

(2004) 03 MP CK 0051

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 349 of 1991

Farooq

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 16-03-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 157, 162, 174

Evidence Act, 1872 — Section 3, 60

Penal Code, 1860 (IPC) — Section 302

Citation : (2004) 2 MPHT 491 : (2005) 3 MPLJ 15

Hon'ble Judges : S.P. Khare, J;Ajit Singh, J

Bench : Division Bench

Advocate : S.C. Datt and Siddarth Datt, for the Appellant; Anjali Banerjee, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Appellant Farooq has been convicted u/s 302, Indian Penal Code and sentenced to imprisonment for life. Four other persons were also prosecuted and tried with the appellant but they have been acquitted.

The prosecution case is that on 18-6-1988 at 9.30 A.M. accused Farooq fired at deceased Chandan Singh in the house of Guljari Seth in Chhatarpur resulting in his death. According to the prosecution this incident was witnessed by Munna Singh (P.W. 6), who is brother of the deceased. He was there with the deceased for settlement of accounts with Guljari Seth. It is also the prosecution case that Nathuram (P.W. 4) and Deshraj (P.W. 7) were labourers in the employment of deceased Chandan Singh and they were waiting out-side the house to get the payment of their wages and they also saw a part of the incident and Munna Singh (P.W. 6) told them immediately that his brother Chandan Singh has been shot dead by accused Farooq. A telephonic message was received at Chhatarpur Police Station at 9.35 A.M. regarding firing in Mohalla Gwal Mangra and it was recorded in Rojnamcha Sanha, a copy of which is Ex. P-16. Abhimanyu Mishra

(P.W. 10), Sub-Inspector of Police, proceeded to the spot and found Chandan Singh in badly injured condition. He hastened to take him to the hospital where he was declared dead at 10.10 A.M. He was initially examined by Dr. Hari Agrawal (P.W. 2) and he noted injuries on the body of Chandan Singh. His report is Ex. P-2. The autopsy was conducted by Dr. A.K. Shrivastava (P.W. 5). The post-mortem report is Ex. P-7. In his opinion the cause of death was the gun shot injury sustained by the deceased in his abdomen (aorta) and spinal injury. Munna Singh (P.W. 6) has lodged the F.I.R. on 18-6-1988 itself at 10.25 A.M. and that is Ex. P-8. According to the prosecution, the FIR was promptly lodged and there was not delay in recording the FIR.

Accused Farooq pleaded not guilty. His defence is that he has been falsely implicated.

The Trial Court relied upon the evidence of Munna Singh (P.W. 6), Nathuram (P.W. 4) and Deshraj (P.W. 7) which was corroborated by prompt FIR and the medical evidence. The Trial Court disbelieved the prosecution case so far as the other four accused persons were concerned and they have been acquitted.

In this appeal it has been argued that (a) FIR (Ex. P-8) has no corroborative value for three reasons; firstly, the telephonic message (Ex. P-16) is the real FIR, secondly Ex. P-8 has been recorded in the course of the investigation and, therefore, it is hit by Section 162 Cr.P.C. and thirdly there has been non-compliance of the provisions in Section 157 Cr.P.C. as the copy of the FIR was not sent to the Magistrate; (b) The prosecution witnesses, on whose testimony the Trial Court has placed reliance for convicting the appellant, are interested and partisan witnesses; (c) Munna Singh (P.W. 6) is not reliable as he did not disclose the name of the appellant to the Police Officer Abhimanyu Mishra (P.W. 10) when the latter reached the spot on receiving the telephonic message, he did not disclose his name while travelling in the jeep with him and also in the hospital where Chandan Singh was admitted and (d) the testimony of the three witnesses has been disbelieved as against the four accused persons and, therefore, their evidence could not be accepted for convicting the appellant.

There has to be critical analysis, independent evaluation and "dispassionate judicial scrutiny" of the evidence on record in an appeal against the conviction. The testimony of the three witnesses mentioned above is to be assessed in light of the arguments raised on behalf of the appellant.

It has not been disputed during the course of hearing of this appeal that deceased Chandan Singh met a homicidal end. That is clearly borne out from the evidence of Dr. Hari Agrawal (P.W. 2) who examined Chandan Singh on 18-6-1988 at 9.48 A.M. His report is Ex. P-2. He found an entry and an exit wound on the abdomen. In his opinion it was caused by fire-arm. Chandan Singh was not in a position to speak. There is some discrepancy in recording the entry and exit wound but that has no material bearing. The autopsy on the body of Chandan Singh was conducted by Dr. A.K. Shrivastava (P.W. 5) on the same date

at 11.40 A.M. His report is Ex. P-7. He found one entrance wound of 1.2 cm diameter present in the right hypochondrium, 15 cms. lateral to mid-line and 2 cms. below the inferior costal margin, edges of the wound were irregular and inverted, no blackening or tattooing seen, bleeding present. He also found one wound of exit of 3 cms. diameter present on the back in left lumbar region at the level of L2 & L3 vertebra 7.5 cms. lateral to mid-line towards left, edges were irregular and everted, bleeding present. In his opinion the injury found on the deceased over the abdomen was caused by gun shot. This injury was the cause of his death.

The only point which has been seriously debated in this appeal is whether appellant Farooq is the author of this crime. Munna Singh (P.W. 6) is brother of deceased Chandan Singh. He has deposed that he had gone to the house of Guljari Seth with his brother Chandan Singh in connection with the settlement of accounts relating to a contract work. According to him, Deendayal and Guljari Seth (P.W. 3) were present at the place where he and his brother were sitting. He has further deposed that accused Nafees entered the house and saluted his brother. On seeing accused Farooq with a Katta in his hand his brother got up from the chair and at that point of time accused Farooq fired at him, causing injury in his abdomen on the right side. The witness has further deposed that he narrated this incident to Nathuram (P.W. 4) and Deshraj (P.W. 7) who were sitting out-side and who came at the place where the deceased was lying. He disclosed to them that accused Farooq has fired at his brother. He asked them to bring some conveyance to take Chandan Singh to the hospital. He took his brother in a jeep to the hospital. He died there after 5-10 minutes. He went to Kotwali and lodged the FIR (Ex. P-8). It has been recorded at 10.25 A.M. He came back to the hospital again and the Panchanama of the dead body of his brother was prepared and that is Ex. P-9 which bears his signature.

In cross-examination Munna Singh (P.W. 9) has stated that there was enmity between the deceased and accused Nafees regarding the work of mining contract. He has denied the suggestion that he was not present at the time of incident. He has admitted that he is facing prosecution in 3-4 criminal cases and he is also a witness in a murder case. He has affirmed that he had gone with his brother Chandan Singh to the house of Guljari Seth. According to him he did not go to the Police Station to lodge the report before taking his brother to the hospital. He did not disclose to the persons present in the jeep that his brother has been shot dead by appellant Farooq. In Para 25 he has stated that he had disclosed to the doctor who attended his brother the name of accused Farooq as the assailant. Then he went to Kotwali and lodged the report.

Nathuram (P.W. 4) has testified that he was sitting out side the house of Guljari Seth with Deshraj (P.W. 7). Accused Nafees came there on a cycle, went inside the room and saluted Chandan Singh. He saw accused Farooq entering into the room shortly thereafter with a Katta. He heard the sound of gun shot inside the room. The accused persons ran away and then he entered into the room with

Deshraj (P.W. 7). He was told by Munna Singh (P.W. 6) and Deendayal that accused Farooq has caused firearm injury to Chandan Singh. He saw bleeding from the abdomen of Chandan Singh. He left the place of incident after Chandan Singh was taken to the hospital in the jeep. In cross-examination he has stated that he was working with Chandan Singh for the last 2-3 years. He had been to the house of Chandan Singh with Deshraj (P.W. 7) at about 8 A.M. and there he came to know that Chandan Singh is at the residence of Guljari Seth and therefore he came there to take the amount of his wages. He has been confronted with his statement u/s 161 Cr.P.C. (Ex. D-1). There are certain minor discrepancies which are not material. He has further stated that in the jeep some police personnel were there and at that time he did not tell them that accused Farooq has fired at Chandan Singh. According to him, Munna Singh (P.W. 6) went to the hospital with his brother Chandan Singh in this jeep.

Deshraj (P.W. 7) has deposed that he had seen accused Farooq entering into the room with a Katta in his hand. He went inside after the accused persons had left the place of incident. He saw Chandan Singh in injured condition. He was told by Manna Singh (P.W. 6) to bring some conveyance. After sometime Munna Singh (P.W. 6) took Chandan Singh to the hospital in police jeep. He has corroborated the testimony of Nathuram (P.W. 4) to a large extent. He has admitted that Chandan Singh was not able to speak at the place of incident.

Abhimanyu Mishra (P.W. 10) has deposed that he was Sub-Inspector of Police at Chhatarpur Kotwali and he received a telephonic message that there has been firing in Mohalla Gwal Mangra in Chhatarpur. He recorded this message in Rojnamcha (Ex. P-16) and he hastened to the place of incident. He saw bleeding from the abdomen of Chandan Singh. According to him Chandan Singh told him that accused Farooq has fired at him. This part of his testimony has been disbelieved by the Trial Court. In our opinion also the deceased did not make any statement or dying declaration to this police officer. He took Chandan Singh in his jeep to the hospital and there he gave the application Ex. P-17 to the doctor for examination of the injuries of Chandan Singh, who was admitted in the hospital. At that time Chandan Singh was not able to speak and after a few minutes he died. He came to know in the hospital that Munna Singh (P.W. 6), brother of the deceased, has reached Kotwali and therefore, he went there and recorded his FIR (Ex. P-8) at 10.25 A.M. Then he came to the hospital again and prepared the Panchnama of the dead body of Chandan Singh which is Ex. P-9. He gave the requisition for post-mortem and that is Ex. P-6. He has explained that he has noted time "10.10 A.M." in the Panchnama as Chandan Singh had died at that time. The printed form also provides that "Time of Death" is to be stated therein. According to this form there is no column for noting the time of preparation of the Panchnama. In the application (Ex. P-6) for post-mortem examination the time of sending the dead body for post-mortem has been mentioned as "10.30 A.M.". The autopsy surgeon has stated in his report that the requisition for post-mortem examination was received at 11.30 A.M. and he commenced the autopsy at 11.40 A.M. The time interval between the requisition and the post-mortem

examination is very short.

Abhimanyu Mishra (P.W. 10) has further stated in his cross-examination that Munna Singh (P.W. 6) had lodged the FIR (Ex. P-8) at 10.25 A.M. He has further stated that he recorded the statements u/s 161 Cr.P.C. after sending the dead body of Chandan Singh for post-mortem examination. He did not record their statements prior to sending the dead body of the deceased for autopsy. In Para 10 he has stated that he had seen Nathuram (P.W. 4), Munna Singh (P.W. 6) and Deshraj (P.W. 7) on the spot when he reached there but he did not record their statements at that time. They did not give any information to him on the spot as to who has fired at Chandan Singh nor he asked them. He has further stated in Para 12 that Munna Singh (EW 6) accompanied him in his jeep to the hospital but he did not tell him anything about the incident in the jeep nor he asked him about the same. In Para 13 he has explained that his first anxiety was to take Chandan Singh to the hospital as his condition was precarious and he did not want to lose even a second in taking him to the hospital. He has stated that this is the reason that he did not go to the Kotwali on way to the hospital to record the FIR. He prepared the application (Ex. P-17) in the hospital. According to him, Chandan Singh died in the hospital at 10.10 A.M. He has further admitted that Munna Singh (P.W. 6) was present at the time of preparation of Panchnama. In Para 16 he has said that the time of the preparation of Panchnama is 10.10 A.M. is rightly written in Ex.P-9. He has made a mistake here and in fact the time of death has been written as 10.10 A.M. as printed in the proforma. In Para 23 he has stated that he sent a copy of the FIR to the Magistrate on 18-6-1988 itself. He has denied the suggestion that the FIR has been ante timed.

After careful scrutiny of the deposition of Munna Singh (P.W. 6) it is found that his testimony is reliable. Though he is involved in a number of criminal cases, that cannot be a ground to reject his evidence outright. He was definitely present at the place of incident when his brother Chandan Singh sustained gun shot injury. He is very firm on the point that accused Farooq fired at his brother Chandan Singh. He disclosed the name of accused Farooq to Nathuram (P.W. 4) and Deshraj (P.W. 7) immediately after the incident. Their names find place in the FIR (Ex. P-8). The incident had taken place at 9.30 A.M. and the FIR has been lodged at 10.25 A.M. that is within less than an hour. There was no time for concoction or embellishment. It is true that Munna Singh (P.W. 6) did not lodge any report to the police officer who had arrived at the scene of occurrence and the police officer also did not record "Dehati Nalishi" before taking the injured person to the hospital. This is, however, understandable. The brother of the deceased and the police officer were naturally anxious to take the injured person to the hospital so that his life may be saved. It was their primary duty to take care of the person who had sustained gun shot injury and who was lying there in bleeding condition. The saving of the life of such a person has to be given precedence than putting the machinery of investigation into gear. If the police officer and the brother of the deceased thought it proper to take the injured person to the hospital first their conduct cannot be criticised on this ground that the police officer did not

record Dehati Nalishi of Munna Singh (P.W. 6) before taking the injured person to the hospital. There cannot be a theoretical approach in such matters. The practical expediency must have the precedence.

Now the arguments advanced on behalf of the appellant must be considered *ad-seriatim*. It has been argued that Ex. P-16, the telephonic message, was the real FIR. A perusal of the Rojnamcha entry (Ex. P-16) shows that some unknown person has given the information that there has been firing in Gwal Mangra Mohalla and, therefore, the Sub-Inspector hastened to the place of the incident. This cannot by any stretch of argument be treated to be an FIR. It is well settled that a cryptic and anonymous telephonic message which does not clearly specify a cognizable offence cannot be treated as first information report. In *Soma Bhai Vs. State of Gujarat*, it has been held by the Supreme Court that cryptic information given to the police even by an identifiable person on telephone cannot be termed as FIR. Earlier in *Tapinder Singh Vs. State of Punjab and Another*, it has been held that cryptic and anonymous oral message which did not in terms clearly specify a cognizable offence cannot be treated as first information report. The mere fact that the information was the first in point of time does not by itself clothe it with the character of first information report. The question whether or not a particular document constitutes a first information report has, broadly speaking, to be determined on the relevant facts and circumstances of each case.

The legal position has been made crystal clear regarding the telephonic first information report in *Ramsinh Bavaji Jadeja Vs. State of Gujarat*, where it has been held that the question as to at what stage the investigation commences has to be considered and examined on the facts of each case, especially, when the information of a cognizable offence has been given on telephone. Any telephonic information about commission of a cognizable offence irrespective of the nature and details of such information cannot be treated as first information report. So if the telephonic message is cryptic in nature and the officer in charge, proceeds to the place of occurrence on the basis of that information to find out the details of the nature of the offence itself, then it cannot be said that the information, which had been received by him on telephone, shall be deemed to be first information report. The object and purpose of giving such telephonic message is not to lodge the first information report, but to request the officer in charge of the police station to reach the place of occurrence. On the other hand, if the information given on telephone is not cryptic and on the basis of that information, the officer in charge, is *prima facie* satisfied about the commission of a cognizable offence and he proceeds from the police station after recording such information, to investigate such offence then any statement made by any person in respect of the said offence including about the participants, shall be deemed to be a statement made by a person to the police officer "in the course of investigation", covered by Section 162 of the Code.

Recently in *Mundrika Mahto and Others Vs. State of Bihar*, also it has been held :

"the telephonic conversation also could not be treated as FIR, as contended, as it was a cryptic information that was received and recorded in the daily diary regarding the commission of offence".

In the present case the telephonic message recorded in Rojnamcha (Ex. P-16) is very vague and cryptic. It cannot be treated as FIR.

The FIR (Ex. P-8) is the real FIR. It has been argued that the investigation had commenced as the police officer had reached the spot, he had taken the injured person to the hospital and he had submitted the application (Ex. P-17) to the doctor for examination of the injuries of Chandan Singh and, therefore, investigation having commenced the statement recorded in the Ex. P-8 is really the statement u/s 161 Cr. P.C. As has been discussed above, the police officer had reached the spot after receipt of the telephonic message that an incident of firing has taken place and there he saw Chandan Singh lying in bleeding condition and, therefore, he took him to the hospital and submitted the application for examination of his injuries. It cannot be said that the FIR (Ex. P-8) was recorded "in the course of an investigation" within the meaning of these words in Section 162 Cr.P.C. The phrase "in the course of an investigation" means a step in, or in the conscious prosecution of, the investigation itself. The learned Counsel for the appellant has relied upon the decisions of the Supreme Court in *The State of Bombay Vs. Rusy Mistry and Another*, and *Balaka Singh and Others Vs. The State of Punjab*, . These decisions do not lay down that recording of the FIR after sending of the injured person to the hospital before recording the FIR is not permissible. In the opinion of this Court the injured person can be sent to the hospital and the FIR can be recorded thereafter depending upon the medical aid which is to be made available to the victim. The decision in *The State of Madhya Pradesh Vs. Mubarak Ali*, has also been cited in which it has been held that under the Code, an investigation starts after the police officer receives information in regard to an offence and consists of various-steps to be taken thereafter. In this case No. "information in regard to an offence" was received by the police officer before he sent the injured person to the hospital. As already discussed, the situation was such in which it was necessary to take injured person to the hospital first and then to proceed to record the FIR. The deceased died within a few minutes after reaching the hospital and then thereafter the FIR was recorded without any loss of time at the Kotwali.

It has also been argued that Panchnama (Ex. P-9) was prepared before recording the FIR. That does not appear to be factually correct. The death took place at 10.10 A.M. and that time has been noted in the Panchnama (Ex. P-9). In cross-examination the investigation officer appears to have been confused. The Panchnama (Ex. P-9) was prepared after recording the FIR (Ex. P-8) at 10.25 A.M. It has also been argued that Dehati Nalishi could be recorded in the hospital also. The investigation officer has explained that Munna Singh (P.W 6) had left for Kotwali and, therefore, he went there and then recorded the FIR. As a matter of fact there has been no unusual delay in recording the FIR. It has been done

with utmost promptitude in the circumstances of the case.

It has also been put forth by the learned Counsel for the appellant that in the Panchnama (Ex. P-9) the name of accused Farooq and the names of the witnesses are not mentioned. In support of this argument reliance has been placed on the decision of the Supreme Court in Meharaj Singh (L/Nk.) Vs. State of U.P., The study of this case laws reveals that there were several infirmities in the investigation and it, was observed that the mention of the names of the witnesses or the accused in the Panchnama u/s 174 Cr.P.C. served as an external check to hold that the FIR was lodged at the time which is recorded in it. The Supreme Court observed : "Even though the inquest report, prepared u/s 174 Cr.P.C. is aimed, at serving a statutory function, to lend credence to the prosecution case, the details of the FIR and the gist of statements recorded during inquest proceedings get reflected in the report. The absence of those details is indicative of the fact that the prosecution story was still in embryo and had not been given any shape and that the FIR came to be recorded later on after due deliberations and consultations and was then ante timed to give it the colour of a promptly lodged FIR, In our opinion, on account of the infirmities as noticed above, the FIR has lost its value and authenticity and it appears to us that the same has been ante timed and had not been recorded till the inquest proceedings were over at the spot by P.W. 8."

From the above observations it is clear that while appreciating the evidence on record it can be considered whether the details of the FIR and the gist of the statements recorded during inquest proceedings find place in the inquest proceedings, but the absence of such details in the inquest report alone is not sufficient to hold that the FIR has not been recorded at the time shown in it. The Supreme Court has not laid down the law that in the inquest report or Panchnama the names of the accused or the witnesses must invariably be mentioned. The law in this respect was laid down by the Supreme Court long back in Pedda Narayana and Others Vs. State of Andhra Pradesh, as under :--

"The proceedings u/s 174 have a very limited scope. The object of the proceedings is merely to ascertain whether a person has died under suspicious circumstances or an unnatural death and if so what is the apparent cause of the death. The question regarding the details as to how the deceased was assaulted or who assaulted him or under what circumstances he was assaulted is foreign to the ambit and scope of the proceedings u/s 174 . Neither in practice nor in law was it necessary for the police to mention those details in the inquest report."

The above legal position has not been diluted by any subsequent decision of the Supreme Court. Any observation in a subsequent decision while appreciating the evidence of the witnesses does not alter the law which has been handed down by the Supreme Court in an earlier decision. The learned Counsel for the appellant has also not been able to point any decision of the larger Bench of the Supreme Court in which the law laid down in Podda Narayana's case has been varied.

In the opinion of this Court the FIR (Ex. P-8) is real FIR and it is not hit by Section 162, Cr.PC.

Abhimanyu Mishra (P.W. 10) has stated in Para 23 of his deposition that he had sent a copy of the FIR to the Magistrate as required by Section 157, Cr.P.C. on 18-6-1988. It has been suggested in his cross-examination that the copy of the FIR was received by the Magistrate either on 19-6-1988 or on 20-6-1988. This aspect has not been pursued further. Therefore, it cannot be said that there was any unusual delay in sending a copy of the FIR to the Magistrate, There has been full compliance of Section 157, Cr.P.C. Even if there has been some delay in sending a copy of the FIR to the Magistrate, that is not sufficient to disbelieve the evidence of the witnesses.

It is true that Munna Singh (P.W. 6) is brother of the deceased and Nathuram (P.W. 4) and Deshraj (P.W. 7) were the labourers employed by him and to that extent they can be said to be interested in the conviction of the assailants of the deceased. The testimony of the witnesses cannot be discarded on the ground of relationship or on the ground that the witnesses were in the employment of the deceased. Normally the kith and kin of the deceased come forward to stand as witnesses and if they had seen the occurrence they would not absolve the real offenders and involve innocent persons in the murder. [Hukam Singh and Others Vs. State of Rajasthan,]

It has been vehemently argued on behalf of the appellant that the first impulse of Munna Singh (P.W. 6) would have been to disclose the name of appellant Farooq to Abhimanyu Mishra (P.W. 10) when he arrived at the spot and having remained silent at that moment, he cannot be believed on the point that he saw accused Farooq firing at his brother. As discussed above, the first anxiety of the police officer and the brother of the deceased was to take Chandan Singh to the hospital as till that time he was lying in badly injured condition and his injury was bleeding. It is for this reason that the police officer did not record the statement of Munna Singh (P.W. 6) at that time. It has been observed by the Supreme Court in Raman Bhai Naran Bhai Patel and Others Vs. State of Gujarat, that the IO's anxiety to remove the injured to the hospital instead of interrogating the persons present to find out the cause of assault is not improper. The FIR was recorded at the police station within an hour of the incident after Chandan Singh was declared dead in the hospital. In Hem Raj v. Raja Ram AIR 2004 SCW 447 also it has been observed in Para 9 that the testimony of the witness cannot be disbelieved on the ground that he left the hospital and went to the police station to lodge the report. It has also been observed in this decision that the absence of names of accused in the inquest report does not affect the prosecution case as there is no specific column to mention the names of the accused.

Next it has been argued that the three prosecution witnesses mentioned above have been disbelieved so far as the other four accused persons were concerned and, therefore, their evidence cannot form the basis of conviction of the appellant. The decision of this Court in State of M.P. v. Banshilal Beharilal 1957

MPLJ 852 has been cited in support of the plea that where a witness is proved to have told nine lies in the course of his deposition in a murder trial, it is unsafe to act upon the rest of his evidence. In the present case the witnesses have not been believed against the four accused persons in view of some discrepancies and the acceptance of plea of alibi of the two out of those four accused persons. It has been held by the Trial Court that the prosecution could not prove its case beyond reasonable doubt against them. They were not main culprits. They were said to be accessories. Therefore, their acquittal could not come in the way of the conviction of the appellant against whom the prosecution case was held to have been proved beyond reasonable doubt. The Supreme Court has recently observed in Krishna Mochi and Others Vs. State of Bihar, through a three Judge Bench that even if major portion of evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, notwithstanding acquittal of number of other co-accused persons, his conviction can be maintained. It is the duty of Court to separate grain from chaff. Where chaff can be separated from grain, it would be open to the Court to convict an accused notwithstanding the fact that evidence has been found to be deficient to prove guilt of other accused persons. Falsity of particular material witness or material particular would not ruin it from the beginning to end. The maxim "falsus in uno falsus in omnibus" has no application in India and the witnesses cannot be branded as liar. All that the maxim amounts to, is that in such cases testimony may be disregarded and not that it must be disregarded. The doctrine merely involves the question of weight of evidence which a Court may apply in a given set of circumstances, but it is not what may be called "a mandatory rule of evidence". The doctrine is a dangerous one specially in India for if a whole body of the testimony were to be rejected, because witness was evidently speaking an untruth in some aspect, it is to be feared that administration of criminal justice would come to a dead-stop.

The benefit of doubt cannot be extended to the appellant as the evidence against him has been found to be worthy of reliance. It has been observed in Lal Singh Vs. State of Gujarat and Another, : "Smelling doubts for the sake of giving benefit of doubt is not the law of the land." The learned Counsel for the appellant has cited the decision of Ram Pukar Thakur and Others Vs. The State of Bihar, in which the witness was disbelieved on the ground that he did not disclose the names of the assailants to anyone who had come to the spot. In the present case the names of the assailants have been disclosed to the two witnesses by Munna Singh (P.W. 6) immediately after the incident. Thus the two witnesses cannot be said to be chance witnesses. Their presence on the spot is natural as they were there to take their wages after the settlement of the accounts. There are many cases which have been cited by the learned Counsel for the appellant during the course of hearing of this appeal but they were rendered on their own facts and they do not apply in the present case.

After considering all the aspects we are of the opinion that the Trial Court has rightly convicted appellant Farooq u/s 302 I.P.C. for committing murder of Chandan Singh. He has been sentenced to imprisonment for life.

The appeal is dismissed.