

(2017) 09 MP CK 0007
In the Madhya Pradesh High Court
Case No : 2615 of 2005

Goldie Glass Industries

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 07-09-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 162](#) - Statements to police not to be signed-use of statements in evidence
[Indian Penal Code, 1860](#), [Section 302](#) - Punishment for

Citation : (2017) 09 MP CK 0007

Hon'ble Judges : Hemant Gupta, Vijay Kumar Shukla

Bench : Division Bench

Advocate : Anand Nayak, Namrata Agarwal

Final Decision : Dismissed

Judgement

1. Challenge in the present appeal is to an order passed by the learned First Additional Sessions Judge, Satna (M.P.) in Sessions Trial No.75/2003 on 14.11.2005 convicting the appellant for an offence punishable under Section 302 of IPC and vide separate order convicting him to undergo life imprisonment and to pay a fine of Rs.1000/-; in default of payment of fine, the appellant was ordered to undergo rigorous imprisonment for another six months. The appellant was also convicted for an offence under Section 25(1)(b) and (a) of the Arms Act and sentenced to undergo rigorous imprisonment for a period of three years and a fine of Rs.1,000/-; in default of payment of fine, he was to undergo another rigorous imprisonment of six months.

2. The prosecution case was set in motion on the statement (Ex.P-2) of Satish Kumar Chourasiya alias Rajni Chourasiya s/o Daulat Ram Chourasiya made to Shri A.P. Singh, Station House Officer, Police Station, Uchehara, District Satna on 03.10.2002 at about 11 p.m. On the basis of such statement, FIR (Ex.P-1) was lodged. He stated that he stays in village Ichaul in Atta Chakki (flour mill). On 3.10.2002 at about 4 p.m., he was standing near Kranti crossing eating Chat when somebody informed him that his brother Ajay Chourasiya is being beaten by accused Sukhendra, Sapan, Chingu, Kalyan and Dablu Ghosh. There was a rumor in the area that Ajay and Sukhendra had a dispute on account of a money transaction. When he reached the place of occurrence then he saw that the appellant has caught hold of Ajay from his collar and took out a country-made pistol kept in his pant and fired on the right side of the chest of Ajay. Ajay fell on the spot near Mandir (temple). At that time, Chingu, Sapan, Kalyan and Dablu have caught hold of Ajay and after firing of bullet, all five accused persons ran away. He took Ajay on a motorcycle to Uchehara Dispensary where, after giving the first-aid, his brother was referred to Satna. He narrated the entire incident to his brother, father and neighbours. The injured has been taken to hospital for treatment but when he reached hospital, doctor informed him that his brother has been brought dead.

3. On the basis of the statement made by Satish Kumar Chourasiya alias Rajni Chourasiya, PW-11 - A.P. Singh took over the investigation. After death of Ajay Chourasiya, he took in possession the dead body on 4.10.2002 vide memo Ex.P-12 and sent the dead body for postmortem examination vide memo Ex.P-6. He also took in possession of the clothes of deceased, his chappals and also the pellets vide memo Ex.P-16. He prepared a site plan by visiting the site on 4.10.2002. Earlier, he has recorded the statements of Rajni Chourasiya,

Shiv Prasad and Daulat Ram on 3.10.2002 and statements of Lalla alias Lala Chourasiya, Billa alias Dilip Avadhiya, Jugga alias Jogendra Tamrakar were recorded on 4.10.2002. Accused Sukhendra was arrested on 6.10.2002 at about 4.30 p.m. at Nagaud Bus Stand vide memo Ex.P-10. Accused made a disclosure statement of keeping the country-made pistol lying concealed. The statement was recorded vide memo Ex.P-8 and at about 4.45 p.m., the country-made 0.12 bore pistol was recovered, which was taken in possession vide Ex.P-9. From the other pocket, he produced an empty shell and a live cartridge, which was also taken in possession vide memo Ex.P-9.

4. The other accused persons were declared absconding on 17.11.2002 vide memo Ex.P-17 and were arrested on 28.01.2003 when they surrendered in Court vide arrest memos Ex.P-23 to Ex.P-26. The country-made pistol was examined by the Armourer, request of which was made vide memo Ex.P-5A. The country-made pistol and live cartridge was sent for forensic science examination to Laboratory at Sagar vide memo Ex.P-20.

5. On completion of the investigations, a charge-sheet was filed in Court. The accused pleaded not guilty and claimed trial.

6. During trial, on the basis of oral and documentary evidence the appellant was convicted as stated above while all other accused persons, namely, Chingu alias Vijay, Dablu alias Dinesh Ghosh, Sapan Ghosh and Kalyan Ghosh were acquitted by giving benefit of doubt.

7. During the course of trial, the prosecution examined the author of the FIR - Satish Kumar Chourasiya alias Rajni Chourasiya as PW-1, Shivprasad as PW-2 and Lala as PW-3. Kailash Prasad (PW-6) is the witness to the disclosure statement of the present appellant whereas PW-5 - Dr. B.K. Gautam was a Medical Officer at Community Health Centre, Uchehara, who initially examined the deceased. PW-8 is Dr. M.M. Pandey, who has conducted the

postmortem examination. PW-9 - Jogendra Tamrakar and PW-10 - Dilip Kumar are the eye-witnesses, though declared hostile.

8. In this background, learned counsel for the appellant vehemently argued that from perusal of the site plan (Ex.P-3) prepared by the Investigating Officer A.P. Singh (PW-11), the presence of witnesses is not reflected, therefore, their presence is doubtful at the place of occurrence. Learned counsel for the appellant relies upon a Division Bench judgment of this Court reported as 2005 Cri. L.J. 299 (Vijay Singh vs. State of M.P .) to contend that it was incumbent upon the Investigating Officer to mention the place from where the witnesses have witnessed the incident. Since the site plan does not disclose the presence of the witnesses, therefore, the testimony of the so-called eye-witnesses cannot be relied upon. It is further argued that the pistol was taken in possession on 6.10.2002 but was forwarded to the Forensic Science Laboratory, Sagar on 21.11.2002 vide Ex.P-18. The prosecution has not produced any evidence that such pistol was not tampered with - when the same was in possession of the police. It is further contended that there is unexplained delay in sending the pistol and other articles for the expert opinion. It is also argued that the prosecution has not produced the clothes of Satish Kumar Chourasia (PW-1) as he has taken the deceased on his motorcycle to Primary Community Health Centre. If the witness had taken the deceased on his motorcycle, his clothes were bound to be bloodstained. It is also argued that Shivprasad (PW-2) was not present at the place of occurrence and has been falsely introduced by the prosecution. The presence of Lala (PW-3) is also said to be doubtful and not of a reliable witness. Jogendra Tamrakar (PW-9) and Dilip Kumar (PW-10) have been declared hostile; therefore, their testimony can also not be relied upon. It is also argued that the place of occurrence is said to be a market place but none of the independent witness has been examined.

The prosecution witnesses are either the relations or acquaintances of the deceased, therefore, the entire prosecution story is doubtful.

9. We have heard learned counsel for the parties and find no merit in the present appeal.

10. In respect of the first argument that the site plan has not disclosed the places from where the witnesses have witnessed the occurrence, therefore, the presence of witnesses is doubtful, is not tenable. In Vijay Singh's case (supra), the site plan was prepared in the presence of sole eye-witness PW-2 Almadi Bai. Almadi Bai was examined as PW-2. She was cross-examined in respect of the fact that from where the gunshot was fired. Since she could not explain the said fact, the Court relied upon the Supreme Court judgment reported as AIR 2004 SC 124 (Shingara Singh vs. State of Haryana & Another) and AIR 2003 SC 2098 (Baldev Singh vs. State of M.P .) to doubt the veracity and truthfulness of the witness. But, in the present case, the site plan (Ex.P-3) has been prepared by Investigating Officer (PW-11) and witnessed by Shivprasad (PW-2) and Munni Lal (PW-7).

11. Shivprasad (PW-2) has proved the site plan which is prepared on the basis of his directions. He admitted his signature on site plan (Ex.P-3) but in cross-examination he stated that he does not know what has been written in Ex.P-3 and he has signed on such document without reading. Munnial (PW-7) is the father of deceased and that of Satish Kumar Chourasia (PW-1). He is witness to the preparation of the site plan and not to the occurrence. The place from where Shivprasad (PW-2) has seen the occurrence has been mentioned in the site plan, therefore, even if the distance between the place where the accused was standing and where the witness was standing will not create doubt on the testimony of the eye-witnesses.

12. The question which arises is: as to whether on that basis such a site plan can create doubt on the veracity of the eye-witnesses. The

Supreme Court in a judgment reported as AIR 1962 SC 399 (Tori Singh and another vs. State of Uttar Pradesh) was examining the argument that the deceased was not likely to receive injury where he is reflected in the site plan. The Court held that the marking of the spot on the sketch-map would not be admissible in view of the provisions of S. 162 of the Code of Criminal Procedure. The Court held as under:-

"7.In the second place, the mark on the sketch- map was put by the Sub-Inspector who was obviously not an eye-witness to the incident. He could only have put it there after taking the statements of the eye witnesses. The marking of the spot on the sketch-map is really bringing on record the conclusion of the Sub-Inspector on the basis of the statements made by the witnesses to him. This in our opinion would not be admissible in view of the provisions of S. 162 of the Code of Criminal Procedure, for it is in effect nothing more than the statement of the Sub-Inspector that the eye-witnesses told him that the deceased was at such and such place at the time when he was hit. The sketch-map would be admissible so far as it indicates all that the Sub-Inspector saw himself at the spot; but any mark put on the sketch-map based on the statements made by the witnesses to the Sub-Inspector would be inadmissible in view of the clear provisions of S. 162 of the Code of Criminal Procedure as it will be no more than a statement made to the Police during investigation.....

8. This Court had occasion to consider the admissibility of a plan drawn to scale by a draftsman in which after ascertaining from the witnesses where exactly the assailants and the victims stood at the time of the commission of offence, the draftsman put down the places in the map, in Santa Singh vs. The State of Punjab, AIR 1956 SC 526. It was held that such a plan drawn to scale was admissible if the witness corroborated the statement of the draftsman that they showed him the places and would not be hit by S. 162 of the Code of Criminal Procedure. In that case there was another sketch prepared by the Sub-inspector which was ruled out as

inadmissible under S. 162 . The sketch-map in the present case has been prepared by the Sub-inspector and the place where the deceased was hit and also the places where the witnesses were at the time of the incident were obviously marked by him on the map on the basis of the statements made to him by the witnesses. In the circumstances these marks on the map based on the statements made to the Sub-inspector are inadmissible under S. 162 of the Code of criminal Procedure and cannot be used to found any argument as to the improbability of the deceased being hit on that part of the body where he was actually injured, if he was standing at the spot marked on the- sketch-map."

[emphasis supplied]

13. In another judgment reported as 1996 (8) SCC 199 (Jagdish

Narain and another vs. State of U.P .), the prosecution evidence was sought to be disputed inter alia on the ground that the failure of the Investigating Officer to indicate in the site plan as to where from the shots were fired, makes the prosecution case doubtful. The High Court held that such failure did not detract from the truthfulness of the eye- witnesses and only amounted to omission on the part of the Investigating Officer. The Court held that when a site plan is prepared by an Investigating Officer, he prepares what he sees and observes. That would be direct and substantive evidence. But, information derived in respect of an incident such as when, where and how it happened, is hearsay evidence. The person from whom he heard, when examined is not the direct evidence. Such statement cannot be used even to corroborate the maker thereof and can be used only to contradict him. The Supreme Court held as under:-

"9. In responding to the next criticism of the trial Court regarding the failure of the Investigating Officer to indicate in the site plan prepared by him the spot wherefrom the shots were allegedly fired by the appellants and its resultant effect upon the investigation itself, the High Court observed that such failure did not detract from the truthfulness of the eye witnesses and only amounted to an omission on the part of the Investigating Officer. In our opinion neither the criticism of the trial Court nor the reason ascribed by the High Court in its rebuttal can be legally sustained. While preparing a site plan an Investigating Police Officer can certainly record what he sees and observes, for that will be direct and substantive evidence being based on his personal knowledge; but as, he was not obviously present when the incident took place, he has to derive knowledge as to when, where and how it happened from persons who had seen the incident. When a witness testifies about what he heard from somebody else it is ordinarily not admissible in evidence being hearsay, but if the person from whom he heard is examined to give direct evidence within the meaning of Section 60 of the Evidence Act, 1872, the former's evidence would be admissible to corroborate the latter in accordance with Section 157 Cr.P.C (sic Evidence Act). However such a statement made to a Police Officer, when he is investigating into an offence in accordance with Chapter XII of the Code of Criminal Procedure cannot be used to even corroborate the maker thereof in view of the embargo in Section 162(1) Cr PC appearing in that chapter and can be used only to contradict him (the maker) in accordance with the proviso thereof, except in those cases where sub-section (2) of the section applies. That necessarily means that if in the site plan PW 6

had even shown the place from which the shots were allegedly fired after ascertaining the same from the eye witnesses it could not have been admitted in evidence being hit by Section 162 Cr.P.C. The law on this subject has been succinctly laid down by a three Judge Bench of this Court in *Tori Singh vs. State of U.P.*, AIR 1962 SC 399....."

14. Similar is the finding recorded in another case reported as 2010 (15) SCC 91 (*Shivanna vs. State by Hunsur Town Police*) wherein, Their Lordships held as under:-

"6. Mr Sanjay R. Hegde, the learned counsel for the State of Karnataka, has however referred to Ext. P-10 (the site plan) to contend that as the accident had happened on a State highway on the Mysore bypass and the fact that a vehicle which was going ahead of the offending vehicle would have been visible to the appellant and as the accident had happened as he was attempting to overtake that vehicle, a duty to take extra care lay on him but he had ignored this basic principle.

7. We are unable to accept this plea. The site plan only indicates the place where the accident happened and nothing more can be read into it. In the face of the eyewitness evidence produced by the prosecution itself no inferences can be drawn as in such a situation the ocular evidence of those travelling in the vehicle has to be given primary importance. We are of the opinion that this is a case of no evidence, calling for interference at any stage."

15. In another judgment reported as (2005) 13 SCC 624 (*Pratap Singh and another vs. State of M.P.*), it was held that even if the witnesses are not reflected in the site plan, that does not bar the prosecution to produce such witnesses during trial. The relevant extract from the said decision reads as under:-

"18. The High Court, in our opinion, further committed an error in not drawing an adverse inference for non-examination of Shivrajsingh and Motiram. It was for the prosecution to prove its case. Even if in the First Information Report their names were not disclosed but if during investigation materials came to the notice of the Investigating Officer that apart from Mangal Singh two other witnesses had also witnessed the occurrence, he was duty bound to show the places wherefrom they had witnessed the occurrence in the site plan prepared by him and also record their statements under Section 161 of the Code of Criminal Procedure. We do not see any reason as to why adverse inference should not have been drawn for non- filing of the said statements before the Court along with the charge sheet. We have noticed hereinbefore the adverse remarks made as against the Investigating Officer. The High Court may or may not be correct in making those remarks but we only intend to point out that a

site plan is not prepared at the instance of the witnesses but is done as a part of the investigation. If a site plan has been prepared and if during investigation it has been brought to the notice of the Investigating Officer that there were some other witnesses whose evidence would be material for the purposes of proving the prosecution case namely, witnessing the occurrence by two independent witnesses; we do not see any reason why evidence of such witnesses should not have been recorded. It is correct that it is the duty of the Investigating Officer to produce the said statements with the charge sheet but, if the same had not been done, the benefit thereof must be given to the defence and not to the prosecution. The High Court therefore in our opinion committed a serious error in this behalf. Non-examination of the seizure witnesses also, in the

peculiar facts and circumstances of the case was of some significance. The learned Sessions Judge made comments about the non-examination of the seizure witnesses only for the purpose of showing that the investigation in the matter might have been partisan in nature at the hands of PW.7. The High Court on the one hand made adverse comments against the conduct of the Investigating Officer but on the other hand placed strong reliance on his evidence alone for the purposes of believing that several material objects including the weapons of offence viz. Lathi and Barchhi were recovered in accordance with law."

16. In Shingara Singh's case (supra), relied upon by the Division Bench of this Court in Vijay Singh (supra) a bicycle was shown in the site plan. It was found to be an act of interpolation. Similar was the position of the ladder in the site plan. The Court, thus, held that such deficiency in the site plan makes the prosecution case doubtful. However, the defects as quoted above are that part of the site plan which is prepared on the basis of the observation of the Investigation Officer alone is relevant whereas the site plan prepared on the basis of information given to him is hearsay evidence. Such site plan is not admissible until and unless the witnesses on the basis of whose statement the site plan is prepared, appear in the witness box and have been contradicted in terms of Section 162 of the Cr.PC - as held by the Supreme Court in Jagdish Narain's case (supra). Since Shivprasad (PW-2) has not been confronted with the site plan in terms of Section 162 Cr.P.C, therefore, the omission in the site plan of the place where from witnesses have seen the occurrence will not discredit

the prosecution story. It may be noticed that in Singhara Singh's case (supra), three Judge Bench judgment in Tori Singh's case (supra) was not referred to. Since the larger Bench judgment was not referred to in Vijay Singh's case (supra), therefore, the judgment does not lay down a binding precedent. Even on facts, the judgment is distinguishable. Therefore, we do not find that omission of giving the distance or even the place where the witness was standing in the site plan would not create doubt on the presence of the eye-witnesses after they have been examined by the prosecution on oath in Court.

17. The argument that the prosecution has not led evidence that the pistol was not tampered with when it was in custody of the police, is again not tenable. A.P. Singh (PW-11), the Investigating Officer has deposed that the country-made pistol was taken in possession vide memo Ex.P-9 whereas the empty shell and live cartridge was taken in possession vide memo Ex.P-9. He has also deposed that such pistol was sent for examination by the Armourer vide Ex.P-5A and was sent to Forensic Science Laboratory vide memo Ex.P-20 dated 21.11.2002. In cross-examination he has denied the suggestion that the empty shell and the country-made pistol were recovered from somebody else. He admitted that empty shell and the live cartridge was taken in possession on 06.10.2002 but has been sent for examination on 21.11.2002 but there is no document of keeping the recovered articles in Malkhana. The report of the Forensic Science Laboratory Ex.P-21 and P-22 is to the effect that the packets A, B, E and F were received in the Laboratory in a proper seal. Therefore, mere fact that the prosecution agency has not been able to produce the documents in respect of proper custody in the Malkhana will not create doubt on the prosecution story. The report Ex.P-22 in respect of use of country-made pistol in the crime. It states that the country-made pistol, empty shell and the live cartridge was received in sealed and intact condition

but the report is that the mark on the empty shell does not correspond to firing pin of the country-made pistol contained in the parcel A-1. It may be stated that the empty shell was not recovered by the investigating agency from the place of occurrence but was handed over by the accused at the time of his arrest from the pocket; therefore, accused could very well hand over an empty shell which was not fired from the country-made pistol. Keeping in view the direct eye-witness account, non-matching of empty shell having fired from the country-made pistol recovered from the appellant will not be a ground to doubt the prosecution story.

18. In respect of the argument that the country-made pistol, empty shell and live cartridge were sent for forensic science examination after delay again does not warrant any consideration. Ramsingh (PW-4), the Armourer, who deposed that on 21.11.2002 a sealed intact packet was received containing country-made pistol and an empty shell. He has also received the live cartridge which was sent vide memo Ex.P-5A. He has deposed that the country-made pistol was in working condition but whether there was a fire from country-made pistol, could be reported only by the Forensic Science Laboratory, Sagar. The weapon was taken in possession by the police on 06.10.2002 and was forwarded to the Armourer for his opinion on 21.11.2002 and also sent to FSL, Sagar on the same day. Learned counsel for the appellant failed to point out any statutory time limit for forwarding the articles taken in possession for forensic science examination. The country-made pistol and empty shell and live cartridge was sent for the expert opinion in 45 days, therefore, delay in sending the seized articles for opinion of the Forensic Science Laboratory is not much. Therefore, that delay cannot be treated to be fatal for the prosecution case.

19. In respect of the argument that the clothes of Satish Kumar

Chaurasiya (PW-1) must have been blood stained, which were not taken in possession by the police discredits the prosecution story, is again not meritorious. PW-1 in witness box deposed that his blood stained clothes were recovered by the prosecution but when A.P. Singh (PW-11) appeared in the witness box, no question was asked as to why the blood stained clothes were not being produced in the evidence. The failure of the investigating agency to produce the blood stained clothes of the witness will not make the prosecution story doubtful keeping in view the categorical testimony of Satish Kumar Chaurasiya (PW-1). He is the one who picked up the deceased from the place of occurrence and took him to hospital and in the process his clothes were blood stained.

20. We find that failure of the prosecution to lead any evidence of safe custody of country-made pistol, empty shell or live cartridge does not create doubt on the prosecution story. Firstly for the reason that even in the FSL report, empty cartridge was not found to be fired from the country-made pistol and secondly it is a settled law that the defective investigation by itself cannot be a ground for acquittal. It was so held by the judgment of the Supreme Court reported as (2010) 9 SCC 567 (C. Muniappan and others vs. State of Tamil Nadu) wherein it is held as under:-

"55. There may be highly defective investigation in a case. However, it is to be examined as to whether there is any lapse by the I.O. and whether due to such lapse any benefit should be given to the accused. The law on this issue is well settled that the defect in the investigation by itself cannot be a ground for acquittal. If primacy is given to such designed or negligent investigations or to the omissions or lapses by

perfunctory investigation, the faith and confidence of the people in the criminal justice administration would be eroded. Where there has been negligence on the part of the investigating agency or omissions, etc. which resulted in defective investigation, there is a legal obligation on the part of the court to examine the prosecution evidence de hors such lapses, carefully, to find out whether the said evidence is reliable or not and to what extent it is reliable and as to whether

such lapses affected the object of finding out the truth. Therefore, the investigation is not the solitary area for judicial scrutiny in a criminal trial. The conclusion of the trial in the case cannot be allowed to depend solely on the probity of investigation. (Vide Chandra Kanth Lakshmi v. State of Maharashtra, (1974) 3 SCC 626; Karnel Singh v. State of Madhya Pradesh, (1995) 5 SCC 518; Ram Bihari Yadav v. State of Bihar, (1998) 4 SCC 517; Paras Yadav v. State of Bihar, (1999) 2 SCC 126; State of Karnataka v. K. Yarappa Reddy, (1999) 8 SCC 715; Amar Singh v. Balwinder Singh, (2003) 2 SCC 518; Allarakha K. Mansuri v. State of Gujarat, (2002) 3 SCC 57; and Ram Bali v. State of U.P ., (2004) 10 SCC 598."

21. Similar view has been reiterated by the Supreme Court in its judgment reported as (2013) 7 SCC 278 (Ganga Singh vs. State of M.P .) wherein it was held that the court cannot acquit the accused on the ground that there are some defects in the investigation. The Supreme Court concluded as under:-

"17. We are also unable to accept the submission of Mr. Mehrotra that the investigation by the police is shoddy and hasty and there are defects in the investigation and therefore benefit of doubt should be given to the appellant and he should be acquitted of the charge of rape. The settled position

of law is that the prosecution is required to establish the guilt of the accused beyond reasonable doubt by adducing evidence. Hence, if the prosecution in a given case adduces evidence to establish the guilt of the accused beyond reasonable doubt, the court cannot acquit the accused on the ground that there are some defects in the investigation, but if the defects in the investigation are such as to cast a reasonable doubt in the prosecution case, then of course the accused is entitled to acquittal because of such doubt. In the present case, as we have seen, the evidence of PW-5 as corroborated by the evidence of PW-2 and the FIR establish beyond reasonable doubt that the appellant has committed rape on PW-5 and thus the appellant is not entitled to acquittal."

22. In another three Judge Bench judgment reported as (2013) 10 SCC 192 (Hema vs. State Through Inspector of Police, Madras), Their Lordships held, which reads as under:-

"18. It is clear that merely because of some defect in the investigation, lapse on the part of the investigating officer, it cannot be a ground for acquittal. Further, even if there had been negligence on the part of the investigating agency or omissions, etc. it is the obligation on the part of the court to scrutinise the prosecution evidence dehors such lapses to find out whether the said evidence is reliable or not and whether such lapses affect the object of finding out the truth."

23. Similar issue has been discussed by the Supreme Court in

its judgment reported as (2015) 9 SCC 588 (V.K. Mishra and another vs. State of Uttarakhand and another). The relevant paragraph from the said judgment is reproduced as under:-

"34. Refuting the contention of the appellants on the lapses in the investigation and contending that any lapse in the investigation does not affect the core of the prosecution case, the respondents have placed reliance upon the judgment of this Court in State of Karnataka vs. K. Yarappa Reddy, (1999) 8 SCC 715, wherein this Court held as under: (SCC p. 720, para 19)

"19.....It can be a guiding principle that as investigation is not the solitary area for judicial scrutiny in a criminal trial, the conclusion of the court in the case cannot be allowed to depend solely on the probity of investigation. It is well-nigh settled that even if the investigation is illegal or even suspicious the rest of the evidence must be scrutinized independently of the impact of it. Otherwise the criminal trial will plummet to the level of the investigating officers ruling the roost. The court must have predominance and pre- eminence in criminal trials over the action taken by investigating officers. Criminal justice should not be made a casualty for the wrongs committed by the investigating officers in the case. In other words, if the court is convinced that the testimony of a witness to the occurrence is true the court is free to act on it albeit the investigating officer's suspicious role in the case...."

24. Therefore, the failure of the Investigating Officer to produce the bloodstained clothes of Satish Kumar Chourasiya (PW-1) or to produce evidence of safe custody of country-made pistol, empty shell and live cartridge will not prejudice the trial as the statements of eye-witnesses such as Satish Kumar (PW-1) and Shivprasad (PW-2) and even the witnesses namely, Jogendra Tamrakar (PW-9) and Dilip Kumar (PW-10), who have been declared hostile, clearly implicates the appellant as the one who fired the fatal shot from a country-made pistol in his possession.

25. In respect of the argument that Shiv Prasad (PW-2) and Lala (PW-3) were not present at the time of occurrence, it is seen that though the said witnesses have suggested that they were not present at the time of occurrence but a cumulative reading of the entire lengthy cross examination does not lead to any doubt on the presence of the witnesses at the time of occurrence.

26. Although Jogendra Tamrakar (PW-9) has been declared hostile inasmuch as he has not deposed about the presence of Shiv Prasad (PW-2) and Lala (PW-3) at the time of occurrence in the presence of other co-accused but he has deposed about the presence of Satish Kumar Chaurasiya (PW-1) when appellant fired upon the deceased. He denied that other co-accused persons were also beating Ajay at the time of incident. In cross-examination he has stated that his house is 10-15 steps away from the place of occurrence and he denied the suggestion that in fact Satish (PW-1) fired on Sukhendra but by mistake it hit the deceased. The suggestion in fact proves the presence of Jogendra Tamrakar (PW-9) at the place of occurrence.

27. On the other hand, Dileep Kumar (PW-10) has also been declared hostile but he also deposed that the appellant fired, which hit the deceased on his chest and at that time Sukhendra was alone. In cross-examination he admits that there was altercation between appellant and deceased and thereafter the fire was shot. The testimony of PW-9 and PW-10 is relevant to the extent of firing by the appellant on the deceased Ajay.

28. The argument that no independent witness from the market has been examined is again not tenable. Satish Kumar Chaurasiya (PW-1) is the only relative witness. Shiv Prasad (PW-2) and Lala (PW- 3) are not related to the deceased. Still further, the quantity of witnesses is not relevant but the quality thereof. The witnesses including the hostile witnesses have deposed that the accused fired from his pistol upon the deceased. To that extent, their testimony stands corroborated by the prosecution story.

29. In view of the discussion made hereinabove, we do not find any error in the findings recorded by the learned Trial Court. We find that the findings recorded by the learned Trial Court are based upon correct appreciation of law and facts. There is no reason to interfere

with such findings in the present appeal. The appeal is dismissed.