

Om Parkash Vs. State

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Court : Delhi

Decided On : May-03-1979

Reported in : 1979CriLJ141; 16(1979)DLT281

Judge : V.D. Misra and; F.S. Gill, JJ.

Acts : [Evidence Act, 1872](#) - Sections 3; [Code of Criminal Procedure \(CrPC\) , 1973](#)
- Sections 154

Appeal No. : Criminal Appeal Nos 209 of 1978

Appellant : Om Parkash

Respondent : State

Advocate for Pet/Ap. : P.P. Grover and; S.N. Mehta, Advs

Judgement :

V.D. Misra, J.

(1) Om Parkash alias Omi and Chuni Lal have been convicted under section 302/34, Indian Penal Code, and each of them has been sentenced to imprisonment for life by Mr. R. L. Gupta, Additional Sessions Judge, Delhi. Separate appeals challenging the convictions have been filed by Om Parkash and Chuni Lal. These are being disposed of by this judgment.

(2) The prosecution case, in brief, is this. On the night of February 3, 1977 Head Constable Dhara Singh and Constable Ram Datt were patrolling their area on a motor-cycle. At 11.00 or 11.15 P.M. on their way to the car parking area of Ajmeri Gate from Turkman Gate they saw the appellants chasing Puran Singh (deceased), Om Prakash alias Omi appellant was carrying an open knife in his hand while Chuni Lal appellant was unarmed. Chuni Lal overtook Puran Singh near the iron railing of the parking area and gave first blows on his face. In the meantime Om Parkash reached there. Chuni Lal shouted 'Omi mar chakoo', whereupon Omi gave a knife blow on the back of right buttock of Puran Singh. The head constable stopped his motor- cycle and ran after the assailants. Constable Ram Datt joined the chase. The head constable was able to apprehend Chuni Lal, Omi appellant, however, succeeded in escaping. He ran away towards the nearby railway bridge. Constable Ram Datt ran after him. One Udey Singh joined the constable in the chase.

(3) Puran Singh, after receiving the injury, walked a few paces and fell down. The head constable noticed a cycle rickshaw and directed the rickshaw puller to take the injured to the Irwin Hospital. While the injured was being put in the rickshaw, a passport belonging to one Jagdish Chand fell from his pocket. This passport was picked up by the head constable. It was later on discovered that the passport had been stolen. The injured was medically examined at 11.20 P.M. by the doctor posted at the Casualty Department of the hospital and was declared dead. Constable Siri Niwas, who was on duty at the casualty, telephoned Police Station Kamla Market at 11.45 P.M. and informed the latter that an unknown dead man has been brought to the hospital by one Aslam. This information was conveyed to Inspector Bal Krishan Tanwar, Station House Officer of the Police Station. The Inspector Along with Sub-Inspectors Neel Kant and Shiv Narain went to the hospital. After collecting the death certificate of the deceased all of them came to the scene of crime. Head Constable Dhara Singh made a statement (Exhibit Public Witness 1/B) which was recorded by Inspector Tnwar. At 1.05 A.M. this statement dispatched to the police-station for registration of a case. Custody of Chuni Lal appellant was taken over by the Inspector. At about 2 A.M. Constable Ram Dutt came back to the scene and reported his failure to apprehend Omi appellant.

(4) On February 4, 1977 the Inspector held an inquest on the dead body of Puran Singh and sent the same for post-mortem examination. Dr. Bishnu Kumar (Public Witness 2) of Maulana Azad Medical College performed the post-mortem examination at 10.30 A.M, on February 5, 1977. He found the following injuries :

'1.Abrasion 0.5 x 0.5 cm just above the middle part of right eyebrow.

2.Bruise 3.2 x 2 cm over left cheek bone prominence with an abrasion 0.6 x 0.4 cm in its middle region.

3.Abrasion 1 x 0.6 cm just below right ear over the angle of right lower jaw bone.

4.Fracture of the right side of nasal bone.

5.Abrasion 1 x 0.5 cm on the front of the right knee joint.

6.Incised punctured wound 2 x 0.5 cm vertical and abdominal cavity deep, situated on right buttock 5 cm from mid- line just at the level of the upper and of internal bruise. Blood was coming out of wound on pressure. Both the angles of the wound were acute.'

Injury No. 6 was found to have been caused by double-edged sharp weapon. It was about 12 cm deep. This injury had 'cut the full thickness of the buttock muscles, then entered the palvic cavity through the sacro-sciatic notch, cutting the tributaries of iliac vein and branches of iliac artery, then entered the peritoneal cavity making a cut in peritoneum at a place where it reflects on bladder and finished by making a cut of 0.8 cm on the back wall of the urinary bladder in its whole thickness.' It was opined to be sufficient in the ordinary course of nature to cause death.

(5) On the morning of February 7, 1977 at 9 A.M. Inspector Tanwar arrested appellant Om Parkash at G. B. Road. The Inspector got his appellant's face muffled and directed Sub-Inspector Shiv Narain to take the appellant to the court for judicial remand to await a test identification parade. Sub-Inspector Shiv Narain produced the appellant before the Magistrate Along with application exhibit Public Witness 5/A and the Magistrate remanded him to judicial custody till February 19,

1977. Later on this appellant refused to take part in the identification parade on the plea that he had already been shown to the witnesses.

(6) The defense of the appellants was one of complete denial Chuni Lal, in his statement recorded under section 313 of the Code of Criminal Procedure, stated that he had taken liquor and was coming from G.B. Road and going to Ajmeri Gate where he lived. On the way he was stopped by Head Constable Dhara Singh and was questioned. He was involved in the present case on suspicion, Om Parkash appellant stated that he had been involved in the case on suspicion. He alleged that he was arrested from his house at Shahdara and was brought to police-station. From the police-station he was taken to the court where he was directed to muffle his face and sent to judicial lock-up.

(7) In order to prove the motive the prosecution examined Dalip Singh (Public Witness 17), father of Puran Singh deceased. However, the only fact deposed to by this witness is that the deceased and Om Parkash appellant were on friendly terms but lately there had been some dispute between them. But he could not give any detail of the alleged dispute. He was not even been able to tell us when the dispute arose. How could he say of any dispute between them because, admittedly, he had turned the deceased out of his house about 8 or 9 years prior to his death. The reason for throwing him out was that the deceased had become a badmash and was a history sheeter. However, the failure of the prosecution to prove the motive would not affect the case if the eye-witnesses are to be believed.

(8) There are only two eye-witnesses. One is Head Constable Dhara Singh (Public Witness 1) and the other is Constable Ram Dutt (Public Witness 3). The evidence of these two witnesses is assailed on the ground that in fact they had not witnessed the incident. It is argued that since the incident had taken place in the area of their beat, they agreed to become convenient witnesses as no one from the public had come forward to say that he had seen the occurrence. It is contended that they apprehended Chuni Lal on suspicion and framed up Om Parkash appellant. It is also contended that the whole investigation has been mala-fide and the police has manipulated to earn the credit of having successfully solved a blind murder which had taken place within one furlong of the police-

station.

(9) Now H. C. Dhara Singh neither knew the appellants nor the deceased. This witness deposes that he did not enquire the name of the rickshaw-wala who was directed to take the injured to the hospital. He is certain that he never gave the name of this ricksha-wala to Inspector Tanwar who recorded his statement Exhibit Public Witness 1/B which was the first information report. The witness swears that he came to know the name of rickshaw-wala after one or two days when he went to the hospital and talked to the constable on duty there. But the first information report shows the presence of two persons. One is the rickshaw-wala. The other is one Aslam of Gali Shahtara. According to this report, this Aslam was asked to accompany the injured to the hospital. In the court the witness took the stand that he never stated in the first information report that anyone else, much less a person named Aslam, went with the injured to the hospital and it was only the rickshaw-wala who took the injured. The mystery of the name of Aslam appearing in the first information report was tried to be solved by the State Counsel by drawing our attention to Exhibit Public Witness 7-A. It is the information sent by the duty constable Siri Niwas from hospital. It contains the name of Aslam with his parentage and residential address as the person who had brought the injured to the hospital. It is to the effect that the said Aslam has brought an unknown dead person, aged about 35 years 'from Ajmeri Gate somehow in that condition'. We may at this stage record that the prosecution failed to produce Aslam though he was cited as a prosecution witness. The suggestion made by Mr. S. N. Mehta, learned counsel for the State, is that since Inspector Tanwar had come to know of the name of Aslam, he recorded his name in the statement of H.C. Dhara Singh though the latter had not given out the name. But this only shows that the statement of Dhara Singh was not faithfully recorded and in addition to an unknown rickshaw-wala a stranger by the name of Aslam was sought to be placed on the scene of occurrence. It is clear case of mala-fide on the part of the Inspector. It may be noticed that it is not the case of Inspector Tanwar that Dhara Singh had not given out the name of Aslam.

(10) The mystery of the name 'Aslam' deepens further when we look at death certificate Exhibit Public Witness 16/A which was proved by a record keeper of the

hospital since the doctor concerned had left the hospital. In this certificate there is clear interpolation of words 'by Islam son of Mohd. Sadiq-4494 Gali Sitara, Hauz Khazi'. When it came to be written No body knows. But the word 'Islam' was, in the process of conveying the information, changed to 'Aslam'. And this Aslam has been held back by the prosecution.

(11) The conduct of H. C. Dhara Singh at the place of occurrence appears to be very strange indeed. His motor-cycle, which was fitted with a wireless set, was hardly 10 paces away from the place where he had apprehended Chuni Lal. Though he had picked up the passport, which fell from the pocket of the injured and had also put the injured in the cycle-rickshaw, he did not care to flash a message about a murderer being at large. The only Explanationn for not flashing the message is : 'I did not send wireless message because it was on the motor-cycle and I was with accused Chuni Lal.' It can hardly be any Explanationn. If he could have picked up the passport which had fallen from the pocket of the injured and could have put the injured in the cycle-rickshaw, we see no reason why he could not flash the wireless message from the nearby motor-cycle. He could have easily taken accused Chuni Lal near his motor-cycle and sent the message. The importance of the message lay not only in the fact that the incident had taken place but also in the fact that one of the assailants had succeeded in escaping Along with the weapon of offence and that he was being chased by his companion constable and a public man. This message would have alerted all the policemen on patrol duty who could have helped Constable Ram Dutt in apprehending the other assailant. Again, admittedly the police-station is hardly about a furlong away from the place of occurrence. This head constable could have taken accused Chuni Lal to the police-station so that an effective hunt for the escaped assailant could be immediately organized. It is in evidence that there is a taxi stand just across the road where the head constable was standing with accused Chuni Lal. He could have very well shouted for the help of persons since some taxis with their drivers are always there.

(12) H.C. Dhara Singh deposes that he had not given the name of Omi accused in his police-statement since he did not know it. He goes on to state that he came to know the name of Omi on the following morning after he returned to the police-

station. Of course he could not recollect who had told him the name of Omi accused. If that be so, how does the name of Omi appear in his police-statement. The alleged exhortation 'Omi Mar Chaku' is thus evidently a brain wave of the Inspector to ensure that the assailant is named. We may at this stage also record that the first information report does not contain any description of the assailant who had stabbed the injured and had succeeded in making good his escape. This witness does state that the Inspector did enquired from him the description of Omi but it was done only at the police-station. He admits that he had a fleeting glimpse of the second assailant. Now Om Parkash appellant, after his arrest, was remanded to judicial custody to await test identification parade. He has refused to take part in the parade on the ground that he had been shown to the witnesses. We will presently discuss the question of identification in detail. At this stage it may be noticed that H.C. Dhara Singh admitted in cross-examination that he had seen Om Parkash appellant a day before the latter was put up for identification. He also admits that he had seen this appellant again on the date of the identification parade. He further admits that he had seen this appellant at the police-station though he could not recollect how many days thereafter he had gone to take part in the test identification parade at the Central Jail. In other words, this appellant having been shown to this witness before the test identification parade was to be held, the appellant was justified in refusing to take part in the identification parade. Mr. Mehta contends that the witness seems to be confused since he could not have possibly seen this appellant at the police-station a day before the parade since the appellant was in jail. It is not a correct reading of the statement of the witness. The relevant portion of the statement of the witness reads thus :

'I did not see Omi accused after that date till one day before the identification parade and on the date of the identification parade. I had seen him at P.S. I do not recollect how many days thereafter I had gone for test identification parade of the accused in jail.'

(13) It is plain that the witness was not stating that he had seen this accused at the police-station a day before the date fixed for the identification parade. Otherwise, there was no reason for him to say that he did not know how many days thereafter he had to go to the jail for taking part in the identification parade especially when

he had earlier stated that he had seen the accused only a day before the parade. We have no doubt in our mind that the investigating agency had shown Om Parkash appellant soon after his arrest and had also enabled this witness to see this accused in jail. We cannot forget that the witness being a head constable of the police could have gone in the jail under some pretext to see the appellant there.

(14) The other eye-witness Ram Datt constable (Public Witness 3) would have us believe that he knew Om Parkash appellant before the occurrence. He deposes that during his posting in Police-Station Saddar Bazar he had come to know Om Parkash who was running a paan bidi shop in the jurisdiction of the police-station. The constable would sometime purchase paan bidi from the appellant. He swore that he had stated this fact in his police-statement. But he was duly confronted with it. It was found that there was no mention of the witness having at any time been posted at Police-Station Saddar Bazar. There was no mention of this appellant selling paan bidi. In his police-statement, this witness swore, he had given the name of the father of Om Parkash appellant as Phulu, but, after confrontation, it was found that the name of the appellant's father was not recorded. It may at this stage be noticed that it is not the case of the prosecution that the name of the father of this appellant is Phulu. On this record the name of the father of om Parkash is Gulzari Lal. Moreover, the defense has examined Constable Sher Singh (DW1) who stated that this constable, according to the police record, was last posted in Police-Station Saddar Bazar between 1-5-1962 to 2-2-1965. In other words, if Public Witness 3 is to be believed he would have last seen the appellant about 12 years before the occurrence. Now the age of Om Parkash, as recorded in his statement, was 25 years in August, 1978. So he would have been of 12 years of age when this witness saw him last. This witness admittedly had a fleeting glimpse of the assailant whom he pursued. We cannot hold that having seen a person casually about 12 years ago, one will be sure about his identity after having a fleeting glimpse.

(15) Again whereas H.C. Dhara Singh deposes that Constable Ram Datt (Public Witness 3) after making his statement to the investigating officer he did not resume patrolling with Dhara Singh. Ram Datt swear that resumed patrolling with

the witness, Ram Datt categorically states that he patrolled with other police-official that night till 7 A.M. the following morning. Now the head constable tells us that it was during the resumed patrolling that Constable Rate Datt told him that he knew 'Omi', though he did not give any particulars of this accused. The head constable goes to the extent of swearing that during the resumed petrolling both of them were on the look out for accused Omi. Now, Inspector Tanwar had asked for the police remand of accused Chuni Lal on the ground that 'his accomplice Omi has to be arrested on his pointing out the place of residence as well as the weapon of offence, i.e., knife is also to be recovered.' (Exhibit Public Witness 20/DA). Was it the case of the prosecution that knife had been used by Chuni Lal or that Chuni Lal knew where the knife was The prosecution case is that Chuni Lal companion had succeeded in running away Along with the knife. Moreover, if the identity of Om Parkash appellant had been established by the statement of Constable Ram Datt, the question of Chuni Lal pointing out the place of his companion's residence did not arise. It may be noticed that Chuni Lal accused never pointed out the residence of Om Parkash appellant nor was the latter arrested on the pointing out of Chuni Lal. We will presently discuss the bona-fides of the investigating officer.

(16) Constable Ram Datt's conduct after the incident is as much intriguing as that of H.C. Dhara Singh. Constable Ram Datt Along with a public witness Udhey Singh (who incidentally does not support the prosecution) started chasing the assailant running away with a knife. For practically three hours he kept on looking for that assailant and could not find him. He could not tell us when he lost sight of the assailant and what he did thereafter. He admits that he did not notice what this assailant was wearing. Though Dhara Singh is positive that the assailant ran away with the knife, the witness is certain that the assailant was not carrying a knife in his hand. If that is so, then what happened to the knife with which the assailant is alleged to have escaped He was being continuously chased by this witness. Surely this witness would have seen him throwing away the knife. But this would only be if the constable was close enough to see the assailant clearly.

(17) This witness admits that while searching for the assailant he came across many police-constables on petrol duty. But strangely enough he did not even care

to find out from them if they had seen anyone running or seen anyone resembling the assailant. He did not even ask the constables to ring up the flying squad to help the witness in searching the accused.

(18) This is all the evidence we have got in respect of the occurrence. We are extremely doubtful if these two witnesses had seen the stabbing. It may be that Constable Ram Datt and H.C. Dhara Singh reached the place of incident soon after the occurrence and started looking for the assailants. We will now test their evidence with reference to other circumstances.

(19) Counsel for the appellants seriously contended that the first information report was prepared later on after due deliberations and the statement of H.C. Dhara Singh was not recorded at the time at which it purports to have been recorded. It may be notified that the trial court summoned the copy of the first information report (Exhibit C.W. 1/A) received by the Ilaqa Magistrate from the police-station. We have seen the copy. It is not a carbon copy of the first information report. According to rule 24.5 of the Punjab Police Rules, Volume III. it is the duty of the police-station, in a murder case, to send a carbon copy of the first information report to the Ilaqa Magistrate immediately after it has been recorded. There is no Explanation on the record as to how an ordinary copy came to be delivered to the Ilaqa Magistrate after practically five days of the incident. It was also strongly contended by the learned counsel of Om Parkash appellant that the appellant was shown to the witnesses after his arrest and before he was produced before the Magistrate for being sent to judicial custody to await test identification parade. It may be recalled that H.C. Dhara Singh categorically stated that he had seen this appellant at the police-station long before this witness went to the jail to identify the appellant in the identification parade. We noticed that whereas inspector Tanwar in his application for remand (Exhibit Public Witness 5/A) had requested for judicial remand till February 17, 1977, the Magistrate had granted the remand till February 19, 1977. In these circumstances, we decided to look into the case diary of February 7, 1977. We were astonished to notice in the case diary made by Inspector Tanwar that he had asked for judicial remand till February 19, 1977. We were also shocked to see that the case diary does not conform to rules 25.53 and 25.54 of the Punjab Police Rules.

(20) Now the entries in the case diary cannot by themselves be taken as evidence of any date, fact or statement therein contained, and it may be used for the purpose of contradicting the police-officer who made it, or it can be used by the police-officer who made it. We, therefore, in the interest of justice decided to examine Inspector Bal Kishan Tanwar in order to find out the truth.

(21) The first thing which has come to light is that all the case diaries relating to the investigation conducted by Inspector Tanwar were not written by this Inspector. They were written by S.I. Shiv Narain who had partly investigated this case. Of course, the Inspector has signed at the requisite places. The attention of the Inspector was drawn to the fact that whereas in the application Exhibit Public Witness 5/A he had asked for judicial remand of Om Parkash till February 17, 1977, the case diary records that this remand was asked for till February 19, 1977. The Inspector had no Explanation. He stated that he was not writing the case diaries simultaneously but was in the habit of writing the case diary at the police-station after the end of the day. He had to concede that before signing the case diary of February 7, 1977, he had not gone through it. He would, however, have us believe that since the case diary was written in his presence by S.I. Shiv Narain, so he did not think it worthwhile to go through the same. He admitted that the case diary was written at the end of the day. He had seen a copy of the application (Exhibit Public Witness 5/A) for remand as well as the copy of the Magistrate's order granting the remand. At this stage it may be noticed that even the remand application Exhibit Public Witness 5/A was not written by this Inspector. It was written by another Sub-Inspector named Neel Kant. The Inspector had only signed it. Significantly the Inspector dare not depose that he dictated the case diary. Evidently, the Inspector did not know what was being written. We have no hesitation in holding that neither he had seen what was written in the case diary nor he even cared to know its contents.

(22) Rules 25.53 and 25.54 of the Punjab Police Rules, Volume Iii, which govern Delhi Police, relate to case diaries. Rule 25.53 lays down briefly what should be recorded in case diaries. Rule 25.54 is about the record of case diaries. The relevant part of this rule reads thus:

'25.54(1) Case diaries shall ordinarily be submitted in Form 25.54 (1) and each sheet shall be numbered and stamped with the station stamp. Two or more copies as may be ordered, shall be made by the carbon copying process by the officer conducting the investigation. The officer writing a case diary shall enter in such diary a list of the statements, recorded under section 161, Criminal Procedure Code, which are attached to such diary and the number of pages of which each such statement consists.

(2) They shall be sent from the scene of investigation to the police station without delay.

(3) On arrival at the police station the number and date of each case diary shall be recorded on the reverse of the police station copy of the first information report, and the date and hour of receipt shall be entered on each copy of the diary.

(4) The original shall be dispatched with as little delay as possible to the inspector or other superior officer as may be ordered, after the time of dispatch has been entered in the space provided in the form on both the original and the copy or copies. Orders for the disposal and record of case diaries in the headquarters office are contained in rule 11.70. Also see rule 27.38. * * * * *

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(23) The case diaries of the present case do not have book number and Serial number printed on them. The space after words 'Book No' and 'Serial' is blank. The Inspector was asked to explain why he was using such case diaries. His Explanation is that 'a number of case diaries have been supplied to us which do not have printed numbers'. He states that such case diaries have been supplied by Record Keeper of Deputy Commissioner of Police. He also stated that such case diaries have been supplied to practically at police-stations. He produced before us two types of case diaries supplied to the police-station. One has the book number and Serial number printed on each sheet of the case diary while in the other those numbers were not printed. We were given to understand that it was left to an investigating officer to use the type of case diary he liked. We may at this stage note that in Criminal Appeal No. 215 of 1976 (Ashok Kumar v. State) decided on April 17, 1979(4), we had examined the investigating officer of that case. The

investigating officer of that case was found to be using both types of case diaries. He agreed with the suggestion of the State counsel that 'in the police-stations generally no importance is attached to the use of numbered case diaries.' Sub-rule (2) of Rule 25.54 shows that case diaries have to be written at the place of investigation and not at the end of the day. Otherwise there is no sense in requiring an investigating officer to send case diaries from the scene of investigation to the police-station without delay. Inspector Tanwar should not have, therefore, got written his case diary at the end of the day at the police-station.

(24) We also noticed that though an investigating officer is required under sub-rule (4) to send immediately case diary of each day to his superior officer the case diaries of this case were sent only on April 11, 1977. All the case diaries bear this date under the signatures of the Sub-Divisional Police-Officer. Under this sub-rule time of dispatch of a case diary is required to be mentioned 'in the space provided in the form.' This space has been left blank in the case diaries of this case. We have, therefore, to hold that till April 11, 1977 the investigating officer did not send the case diaries to his superior officer. We had summoned the dispatch register as well as the peon book and daily diaries of this police-station to find out the dates on which the case diaries were sent to the Sub-Divisional Police-Officer. The dispatch register was not produced before us. Inspector Tanwar swore that he had checked up the register but did not find any entry about the dispatch of case diaries to the Sub-Divisional Police-Officer as well as about the dispatch of carbon copy of the first information report to the Ilaqa Magistrate. He, however, stated that the investigation was complete on March 21, 1977 when he sent the case for checking to the Prosecution Branch and thereafter sent the charge sheet to the Sub-Divisional Police-Officer who signed it on March 30, 1977 before it was put up before the court. But this does not show that the investigating officer had sent the case diaries to the Sub-Divisional Police-Officer (S.D.P.O.) on any date before April 11, 1977. It is true that the Inspector swears that he sent the case diaries of each day immediately. But then there is no record to support him. In fact, the record has been withheld from us. Moreover, we have no reason to believe that the S.D.P.O. did not sign the case diaries on the dates which these purport to bear. It may be noticed that the S.D.P.O., who had signed the challan on March 30, 1977, is the person who had signed the case diaries on April 11, 1977.

(25) As regards the dispatch of the copy of the first information report to the Ilaqa Magistrate the stand taken by the Inspector is that he did send it on February 4. He relied on an entry in the daily diary of the police-station which records that constable Surjit Singh had been sent at 1.55 P.M. with special report to D.I.G. (Range), the Sub-Divisional Magistrate and the Superintendent of Police (Central). In our opinion, the Inspector is trying to catch at a straw. The entry does not mention that carbon copies of the first information report were being sent. It may be noticed that under Rule 24.5 of the Punjab Police Rules, Volume Iii, every four pages of the first information report register are 'numbered with the same number'. The three copies have to be prepared simultaneously by using the carbons. The three carbon copies are to be sent to officers mentioned in this rule. The rule enjoins upon a police-station to send one to the Superintendent of Police, one to the Ilaqa Magistrate and one to be given to the complainant, In murder cases, this rule requires that the carbon copy sent to the Magistrate be delivered to him in his court during court hours and after the court hours at his residence. In case the Ilaqa Magistrate is out of station, this copy is required to be submitted to the Duty Magistrate. In case the Ilaqa Magistrate is not available after court hours, the copy has to be left at his house by the messenger 'noting the date and hour of delivery on the cover with the contents.' It is true that this is not a mandatory provision and is only directory. But it is a salutary provision indeed. This is the only check to find out if a police-officer has recorded the first information report at the time it purports to bear. This rule does not require any copy of the first information report to be sent to the D.I.G. (Range) or to the Sub-Divisional Magistrate. It may be that some administrative order issued by the Inspector-General of Police requires copies to be sent to various officers. We cannot lose sight of the fact that in 1977 the Police Commissioner system had not been introduced in Delhi and the Sub-Divisional Magistrates were also responsible for law and order in their jurisdictions. It may, therefore, have been considered necessary to keep the Sub-Divisional Magistrates informed of the serious happenings in their jurisdictions. The Inspector cannot now take recourse to the above-mentioned entry and say that by mistake the constable had delivered the carbon copy of the F.I.R. to the Sub-Divisional Magistrate instead of Ilaqa Magistrate. If that was so, then how the ordinary copy of the F.I.R. (Exhibit C.W. 1/A) came to be delivered to the Ilaqa Magistrate at 10

A.M. on February 8, 1977. There is no Explanationn. The Inspector admitted that he came to know about a copy of the F.I.R. having been delivered to the Sub-Divisional Magistrate only when he was summoned by us and he went through the daily diary in order to find out if any copy was sent to any Magistrate. In our opinion this Explanationn of the Inspector is just an afterthought and is baseless.

(26) Whenever any cognizable offence takes place, it is the duty of the police to investigate and bring the offender to book. It cannot be gainsaid that it is the duty of the police to investigate fairly. Indeed, this is the first important step to ensure that justice is done in, a case. The Punjab Police Rules and the provisions of the code of Criminal Procedure relating to investigation should be scrupulously followed by the police-officers not only to show their bona-fides in the investigations, but also to instil confidence in the public at large and the accused in particular.

(27) We are indeed shocked to notice that not only the subordinate officers working in the police-stations but also the higher police-officers of the rank of Deputy Commissioners and others are a party to flouting the salutary provision of rule 25.54 of the Punjab Police Rules by not supplying the case diaries bearing book number and Seriall number to the whole police-force. Why two types of diaries, referred to above, are being supplied by the police headquarters is better known to them. We understand that whenever a case diary is issued to any investigating officer its book number and Seriall number are duly recorded by the person issuing the case diary. It is by these numbers that one can check whether there has been any change in any sheet of the case diaries. With this salutary check gone, an unscrupulous police-officer is at liberty to do what he likes. He can change any sheet of the diary at any time. Indeed, he can rewrite and change the whole case diary. Nobody will be able to find out the mischief done by the officer. We can only trust and hope that the Police-Commissioner of Delhi will immediately take necessary steps to ensure compliance of the Police rules and will also call back all the unnumbered case diaries issued to all the police-stations so that no police-officer may use any such case diary for investigation.

(28) In the instant case it is not possible to find out if a case diary was written on the date and time which it purports to bear. It cannot also be found out if the investigating officer was using the case diaries issued to him or he had used the case diary issued to someone else. Evidently the Sub-Divisional Police-Officer never checks the investigation since he only got the case diaries after the whole investigation was over and the case sent to the court. As already stated, the investigating officer Inspector Tanwar not only did not write any part of his case diaries but also did not care even to write the applications and other relevant documents in his own hand. He has only taken the trouble of signing them.

(29) As regards the first information report, we have already noticed that the name of Aslam, which was never given by H. C. Dhara Singh, has evidently been introduced by the person recording the first information report. We were told that this had also been written by a sub-inspector and the Inspector had only signed it. It is evident that this must have been prepared at a later time. It may be recalled that carbon copy of the first information report was not sent to the Ilaqa Magistrate for a few days. The only other check to assure ourselves whether the first information report was promptly recorded, was the inquest report. In the instant case the inquest report was not sent to the doctor till 5th. The Explanationn for this delay is that since 4th was a holiday no post-mortem examination could be conducted on that day. Since the doctor conducting the post-mortem examination was not asked if any post-mortem examination is conducted on a holiday or not, we would not say anything further on this aspect. But with this check also gone and the fact that the maker of the first information report was a head constable of the same police-station, we cannot hold that the first information report was promptly recorded.

(30) We may also point out another important fact. Form No. 24.5(1) prescribed by the Punjab Police Rules in respect of the first information report of a cognizable crime requires 'date and hour of dispatch from police-station' of the report to be mentioned. In the instant case this item is at Seriall No. 7. No date and hour have been given. Only the words 'Through special report' have been written in this column. We may record that we have still to see a first information report which contains the date and hour of dispatch from police-station. Always some vague

words like the present are used. Why this is consistently done, is again better known to the station House Officers of the Police-Stations. We have already pointed out in Dharambir Singh and another v. State, criminal Appeal No. 284 of 1975, decided on March 30, 1979 (5), the importance of complying with the provisions of various rules and the necessity of mentioning all the information required to be recorded in the form prescribed by the rules.

(31) The Supreme Court in Datar Singh v. The State of Punjab, : 1974 CriLJ908 had occasion to scrutinize the investigation of the police. It was noticed that the time and date of dispatch of the report from the police-station to a Magistrate was not mentioned in the requisite column of the first information report. The failure of the prosecution to show what happened to the copy of the report sent to the Magistrate was adversely commented upon. The omission was treated as 'quite significant in the light of other facts indicating that the F.I.R. must have been drawn up much later than it is actually shown to have been.' Again in, where the special report to the Magistrate was sent 12 hours after the recording of the first information report, the Supreme Court observed : 'Another finding which demolishes the entire edifice and fabric of the prosecution case is that the F.I.R. itself was not written at 10 P.M. as alleged by the informant Banta Singh but it was written out after the inquest report was prepared by the A.S.I. * * * * * The High Court points out that according to the prosecution the special report reached the Ilaqa Magistrate at 11 A.M. on September 2, 1966 i.e. more than 12 hours after the F.I.R. was lodged at the police-station, whereas it should have been delivered to the Ilaqa Magistrate during the night or at least in the early morning. Counsel appearing for the appellants submitted that under the High Court Circulars and the Police Rules it was incumbent upon the Inspector who recorded the F.I.R. to send a copy of the F.I.R. to the Ilaqa Magistrate immediately without any loss of time and the delay in sending the F.I.R. has not been properly explained by the prosecution as rightly held by the High Court. It is, therefore, clear that the F.I.R. was a belated document and came into existence during the small hours of September 2, 1966. * * * * * The High Court also found that the best person to explain the delay in sending the special report to the Ilaqa Magistrate was the Police Constable who had carried the F.I.R. to the Ilaqa Magistrate but the Constable has not been examined by the prosecution'.

(32) We may now notice another contention put forward by the learned counsel for Chuni Lal appellant. It is contended that the first information report is fabricated. A false exhortation has been put in the mouth of Chuni Lal in order to make him liable for murder as well as to get at the other appellant.

(33) It may be recalled that H. C. Dhara Singh stated that Chuni Lal and Om Parkash appellants were seen chasing Puran Singh. Om Parkash was holding an open knife in his hand while he was chasing. Chuni Lal was able to overtake Puran Singh and had started giving fist blows. In the meantime Om Parkash appellant had also reached. Evidently, there was no necessity of Chuni Lal exhorting Om Parkash who was holding an open knife in his hand. The intention of Om Parkash was evident. He was going to use the knife and did not need any exhortation. Nor was there any necessity of Chuni Lal giving any exhortation to Om Parkash. We, therefore, cannot believe that Chuni Lal gave any exhortation.

(34) The result of the above discussion is that we allow the appeals. The convictions of the appellants are hereby quashed and the sentences awarded to them are set aside. They are directed to be released forthwith unless they are required in any other case.