

(2019) 05 CAL CK 0071

In the Calcutta High Court

Case No : Criminal Revision (CRR) No. 2651 Of 2018

Swarajit Patra & Ors Vs State Of West Bengal & Anr ?

Date of Decision : 23-05-2019

Acts Referred:

Indian Penal Code, 1860 — Section 34, 324, 326, 341, 379

Code Of Criminal Procedure, 1973 — Section 156, 156(3), 157, 159, 313, 428, 431

Citation : (2019) 05 CAL CK 0071

Hon'ble Judges : Shivakant Prasad, J

Bench : Single Bench

Advocate : Sekhar Kumar Basu, Rajdeep Majumder, Diptangsu Basu, Pritam Roy, Kriti Mehrotra, Rana Mukherjee, Debjani Sahu

Final Decision : Dismissed

Judgement

Shivakant Prasad, J

In this revisional application three petitioners/accused persons have challenged the judgment and order dated 29.8.2018 passed by Additional Sessions Judge, 2nd Court, Krishnanagar, Nadia, in Criminal Appeal No. 06 of 2018 modifying the judgment dated 15.01.2018 passed by Judicial Magistrate, 5th Court, Krishnanagar, Nadia in connection with Kotwali P.S. Case No. 1142/12 (G.R. Case No. 4288/12 under Sections 341/324/326/379/34 of the Indian Penal Code, 1860 thereby convicting the petitioners/accused persons under Sections 341/326/34 of the Indian Penal Code and sentencing them to suffer simple imprisonment for one month for the offence under Section 341/34 of the Indian Penal Code and to suffer rigorous imprisonment for three years and fine of Rs. 10,000/- each in default to suffer rigorous imprisonment for another six months for the offence punishable under Section 326/34 of the Indian Penal Code with direction that both the sentences shall run concurrently.

Prosecution case, in brief, is that on 14.11.2012 at about 10.00 P.M. to 11.00 P.M. when victim Rakesh Garai, the elder brother of complainant Palash Garai was returning home after closing his shop he was way laid by the petitioners/accused persons who restrained him near Ghurni Tarun Sangha Club and

physically assaulted him and demanded a sum of Rs. 4,500/- for consuming liquor and when Rakesh Garai declined to accede to their demand, the three accused persons forcibly snatched Rs. 4,500/- from his possession and when he resisted the attempt the accused petitioner No. 1 Swarajit Patra took a knife from the pocket of petitioner No. 2 Somnath Swarnakar and stabbed at the lower abdomen of Rakesh Garai, as a result, he sustained profuse bleeding injury and intestine prolapsed from his abdomen due to severe stab injury. The injured was immediately admitted in District Hospital, Nadia in critical and morbid condition.

Kotwali P.S. Case No. 1142/12 dated 15.11.2012 under Sections 341/324/326/307/379/34 of the Indian Penal Code was started on the basis of written complaint by Palash Garai and investigation ensued. On completion of investigation, Charge-sheet No. 328/2013 dated 11.4.2013 under Sections 341/324/326/379/34 IPC was submitted by the Investigating Officer. Chief Judicial Magistrate, Krishnanagar transferred the case for trial and disposal to Judicial Magistrate, 6th Court, Krishnanagar, Nadia vide order dated 27.11.2013.

Charges under four heads under Sections 341/34, 324/34, 326/34 and 379/34 IPC were framed by the trial Magistrate and prosecution examined as many as nine witnesses to bring home charges against the petitioners.

It would appear from the order-sheet of the lower Court record that the case was transferred to the Court of learned Judicial Magistrate, 5th Court, Krishnanagar, Nadia for simultaneous trial with G.R. Case No. 4941 of 2012 pending in the Court of Judicial Magistrate, 5th Court, Krishnanagar, Nadia.

After closure of prosecution evidence the accused persons were examined under Section 313 Cr.P.C. to which each of them declined to adduce any defence witness. The defence is one of denial of charges levelled against the accused persons, petitioners herein which emerged from the trend of the cross-examination. After hearing the prosecution and the defence, the learned Magistrate by his judgment dated 15.01.2018 convicted the petitioners for the commission of offence under Sections 341/34, 326/34, 379 of the Indian Penal Code on finding them guilty and upon hearing on the point of sentence, they were sentenced to simple imprisonment for one month for the offence under Section 341/34 IPC and rigorous imprisonment for three years for the offence under Section 326/34 IPC and further rigorous imprisonment for two years for the offence under Section 379 IPC and also sentenced to pay compensation of Rs. 11,500/- against each of the accused persons amounting to Rs. 34,500/- to the victim Rakesh Garai. The convicts were directed to serve out the sentences in respect of three offences consecutively, thus, imposing five years rigorous imprisonment and one month simple imprisonment in aggregate in view of Section 31 of the Code of Criminal Procedure. Direction was given for payment of compensation to the victim under the provision of Section 357 of the Code of Criminal Procedure in default to one month simple imprisonment subject to decision of the appeal for realization from the convicts by execution under the provision of Section 431 of the Code of Criminal Procedure. Direction was also

given for setting off the pretrial detention undergone by the convicts/petitioners under Section 428 of the Code of Criminal Procedure, at the time of final calculation of their term of imprisonment.

The said judgment of trial Magistrate was assailed in appeal by the petitioners in Criminal Appeal No. 06/2018 and the learned Additional Sessions Judge, 2nd Court, Krishnanagar, Nadia by his judgment and order dated 29th August, 2018 modified the sentences on the appellants, petitioners herein directing them to suffer simple imprisonment for one month for the offence under Section 341/34 IPC and rigorous imprisonment for three years and fine of Rs. 10,000/-each in default to suffer rigorous imprisonment for another six months for offence under Section 326/34 IPC, holding that the conviction of the appellants ought to have been under Sections 341/34 and 326/34 IPC. As there is no ingredients of Section 379/34 IPC in view of the evidence that the victim and the others were wrongfully restrained in furtherance of common intention and thereafter, in furtherance of common intention with efforts the accused Swarajit Patra assaulted the victim by a knife resulting in stabbed injury in his lower abdomen.

The judgment of Appellate Court below is under challenge in this revisional application, inter alia, on the grounds that the FIR is a delayed FIR which was started on 15.11.2012 strangely without plausible reason the same was forwarded to the learned Chief Judicial Magistrate on 08.12.2012 without adhering to the legal obligations that an FIR should be sent to the Court before 24 hours. Accordingly, the ground taken is that the FIR is an embellished one with concocted facts. Secondly, that the prosecution case is based on hearsay evidence without corroboration by the prosecution witnesses and thirdly, that there are material contradictions in the deposition of P.W. 1, victim with that of P.Ws. 2, 3, 6 & 8 so far as the time of incident and the place of occurrence as alleged by the prosecution.

Accordingly, the petitioners have assailed the judgments of both the Courts below praying for setting aside the judgment impugned and quashing the criminal charges against the accused persons.

Now the point of decision is as to whether the judgment impugned is tenable in law and in fact.

Mr. Sekhar Kumar Basu, learned senior counsel appearing for the petitioners pointed out that the revisional application is fundamentally based on the challenge on the perversity of the findings of both the Courts of Appeal and that of the Court of original jurisdiction in regard to the charges framed and conviction recorded, apart from the oral submission.

It is submitted that the place of occurrence, time of occurrence and date of occurrence fundamentally plays a significant role in the assessment of evidence in a criminal trial and deviation from any of these three aspects either collectively or severally would lead to the rejection of the prosecution case. The reason behind such indispensable requirement of law is that if any changes found to

have taken place with regard to place where the offence was committed about the time when the offence was committed and the date when it was committed, the colour and complexion of the prosecution case undergoes an uncorrectable change.

It is pointed out that according to the charge framed by the learned Magistrate the place of occurrence and the time of occurrence is on 14.11.2011 at Ghurni at 10.00 P.M. alleging commission of the offence which prosecution cannot deviate from the date and the place of occurrence and the time mentioned in the charge since the accused persons have to face trial to answer the charges framed against them.

Jurisprudentially, the Court is entitled to alter and/or to amend the charge at any time before the delivery of judgment but in case where such alteration or amendment does not take place, the prosecution is bound to confine to the charges framed and the manner of commission of the offence as indicated in the charges.

It is submitted that P.W. 1 in his evidence did not mention the place of occurrence and his evidence in cross-examination is something which is devoid of any logic and cannot be understood with precision. In cross-examination as he has deposed that he told the police that he along with some other was gossiping under tree having pucca ground. There were two friends with him and might tell the names of his friends to police. P.W. 1 has also stated in cross-examination that he told the incident to the Darogababu and to the doctor and the doctor did not write anything in his prescription. It is argued that the evidence of P.W. 1 in conjunction with the evidence of P.W. 6 Dr. Nabarun Banerjee will find a serious contradiction about the place of occurrence and also about the time. P.W. 6 has stated that

P.W. 1 was conscious and cooperative and that at the operation theater, P.W. 1 did not tell the name of the assailant but stated that he was stabbed in the club room near his house and that the incident of assault took place at 7.30 P.M. P.W. 6 emphatically contradicts P.W. 1 when the latter said that the doctor did not write anything in front of him. At the time of recording the history of assault, P.W. 1 was the only person who was with P.W. 6 at the operation table. The history of assault recorded by P.W. 6 on 14.11.2012 is prior to the registration of FIR at the instance of P.W. 3 the brother of the P.W. 1 on the following day. In cross-examination, P.W. 1 was suggested by the defence that the incident took place in Tarun Sangha Club at 7.30 P.M. which suggestion was denied by him to mean that incident took place near Tarun Sangha Club . The denial was mere words of mouth since such defence suggestion is amply corroborated by recording of the history of assault by P.W. 6.

It is also argued that P.W. 2 claimed to be a companion of P.W.1 at the relevant point of time who mentioned the time of incident at 10.30 P.M. but this witness was not interrogated by the police during investigation meaning thereby

whatever he has stated in the Court for the first time, there is ample reason to hold that his version was fabricated.

I have perused the evidence of P.W. 2 to ascertain the truth. I am not in agreement with defense argument that the version of P.W. 2 is fabricated one because no suggestion has been put to the I.O. P.W. 9 suggesting that I.O. has not interrogated P.W.2 rather, I find from the evidence of P.W. 2 that he fled away from the place of occurrence out of fear and went to the house of Rakesh and informed them about the incident. Therefore, argument that there is no semblance of reliability in the deposition of P.W. 2 is not acceptable. According to P.W. 3, the brother of the victim and the complainant, he was at home, heard screaming in the locality when he rushed to Tarun Sangha Club situated at Ghurni, Kumor Para and saw his elder brother P.W. 1 seated on a chair having no sense and blood was oozing from his abdomen which was wrapped with a piece of cloth. He took his brother to Shakti Nagar Hospital with the help of another person whom he did not name. In cross-examination P.W. 3 stated that his brother regained his consciousness in the hospital one hour after and he lodged a complaint at the police station on the following day at 11.00/11.30 A.M. and police came to their house for investigation two months after the incident and he was interrogated by the police at that time but he could not remember that blood stained apparel of his brother was handed over to the police or not. P.W. 3 has deposed during cross-examination that a false case on the allegation of teasing and outraging modesty of Shukla Das sister of accused Somnath Swarnakar against his brother (P.W.1) and Judisthir (P.W.2) was filed.

As regards lodging of a First Information Report by P.W. 3 and registration of the same and sending the same to Court of Chief Judicial Magistrate, Krishnanagar by S.I. of Police P.W. 5 is concerned. Mr. Basu submitted that there is a lacuna in the prosecution case as P.W. 5 candidly admitted that the FIR dated 15.11.2012 was transmitted to the Court on 08.12.2012 and there was no explanation for such inordinate delay in the transmission of the FIR in the Court and there is no contents in the FIR as regards P.W. 7 being companion of P.W.1 inasmuch as P.W.1 did not mention the names of his companions in his evidence. It was only P.W.2 who had claimed to be companion of P.W. 1 and one Tarak Pal, P.W. 7 to argue that the evidence of P.W. 7 is not trustworthy as an eye witness to the incident. P.W. 7 in clear crystal term has stated on oath that at about 10.00 P.M. to 10.30 P.M. incident occurred near Tarun Sangha Club of Ghurni Kumorpara within Kotwali P.S. when on hearing hue and cry, he came out from his house and saw Rakesh Ghorai brother of Palash Garai with cut and bleeding injury over abdomen lying near Tarun Sangha Club under a tree having circular pucca ground. He took Rakesh to hospital with his brother Palash Garai and one neighbor Abhijit Garai and in the hospital Rakesh Garai had told that the present petitioner namely, Swarajit Patra, Somnath Swarnakar and Ashok assaulted him by knife and snatched his money amount of Rs. 4,000/- to 5,000/- from his possession.

It is true that P.W. 7 may not be treated as an eye witness of the incident but he has corroborated the prosecution case what he had seen after the incident and his evidence cannot be impeached on the sole ground that he is not an eye witness rather he was companion of the victim and that of his brother and another neighbor who took the victim injured to the District Hospital for his treatment.

It may be that P.W. 2 and P.W. 3 have projected P.W. 7 as an eye witness but he can be characterized as a post occurrence witness. These are the minor deviation in the evidence of the prosecution witnesses but that by itself does not go to the root of the prosecution case to shake it.

P.W. 8 Abhijit Garai is one of the persons who accompanied the victim to the District Hospital along with P.W. 3 and P.W. 7. According to him, he was called by Palash Garai over phone and he saw that Rakesh Garai was injured over his abdomen with bleeding injury and heard that the accused persons, petitioners herein physically assaulted the victim. He has also identified the accused persons during trial. In cross-examination P.W. 8 stated that at the time of examination of Rakesh Garai by doctor at Shakti Nagar Hospital, he was present with P.W. 3, Palash Garai. He also deposed that P.W. 1 was in sense when he was taken to hospital and he was in a position to talk with others. It is submitted that the logical conclusion of such statement of P.W. 8 in his cross-examination is that when the doctor P.W. 6 examined P.W. 1 at the hospital, P.W. 8 was present there and that P.W. 1 made statement before the doctor as to how he sustained injury and where he sustained injury and when to argue that this witness is a tutored witness.

I am unable to agree with such submission of learned defense because the injured in serious bleeding injury even if had revealed to the doctor attending him and if the doctor has not noted the same in his report, it cannot be said to be a serious infirmities to come to the logical conclusion as argued by learned counsel. The witness cannot be held to be a tutored witness in view of his clear crystal statement on oath that he was called by Palash Garai over mobile phone and he came to the spot and heard that the accused persons petitioners herein physically assaulted Rakesh. He was one who also accompanied the injured to the hospital and his statement has not been impeached in his cross-examination. It is settled principle of law of appreciation of evidence in criminal trial that contradictions or improvements in minor details cannot be regarded as very material or as positive prove of the mendacity of the witnesses and the whole case cannot be thrown out on that account. Looking into the evidence on record in its totality this Court finds that prosecution case has been well proved by the prosecution witnesses with the medical evidence to conclude that the accused persons petitioners herein participated in the crime as alleged in which the injured P.W. 1 was inflicted with grievous injury by use of a deadly weapon like knife by the petitioner Swarajit Patra.

I am of the view that discrepancies and certain improvements in the evidence of

prosecution witnesses should not be given too much stress without any attempt to appraise the real value and effect. It is a common experience that discrepancies in evidence do occur due to defensive suggestion put to the witnesses during their cross-examination even in the statement of a perfect honest witness which are really due to difference in individual faculties with regard to observation, recollection and recital of details. I find that evidence of all the witnesses adduced in Court in this given case is well proved which are in general agreement.

It is further argued that Investigating Officer (P.W. 9) did not collect the blood stained earth from the place of occurrence, the blood stained apparel of the victim and the offending weapon were also not seized by him, accordingly, it is argued that the evidence adduced by the prosecution witnesses and tested by cross-examination, the place of occurrence, the time of occurrence and the manner of commission of the offence have not been depicted truthfully and the prosecution case had signally fallen short of required truth beyond reasonable doubt.

Mr. Basu to buttress his argument referred to a decision in case of Mamfru Chowdhury and Ors., complaint vs. King Emperor reported in AIR 1924 Calcutta 323 wherein it has been observed that the evidence must show that the incident alleged happened at the time, in the place and under the precise circumstance narrated on behalf of the prosecution. The principle of law as laid in the said legendary decision is undoubtedly being followed from time to time for almost 96 years which decision was in the context of the fact that a charge of rioting where the common object of the unlawful assembly as specified in the charge was twofold, the prosecution case would be much weakened in the absence of evidence as to both the objects where two of the complainant's party were said to have been severely injured and detained in hospital for about 25 days. Principle of law was laid in that perspective that the absence of medical evidence was a serious defect in the case for the prosecution and the evidence must show that the incident allegedly happened at the time, in the place and under the precise circumstances narrated on behalf of the prosecution. It is equally the principle of law laid in the said decision itself that credibility of the witnesses or jurors must not be judged from their denomination. It means evidence is not counted rather weighed as per the provisions of Section 134 Indian Evidence Act.

Case of Syed Ibrahim v. State of Andhra Pradesh reported in JT 2006 (6) SC 597 was also relied on by the learned counsel for the petitioners to argue that since the place of occurrence itself had not been established. It would not be proper to accept the prosecution case. It has been held that the FIR is not a substantive piece of evidence, yet, the same can be used to test the veracity of the evidence. That is to say, it is subject to corroboration or contradiction by its maker only.

In the cited decision the appellant was charged with the murder of his wife who was sentenced to life imprisonment on the basis of the testimony of P.W. 1, the father of the deceased who was the sole eye witness of the incident since other

prosecution witnesses did not support the prosecution case. The High Court initially allowed the appeal but on remand dismissing the appeal and confirming the conviction and sentence the High Court found the evidence of P.W. 1 to be sufficient to fasten guilt on the accused. On scanning the evidence of P.W. 1 it was observed by the Hon'ble Supreme Court that the evidence of P.W. 1 suffered from inconsistencies and therefore did not inspire confidence inasmuch as there was variation with regard to the place of occurrence. Since P.W. 1 and his wife having been separated for nearly two decades, it was doubtful if he could have witnessed the incident stated to have taken place at the place of his estranged wife and in that set of fact, the appellant was directed to be set at liberty.

Now, in the context of the above cited decisions this Court is called upon to appraise the evidence on record.

In appraising the evidence of prosecution witnesses P.W.1, P.W.2 identity of the assailant is not in doubt. Rakesh Garai P.W. 1 is the victim who has in clear crystal term deposed on oath that on 14.11.2012 at 11.00/11.30 P.M. when he was coming home from his shop, the accused persons came to him and asked money for drinking liquor. P.W. 1 told them that he did not have money. Then, three accused persons forcibly took Rs. 4,500/- from his pocket and when he tried to resist them, Swarajit Patra took a knife from Somnath Swarnakar and stabbed it on lower abdomen of P.W. 1. When he tried to run away he fell on the ground and became senseless and he could not remember what happened afterwards. Obviously, his brother took him to Shaktinagar hospital where he was admitted for 15/20 days. He has narrated the fact to the Investigating Officer and also to the doctor but the doctor had not written anything in his presence as suggested by the defence during his cross-examination.

It would reveal from his cross-examination that defence has given certain suggestion to the P.W. 1 to take contradiction but such a submission has not been put to the Investigating Officer to get the benefit of those contradictory statements such as he wore a thin sweater on a T-shirt and due to assault his sweater and T-shirt became stained in blood. He did not give those blood stained apparels to Darogababu neither he took the same. According to P.W. 9, he has not collected blood stained earth and wearing apparel of the victim nor he sent those things to FSL for expert opinion. He could not even seize any offending weapon in this case but admittedly he has examined Rakesh Garai on 16.11.2012 at Kumor Para, Ghurni in his residence as suggested to him in cross-examination. Admittedly, Shukla Das sister of accused Somnath had filed a complaint against P.W. 1, P.W. 2 and P.W. 7 after one month of the incident. Suggestions were put to him during cross-examination that he was called in club when Shukla Das allegedly complained at club. He was also suggested that he told police that they were gossiping under a tree having pucca ground. There were two friends with him and he might tell the names of his friends to police. But those suggestions have not been put to the Investigating Officer by the defence to take such contradiction therefore, ocular testimony of P.W. 1 injured

cannot be discredited. It is settled law that injured is the first eye witness to the occurrence as he cannot leave out the culprit and falsely implicate the innocent person. The evidence unequivocally reflects that the injured witness has deposed pointing to the guilt of the accused persons who forcefully took Rs. 4,500/- from his pocket and when he tried to resist them, Swarajit Patra took a knife from Somnath Swarnakar and stabbed it on lower abdomen of P.W. 1. The prosecution case finds corroboration by the witnesses which are in general agreement.

P.W. 6 Nabarun Banerjee the doctor has testified the fact of admission of Rakesh Garai on 14.11.2012 in the emergency who was firstly examined by Emergency Medical Officer and sent directly to O.T. He examined the patient and saw that the patient had a sharp cut wound in his anterior abdominal wall right ILISE fossa with prolapsed intestine. The patient gave history at that time that he sustained a stab injury on the same place at 7.30 P.M. on the same day i.e. on 14.11.2012 in the club room near his house and he was brought to the hospital by Abhijit Garai, his brother and immediately took the high risk consent from the members of the family and operated on the patient. Then the patient was sent to the ward and was discharged after advice on 21.11.2012. P.W. 6 has proved the Medical Report, viz, bed head ticket, injury reports and discharge certificate of the victim marked collectively as Exhibit-3.

It would be evident from the Medical Report Exhibit-3 that Rakesh Garai was admitted on 14.11.2012 at 11.35 P.M. So it is not understood as to why the doctor has deviated by saying that the P.W. 1 sustained injury at 7.30 P.M. Evidence of doctor is that of the opinion evidence. Ordinarily medical evidence is corroborative evidence. When a medical person is called as an expert, he is not the witness to the facts because his evidence is not direct evidence of how an injury in question was done. He gives his opinion only on how that, in all probability was caused. The value of such evidence lies to the extent it supports and lends weight to the direct evidence of eyewitnesses or contradicts evidence and removes the possibility of the injury in question which could take place in the manner alleged by the witness. Although the substantive evidence is that of the eyewitnesses who have seen the incident, expert evidence has corroborative value. The prosecution on medical evidence which is consistent with the eyewitness testimony to corroborate the eyewitness account that the injury took place in a particular manner. The rule of accepting medical evidence is that medical evidence is opinion evidence. Sometimes it may happen that such an opinion points out total improbability of certain events and at the same time direct evidence in showing that the event actually happened. So, as per general rule, direct evidence is always admissible. This rule will not be made applicable that direct evidence may be discarded on the basis of opinion evidence. Where direct evidence is doubtful and it is improbable because of the expert evidence then only the court may not accept the both.

In this case the medical report display that the injured was admitted in hospital at 11.35/11.40 P.M. on 14.11.2012 in critical and morbid condition. In the history

of patient, doctor has noted that the patient sustained stab injury at 7.30 P.M. on 14.11.2012 in club room near his house. He was brought by Avijit Garai, brother with the prolapsed small gut 2 inches RIF wound, on exploration- wound extended to 4 inch grid iron muscle cutting incision. Gut showed small ½ c.m. perforation, 40 inch from Illeco Caecul Valve were repaired in the operation.

I find on the totality of the evidence on record in particular that of the injured P.W.1 and independent eye witness viz. P.W. 2 that they have unequivocally deposed that it was the petitioner Swarajit Patra who stabbed P.W. 1 at his abdomen causing bleeding injury and other two accused persons were present there.

As regards delay in sending the FIR to the Magistrate is concerned it cannot be taken as a ground to justify the inference that the FIR is concocted and embellished to falsely implicate the accused persons. Delay caused is not by the I.O. rather by the Officer in-Charge of the Police Station and sometimes the FIR forwarded to the Magistrate are not placed before the Magistrate on day to day basis by the Court Inspector. In the given facts on the basis of the evidence on record I find that P.W. 3 had lodged the FIR on 15.11.2012 by giving explanation that he was engaged with the injured in the hospital and the I.O. P.W. 9 has not been cross-examined by the defence as to the date of receiving the FIR from the Police Station by him for investigation. According to P.W. 9 during investigation he prepared rough sketch map of the place of occurrence with explanatory index, Exhibit- 4 on 16.11.2012.

In a decision in case of Pala Singh & Anr. vs. State of Punjab reported in AIR 1972 page 2679 it has been observed that the FIR was actually recorded without delay and the investigation started on the basis of that FIR and there was no other infirmity brought to the notice of the Court, 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. Section 157 Cr.P.C. requires the 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 Section 159 Cr.P.C.

In Rabindra Mahto & Anr. Vs. State of Jharkhand, 6th January, 2006 (Appeal (Crl.) 588 of 2005 reiterated that Section 157 of the Code of Criminal Procedure mandates that if, from information received or otherwise, an officer in charge of police station has reason to suspect the commission of an offence which he is empowered under Section 156 to investigate, he shall forthwith send a report of the same to the Magistrate empowered to take cognizance of such offence upon a police report. Section 157 Cr.P.C. thus in other words direct sending of the report forthwith i.e. without any delay and immediately. Further, Section 159 Cr. P.C. envisages that on receiving such report, the Magistrate may direct an

investigation or, if he thinks fit, to proceed at once or depute any other Magistrate subordinate to him to proceed to hold a preliminary inquiry into the case in the manner provided in the Code of Criminal Procedure.

The forwarding of the occurrence report is indispensable and absolute and it has to be forwarded with earliest dispatch which intention is implicit with the use of the word "forthwith" occurring in Section 157, which means promptly and without any undue delay. The purpose and object is so obvious which is spelt out from the combined reading of Sections 157 and 159 Cr.P.C. It has the dual purpose, firstly to avoid the possibility of improvement in the prosecution story and introduction of any distorted version by deliberations and consultation and secondly to enable the Magistrate concerned to have a watch on the progress of the investigation".

Therefore, the principle of law as discussed above there cannot be any manner of doubt that Section 157 of Criminal Procedure Code requires sending of an FIR to the Magistrate forthwith and without undue delay. At the same time, this lacuna on the part of the prosecution would not be the sole basis for throwing out the entire prosecution case being fabricated if the prosecution had produced the reliable evidence to prove the guilt of the accused persons.

The Hon'ble Supreme Court of India in a recent judgment in Anjan Das Gupta Vs State of West Bengal & Ors on 25 November, 2016 appreciated the ratio decidendi advanced in Pala Singh v. State of Punjab 1972 (2) SCC 640, and held that delay in forwarding the FIR to court is not fatal in a case in which investigation has commenced promptly on its basis. It has been observed that when no questions were put to I.O. in his cross-examination regarding the delay in dispatch, at the time of hearing, the accused cannot make capital of the said delay in forwarding the FIR.

In Shivilal Vs. State of Chhattisgarh, (2012) C.Cr.L.R. SC 99 the Hon'ble Supreme Court has held that in case, the provision of Section 157(1) Cr.P.C. had not been complied with, it may be treated as a lapse on the part of the Investigating Officer and should not adversely affect the prosecution case. In the said judgment the Hon'ble Apex Court has been pleased to explain the issue by appreciating some earlier judicial pronouncements and the said observation is quoted here - "this Court in Bhajan Singh @ Harbhajan Singh & Ors. v. State of Haryana, (2011) 7 SCC 421, has elaborately dealt with the issue of sending the copy of the FIR to the Illaqa Magistrate with delay and after placing reliance upon a large number of judgments including Shiv Ram v. State of U.P., AIR 1998 SC 49; and Arun Kumar Sharma v. State of Bihar, (2010) 1 SCC 108 came to the conclusion that Cr.P.C. provides for internal and external checks: one of them being the receipt of a copy of the FIR by the Magistrate concerned. It serves the purpose that the FIR be not ante-timed or ante-dated. The Magistrate must be immediately informed of every serious offence so that he may be in a position to act under Section 159 Cr.P.C., if so required. The object of the statutory provision is to keep the Magistrate informed of the investigation so as to enable him to

control investigation and, if necessary, to give appropriate direction. However, it is not that as if every delay in sending the report to the Magistrate would necessarily lead to the inference that the FIR has not been lodged at the time stated or has been ante-timed or ante-dated or investigation is not fair and forthright. In a given case, there may be an explanation for delay. An unexplained inordinate delay in sending the copy of the FIR to Illaqa Magistrate may affect the prosecution case adversely. However, such an adverse inference may be drawn on the basis of attending circumstances involved in a case."

The learned Trial Magistrate has rightly applied the principles of law on the subject of delay in forwarding the FIR to a Magistrate with his correct finding that the FIR was lodged immediately on 15.11.2012 within one day of incident which took place on 14.11.2012 by Palash Garai informant after attending the injured in the hospital for his treatment as the injured has to undergo life saving surgical operation. The sketch map of the place of occurrence with explanatory index Exhibit- 4 was prepared by the I.O. on 16.11.2012 that is within two days of the incident and one day after receiving the written information and no ground has been displayed in proof of prejudice to the accused persons/petitioners herein due to delay in sending the FIR inasmuch as there is no cross-examination of I.O. on this point.

In *Brahm Swarup Vs. State of UP* reported in 2011 SCC (6) 288 catena of decisions were discussed on the issue of delay of forwarding the FIR to the Magistrate.

The purpose of the 'forthwith' communication of a copy of the FIR to the Magistrate is to check the possibility of its manipulation. Therefore, a delay in transmitting the report to the Magistrate is of little consequence since manipulation in the FIR would get ruled out. Nevertheless the prosecution is required to explain the same but is question is put to the Investigating Officer in respect of delay in forwarding the FIR, the prosecution is under no universal rule that whenever there is some delay in sending the FIR to the Magistrate the prosecution version becomes unreliable that is to say the facts and circumstances of a case are important for a decision in a criminal trial. Applying the ratio in *Pala Singh (supra)* in case in hand I do not find any prejudice having been caused to the accused persons/petitioners herein because of the delay in forwarding the FIR on 8th December, 2012 in view of my anxious consideration to the facts and circumstances of the instant case discussed herein above.

As I have discussed in the forgoing paragraphs that the victim is the best person to say as to who harmed him and if the victim has no apparent reason to implicate the accused persons then, the identification by the victim can be taken by the court as inviolable.

From the judgment impugned passed by the Appeal Court below, it is evident that a counter case being Kotwali P.S. Case No. 1268 dated 20.12.2012 was submitted on the basis of a written complaint of one Shukla Das filed before the

SDJM under Section 156(3) of Cr.P.C. to treat the same as FIR which was filed nearly after one month from the date of incident obviously afterthought to dilute the case of the prosecution case.

It is settled principle of law that the evidence of an eye witness cannot be disbelieved even on the ground of inimical disposition towards the accused or probabilities of narrating the details of actual assailant. The testimony of an injured witness is an unrelevancy and efficacy as he has sustained injuries at the time and place of occurrence and this lends support of the testimony of victim that he was present at the time of occurrence. Thus, the testimony of victim witness is accorded as special status in law. Such a witness comes with the built in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant in order to falsely implicate someone.

Having regard to the findings of facts and appreciation of legal propositions by two Courts below and on perusal of the judgment impugned and appraisal of the evidence on record I hold that the normal courses of human conduct instil the confidence of the judicial mind in respect of the grievous injury inflicted by Swarajit Patra by a knife, although, other two petitioners have participated in the crime of restraining the victim as they waylaid the victim on his way to his house after he had closed his business place.

On anxious consideration to the entire material facts and circumstances I have hold the views taken by the Appellate Court and I do not find any ground to interfere into the judgment and order dated 29.8.2018 passed by Additional Sessions Judge, 2nd Court, Krishnanagar, Nadia, in Criminal Appeal No. 06 of 2018 arising out of judgment dated 15.01.2018 passed by Judicial Magistrate, 5th Court, Krishnanagar, Nadia in connection with Kotwali P.S. Case No. 1142/12 (G.R. Case No. 4288/12 under Sections 341/324/326/379/34 of the Indian Penal Code, 1860 and is hereby affirmed. Ergo, revisional application being no. 2651 of 2018 is dismissed.

Let a copy of this judgment together with the LCR be sent down to the learned Trial Court forthwith with direction to the appellants to surrender before the Court and served out the sentences.

Urgent certified Photostat copy of this Judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.