SUPREME COURT OF INDIA

Jeewan & Ors.

Vs.

State of Uttarakhand

C.A.No.1275of2009

(Swatanter Kumar and Madan B. Lokur,JJ.)

13.12.2012

JUDGMENT

Swatanter Kumar, J.

1. The present appeal is directed against the judgment of the High Court of Uttarakhand at Nainital dated 14th October, 2008 vide which the High Court confirmed the judgment of the trial court and dismissed the appeal preferred by the accused against their conviction and order of sentence.

2. The conviction of the accused is based upon the version of the prosecution that on 12th March, 1991 at about 10 p.m., complainant Bhupal Chandra, who later came to be examined as PW1, along with his brother Devendra Lal after attending the marriage ceremony of one Pooran Chandra in Village Dhapla within the limits of Police Station Kaladhungi, District Nainital, were returning home. On their way, they found the accused Jeewan Ram, Dalip and Kamal, all residents of their village, standing there. Jeewan was carrying a knife while Kamal and Dalip were armed with sticks (danda). Accused Kamal and Dalip caught hold of Devendra while Jeewan struck several blows with knife on his chest and abdomen. PW1 was carrying torch and saw the occurrence in that light. Two more persons, Rajendra Singh, PW2 and Prem Ram, PW3, who after attending the marriage were taking rest in the nearby house of Shyam Lal, upon hearing the alarm raised by Devendra Lal, reached the place of occurrence. In the light of the torches they were carrying, they witnessed the accused committing the crime. Upon hearing the alarm raised by Devendra, these witnesses saw the accused persons running away, however, they did not chase them out of fear.

3. Devendra Lal, was immediately taken to a hospital in Haldwani where he succumbed to his injuries. At about 8.45 a.m., on 13th March, 1991 Bhupal Chandra, PW1, lodged the First Information Report (for short, the FIR) against the three accused persons at Police Station Kaladhungi and a crime case No. 68 of 1991 was accordingly registered under Section 302 of the Indian Penal Code (for short, the IPC) against all the three accused

persons. In the First Information Report, Ext. A1, the complainant stated that the motive for commission of crime by the accused was

previous enmity between the parties. According to him, during Deepawali festival, the accused persons along with Devendra Lal were playing cards and gambling, when they picked up a quarrel and there was a scuffle between the parties. The scuffle did not aggravate into any serious situation because of intervention by Sabhapati, the head-man of the village. Though, he got the matter compromised, the three accused continued to harbour enmity and even threatened Devendra Lal to see him later.

4. After Devendra Lal succumbed to his injuries in the hospital, a report was sent to the police. Sub Inspector Daya Ram Singh, PW8 came to the civil hospital, Haldwani, took up the charge of the dead body and prepared the inquest report, Ext. A6, whereafter the body was handed over to Dr. T.C. Pant, PW7 with a request to perform post-mortem upon the body of the deceased. The doctor performed the post-mortem and prepared a report, Ext. A7, in which he noticed the injuries upon the body of the deceased as well as the cause of death, which reads as under:-

> "i) P.W. 1.2 cm X V2 cm on front of sterum, 7 cm medial left nipple. On opening the wound it is cavity deep piercing the sterum.
>
> ii) P.W. 8 cm X 3 cm X cavity deep, on right side of chest, 3 cms towards right nipple.
> On opening the wond right lobe of liver is cut.
>
> iii) P.W. 15 cm X 5 cm X cavity deep. Medial end of wound touching 6th thoracic spine extending to right side of back of chest. Right lung beneath the injury is cut.
>
> iv) Punctured wound 4 cm x 2 cm x cavity deep, 3 cm above from the left ant sup iliac spine on left lat side of abdomen. Loops of intestine coming out.
>
> v) P.W. 3 cm X 1 V2 cm X cavity deep about 3 cm from left nipple underneath the injury. Left lung is cut.
>
> vi) I.W. 4 cm X 2 cm X muscle deep on medial side of right knee about 2 V2 cm from upper border of patella.
>
> vii) I.W. 3 cm X 1V2 cm X muscle deep, about 2 cm lateral to left ant sup iliac spine.
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> 5. PW9, Sub Inspector Ram Baran Ram, interrogated the witnesses, inspected the torches of the complainant and witnesses, prepared memorandums, Ext. A2 to A4, the site plan of the place of occurrence, Ext. A10, arrested the accused persons on

15th March, 1991 and recovered the knife used in the crime upon the statement of Jeewan vide memorandum Ext. A- The Report was filed in the court of competent jurisdiction. The accused persons were committed to the court of III Additional Sessions Judge, Nainital and were tried under Section 302 IPC read with Section 34 IPC, the offence with which they were charged. The learned trial court vide its judgment dated 25th February, 1994 formed the view that the prosecution had been able to prove its case beyond reasonable doubt and therefore convicted the accused persons of committing anJeewan & Ors vs State Of Uttarkhand on 13 December, 2012offence under Section 302 read with Section 34 IPC and awarded them the following sentenceOn the basis of the above evidence and circumstances, I arrive at the conclusion that the prosecution has succeeded in proving the charges levelled by them. Thus, I find the accused persons Jeevan, Kamal and Dalip guilty for the offence of murder of Devender on dated 12.03.1991 at 10.00 p.m. in village Dhapla, Police Station Kaladungi.Sd/-(Bijender Singh) Third Addl. Sessions Judge, Nainital, Camp at Haldwani Dated:25.02.1994 O R D E R The accused persons Jeevan, Kamal and Dalip are found guilty for the offence under section 302 read with section 34 I.P.C. They are on bail. Their Personal Bonds and Bail Bonds are cancelled and the sureties are discharged.They be taken in custody for undergoing sentence to awarded after hearing them on the quantum of sentence.Sd/-(Bijender Singh) Third Addl. Sessions Judge, Nainital, Camp at Haldwani Dated:25.02.1994 I have heard the accused persons Jeevan, Kamal and Dalip and their learned counsel Shri Shyam Singh Mehra, Advocate on the quantum of sentence, who has stated that the accused persons are innocent, but I have convicted them after analyzing the evidence."

6.Aggrieved from the judgment of conviction and order of sentence, the accused persons preferred a common appeal before the High Court which came to be dismissed vide judgment of the High Court dated 14 th October, 2008 giving rise to the present appeal.

7. It is contended on behalf of the appellants/accused that :

"(a) the presence of PW2 and PW3 at the place of occurrence is very doubtful on the one hand, while on the other, as per the case of prosecution, the incident occurred near the place of marriage where, obviously, a large number of persons must be present and non- production of any such person from the marriage party raises doubt towards the case of prosecution.

(b) there is inordinate delay in lodging the FIR. The occurrence took place at about 10.00 p.m. on 12th March, 1991 while the First Information Report Ext.A1 was lodged at about 8.45 a.m. on 13th March, 1991. Thus, the accused are entitled to the benefit of doubt.

(c) The Inquest Report is in contradiction with the medical evidence and the ocular evidence of the prosecution and there being material contradictions, the appellant is entitled to the benefit of acquittal.

(d) The accused persons had not been given proper hearing before the High Court and their right to a fair defence stood denied."

8. Amongst the above contentions, we may deal with the last argument raised on behalf of the appellant at the threshold. There is no merit in this submission that the appellant was denied proper and fair hearing before the High Court. The accused had filed an appeal before the High Court through private counsel Mr. V.S. Pal and Mr. M.S. Pal, advocates. These advocates appeared and took several adjournments before the High Court. Thereafter they did not appear in that court. Then, Advocate Shri D.N. Sharma appearing for appellants stated that he had no instructions in the matter. The High Court having been left with no alternative but to proceed with the matter and keeping in view the judgment of this Court in the case of Dharam Pal v. State of U.P. [AIR 2008 SC 920], heard the appeal with the assistance of amicus curiae appointed by the court. Having heard both the amicus and the State counsel, the Court then decided the appeal. The appeal was decided by the court in accordance with law. These facts have also been recorded by the High Court in its judgment under appeal. In the grounds of appeal raised by the appellant, there is no challenge to these facts. Thus, in view of the undisputed facts, there is no occasion for this Court to return a finding that the appellant had no proper opportunity of hearing before the High Court. The contention that the amicus curiae did not raise all the relevant contentions before the High Court is without any substance. It is not for the Court to require a counsel, including Amicus Curiae, to raise a submission, the submission may vary from counsel to counsel. The duty of the court was only to ensure that the accused was not held guilty without affording him an opportunity of hearing in accordance with law. If the counsel appearing for the appellants pleaded no instructions, no fault of procedural or substantial violation could be attributed to the court. The blame for such attitude would lie on none else but the appellants or the persons pursuing appeal on their behalf. The High Court took every precaution and ensured proper hearing to the appellants before it passed the impugned judgment. Thus, we have no hesitation in rejecting this contention.

9. The remaining three contentions raised on behalf of the appellant can be discussed together in order to avoid repetitive discussion, as they are inter-linked with appreciation of evidence.

10. According to the prosecution, the deceased Devendra was murdered by three accused to which his brother Bhupal Chandra, PW1, Rajendra Singh, PW2 and Prem Ram, PW3 were eye-witnesses. They were coming from the marriage and in torch light they saw the accused persons committing the crime. PW1 has fully supported the case of the prosecution and has stated that Jeewan was carrying a knife and Kamal and Dalip were carrying Dandas. There was a heated exchange of words between them and thereafter Kamal caught hold of Devendra while Jeewan stabbed three to four times in the stomach of Devendra. On seeing this, PW1 raised an alarm and then witnesses Rajendra Singh and Prem Ram came to the place of occurrence. Upon their coming, the accused persons ran away.

11. The deceased was taken to the hospital where he collapsed. In his cross-examination, PW1 also stated that crime scene was about 100 steps away from the venue of the marriage of Pooran Chandra and there was no light in the passage.

12. According to PW2, Rajendra Singh, they were sitting in the house of Shyam Lal and talking when they heard the noise coming from the hut of Nathu Ram. PW2 and PW3 thereafter reached the place of occurrence. In the torch light, they claimed to have seen the accused persons committing the crime including the fact that Jeewan was carrying knife and that Jeewan stabbed the deceased. According to him, when they challenged the accused persons, the accused persons ran away. On similar lines is the statement of PW3.

13. The first question that arises for consideration is whether the presence of these three witnesses in and around the place of occurrence is so very doubtful that their statement should be disbelieved. The answer to this question has to be in the negative. It is an undisputed case before us that there was a marriage in the house of Pooran Chandra and all the three witnesses had gone to attend the marriage. PW1 was accompanying the deceased. When they were returning from the marriage, the incident occurred near the place of Nathu Ram. It is not unbelievable that village persons would attend a marriage and sit down at somebodys place to chat. Thus, the presence of PW2 and PW3 at the place of Shyam Lal can hardly be doubtful. PW1 would be accompanying the deceased, as he was his brother. We are unable to see any merit in the contention and the reasons for which the court can come to the conclusion that the presence of these witnesses at the place of occurrence was doubtful.

14. Heavy reliance was placed upon a discrepancy appearing in the statement of PW1 and PW2. PW1 had stated as follows:-

> "Devendra was caught by Kamal and Devendra and Jeevan stabbed three to four times in the stomach of Devendra. I raised alarm and then witnesses Prem Ram and Rajendra Singh came there. Accused persons ran away when they were challenged.
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> While PW2 stated as follows:-
>
> "Right then we heard the noise coming from the hut of Nathu Ram and then I and Prem Singh reached at the crime scene. We were carrying torch and we saw in its light that Jeevan was carrying knife and Kamal and Dalip were carrying Danda and they were attacking with them on Devendra. Jeevan stabbed him and Kamal and Dilip caught his hold. When we challenged them, accused persons ran away. Devendra fell down on the surface."

15. The contention is that PW2 and PW3 never saw the occurrence as according to PW1, it was after Jeewan had stabbed the deceased three-four times in the stomach that he raised alarm. While according to PW2, in the torch light they had seen Jeewan stabbing the deceased. This cannot be called a discrepancy of any material consequence. Firstly, PW1 had categorically stated that he had raised the alarm upon which Prem Ram and Rajendra Singh

reached at the spot. Secondly, PW2 and PW3 were in the house of Shyam Lal which was very close by. Listening to the hue and cry, they had come to the house of Nathu Ram and in the torch light had seen Jeewan stabbing and Kamal and Dalip holding the deceased.

16. The court cannot lose sight of the fact that the statement of these witnesses had been recorded more than two years subsequent to the date of occurrence. To expect the witnesses to depose with arithmetical exactitude would not be proper application of rule of evidence, keeping in view the facts and circumstances of the case.

17. It is but natural that it would take a little time for the offender to stab a person three to four times. Natural conduct of PW1 would be to raise alarm, which he did. Immediately then, PW2 and PW3 came and saw the deceased being stabbed. They might not have seen all the stabbings, but even last stabbing by Jeewan could be viewed by them as they were carrying torches and had seen the accused persons. They not only saw the occurrence, but PW2 and PW3 also challenged the accused persons upon which they ran away. Thus, PW2 and PW3 had sufficient time to see, if not the entire occurrence, at least a part thereof as well as the participation of the accused persons in committing the murder of the deceased.

18. Another discrepancy that is sought to be highlighted on behalf of the appellant is that in the inquest report, Ext. A6, the name of Kamal has been recorded, stating that he committed the murder of the deceased by stabbing him. While according to the witnesses giving the ocular version, it was Jeewan who had given stab injuries to the deceased. It is to be noticed that Ext. A6 is an inquest report prepared by S.I. Daya Ram Singh in which various factors were recorded and then it was an impression that was formed by the person preparing it. The expression used in Ext. A6 is Malum. This could be a plausible error that crept in Ext. A6. It records the name of the witnesses, name of the Panchas and it appears that names of the other accused have not been stated. The object of the inquest report was more towards recording the status of the body, the articles on the body of the deceased and the situation existing at the spot. This error cannot frustrate the case of the prosecution which stands fully established by the statements of PW1, PW2 and PW3.

19. At this stage, it can be very usefully noticed that PW1 is even a Panch witness to Ext.A6 which clearly establishes his presence at the place of occurrence. The medical report and the injuries afore-recorded and the statement of PW7, Dr. T.C. Pant fully support the case of the prosecution. In the post-mortem report, he noticed as many as five punctured wounds i.e. on the left nipple, towards right nipple on the right side of the chest cutting right lobe of the liver, punctured wound touching 6th thoracic spine extending to right side of back of chest, punctured wound cavity deep anterior superior illiac spine on the left lateral side of abdomen and punctured wound cavity deep underneath the first injury. Besides this, two more incised wounds were noticed at the right knee and the spine region.

20. This medical evidence clearly supports the case of the prosecution that the deceased was stabbed three to four times by the accused persons. They had participated with the common intention in committing the murder of the deceased. While Kamal caught hold of the

deceased Jeewan had stabbed him and Dalip also participated in the commission of the crime. The cumulative effect of the oral and documentary evidence was that all the three accused had been found guilty of offence under Section 302 read with Section 34 IPC and punished with imprisonment for life.

21. Now, let us examine the law in relation to discrepancies. Discrepancy has to be material and seriously affecting the case of the prosecution. Every minor and immaterial discrepancy would not prove fatal to the case of the prosecution. The Court has to keep in mind that evidence is recorded after years together and to expect the witnesses to give a minute to minute account of the occurrence with perfection and exactitude would not be a just and fair rule of evidence. The law in this regard is well settled. Even an omission or discrepancy in the inquest report may not be fatal to the case of the prosecution. The Court would have to examine the entire case and discuss the prosecution evidence in its entirety to examine the real impact of a material contradiction upon the case of the prosecution. Trustworthy evidence cannot be rejected on fanciful ground or treated to be in the nature of conjectures. In this regard, reference can be made to the case of Brahm Swaroop and Anr. v. State of Uttar Pradesh [(2011) 6 SCC 288], where the Court held as under:-

> "Omissions in the inquest report are not sufficient to put the prosecution out of court. The basic purpose of holding an inquest is to report regarding the apparent cause of death, namely, whether it is suicidal, homicidal, accidental or by some machinery, etc. It is, therefore, not necessary to enter all the details of the overt acts in the inquest report. Evidence of eyewitnesses cannot be discarded if their names do not figure in the inquest report prepared at the earliest point of time. The inquest report cannot be treated as substantive evidence but may be utilised for contradicting the witnesses of inquest. (See Pedda Narayana v. State of A.P., Khujji v. State of M.P., George v. State of Kerala, Sk. Ayub v. State of Maharashtra4, Suresh Rai v. State of Bihar, Amar Singh v. Balwinder Singh6, Radha Mohan Singh v. State of U.P.7 and Aqeel Ahmad v. State of U.P.8) In Radha Mohan Singh, a three-Judge Bench of this Court held: (SCC p. 460, para 11) 11. No argument on the basis of an alleged discrepancy, overwriting, omission or contradiction in the inquest report can be entertained unless the attention of the author thereof is drawn to the said fact and he is given an opportunity to explain when he is examined as a witness in court. (emphasis added) Even where the attention of the author of the inquest is drawn to the alleged discrepancy, overwriting, omission or contradiction in the inquest report and the author in his deposition has also admitted that through a mistake he omitted to mention the crime number in the inquest report, this Court has held that just because the author of the report had not been diligent did not mean that reliable and clinching evidence adduced by the eyewitnesses should be discarded by the Court. [Vide Krishna Pal (Dr.) v. State of U.P.] In view of the law referred to hereinabove it cannot be held that any omission or discrepancy in the inquest is fatal to the prosecutions case and such omissions would necessarily lead to the inference that FIR is ante-timed. Shri N.K. Sharma, Sub¬Inspector (PW 7), had denied the suggestion made by the defence that till the time of preparing the report the names of the accused persons were not available. He further stated that the column for filling up the nature

of weapons used in the crime was left open as it could be ascertained only by the doctor what weapons had been used in the crime. Thus, the submissions made in this regard are preposterous."

22. Similarly, reference can also be made to the case of Shyamal Ghosh v. State of West Bengal [(2012) 7 SCC 646], where the Court dealing with discrepancies in the investigation and non-obtaining of FSL and their effect on the case of the prosecution held as under:-

58. Of course, there are certain discrepancies in the investigation inasmuch as the investigating officer failed to send the bloodstained gunny bags and other recovered weapons to the FSL, to take photographs of the shops in question, prepare the site plan thereof, etc. Every discrepancy in investigation does not weigh with the court to an extent that it necessarily results in acquittal of the accused. These are the discrepancies/lapses of immaterial consequence. In fact, there is no serious dispute in the present case to the fact that the deceased had constructed shops on his own land. These shops were not the site of occurrence, but merely constituted a relatable fact. Non-preparation of the site plan or not sending the gunny bags to the FSL cannot be said to be fatal to the case of the prosecution in the circumstances of the present case. Of course, it would certainly have been better for the prosecution case if such steps were taken by the investigating officer. From the above discussion, it precipitates that the discrepancies or the omissions have to be material ones and then alone, they may amount to contradiction of some serious consequence. Every omission cannot take the place of a contradiction in law and therefore, be the foundation for doubting the case of the prosecution. Minor contradictions, inconsistencies or embellishments of trivial nature which do not affect the core of the prosecution case should not be taken to be a ground to reject the prosecution evidence in its entirety. It is only when such omissions amount to a contradiction creating a serious doubt about the truthfulness or creditworthiness of the witness and other witnesses also make material improvements or contradictions before the court in order to render the evidence unacceptable, that the courts may not be in a position to safely rely upon such evidence. Serious contradictions and omissions which materially affect the case of the prosecution have to be understood in clear contradistinction to mere marginal variations in the statement of the witnesses. The prior may have effect in law upon the evidentiary value of the prosecution case; however, the latter would not adversely affect the case of the prosecution.

23. This Court has also expressed the view that it is a fair and settled position of law that even if there are some omissions, contradictions or discrepancies, the entire evidence cannot be discarded. After exercising care and caution and sifting the evidence to separate the truth from untruth, exaggeration, embellishments and improvements, the Court can come to the conclusion as to whether the residual evidence is sufficient to convict the accused.

24. Still, in some cases, the Court took the view that unless finding recorded by the High Court is so outweighed or such finding so outrageously defies logic so as to suffer from the vice of irrationality, this Court would not interfere with the judgment. A mere discrepancy simplicitor does not affect the case of the prosecution materially or make it improbable and the Court will not be inclined to interfere with the finding recorded by the high courts. (Ref.

State of U.P. v. Naresh and Ors. [(2011) 4 SCC 324] and Bhola @ Paras Ram v. State of H.P. [(2009) 11 SCC 460].

25. In the case of Munshi Prasad & Ors. v. State of Bihar [(2002) 1 SCC 351], this Court has also taken the view, after discussing various judgments, that some documents are not substantive evidence by themselves and it is the statement of expert or the author of the document that has the credibility of a substantive evidence. In the similar vein, the inquest report also cannot be termed to be basic or substantive evidence being prepared by the police personnel being a non-medical man and at the earliest stage of the proceeding. In the wake of the aforesaid, a mere omission of a particular injury or indication therein of an additional one cannot, however, invalidate the prosecution case. The evidential value of inquest report cannot be placed at a level as has been so placed by the appellants. The Inquest Report or the post mortem report cannot be termed to be basic evidence or substantive evidence and discrepancies occurring therein cannot be termed to be fatal nor even a suspicious circumstance which would warrant a benefit to the accused and result in dismissal of the case of the prosecution.

26. In view of the above discussion on the evidence of the case and other attending circumstances seen in light of the above stated principles, we have no hesitation in coming to the conclusion that the discrepancies pointed out by the appellants are neither material nor do they affect the case of the prosecution adversely. The Court has to examine the entire evidence as a whole and not in parts so as not to frustrate the entire eye witness version and the medical evidence. There is sufficient evidence in the present case to show the involvement of the accused persons in the commission of the crime.

27. Lastly, we should deal with the contention of the appellant dealing with the delay in institution of the FIR. Admittedly, the occurrence took place at about 10 p.m. on 12th March, 1991 and the FIR was lodged on 13th March, 1991 at about 8.45 a.m. There is some delay in lodging of the FIR, but this delay stands fully explained by the statement of the witnesses and the conduct of such witnesses. PW1 is the author of the FIR. According to his statement, he had first taken the deceased to the hospital and he remained in the hospital and went to the police station in the morning hours of 13th March, 1991. This conduct of PW1 is natural. He is the brother of the deceased and was grieving the death of his brother. His priority would be to ensure that his brother gets the best of the medical aid at the earliest and then to look after him. There is some distance between the hospital and the place of occurrence and he remained in the hospital to look after his brother. Unfortunately, his brother was declared dead. This entire controversy has been well discussed by the trial court in its judgment. The relevant part of the judgment reads as under:-

> "According to the prosecution, the incident occurred on 12.03.1991 at 10.00 p.m. whereas the first information report of the incident was lodged with Police Station Kaladungi on dated 13.02.1991 at 8.45 a.m. The place of incident is situated at a distance of 10 kms from the Police Station. The learned defence counsel has pleaded that no satisfactory explanation has been given for delay in lodging first information

report, due to which the prosecution story appears to be doubtful. PW-1 Bhopal Chander has stated that after receiving injury Devender was taken to the hospital in Haldwani in a tractor where he died and subsequently he went to Police Station Kaladungi in the morning to lodge the complaint leaving the dead body in the Hospital in Haldwani itself. It is the natural process that the every family member first of all tries to save the life of injured instead of lodging first information report and the same has happened in the present case as well that the complainant first of all brought his brother to the hospital in Haldwani in order to save his life where he died and subsequently he went to the Police Station and lodged the complaint. Keeping in view the circumstances of the case, satisfactory explanation is available on the file to the delay in lodging first information report."

28. We are in full agreement with the reasoning given by the trial court for accepting that delay in lodging of the FIR had been duly explained. It is not the law that mere delay in lodging the FIR would always or unexceptionally prove fatal to the case of the prosecution. Wherever the delay is properly explained by the prosecution or the witnesses, the court would be reluctant to grant benefit of acquittal to the accused only on that ground. In the case of Nagesh v. State of Karnataka [(2012) 6 SCC 477], the Court discussed various judgments of this Court and while noticing the principle that letting the guilty escape is not doing justice according to law held as under:-

"The Court has to examine the evidence in its entirety, particularly, in the case of circumstantial evidence, the Court cannot just take one aspect of the entire evidence led in the case like delay in lodging the FIR in isolation of the other evidence placed on record and give undue advantage to the theory of benefit of doubt in favour of the accused. This Court in Sucha Singh v. State of Punjab has stated: (SCC pp. 653-54, para 20) 20. Exaggerated devotion to the rule of benefit of doubt must not nurture fanciful doubts or lingering suspicion and thereby destroy social defence. Justice cannot be made sterile on the plea that it is better to let a hundred guilty escape than punish an innocent. Letting the guilty escape is not doing justice according to law. (See Gurbachan Singh v. Satpal Singh) The prosecution is not required to meet any and every hypothesis put forward by the accused. (See State of U.P. v. Ashok Kumar Srivastava.) A reasonable doubt is not an imaginary, trivial or merely possible doubt, but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case. If a case is proved perfectly, it is argued that it is artificial; if a case has some inevitable flaws because human beings are prone to err, it is argued that it is too imperfect. One wonders whether in the meticulous hypersensitivity to eliminate a rare innocent from being punished, many guilty persons must be allowed to escape. Proof beyond reasonable doubt is a guideline, not a fetish. [See Inder Singh v. State (Delhi Admn.). Vague hunches cannot take place of judicial evaluation. Jeewan & Ors vs State Of Uttarkhand on 13 December, 2012 A Judge does not preside over a criminal trial, merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. Both are public duties. [Per Viscount Simon in Stirland v. Director of Public Prosecutions quoted in State of U.P.

v. Anil Singh (SCC p. 692, para 17).] Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than truth."

29. In other cases, the Court has taken the view that mere delay in lodging the FIR may not prove fatal in all cases, but in given circumstances of a case, delay in lodging the FIR can be one of the factors which corrode the credibility of the prosecution version. Delay in lodging of the FIR cannot be a ground for throwing the entire prosecution case. In cases, where there is some delay in filing the FIR, the complainant must give explanation for the same. Undoubtedly, delay in lodging the FIR does not make the complainant's case improbable when such delay is properly explained. (Ref. Bhajan Singh @ Harbhajan Singh & Ors. v. State of Haryana [(2011) 7 SCC 421] and Jitender Kumar v. State of Haryana [(2012) 6 SCC 204].

30. The delay having been properly explained by the investigating agency, PW2 and PW1, we see no reason to take the view that delay in lodging of the FIR in the facts of the present case would prove fatal to the case of the prosecution. The motive is not an absolute essential feature of commission of a crime. According to PW1, there had been scuffle between the parties few days prior to the date of occurrence, when the accused persons were playing cards along with the deceased and gambling which could be settled only by the intervention of the Sabhapati and that they had threatened the deceased and stated that they would see him later. This may or may not be a motive enough to kill somebody, but the fact remains that prior to the date of occurrence, there was a scuffle between the parties where the accused persons had threatened the deceased.

31. In view of the above discussion, we see no reason to interfere with the concurrent finding of conviction and order of sentence passed by the courts. Consequently the appeal is dismissed.

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