

(2016) 01 CAL CK 0119
In the Calcutta High Court
Case No : C.R.A. No. 278 of 2005

Nashim Ali Gazi

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 19-01-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, Section 34

Citation : (2017) 1 CalLT 110

Hon'ble Judges : Debasish Kar Gupta and Md. Mumtaz Khan, JJ.

Bench : Division Bench

Advocate : Mr. Sanjay Banerjee, Advocate, for the Appellant; Mr. Manjit Singh, Mr. Ranabir Roychowdhury, Mr. Karan Sharma, Advocates, for the State

Final Decision : Dismissed

Judgement

Debasish Kar Gupta, J. - These appeals are preferred by the appellants assailing their conviction under Sections 302/34 of the Indian Penal Code (hereinafter referred to as the I.P.C.) and sentence of suffering rigorous imprisonment for life passed by the learned Additional Sessions Judge, 3rd Court Alipore in Sessions Trial No.2 (1) 2000 arising out of Sessions Case No.48 (3)/1999 on December 4, 2004.

2. On receipt of an information on December 28, 1997 at 18.05 hours Nepal Chandra Pal (PW 12), Sub-Inspector of Police, posted at Patharpratima Police Station, District-South 24-Parganas, went to Bahirchak, South 24-Parganas, and found a dead body at the southern side of a pond in front of the house of one Rashid Gazi, son of Nasim Gazi, Bahirchak, South 24-Parganas. He prepared surathal report of the dead body of Md. Ziaul Haque Molla on the same day, i.e. on December 28, 1997 at about 22.00 hours with the assistance of constable Sadananda Samanta with the help of a Hazzaq lamp in front of the house of aforesaid accused Rashid Gazi, on the basis of identification of the aforesaid dead body by one Md. Islam Naiya son of late Kali Hosain Naiya. The above dead body was sent to the Diamond Harbour S.D. Hospital, South 24-Parganas, for post

mortem examination.

3. A letter of complaint dated December 29, 1997 was submitted at 00.30 hours by one Md. Jahangir Naiya (PW 1) to the Officer-in-Charge, Patharpratima Police Station, at the spot. The letter of complaint under reference (Ext.-1) was scribed by Ismil Ali Naiya, the father of the PW 1.

4. According to the above letter of complaint, one Md. Ziaul Haque Molla (the cousin brother of PW 1 and the deceased) came to his residence on December 28, 1997 at about 15.00 hours. He took PW 1 to the office of Sri Santosh Kumar Jalani, the Panchayat Pradhan, District?South 24-Parganas to collect character certificate of the PW 1. The above Panchayat Pradhan was not present at his home. So, at about 16.00 hours, Ziaul Haque Molla (the deceased) told him to go home informing him that he (the deceased) would go to Madarpara. Thereafter, standing near the house of one Ayub Ali Molla, the PW 1 saw that as soon as the victim had reached the crossing of Bahirchak for the purpose of boarding on a bus, Khaleda Bibi, wife of Rahisuddin caught hold of the victim from backside suddenly. Then, Nashim Gazi (the appellant in CRA 278 of 2005), Murtaza Gazi (the appellant in CRA 389 of 2009), Rashid Gazi and Rahiuddin Gazi, both son of the aforesaid Murtaza Gazi also caught hold the victim from the backside. Murtaza Gazi (the appellant in CRA 389 of 2009) assaulted the victim with a "banti" (a sharp tool used for cutting) on his head. Rashid Gazi assaulted the victim with a crowbar on his head. The victim fell down on the ground. The aforesaid persons dragged the victim by the side of a pond situated in front of the house of the aforesaid Rashid Gazi. The PW 1 rushed to the place of occurrence and requested the appellants and the others to release the victim. They brandished a machine at the PW 1 and threatened to shoot him in the event of moving forward further. PW 1 started crying.

5. Haritan Bewa (PW 2), Esmatara Khatoon (PW 3) and Maleka Bewa (PW 4), the cousin sister, sister and the grandmother of the PW 1 respectively, came running there and requested to release the victim. The appellants and others kicked them and threatened them showing a machine (pipe gun). Then, standing at a distance from the place of commission of the above offence, they witnessed that aforesaid Khaleda Bibi handed over two pieces of wood to the others. Nashim Ali Gazi and Murtaza Gazi, the appellants in these appeals, placed two legs of the victim above those pieces of woods and smashed two legs of the deceased with two iron crowbars. Rashid Gazi, one of the associates of the appellants, chopped the hands of the deceased into pieces with "Daval" (sic) keeping the hands on the wood. The victim was beaten indiscriminately by the other associates of the appellants. Many villagers were rushing towards the place of occurrence hearing the shouting of the PW 1. The appellants along with their aforesaid associates fled away running through the field in the west direction. The PW 1 and others went near the body of the victim and found him dead. According to the above letter of complaint, the killing of the victim was outcome of a conspiracy.

6. The aforesaid Sri Nepal Chandra Pal (PW 12) Sub-Inspector of Police,

Patharpratima Police Station, District-South 24-Parganas was engaged for investigation of the above case. A rough sketch map of the place of occurrence was prepared by him with reference to First Information Report bearing Patharpratima P.S. Case No.71 dated December 29, 1997 initiated for commission of offence under Sections 302/201/34 of I.P.C. on the basis of the information mentioned herein above.

7. The post mortem examination of the body of the victim was conducted by Dr. Goutam Basu (PW 11), the Medical Officer of Diamond Harbour S.D. Hospital, District-South 24-Parganas, at the material point of time, on December 29, 1997. According to the opinion of PW 11, as recorded in the above post mortem report, the cause of death of the victim was shock and haemorrhage following antemortem injuries as incorporated in the post mortem report.

8. Charge-sheet No.46 dated July 20, 1998 was submitted against (1) Khaleda Bibi, (2) Nashim Ali Gazi (appellant in CRA 278 of 2005), (3) Rahiuddin Gazi, (4) Rashid Ali Gazi and (5) Murtaza Gazi (appellant in CRA 389 of 2009). Charge dated January 12, 2000 was framed against the above five accused persons for commission of an offence punishable under Section 302 read with Section 34 of I.P.C. Thereafter Khaleda Bibi, Rashid Gazi and Rahisuddin Gazi absconded and trial proceeded only against these appellants. The prosecution adduced 12 witnesses. The statements of the appellants were recorded under Section 313 of the Cr.P.C. on March 31, 2004. After considering the evidences on record the impugned judgment, order of conviction and sentence were passed by the learned Court below.

9. According to Mr. Sanjay Banerjee, learned Advocate appearing on behalf of the appellants in both the appeals, the impugned judgment was not based on evidence. The relevant evidence, both oral and documentary were not taken into consideration and extraneous factors were taken into consideration. According to him, the decision making process of the learned Court below was not sustainable in law for the following reasons:-

(i) PW 1, PW 2, PW 3, PW 4, PW 5 and PW 6 should not be treated as eyewitnesses in view of the major contradictions in between the evidence adduced by the above prosecution witnesses as also contradictions of the evidence adduced by them with that of the evidence of PW 12, the Investigating Officer (hereinafter referred to as I.O.). The learned Court below did not take into consideration the distance in between the place where from the PW 1 claimed to observe the commission of offence by the appellants with that of the place of occurrence.

(ii) There were major contradictions in between the evidences of PW 1, PW 2, PW 3, PW 4, PW 5 and PW 6 with regard to the time of arrival of the above witnesses at the place of occurrence. Further the times of arrival of the PW 2, PW 3, PW 4, PW 5 and PW 6 at the place of occurrence were not corroborated with the evidences adduced by the I.O. (PW 12). The learned Court below failed to

appreciate that in the event the above time factors were taken into consideration in its entirety, it would lead to an absurdity. Therefore, none of them was eyewitness of commission of offence.

(iii) According to the prosecution case, the commission of offence took place at or about 16.00 hours on December 28, 1997. The surathal report was prepared by the I.O. (PW 12) in connection with Patharpratima P.S. Case No.71 dated December 29, 1997, according to the above surathal report. According to the evidence of the I.O. (PW 12), inquest on the dead body of the victim was conducted by him after his engagement as Investigating Officer in connection with the above P.S. case. Further according to the FIR under reference the same was drawn at 06.15 hours on December 29, 1997, i.e. the number of the above P.S. case was incorporated in the surathal report before drawing the above FIR.

(iv) Though according to the FIR under reference, the first information received in Patharpratima Police Station at 18.05 hours on December 28, 1997, as appears from G.D. Entry No.1045 made on that date, there was no explanation of delay in drawing the FIR at 06.15 hours on the next date, i.e. on December 29, 1997. The Officer-in-Charge of Patharpratima Police Station, who was the maker of the FIR, was not a prosecution witness. So, the above FIR should not have been taken into consideration by the learned Court below.

(v) The father of PW 1, Islam Ali Naiya scribed the letter of complaint in Bengali. According to the PW 3, the aforesaid Islam Ali Naiya was not present at the place of occurrence on the above date. According to the evidence of PW 4, the aforesaid Islam Ali Naiya went to Nayadhari village, District-South 24-Parganas and he was not available in his residence on that date. That apart, according to the evidence of PW 1 adduced in course of cross-examination, he could write in Bengali. Therefore, the letter of complaint which was the basis of drawing formal FIR was not proved.

(vi) There were also contradictions with regard to the arrival and presence of the villagers other than the prosecution witnesses. So far as the evidence of the eyewitnesses were concerned, according to the PW 1, the villagers other than the prosecution witnesses came to the place of occurrence hearing the shouting of PW 1. According to PW 2, the above villagers arrived at the place of occurrence after his arrival at the above place. According to PW 3, no person from the village under reference rushed to the place of occurrence following him upon hearing shouting of the PW 1.

(vii) The seizures of alleged weapons of offence, that is one "bati", one "iron shabol" two cubits with sharp edge were recovered from the house of Rashid Gazi, one of the miscreants on May 20, 1998, i.e. six months after the date of commission of offence. The alleged weapons of offence, i.e. one "dawali" with one wooden "but" and one shabol made of iron, were seized from the house of Nashim Ali Gazi on May 17, 1998. They were absconding during the intervening period. Therefore, carrying of the alleged weapons of offence by the respective

miscreants during the period of absconding and to store them at their respective residences after their returning home after six months should not have been taken into consideration by the lower Court below.

(viii) The seized articles and the controlled earth were not sent for chemical examination. Those were not produced before the Court by the I.O. (PW 12) at the time of adducing evidence initially on different dates from September 11, 2002 to August 11, 2003. Subsequently, he was recalled by prosecution on the last date of adducing evidence when the seized weapon of offence, pant, shirt and maplar, soaked with blood were produced before the Court by the I.O. (PW 12). During cross-examination he stated that no seizure list was prepared in respect of the wearing apparels of the deceased, nor those wearing apparels were mentioned in the charge-sheet.

(ix) There was no material on record showing enmity between the deceased person and the appellants. Under such circumstances it was unreasonable to allege that in the letter of complaint that the commission of offence by the appellant was an outcome of a conspiracy.

10. Reliance is placed By Mr. Banerjee upon the decisions of, Badam Singh v. State of M.P., reported in AIR 2004 SC 26, Lakshman Prasad v. State of Bihar, reported in AIR 1981 SC 1388 and Anil Prakash Shukla v. Arvind Shukla, reported in (2007) 9 SCC 513 in support of his above submissions.

11. On the other hand, Mr. Manjit Singh, learned Public Prosecutor, High Court, Calcutta, submits on behalf of the State respondents that the charge framed against the appellants were proved beyond doubt on the basis of the evidence of eyewitnesses out of whom PW 1, PW 3 and PW 4 were relations of the deceased person and PW 2, PW 5 and PW 6 were natural witnesses. The evidence of PW 1 (de facto complainant) was further corroborated by that of PW 5. So far as the presence of PW 2, PW 3 and PW 4 at the place of occurrence at the material point of time was concerned.

12. Drawing our attention towards the times of recording the General Diary Entry (hereinafter referred to as G.D.E.) made in the Patharpratima Police Station, District-South 24-Parganas, submission of letter of complaint by PW 1 and the recording of Patharpratima P.S. F.I.R. No.71 dated December 29, 1997, respectively, it is submitted by the learned Public Prosecutor that there was no contradiction for creating any doubt or dispute with regard to correctness of decision making process of the learned trial Court. It is further submitted by him that in view of the fact and circumstances of this case, non-production of the general diary could not create any doubt with regard to commission of offence by the appellants. There was no cross-examination of the PW 12 with regard to such non-production of general diary.

13. According to learned Public Prosecutor, there was no delay in drawing the FIR under reference taking into consideration the series of events which took place at the material point of time.

14. Drawing our further attention towards the post mortem report under reference, it is further submitted by the learned Public Prosecutor that there was no discrepancy of material dimension with regard to injuries sustained by the deceased person and the cause of death mentioned therein with the evidences of eyewitnesses.

15. With regard to the weapon of offence and the seizure list thereto, it is submitted by him that those were exhibited (Mat. Ext.-1 and 2) without protest. Taking into consideration the oral evidence of the eyewitnesses and the post mortem report under reference, the learned trial Court correctly arrived at the conclusion with regard to the use of the weapons of offence. No evidence was brought on record to create any doubt with regard to the weapon under reference so far as the question of use of the same for commission of offence by the appellants was concerned.

16. It is also submitted by the learned Public Prosecutor that the commission of offence by the appellants was proved beyond doubt on the basis of the evidences adduced by the eyewitnesses which were corroborating with the other oral and documentary evidences. So, motive of the appellants in commissioning the above offence was not an essential ingredient for their conviction under Sections 302/34 of I.P.C.

17. Reliance is placed by the learned Public Prosecutor on the decisions of State of U.P. v. Naresh & Ors., reported in (2011) 4 SCC 324, Sanjeev Kumar Gupta v. State of U.P., reported in 2015 AIR (SCW) 3151, Dharnidhar v. State of U.P., reported in (2010) 7 SCC 759 and Shyamal Ghosh v. State of West Bengal, reported in (2012) 7 SCC 646 in support of his above submission.

18. We have heard Mr. Sanjay Banerjee, learned Advocate appearing for the appellants and Mr. Manjit Singh, learned Public Prosecutor, High Court Calcutta, and we have considered the facts and circumstances of this case.

19. While dealing with the first contention of the appellants that in view of discrepancies in between the evidences of PW 1, PW 2, PW 3, PW 4, PW 5 and PW 6, there was doubt that they had witnessed the commission of offence, we may recollect the time honoured proposition of law laid down by the Hon'ble Supreme Court in the matter of State of Punjab v. Jagir Singh, Baljit Singh and Karam Singh reported in (1974) 3 SCC 277 that though the benefit of reasonable doubt should go in favour of the accused, the Court should not reject the evidence which is ex facie trustworthy and reading the same as a whole leads to a ring of truth. The relevant portion of the above decision is quoted below:-

"23. A criminal trial is not like a fairy tale wherein one is free to give flight to one's imagination and phantasy. It concerns itself with the question as to whether the accused arraigned at the trial is guilty of the crime with which he is charged. Crime is an event in real life and is the product of interplay of different human emotions. In arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the court has to judge the evidence by

the yardstick of probabilities, its intrinsic worth and the animus of witnesses. Every case in the final analysis would have to depend upon its own facts. Although the benefit of every reasonable doubt should be given to the accused, the courts should not at the same time reject evidence which is ex facie trustworthy on grounds which are fanciful or in the nature of conjectures."

(Emphasis supplied)

20. The above proposition of law has been repeated and reiterated by the Apex Court time and again. In the decision of State of U.P. v. Krishna Master, reported in (2010) 12 SCC 324, it has been held by the Hon'ble Supreme Court that minor discrepancies of trivial matters would not ordinarily permit rejection of the evidence as a whole on the basis of hypertechnical approach by taking sentences torn out of the context here and there from the evidence, attaching importance to some technical error of the investigating officer in going to the root of the matter. The relevant portion of the above decision is also quoted below:-

"15. Before appreciating evidence of the witnesses examined in the case, it would be instructive to refer to the criteria for appreciation of oral evidence. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is found, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hypertechnical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole.

16.

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17. In the deposition of witnesses, there are always normal discrepancies, howsoever honest and truthful they may be. These discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition, shock and horror at the time of occurrence and threat to the life. It is not unoften that improvements in earlier version are made at the trial in order to give a boost to the prosecution case, albeit foolishly. Therefore, it is the duty of the court to separate falsehood from the truth. In sifting the evidence, the court has to attempt to separate the chaff from the grains in every case and this attempt cannot be abandoned on the ground that the case is baffling unless the evidence is really so confusing or conflicting that the process

cannot reasonably be carried out. In the light of these principles, this Court will have to determine whether the evidence of eyewitnesses examined in this case proves the prosecution case."

(Emphasis supplied)

21. In adjudicating the aforesaid contention of the appellants, we find from the evidence that the incident of catching the deceased person (the cousin of PW 1) by the appellants was witnessed by the PW 1 at the time of their returning back to home within a few minutes from changing the direction of his further move from a place nearby the place of occurrence. The injuries sustained by the deceased as a result of assaulting him by the appellants with the participation of other miscreants were corroborated by the post mortem report of dead body of the deceased as also the evidence adduced by the other eyewitnesses. His deposition with regard to holding of threats by the appellants and others showing him firearm to restrain him from moving further towards the deceased and/or to shout, was taken into consideration by the learned Court below reading his evidence as a whole.

22. According to the deposition of PW 1, after assaulting the deceased for the first time near the crossing of Bahirchak, the deceased was dragged beside a pond situated near the house of Rashid Gazi. So, we are of the opinion that the arrival of PW 2, PW 3 and PW 4 near the house of one Rashid Gazi and to witness the commission of offence by the appellants and his associates from the second phase of assaulting the deceased should not raise even an iota of doubt in the mind of the learned Court below with regard to their depositions. There was further corroboration of the deposition of PW 1 with regard to threatening them showing firearm by the associates of appellant in order to stop them moving further towards the deceased and/or shouting. There was corroboration of the evidence of PW 2 with that of the PW 3 and PW 4, as a whole so far as the place of their arrival and witnessing the commission of offence by the appellants and their other associates was concerned.

23. PW 5 and PW 6 were the natural witnesses. They were residing in the same village. Their depositions were also corroborated with that of other eyewitnesses, namely, PW 2, PW 3 and PW 4, so far as the commissioning of offence by the appellants with other miscreants from the second phase of assaulting the deceased near the house of Rashid Gazi was concerned.

24. That apart, the injuries as also the cause of death of the victim as mentioned in the post mortem report and nature of weapon used by the appellants for commissioning of offence were corroborating with the deposition of aforesaid eyewitnesses, namely, PW 1, PW 2, PW 3, PW 4, PW 5 and PW 6.

25. The deposition of I.O. (PW 12) in course of cross-examination that no dragging mark or blood trail on the road of Bahirchak to bring the deceased nearby the pond lying and situated near the house of aforesaid Rashid Gazi had not been rightly observed by the learned Court below as discrepancy of material

dimension for creating doubt in respect of the oral evidence of the eyewitnesses and its corroboration with the injuries sustained by the deceased as also the cause of his death as mentioned in the post mortem report.

26. Necessary to observe, that non-detection of one or two injuries on the body of the victim while preparing the surathal report was also not a discrepancy touching the root of the case of the prosecution in view of the accepted proposition of law as discussed herein above. Surathal report was not prepared by a medical expert and the object of preparing the same was to find out prima facie a case of commission of cognisable offence. However, the contention of the appellant regarding the doubt of using the recovered weapon for commissioning the offence will be considered at a latter part of this judgement.

27. With regard to witnessing the incident of attacking the deceased at Bahirchak from a distance of about 20/30 cubits, so far as the evidence of PW 1 was concerned, was not considered by the learned trial Court as an absurdity correctly. Therefore, we are of the opinion that interference with the impugned judgment of the learned trial Court in respect of the above contention of the appellants is not necessary.

28. The next contention of the appellants is the truthfulness of the evidence of PW 2, PW 3 and PW 4 as eyewitnesses. We find corroboration in their evidences so far as the question of their arrival near the house of aforesaid Rashid Gazi and to witness the commission of offence by the appellant and his associates from the second phase of assaulting the deceased was concerned. We find corroboration of the above evidence with that of PW 5 and PW 6, who were natural witnesses. Moreover, it has been discussed herein above we find no impropriety in the decision making process of the learned Court below so far as the evidence of PW 1 (the de facto complainant) of witnessing the commission of offence by the appellants from the first phase of assaulting the deceased was concerned. That apart, evidence of aforesaid witnesses was corroborating with that of the I.O. (PW 12). In view of the above, we do not find any substance in the submissions made on behalf of the appellants in this regard.

29. The next contention of the appellants is the unexplained delay in lodging the FIR was not taken into consideration by the learned Court below. In the matter of Jittender Kumar v. State of Haryana, reported in (2012) 6 SCC 204, it has been observed by the Hon"ble Supreme Court that mere delay in lodging FIR may not prove fatal in all cases. The Court has to seek an explanation for delay and check the truthfulness of the version put forward. In the event, the Court is satisfied with regard to reasonablity of delay, if any, in drawing the FIR, then the case of the prosecution should not fail on the ground alone. The relevant portion of the above decision is quoted below:-

"43. It is a settled principle of criminal jurisprudence that mere delay in lodging the FIR may not prove fatal in all cases, but in the given circumstances of a case, delay in lodging the FIR can be one of the factors which corrode the credibility of

the prosecution version. Delay in lodging the FIR cannot be a ground by itself for throwing away the entire prosecution case. The court has to seek an explanation for delay and check the truthfulness of the version put forward. If the court is satisfied, then the case of the prosecution cannot fail on this ground alone. [Ref. Yakub Ismailbhai Patel v. State of Gujarat, State of Rajasthan v. N.K. (SCC p.41, para 15) and Shubh Shanti Services Ltd. v. Manjula S. Agarwalla.]

30. Considering the time factors relating to the occurrence of series of events in this matter, we find that the commission of offence took place at 16.00 hours on December 28, 1997. The above information was received in Patharpratima Police Station, Sub-Division- Kakdwip, District-South 24-Parganas, on December 28, 1997, at 18.05 hours by PW 12. At that point of time the information was recorded under G.D. Entry No.1045 at the above police station. He went to Bahirchak, South 24-Parganas and found a dead body in front of the house of one Rashid Gazi. On the same date at about 22.00 hours he prepared the surathal report of the dead body of the victim which had been identified by one Md. Islam Naiya. Thereafter, the dead body of the deceased was sent to Diamond Harbour S.B. Hospital, South 24-Parganas for post mortem examination. The letter of complaint was received from PW 1 on December 29, 1997 at about 00.30 hours at the place of occurrence by the Officer in Charge, Patharpratima Police Station which he forwarded to the Patharpratima Police Station. PW 10 received the above letter of complaint of PW 1 in Patharpratima Police Station, District South 24-Parganas, on December 29, 1997 at 06.15 hours relating to the commissioning of offence under reference. It was recorded under Entry No.1054 and Patharpratima P.S. Case was drawn at that point of time under FIR no.71 dated December 29, 1997, under Sections 302/34 of the I.P.C. against the five accused persons on the basis of the above letter of complaint. Considering the place and time of receipt of the above letter of complaint, there was a reasonable link of referring the FIR number under reference in the surathal report.

31. Considering the aforesaid time factors, we are of the opinion, that the consumption of aforesaid period in registering the FIR was inevitable and it was not such an inordinate delay which could be construed as a ground for acquittal of the appellants provided the prosecution could prove its case beyond reasonable doubt otherwise. Therefore, we do not find any error in the decision making process of the trial Court in this regard.

32. Another contention of the appellants was relating to question of presence of father of the PW 1 at that place of occurrence on the date of the incident and doubt regarding truthfulness of scribing the letter of complaint in Bengali, because, according to the evidence of Pw 4, the father of the PW 1 went to Nayadhari Village on that date and he returned back home on the next date. According to the evidence of PW 1, he was mentally disturbed after witnessing the incident of killing of the victim. He could not regain his mental stability when the other people came to the place of occurrence. According to the evidence of PW 6 (a natural eyewitness), he narrated the incident of murder of the victim to

police on the date of occurrence of the incident in the evening when father of the PW 1 was present there. There could be no doubt or contradiction with the evidence of PW 4, in the event the father of the PW 1 went to Nayadhari village and thereafter went to the place of occurrence in the evening as also to return back home on the next day in the morning. With regard to scribing the letter of complaint, though the PW 1 had the capacity/knowledge of writing the same in Bengali, we are of the opinion that the question of inability to get out of the state of shock by the PW 1 after witnessing the brutal killing of the deceased and not to regain his composure by that time was neither confusing nor conflicting and reading the evidence as a whole it appeared to the learned Court below to have a ring of truth. After further consideration of the evidence of PW 10 in receiving the letter of complaint (Ext.-1) without any protest and/or in absence of any cross-examination with regard to truthfulness of the same, we do not find any error in the decision making process of the learned Court below in raising no doubt about the truthfulness of the letter of complaint.

33. So far as the question of discrepancy in relation to arrival and presence of villagers at the place of occurrence of death of the victim is concerned, we have already discussed the cardinal rule of final analysis of evidence herein above. In order to appreciate the evidence applying the above cardinal rule to the context here, we may further refer to the decision of State of U.P. v. M. K. Anthony, reported in (1985) 1 SCC 505. It has been observed by the Apex Court that in examining the truthfulness of the evidence, the Appellate Court will have to attach due weightage to the appreciation of evidence by the Trial Court. Unless there are reasons weighty and formidable it would not be proper for the Appellate Court to reject the evidence on the ground of minor variations or infirmities in some details unrelated to the main incident because power of observation, retention and reproduction differ with individuals. The relevant portion of the above decision is quoted below: -

"10. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hypertechnical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. If the court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to

reject the evidence on the ground of minor variations or infirmities in the matter of trivial details. Even honest and truthful witnesses may differ in some details unrelated to the main incident because power of observation, retention and reproduction differ with individuals."

(Emphasis supplied)

34. In the light of the facts and circumstances involved here, the presence of villagers at the place of occurrence was unrelated for examining the truthfulness of the evidence of eyewitness and others. We are not inclined to take a different view to that of the learned Court below in this regard.

35. For dealing with the question of using the recovered weapons by the appellants in commissioning the offence under reference, we would like to refer to the principles of law settled by the Hon"ble Supreme court in this regard as follows:-

36. In *Raju @ Narinder Kumar v. State of Haryana*, reported in (2011) 14 SCC 636, the Apex Court took into consideration the fact of recovery of weapon of offence at the disclosure of the accused, nature of injury sustained and the post mortem report (the injury could have been caused with a sharp-edged weapon like the knife) to arrive at a conclusion that both the Court below committed no error in awarding life imprisonment to the appellant. Relevant portions of the above decision are quoted below:-

"13. The injuries which were caused on the vital parts of the deceased stand fully corroborated from the evidence of PW 3 Dr Benu Gupta, who had performed the post-mortem on the three dead persons. The injuries on the persons of the deceased are at the same vital parts of the bodies, described by the aforesaid witnesses. Thus their ocular evidence is fully corroborated with the medical evidence.

14. It is also to be noted that the weapon of offence (knife) was recovered at the disclosure of the appellant, which was kept concealed in a heap of rubbish in the corner of the residential house. The said statement was duly signed by the appellant and was attested by the prosecution witnesses. At the time of recording of the evidence of PW 3 Dr Benu Gupta, the said knife was shown to her, who categorically deposed that with the aid of the said knife, the nature of injuries sustained by all the three deceased, could be caused. There is consistency in the evidence of the prosecution witnesses. There is no reason to doubt their credibility or trustworthiness."

37. In *Bakhshish Singh v. State of Punjab & Ors.*, reported in (2013) 12 SCC 187, the Hon"ble Supreme Court took into consideration the testimony of the doctor who had prepared the post mortem report that the injuries of the deceased had been caused by a sharp-edged weapon, to arrive at a conclusion that it was quite consistent with the use of dagger for the offence. The relevant portion of the above decision is quoted below:-

"27. It was further urged that the dagger which was produced in the court could not have been used as an instrument for the crime because the dagger was not shown to the doctor during post-mortem examination and the doctor has only stated that the injuries could have been through the sharp edged weapon given in the court. We find from the testimony of the doctor that he deposed that the injuries were caused by a sharp-edged weapon, which is quite consistent with the use of dagger for the offence."

38. In the instant case the learned trial Court took into consideration the evidence of eyewitnesses, the injuries detected on the body of the deceased in course of preparing surathal report, the injuries and cause of death of the victim as recorded in the post mortem report, the evidence of the Doctor concerned, different weapons/articles seized from the appellants during investigation, namely two pieces of wood, one iron rod, one "dao", one "banti" and one iron "sabol", which had been produced before the Court by the I.O. (PW 12) together with seizure lists to arrive at a conclusion that the aforesaid weapons/articles had been used by the appellants for commissioning the offence under reference. We do not find any impropriety in the inference drawn by the learned trial Court in this regard.

39. The next contention of the appellants was that the seized articles and the controlled earth were not sent for chemical examination and those were produced before the Court by the I.O. (PW 12) when he had been recalled by prosecution. The Apex Court held in *Promode Dey v. State of West Bengal*, reported in (2012) 4 SCC 559, while dealing with almost identical facts and circumstances, that non-collection of chemical report of the seized articles may be a defect in investigation but the same cannot result in acquittal of an accused against whom enough evidence is available for conviction. The relevant portion of the above decision is quoted below:-

"13. The learned counsel for the respondent argued that the fact that the FSL report was not collected from the FSL may be defect in the investigation but a defect in investigation cannot result in acquittal of an accused against whom enough evidence is available for conviction. In support of this proposition, he relied on the decision of this Court in *Ramappa Halappa Pujar v. State of Karnataka*."

40. As discussed herein above, the commission of offence under reference has been proved beyond any reasonable doubt on the basis of the evidence of as many as six eyewitnesses, out of which two were natural witnesses, the seizure of weapon of offence and the post mortem report, amongst others, no adverse inference can be drawn from the above contention of the appellants.

41. Regarding the contention of the appellants that impugned judgement cannot be sustained in law in absence of any evidence in support of existence of enmity in between the deceased and the appellants, we find that the following ingredients are essential in connection with the offence under section 302 of the

I.P.C. : -

"Ingredients of offence. ? The essential ingredients of the offence under section 302 are as follows:

- (1) Death of a human was being caused;
- (2) Such death was caused by or in consequence of the act of the accused;
- (3) Such act was done ?
 - (a) with the intention of causing death, or
 - (b) that the accused knew it to be likely to cause death, or
 - (c) that the injury was sufficient in the ordinary course of nature to cause death."

42. Moreover, it has been held in *Zile Singh v. State (Delhi Administration)*, reported in 1980 (Supp) SCC 690, that the requirement of motive becomes academic when there is direct evidence to connect the accused. The relevant portion of the above judgement is quoted below:-

"4. Moreover as indicated above the statement of PW 20-A is corroborated by the evidence of PW 22 and recovery of blood-stained clothes from the possession of the appellant. This Court will not reappraise that evidence in appeal by special leave. It was then argued that there was no reliable evidence to prove the motive for the murder. As there is direct and clear evidence which connects the accused with the murder of the deceased, the question of motive becomes academic. The High Court has given cogent reasons for accepting the evidence of recovery and corroborative evidence of PW 22. We are unable to find any error of law in the findings arrived at by the High Court. We are, therefore, satisfied that there is no merit in this appeal which is accordingly dismissed."

43. Taking into consideration the facts and circumstances involved in these appeals, as discussed herein above, we find that there was reliable evidence to connect the appellants with the murder of the deceased. Therefore, we do not find any impropriety in the impugned judgement in this regard.

44. In the decision of *Badam Singh (supra)*, there was doubt in respect of presence of eyewitness. There was no doubt in the mind of the Court with regard to presence of eyewitness. In *Lakshman Prasad (supra)*, it was held that the complainant implicated his neighbor falsely in a case of dacoity due to enmity with him. The facts and circumstances of the instant appeals were different altogether. In *Anil Prakash Shukla (supra)*, there was inconsistency between version given in the FIR and statement made before the Court by the sole eyewitness. In these appeals in our hand, the contents were different. So, none of the aforesaid decision helped the appellants here.

45. In view of the above, we are unable to find any error in the decision making process of the impugned judgment. There is no merit in these appeals.

46. These appeals are, accordingly dismissed.

47. Let this judgment together with the Lower Court's records be sent back to the learned Court below expeditiously.

Urgent Photostat certified copy of this judgment, if applied for, be given to the parties, on priority basis.

Md. Mumtaz Khan, J. - I agree.