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Court : Patna

Decided On : Mar-11-1999

Judge : B.P. Singh and N.K. Singh, JJ.

Appeal No. : Criminal Appeal No. 493 of 1992

Appellant : Munna Tiwari

Respondent : The State of Bihar

Disposition : Appeal Dismissed

Prior history : B.P. Singh and N.K. Singh, JJ. 1. The appellant herein was put up for trial before the 2nd Addl. Sessions Judge, Arrah in Sessions Trial No. 449 of 1991 charged of the offence under Section 302 of the Indian Penal Code for having committed the murder of Satyanarain Tiwary. The learned 2nd Addl Sessions Judge, Arrah by his judgment and order dated 21st of November, 1992 has found the appellant guilty of the offence under Section 302, I.P.C. and sentenced him to undergo rigorous imprisonment for

Judgement :

B.P. Singh and N.K. Singh, JJ.

1. The appellant herein was put up for trial before the 2nd Addl. Sessions Judge, Arrah in Sessions Trial No. 449 of 1991 charged of the offence under Section 302

of the Indian Penal Code for having committed the murder of Satyanarain Tiwary. The learned 2nd Addl Sessions Judge, Arrah by his judgment and order dated 21st of November, 1992 has found the appellant guilty of the offence under Section 302, I.P.C. and sentenced him to undergo rigorous imprisonment for life.

2. The case of the prosecution is that deceased Satyanarain Tiwary and the appellant Munna Tiwary were collaterals residing in the same village Manichapara which lies within the jurisdiction of police station Barhara. On 6th of February, 1991 at about 7.30 a.m. while the deceased along with his son and father-in-law was sitting at his Darwaja and gossiping, appellant Munna Tiwary came and picked up a quarrel with him in connection with some land dispute. An altercation followed which attracted several villagers to the Darwaja of the deceased. It appears that those who assembled attempted to pacify the appellant who returned to his home. However, shortly thereafter he came With a Chhura and inflicted two chhura blows, one on the abdomen and the other on the left side of the chest of the deceased. After receiving Chhura blows, the deceased fell down. He was carried to the local State Dispensary at Manichapara by his son, father-in-law and other villagers, but the Medical Officer at the dispensary declared him dead. A requisition was sent by the Medical Officer to the police station pursuant to which the Investigating Officer Md. Aley came to the State dispensary and recorded the fardbeyan of Rajesh Kumar Tiwary, P.W. 3, the son of the deceased at 9 a.m.

3. In the fardbeyan Rajesh Tiwary, P.W. 3 stated that on that day at 7.30 a.m. he was at his Darwaja talking to his father Satyanarain Tiwary, deceased and his Nana Kedar Nath Tiwary, P.W. 1. While they were so talking, the appellant came to their Darwaja' and started abusing his father. An altercation followed. On hearing the hulla, the neighbourers and co-villagers assembled. The appellant then ran back to his house but came back with a chhura and inflicted two Chhura blows on his father, first on the abdomen and the second on the chest. After inflicting two chhura blows, the appellant ran away with his chhura. On receiving the injuries, Satyanarain Tiwary sat down pressing his injuries with his hands and was crying in pain. Thereafter the informant, his Nana and his mother Prabhawati Devi started crying and attending to Satyanarain Tiwary. With the help of villagers, the injured who brought to the State dispensary at Manichapra where the doctor

declared him dead. It was stated that the cause for the occurrence was the existing land dispute between the deceased and the appellant. The occurrence was witnesses by the mother of the informant Prabhawati Devi, P.W. 2, Kedar Nath Tiwary, P.W. 1 and villagers Yogendra Tiwary, P.W. 4, Prem Shankar Tiwary, Mithilesh Pandey, Ramayan Tiwary, etc.

4. From the deposition of the Investigating Officer, P.W. 6, it appear that he was attached to Barhara police station which was at a distance of 3 Kms from the village of occurrence. On receiving the O.D. slip from the State dispensary, he went to the dispensary at Manichapra and recorded the fardbeyan of Rajesh Kumar Tiwary, P.W. 3 which was marked as Exs 4. The fardbeyan was witnessed by Kedar Nath, P.W. 1 and Yogendre Tiwary, P.W. 4. He sent the fardbeyan to the Officer-In-charge 'Barhart police station for registration of a case and thereafter commenced investigation. He has deposed that it took him about 10 minutes to record the fardbeyan whereafter it took him another 10 minutes to record the same in the case diary. He has also proved the formal first information report drawn up by Sri B.K. Choudhary, the Officer-In-charge of the police station at 10 a.m. which was marked as Ext-5. The fardbeyan itself state that fact that it was recorded at 9 a.m. while the formal first in formation report drawn up at the Police Station was drawn up at 10 a.m.

The Investigating Officer then prepared the inquest report which was witnessed by Yogendra Tiwary, P.W. 4 and Prem Shankar Tiwary. The Investigating Officer has stated that he sent the dead body to the Arrah Sadar hospital through constable Sitaram Singh and Chowkidar Sohan Paswan. The Investigating Officer is categoric in stating that before he left for the place of occurrence, he had despatched the fardbeyan to the police station for registration of a case. He thereafter came to the place of occurrence at about 10.30 a.m. and inspected the place of occurrence He remained there till about 8.30 p.m. He found that the house of the appellant was adjacent south of the Sahan of the deceased. In front of the house of the deceased was his Sahan which measured 45' x 20'. He examined several witnesses and recorded their statements. Those witnesses are Kedar Nath Tiwary, P.W. 1, Yogendra Tiwary, P.W. 4, Prabhawati Devi, P.W. 2, Prem Shankar Tiwary, Mithilesh Pandey and Ramayan Tiwary. He searched for

the accused, but he was not found. Constable Sitaram Singh came and handed over to him blood stained clothes of the deceased which he sent to the Malkhana. On that day itself, he receive the post-mortem report.

On the following day, he again came, to the village Manichapra an recorded the further statement of the informant P.W. 3 and his mother Prabhawati Devi, P.W. 2. He also recorded he statement of witness Mahanand Tiwary. After completing the investigation he submitted charge-sheet on 8th of May, 1991.

5. The appellant was put up for trial before the 2nd Addl. Sessions Judge, Arrah charged of the offence under Section 302, I.P.C.. The prosecution examined six witnesses in support of its case out of whom. P.Ws. 1, 2, 3 and 4 are the eye-witnesses whereas P.W. 5 is the Medical Officer who conducted the post-mortem examination over the dead body of the deceased. P.W. 6 is the Investigating Officer.

6. We may first, notice the medical evidence on record. Dr. Nawalkishore Prasad Sinha, P.W. 5 has deposed that on 6th February, 1991, he was posted as the Civil Assistant Surgeon at the Sadar hospital, Arrah. He held the post-mortem examination on the dead body of deceased Satyanarain Tiwary at 2 p.m. on that day. He found the following ante-mortern injuries on the person of the deceased.

1. One incised wound measuring 1' 1/4' chest cavity deep over the pericardial region on the left side of the chest.

2. One insided wound 1 1/4' 1/4' abdominal cavity deep on the left side of the abdomen and the gut portion was coming out of the wound.

On dissection, he found that the heart chambers were empty. The heart valve was pierced. Chest cavity was full of blood and semi clotted blood. The left lung was pierced in lower portion and pale. He found the abdominal cavity full of semi clotted blood and the gut was pierced at many place he found two ounces semi digested food material in the stomach. In the opinion of the doctor, all the injuries were sufficient to cause the death even individually in normal course of nature. Both the injuries were caused by sharp pointed weapon, may be chhura or dagger.

The time that elapsed since death was assessed by him as within 12 hours. The cause of death was due to severe haemorrhage and shock as a result of the above injuries.

In his cross-examination he stated that he found rigor mortis present in all the four limbs. In his opinion the rigor mortis starts to set in after two to three hours and it takes about 12 hours to complete in the entire body. It does not stay for more than 12 hours, though during winter season it may stay for about 36 hours and in summer a little less. Thereafter it starts disappearing. He also opined that after the foods goes to the stomach, the stomach starts discharging secretion after two hours. After two to three hours the food starts leaving the stomach and starts going to duadunam, part of small intestine. The food which he found was residual in the stomach and major part had travelled to the duadunam. According to him, there was no time limit for food to leave the stomach and that depends on many factors. In the case of a healthy man, the food is digested within 8 to 12 hours.

7. From the evidence on record, it is quite apparent that Satyanarain Tiwary met a homicidal death on account of the two injuries inflicted on his abdomen and chest.

8. Kedar Nath Tiwary was the first witness examined on behalf of the prosecution in support of its case. He was examined as P.W. 1 and he deposed that he was resident of a village which was at a distance of about one kilo meter away from the village of occurrence. His daughter was married to the deceased. He had come to village Manichapra a day earlier to talk to his son-in-law, deceased, in connection with his daughter's marriage. On the earlier day, they had gone to village Basuri to negotiate a marriage settlement and returned to village Manichapra at about 12 or 12.30 in the night. On the following morning at about 7 or 7.30 a.m., he was sitting at the Darwaja of the deceases Satyanarain Tiwary and talking to his son-in-law and his grand son Rajesh Tiwary, the informant, P.W. 3. They had just finished their usual routine in the morning and had yet to wash their mouth and take breakfast. They were all talking about family matters when the appellant came there and started abusing the deceased. From the altercation that followed it appeared that the dispute related to some land. He as well as others who had come there attempted to pacify the appellant who went back to his house, but the

appellant again returned after some time armed with a chhura and stabbed Satyanarain Tiwary on his abdomen and left chest. After inflicting the injuries, the appellant ran away. According to this witness, the appellant had returned after about 10-15 minutes. The injured Satyanarain Tiwary pressed his wounds and sat down. Soon thereafter they brought Satya Narain Tiwary to the hospital at Manichapra on a cot, but the doctor declared him dead. This witness has stated that the appellant and the deceased were collaterals and cousins by relationship.

The witness was subjected to unnecessarily lengthy cross-examination. Many questions were put to him about the relationship of the families residing in the village, most of which is not relevant. However the sum and substance of the several answers given by the witness is that there were five Tiwary families residing in village Manichapra including the family of the deceased and the appellant. Though the families had separated long ago, there were disputes between them now and then. This witness also stated that the hospital at Manichapra was less than one kilometer from the place of occurrence. It was taken from him in cross-examination that the altercation lasted about 5 to 7 minutes and 2 or 4 people from the village had also come and attempted to pacify the appellant. When the appellant came the second time and approached the deceased, the deceased started calling them and on hearing his call they looked at him but by then the appellant stabbed the deceased and ran away. At that time the deceased was a little to the west of this witness. The injured was immediately taken to the hospital on a cot and it took about 10-15 minutes to reach the hospital. Though no one had gone to the police station to inform the police, the police officer came to the hospital after about an hour. Amongst the villagers who had assembled he could recognise Yogendra Tiwary, P.W. 4 and Bhar Pandey (deceased). This witness has further stated that the marriage of his daughter did not take place then, but it was to take place on the 24th day of the 4th month this year. He had settled the marriage at village Basuri. It is worth remembering that according to this witness one day before the occurrence he had gone to the same village Basuri in connection with the marriage negotiation of his daughter. This witness denied the suggestion that he was not present when the occurrence took place.

9. Prabhawati Devi, the wife of the deceased was examined as P.W. 2. She has also given more or less a consistent version of the occurrence. She has deposed that the occurrence took place at about 7 a.m. and on hearing the hulla and the voice of the appellant, she had come out. She saw that her husband, her father and her son were there and her father, P.W. 1, was trying to explain things to the appellant, who was raising a land dispute. Thereafter the appellant went back and she kept standing at the Darwaja of her house. The appellant returned after some time with a chhura and assaulted her husband. Her husband was removed to the hospital on a cot. This witness claims that she fainted and regained her senses after some time. For two-three days thereafter also she used to faint now end then. This witness has explained in his cross-examination that initially she had come out when a quarrel was going on outside in the Sahan and thereafter she had gone inside her house meaning thereby she had gone from Sahan and stood at the Darwaja of her house. She has also stated that at the time of occurrence her husband was wearing a full sleeved ganji and full sleeved shirt and full sleeved Sweater. She denied the suggestion that she has not witnessed the occurrence.

10. P.W. 3 Rajesh Kumar Tiwary is the informant. He has fully supported the version given out by him in his fardbeyan. He has deposed that at about 7 or 7.30 on the date of occurrence his Nana, P.W. 1, was sitting on a cot at his Darwaja. They were talking to his father Satyanarein Tiwary, deceased. At that time, Munna Tiwary came and started altercating with his father saying that he had taken the good lands and had given him inferior ones. Thereafter the witness as well as his Nana, P.W. 1 Yogendra Tiwary and Mithilesh Pandey started pacifying the appellant who returned to his house. But after about five minutes, Munna Tiwary again came and gave one stab injury on the abdomen of his father and another on his chest with his chhura. His father pressed his injuries and sat down and thereafter fell down. The appellant ran away. Thereafter he along with his Nana P.W. 1, Yogendra Tiwary, P.W. 4 and Mithilesh Pandey placed the injured on a cot and took him to Manichapra hospital where the doctor declared his father dead. Later the A.S.I, from the Barhara police station came to the hospital and recorded his statement which he signed. He proved his signature on the fardbeyan which was marked as Ext-1. This witness has clarified that Mithilesh Pandey was also known as Bhar Pandey, but he had since died.

In his cross-examination this witness admitted that there was some dispute with Munna Tiwary in connection with land. This dispute was there for a period of about a month and half before his father's death, but there was no litigation pending in that connection. This witness has further stated that to the west of his Sahan was the house of Chandrashekhar Tiwary. To the south of the house of Chandrashekhar Tiwary was some follow land and to the south of the fallow land was the house of the appellant. According to this witness, the altercation continued for about five minutes whereafter the appellant went back to his house. There were heated exchanges between his father and the appellant and some villagers had also assembled. Amongst the villagers who had attempted to pacify the appellant, were Surendra Pandey, Tribhuwan Pandey, Ramnath Pandey etc. After the appellant returned to his house, the villagers also left the place of occurrence. This witness further stated that he did not notice any blood falling on the ground, but the clothes of the deceased were soaked with blood including the sweater which he was wearing. He has stated in his cross-examination that he had gone to Arrah where the post-mortem examination on the dead body of the deceased was conducted. At about 3 p.m. he returned to his village and found that the police officer had come who recorded his statement which he signed. It has further been taken from him in his cross-examination that at the time of stabbing, the villagers were not present. He denied the suggestion that the appellant had been falsely implicated on account of enmity. He also denied the suggestion that no one had seen where, when and who killed the deceased.

11. Yogendra Tiwary was examined as P.W. 4. It appears that during the course of investigation this witness claimed to be an eye witness, but while deposing before the trial Court this witness stated that he had come out of his house on hearing hulla and had seen the deceased being placed on a cot and being taken to the hospital. He also followed them. He has admitted that the inquest report was prepared in his presence at the hospital and he had signed the same. This witness was declared hostile and was permitted to be cross-examined by the prosecution. He went to the extent of denying that he had ever made a statement before the police. He also denied the suggestion that he had given false evidence in Court in collusion with the appellant.

12. It will thus appear from the evidence on record that there are as many as three eye-witnesses who claim to have witnessed the occurrence. One of the eye-witnesses is the father-in-law of the deceased who claims to have come to the village of occurrence a day before the occurrence. The remaining two witnesses are his wife and son respectively. The evidence given by these witnesses is consistent and presence of these witnesses appears to be natural. Nothing has been elicited in their cross-examination which may lead us to discard their testimony. Counsel for the appellant also submitted that though the version disclosed by them at the trial was consistent, he characterized their evidence as parrot like. However we feel satisfied that the testimony of the witnesses has a ring of truth and in the absence of any surrounding suspicious circumstances, their testimony should be acceptable. There appears to be no reason why they should falsely implicate the appellant when he was not the real culprit. The fardbeyan was lodged promptly within an hour and a half of the occurrence and the formal first information report was also drawn up within an hour of the recording of the fardbeyan.

13. Counsel for the appellant submitted that the presence of P.W. 1 Kedar Nath Tiwary appears to be doubtful. He submitted that Kedar Nath Tiwary is the father-in-law of the deceased and it was not expected that he would stay at his daughter's house having regard to the belief in the rural areas that a father should not accept food at the house of his daughter. To us it appears that the submission has no force. P.W. 1 has explained that in connection with his daughter's marriage he had come to village Manichapra and, in fact, one day before the date of occurrence he had gone to village Basuri in connection with his daughter's marriage negotiation. They had returned late in the night at about 12.30. On the following day, the occurrence took place in the morning. While deposing at the trial this witness has stated that ultimately his daughter's marriage was settled at village Basuri and was to take place in the fourth month of the year in which he was deposing. These facts sufficiently explain the presence of P.W. 1 at the house of the deceased on the fateful day. There appears to be nothing in his cross-examination which would persuade us to reject his testimony outright.

14. So far as Prabhawati Devi is concerned, it was submitted that she may not have seen the occurrence because she came out of the house on hearing some noise and again returned to her house after the alternation ended. The witness-has stated that she had come out when she heard some noise, but after the appellant went away she came inside the house and stood at the Darwaja of her house. When this witness stated that she had come out, she meant that she had come out in the Sahan and when she stated that she went inside the house; she meant that she stood at the Darwaja of the house. Moreover the stabbing incident took place within about five minutes of the altercation, and we find nothing unnatural in the deposition of the witness that after the altercation she went and stood at the door of her house and thereafter she witnessed the occurrence. In does not appear from the evidence on record that the house of the deceased is a very large haweli so that the witness would have taken considerable time in coming out of the house. It has come in the evidence of P.W. 3 that they owned about 8 or 9 bighas of land only. This witness as well as P.W. 1 have been named in the first information report, and that lends assurance to the conclusion reached by us that they were present when the occurrence took place.

15. So far as the informant is concerned, no particular argument has been advanced before us for rejecting his testimony. We shall, however, deal with the submission urged on behalf of the defence that according to the testimony of this witness the fardbeyan was recorded after 3 p.m. when he returned from the hospital at Arrah where the post-rnortem examination was conducted. So far as this witness is concerned, we find that his testimony in Court is fully corroborated by his fardbeyan on the oasis of which a formal first information report was drawn up. He had dodged a report within an hour and a half of the occurrence as soon as P.W. 6 came to the hospital on the basis of O.D. requisition. Having regard to the facts and circumstances and the sequence of events, we find that there was really no opportunity of the informant to concoct a false case implicating the appellant.

16. Counsel for the appellant then submitted that though the fardbeyan purports to have been recorded at 9 a.m. at the State dispensary at Manichapra, it was really recorded after 3 p.m. on the date of occurrence. His submission is that event he inquest report was recorded after the formal first information report was drawn up.

We have carefully examined the submission urged on behalf of the appellant. The evidence of P.W. 3 the informant is quite clear that the police officer came to the State dispensary after about an hour of their reaching the State dispensary. P.W. 6 recorded the statement which he signed and which was witnessed by P.W. 1 and P.W. 4. P.W. 1 has also deposed that he had signed the fardbeyan as a witness. P.W. 4 was however declared hostile. He claimed that he had only signed the inquest report and had not seen the occurrence. There appears to be substance in the submission urged on behalf of the State, and as suggested to P.W. 4, that he has backed out in collusion with the appellant and did not depose truthfully at the trial. The deposition of P.W. 6 also leaves no room for doubt that the fardbeyan was recorded by him at 9 a.m. at the State dispensary at Manichapra. In fact he has categorically stated that even before leaving for the place of occurrence he had sent the fardbeyan to the police station for registration of a case and he had further proved the formal first information report which was in the hand-writing of the Officers-In-charge of Barhara police station Sri B.K. Choudhary and it was drawn up at 10 a.m.

Learned Counsel submitted by reference to a stray statement made by the informant in his cross-examination that after he came back from the hospital at Arrah at about 3 p.m. the police officer recorded his statement in the village which he signed. On the basis of this statement, it. was sought to be argued that the fardbeyan was recorded after 3 p.m. on the date of occurrence. It appears from the deposition of Investigating Officer, P.W. 6 that he had further examined the informant and recorded his further statement on the following day i.e. on 7th of February, 1991. It appears to us that under some confusion, the informant has stated that his statement was recorded at 3 p.m. on the date of occurrence after he returned from the Arrah Sadar hospital. The deposition of this witness in his examination-in-chief is quite clear and categoric and fully supported by the Investigating Officer, P.W. 1 and the eye-witness P.W. 1. The witness has not stated that the statement recorded at 3 p.m. by the Investigating Officer was his first statement because he had earlier deposed that his fardbeyan was recorded at 9 a.m. It appears to us that on account of lapse of memory the witness has stated that he made a statement to the Investigating Officer which he signed at 3 p.m. on the date of occurrence. In all probability under the stress of cross-examination he

made such a statement under the impression that his further statement was recorded on the date of occurrence itself instead of the following day. We are, therefore, satisfied on the basis of the evidence on record that the fardbeyan of the informant was recorded at 9 a.m. on the date of occurrence i.e. on the 6th February, 1991. We also notice that in the course of his cross-examination, the Investigating Officer was not cross-examined on this aspect of the matter and no suggestion was even put to him that the fardbeyan was recorded at 3 p.m. on the date of occurrence and not at 9 a.m. as stated by the witness in his deposition and as recorded in the fardbeyan and in the formal final information report drawn up on its basis thereafter.

17. Counsel for the appellant then submitted that though no one went to inform the police, P.W. 6 came on his own to the State dispensary on receiving the O.D. slip from the State dispensary, He submitted that the O.D slip has not been produced. He also submitted that the doctor who declared Satyanarain Tiwary dead at the State dispensary at Manichapra was also not examined. We are of the view that non-production of the O.D. slip and non-examination of the doctor who examined Satyanarain Tiwary at the Manichapra State dispensary does not, in any manner, affect the veracity of the prosecution case. Admittedly, no one had informed the police about the occurrence, and, therefore it is natural that in normal course an O.D slip must have been sent by the Medical Officer to the Police Station. We have, therefore, no reason the disbelieve the Investigating Officer P.W. 6 who states that he went to the State dispensary on receiving the O.D slip from Manichapra.

18. Another submission urged on behalf of the appellant is that though the dead body was sent for post-mortem examination to the Arrah Sadar Hospital, the requisition under which the dead body was sent, has not been produced, nor has the person been examined who had accompanied the dead body to the Arrah Sadar hospital. In our view, these are not very material. The Investigating Officer in his deposition has stated that the dead body of Satyanarain Tiwary was sent to the Arrah Sadar hospital and the persons who accompanied the dead body were Constable Sitaram Singh and Chowkidar Sohan Paswan. There is no reason for us to doubt the truthfulness of the statement particularly when the Investigating

Officer has not been cross-examined on this aspect of the matter at all and the statement has gone unchallenged.

19. It was then submitted that no blood was found at the place of occurrence and the blood soaked clothes were also not produced before the Court. The Investigating Officer has categorically stated that he did not find any blood at the place of occurrence. Even the witnesses have deposed that no blood fell at the place of occurrence. That appears to be so because the deceased was heavily clothed. Apart from the full sleeved ganji and a shirt, he was also wearing a sweater, a woolen garment. Obviously the blood that may have oozed out, may have soaked the clothes which the deceased was wearing. Moreover, the medical evidence on record is clear that the valve of the heart was damaged from which one can infer that the heart must have stopped pumping blood immediately. This apart large quantity of blood was found in the chest cavity and in the abdominal cavity. In these circumstances, and having regard to the clothes worn by the deceased at the time of occurrence, it may be that the blood which came out got soaked by the clothes worn by the deceased, and large quantity of the blood got accumulated in the abdominal cavity and the chest cavity. So far as non-production of blood stained clothes is concerned, the I.O. has no doubt stated that the blood stained clothes were handed over to him by Constable Sitaram Singh and he had sent them to the Malkhana. We have noticed in large number of cases that material exhibits are rarely produced before the Court and this must be considered to be a serious dereliction on the part of the police officer. However for such lapses on the part of the Investigating Officer, the prosecution case cannot be rejected outright when there is reliable evidence on record to satisfy the Court that the blood stained clothes were, in fact, seized, but not produced. If the blood soaked clothes bad been produced before the Court that might have provided corroborative evidence to the prosecution, which in the instant case is not available. That however, in our opinion, having regard to the facts and circumstances of the case, does not deferent from the veracity of the prosecution case.

20. It was submitted that the inquest report was drawn up after the case was registered at the police station. This submission is urged on the basis that the

inquest report contains the case number which could have been available only after the formal first information report was drawn up. It was submitted that the formal first information report was drawn up at 10 a.m. at the police station and a case must have been registered at that time. It was not, therefore, possible for the Investigating Officer preparing the inquest report at about 9.30 a.m. to enter the case number. The submission is attractive, but devoid of force. In a case of this nature where an Investigating Officer prepares an inquest report at a place other than the police station, he may not be aware of the number of the case registered at the police station. Invariably some place is left blank in the first column where the case number is later inserted with a view to co-relate the inquest report with the case to which it relates. This happens in large number of cases. In any event, such a suggestion was not even put to the Investigating Officer because if he was cross-examined on this aspect of the matter, he may have offered an explanation. We are, therefore, not impressed by this argument.

21. It was lastly submitted that though some independent witnesses were present at the time of occurrence, they have not been examined and, therefore, the case of the prosecution becomes doubtful. Reliance was placed on the judgment reported in : 1971 CriLJ1173 , The State of U.P. and Anr. v. Jaggo @ Jagdish and Ors. That case is clearly distinguishable. The broad proposition that prosecution case must necessarily fail if the prosecution fails to examine all independent witnesses, has no legal sanctity. While it is true that the prosecution must examine all witnesses who may unfold the prosecution case to enable the Court to make a proper assessment on the facts and circumstances of the case, the mere failure to examine some of them will not result in the rejection of the prosecution case. Much depends on the facts and circumstances of each case. In the case on which reliance is placed by the Counsel for the appellant, the witness who was sitting with the deceased at the time of occurrence and was named in the first information report, was not examined. On the other hand, two other witnesses were examined whose names did not find place in the first information report and whose presence appeared to the Court to be doubtful. It was in these circumstances that the Court observed that the non-examination of the independent witness who was admittedly sitting with the deceased at the time of occurrence made the prosecution case suspect particularly, when the other two witnesses examined by the prosecution

did not appear to be reliable. In the instant case, several eye-witnesses who have been named in the first information report have been examined, but some of them have not been examined. We have also noticed that the occurrence took place in two parts. On the first occasion when the deceased came and altercated with the deceased, according to the eyewitnesses, a few villagers had assembled. Their evidence however is to the effect that after the appellant returned to his house, the villagers also went back to their respective houses. At the time when the appellant against came with a dagger in his hand and stabbed the deceased, the villagers were not present. At the end of the fardbeyan, the informant, has mentioned the names of a few such eye-witnesses who were co-villagers, apart from those examined at the trial. From the evidence on record, it appears that those witnesses may have witnessed the first part of the occurrence, but not the second part when the actual assault took place. Moreover, as many as four witnesses named in the first information report have been examined at the trial, and therefore, the non-examination of the remaining witnesses named in the first information report, who perhaps had witnessed only the first part of the occurrence, does not affect the veracity of the prosecution case. It is well settled that where several eye-witnesses are named in the first information report and large number of such witnesses are examined at the trial, the mere non-examination of a few would not render the prosecution case suspect so as to merit its rejection outright. The evidence of eye witnesses has to be examined with care and caution, particularly if they are shown to be inimical. In the instant case, we have found the prosecution witnesses, who claim to be eye-witnesses to be truthful. Their presence at the place of occurrence was natural and the fardbeyan was lodged shortly after the occurrence without affording to the prosecution an opportunity to concoct a false case. The medical evidence on record fully corroborates the prosecution version and we find no motive for the prosecution witnesses to falsely implicate the appellant.

22. On a overall appreciation of the facts and circumstances of the case, we are satisfied that the trial Court has rightly concluded that the prosecution has been able to prove its case beyond reasonable doubt. We find no merit in this appeal and the same is, accordingly, dismissed.

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