

(2009) 04 CAL CK 0040
In the Calcutta High Court
Case No : C.R.A. No. 17 of 1998

Surajit Sarkar

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 24-04-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 162, 313
Penal Code, 1860 (IPC) — Section 120B, 302, 34

Citation : (2009) CriLJ 2895 : 113 CWN 1114 : (2010) 6 RCR(Criminal) 1454

Hon'ble Judges : Kishore Kumar Prasad, J; Girish Chandra Gupta, J

Bench : Division Bench

Advocate : Sekhar Basu, Joy Sengupta, Kallal Mondal and S. Biswas, for the Appellant; Sk. Abdus Salam and Shirin Sultana, for the Respondent

Final Decision : Dismissed

Judgement

Kishore Kumar Prasad, J.—This appeal is directed against the judgment and order of conviction dated. 26-11-1997 passed by the learned Additional Sessions Judge. Second Court, Nadia in Sessions Trial No. VI of May 1997 arising out of Sessions Case No. 10 of April 1995 by which the appellant/accused Surajit Sarkar was convicted for the offence punishable u/s 302 of the Indian Penal Code. The appellant was heard on question of sentence on 27-11-1997 and thereafter by an order passed on the same day that is on 27-11-1997; he was sentenced to suffer imprisonment for life as also to pay a fine of Rs. 2,000/-, in default to suffer further rigorous imprisonment for three months.

2. The sentences were directed to run concurrently.

3. The five accused persons namely, Gopal Sarkar, Adhir Sarkar, Sukumar Sarkar, Bhabesh Sarkar and Jamai Gopal Sarkar were also tried in this case but the learned trial Court finding no tangible evidence against them to his satisfaction had, however, acquitted them of the offence punishable under Sections 302/34 of the Indian Penal Code charged against them.

4. Being aggrieved by the orders of conviction and sentences passed by the learned Trial Court, the appellant Surajit Sarkar has preferred the present appeal.

5. Prosecution version as unfolded during trial in a nutshell is that on 21-3-1992, the informant Susanta Sarkar (P.W. 1) of Arpara village within the limits of Santipur P.S. District-Nadia lodged a complaint before the officer-in-charge Santipur P.S. (Exhibit 1) to the effect that on 21-3-1992 at about 9 p.m. he heard from a person that when his father Gour Chandra Sarkar (deceased) was returning from Gobindapur at about 8.30/8.45 p.m. he had been assassinated in front of the house of one Bimal Poddar by some unknown miscreants. On hearing this news he ran to the place of occurrence and on going there he found his father lying dead on the road having serious bloodshed injuries on his head. In the evening, the deceased had gone to Gobindapur Bazar on a bi-cycle for his personal work. It was mentioned that there was a family dispute in between the informant and the sons of Gour Sarkar of Dakshin para and some people engaged by Gour Chandra Sarkar and on 8-3-1992 there was a tussle with them for which one criminal case was started. Nemai, the brother of the informant, was in jail custody, on the other hand, the opposite side had been released on bail. It seemed to the informant that due to previous grudge, the accused persons had killed his father.

6. The complaint made by P.W. 1 on the spot was sent by the officer-in-charge to the Duty Officer through A.S.I., M.K. Paik for starting a case and after receipt of the same, Santipur P.S. case No. 60/1992 dated 22-3-1992 was started under Sections 302/34/120-B of the Indian Penal Code against all the accused persons.

7. The Investigating Agency took up investigation. During investigation, the first Investigating Officer (P.W. 14) visited the place of occurrence, prepared sketch map of the place of occurrence and inquest report on the dead body of the deceased, collected Post Mortem examination report of the deceased, examined the available witnesses and recorded their statements. In the usual course after completion of investigation, the second Investigating Officer (P.W. 12) submitted charge-sheet against all the six accused persons under Sections 302/34/120-B of the Indian Penal Code.

8. The case was committed to the Court of Sessions.

9. In the Court of learned trial Judge, charge u/s 302 read with Section 34 of the Indian Penal Code was framed against all the accused persons. The accused persons pleaded not guilty to the charge framed against them and claimed to be tried.

10. In the trial Court, as many as fourteen witnesses were examined on behalf of the prosecution.

11. P.W. 1 is the son of the deceased Gour Chandra Sarkar, who lodged the First Information Report (Exhibit 1); P.W. 2 (nephew of the deceased); P.W. 4 (the resident of village Arpara); and P.W. 6 (sic) of the deceased) were declared

hostile; P.W. 3 was one of the members of Panchayat who gave information about the murder which was entered in the G.D. (Exhibit 4) by P.W. 11; P.W. 5 was merely tendered for cross-examination; P.W. 7, a relative of the deceased and P.W. 8, another son of the deceased were the eye-witnesses of the occurrence; P.W. 9 was the doctor who conducted the Post Mortem examination upon the dead body of the deceased; P.W. 10 brought the G. D. before the learned trial Court; P.W. 11 received information over telephone from P.W. 3 and reduced it into a G.D. (Exhibit 4) and also drew up the formal First Information Report; P.W. 13 was a constable who carried the dead body to the Autopsy Surgeon, P.W. 9 and P.W. 14 and P.W. 12 were the two Investigating Officers of this case.

12. Apart from leading oral evidence, the prosecution also tendered and proved a large number of exhibits, which were marked, as exhibit 1 to 6 and Mat Exhibits 1 to IV.

13. Though the accused persons were examined u/s 313 of the Code of Criminal Procedure, yet there was no adduction of evidence by them.

14. The defence version as it appears from the trend of cross-examination of P.Ws. as also from the answer given by the accused in reply to the question put to them u/s 313 of the Code of Criminal Procedure was that they have been falsely implicated in this case out of previous enmity.

15. The learned trial Judge disbelieved the defence version.

16. The learned trial Judge after considering the oral and documentary evidence and hearing the learned Counsel for the parties passed orders of conviction and sentences against the appellant as indicated above.

17. It was contended by the learned Counsel appearing for the appellant that (i) FIR which has been marked as Exhibit 1 could not be treated as FIR, (ii) Exhibit 4, the information recorded in the G.D. Entry No. 1291 dated 21-3-1992 should be treated as FIR, (iii) the evidence of the material witnesses of the prosecution are unworthy of credit and they were highly interested witnesses and, therefore, on the version of the said witness the learned trial Judge was not justified in believing the testimony of eyewitnesses when their evidence was discarded in respect of the other five co-accused persons, (iv) there was infirmity in the FIR of important facts affecting the probabilities of the case and (v) the informant could not have been relied upon since he did not whisper in the FIR about the name of person from whom he came to know regarding the murder of his father.

18. Per contra, the learned Counsel appearing for the State-respondent supported the impugned judgment passed by the learned trial Court. It was argued that the learned trial Judge had detailed and discussed the evidence adduced by the prosecution at length and had assigned adequate reasons for recording his finding against the appellant for the offence punishable u/s 302 of the Indian Penal Code and no case has been made out for this Court to interfere

with the impugned judgment.

19. We have given our anxious and thoughtful consideration to the respective contentions of the learned Counsel for the parties. We have perused the evidence both oral and documentary tendered and proved by the prosecution to substantiate its case and the impugned judgment.

20. At the outset, it needs to be mentioned here that it is not disputed that the deceased Gour Chandra Sarkar died on account of the injuries sustained by him on the date of occurrence. The dead body of the deceased was taken to Ranaghat Sub-Divisional Hospital on 22-3-1992 by P.W. 13 after performing inquest (Exhibit 5) on the dead body of the deceased at about 11.15 p.m. on 21-3-1992 by P.W. 14 at the place of occurrence that is from the village road in front of house of one Bimal Poddar. P.W. 14, the first Investigating Officer of this case prepared seizure list (Exhibit 2/2) at 23.55 hours after making seizure of one bi-cycle, one empty old plastic bag, one H.M.T. wrist watch and one pair of plastic shoes of black complexion from the place of occurrence possessed by the deceased.

21. P.W. 9, Dr. Partha Saha who conducted post-mortem on the dead body of the deceased (Exhibit 3) on 22-3-1992 at Ranaghat Sub Divisional Hospital found the following ante-mortem injuries on the person of the deceased:

(1) 1 1/2" cut mark over the right frontal parietal region.

(2) 1/2" cut mark over the back of right parietal region.

There are some abrasion mark over the right ear and right knee. I found the right parietal bone was fractured. The mens rea brain matter was ruptured. There were fracture of right 6 & 7 ribs and fracture of lower end of right regions. Dislocation of right elbow joint.

22. In the opinion of Dr. Saha, death, was caused due to the effect of injuries resulting anti-mortem injuries sustained By the deceased. It was further opined that the injuries might be caused by heavy blunt weapon.

23. The appellant also admitted in his examination u/s 313 of the Code of Criminal Procedure that the deceased had been murdered on the date of incident that is on 21-3-1992 at night and as such the mere suggestion given to P.W. 9 by the defence that the injuries upon the deceased might be caused by fall does not stand.

24. Thus, it is amply established that the deceased met a homicidal death account of the injuries sustained by him.

25. Now, we have to consider whether the appellant herein was responsible for causing injuries to the deceased resulting his instantaneous death on the spot.

26. Before entering into detailed discussion of the evidence, we shall deal with the argument in relation to FIR. Learned Counsel appearing for the appellant

mainly projected his attack upon the prosecution case contending that the written complaint, Exhibit 1 given by P.W. 1 to officer-in-charge, Santipur P.S. (P.W. 14) at the spot cannot be treated as FIR as contemplated u/s 154 of the Code of Criminal Procedure, for the simple reason that even prior to registering the said Exhibit 1, there has been information given to police station by P.W. 3 over phone and thereby the police had been informed of the occurrence involved in this case and that, therefore, if for any reason the complaint Exhibit 1 is treated as an FIR, it is directly hit by Section 162 of the Code of Criminal Procedure and would not under any circumstance amount to be an FIR and on that score, there was an inherent defect in the case on the basis of which the prosecution has to fail.

27. Before proceeding to discuss the aforesaid contention of the learned Counsel for the appellant from the juristic point of view, we may first refer to the evidence of P.W. 3 Paresh Biswas, who was one of the Panchayat members of Gobindapur village and unconnected with the occurrence. According to this witness, he was a resident of village Arpara within the limits of Santipur Police Station. He at the relevant time of occurrence when was in the midst of a village meeting, he came to know about the fact of murder; that he came to the spot immediately and found the dead body of the deceased lying on the ground. Accordingly, he contacted Santipur Police Station over telephone by informing that one unknown person was murdered at Arpara village. Thereafter, P.W. 3 waited on the spot and after arrival of the police, he did nothing more and ultimately he left for his house.

28. However, it is the evidence of P.W. 11. S.I.K. Majumdar that on 21-3-1992 at about 21.35 hours when he was in charge of the police station in absence of regular officer in charge of police station, he received an information over phone from an unknown person which he recorded vide G.D. Entry No. 1091 dated 21-3-1992 (Exhibit 4).

29. The said G.D. in extenso is as follows:

21.35 1091 True copy of Santipur P.S. Telephone G.D.E. 1091 dated 21-3-1992 Received Today in the marginally noted time I received an information over Telephone from an unknown person Gobindapur, P.S. Santipur, Nadia that today (21-3-1992) night one unknown person was murdered at Arpara, P.S. Santipur, Nadia. Accordingly I noted the fact in G.D. and informed the matter to O.C. Santipur P.S. (N)

S/D K.P. Majumder S.I.

30. The facts stated in exhibit 4 not only are vague but also do not give minimum necessary description of an FIR. It simply says that murder of one unknown person has taken place in village Arpara and as the officer-in-charge was not available in the Police Station, the maker informed the matter to officer-in-charge, Santipur Police Station.

31. At about 00.45 hours at night, P.W. 11 received a written complaint, (Exhibit 1) duly forwarded by officer-in-charge, Santipur Police Station through A.S.I., M. Paik and on the basis of said complaint, he registered Santipur Police Station Case No. 60/1992 after filling up the formal FIR (Exhibit 1/1).

32. It is further evident from the materials on record that the Investigating Agency started investigation not after receiving the message or before starting for the place of occurrence but after receiving the complaint as it is evident from the endorsement of the officer-in-charge of Santipur Police Station (the first Investigation Officer) in the complaint which runs as follows:

Received and forwarded to the Duty Officer through A.S.I., M. Paik for starting a case under Sections 302/34 120-B of the Indian Penal Code and I have taken up the investigation.

33. This cannot be an afterthought and imaginary instrument created for the purpose of this case. Further, from documents that is seizure list, inquest report etc. it may be seen that P.S. case number has been mentioned. As such, after starting the case, the case number has been mentioned and in the complaint (Exhibit 1), the first Investigating Officer (that is the O.C. Santipur P.S.) directed the Duty Officer to start a case and he had taken up the investigation.

34. On a meticulous consideration of the evidence of P.Ws. 3 and 11 coupled with the facts stated in the G.D. (Exhibit 4), we may straightway observe that there is no force in the contention made by the learned Counsel for the appellant, as stated above, for the simple reason that a telephonic message received by a police officer or a person in the police station is only cryptic and anonymous oral message, which in our view may not in terms clearly specify the cognizable offence, therefore, cannot be treated as FIR as defined u/s 154 of the Code of Criminal Procedure.

35. In this regard in Tapinder Singh Vs. State of Punjab and Another, , the Hon"ble Apex Court has held as follows:

The telephonic message recorded in the daily diary of the police station was a cryptic and anonymous oral message which did not in terms clearly specify a cognizable offence and could not, therefore, be treated as first information report. The mere fact that this information was the first in point of time could not by itself clothe it with the character of first information report. The question whether or not a particular document constitutes a first information report has to be determined in each case.

In another case Soma Bhai Vs. State of Gujarat, , the Apex Court has held the legal ratio on the aspect of First information as contemplated u/s 154, Cr.P.C. in the following terms:

At page 1211, of Cri LJ:

Under Section 154 of the Criminal Procedure Code of 1898, the first Information

is the earliest report made to the Police Officer with a view to his taking action in the matter. In the instant case, the complainant had made the report regarding the occurrence having taken place to P.S.I. Patel; who however, before reducing it into writing, by way of abundant caution tried to seek further instruction from the main police station at Surat and that was why he had booked a call to Surat. The message given to the Surat Police Station was too cryptic to constitute a First Information Report within the meaning of Section 154 of the Code and was meant to be only for the purpose of getting further instructions. Furthermore, the facts narrated to P.S.I. Patel which were reduced to writing a few minutes later undoubtedly constituted the First Information Report in point of time made to the police in which necessary facts were given. In these circumstances, the telephonic message to the Police Station at Surat cannot constitute the First Information Report.

36. In the decision reported in the case of Ramsinh Bavaji Jadeja Vs. State of Gujarat, the Apex Court has held as follows:

The question as to at what stage the investigation commences has to be considered and examined on the facts of each case, especially, when the information of a cognizable offence has been given on telephone. Any telephonic information about commission of a cognizable offence irrespective of the nature and details of such information cannot be treated as first information report. So if the telephonic message is cryptic in nature and the officer in charge, proceeds to the place of occurrence on basis of that information to find out the details of the nature of the offence itself, then it cannot be said that the information, which had been received by him on telephone, shall be deemed to be first information report. The object and purpose of giving such telephonic message is not to lodge the first information report, but to request the officer-in-charge of the police station to reach the place of occurrence.

37. In the light of the above legal norms and ratio laid down by the Hon'ble Apex Court that the telephonic message is merely cryptic and anonymous, we are fully satisfied to hold the ingredients contemplated u/s 154 of the Code of Criminal Procedure have not at all been complied with in the case and as was rightly argued by the learned Counsel for the State-respondent, we are fully satisfied to hold that the telephonic message given by P.W. 3 did not amount to an FIR as contemplated by law and that in all, Exhibit I would clearly and squarely land within the ambit of Section 154 of the Code of Criminal Procedure amounting to the FIR and that accordingly, we reject the contention of learned Counsel for the appellant made on the above said aspect.

38. Now, we are to go through the evidence of the material witnesses in order to substantiate the prosecution version in respect of the present appellant.

39. P.W. 1 Susanta Sarkar, the informant-cum-son of the deceased stated in his evidence that his father was murdered on 21-3-1992 at about 8/8.30 p.m. At the time of incident he was in his house. Suddenly on hearing cry in his house he

asked his mother as to why she was weeping and then his mother stated to him that his father had been murdered as informed to her by Bishnu Sarkar. Then he went to the spot which was in the middle place of the road in between Arpara and Gobindapur. There was a primary school about 60/70 cubits away from the place of occurrence and the school was situated by the southern side of the road. On going to the place of occurrence he found that his father was lying dead on the ground in senseless condition and he cried out and village people told him to file FIR. He wrote the FIR in the house of his uncle and he also proved the FIR, which is marked exhibit. At about 10.30 p.m. in the night he came to know that police had come to the spot and so, he went there and police officer seized bicycle, bag, wristwatch and a pair of shoes, which are marked Exhibits. He handed over the FIR to the police officer and after he returned to his house at about 2/2.30 in the night his brother Achintya Sarkar came to his house and stated to him that Surajit Sarkar, Adhir Sarkar and Sukumar Sarkar killed his father and when he opposed them Bara Gopal Sarkar, Jamai Gopal Sarkar and Bhabesh Sarkar chased him and then he fled away. He also identified all the accused persons in Court. In cross-examination this witness stated that Gour, Gopal and Netai are three brothers and Achintya is his brother and Bishnupada is his cousin brother and Sanatan is his relation. In cross-examination he also stated that on hearing the news, from his brother Achintya, he took him to the police station and placed before the O.C. We do not find any other contradiction in his evidence in cross-examination.

40. It is true that in the FIR, P.W. 1 did not mention the name of Bishnu Sarkar in so far as it relates to receipt of information about killing of his-father. It is well settled law that FIRs are not taken as encyclopaedia and commission of a fact therein, even if material, cannot by itself make the witness deposing about the fact unbelievable on that point.

41. The informant may lodge a report about the commission of offence though he may not know the name of the victim or his assailant. He may not even know how the occurrence took place. The first informant need not necessarily be an eye-witness so as to be able to disclose in great details all aspects of the offence committed. What is of significance is that the information given must disclose the commission of a cognizable offence and the information so lodged must provide a basis for the police officer to suspect the commission of cognizable offence. At this stage it is enough if the police officer on the basis of information given suspects the commission of a cognizable offence, and not that he must be convinced or satisfied that a cognizable offence has been complained. If he has reasons to suspect on the basis of information received, that a cognizable offence may have been committed, he is bound to record the information and conduct an investigation. At this stage it is also not necessary for him to satisfy himself about the truthfulness of the information. It is only after a complete investigation that he may be able to report on the truthfulness or otherwise of the information. Similarly, even if the information does not furnish all the details, he must find out those details in the course of investigation and collect all the necessary evidence.

42. The FIR is lodged with a view to setting the investigative-process in motion and not for the purpose of setting down in paper all known facts and circumstances about the incident. Moreover, the mental and physical condition of the informant will have to be considered when minute details are expected.

43. Next coming to the evidence of P.W. 2 Bishnupada Sarkar, who allegedly informed the matter to the mother of the informant. He stated in his evidence that when he was returning to his house from Gobindapur Bazar by cycle with a torchlight in his hand and crossing the primary school of Gobindapur village, then he saw 5/6 persons going towards south from the road. He saw them with the help of torchlight in his hand. He identified only Surajit Sarkar and he also identified him in Court. Then, on proceeding to some extent about 2/4cubits he saw the elder brother of his father lying on the road in blood shed injury. He saw the injuries on his chest, head and hand etc. At that time the injured was senseless and his flesh was trembling to some extent. Then and there he went to his house and informed the incident to the wife of his uncle. He did not go to the place thereafter and he also proved his signature in the seizure list as marked Ext. 2/1 but stated that Darogababu did not seize anything in his presence. At this stage, the prosecution declared him hostile and cross-examined him and at the time of cross-examination by the prosecution he stated that he went to the place of occurrence at about 12 night and Darogababu seized cycle, bag, shoes and wristwatch in his presence and he signed the paper at the place of occurrence.

44. At the time of cross-examination by the defence this witness stated that at first he met the Darogababu at his house and it seemed to him that he was present at the place of occurrence when the Darogababu held inquest over the dead body. He also stated that the Darogababu met him at his house first and then at the place of occurrence. He also exhibited his signature in the inquest report (Ext. A/1). We do not find any other contradiction in his evidence.

45. P.W. 2 though declared hostile, yet most-portion of his evidence supported the prosecution case. The mere fact that he was declared hostile by the prosecution and allowed to be cross-examined does not make him an unreliable witness as to exclude his evidence from consideration altogether and his, evidence remains admissible in trial and there is no bar to base conviction upon his testimony if corroborated by other reliable evidence.

46. It was submitted by the learned Counsel for the appellant that the inquest report (Exhibit 5) prepared on the spot by P.W. 14 in presence of P.Ws. 1 and 2, names of the accused were not mentioned as the persons who had caused the death of the deceased and that also indicates that till the inquest report was completed, it was not known who had caused the death of the deceased. There is no substance in this contention also. There is no requirement of law or any rule that an inquest Panchanama should contain name of the accused. The inquest panchanama is a report required to be made by the I.O. with respect to the apparent cause of death. It is to be prepared in presence of two or more

inhabitants of the neighbourhood and has to describe the wounds, fractures, bruises and other marks of injuries as are found on the dead body and stating in what manner or by what weapon or instrument (if any), such marks appear to have been inflicted. Therefore, from the absence of the name of the accused in the inquest report, it cannot be inferred that his name was not disclosed as the murderer till it was completed. Shaikh Ayub Vs. State of Maharashtra, and Amar Singh Vs. Balwinder Singh and Others, (relied on).

47. Regarding non-seizure of the torchlight used by P.W. 2. it was held in Balo Yadav and others Vs. State of Bihar, that such an omission cannot be considered as a lapse on the part of the I.O. and it was not a ground for impairing the testimony of the witness concerned. Even if there is failure on the part of investigating officer to take steps for the seizure of torchlight, such an omission cannot be treated as a ground to reject the prosecution case.

48. P.W. 4 Rekha Poddar stated in her evidence that Gour Chandra Sarkar had been murdered 3/4 years ago and she did neither see nor know anything in this matter.

49. This witness was declared hostile by the prosecution and cross-examined by the prosecution.

50. Her evidence does not help the prosecution case excepting the murder of the deceased.

51. P.W. 5 Anjali Poddar stated in her evidence that Gour Chandra Sarkar had been murdered but she did neither see nor know anything about the murder. She did not go to the place of occurrence.

52. P.W. 6 Nemai Rajowar in his evidence stated that Gour Chandra Sarkar had been murdered 5 year? ago at night but he knows nothing about this.

53. This witness was declared hostile by the prosecution and cross-examined by the prosecution. His evidence also does not help the prosecution in any way save and except information of the murder of Gour Chandja Sarkar.

54. P.W. 7 Sanatan Sarkar alleged to be the eye-witness of the occurrence stated in his evidence that Gour Chandra Sarkar was his neighbour and he was murdered. On 21-3-1992 in the night at about 8-30 p.m. when he was coming along with Achintya and Gour Chandra Sarkar from Gobindapur, at Arpara on the way near the primary school Gour Chandra Sarkar was surrounded by 5/6 persons and with the help of torch he saw that Surajit assaulted Gour by a rod and while Gour was assaulted, then he was 15/16 cubits away from him. Adhir, Sukumar and some other were with him. They chased him and as such, he left the place Surajit, Adhir and Sukumar have been identified by him in Court. Police examined him in this case. This witness was also cross-examined by the defence. But we do not find any contradiction in his evidence to help the defence case.

55. P.W. 8 Achintya Sarkar, another alleged eye-witness of the occurrence and

son of the deceased stated in his evidence that his father Gour Chandra Sarkar was murdered. On 21-3-1992 in between 8 and 8.30 p.m. in the night he along with his father and Sanatan were returning home from village Gobindapur. When his father reached near the school, then his father was 8 cubits away from him and Sanatan was to some extent back of him. There was a torch in his hand. He saw with the help of torchlight that six persons were standing there. At first Surajit assaulted his father by rod and then Sukumar assaulted his father by rod and Adhir also assaulted by rod. He tried to go to his father and then Gopal Sarkar, Jamai Gopal Sarkar and Bhabesh chased him and he left the place towards the north. After one mile he fell down on the ground and there he was for sometime due to fear that he may be killed. At about 2 p.m. he went to his village. Police came on that night and he narrated the incident to the police. He did not state to the police that Sanatan was with him. In cross-examination this witness stated that he went to his father and saw there that his father was lying dead in blood shed condition and then Sanatan was not with him, he alone went back to his father. We do not find any other contradictions in his evidence at the time of cross-examination by the defence.

56. Regarding non-seizure of the torchlight used by P.W. 8, it was held in Balo Yadav and others Vs. State of Bihar, that such an omission cannot be considered as a lapse on the part of the I.O. and it was not a ground for impairing the testimony of the witness concerned. Even if there was failure on the part of investigating officer to take steps for the seizure of torchlight, such an omission cannot be treated as a ground to reject the prosecution case.

57. Much has been made out by the learned Counsel for the appellant for the alleged failure of P.W. 8 to disclose the names of the accused to P.W. 1. Non-mentioning of the names of the accused is fact fully not borne out and even if accepted would not render his testimony unacceptable. Post event conduct of a witness cannot be predicted on species lines. It varies from person to person as different people react differently under different situations.

58. In Rammi @ Rameshwar etc. Vs. State of Madhya Pradesh, the Hon''ble Apex Court held:

This Court has said time and again that the post event conduct of a witness varies from person to person. It cannot be a cast-iron reaction to be followed as a model by every one witnessing such event. Different person would react differently on seeing any violence and their behaviour and conduct would, therefore, be different.

59. P.W. 8 had lost his father in a most ghastly crime committed by the culprits. He apprehended danger in his life and was under shock. P.W. 1 did not ask him about the names of the persons involved in the crime nor did he think it proper to disclose such names. Under such circumstances, no adverse inference could be drawn against P.W. 8 making his testimony doubtful or unbelievable.

60. The appellant's Counsel contended that P.W. 8 was examined by the police

on 18-6-1992 that is 81 days after the incident. The suggestion being that the evidence must be looked at with suspicion.

61. We are not impressed by this submission. The question of delay in examining P.W. 8 after 81 days as submitted by the learned Counsel for the appellant for the first time before this Court is factfully not borne out on the materials on record. The fact of delayed examination of P.W. 8, should, in our opinion have been put to the I.O. so as to enable him to explain the undue delay in examining P.W. 8. The question of delay in examining a witness during investigation is materials only if it is indicative and suggestive of some unfair practice by the investigating agency for the purpose of introducing a got-up witness to falsely support the prosecution case. It is, therefore, essential that the I.O. should be asked specifically about the delay and reasons therefore P.W. 8 stated in his evidence that he went to his village at about 2 p.m. on the relevant night of the incident and he narrated the incident to police who came on that night. The first Investigating Officer (P.W. 14) in his evidence in cross-examination clearly stated that he examined P.W. 8 at his house on the night of incident at 2.10 hours. P.W. 14 had not been questioned about any delay in examining P.W. 8.

62. As regards delayed examination of certain witnesses, the Hon''ble Apex Court in several decisions has held that unless the investigating officer is categorically asked as to why the delay in examination of the witness, the defence cannot gain any advantage therefrom. It cannot be laid down as a rule of universal application that if there is any delay in examination of a particular witness, the prosecution version becomes suspect. It would depend upon several factors. If the explanation offered for the delayed examination is plausible and acceptable and the Court accepts the same as plausible, there is no reason to interfere with the conclusion. See *Ranbir and Others Vs. State of Punjab*, and *Bodh Raj @ Bodha and Others Vs. State of Jammu and Kashmir* :

63. The aforesaid eye-witnesses have fully supported the prosecution version as regards the present appellant. They were cross-examined at length. Besides some minor wear and tear in the testimony of the aforesaid material witness, learned Counsel for the appellant could not point out to us any material infirmity which could persuade us to hold contrary.

64. A sentence from here and a sentence from there cannot be used to condemn the prosecution case as false. Discrepancies are likely to occur for variety of reasons namely social status of the parties, education and time when the deposition of the witness is recorded. Reading the evidence as a whole, we do not find any artificiality in the version of the material witness for the prosecution touching the appellant herein.

65. It is true that P.Ws. 1, 2, 7, 8 are related to the deceased but their evidence cannot be discarded on that ground. There is no rule of law or prudence which requires that the evidence of a close relation must be discarded for the simple reason that is they are related to each other. By now, it is well-settled principle of

law that animosity is a double-edged sword. It cuts both sides. It could be a ground for false implication and it could also be a ground for assault. Just because the witnesses are related to the deceased would be no ground to discard their testimony, if otherwise their testimony inspires confidence.

66. In the facts and circumstances of the present case, they are natural witnesses of the incident.

67. We have no reason to disbelieve their testimony. Similarly, being relatives, it would be their endeavour to see that the real culprits are punished and normally they would not implicate wrong persons in the crime, so as to allow the real culprits to escape unpunished.

68. In the case of State of Punjab Vs. Karnail Singh, the Hon''ble Supreme Court had held as under:

8. We may also observe that the ground that the witnesses being close relatives and consequently, being partisan witnesses, should not be relied upon, has no substance. This theory was repelled by this Court as early as in Dalip Singh Vs. The State of Punjab, in which surprise was expressed over the impression which prevailed in the minds of the Members of the Bar that relatives were not independent witnesses. Speaking through Vivian Bose, J. it was observed: (AIR p. 366):

25. We are unable to agree with the learned Judges of the High Court that the testimony of the two eye-witnesses requires corroboration. If the foundation for such an observation is based on the fact that the witnesses are women and that the fate of seven men hangs on their testimony we know of no such rule. If it is grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy Common to many criminal cases and one which another Bench of this Court endeavoured to dispel in - Rameshwar Vs. The State of Rajasthan, . We find, however, that it unfortunately still persists, if not in the judgments of the Courts, at any rate in the arguments of counsel.

9. Again in Masalti Vs. State of U.P., this Court observed:

But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses. The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. No hard and fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct.

69. The evidence of the material witnesses in the instant case is consistent in respect of the present appeal and their testimonies are also credible and cogent to implicate the appellant for the offence punishable u/s 302 of the Indian Penal Code.

70. In view of the above discussions, we do not find any force in the contention of the learned Counsel for the appellant that the prosecution has not been able to prove its case against the appellant beyond reasonable doubt.

71. So far as the contention that no independent witness was produced is concerned, we like to say that it is not always necessary to multiply the evidence of the incident on the same point. It has to be seen what is the quality of the witnesses. It is the quality of the evidence and not the quantity, which is required. If the evidence available on record is otherwise satisfactory in nature and can be said to be trustworthy then increase in the number of witnesses cannot be the requirements of the case.

72. Moreover, it has now almost become a fashion that public is reluctant to appear and depose before Court especially in criminal case because of varied reasons. Criminal cases are kept dragging for years to come and the witnesses are harassed lot. They are being threatened, intimidated and at the top of all they are subjected to unnecessary lengthy cross-examination. So, the public witness avoid to come¹¹⁶ the Court.

73. The plea regarding principle of "falsus in uno falsus in omnibus" advanced by the learned Counsel for the appellant is also not tenable. Even if major portion of the evidence is found to be deficient, in case residue is sufficient to prove the guilt of an accused, his conviction can be maintained. It is the duty of the Court to separate grain from chaff. Where chaff can be separated from grain, it would be open to the Court to convict an accused notwithstanding the fact that the evidence has been found to be deficient or to be not wholly credible. Falsity of material particular would not ruin it from the beginning to end. The maxim "falsus in uno falsus in omnibus" has no application in India and the witness or witnesses cannot be branded as liar/liars. The maxim "falsus in uno falsus in omnibus" has not received general acceptance nor has this maxim come to occupy the status of rule of law. It is merely a rule of caution. All that it amounts to, is that in such cases testimony may be disregarded and not that it must be disregarded. The doctrine merely involves the question of weight of evidence which a Court may apply in a given set of circumstances, but it is not what may be called "a mandatory rule of evidence" See Nisar Ali Vs. The State of Uttar Pradesh, It is always open to a Court to differentiate accused who had been acquitted from those who were convicted where there are a number of accused persons. The doctrine is a dangerous one specially in India for if a whole body of the testimony were to be rejected, because witness was evidently speaking on untruth in some respect, it is to be feared that administration of criminal justice would come to a dead-stop. Therefore, it has to be appraised in each case as to what extent the evidence is worthy of acceptance, and merely because in some respect the Court considers the same to be insufficient for placing reliance on the testimony of a witness, it does not necessarily follow as a matter of law that it must be disregarded in all respects as well. The evidence has to be shifted with care.

74. Also, there is no rule of law that if the Court acquits the co-accused on the evidence of a witness finding it to be open to some doubt, any other accused against whom there is evidence about his involvement in the crime based on the remaining credible part of the evidence of that witness, should also be acquitted. In this connection, a reference may be made to the decisions of the Hon'ble Apex Court in the case of Swaran Singh Vs. State of Punjab, and in the case of Komal and Others and Meharban and Others Vs. State of Uttar Pradesh,

75. The mere fact that benefit of doubt was given to those accused against whom the prosecution evidence is insufficient and thereby fail to prove its case to the hilt, that does not mean that other accused persons against whom there is sufficient material to establish the prosecution case should also be given such benefit of doubt. In this connection, a reference may be made to the two decisions of the Hon'ble Apex Court in the case reported in State of U.P. Vs. Rasid and Others, and Gangadhar Behera and Others Vs. State of Orissa,

76. In the present case the co-accused persons were given benefit of doubt with regard to their involvement in the crime under consideration for want of tangible evidence to the satisfaction of the learned Trial Court, they were acquitted from the charges levelled against them.

77. For the aforesaid reasons, the submission advanced by the learned Counsel for the appellant in this regard is without substance and we accordingly reject it.

78. On a conspectus of the evidence of the material witnesses, the evidence of the doctor and other surrounding circumstances, we are in complete agreement with the conclusion arrived at by the learned trial Court. The judgment and orders of conviction and sentence passed by the learned trial Court did not suffer from any illegality or impropriety to warrant interference.

79. In the result, the conviction recorded and the sentences imposed upon the appellant by the trial Court are affirmed.

80. The appeal is accordingly dismissed.

81. The appellant is now in jail. He is directed to serve out the remainder part of his sentence as imposed against him by the learned trial Court.

82. Send a copy of this judgment to the Superintendent, of the concerned Correctional Home where the appellant is now under detention for information and necessary action.

83. Lower Court records with a copy of this judgment to go down forthwith to the Court of the learned Trial Judge for information and necessary action.

84. Urgent xerox certified copy of this judgment, if applied for, be supplied to the learned Counsel for the parties upon compliance of all formalities.

Girish Chandra Gupta, J.

85. I agree.