

(1995) 07 BOM CK 0041
In the Bombay High Court
Case No : Criminal Appeal No. 314 of 1991

Ramrao Bhujade		APPELLANT
	Vs	
The State of Maharashtra		RESPONDENT

Date of Decision : 03-07-1995

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 157, 159, 313
Penal Code, 1860 (IPC) — Section 300, 302

Citation : (1996) CriLJ 112

Hon'ble Judges : R.M. Lodha, J;B.U. Wahane, J

Bench : Division Bench

Advocate : M.R. Daga, for the Appellant; K.G. Pande, Assistant Public Prosecutor, for the Respondent

Judgement

R.M. Lodha, J.—On 20-5-1991, after trial in Sessions Case No. 39 of 1990, the accused/appellant was convicted by the Sessions Judge, Wardha, for the offence punishable u/s 302 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for life, and dissatisfied by the conviction and sentence, the accused/appellant has preferred this appeal.

2. Deceased Durga Bhujade was the wife of the accused-appellant Ramrao Domaji Bhujade. On 24-1-1990 between 5-00 to 6-00 P.M. the accused/appellant, according to the prosecution, assaulted his wife Durga and hit her by stone (Art. 4) on her head resulting into fractures of frontal bone, parietal bone, temporal bone and nasal bone and number of lacerated injuries. Durga died. An oral report was lodged by P.W. 5 Aruna Domaji Bhujade - the sister of the accused/appellant, at police station, Wardha, at about 6-30 P.M., and on the basis thereof offence u/s 302 of the Indian Penal Code was registered, vide Crime No. 33/90 at police station Wardha. Post-mortem on the dead body of deceased Durga was conducted on 25-1-1990 and the death of Durga was opined to be due to shock secondary to excessive haemorrhage and injury to brain. The investigation proceeded immediately by Mulchand Dulichand

Sharnagat P.S.I., police station Wardha (P.W. 9). The Investigating Officer visited the place of incident and inquest panchanama (Exh. 18) was prepared. The Investigating Officer recorded the statements of Aruna (PW 5), Damodhar (PW 4), Shrikant, Kamala, Prabhakar and others on 25-1-1990. The accused was arrested and his clothes were seized, viz. Pajama (Art. 6), shirt (Art. 7) and Shadow Baniyan (Art. 8). Stone (Art. 4) as well as the clothes worn by the accused, viz., Pajama (Art. 6), Shirt (Art. 7) and Shadow Baniyan (Art. 8), were sent for chemical analysis and according to the Chemical Analyser's report (Exh. 53), on all these articles blood group "O" was found. The deceased had the blood group "O" while the blood group of the accused is "A". On conclusion of investigation, the Investigating Officer submitted the challan and since the offence was u/s 302 of the Indian Penal Code and exclusively triable by the Sessions, the accused was committed to the Sessions Court, Wardha, and the Sessions Judge, Wardha, on 15-11-1990 charged the accused that on or about 24-1-1990 at about 5-30 to 6-00 P.M. at Wardha, the accused committed the murder intentionally or knowingly causing the death of his wife Durga by hitting her by means of a stone and thereby committed an offence punishable u/s 302 of the Indian Penal Code. The accused pleaded not guilty. Prosecution in support of its case examined P.W. 1 Vijay Chhaganlalji Chandak, P.W. 2 Pravin Dattatrya Munde, P.W. 3 Surajpal Bhaiyasingh Thakur, P.W. 4 Damodhar Sonbaji Mohite. P.W. 5 Aruna w/o Krishnaraoji Sawarkar, P.W. 6 Rajendra Vithalrao Jibkate, P.W. 7 Namdeo Marotrao Kale, P.W. 8 Ashok Kesharao Chaudhari, P.W. 9 Mulchand Dulichand Sharnagat and P.W. 10 Gunwant Pandurang Lichade. The post-mortem report (Ex. 26), oral report lodged by P.W. 5 Aruna (Exh. 40), first information report (Ex. 41), Chemical Analyser's report (Exh. 53) and other documents were also exhibited by the prosecution. Statement of the accused u/s 313 of the Code of Criminal Procedure was recorded in which the accused denied the accusation against him. The accused filed the written statement before the trial Court on 12-4-1991. The Sessions Judge, Wardha, after recording the evidence, heard the arguments of the learned Public Prosecutor and the counsel for the accused and by his judgment dated 20-5-1991 concluded that the prosecution proved that deceased Durga died a homicidal death and that the prosecution also proved that it was the act of the accused which was responsible for the death of deceased Durga by hitting her with a stone, and the said act done by the accused was with an intention to cause the death of the deceased, and accordingly convicted the accused of the offence punishable u/s 302 of the Indian Penal Code and sentenced him to suffer rigorous imprisonment for life.

3. We have heard the learned counsel for the accused/appellant and the learned Additional Public Prosecutor at considerable length and perused the record of the case and the paper-book with the assistance of both the learned counsels.

4. Assailing the conviction and sentence awarded by the Sessions Judge, Wardha, to the accused/appellant, Shri M. R. Daga, the learned counsel for the appellant, has strenuously urged that the prosecution has failed to establish the guilt of the accused/appellant for the offence punishable u/s 302 of the Indian

Penal Code. Pointing out the infirmities in the prosecution case, Shri Daga, the learned counsel for the accused/appellant, urged that the prosecution has not examined Purshottam, who was a very material witness, and from the evidence led by the prosecution it appeared that deceased Durga had affairs with him and he also visited the house of the accused on the day of the incident while the accused was away for his work. Shri Daga urged that the possibility could not be ruled out that the murder of deceased Durga was committed by Purshottam, and in fact when the accused arrived at his house, he found that his wife Durga was already murdered. The learned counsel for the accused/appellant also submitted that P.W. 5 Aruna was declared hostile and in reply to the Public Prosecutor's question in cross-examination, she deposed that the accused was frustrated and he told her that he would go to the police station for giving the report and many people had advised her that her brother Ramrao might end his life and, therefore, she went to the police station and lodged the report. Shri Daga relying on this part of the deposition of P.W. 5 Aruna submitted that the accused was frustrated and wanted to end his life because, firstly when he arrived at his house, he found his wife dead, or in the alternative, the accused might have found Purshottam with his wife and that might have gravely provoked the accused. Shri Daga also submitted that the fact that, according to the prosecution, the accused lifted the stone from the door itself showed that the accused was deeply annoyed and enraged and if at all, therefore, the accused is held guilty of having hit his wife with the stone, the said act was done by the accused out of grave and sudden provocation. The learned counsel for the accused/appellant would also urge that P.W. 4 Damodhar was not an eye-witness since he had arrived at the scene only after the assault had started. Shri Daga also contended that the first information report, according to the prosecution's own case, was transmitted to the Magistrate on 5-2-1990 while the incident took place on 24-1-1990 and the report was also lodged on 24-1-1990. Shri Daga submitted that the gross delay in transmission of the first information report to the Magistrate is fatal in the facts and circumstances of the present case and the entire prosecution story becomes doubtful and suspicious and liable to be rejected outright on this ground alone. In this connection, Shri Daga referred to the deposition of P.W. 8 Ashok Keshavrao Chaudhari and also deposition of P.W. 7 Namdeo Marotrao Kale and to buttress his argument relied upon the decision of the apex Court in *Ishwar Singh Vs. State of U.P.*, . Thus, Shri Daga strenuously contended that in the circumstances of the case, the accused/appellant is entitled to benefit of doubt and in any case alternatively the act of the accused appellant was not intentional and the same was done out of grave and sudden provocation and, therefore, his case would fall in Exception I to Section 300 of the Indian Penal Code.

5. On the other hand, Shri Pande, Additional Public Prosecutor, would urge that though P.W. 5 Aruna has been declared hostile since she happened to be the sister of the accused and her testimony is worthless, the evidence of another eye-witness (PW 4) Damodhar is totally trustworthy and sufficient to bring home the

guilt of the accused/appellant for having committed the murder of his wife Durga. Shri Pande would also submit that the testimony of P.W. 4 Damodhar is duly corroborated by medical evidence and also by the report of the Chemical Analyser and, therefore, the Sessions Judge, Wardha, has rightly convicted the accused for the offence punishable u/s 302 of the Indian Penal Code and sentenced him to life imprisonment, warranting no interference by this Court in appeal.

6. We would like to first deal with the submission of the learned counsel for the accused/appellant that there was gross delay in transmitting the first information report to the Magistrate. P.W. 8 Ashok Keshavrao Chaudhari admitted in his deposition that he despatched the copy of the first information report of the present crime on 5-2-1990 with another constable and accordingly made an entry in the Outward Register and the Dak-book, and the Chief Judicial Magistrate received the copy of the first information report on 5-2-1990. The first information report (Exh. 41) is registered on 24-1-1990 at 6-20 P.M. at police station, Wardha City, Wardha. Obviously the first information report was transmitted to the Chief Judicial Magistrate after about 10 days, though it was required to be transmitted forthwith. The delay in transmitting the first information report is sought to be explained by P.W. 8 Ashok Chaudhari by stating that constable Shankar B. No. 1040 was doing the duty at the police station as Despatch clerk and he proceeded on leave from 24-1-1990 for 15 days and constable Anna took the charge of his duty on 24-1-1990 at about 10-40 A.M. and he did not do said work upto 3-2-1990. Thereafter P.W. 8 Ashok Chaudhari took charge of his duty as a Despatch Clerk and neither he nor constable Anna had any experience of the said work and on 5-2-1990 the first information report was despatched. In view of the aforesaid fact that the first information report was transmitted to the Chief Judicial Magistrate after about 10 days and the explanation submitted by the prosecution, question is whether the delay in transmitting the first information report to the Chief Judicial Magistrate is fatal and that merely because transmission of the first information report to the Chief Judicial Magistrate was belated, the prosecution story becomes doubtful and that a doubt is created that the first information report (Exh. 41) has been ante-dated.

7. Shri Daga, the learned counsel for the accused/appellant strongly relied upon the decision of the apex Court in *Ishwar Singh Vs. State of U.P.*, which reads thus -

"..... Section 157 of the Code of Criminal Procedure, 1898 as well as of 1973 both require the first information report to be sent "forthwith" to the Magistrate competent to take cognizance of the offence. No explanation is offered for this extraordinary delay in sending the report to the Magistrate. This is a circumstance which provides a legitimate basis for suspecting, as Mr. Anthony suggested, that the first information report was recorded much later than the stated date and hour affording sufficient time to the prosecution to introduce

improvements and embellishments and set up a distorted version of the occurrence. In this case the suspicion hardens into a definite possibility when one finds that the case made in Court differs at least in two very important particulars from that narrated in the F.I.R. Mahabir Singh, who lodged the first information report, stated in Court that he had invited some people to his house to effect a settlement between him and Ishwar Singh, and that he had also sent Ghanshyam to call Ishwar Singh there. The F.I.R. does mention anything like this. From the F.I.R. it appears as if the accused persons came uninvited to his house, demanded why he had demolished the drain, and started assaulting him and the other persons who were present there. It is also difficult to understand why Mahabir should invite anyone to his house for a settlement, if really Ishwar Singh had permitted him to demolish the drain as he claimed. Further, the F.I.R. does not mention that Mahabir and Satyapal wielded lathis in their defence when attacked and that this resulted in some of the accused getting injured, but that is what both Mahabir (PW 1) and Satyapal (PW 2) stated in their evidence in Court. These variations relate to vital parts of the prosecution case, and cannot be dismissed as minor discrepancies. In such a case, the evidence of the eye-witnesses "cannot be accepted at his face value", as observed by this Court in Mitter Sen and Others Vs. The State of U.P., ."

8. In Pala Singh and Another Vs. State of Punjab, , the Supreme Court considered the aspect of delay in receipt of the occurrence report by the Magistrate with reference to S. 157 of the Code of Criminal Procedure and observed thus -

"..... Section 157, Cri.P.C. requires such report to be sent forthwith by the police officer concerned to a Magistrate empowered to take cognizance of such offence. This is really designed to keep the Magistrate informed of the investigation of such cognizable offence so as to be able to control the investigation and if necessary to give appropriate direction under S. 159. But when we find in this case that the F.I.R. was actually recorded without delay and the investigation started on the basis of that F.I.R. and there is no other infirmity brought to our notice, then, however, improper or objectionable the delayed receipt of the report by the Magistrate concerned it cannot by itself justify the conclusion that the investigation was tainted and the prosecution insupportable. It is not the appellants' case that they have been prejudiced by this delay."

9. Pala Singh and Another Vs. State of Punjab, came for consideration before the apex Court in Sarwan Singh and Others Vs. State of Punjab, , and the Supreme Court observed that mere delay in despatch of the first information report is not a circumstance which can throw out the prosecution case in its entirety. In the facts and circumstances of the case in Sarwan Singh's case, the apex Court held that the prosecution gave a very cogent and reasonable explanation for the delay in despatch of the first information report and accordingly the prosecution case was not liable to be rejected on the ground of delay in despatch of the first information report.

10. The apex Court again considered *Pala Singh and Another Vs. State of Punjab*, in *State of U.P. Vs. Gokaran and Others*, and placing reliance on the observations made in *Pala Singh*'s case (cited supra); observed that every delay in sending the delayed report to the District Magistrate under S. 157 of the Code of Criminal Procedure would not necessarily lead to the inference that the first information report has not been lodged at the time stated or has been ante-timed or ante-dated or investigation was not fair and forthright. The Supreme Court thus held -

"13. As regards the last circumstances, it is true that the special report was received by the District Magistrate on 29th March but it is not as if every delay in sending such a delayed special report to the District Magistrate under S. 157, Cr.P.C. would necessarily lead to the inference that the F.I.R. has not been lodged at the time stated or has been ante-timed or ante-dated or that the investigation is not fair and forthright. As has been pointed out by this Court in *Pala Singh and Another Vs. State of Punjab*, the relevant provision contained in S. 157 Cr.P.C. is really designed to keep the Magistrate informed of the investigation of a cognizable offence so as to be able to control the investigation and if necessary to give appropriate direction under S. 159, Cr.P.C.; but if in a case it is found that the F.I.R. was recorded without delay and the investigation started on that F.I.R. then however improper or objectionable the delayed receipt of the report by the Magistrate concerned that cannot by itself justify the conclusion that the investigation was tainted and the prosecution in-supportable. In the instant case the material on record clearly shows that steps in investigation by way of drawing inquest report and other panchanamas had been taken in the early hours of the morning of 28th March and these could only follow the handing over of F.I.R. Ex. Ka-1 by Ram Narain Singh to the Station Officer at about 2.15 a.m. In view of these facts the delayed receipt of the special report by the District Magistrate on 29th March would not enable the Court to dub the investigation as tainted one nor could Ex. Ka-1 be regarded as ante-timed or antedated. For the same reasons the delay in sending the necessary papers to the Medical Officer which were received by him on 29th March will be of no significance."

11. It is no doubt true that the first information report should be despatched and transmitted to the Magistrate expeditiously and with utmost urgency since under S. 157 of the Code of Criminal Procedure, the officer in charge of the police station is required to send the report to the Magistrate forthwith. The expression "forthwith send the report" enjoins the officer in charge of the police station to send the report to the Magistrate empowered to take cognizance of the offence as soon as he has reason to suspect the commission of the cognizable offence from the information or other source. However, mere delay in sending the report to the Magistrate would not in all cases and as a rule vitiate the trial. In cases where first information report is promptly recorded and on the basis of such first information report the investigation starts, without any infirmity and prejudice to the accused, it cannot be said that because there was delay in sending the report to the Magistrate, the trial is vitiated or that the prosecution case becomes doubtful or suspicious. Delay in despatch or transmission of the first information

report to the Magistrate must be looked into from the point of view whether the first information report sought to be projected as first information report was in fact not the first information report or that the first information report had been ante-dated. On lodging of the first information report if the investigation started immediately and promptly, merely because there was delay in transmission or despatch of such first information report to the Court, it will not materially affect ordinarily the prosecution case unless by such delay, prejudice is caused to the accused or improvements made by the prosecution in its case becomes obvious, and the prosecution case becomes doubtful or suspicious and the first information report seems suspicious. When the prosecution explains the delay in despatch or transmission of the first information report to the Magistrate and if the explanation furnished by the prosecution appears plausible, cogent and reasonable, the fact that there was a delay in transmission or despatch of the first information report to the Magistrate, by itself will not materially affect the prosecution case and will not render the first information report suspect. Applying the aforesaid principles and the legal position in the facts and circumstances of the present case, it would be seen that the first information report was lodged at the police station, Wardha, on 24-1-1990 at 6.20 p.m. and immediately thereafter investigation commenced. Inquest was prepared on 24-1-1990 immediately thereafter and the incriminating material was seized and statements of the witnesses were also recorded in the morning on the next day i.e. 25-1-1990. In this background, the intrinsic evidence would show that the first information report was not ante-dated. Not only that, the prosecution has submitted the cogent and reliable explanation that on 24-1-1990 in the morning the Despatch Clerk had gone on leave for 15 days and constable Anna was not well versed and P.W. 8 Ashok took the charge of his duty as a Despatch Clerk on 3-2-1990 and on 5-2-1990 he despatched the first information report to the Chief Judicial Magistrate and the same was received by the Chief Judicial Magistrate on 5-2-1990. The explanation furnished by the prosecution, in the peculiar facts and circumstances of the present case, is satisfactory and it cannot be said that merely because there was a delay in transmission of the first information report, the prosecution case was affected. The learned counsel for the accused/appellant could not point out any prejudice caused to the accused/appellant in delayed transmission of the first information report. We, therefore, hold that merely because there was delay in transmission of the first information report to the Chief Judicial Magistrate, prosecution case could not be thrown and no benefit could be granted to the accused/appellant on that score.

12. The judgment of the apex Court in *Ishwar Singh Vs. State of U.P.*, and strongly relied upon by the learned counsel for the accused/appellant does not apply in the facts and circumstances of the present case, and in *Ishwar Singh's* case (cited *supra*) the apex Court found that the extraordinary delay in sending the first information report created suspicion about the correctness of the first information report, because the case made in the trial by the prosecution differed in two very important particulars from the narration given in the first information

report. However, present is not a case of that type and, therefore, Ishwar Singh's case (cited supra) is of no help to the accused/appellant.

13. It is true that the author of the first information report is P.W. 5 Aruna, the sister of the accused/appellant, and she has been declared hostile. Looking to the tenor of her deposition in Court and the fact that she had totally resiled from her previous statement, she is not a trustworthy witness and cannot be relied for any purpose. It is not that merely because P.W. 5 Aruna has been declared hostile, her evidence deserves to be excluded from consideration altogether, but after consideration of her evidence and in totality of the circumstances, her evidence is of no worth and she being untrustworthy witness, her testimony is liable to be rejected for all purposes.

14. P.W. 4 Damodhar Sonbaji Mohite is a very material witness and he has given the full account of the incident in his deposition before the Court. He testified that on 24-1-1990 in the evening at about 5.30 or 6.00 p.m., after having his meals, he went to latrine for easing purposes and while returning he heard the shouts of the mother of the accused. He rushed towards the house of the accused Ramrao and saw that accused Ramrao was hitting his wife with stone on her head. The face of the wife of the accused was smeared with blood. The accused threatened him by showing the stone and warned him to go away, and this witness returned home. In cross-examination, suggestion about the quarrel between him and the accused was given. This witness has not been shaken in cross-examination at all and there is no justifiable reason to discard his deposition or discredit his testimony. His presence at the time of the incident is established. The statement of this witness was also recorded by the police on the next day. His testimony would clearly show that he had seen the incident and was, therefore, an occurrence witness. The testimony of P.W. 4 Damodhar is duly corroborated by the medical evidence. Post mortem report (Exh. 26) reveals that the deceased had fractures of frontal bone, parietal bone, temporal bone and nasal bone and other lacerated wounds. P.W. 1 Dr. Vijay Chandak deposed before the Court that he conducted the post mortem examination of deceased Durga on 25-1-1990 since he was posted at General Hospital, Wardha, and on external examination, he found seven injuries and also noticed fractures of frontal bone, parietal bone, temporal bone and nasal bone, and all these injuries were ante mortem. According to him, external injury Nos. 4, 5 and 6 corresponding to internal injury to brain were sufficient to cause death in ordinary course of nature. The Chemical Analyser's report (Exh. 53) further corroborates the testimony of P.W. 4 Damodhar. The stone (Art. 4) having blood was found to be of "O" group and the blood group of deceased Durga was also of "O" group. The accused at the time of the incident was wearing Pajama (Art. 6), Shirt (Art. 7) and Shandow Baniyan (Art. 8), and according to the Chemical Analyser's report, the blood found on these articles was of "O" group, whereas the blood group of the accused is "A".

15. Deceased Durga died of homicidal death is duly established by medical

evidence and the complicity of the accused/appellant is proved beyond reasonable doubt on the basis of the deposition of P.W. 4 Damodhar, duly corroborated by medical evidence and the Chemical Analyser's report. In view of the aforesaid evidence there is no merit in the contention of the learned counsel for the accused/appellant that Purshottam, who had affairs with the deceased, ought to have been examined by the prosecution and since he has not been examined, adverse inference should be drawn and benefit should be extended to the accused/appellant. Though much reliance was placed by the learned counsel for the accused/appellant in this connection on the deposition of P.W. 5 Aruna to show that according to her, Purshottam - a friend of the accused/appellant, had been to the house of deceased Durga on the date of incident and he remained there for a long period and she did not know when Purshottam left the house of Durga but as observed above, P.W. 5 Aruna has no respect for truth and she is a witness of no worth and, therefore, her deposition cannot be said to be of any help to the accused. Nor, from the deposition of P.W. 5 Aruna, such an inference could be drawn that Purshottam was present in the house of the accused at the time the incident took place. Therefore, there was no necessity of examining Purshottam by the prosecution and because of non-examination of Purshottam, the accused/appellant cannot derive any benefit.

16. Shri Daga, the learned counsel for the accused/appellant, vehemently contended that the accused/appellant had no intention to kill his wife and the fact that he lifted the stone from the door itself and hit his wife Durga with the said stone would show that the accused/appellant was deeply annoyed and the said act was done by him out of grave and sudden provocation. We do not find any merit in this contention of Shri Daga. There is no evidence whatsoever on record that Purshottam was present in the house when the accused arrived or that deceased Durga - the wife of the accused, was with Purshottam in the house at that time the accused arrived at his house. Merely because the accused entertained apprehension that his friend Purshottam was having affairs with his wife Durga, in the absence of Purshottam at the time the accused arrived at his house, it would not bring the act of the accused under Exception I to S. 300 of the Indian Penal Code. As observed above, since there is no evidence available on record to show that Durga - the wife of the accused, was found with Purshottam in the house of the accused at the time he arrived or that Purshottam was present in the house of the accused at the time he arrived at the house, by no stretch of imagination can it be inferred that the accused/appellant was deprived of power of self-control by grave and sudden provocation. The argument sought to be built by Shri Daga that at best the case of the accused/appellant would be covered under Exception I to S. 300 of the Indian Penal Code, is without any foundation. The burden to prove that the act of the accused was covered under Exception I to S. 300 of the Indian Penal Code was on the accused and could be discharged not by strict proof but by preponderance of probabilities. On the basis of the evidence, which has come on record, as already indicated above, no inference can be drawn that the act of the accused/appellant was done

while he was deprived of power of self-control by grave and sudden provocation. In his statement under S. 313 of the Code of Criminal Procedure, the accused/appellant has not put forth any defence. In his written statement before the Court, he has sought to give his version in defence by stating that Purshottam used to visit his house frequently and for the last 3-4 years he used to visit Durga when he and other members of the family were not present and he used to remain with her in separate room for hours together and Durga had also intimacy with him. According to his version in the written statement before the Court, he and other members of his family accosted for this act, but she did not pay heed, and on the day of the incident when he returned home between 5.30 to 6.00 p.m., he found Durga lying in a pool of blood in his room. Seeing the condition of his wife, he raised shouts and fell down near her and remained unconscious for sometime. After sometime, his family members poured water on him, he woke up and went to the police station and informed that his wife was lying in a pool of blood in his house. This version, as it is, does not help Shri Daga's argument that the act was done by the accused/appellant at the time when he was deprived of his power of self-control.

17. In view of our discussion and the reasons recorded by the trial Court, with which we agree, the prosecution has proved beyond reasonable doubt that the accused/appellant committed the murder of his wife Durga, and he has rightly been convicted for the offence punishable under S. 302 of the Indian Penal Code and sentenced to suffer imprisonment for life. The conviction and sentence awarded by the Sessions Judge, Wardha, does not suffer from any infirmity, warranting interference by this Court in appeal.

18. Consequently, we do not find any merit in this criminal appeal and the same is dismissed. The conviction and sentence awarded by the Sessions Judge, Wardha, in his judgment dated 20-5-1991 against the accused/appellant is maintained.

19. Appeal dismissed.