A L/NK. MEHARAJ SINGH/KALU

v.

STATE OF UTTAR PRADESH

APRIL 21, 1994

B [DR. A.S. ANAND AND FAIZAN UDDIN, JJ.]

Indian Penal code, 1860 :

S.302—Murder—Trial of—Eye-witnesses not believed—All accused aquitted—On appeal High Court maintained aquittal of one and convicted the other two accused—Sentenced to life imprisonment—Held : keeping in view their unnatural conduct, it could be said that none of the witnesses had actually seen the occurrence—Accused roped in on account of misguided suspicion because of previous enmity—Conviction and sentence recorded by the High Court set aside.

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K. and M along with N and B were challenged for an occurrence which allegedly took place on 3-11-1977 at 11.15 A.M in which the deceased L died. K and N are both brothers and B is their nephew. The F.I.R. is said to have been lodged at about 12.45 P.M. by the father of the deceased. The prosecution alleged that there was background of hostility between E **the parties of the deceased and the accused. The prosecution version of the incident is that when the deceased along with his wife P.W. 3 were loading Jawar in their cart, the accused persons armed with gun, country made pistol and knife, attacked him. N. & K are alleged to have shot at the deceased with their respective weapons, while M is said to have** F **caused injuries to the deceased with knife, after he had fallen down. In support of its case the prosecution examined four alleged eye-witnesses viz. P.W. 2, P.W.3 (wife of the deceased), P.W. 4 and P.W. 5.**

The Trial Court acquitted all the accused. The State appealed to the High Court. N died during the pendency of their appeal before the High G **Court and therefore the appeal abated in respect of him. The High Court maintained the acquittal of B while reversing the acquittal of K and M and convicting them of various offences including the one punishable under Section 302 IPC and sentenced them to life imprisonment.**

The State did not file any appeal against the acquittal of B, K and H **M appealed to this Court.**

Allowing the appeals and setting aside their convictions and sentences, this court A

HELD : 1. The observation of the High Court that the injuries were caused by four different shots is not the opinion of the doctors because no elucidation was sought from the doctor in this behalf. The High Court divided the injuries, without any basis and ignored certain vital aspects like B the factum that injury No.13 consists of three wounds on the right arm upper part which is at quite a distance from injury No.4. There is no evidence, direct or indirect, about the height or health of the deceased but nevertheless the High Court attempted to explain the direction of injuries Nos.5 and 6 by observing that the deceased was well built and so would be *presumed* to C be taller than the accused assailants. This is a purely conjectural finding based on surmises and not on any evidence on the record. [600-E-H]

2. The High Court also, without any evidence, observed that the level of the path way is *normally* slightly higher than the field with a view to explain the directions of the injury as from upwards. [601-A] D

3. The presence of blackening and tattooing would show that the shots had been fired from a closer range. No explanation was offered by the prosecution and the High Court also did not properly appreciate this aspect of the case. [601-B-C]

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4. The finding of the High Court regarding the incised wounds found on the dead body of the deceased is even more conjectural which is neither supported by the medical data nor by the medical opinion. [601-C]

5. Medical evidence is only an evidence of opinion and is not conclusive, The High Court can decide the case on the basis of the F evidence led and not on what ought to have been led. No explanation from the medical witness was sought about the reason for three different types of incised injuries found on the deceased and whether the same could have been caused by one weapon alone. [601-F-G]

6. According to the Doctor, the presence of semi-digested food would G show that if the deceased had taken his food at about 7 a.m., his death could have taken place between 9 and 9.30 a.m. It would imply that he occurrence took place much earlier than is alleged by the prosecution.

[601-G-H; 602-A]

7. The F.I.R. in the case was not recorded at the time alleged by the H

A prosecution. According to P.W. 3 the deceased had left the house at 7 a.m. He would have therefore taken his food before leaving the house because it is not the prosecution case that food was served to him while he was in the fields. Death, according to the medical witness, could have occurred within about 2 or 2½ hours from the time the deceased had taken food since 150 gms of semi-digested food was found in the stomach of the deceased. According to B P.W. 3 however, the occurrence took place at about 11.30 a.m., which would imply that the deceased took his food later and did not leave his house at 7 a.m. but at about 9.30 a.m. The effort on the part of P.W. 3 to show that the occurrence took place at 11.30 a.m. appears to have been made because she wanted to back up the prosecution story by stating that the F.I.R. had been C lodged promptly at 12.45 p.m. and that she had seen the occurrence. According to the prosecution case P.W. 8 the investigating officer left for the place of occurrence *after* the case had been registered at the police station but in the inquest report prepared by him at the spot, the number of the F.I.R. or the crime number has not been given. Even the heading of the case does not find mention in the inquest report. No explanation has been furnished for D the omission of these vital matters from the inquest report. It is also relevant to note that copy of the F.I.R. was not even sent to the medical officer along with the inquest report and dead body for post mortem. There is yet another factor which is very relevant. The prosecution laid no evidence to show as to when the copy of the F.I.R., Special Report (which was required to be E despatched under the statutory provisions of Section 154 Cr. P.C. read with Section157 Cr. P.C. promptly to the Magistrate) was actually despatched. There is no evidence either to show as to when the copy of the F.I.R. was received by the Magistrate. [603-A-F, 604-A-B]

8. F.I.R. in a criminal case and particularly in a murder case is a vital F and valuable piece of evidence for the purpose of appreciating the evidence laid at the trial. The object of insisting upon prompt lodging of the F.I.R. is to obtain the earliest information regarding the circumstance in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapon, if any, used, as also the names of the G eye-witnesses, if any. Delay in lodging the F.I.R. often results in embellishment, which is creature of an after thought. On account of delay, the F.I.R. not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured vision or exaggerated story. With a view to determine whether the F.I.R. was lodged at the time it is alleged to have been recorded, the courts generally look for certain external checks. One of such H checks is the receipt of the copy of the F.I.R., called a special report in a

murder case, by the local Magistrate. If this report is received by the Magistrate late it can give rise to an inference that the FIR was not lodged at the time it is alleged to have been recorded, unless, of course, the prosecution can offer a satisfactory explanation for the delay in despatching or receipt of the copy of the FIR by the local Magistrate. Prosecution has laid no evidence at all in this behalf. The second external check equally important is the sending of the copy of the FIR along with the dead body and its reference in the inquest report. Even though the inquest report, prepared under Section 174 Cr. P.C. is aimed at serving a statutory function, to lend credence to the prosecution case, the details of the F.I.R. and the gist of statements recorded during inquest proceedings get reflected in report. The absence of those details is indicative of the fact that the prosecution story was still in embrayo and had been given any shape and that the F.I.R. came to be recorded later on after due deliberations and consultations and was then ante timed to give it the colour of a promptly lodged F.I.R. [604-D-H, 605-A-B]

9. In the inquest report even the name of the accused has not been mentioned. It also does not contain the names of the eye-witnesses and the gist of the statement of the eye-witnesses. It does not reveal as to how many shots had been fired or how many weapons had been used. The inquest report is not signed by any of the eye-witnesses, although the investigating officer has categorically asserted that two of them were present at the place of occurrence when he visited it and recorded their statements. [603-F-G]

10. It appears that it was a blind murder and none of the eye-witnesses were actually present at the scene. The ante timing of the F.I.R. was obviously made to introduce eye-witnesses to support the prosecution case. This is clear from the fact that though P.W. 3 the widow of the deceased claimed that she was present with her husband at the time of occurrence, her conduct was so unnatural that not only she did not try to save her husband by trying to provide cover but even after her husband fell down and was inflicted repeated injuries with the knife by the appellant M, she did not even try to go anywhere near her husband and even later on hold his head in her lap and try to provide some comfort to him. It is not the case of the prosecution that the clothes of any of them had got blood stained. The very fact that none of these witnesses went to lodge a report that instead left it to the father of the deceased to lodge the F.I.R. would also go to show that the witnesses in all probability were not present at the spot. The absence of any blood in the field of K as also the absence of blood trail from the field to the place where the dead body was found, as admitted by P.W. 8, also suggests that the occur-

A rence did not take place in the manner suggested by the prosecution and that the genesis of the fight has been suppressed from the Court. The evidence of the doctor who conducted the post mortem examination showed that the stomach contained partially digested food material weighing about 150 gms, concluding therefrom that the occurrence must have taken place between 9 and 9.30 a.m. If the deceased had taken his food at 7 a.m. a doubt arises B about the correctness of the prosecution version which alleged the time of occurrence as 11.30 a.m. presumably with a view to lend an assurance that P.Ws. 2, 3, 4 and 5 were present in the field at the time. The evidence of the doctor to the effect that he had found incised injuries on the deceased including one L shaped injury (injury No. 11) and one semi-circular injury (injury C No. 18) is indicative of the fact that these two injuries were caused by different weapons and looking to the nature of the other incised wounds on the deceased, the possibility that three types of sharp edged weapons were used cannot be ruled out. That being the position, it is obvious that the ocular testimony does not fit in with the medical evidence and on the hand it contradicts it. [605-C-H, 606-A-C]

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11. It appears that a concerted effort was made by the prosecution witnesses to introduce R and J as eye-witnesses in the case but since they have not been examined, it would be fair to draw a presumption that they perhaps were not prepared to support the prosecution case. [606-E-F]

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12. The fact that the alleged eye-witnesses are deeply interested in the prosecution is not a ground to discard their testimony but it certainly puts the court on its guard to scrutinize their evidence more carefully. Keeping in view their unnatural conduct, it appears that none of the alleged eye-witnesses had actually seen the occurrence and they were introduced as eye-witnesses after thoughtful deliberations and consultations. It appears, that F since it was a blind murder the appellants have been roped in on account of misguided suspicion because of previous enmity. [606-F-H]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 386 of 1993.

G

WITH

Criminal Appeal No. 288 of 1994.

From the Judgment and Order dated 18.7.91 of the Allahabad High H Court in Government Appeal No. 126 of the 1979.

D.S. Tewatia, Mahavir Singh, Kusum Singh and P.N. Gupta for the Appellants. A

Anis Ahmad Khan, A.S. Pundir and R.S. Yadav for the Respondent.

The Judgment of the Court was delivered by

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DR. ANAND, J. These two appeals under section 2(a) of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970, are directed against the judgment of the Allahabad High Court allowed the appeal of the respondent State and setting aside the acquittal of the appellants in both these appeals. Since, the appeals arise out of the common judgment, these are being disposed of by this common judgment. Kalu, Neelu, Meharaj Singh and Babu were challanged by the police for an occurrence which took place on 3.11.1977 at 11.15 a.m. at village Dhanju in which one Laxman Singh was murdered. The trial court acquitted all the accused, against which order the State went up in appeal to the High Court. Neelu died during the pendency of the appeal in the High Court and, therefore, appeal against him abated. The High Court maintained the acquittal of Babu who is the sister's son of Kalu and Neelu, the two brothers, while convicting Kalu and Meharaj Singh for various offences. The State has not filed any appeal against acquittal of Babu, Kalu and Meharaj Singh have filed two separate appeals, as noticed earlier. C D E

According to the prosecution case, on account of some pending criminal litigation against the deceased his father and some other members of his faction for causing injuries to Neelu and Kalu and their father, the relations between the parties were strained and both sides were hostile to each other. On 3.11.1977 at about 11 a.m. when deceased Laxman Singh along with his wife Smt. Kamlesh PW2, were loading jawar in their cart, kept at the chak road, accused persons armed with gun. country made pistol and knife attacked him. Neelu and Kalu are alledged to have shot at the deceased from their respective weapons, Meharaj Singh appellant is alleged to have caused injuries with a knife to the deceased, after he had fallen down. F G

The first information report was lodged by Makhar Singh, father of the deceased on 3.11.77, at about 12.45 p.m. at Police State Daurala at a distance of 4 kms. from the place of occurrence. The investigation of the case was conducted by sub inspector Sultan Singh PW8 at the initial stage H

A and was then takenover by PW9 Laxman Singh sub-inspector. Sultan Singh PW8, according to the prosecution version, reached the scene of occurrence at 2 p.m. and prepared the inquest report of deceased Laxman Singh whose dead body was found at distance of about 21 steps from the Khajoor tree which stood on the dividing line between the fields of Balbir Singh and
B Ganga Saran. The investigating officer noticed presence of the cart of the deceased at a distance of five steps from the Khajoor tree. The dead body of the deceased was sent for post mortem examination which was conducted by Dr. N.K. Pande PW10, who found a number of gun shot wounds on the deceased besides eight incised wounds. Dr. Pande also found that the stomach contained partially digested food material weighing about 150
C gms. 18 big shots and 80 palletes, along with wadding pieces, were recovered from different parts of the body of the deceased during the post mortem of the deceased.

The trial court, after appreciating the evidence on the record, opined
D that the first information report was ante timed and that the occular testimony was contradicted by medical evidence. The trial court also found, the evidence of the alleged eye witnesses PWs. 2, 3, 4 and 5 as unreliable, not only on account of the fact that were all interested in the prosecution but because their conduct was found to be unnatural. The trial court found merit in the case set up by Neelu, deceased and Babu, the acquitted
E accused. Their case was that it was a blind murder and since none of the alleged eye witnesses had actually seen the occurrence, they had roped in the accused persons only on account of the previous enmity on mere suspicion. The High Court agreed with the trial court except in so far as the complicity of the two appellants is concerned and set aside the order
F of acquittal recorded against them We shall refer to relevant portions of the evidence during the course of discussion and do not consider it necessary to reproduce the entire evidence, which has been extracted by both the courts below extensively.

The manner of occurrence was deposed to at the trial by Smt.
G Kamlesh PW3, widow of the deceased. She stated that when she along with her husband were bringing the second bundles of jawar, after having placed the first two bundles in the card earlier, all of a sudden a shot fired at her husband on receipt of which the bundle of jawar fell down. She deposed that Neelu accused armed with a gun, Kalu and Babu accused each
H carrying a pistol and Meharaj Singh armed with a knife were seen present

near about, at a distance of about 1/2 hath from her husband. She went on to add that her husband went towards the carts, but could hardly reach the boundary of the field of Balbir Singh, when Neelu, Kalu and Babu again fired at him. He fell down and, thereafter, Meharaj Singh came there and inflicted injuries on him with the knife. According to her testimony Neelu had fired about 6-7 shots. She raised an alarm which attracted Balbir PW2, Shiv Charan PW4, Satkari PW5 and others. They also witnessed the occurrence. She went on to add that Neelu, Kalu and Babu each had reloaded their fire arms during the incident once and they had fired at the deceased twice. The assault with the knife by Meharaj Singh continued for about 1/2 a minute to one minute and that the deceased was lying on his right side when he breathed his last. During her cross examination she admitted that she took no steps to save her husband by either falling on her husband or taking the assault on herself. She admitted that she did not even receive a scratch during the entire occurrence and her clothes neither got torn nor even got stained with blood. Balbir Singh PW.2 Shiv Charan PW4, and Satkari PW5 have generally supported her testimony. Balbir Singh PW2 admitted in the cross examination that he arrived at the scene *after* he heard the sound of firing and also of weeping but still went on to say that he had seen all the accused firing at the deceased twice after reloading their fire arms. According to him the repeated firing had taken place from a distance of 3-4 steps from the deceased. He further deposed that he had conveyed the details of the incident to Makhar Singh father of the deceased, who had also reached the scene of occurrence. On his own showing, his statement was recorded by the investigating officer in the presence of S.H.O. and about 25 other persons in his village in the evening and not at the spot, though the investigating officer had arrived at the spot while he was still there.

Shiv Charan PW4 deposed about the weapons which each of the accused was armed with at the time of the occurrence as well as the manner of assault on Laxman deceased. He admitted that he did not make any attempt to save Laxman and went on to add that he did not do so because he had been terrorised by the accused with their fire arms. He also narrated the occurrence to Makhar Singh after the latter arrived at the scene. In the cross examination he admitted that he was a witness for Neelu in a criminal case which he had instituted against the deceased Laxman and others but that he had not been examined till then in the case against Laxman and others and added that in that case it was only Laxman

A deceased who had caused injuries to Neelu, Kalu and Sri Ram by lathis. He admitted that on the date of the incident he could not go to his field to see whether it was fit for being ploughed or not and that he went there only the next morning. He also admitted that he himself is an accused in a case relating to the murder of a lawyer, by name Vinod, which case was B still pending. He pleaded ignorance whether Neelu accused is a witness against him in that murder case. He admitted that Yad Ram and Makhar Sing had stood surety for him in the said murder case against him. According to him the present occurrence was also witnessed by Resham and Jog Raj. Prosecution has, however, not examined them as witnesses at the trial. Satkari PW5 also generally supported the version given by Kamlesh PW3 C and Balbir Singh PW2. He denied that he was a servant of Makhar Singh. He also named Resham as an eye witness. After having noticed the substratum of the occular testimony, we shall now deal with the medical evidence.

D Dr. N.K. Pande, PW10 conducted the post mortem examination of the deceased. The details of the injuries have been given in the judgment of the High Court as well as in judgment of the learned Sessions Judge. We need not, therefore reproduce the same. He had found gun shot wounds as well as incised wounds on the deceased. Out of the injuries noted by Dr. Pande, injuries 1-7, 9 and 13 were gun shot wounds of entry E on different parts of the body of the deceased. The High Court observed that injuries 1, 2 and 3 had been caused by one shot; 4-6 and 13 by second shot, 7 and 8 by the third shot while 9 and 10 by the 4th shot. This, however, is the observation of the High Court and not the opinion of the doctor because no elucidation was sought from the doctor in this behalf. Looking to the injuries from the post mortem report, it is obvious that injury No. 4 F consists of nine gun shot wounds in an area of 7x5 cms. This could most probably be the result of one shot only as the direction is towards the back. The direction of injuries 5 and 6 is from below upward and, therefore it is possible that injury 9 and 13 could have been caused with the same shot. The High Court divided the injuries, without any basis and ignored certain G vital aspects like the factum that injury No. 13 consists of three wounds on the right arm upper part which is at quite a distance from injury no. 4. There is no evidence, direct or indirect, about the height or health of the deceased but nonetheless the High Court attempted to explain the direction of injuries Nos. 5 and 6 by observing that the deceased was well built and so would be *presumed* to be taller than the accused assailants. This is H a purely conjectural finding based on surmises and not on any evidence on

the record. That he was well built is deposed to by the eye witnesses also but no question was asked about his height from any one. The High Court also, without any evidence, observed that the level of the path way is *normally* slightly higher than the field with a view to explain the direction of the injury as from upwards. In doing so the High Court ignored, the evidence of PW3 to the effect that the level of path was only about *six fingers*, According to the occular testimony of PWs 2-5, the first shot was fired by Neelu from a close range of about 2 paces and the other were fired by him from a distance of about 6 and 7 paces. There was blackening and tattooing around injuries 1,2,7,9 and 10. The presence of blackening and tattooing would show that the shots had been fired from a closer range. No explanation was offered by the prosecution and the High Court also did not properly appreciate this aspect of the case. The finding of the High Court regarding the incised wounds found on the dead body of the deceased is even more conjectural which is neither supported by the medical data nor by the medical opinion. Dr. Pande pointed out the *difference in width of various incised wounds* according to which it is obvious that more than one sharp edged weapons had been used on the deceased. Yet the eye witnesses have attributed the knife blows to only one of the appellants, Meharaj Singh, and that to by one knife only. Injury No. 11 on the deceased was found to be L shaped while injury No. 18 has been found to be semi circular. The other incised injuries were also of different dimensions. The trial court noticed these discrepancies and gave benefit of doubt to the accused by holding that the prosecution had not been able to establish the case against them beyond a reasonable doubt. The High Court discarded the reasons of the trial court but without seeking any explanation from the doctor regarding the number of sharp edged weapons which might have been used, went on to surmise that since the injuries were in some cases on the fleshy part of the body and some on the bony part, the difference in the width was bound to occur. We are conscious of the fact that the medical evidence is only an evidence of opinion and is not conclusive but than the High Court can also decide the case on the basis of the evidence led and not on what ought to have been led. No explanation from the medical witness was sought about the reason for three different types of incised injuries found on the deceased and whether the same could have been caused by one weapon alone. According to Dr. Pande, the presence of semi-digested food would show that if the deceased had taken his food at about 7 a.m., his death could have taken place between 9 and 9.30 a.m. It would imply that the occurrence took place much earlier than is alleged by the prosecution. These aspect were not considered in their

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A proper perspective by the High Court. We are constrained to observe that the approach of the High Court in dealing with the medical evidence, in our opinion, was not proper and satisfactory and on the other hand the learned First Addl. Sessions Judge, Meerut dealt with the same in an appropriate manner.

B We find force in the submission of Mr. Tewatia, the learned Senior Counsel appearing for the appellant that the FIR had been ante timed and thus the investigation was tainted.

According to the testimony of PW8 Sultan Singh sub-inspector, he C reached the place of occurrence at about 2 p.m. on 3.11.1977. The dead body of Laxman was lying at the place of occurrence. He prepared the sketch of the dead body. Before coming to the place of occurrence, the FIR had already been lodged at the police station in his presence and he had commenced the investigation thereafter. After preparing the inquest D report at the spot, he sent the dead body for post mortem examination along with constables Mehabir Singh and Sikhbir Singh. He further deposed that he had found blood at the place of occurrence and had collected samples of blood stained soil. He admitted that he recorded the statements of the witnesses Kamlesh and Shiv Charan at the spot while that E of Balbir Singh in his village and that when he recorded the statement of Balbir Singh, other witnesses were not present in the village. In the cross examination the witness stated that he did not find any trailing of blood from the field of Kirpal Singh to the place where the dead body was actually found nor any blood in the field of Kirpal Singh. He also did not show in the site plan the portion of the field from where the fodder had F been cut. On being recalled, the witness stated that Balbir had not stated before him that Makhar had reached the place of occurrence and that he had disclosed the incident to him. The investigating officer, however, offered no explanation as to why he had not recorded the statement of Balbir Singh, if as deposed to by Balbir Singh, he was present at the site G when the investigating officer came there. The trial court had found that the FIR had been ante timed but the High Court discredited that finding of the trial court and came to the conclusion that FIR had been recorded at the time as alleged by the prosecution and that there was no unfairness or taint in the investigation. For the reasons which we shall presently H demonstrate, we are of the opinion, that the FIR in the case was not

recorded at the time as alleged by the prosecution. A

According to PW 3 Kamlesh, the deceased had left the house at 7 a.m. He would, therefore, have taken his food before leaving the house because it is not the prosecution case that food was served to him while he was in the fields. Death, according to the medical witness, could have occurRed within about 2 or 2 1/2 hours from the time the deceased had B taken food on account of the presence of 150 gms. of semi digested food in the stomach of the deceased. According to PW3, however, the occurrence took place at about 11.30 a.m. which would imply that the deceased took his food later and did not leave his house at 7 a.m. but at about 9.30 a.m. That is no bodys case. The effort on the part of Kamlesh PW3 to show C that the occurrence took place at 11.30 a.m. appears to have been made because she wanted to back up the prosecution story by stating that the FIR had been lodged promptly at 12.45 p.m. by Makhar Singh and that she had seen the occurrence. According to the prosecution case PW8, the investigating officer, left for the place of occurrence *after* the case had been registered at the police station but we find that in the inquest report which D was prepared by PW8 Sultan Singh, the investigating officer, at the spot the number of the FIR or the crime No. has not been given. Even the heading of the case, does not find mention in the inquest report. No explanation has been furnished for the omission of these vital matters from the inquest report. Was it because no FIR had actually been registered at E the time as alleged by the prosecution and PW8 had reached the spot and, after, some consultations and deliberations if came into existence ? In this connection it is also relevant to note that copy of the FIR was not even sent to the medical officer along with the inquest report and the dead body for post mortem. The explanation of PW8 for not sending the copy of the FIR or mentioning the name of the case or the crime No. in the inquest F report is wholly unacceptable and the High Court erred in accepting the *ipse dixit* of Sultan Singh PW8. It deserves to be noticed that in the inquest report even the name of the accused has not been mentioned. It also does not contain the names of the eye witnesses or the gist of the statement of the eye witnesses. It does not reveal as to how many shots had been fired G or how many weapon had been used. The inquest report is not signed by any of the eye witnesses, although the investigating officer has categorically asserted that Kamlesh and Shiv Charan were present at the place of occurrence when he visited and he recorded their statements. If he had actually recorded their statements, their is no reason why the details which we have found missing from the inquest report should not have been there. H

A There is yet another factor which is very relevant. The prosecution led no evidence to show as to when did the copy of the FIR, Special Report, which was required to be despatched under the statutory provisions of Section 154 Cr. P.C. read with 157 Cr. P.C. promptly, to the Magistrate was actually despatched. There is no evidence either to show as to when the copy of the FIR was received by the Magistrate. PW8 has remained singularly silent B on this aspect of the case. According to PW3, the police inspector had taken her thumb impression at the site, but the prosecution has with held that document from scrutiny of the courts, for reasons best known to it. The argument of Mr. Tewatia, the learned senior counsel that since *no* FIR had been registered till the investigating officer arrived at the spot and C conducted the inquest proceedings, the thumb impression of PW3 was taken by the police on a document which was required to be used as a FIR, cannot be said to be without any merit. It was the duty of PW8 to explain as to on which document he had obtained the thumb impression of the widow of the deceased at the spot and produce that document for scrutiny of the courts. He did not do so.

D

FIR in a criminal case and particularly in a murder case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstance in which the E crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any, used, as also the names of the eye witnesses, if any. Delay in lodging the FIR often results in embelishment, which is a creature of an after thought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story. With a view F to determine whether the FIR, was lodged at the time it is alleged to have been recorded, the courts generally look for certain external checks. One of the checks is the receipt of the copy of the FIR, called a special report in a murder case, by the local Magistrate. If this report is received by the Magistrate late it can give rise to an inference that the FIR was not lodged G at the time it is alleged to have been recorded, unless, of course the prosecution can offer a satisfactory explanation for the delay in despatching or receipt of the copy of the FIR by the local Magistrate. Prosecution has led no evidence at all in this behalf. The second external check equally important is the sending of the copy of the FIR along with the dead body H and its reference in the inquest report. Even though the inquest report,

prepared under Section 174 Cr. P.C. is aimed at serving a statutory function, to lend credence to the prosecution case, the details of the FIR and the gist of statements recorded during inquest proceedings get reflected in the report. The absence of those details is indicative of the fact that the prosecution story was still in embrayo and had not been given any shape and that the FIR came to be recorded later on after due deliberations and consultations and was then ante timed to give it the colour of a promptly lodged FIR. In our opinion, on account of the infirmities as noticed above, the FIR has lost its value and authenticity and it appears to us that the same has been ante timed and had not been recorded till the inquest proceedings were over at the spot by PW8.

It appears that it was a blind murder and none of the eye-witnesses were actually present at the scene. The ante timing of the FIR was obviously made to introduce eye witnesses to support the prosecution case. We may demonstrate this by noticing that though PW3 Smt. Kamlesh the widow of the deceased claimed that she was present with her husband at the time of the occurrence, her conduct was so unnatural that not only she did not try to save her husband by trying to provide a cover but even after her husband fell down and was inflicted repeated injuries with the knife by the appellant Meharaj Singh, she did not even try to go any where near her husband and even later on hold his head in her lap and try to provide some comfort to him. This becomes obvious from the absence of any blood stains on her clothes. She admitted that she had not even received a scratch during the occurrence. In a situation like this, the normal conduct of any wife would be firstly to make an effort to save her husband even by taking the blow on herself and if that is not possible then at least to go so close to his person, at least after the assailants had left that there would be no escape from the blood oosing out of his injuries of the deceased to come on to her clothes. Similar criticism is also available against Balbir PW2. Shiv Charan PW4 and Satkari PW5. It is not the case of the prosecution that the clothes of any of them had got blood stained. The very fact that none of these witnesses went to lodge a report and instead left it to the father of the deceased to lodge the FIR would also go to show that the witnesses in all probability were not present at the spot. The absence of any blood in the field of Kirpal Singh as also the absence of blood trail from the field of Kirpal Singh to the place where the dead body was found, as admitted by PW8, also suggest that the occurrence did not take place in the manner suggested by the prosecution and that the genesis of the fight

A has been suppressed from the court. The evidence of Dr. Pande who conducted the post mortem examination showing that the stomach contained partially digested food material weighing about 150 gms. and concluding there from that the occurrence must have taken place between 9 and 9.30 a.m. if the deceased had taken his food at 7 a.m. would also throw a doubt on the correctness of the prosecution version which alleged time B of occurrence as 11.30 am., presumably to lend an assurance that PWs 2, 3, 4 and 5 were present in the field at the time. The evidence of Dr. Pande also to the effect that had found incised injuries on the deceased including a L shaped injury (injury No. 11) and a semi circular injury (injury No. 18) is indicative of the fact that these two injuries were caused with different C weapons and looking to the nature of the other incised wounds present on the deceased, the possibility that the three types of sharp edged weapons were used cannot be ruled out. That being the position, it is obvious that the occular testimony does not fit in with the medical evidence and instead it contradicts it.

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It is interesting in this connection also to note that Satkari PW5 named Resham also as an eye witness. The High Court rightly held Satkari to be a chance witness also but the prosecution has not explained as to why Resham who was alleged to be an eye witness has not been examined. According to Balbir PW2, Jog Raj was also an eye witness. He too has not E been examined. Shiv Charan PW4, also named Resham and Jog Raj as eye witnesses. Thus, it appears to us that a concerted effort was made by the prosecution witnesses to introduce Resham and Jog Raj as false eye witnesses in the case but since they have not been examined, it would be fair to draw a presumption, that they perhaps were not prepared to support F the false case. The High Court while setting aside the order of acquittal did not deal with these various infirmities.

The alleged eye witnesses are undoubtedly deeply interested in the prosecution but that by itself cannot be a ground to discard their testimony. It, however, certainly puts this court on its guard to scrutinise their G evidence more carefully and keeping in view their unnatural conduct, as noticed above, it appears to us that none of the alleged eye witnesses had actually seen the occurrence and they were introduced as eye witnesses after thoughtful deliberations and consultations. It appears, that since it was a blind murder, the appellants have been roped in on account of H misguided suspicion because of the previous enmity. Our independent

analysis of the evidence on the record coupled with the infirmities which we have noticed above has created an impression on our minds, that the prosecution has not been able to bring home guilt to either of the appellants beyond a reasonable doubt. The trial court was, therefore, right in acquitting them and the High Court even after noticing the infirmities, in our opinion, fell in error in convicting the appellants. The reasons given by the High Court, to set aside the order of acquittal do not commend to us. They are neither sufficient nor adequate or cogent must less compelling.

As a result of our above discussion, we hold that the case against both the appellants has not been proved beyond a reasonable doubt and that they are entitled to benefit of doubt. Their appeals consequently succeed and are allowed. The conviction and sentence recorded against them by the High Court are set aside. The appellants shall be set at liberty forthwith, if not required in any other case.

R.R. Appeals allowed.