
(2009) 11 GAU CK 0046
In the Gauhati High Court

Abdul Sufan and Others

APPELLANT

Vs

The State of Tripura

RESPONDENT

Date of Decision : 09-11-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156, 161
Penal Code, 1860 (IPC) — Section 148, 149, 302, 323

Citation : (2010) CriLJ 805 : (2010) 4 GLR 408 : (2009) 5 GLT 600

Hon'ble Judges : Tnk. Singh, J;T. Vaiphei, J

Bench : Division Bench

Judgement

T. Vaiphei, J.—In this criminal appeal, the nine convicted appellants are questioning the legality of the judgment and order dated 15-6-2005 passed by the learned Judge, Fast Track Court (Additional Sessions Judge), North Tripura, Kailashahar in Sessions Trial No. 125(NT/K) of 2002 convicting each of them under Sections 148/149/ 323/302, I. P. C. and sentencing them to life and other imprisonments.

2. The case of the prosecution is that on 15-1-2000 at about 0745 hours, one Md. Gouch Ali lodged a written ejahar with the Officer-in-Charge of Kailashahar Police Station alleging that on 14-1-2000 at about 7 p.m., his brother, Makkadas Ali (the deceased) and another person, namely Sunaf Ali, had gone to attend a dinner invitation at the house of one Abdul Rehman and that on returning home after the dinner at about 9.30 p.m., they were attacked by the appellants Nos. 1 to 8 (the appellant No. 9 was not named in the original ejahar) in the course of which the deceased died on the spot and Sunaf Ali sustained severe injuries. In the meantime, on hearing the cries of the deceased and Sunaf Ali, some people rushed to the spot and found the appellants killing his deceased brother. According to Md. Gouch Ali, the following persons, namely, (1) Akachhuch Ali, (2) Nur Islam, (3) Sabid Ali and (4) Sunaf Ali witnessed the incident. On the basis of that report, the police registered a regular case and conducted investigation of the case, which ultimately resulted in charge-sheeting the appellants including the appellant No. 9 under Sections 148/149/ 323/302, I. P. C. On commitment,

the learned Judge, Fast Track Court, North Tripura District, Kailashahar framed charges under the aforesaid sections against the appellants to which they pleaded not guilty and claimed to be tried. Thereupon, the trial Court proceeded with the trial in which the prosecution examined some eleven witnesses and exhibited a number of documents and material objects to bring home the charges against the appellants. At the conclusion of the trial, the trial Court found all the appellants guilty of the charges framed against them, convicted and sentenced them in the manner already indicated earlier.

3. At the outset, we may proceed to notice that the appellants do not dispute the death of the deceased on the night of 14-1-2000 or of the cause of his death or of the nature of injuries sustained by him as a result of the assaults on him which took place on the night of 14-1-2000 or of the sharp weapons used by the assailants in causing those injuries. Therefore, the only questions which falls for consideration in this appeal is as to whether the prosecution has proved beyond reasonable doubt that the appellants caused the death of the deceased on the night of 14-1-2000. In convicting the appellants, the trial Court has primarily relied on the evidence of P.Ws. 1, 2, 3, 4, 5 and 11. P. W. 1 is the brother of the deceased, and is the informant. It is his evidence that on 14-1-2000, his brother, the deceased, and Sunaf Ali (PW 3), with his permission, had gone to attend an invitation for dinner at the house of one Abdul Rahaman on the occasion of "Sangkranti", but when they were late in returning home, he went near BSF Camp to wait for their return. At that time, he was with Sabid Ali (PW 2), Jakir Hussai (PW 5), Nurul Islam and Akkudas Ali. Then, at about 9.30 p.m., all on a sudden, they heard commotion from the direction of the north of the BSF Camp and then rushed there to see what was happening. On the way, he met PW 3 in an injured condition and on being asked, PW 3 told him to proceed to the place of occurrence as his brother was being killed by some miscreants. At that time, PW 5, PW 2, Nurul Islam and Akkadas Ali were a few yards ahead of him. On hearing this information, he rushed to the scene of crime and found the dead body of his deceased brother lying on the paddy field. He found bleeding injuries on the body of his brother, which was lying between the houses of Basir Ali and Abdul Mannen. By the time he reached the scene of crime, PW 2 and PW 5 had already reached the place of occurrence (PO), and they told him that they saw the nine appellants assaulting the deceased by means of dao, kirich, etc. He further deposed that when he met PW 3 on his way to the PO, he (PW 3) had also informed him that the appellants assaulted the deceased. He then left the PO and proceeded to the house of Inush Ali Khadim (PW 11), the Pradhan of their village, apprised him of the incident and requested him to send the information to the Police Station. After this, he at about 01.00 hours proceeded to R. G. M. Hospital along with PW 3 for his treatment leaving behind the deceased under the care of PW 5 and others. It is also his say that on 15-1-2000, he met the darogababu of Kailashahar Police Station and submitted his complaint (Ext. 1) as written by one Majid Ali (PW 6).

4. Coming now to the evidence of the injured witness, who was examined as PW

3, he deposed that on the evening of 14-1-2000, he along with the deceased, with the permission of his elder brother, attended the invitation for dinner at the house of one Abdul Rahaman, and they proceeded to return home at about 9.30 p.m. via Rangauti-Debipur Road, but on reaching near the house of one Abdul Manna, Safique Ali (A-2), Anjab Ali (A-9), Ajmat Ali (A-5), Surnam Ali (A-4), Abdul Ali "(A-1), Ustar Ali (A-8), Hasmat Ali (A-7)," Assadur Rahaman (A-3) and Abdul Malik (A-6) armed with deadly weapons like dao, lathi, spear etc., blocked their way and gheraod them in the course of which A-2 dealt a spear blow on the leg of the deceased, who immediately started to run towards the western side of the road. On seeing this, PW 3 also started to run towards east and while running on the main road, he met PW 5, PW 2, the said Nurul Islam and Akkadas Ali and told them that the appellants attacked him and the deceased, but he managed to save his life. He also requested them to save the life of the deceased. At this, PW 5, PW 2, the said Nurul Islam and Akkadas, Ali rushed to the PO while he proceeded towards his house and on the way he met Gouch Ali (PW 1) to whom he narrated the incident whereafter PW 1 also rushed to the PO. He then went home and on reaching home, he also related (narrated) the incident to Surman Ali (PW 4). PW 4 is the brother of PW 3. The two of them thereafter went to fetch for an auto-rickshaw at Rangauti market for going to hospital for treatment. While they were searching for the auto-rickshaw, PW 1 also arrived at Rangauti market at about 11.45 p.m. They then found the auto-rickshaw and came to R. G. M. Hospital. PW 3 further deposed that he was under treatment in that hospital for 10/12 days. He came to know the next day at the hospital that the deceased was murdered. He claimed that he knew all the appellants as all of them were his neighbours and that he could identify them by the focus of the charger light carried by them. In his re-examination, he disclosed that on 13-1-2000, BSF checked the house of A-8 on the basis of their information and found two bullocks in his house and the same were kept for smuggling to Bangladesh and that A-8 and A-1 quarrelled with them and threatened them.

5. PW 2 in his evidence also deposed that he along with PW 5, the said Nurul Islam and Akkadas Ali met him on their way and saw bleeding injuries on his persons and were requested by him to save the life of the deceased. He also confirmed in his evidence that PW 3 told them that he and the deceased were assaulted by A-4, A-3, A-7, A-9, A-6, A-1 and A-9. PW 4 is the elder brother of PW 3 and deposed that at about 10 p.m. on the fateful night, PW 3 returned home with bleeding injuries on his head and told him that it was A-2, A-9, A-5, A-3, A-7, A-8, A-6 and A-4, who attacked him and the deceased by means of dao, spear, lathi, etc. He also seems to corroborate the statements of PW 1 and PW 3 that while he and PW 3 were searching for auto-rickshaw at Rangauti market, PW 1 also joined them and they took PW 3 to R. G. M. Hospital where he was admitted. PW 5, who is also the brother of the deceased, also seemingly supported the evidence of PW 1 and PW 3 with respect to (i) his company with PW 1, PW 2, the said Nurul Islam and Akkadas Ali in front of Rangauti BSF Camp

on the fateful night at about 9.30 p.m., (ii) the coming of PW 1 behind them when they rushed to the PO on hearing the commotion, (iii) their seeing bleeding injuries on the body of PW 3 and (iii) PW 3 telling them that he and the deceased were attacked by A-4, A-5, A-2, A-7, A-3, A-8, A-6 and A-1 by means of dao, spear, lathi, etc. (iv) PW 3 requesting them to save the life of the deceased, who was chased by the appellants. The evidence of PW 11, as already noticed, who came forward to corroborate the evidence of PW 1, is to the effect that PW 1 and his family members went to his house on the fateful night, told him that the deceased had been murdered and requested him to give information to the Police Station. This witness is the village Pradhan and it is him to whom such incident should normally be reported first by his villagers. The I. O., who was examined as P. W. 9, seems to confirm that it was PW 11 from whom he received telephonic information about the murder of the deceased. A cursory examination of these prosecution witnesses, on a first blush, provides fool-proof evidence to nail the appellants but deeper and closer scrutiny of those evidence leaves us with no alternative but to hold that the appellants are entitled to benefit of doubt. We decide to mistrust the obvious. First, we record the submissions of the learned Counsel appealing for the rival parties.

6. In assailing the findings of the trial Court, Mr. P. K. Biswas, the learned Counsel for the appellants, however, contends that the prosecution did not examine a single independent witness to substantiate the charges levelled against the appellants and that all the so-called eye-witnesses relied on by the trial Court to convict the appellants, namely, PWs. 1, 2, 3 and 5, are the close relatives of PW 1: the trial Court has committed serious error of law in placing reliance upon such evidence, which are, in any case, contradictory to each other. He further contends that there is no explanation by the prosecution for the inordinate delay of lodging the FIR which came to be lodged only on 15-1-2000 at 07.45 hours even though he knew about the occurrence on the night of the incident itself at about 9.30 p.m.; this made the entire prosecution story suspect. He maintains that the evidence of PWs 2 and 4 cannot be relied upon for conviction of the appellants inasmuch as they were not ready to make complaint before the IO of the case on the night of the incident itself at the place of occurrence regarding the incident though they claimed to have witnessed the occurrence. He also submits that the fact that PW 3 did not make any statement to the I. O. of the case when the latter visited him at the Hospital on the night of the occurrence implicating any of the appellants for the offences charged against them will go to show that this witness cannot be believed no conviction can be made on the basis of the testimony of PW 3. The learned Counsel submits that while PW 1 had stated that he met PW 3 at the PO on the night of the incident in an injured condition, PW 3, however, deposed that he met PW 1 at Rangaut market for the first time at about 11.45 p.m. when they went to search for an auto-rickshaw, such contradictory statements in material particulars ought to have been noticed by the trial Court and taken into consideration for acquitting the appellants. It is also the contention of the learned Counsel that though the

IO claimed to have recorded the statement of PW 2, the said Nurul Islam and PW 4 implicating the appellants for the murder of the deceased, no reason was given by him for not treating such information as FIR though such information happened to be the first in point of time; the trial Court should have thereby drawn adverse inference against the prosecution for not registering the FIR at the earliest. In support of this contention, he places strong reliance on Shankarlal Vs. State of Rajasthan, , Vijaybhai Bhanabhai Patel Vs. Navnitbhai Nathubhai Patel and Others, D.V. Shanmugham and another Vs. State of Andhra Pradesh, State of Karnataka Vs. Venkatesh and others, and The State of Tamil Nadu rep. by Secretary to Government Vs. Subair @ Mohamed Subair and Others, He also submits that though PW 11 had stated before the Court that PW 1 only informed him about the murder of the deceased, he did not disclose the name of the appellants nor did he disclose that he had witnessed the occurrence or identify any of the miscreants and that though the information so disclosed by PW 11 was entered in the G. D. Book vide Entry No. 514 dated 15-1-2000 maintained by the police station concerned marked as Ext. 5, the same was not treated as the first information report for disclosing the commission of cognizable offences and had this information not naming any culprits been treated as FIR, it would have established a case of false implication of the appellants by the relatives of the deceased or, at any rate, would have proved that the implication of the appellants was an after-thought. He relies on the decisions of the Apex Court in Lallan Chaudhary and Others Vs. State of Bihar and Another, Ganesh Bhavan Patel and Another Vs. State of Maharashtra, State of Haryana and others Vs. Ch. Bhajan Lal and others, The learned Counsel also places heavy reliance on the statement of PW 7 pointing out that there was heavy fog on the night of the occurrence and goes on to submit that the statements of prosecution witnesses identifying the assailants at the distance of more than half a kani by the focus of torch light in that foggy weather are not believable and in any case no torchlight was seized by the IO : under such circumstances, the trial Court ought to have drawn adverse inference against the prosecution. It is, therefore, contended by the learned Counsel that the trial Court has completely gone overboard and perversely recorded a finding of guilt against the appellants, and the conviction of the appellants on the basis of such findings is illegal and is liable to be set aside by this Court. He also relies on the following decisions :-(i) (1996) 2 GLR 79 : 1996 Cri LJ 4086 : (1996) 2 GLR 99 : L.L. Kale Vs. State of Maharashtra and Others, Tahsildar Singh and Another Vs. The State of Uttar Pradesh, and Harchand Singh and Another Vs. State of Haryana, , in support of his remaining contentions. Mr. A. Ghosh, the learned Additional Public Prosecutor, however, supports the impugned, judgment of conviction and sentences and submits that even if the evidence of PWs. 1, 2, 4, 5 and 11 are also discarded, the evidence of the injured witness i.e. PW 3, which is otherwise credible and trustworthy, are sufficient to prove beyond reasonable doubt the guilt of the appellants. He contends that the factors harped upon by the learned Counsel for the appellants" to cast doubt on the prosecution case are not sufficient to destroy the core of the prosecution case, which is otherwise based on solid and unimpeachable

evidence. He strenuously urges this Court to uphold the judgment of conviction and sentences and dismiss the appeal.

7. On the contention of the learned Counsel for the appellants that PWs. 1, 2, 3 and 5 are the close relative of the deceased, and the same cannot be relied upon to convict the appellants, it is true that there is no rule of presumption that the evidence of related witnesses will always be interested ones or that such witnesses will have only a hostile attitude towards the accused facing trial and that relationship is not a factor to affect the credibility of a witness. But then, it is also equally true that the evidence of such witnesses should be credible and trustworthy, and their evidence must have a ring of truth. It is against the backdrop of the aforesaid principles that we propose to re-appreciate the evidence on records. On the question of delay in lodging the FIR, it may be noted that the incident took place on 14-1-2000 at around 9.30 p.m., but the FIR was lodged with the police on 15-1-2000 at about 7.45 a.m. at RGM Hospital. Thus, there was a delay of about 10 hours in lodging the complaint by the informant. It is the evidence of PW 1 that he left behind the dead body of his deceased at the place of occurrence with PW 5 and went to the house of PW 11, reported the incident to him requesting him to send the information to the police station. PW 5, however, deposed that PW 1 left them to report the incident to the police. Anyway, PW 1 claimed that PW 3, the injured, had told him the names of all the assailants just after the incident when he rushed to the PO. In this evidence, he did not mention that while narrating the incident to PW 11, he had disclosed the names of the assailants. Nor did PW 11, in his evidence, disclose that PW 1 had mentioned the names of assailants. Nor did PW 11, in his evidence, disclose that PW 1 had mentioned the names of the assailants. This is absolutely strange and is inconsistent with ordinary human conduct or nature. It is also interesting to note that PW 1, on his own admission, had stated that to go to R. G. M. Hospital, they had to pass by the police station. If that is so, what prevented him from reporting the incident to the police station on their way to R. G. M. Hospital instead of reporting the matter to PW 11? It is to be noted that PW 11 was never examined by the police u/s 161, Cr. P. C., and the statements given by him in Court are first time statements. In any case, why should PW 1 come to R. G. M. Hospital and leave behind the dead body of his deceased brother? That apart, neither the evidence of PW 3 nor the evidence of PW 4 supported the evidence of PW 1 that after giving information to Pradhan (PW 11), he went to R. G. M. Hospital with PW 3 for his treatment at about 01.00 hours. P. W. 11, in his evidence, also did not say anything about the coming together of PW 1 and PW 3 at his house or of any injury sustained by PW 3 who was alleged by both PW 1 and PW 4 to have sustained bleeding injuries on his person. True, non-examination of PW 11 by the I. O. u/s 161, Cr. P. C. per se may not always be fatal to the prosecution, but in a case of this nature raising reasonable doubt on the version of PWs. 1, 3 and 4, such omission cannot lightly be brushed aside.

8. On the question of delay in lodging the F. I. R. the first point for consideration is whether the G. P. Entry recorded by the I. O. purportedly on the basis of the

telephonic message of P. W. 11, which is at Ext. 5, or the written complaint dated 15-1-2000, which is at Ext. 1, is to be treated as the first information report? Since there is a dispute as to which one is to be treated as the FIR, the contents of Ext. 5 are to the following effect:

[O]ne Md. Inuch Miah Khadim of Rangauti PS ILLS North Tripura TPA informed over Telephone that one dead body of Makaddas Ali (30) s/o. Lt. Inuch Miah of Rangauti PS-ILLIS lying at Debipur near Indo-Bangladesh Border under ILLS PS. The informant could not give any details further other information - entered into G. D. Self duty officer of this office informed the matter to the O/C PS and O/C PS directed to SI. K. Bhowmick to take informative action. Accordingly, SI. K. Bhowmick, SI B. Talukdar, C/No. 5395 Dilip Deb, C/No. 5757 Gogan D/Nath Chitta Paul left for Debipur to verifying information.

The G. D. Entry was apparently recorded at 01.00 hours of 15-1-2000. In our judgment, this particular entry can be termed as the first information report concerning the incident. It is a well-settled law that the first information report must disclose the commission of a cognizable offence and the information so lodged must provide a basis for the police officer to suspect the commission of a cognizable offence. At this stage it is enough if the police officer on the basis of the information given suspects the commission of a cognizable offence, and not that he must be convinced or satisfied that a cognizable offence has been committed. If he has reasons to believe, on the basis of information received, that a cognizable offence may have been committed, he is bound to record the information and conduct an investigation. At this stage it is also not necessary for him to satisfy himself about the truthfulness of the information . It is only after investigation has been completed that he may be able to report on the truthfulness or otherwise of the information. Similarly, even if the information does not furnish all those details he must find out those details in the course of investigation and collect all the necessary evidence. The information given disclosing the commission of a cognizable offence only sets in motion the investigative machinery, with a view to collect all necessary evidence, and thereafter to take action in accordance with law. The true test is whether the information furnished provides a reason to suspect the commission of an offence, which the police officer concerned, is empowered u/s 156 of the Code to investigate. If it does, he has no option but to record the information and proceed to investigate the case either himself or depute any other competent officer to conduct the investigation. The question as to whether the report is true, the accused is named, and whether there is sufficient evidence to support the allegations are all matters which are alien to the consideration of the question whether the report discloses the commission of a cognizable offence. Even if the information does not give full details regarding these matters, the investigating officer is not absolved of his duty to investigate the case and discover the true facts, if he can (See Superintendent of Police, C.B.I. and Others Vs. Tapan Kr. Singh, A perusal of the G. D. Entry extracted earlier does not say so in many words the commission of a cognizable offence; nevertheless, the I. O.

of the case (PW 9) was satisfied about a case of homicide in respect of deceased whereupon he proceeded to conduct the investigation. In our view, the trial Court is correct in holding that the contents of G. D. Entry dated 15-1-2000, and not the complaint lodged by PW 1 at Ext. 1, should be treated as the FIR. Consequently, Ext. 1 is hit by Section 161, Cr. P. C. and cannot be acted upon except for contradicting its author, namely, PW 1. However, the police did fail to register the FIR, which is a serious lapse on the part of the investigating agency. Nevertheless, it is thus clear that the FIR does not disclose the manner in which the murder was committed or of the names of the assailants.

9. From the evidence of P. W. 9 as well as P. Ws. 1, 2, 3, 4 and 5, it becomes absolutely evident that the names of appellants were not disclosed till the complaint at Ext. 1 was filed by PW 1 on 15-1-2000 at 7.45 a.m. though the murder took place at around 9.30 p.m. of the previous night. P. W. 1, the brother of the deceased, claimed in his evidence that just after the incident at around 9.30 p.m. of 14-1-2000, he along with PW 2, PW 5 and the said Nurul Islam and Akkadas Ali, rushed to the PO though he was way behind those witnesses and that he met PW 3 on the way and was told by PW 3 that the appellants had assaulted the deceased. He also deposed that he was also earlier informed by PW 2 and PW 5 that A-7, A-3, A-8, A-2, A-1, A-6, A-4, A-5 and A-9 had assaulted the deceased with dao, kirich, etc. Yet, he revealed the name of the appellants to the police only the next day at about 7.45 a.m. As noticed earlier, he then left behind the deceased with PW 5 at the place of occurrence, reported the incident to PW 11 along with PW 3 and proceeded to the RGM Hospital without bothering to report the incident to the police station, which was located on the way to that hospital. In our opinion, this conduct of PW 1 is incomprehensible. Similarly, PW 2 and PW 5, who were admittedly at the PO when the police came there, also did not appear to disclose the names of the assailants to the police. In fact, PW 2 in his cross-examination revealed that he was interrogated by the police and gave his statement only on the following day of occurrence. PW 4 deposed that he returned to the PO after admitting his brother to the hospital and witnessed the seizure of many articles by the IO, but did not say that he disclosed the names of the appellants to the IO though he claimed that PW 3 disclosed the names of the assailants. It was only in his cross-examination that he revealed the names of A-9 and A-4 to the I. O. The I.O. of the case, who was examined as PW 9, in his evidence stated that none of the persons assembled at the PO was ready to lodge any complaint on the ground that the relative had gone to give information and that only the relative of the deceased would lodge the complaint. But the statement of the IO that he recorded the statements of PW 2 and the said Nurul Islam and Akkadas Ali at the PO is contradicted by PW 2 who in his cross-examination has stated that the IO recorded his statement at the police station at about 8 a.m. the following morning of the occurrence. Of course, PW 2 in the same breath stated that while darogababu visited the PO on the night of occurrence, he had narrated the entire episode to him. In his evidence, he also claimed that PW 1 would himself lodge the complaint in the police station and

directed them not to file any case. To the same effect is the statement of PW 9. Yet, PW 1 did not lodge the complaint to the police on that night even though he claimed to pass by the police station on his way to RGM Hospital along with PW 3 and PW 4 and instead entrusted PW 11 to give the information to the police.

10. That apart, the testimony of the injured i.e. PW 3 is not inspiring at all. In the first place, he claimed that he received injuries on his head and back and was under treatment at RGM Hospital for 10/12 days. The medical report of his injuries is at Ext. 13. All the five injuries sustained by him are certified to be simple in nature. As per the evidence of the Medical Officer, who was examined as PW 10, PW 3 was discharged on 19-1-2000. It is also in his evidence that he was given a lathi blow by A-5, A-7 and A-3. He claimed to identify the appellants by the focus of charger light. Yet, no charger light was seized by the IO in the course of investigation. It must be noted that the incident occurred at around 9.30 p.m. in the month of January, 2000, and it must have been quite dark at that time. There is no evidence of the presence of light in that area. In fact, PW 7, in her cross-examination, revealed that there was heavy fog on the night of the occurrence. It is true that PW 3 claimed that he knew all the appellants since his childhood as they were his neighbours. It is, however, not the case of PW 3 that he identified the appellants by their voice or otherwise. It may also be noted that both PW 2 and PW 5 also deposed that they could identify the appellants by the focus of torchlight which they were carrying at that time. When the night of the incident was evidently heavily foggy, it would naturally be very difficult to identify each of the assailants even with the aid of torchlight. None of these PWs indicated that they heard the voice of any of the assailants. It is not stated by the IO of the case that any of the PWs identified the appellants by torchlight. How many torchlights or charger lights were carried by PWs. 2, 3 and 5 on that night to identify all the appellants in a riot-like atmosphere, is not indicated by any of the so-called eye witnesses. As already noticed, not a single torchlight or charger light was seized by the IO. Coupled with this, there is absolutely no evidence to show that the appellants were duly identified by any of the prosecution witnesses till the next morning. In fact, all the, appellants came to be identified by these witnesses for the first time only when they gave their evidence in the course of trial. In our judgment, the introduction of torchlight for identifying the appellants by PWs. 2, 3 and 5 appears to be an afterthought and an embellishment subsequently developed with the idea of implicating all of them as the accused. On the one hand, there is a case of the prosecution supported by six prosecution witnesses determined to implicate all the appellants for the murder of the deceased and on the other hand, the evidence adduced by those witnesses are found to be tainted by serious embellishments, exaggerations, inconsistencies and missing links. What emerges from the foregoing discussion is that the assailants of the deceased were not known to any of the prosecution witnesses at the time of the incident or thereafter, that the G. D. Entry was designedly left vague to enable the investigating agency to fill in the blank and that the entire case was built up the next day i.e. 15-1-2000 at about 7.45 a.m.

at R. G. M. Hospital when P. W. 1 purportedly submitted a false and fabricated first information report (Ext. 1) to PW 9 implicating all the appellants. In our opinion, the prosecution at the most is able to make out a case of strong suspicion against the appellants about their involvement in the homicide but a strong suspicion cannot take the place of proof.

11. In a criminal jurisprudence, the case of the prosecution should rest on its own strength and not in the absence of explanation plausible defense by the accused. While dealing with serious question Of guilt or innocence of persons charged with crime, the following general rules have been laid down for the guidance of courts:- (i) The onus of proving everything essential to the establishment of the charge against the accused, lies on the prosecution; (2) The evidence must be such as to exclude to moral certainty every reasonable doubt of the guilt of the accused; (iii) In matters of doubt it is safer to acquit than to condemn; for it is better that several guilty persons should escape than that one innocent person suffer; (iv) There must be a clear and unequivocal proof of the corpus delicti; (v) The hypothesis of guilt should be consistent with all the facts proved. With due respect, we may add that it is not the duty of courts to make up the loopholes of the prosecution howsoever suspicious the involvement of the accused in the crime. In other words, this Court cannot take over the duty of the prosecution. We understand that a reasonable doubt is not an imaginary, trivial or merely possible doubt, but a fair doubt based on reason and common sense. In the case at hand, a fair doubt is created in the case of the prosecution; the appellants are entitled to the benefit of doubt. In our anxiety to punish persons accused of murder, we must not overlook the cardinal principles of criminal law that the accused is presumed to be innocent until his guilt is established by the prosecution. Until and unless Parliament amends the Evidence Act, 1872 changing the law of burden of proof, it is not expected to criminal courts, in our anxiety to increase the number of convictions, to dilute the standard of proof required in a criminal trial or give different complexion, covertly, or otherwise, to the concept of fair trial according to law. In the instant case, even if it can be said in favour of the prosecution that the evidence is equally balanced, which appears to be a correct view, conviction of the appellants cannot be upheld. In a criminal case., if there can be two possible views on the evidence adduced by the prosecution, the accused is entitled to acquittal on the benefit of doubt. In the instant case, a fair or reasonable, not imaginary, possible or trivial, doubt looms large in the case of the prosecution to bring home the charges against the appellants, and they are, therefore, entitled to the benefit of doubt. In the, view that we have taken, it is difficult to uphold the impugned judgment of conviction and sentences.

12. For what has been stated in the foregoing, we hold that there is no sufficient evidence to find the appellants guilty of the offences charged against them. They are, therefore, given the benefit of doubt and are accordingly acquitted. The impugned judgment of conviction and sentences dated 15-6-2005 cannot be sustained in law, and is hereby set aside. The appellants shall be Set at liberty

forthwith unless they are required in connection with sortie other case or cases.
Transmit the L. C. Record without delay.