated."

32. Expression '**forthwith**' used in S. 157 . In the case of "**Alla China Apparao V. State of A.P.**" AIR 2002 S. C. 3648= 2002 AIR SCW 4290 the court said that The expression '**forthwith**' within the meaning of Section 157 (1) obviously cannot mean that the prosecution is required to explain every hour's delay in sending the first information report to the Magistrate, of course, the same has to be sent with reasonable dispatch, which would obviously mean within a reasonable time in the circumstances prevailing. If any delay is caused in sending the same to the Magistrate which the prosecution fails to explain by furnishing reasonable explanation, then ipso facto the same cannot be taken to be a ground for throwing out the prosecution case if the same is otherwise trustworthy upon appreciation of evidence which is found to be credible. However, if it is otherwise, an adverse inference may be drawn against the prosecution and the same may affect veracity of the prosecution case, more so when there are circumstances from which an inference can be drawn that there were chances of manipulation in the first information report by falsely roping in the accused persons after due deliberations."

33. In "**State of U.P. V. Gokaran**" AIR 1985 S. C. 131 full bench of three Judges of Supreme Court said that it is not that as if every delay in sending a delayed special report to the District Magistrate under S. 157, Cr. P. C., would necessarily lead to the inference that the F. I. R. has not been lodged at the time stated or has been ante-timed or antedated or that the investigation is not fair and forthright . Court again said that where the steps in investigation by way of drawing inquest report and other panchanamas started soon which could only follow the handing over of FIR, the delayed receipt of special report by District Magistrate would not enable the Court to dub the investigation as tainted one nor could FIR be regarded as ante-timed and antedated.

34. In the case of "**State of Karnataka V. Moin Patel**" AIR 1996 S.C. 3041= 1996 AIR SCW 1411 the Supreme court again said that Where the FIR was promptly lodged and the investigation started promptly on the basis of the FIR , the mere delay in dispatch of the F. I. R. and for that matter in receipt thereof by the Magistrate would not make the prosecution case suspect. The relevant provision contained in S. 157, Cr. P. C. regarding forthwith dispatch of the report (F. I. R.) is really designed to keep the Magistrate informed of the investigation of a cognizable offence so as to be able to control the investigation and if necessary to give proper direction under S. 159, Cr. P. C. and therefore if in a given case it is found that F. I. R. was recorded without delay and the investigation started on that F. I. R. then however improper or objection able the delayed receipt of the report by the Magistrate concerned, it cannot by itself justify the conclusion that the investigation was tainted and the prosecution unsupportable.

35. In **Harpal Singh v. Devinder Singh and another, with Harpal Singh v. State of Haryana and others with State of Haryana v. Satbir Singh and others**, AIR 1997 S.C. 2914 = [1997] 6 SCC 660 the court said that delay in lodging with Magistrate should not be viewed with unrealistic angle. Four hours time was elapsed in this case between making the FIR and

its reaching the hands of the magistrate. The court said that it could not be said that the FIR had been completely cooked up. Trial Court should not adopt a tenuous approach regarding the delay in lodging the FIR. Court again said that in the present set up no police station can be expected to have only one case to look into. A little delay in lodging the FIR with the magistrate should not be viewed from an unrealistic angle.

36. Again in "**Anil Rai V. State of Bihar**" **AIR 2001 S.C. 3173= 2001 AIR SCW 2833 (06.08.2001)** the Supreme Court said where the FIR is shown to have actually been recorded without delay and investigation started on the basis of the FIR, the delay in sending the copy of the report to the Magistrate cannot by itself justify the conclusion that the investigation was tainted and the prosecution insupportable. Extraordinary delay in sending the copy of the FIR to the Magistrate can be a circumstance to provide a legitimate basis for suspecting that the first information report was recorded at much later day than the stated day affording sufficient time to the prosecution to introduce improvements and embellishment by setting up a distorted version of the occurrence. The delay contemplated under S. 157 of the Code of Criminal Procedure for doubting the authenticity of the FIR is not every delay but only extraordinary and unexplained delay. However, in the absence of prejudice to the accused the omission by the police to submit the report does not vitiate the trial. Delay in dispatch of FIR by itself is not a circumstance which can throw out the prosecution's case in its entirety, particularly when it is found on facts that the prosecution had given a very cogent and reasonable explanation for the delay in despatch of the FIR.

37. In "**Bijoy Singh V. State of Bihar**" **AIR 2002 S. C. 1949= 2002 AIR SCW 1873 [16-04-2002]** Court again observed that sending the copy of the special report to the Magistrate as required under Section 157 of the Criminal Procedure Code is the only external check on the working of the police agency, imposed by law which is required to be strictly followed. The delay in sending the copy of the FIR may by itself not render the whole of the case of the prosecution as doubtful but shall put the Court on guard to

find out as to whether the version as stated in the Court was the same version as earlier reported in the FIR or was the result of deliberations involving some other persons who were actually not involved in the commission of the crime. Immediate sending of the report mentioned in Section 157, Cr. P. C. is the mandate of law. Delay wherever found is required to be explained by the prosecution. If the delay is reasonably explained, no adverse inference can be drawn but failure to explain the delay would require the Court to minutely examine the prosecution version for ensuring itself as to whether any innocent person has been implicated in the crime or not. Insisting upon the accused to seek an explanation of the delay is not the requirement of law. It is always for the prosecution to explain such a delay and if reasonable, plausible and sufficient explanation is tendered, no adverse inference can be drawn against it.

38. In "**Sunil Kumar and another v. State of Rajasthan**" 2005 CRI. L. J. 1402 [S.C.] [19 -01-2005] FIR was recorded on 29-10-1999 at about 11.00 A.M. and reached the Magistrate on 30-10-1999 at about 12 noon. Court said that It cannot be laid down as a rule of universal application that whenever there is some delay in sending the FIR to the concerned magistrate, the prosecution version becomes unreliable. It would depend upon the facts of each case. In the instant case as appears from the records the investigation was taken up immediately and certain steps in investigation were taken. Therefore, the plea that there was no FIR in existence at the relevant time has no substance. Court also observed that, no question was asked to the investigating officer as to the reason for the alleged delayed dispatch of the FIR. Court said had this been done, investigating officer could have explained the circumstances. That having not been done, no adverse inference can be drawn.

39. In the case of "**State of Jammu and Kashmir V. Mohan singh**" AIR 2006 S.C. 1410= 2006 AIR SCW 1302 F.I.R. was recorded in evening and Copy was not sent to Magistrate at his residence during night but sent at earliest on next day in Court. Court observed that it cannot be said that there

was delay much less inordinate delay , and prosecution case cannot be thrown out.

40. In "**Brahm Swaroop v. State of U. P.**" AIR 2011 S.C. 280 = 2011 CRI. L. J. 306 prompt lodging of FIR was proved from chick report and the statement of complainant u/S.161 Criminal P.C., which was recorded immediately after lodging FIR. FIR was also contained all essential features of prosecution's case including names of eye-witnesses, time and place of incident, names of victim, motive, names of accused persons, weapons in their hands and manner of assault. In the aforesaid situation the court said that chances of embellishments and concoctions stands ruled out therefore delay of 5 days not fatal to prosecution case.

41. Supreme Court in **Bhajan Singh @ Harbhajan Singh and Ors. v. State of Haryana, (2011) 7 SCC 421 : (AIR 2011 SC 2552)**, has elaborately dealt with the issue of sending the copy of the FIR to the Illaqa Magistrate with delay and after placing reliance upon a large number of judgments including **Shiv Ram v. State of U.P., AIR 1998 SC 49**; and **Arun Kumar Sharma v. State of Bihar, (2010) 1 SCC 108 : (AIR 2009 SC (Supp) 2882)** came to the conclusion that Cr.P.C. provides for internal and external checks: one of them being the receipt of a copy of the FIR by the Magistrate concerned. It serves the purpose that the FIR be not ante-timed or ante-dated. The Magistrate must be immediately informed of every serious offence so that he may be in a position to act under Section 159, Cr. P.C., if so required. The object of the statutory provision is to keep the Magistrate informed of the investigation so as to enable him to control investigation and, if necessary, to give appropriate direction. However, it is not that as if every delay in sending the report to the Magistrate would necessarily lead to the inference that the FIR has not been lodged at the time stated or has been ante-timed or ante-dated or investigation is not fair and forthright. In a given case, there may be an explanation for delay. An unexplained inordinate delay in sending the copy of the FIR to Illaqa Magistrate may affect the prosecution case adversely. However, such an

adverse inference may be drawn on the basis of attending circumstances involved in a case.

42. After placing reliance upon **Bhajan Singh @ Harbhajan Singh and Ors. v. State of Haryana, (2011) 7 SCC 421 : (AIR 2011 SC 2552)** in the case of "**Shivlal v. State of Chhattisgarh**" AIR 2012 S.C. 280 = 2012 CRI. L. J. 616 (19 -9 -2011) the court said if no explanation given by prosecution to that effect , it would definitely cast shadow on prosecution case. In the instant case, copy of the FIR was not sent to the Magistrate at all as required under Section 157 (1), Cr.P.C.

43. In **Narender Singh & Ors. Vs. State Of M.P., ILR 2016 M.P. 641 [Supreme court]** F.I.R. registered on 27/06/1997 at 10 p.m. and report was forwarded to Magistrate on 30/06/1997 at 1.20 p.m. Court held that though there was delay in forwarding the report to the Magistrate but such a delay has not caused any serious prejudice to the appellants and even otherwise there was over whelming and incriminating evidence, both oral as well as documentary to support the case of the prosecution.

44. In **Susanta Das & Ors. Vs. State of Orissa, AIR 2016 SC 589 [Three-Judges]** Court again observed :-

“27. In so far as the alleged delay in forwarding the F.I.R to the Magistrate, we find that the High Court was conscious of the said fact and has made a specific reference to the said fact in paragraph 24 of the impugned judgment wherein, it ultimately held that there was no material on record to show or suggest that the F.I.R was tampered or it was fabricated at a later date by antedating it or the delay in sending the F.I.R by P.W.3 or the delay in placing it before SDJM by the Sub Inspector of Police or the delay in signing the F.I.R by SDJM on 06.04.1996 was so very vital to doubt the case of the prosecution. We fully concur with the said view expressed by the Division Bench.”

45. Supreme Court in the case of **Anjan Dasgupta v. State of West Bengal and Ors. (2017) 11 SCC 222 : (AIR 2016 SC 5510)** had considered Section 157 CrPC. In the above case , the FIR was dispatched with delay.

Referring to an earlier judgment of Supreme Court , it was held that in every case from the mere delay in sending the FIR to the Magistrate, the Court would not conclude that the FIR has been registered much later in time than shown.

46. Recently in **Jafel Biswas and Ors. v. State of West Bengal, AIR 2019 S.C.519 = 2018 SCC Online SC 2011** The Supreme Court held that mere delay in sending report itself cannot lead to conclusion that trial is vitiated or accused entitled to be acquitted on that ground. The Court observed that on delayed dispatch of F.I.R., some prejudice have to be proved by accused. In cases where the date and time of the lodging of the F.I.R. is questioned, the report becomes more relevant. But mere delay in sending the report itself cannot lead to a conclusion that the trial is vitiated or the accused is entitled to be acquitted on this ground. Court placed the reliance upon **State of Rajasthan v. Daud Khan [(2016) 2 SCC 607] : (2015 AIR SCW 6129)** and said in para 19 and 20 :-

“19. The obligation is on the I.O. to communicate the report to the Magistrate. The obligation cast on the I.O. is an obligation of a public duty. But it has been held by this Court that in the event the report is submitted with delay or due to any lapse, the trial shall not be affected. The delay in submitting the report is always taken as a ground to challenge the veracity of the F.I.R and the day and time of the lodging of the F.I.R.

20. In cases where the date and time of the lodging of the F.I.R. is questioned, the report becomes more relevant. But mere delay in sending the report itself cannot lead to a conclusion that the trial is vitiated or the accused is entitled to be acquitted on this ground.”

47. **Therefore it is the position of law that :-**

(i). S. 157, Cr.P.C. is designed to keep the Magistrate informed of the investigation of a cognizable offence so as to be able to control the investigation and if necessary to give proper direction under S. 159, Cr. P. C. It is the only external check on the working of the police agency, imposed by law which is required to be strictly followed.

(ii). A little delay should not be viewed from an unrealistic angle. Delay in dispatch of FIR by itself is not a circumstance which can throw out the prosecution's case in its entirety, particularly when it is found on facts that the prosecution had given a very cogent and reasonable explanation for the delay in dispatch of the FIR.

(iii). Every delay in sending FIR to the Magistrate under S. 157, Cr. P. C., would not necessarily lead to the inference that the F. I. R. has not been lodged at the time stated or has been ante-timed or antedated or that the investigation is not fair and forthright. The delay in sending the copy of the report to the Magistrate cannot by itself justify the conclusion that the investigation was tainted and the prosecution insupportable.

(iv). Where the FIR was promptly lodged and the investigation started promptly on the basis of the FIR, the mere delay in dispatch of the F. I. R. to the Magistrate would not make the prosecution case suspect.

(v). If chances of embellishments and concoctions stands ruled out than only delay of few days will not fatal to prosecution case. An unexplained inordinate delay in sending the copy of the FIR to Magistrate may affect the prosecution case adversely and it would definitely cast shadow on prosecution case.

(vi). On delayed dispatch of F.I.R., some prejudice have to be proved by accused. Mere delay in sending the report itself cannot lead to a conclusion that the trial is vitiated or the accused is entitled to be acquitted on this ground.

48. The defence examined the PW-1 who is clerk posted in the Court of JMFC, Jabalpur Shri A.K. Dubey. But the evidence of this witness is not supported to the defence. The witness said that the copies of FIR kept in a bunch, but the bunch related to the year 1991 is not available in the Court and the witness is not in position to explain the existence of aforesaid bunch.

49. It is true that in this case no any witness has been examined to prove the fact whether the copy of FIR was sent to Magistrate or not ? The FIR was lodged by Mahendra at 10.25 a.m. on 21.08.1991, upon which the crime No.0/91 was registered at Police Station Gorabazar. Upon the basis of aforesaid "0" number crime, the original Crime No.297/1991 was registered at Police Station Cantt.

50. Information through telephone was sent to Police Station, Cantt. upon which the Marg No. 0/91 Ex. P-17 was also registered at 10:50 a.m. on the same day. Akhilesh Mishra(PW-9) said that he immediately proceeded to the place of incident. Therefore, it appears that the incident was happened on 11.08.91 on 10:15 a.m. and the prompt FIR was lodged by Mahendra at Police Station Gorabazar at 10:25 on the same day. As per para 35 of PW-4, Akhilesh Mishra also reached to the place of incident and before that he sent a constable with the complainant. It also appears that the spot map Ex. P-4 was prepared at 11:15 a.m. Notice for inquest Ex. P-2 issued at 10:55 a.m. and the inquest Panchanama Ex. P-3 prepared at 11:10 a.m. Spot map Ex.P-4 was also prepared at 11:15 a.m. Seizure Ex. P-5 was prepared at 11:25 am. Another seizure Ex. P-6 was prepared at 11:20 am. Memorandum of Ashok was prepared at 10:45 a.m. in Police Station Cantt. Both the accused were arrested about 11:00 am on the same day. Seizure of Farsa Ex. P-8 from Ashok was prepared at about 10:55 and seizure of sword Ex. P-9 from Mansingh was prepared at about 10:50. Seizure of clothes Ex.P-10 also prepared at 11:05 am.

51. Therefore, it appears that the police reached to the spot without any delay. Prompt FIR was lodged and the police started the investigation promptly. The FIR was also bearing the name of all three appellants. Trial court also observed in para-14 of the impugned judgment that accused Mansingh and Ashok were arrested on 21.08.1991 at 11:00 am. They were produced before the Magistrate for remand on 22.08.1991 at 10:45 am. The Magistrate granted remand till 30.08.91. As per remand order, the Magistrate granted the remand after perusal of the case diary in which the FIR and other documents were available and the Magistrate prima facie satisfied himself that the offence under Section 302 of IPC is committed, therefore, he granted the remand. In the aforesaid circumstances, it can be said that no prejudice has been caused to the accused by non-compliance of the Section 157 of Cr.P.C..

52. Therefore, it appears that evidence produced by prosecution was sufficient to convict the appellants. Hence, the trial court did not commit any mistake by convicting the appellants for the offence under Section 302/34 of IPC for committing the murder of deceased. The Life imprisonment is minimum punishment prescribed for the offence under Section 302 of IPC. Therefore, no any interference is required in the conviction or sentence. Hence, this appeal is having no force, therefore, dismissed.

53. The appellants were enlarged on bail on 22.03.1995, therefore, their bail bonds are cancelled. They are directed to surrender before the trial court within 15 days from the date of this judgment otherwise the trial court will issue the arrest warrant and send them to jail to serve the remaining part of the sentence awarded by the trial court.

(HULUVADI G. RAMESH)
JUDGE

(B.K.SHRIVASTAVA)
JUDGE

VD/-