
(2010) 03 CHH CK 0030

In the Chhattisgarh High Court

Case No : Criminal Appeal No. 96 of 1991

Bhagirathi, Jagdish, Sonuram and Tuka

APPELLANT

Vs

State of M.P. (C.G.)

RESPONDENT

Date of Decision : 29-03-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 154(1), 157(1), 157(2), 157(3)
Penal Code, 1860 (IPC) — Section 302, 307, 323, 326, 34

Citation : (2010) 03 CHH CK 0030

Hon'ble Judges : T.P. Sharma, J;R.L. Jhanwar, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

T.P. Sharma, J.—Challenge in this appeal is to the judgment of conviction & order of sentence dated 4-12-1990 passed by the 5th Additional Sessions Judge, Raipur in Sessions Trial No. 271/88, whereby & whereunder learned Additional Sessions Judge after holding the appellants guilty for commission of homicidal death amounting to murder of Rekhram & Paltan in sharing common intention and causing simply injury to Paltan, convicted the appellants under Sections 302 read with Section 34 & 323 read with Section 34 of the I.P.C. and sentenced each of them to undergo imprisonment for life & to undergo R.I. for six months, respectively.

2. Conviction is impugned on the ground that without any iota of evidence especially the fact that the prosecution has deliberately suppressed the first F.I.R. recorded by it in which the names of the appellants herein were not mentioned, the trial Court has convicted & sentenced the appellants as aforementioned and thereby committed illegality.

3. As per the information given by the State, appellant No. 3 Sonuram has been released on probation granted by the State Government after serving the sentence and he died during the pendency of appeal. Therefore, this criminal appeal as it relates to appellant No. 3 Sonuram abates.

4. Case of the prosecution, in brief, is that on the fateful day of 23-5-88 at about 4-4.30 p.m. Rekhrum (since deceased) along with Jagdish, Jaggu & Ashok were repairing their tiled roof, Paltan (since deceased) was standing there, at that time appellants Bhagi & Jagdish came from Dhamtari and threatened them. After some time, the appellants herein came to the spot. Appellants Bhagi & Jagdish were holding iron kalari (instrument with handle used in agricultural operations), accused Sonu (since deceased) was holding axe and Tuka was holding stick, they threatened Rekhrum & other persons to come down from the roof, Bhagirathi thrown kalari towards Rekhrum who is repairing tiled roof, Rekhrum, Ashok & Jaggu came down from the roof and all the four accused persons assaulted Rekhrum & Paltan and caused fatal injuries, they were stained with blood. Ashok Kumar was also badly injured and he was examined by the doctor. Sukli Bai (PW-1) - wife of Paltan (since deceased) tried to intervene and then Sonu chased her on which she went to the house of Veer Singh and hide herself. Jagdish, Veer Singh & Phool Singh were sitting in the shop of blacksmith Veer Singh. Again she went to the spot. Her husband Paltan & son Rekhrum died. At that time police came then she lodged report vide dehati nalsi Ex.P-26. Dehati merg was also recorded vide Exs.P-27 & P-28. On the basis of dehati nalsi Ex.P-26, registered F.I.R. was recorded vide Ex.P-29 and registered merg was recorded vide Exs.P-30 & P-31. After summoning the witnesses, inquest over the dead bodies of Paltan & Rekhrum were prepared vide Exs.P- 19 & P-20. Dead bodies were sent for autopsy vide Exs.P-32 & P-33. Dr. C.K. Singhal (PW-19) conducted autopsy on the dead body of deceased Paltan vide Ex.P-42 and found following injuries:

- (1) Distortion of right hand as a result of fracture at three places.
- (2) Haematoma over left temporal region.
- (3) Incised wound of 4" ? 2" ? 1" over parietal region.
- (4) Incised wound of 3" ? 2" ? 1" over left temporal region, bone beneath the injury was found fractured.
- (5) Contusion over left scapula region of 4" ? 2".
- (6) Contusion of 3" ? 2" over left wrist.
- (7) Fracture of left wrist.
- (8) Fracture of bone of right hand at three places.
- (9) Fracture of left parietal region.
- (10) Rupture of left temporal region of brain.
- (11) Fracture of right lungs.

Mode of death of Paltan was shock. Dr. C.K. Singhal (PW- 19) also conducted autopsy on the dead body of deceased Rekhrum vide Ex.P-43 and found following injuries:

- (1) Crushed fracture over right hand.
- (2) Contusion of 2" ? 1" over right wrist with crepitus sound.
- (3) Abrasion over right leg of 2" ? 1".
- (4) Abrasion over right thigh of 2" ? 2".
- (5) Incised wound of 3" ? 2" ? 1" over occipital region.
- (6) Incised wound of 3" ? 2" ? 1" over left frontal region.
- (7) Contusion of 4" ? 3" over left side of neck.
- (8) Fracture of occipital & frontal bones.
- (9) Multiple fracture of right wrist.

Mode of death of Rekham was also shock.

5. During the course of investigation, one blood stained towel was seized from the spot vide Ex.P-1. One blood stained cloth just below the head of deceased Paltan was seized from the spot vide Ex.P-2. Blood stained & plain soil were seized from the spot vide Exs.P-3 & P-4. One iron kalari with wooden handle was seized near the spot vide Ex.P-5. One broken piece of handle was also seized from the spot vide Ex.P-6. Blood stained chappal of deceased Rekham was seized vide Ex.P-7. Blood stained & plain soil were also seized from the spot vide Ex.P-8. During the course of investigation, accused Tukram was taken into custody, he made discloser statement of stick vide Ex.P-9 and the same was seized at the instance of Tuka vide Ex.P-10. Appellant Bhagirathi made discloser statement of kalari wooden stick vide Ex.P-11 and the same was seized at the instance of Bhagirathi vide Ex.P-12. Accused Sonuram (since deceased) made discloser statement of axe vide Ex.P-13 and the same was recovered from Sonuram vide Ex.P-14. Blood stained underwear was seized from appellant Bhagirathi vide Ex.P-15. Blood stained clothes were also seized from accused Sonuram, Jagdish & Tuka vide Exs.P-16, P-17 & P-18, respectively. Patwari prepared spot map vide Ex.P-21. Blood stained clothes were also seized from Ashok Kumar son of Paltan vide Ex.P-23. During the course of investigation, statement of injured Ashok Kumar was recorded vide Ex.P-22. Seized articles were sent for chemical examination vide Ex.P-39 and presence of blood was confirmed over stick, axe, kalari, underwear of appellant Bhagirathi and clothes of appellant Jagdish vide Exs.P-40 & P-41.

6. Statements of the witnesses were recorded u/s 161 of the Cr.P.C. and after completion of investigation, charge sheet was filed before Judicial Magistrate First Class, Dhamtari who in turn, committed the case to the Court of Sessions, Raipur from where 5th Additional Sessions Judge, Raipur received the case on transfer for trial.

7. In order to prove the guilt of the appellants the prosecution has examined as many as twenty witnesses. The accused were examined u/s 313 of the Cr.P.C. in

which they denied the circumstances appearing against them, pleaded innocence and false implication.

8. After affording opportunity of hearing to the parties, learned Additional Sessions Judge convicted & sentenced the accused in the aforesaid manner.

9. We have heard learned counsel for the parties, perused the judgment and record of the trial Court.

10. Mrs. Fouzia Mirza, learned counsel for the appellants, vehemently argued that in the present case according to the case of the prosecution, appellants Bhagirathi & Jagdish were having wooden kalari - a sickle like pointed object having no sharp edge, but according to the evidence, firstly the sickle like shape of kalari was made straight and injuries were caused with kalari by both the appellants, however, no punctured injury or stab injury was found on the dead bodies of both the deceased or even on the body of injured Ashok Kumar. Most of the injuries found on the bodies of the deceased were incised wounds which reveal that sharp edged weapon has been used by the assailants at the time of causing injuries. According to the case of the prosecution, accused Sonuram was having axe and has caused injury with the said axe. There is complete conflict between medical & ocular evidence and no injury was possible to be caused by the kalari. The prosecution has suppressed the first F.I.R. recorded in the Police Station in which names of only two accused persons viz., Tuka & Sonuram were mentioned. After recording of first F.I.R. and suppression of first F.I.R. entire evidence of the prosecution is full of suspicion and is not sufficient for drawing inference against any of the accused/appellants. Learned counsel placed reliance in the matter of T.T. Antony v. State of Kerala and Ors. in which the Apex Court has held that there can be no second F.I.R. and no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or same occurrence giving rise to one or more cognizable offences. Learned counsel further placed reliance in the matter of State of U.P. v. Raja Ram and Ors. in which the Apex Court has held that in case of no injury found over the body of the deceased alleged to have been caused by the accused persons, only one blunt injury caused by the alleged accused person, then the accused persons are entitled for acquittal. Learned counsel also placed reliance in the matter of State of Uttar Pradesh v. Abdul Karim and Ors. in which the Apex Court has held that in case of total discrepancy in injury and weapons used, the appellants are entitled for acquittal. Learned counsel relied upon the matter of Ramanand Yadav v. Prabhu Nath Jha and Ors. in which the Apex Court has held that in case of variance between ocular and medical evidence, normally preference shall be given to ocular evidence, but in case if the evidence specifically rules out the injury as claimed to have been inflicted as per oral testimony, medical evidence shall be given weightage. Learned counsel further relied upon the matter of State of Punjab v. Harbans Singh and Anr. in which the Apex Court has held that in absence of independent witnesses; evidence of stock witnesses, evidence of single witness and cause of fight are not safe to rely. Learned counsel also relied

upon the matter of Hem Raj and Ors. v. State of Haryana in which the Apex Court has held that in case of related witnesses not found reliable, conviction is not safe. Learned counsel placed reliance in the matter of Bimla Devi (Smt) v. State of Haryana in which the Apex Court has held that on the basis of material contradiction between ocular & medical evidence, use of weapon and part of weapon used, conviction would not be possible. Learned counsel further placed reliance in the matter of Pichai alias Pichandi and Ors. v. State of T.N. in which the Apex Court has held that conflict between medical & ocular evidence, in case of any absence of corresponding injury, the accused are entitled for benefit of doubt.

11. On the other hand, Mr. Sandeep Yadav, learned Deputy Govt. Advocate appearing on behalf of the State/respondent, opposed the appeal and submitted that in the present case, the prosecution has not suppressed any first F.I.R. lodged. Defence was having ample opportunity to call the alleged first F.I.R. It is clear from the evidence of Head Constable Subhash Chandra Shukla (PW-14) & Assistant Sub Inspector Biharilal Soni (PW-15) that Head Constable Subhash Chandra Shukla (PW-14), who has recorded dehati nalsi vide Ex.P-26, was on patrolling duty, when he came to the Police Station, Kotwar Gendram orally informed the police about some incident on which he immediately proceeded for the spot where he recorded dehati nalsi. Even otherwise, if the evidence of Assistant Sub Inspector Biharilal Soni (PW-15) that Kotwar Gendram & Gopiram have lodged report, is admitted as gospel truth, second part of evidence would also be required to be believed which reveal that Kotwar Gendram & Gopiram have lodged report relating to four accused and not relating to two accused and, therefore, in any case, even in a stretch of imagination if it is believed or suspected that the police has registered first F.I.R., same would not be fatal to the prosecution. According to the case of the prosecution, after making the kalari straight from sickle shape, both the accused persons viz., Bhagirathi & Jagdish have assaulted Paltan & Rekhram and caused injuries. Medical and ocular evidence are not in conflict in the present case. Only two incised wounds were found on parietal & mastoid regions of Paltan and remaining injuries were not incised wounds. Likewise, only two injuries found over the head of Rekhram were incised wounds and remaining eight injuries were not incised wounds. The accused persons have used kalari like stick with iron straight part and injuries found over the bodies of Paltan & Rekhram were caused by the kalari used by the appellants. In the present case, evidence of Sukli Bai (PW-1) & injured witness Ashok (PW-8) inspire confidence and safe to rely. Learned Additional Sessions Judge after appreciating the evidence available on record has rightly convicted & sentenced the appellants in the aforesaid manner.

12. In order to appreciate the arguments advanced on behalf of the parties, we have examined the evidence adduced on behalf of the prosecution.

13. In the present case, homicidal deaths of Paltan & Rekhram as a result of fatal injuries have not been substantially disputed on behalf of the appellants,

otherwise also established by the evidence of Dr. C.K. Singhal (PW-19) and autopsy reports Exs.P-42 & P-43 which reveal multiple fractures of hands & head of the deceased and that the deaths were homicidal in nature.

14. As regards the injuries of injured Ashok, the prosecution has examined Dr. R.K. Baxi (PW-13) who has deposed in his evidence that on 23-5-88 at about 11.15 p.m. he has examined injured Ashok and found following injuries vide Ex.P-25:

- (1) Lacerated wound of 6 c.m. ? 1 c.m. bone deep on parietal region.
- (2) Lacerated wound of 3 c.m. ? 3 c.m. skin deep on left index finger.
- (3) Lacerated wound of 1 c.m. ? 0.5 c.m. skin deep on right ring finger.
- (4) Contusion of 10 c.m. ? 2 c.m. on chest.
- (5) Swelling over left leg.

Defence has not cross-examined Dr. R.K. Baxi (PW-13) to discredit his testimony. Evidence of this witness is sufficient to establish the fact that at the time of incident injured Ashok also became injured, and aforesaid injuries were found on his body.

15. As regards complicity of the appellants in the crime in question, conviction is substantially based on the evidence of Sukli Bai (PW-1) - the alleged eyewitness and Ashok (PW-8) - the injured witness.

16. Ashok (PW-8) has deposed in his evidence that at the time of incident on 23rd May, 1988 at about 4-5 p.m. he along with Rekhram, Jaggu & Jagdish were repairing the tiled roof, his father Paltan & mother Sukli Bai were standing near the house, at that time, appellants Bhagi & Jagdish came, they abused and told that call the entire family they will see and also told that they will be coming with their other members, thereafter, they went away. After 10-15 minutes, appellants Jagdish, Bhagi, Tuka & Sonu (since deceased) came to the spot, they abused Rekhram and directed him to come down from the roof and while Rekhram was coming down, all the accused persons started assaulting him with stick, kalari & axe. Appellants Jagdish & Bhagi were having kalari, accused Sonu (since deceased) was having axe and appellant Tuka was having stick. Immediately his father Paltan came near Rekhram, then all the appellants assaulted Paltan also. He (this witness) also went near Rekhram, then Jagdish assaulted him with kalari, he fell down on which other accused persons assaulted him and he became unconscious. After some time, when he regained consciousness, his father Paltan & brother Rekhram died. He was taken to Dhamtari Hospital for treatment where he was admitted for 9-10 days. Defence has cross-examined this witness at length. In para 8 of his cross-examination he has admitted that prior to incident, all the appellants had gone to Jabalpur for their livelihood, but on the date of incident all the appellants were present in the village. In para 9 of his cross-examination, he has further admitted that

appellants Bhagi & Jagdish have firstly asked them as to why they are constructing house upon their land. He has also admitted that cause of quarrel was construction of house over the land. In para 10 of his cross-examination he has deposed that he has stated to the police that appellants Bhagi & Jagdish have assaulted his brother Rekhrum & father Paltan, but the aforesaid fact does not find place in Ex.P-22, his previous statement. In his detailed evidence, he has substantially deposed that all the appellants assaulted his father, brother and him. He has specifically deposed in para 3 of his evidence that he is not in a position to say that as to who has assaulted them upon which part of the body, but all the four accused persons have assaulted them.

17. Sukli Bai (PW-1) - mother of deceased Rekhrum & wife of deceased Paltan, has substantially corroborated the evidence of Ashok (PW-8). She has specifically deposed in para 9 of her evidence that appellants Bhagi & Jagdish were having kalari. She has further deposed that these two appellants have pushed her husband & two sons with the point of kalari and even they have pierced by the pointed kalari to her husband & two sons. She has denied the suggestion that at the time of incident Tukaram & Sonu were not present.

18. Ishwar (PW-2) has corroborated the evidence of Ashok (PW-8) and has deposed that all the accused persons were assaulting Paltan, Rekhrum & Ashok, but in his cross- examination, he has stated that police has not recorded his statement.

19. Premu (PW-3) has also substantially corroborated the evidence of Ashok (PW-8). Jagdish (PW-6) who is also working with Rekhrum on the tiled roof has corroborated the evidence of Ashok (PW-8). He has stated in his evidence that when appellants Bhagi & Jagdish came and threatened them, he came down from the roof and went away from the spot, he has not seen the incident, but after some time he came back to the spot, at that time, Rekhrum & Paltan were found dead and Ashok was injured & unconscious.

20. As per the evidence of Sukli Bai (PW-1), accused Sonu (since deceased) chased her on which she went to the shop/house of Veer Singh and narrated the incident to them. Veer Singh (PW-7) has supported the evidence of Sukli Bai (PW- 1) up to that extent.

21. Substantially, conviction is based on the evidence of Sukli Bai (PW-1) & Ashok (PW-8). Ashok (PW-8) is injured & relative witness and Sukli Bai (PW-1) is also relative witness. They are close relatives of the deceased, but their evidence cannot be discarded on the ground that they are relative witnesses.

22. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. While dealing with the question of evidentiary value of the relative witnesses, the Apex Court in the matter of Dalip Singh and Ors. v. The State of Punjab has held that a witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted. Para 26 of the said judgment reads as under:

26. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relation would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalization. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts.

23. While dealing with the same question, the Apex Court in the matter of Ashok Kumar Chaudhary and Ors. v. State of Bihar has held thus,

...it will be erroneous to lay down as a rule of universal application that non-examination of a public witness by itself gives rise to an adverse inference against the prosecution or that the testimony of a relative of the victim, which is otherwise credit-worthy, cannot be relied upon unless corroborated by public witnesses. Insofar as the question of credit-worthiness of the evidence of relatives of the victim is concerned, it is well settled though the Court has to scrutinize such evidence with greater care and caution but such evidence cannot be discarded on the sole ground of their interest in the prosecution. The relationship per se does not affect the credibility of a witness. Merely because a witness happens to be a relative of the victim of the crime, he/she cannot be characterized as an "interested" witness. It is trite that the term "interested" postulates that the person concerned has some direct or indirect interest in seeing that the accused is somehow or the other convicted either because he had some animus with the accused or for some other oblique motive.

24. Statements of relative witnesses cannot be discarded only on the ground of their relationship. The Courts are required to scrutinize their evidence with great care and caution.

25. However, in the present case, evidence of both the relative witnesses viz., Sukli Bai (PW-1) & Ashok (PW-8) reveal that both the parties were in inimical terms on account of dispute relating to land. Therefore, these witnesses are interested witnesses. As held by the Apex Court in the matters of Dalip Singh and Ashok Kumar (supra), relative witnesses are the persons reluctant to spare the real culprit and falsely implicate an innocent person, but in case of enmity close relatives have a tendency to exaggerate or add facts which may not have been stated to them at all to implicate and to ensure conviction of the accused persons. While dealing with the aforesaid question, the Apex Court in the matter of Sharad Birdhichand Sarda v. State of Maharashtra has held that close relatives of the victim have tendency to exaggerate or add facts, Court should examine

their evidence with great care and caution. Para 48 of the judgment of the Apex Court in the above cited case reads thus,

48. Before discussing the evidence of the witnesses we might mention a few preliminary remarks against the background of which the oral statements are to be considered. All persons to whom the oral statements are said to have been made by Manju when she visited Beed for the last time, are close relatives and friends of the deceased. In view of the close relationship and affection any person in the position of the witness would naturally have a tendency to exaggerate or add facts which may not have been stated to them at all. Not that this is done consciously but even unconsciously the love and affection for the deceased would create a psychological hatred against the supposed murderer and, therefore, the Court has to examine such evidence with very great care and caution. Even if the witnesses were speaking a part of the truth or perhaps the whole of it, they would be guided by a spirit of revenge or nemesis against the accused person and in this process certain facts which may not or could not have been stated may be imagined to have been stated unconsciously by the witnesses in order to see that the offender is punished. This is human psychology and no one can help it.

26. As per the law propounded by the Apex Court in the aforesaid matters, the Court is required to analyze the evidence of relative witness, injured witness and interested witness with great care and caution. Admittedly, in the present case, there are material contradictions & omissions in the evidence of Ashok (PW-8), but only on the ground of omission, contradiction and exaggeration, his evidence cannot be brushed away. The maxim "*falsus in uno, falsus in omnibus*" is not applicable in India. The Court is required to separate grain from the chaff, truth from falsehood i.e. exaggeration, contradiction & omission. Statement of any witness cannot be discarded and rejected out rightly on the ground that the witnesses patently falsely implicated to one or more accused or his statement is not reliable for some accused. Statement of a witness may be relied upon for some accused and may be rejected or discarded relating to some accused.

27. In the present case, the appellants have substantially disputed the truthfulness of F.I.R. and have vehemently argued that first F.I.R. has been deliberately and intentionally suppressed by the prosecution and, therefore, second F.I.R. is not legally permissible under the law. In the matter of T.T. Antony (supra), the Apex Court has held that there can be no second F.I.R. and consequently there can be no fresh investigation in respect of the same cognizable offence or same occurrence giving rise to one or more cognizable offences. Paras 17 & 18 of the said judgment read thus,

17. Sub-section (1) of Section 154 Cr.P.C. contains four mandates to an officer in- charge of a police station. The first enjoins that every information relating to commission of a cognizable offence if given orally shall be reduced to writing and the second directs that it be read over to the informant; the third requires that every such information whether given in writing or reduced to writing shall be

signed by the informant and the fourth is that the substance of such information shall be entered in the station house diary. It will be apt to note here a further directive contained in Sub-section (1) of Section 157 Cr.P.C. which provides that immediately on receipt of the information the officer in charge of the police station shall send a report of every cognizable offence to a Magistrate empowered to take cognizance of the offence and then proceed to investigate or depute his subordinate officer to investigate the facts and circumstances of the case. Sub-section (2) entitles the informant to receive a copy of the information, as recorded under Sub-section (1), free of cost. Sub-section (3) says that in the event of an officer in charge of a police station refusing to record the information as postulated under Sub-section (1), a person aggrieved thereby may send the substance of such information in writing and by post to the Superintendent of Police concerned who is given an option either to investigate the case himself or direct the investigation to be made by a police officer subordinate to him, in the manner provided by Cr.P.C., if he is satisfied that the information discloses the commission of a cognizable offence. The police officer to whom investigation is entrusted by the Superintendent of Police has all the powers of an officer in charge of the police station in relation to that offence.

18. An information given under Sub-section (1) of Section 154 Cr.P.C. is commonly known as First Information Report (FIR) though this term is not used in the Code. It is a very important document. And as its nick name suggests it is the earliest and the first information of a cognizable offence recorded by an officer in charge of a police station. It sets the criminal law in motion and marks the commencement of the investigation which ends up with the formation of opinion u/s 169 or 170 Cr.P.C. as the case may be, and forwarding of a police report u/s 173 Cr.P.C. It is quite possible and it happens not infrequently that more informations than one are given to a police officer in charge of a police station in respect of the same incident involving one or more than one cognizable offences. In such a case he need not enter every one of them in the station house diary and this is implied in Section 154 Cr.P.C. Apart from a vague information by a phone call or a cryptic telegram, the information first entered in the station house diary, kept for this purpose, by a police officer in charge of a police station is the First Information Report - FIR postulated by Section 154 Cr.P.C. All other informations made orally or in writing after the commencement of the investigation into the cognizable offence disclosed from the facts mentioned in the first information report and entered in the station house diary by the police officer or such other cognizable offences as may come to his notice during the investigation, will be statements falling u/s 162 Cr.P.C. No such information/ statement can properly be treated as an FIR and entered in the station house diary again, as it would in effect be a second FIR and the same cannot be in conformity with the scheme of Cr.P.C. Take a case where an FIR mentions cognizable offence u/s 307 or 326 IPC and the investigating agency learns during the investigation or receives fresh information that the victim died, no fresh FIR u/s 302 IPC need be registered which will be irregular; in such a

case alteration of the provision of law in the first FIR is the proper course to adopt. Let us consider a different situation in which H having killed W, his wife, informs the police that she is killed by an unknown person or knowing that W is killed by his mother or sister, H owns up the responsibility and during investigation the truth is detected; it does not require filing of fresh FIR against H - the real offender - who can be arraigned in the report u/s 173(2) or 173(8) Cr.P.C. as the case may be. It is of course permissible for the investigating officer to send up a report to the Magistrate concerned even earlier that investigation is being directed against the person suspected to be the accused.

28. While dealing with same question, the Apex Court in the matter of Kari Choudhary v. Most. Sita Devi and Ors. has held that there cannot be two FIRs against the same accused in respect of the same case. But when there are rival versions in respect of the same episode, they would normally take the shape of two different FIRs and investigation can be carried on under both of them by the same investigating agency. Para 11 of the said judgment reads thus,

11. Learned counsel adopted an alternative contention that once the proceeding initiated under FIR No. 135 ended in a final report the police had no authority to register a second FIR and number it as FIR 208. Of course the legal position is that there cannot be two FIRs against the same accused in respect of the same case. But when there are rival versions in respect of the same episode, they would normally take the shape of two different FIRs and investigation can be carried on under both of them by the same investigating agency. Even that apart, the report submitted by the Court styling it is as FIR No. 208 of 1998 need be considered as an information submitted to the Court regarding the new discovery made by the police during investigation that persons not named in FIR No. 135 are the real culprits. To quash the said proceeding merely on the ground that final report had been laid in FIR No. 135 is, to say the least, too technical. The ultimate object of every investigation is to find out whether the offences alleged have been committed and, if so who have committed it.

29. While dealing with same question, the Apex Court in the matter of Ramesh Baburao Devaskar and Ors. v. State of Maharashtra has held that in case of cryptic message not disclosing the identity and other requirements to satisfy the requirement of Section 154 of the Cr.P.C., the information regarding commission of offence may be recorded. When, however, the First Information Report is lodged by a person who claims himself to be aware of not only the commission of the offence, the name of the deceased and at least one of the accused who had committed the same, the could have been recorded on the basis thereof. Para 11 of the said judgment reads as follows:

11. Lodging of a First Information Report is necessary for setting the criminal law in motion. It can be lodged by anybody. It, however, should not be too sketchy so as to make initiation of investigation on the basis thereof impossible. Only information in regard to commission of an offence may not for all intent and purport satisfy the requirement of the First Information Report. When, however,

the First Information Report is lodged by a person who claims himself to be aware of not only the commission of the offence, the name of the deceased and at least one of the accused who had committed the same, the could have been recorded on the basis thereof. It may, however, be another thing to say that any information in regard to the commission of an offence is given by way of a telephone or by a person who does not disclose his identity and such message is so cryptic that it may not satisfy the requirement of Section 154 of the Code of Criminal Procedure. [See Om Prakash @ Raja Vs. State of Uttaranchal,].

30. While dealing with same question relating to recording of subsequent F.I.R., the Apex Court in the matter of Nirmal Singh Kahlon v. State of Punjab and Ors. has held that the second F.I.R. would be maintainable when new discovery is made on factual foundations. Para 59 of the said judgment reads thus,

59. The second FIR, in our opinion, would be maintainable not only because there were different versions but when new discovery is made on actual foundations. Discoveries may be made by the police authorities at a subsequent stage. Discovery about a larger conspiracy can also surface in another proceeding, as for example, in a case of this nature. If the police authorities did not make a fair investigation and left out conspiracy aspect of the matter from the purview of its investigation, in our opinion, as and when the same surfaced, it was open to the State and/or the High Court to direct investigation in respect of an offence which is distinct and separate from the one for which the FIR had already been lodged.

31. As per the dicta of the Apex Court in the aforesaid authorities, normally there cannot be two FIRs against the same accused in respect of the same case, but when there are rival versions in respect of the same episode they would normally take the shape of two FIRs and investigation can be carried on under both of them by the same investigating agency.

32. In the present case, Gendram (PW-12) - Kotwar has specifically deposed in his evidence that Sukli Bai came to him and informed that all the four accused persons have assaulted her husband & sons on which he went to the spot along with Sukli Bai where Rekhram & Paltan were lying unconscious, then he went to the Police Station along with Brijlal and informed the police, thereafter, he again came back to the village along with police. In his cross- examination he has denied the suggestion that he has not named all the accused persons. According to his cross- examination he was not sure that whether he has signed over the F.I.R. or not.

33. Assistant Sub Inspector Biharilal Soni (PW-15) has deposed that on 23-5-88, Gopiram & Kotwar Gendram came to the Police Station and lodged report and on the basis of such report, Head Constable Subhash Chandra Shukla (PW-14) proceeded for enquiry. But he has denied the suggestion that Gopiram & Gendram have stated the names of only two assailants. He has specifically deposed that they had lodged report against all the four persons. However, Head

Constable Subhash Chandra Shukla (PW-14) has deposed in para 2 of his evidence that when he came to the Police Station from village patrolling, at that time, Kotwar Gendram was present and he told the incident to Assistant Sub Inspector Biharilal Soni on which he went to the spot. He has specifically stated that Assistant Sub Inspector Biharilal Soni has not given any written report to him, he only informed him orally. He has further deposed that he has recorded dehati nalsi Ex.P-26 on the spot, thereafter, Investigating Officer Subhash Chand Choudhary (PW-18) reached to the spot. Subhash Chand Choudhary (PW-18) has admitted in para 11 of his cross- examination that on the basis of report of Gendram & Gopiram, Head Constable Subhash Chandra Shukla (PW-14) proceeded for the spot for investigation, thereafter he also proceeded for the spot. He has further admitted in para 11 of his cross- examination that he has not read the F.I.R. which was earlier recorded and even he has not filed the same with the charge sheet, but he has specifically denied that in the first F.I.R. names of only two accused persons were mentioned.

34. In the present case, the alleged first F.I.R. has not been filed by the prosecution, although the aforesaid witnesses had admitted the existence of first F.I.R. but the evidence of Head Constable Subhash Chandra Shukla (PW-14) reveals that he was orally informed by Assistant Sub Inspector Biharilal Soni (PW-15) about the incident.

35. During the course of trial, both the parties were having opportunity for causing production of the alleged first F.I.R. but both the parties have not filed any petition for production of the alleged first F.I.R. Further, the evidence of all the aforesaid witnesses clearly establish that in the first F.I.R. names of the above four accused persons had been mentioned. In absence of any document, it is difficult to hold that there was first F.I.R. in accordance with the provisions of Section 154 of the Cr.P.C. which satisfies the necessary ingredients, but dehati nalsi has been recorded on the spot at the instance of a person who claims that she has seen the incident and she has named the names of the assailants. Evidence of Gendram (PW-12) clearly reveals that the incident was informed to him by Sukli Bai (PW-1) who has lodged dehati nalsi Ex.P-26. It clearly establishes that the alleged Gendram (PW-12), accordance to the defence who has lodged the first F.I.R., was not having any detailed knowledge of the incident. Therefore, even if it is presumed that the first F.I.R. has been lodged by Gendram in a cryptic manner, then the second detailed information i.e. the F.I.R. lodged by Sukli Bai (PW-1) who claims herself as eyewitness and has mentioned the names of deceased, name of the injured and names of the assailants, is permissible under the law. In the circumstances, even suppression of first F.I.R. would not be fatal to the prosecution in the present case.

36. Conviction is substantially based on the evidence of Sukli Bai (PW-1) - relative & interested witness and Ashok (PW-8) - injured witness. In the present case, enmity between the parties is not in dispute. Enmity between the parties on account of construction of house over the land is also not in dispute. In case

of enmity, normally there is tendency to implicate and allege against the accused persons to ensure their conviction, but only on this ground the evidence of Sukli Bai (PW-1) & Ashok (PW-8) cannot be discarded. There are some omissions & contradictions in the evidence of these witnesses and in their previous statements Exs.D-1 & D-6. But both the witnesses have stuck to the version that all the accused persons/appellants came, appellants Bhagi & Jagdish were holding kalari, accused Sonu (since deceased) was holding axe & appellant Tuka was holding stick, and they assaulted Rekhrum, Paltan & Ashok. In case of repeated assaults and numerous injuries by more than one person, especially nine injuries to Paltan and ten injuries to Rekhrum, it is difficult to a witness to see as to who has caused injury to whom and on which part of the body by which weapon. The witnesses can substantially depose as to how many persons had assaulted how many persons and by which weapon.

37. Evidence of Dr. C.K. Singhal (PW-19) reveals that only two incised wounds were found on parietal & mastoid regions of Paltan and remaining injuries were not incised wounds. Likewise, only two injuries found over the head of Rekhrum were incised wounds and remaining eight injuries were not incised wounds. Accused Sonu (since deceased) has used axe and appellants Bhagi & Jagdish have used kalari by making it straight. Kalari is not a sharp edged weapon, it is a pointed weapon and most of its part is a stick having iron on its one end. Punctured/pierced wound from pointed side of kalari and contusion/abrasion/laceration from remaining part of kalari may be caused by using it. Most of the injuries found over the bodies of Paltan & Rekhrum reveal that the injuries have been caused by hard & blunt object.

38. As held by the Apex Court in the case of Ramanand (supra), in case of total conflict between medical & ocular evidence, preference shall be given to ocular evidence, but in the present case, there is no conflict between medical & ocular evidence. Therefore, the case of Ramanand (supra) is distinguishable on facts to that of the present case.

39. As held by the Apex Court in Abdul Karim's case (supra), in case of total discrepancy in injury and weapons used, the appellants are entitled for acquittal, but in the present case, there is no discrepancy between injuries & weapons used; contusion, laceration & bruise can be caused by blunt part i.e. stick like part of kalari. Therefore, Abdul Karim's case (supra), is also distinguishable on facts to that of the present case.

40. As held by the Apex Court in Raja Ram's case (supra), in case of no injury found over the body of the deceased alleged to have been caused by the accused persons, only one blunt injury caused by the alleged accused person, then the accused persons are entitled for acquittal, but in the present case, no single simple injury was found over the body which would have been caused by the weapons used by the appellants. Therefore, Raja Ram's case is also distinguishable on facts to that of the present case.

41. As regards recovery of weapons at the instance of the appellants, as per the evidence of Investigating Officer Subhash Chand Choudhary (PW-18) - Sub Inspector, appellant Tuka made confessional statement of stick vide Ex.P-9 and he has seized the stick at the instance of Tuka vide Ex.P-10. Likewise, appellant Bhagi made confessional statement of kalari & bamboo stick vide Ex.P-11 and the same have been recovered from Bhagi vide Ex.P-12. Accused Sonu (since deceased) made discloser statement of axe vide Ex.P-13 and same has been recovered from Sonu vide Ex.P-14. Clothes of accused persons have also been recovered and one kalari was seized from the spot vide Ex.P-5. Seized articles were sent for chemical examination vide Ex.P-39 and presence of blood over stick, axe, kalari, underwear of appellant Bhagirathi and clothes of appellant Jagdish have been confirmed vide Exs.P-40 & P-41.

42. In the present case, evidence of relative & interested witness Sukli Bai (PW-1) and relative, interested & injured witness Ashok (PW-8) have been substantially corroborated by the evidence of Ishwar (PW-2), Premu (PW-3), Phool Singh (PW- 4), Jagdish (PW-6) & Veer Singh (PW-7) and also corroborated by recovery of weapons stained with blood. According to the evidence of aforesaid witnesses, firstly appellants Bhagi & Jagdish went and gave threat to the complainant party, thereafter, they went with remaining two accused persons, all were holding weapons, they assaulted and caused murder of two persons Paltan & Rekhram and injury to one person Ashok. This shows that they have committed the offence in sharing common intention.

43. After appreciating the evidence available on record, learned Additional Sessions Judge has convicted the appellants u/s 302 read with Section 34 of the I.P.C. for causing murders of Paltan & Rekhram and u/s 323 read with Section 34 of the I.P.C. for causing injury to Ashok, and sentenced them in the manner mentioned above. Conviction recorded by the trial Court is based on credible, clinching & legal evidence sustainable under the law. While convicting & sentencing the appellants the trial Court has not committed any illegality.

44. For the foregoing reasons, the appeal is devoid of merit, same is liable to be dismissed and it is hereby dismissed. Appellants Bhagirathi @ Bhagi, Jagdish & Tuka are on bail, they shall surrender immediately before the 5th Additional Sessions Judge, Raipur in S.T. No. 271/88 for serving the remaining sentences imposed upon them.