

Jai Pal Singh Vs. State

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Court : Delhi

Decided On : May-24-1996

Reported in : 1996IIIAD(Delhi)429; 1996CriLJ4097; 64(1996)DLT754

Judge : Arun Kumar and; Mohd. Sharnim, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302; [Evidence Act, 1872](#) - Sections 134

Appeal No. : Criminal Appeal No. 217 of 1992

Appellant : Jai Pal Singh

Respondent : State

Advocate for Pet/Ap. : Bhuvnesh Saini and; Seema Gulati, Advs

Judgement :

Mohd. Sharnim, J.

(1) The case of the complainant which emerges from the evidence led by the prosecution may shortly be stated as under: that on March 6,1990 at about 1.00 p.m., PW2 Bhuvnesh Kumar Along with his father known as Kunwar Pal (hereinafter referred to as the deceased to facilitate the reference) called on his maternal uncle, Public Witness 7 Ramesh at his house at S-166/15, Baba Lakhi Nath,Ward No. 3, Mehrauli, New Delhi. While he and his father i.e. the deceased

and aforesaid PW7 Ramesh were taking tea Jai Pal (hereinafter referred to as the appellant for the sake of convenience), his brother Bijender, his son Dashrath @ Pappu and one Ajay Pal Singh also arrived at his house. Ramesh (Public Witness 7) also entertained them with tea. The appellant herein is the maternal uncle of the wife of PW7 Ramesh. They fell to talking. The appellant while talking to the deceased went into his tantrum and alleged that he (i.e. the deceased) had falsely implicated him in a criminal case for having committed the murder of one Shakti Singh in the village. It was on account of this fact that he had to leave his village. It led to an altercation in between his father and the appellant where after he and the deceased left the house of PW7 Ramesh. Ramesh, however, accompanied them. They were followed by the appellant and his above-named associates. When they arrived at 'near a plot belonging to Baba Lakhi Nath, Ward No. 3, Mehrauli at about 3.15 p.m., accused Dashrath @ Pappu and Bijender caught hold of the deceased while the appellant picked up a stone from the stones lying at the plot and hit his father on his head. He and PW7 Ramesh tried to come to the rescue of the deceased. However, he was not allowed to do so as he was caught hold of by the brother-in-law of the appellant known as Ajay Pal Singh who shoved him aside. He thereafter hit him with a brick many a times on his head and forehead. PW4 Ramesh could not free his father from the clutches of the appellant and his associates. After having been hit he fell on the ground. The appellant was wearing a monkey cap (Ex. P5) which fell down at the spot. The appellant and the accused persons after having caused injuries to him and his father took to their heels. He raised an alarm which drew the attention of PW3 Kuldeep Singh and a Home Guard i.e. PW1 Digambar Singh. PW3 Kuldeep Singh chased the appellant. He succeeded in apprehending one of them i.e. the appellant. He and his father were removed to the hospital on the instructions of PW3 Kuldeep Singh through PW1 Digambar Singh who got them admitted there.

(2) Someone from amongst the members of the public informed the police with regard to the above said incident. The said information was recorded at Sr. No. 8A of the daily diary vide Ex. PW5/A. A copy of the said information was entrusted to Si R.P. Rao (Public Witness 14). On receipt of the said information he Along with Constable Paras Ram (Public Witness 4) set out for the spot. After having reached there he found over there PW3 Kuldeep Singh and PW7 Ramesh. He further came

to know that the appellant had already been apprehended. He was further apprised of the fact that the injured persons had already been removed to the All India Institute of Medical Sciences with the help of Pwi Digambar Singh. Consequently he left for the Aiims Along with Constable Paras Ram (Public Witness 4). He made enquiries over there with regard to the injured persons. Both of them were found admitted in the hospital. The deceased was declared unfit for the statement by the doctor (vide Ex. PW14/B) whereas his son PW2 Bhuvnesh Kumar was found fit to make the statement. He recorded the statement of PW2 Bhuvnesh Kumar vide Ex. PW2 / A Ex. PW14/C He sent the said statement to the Police Station Along with his endorsement thereon (vide Ex. PW14/A) through Constable Paras Ram for registration of the case. Whereupon an F.I.R. was recorded by PW8 Kishan Lal who was working as the Duty Officer on March 6, 1990 at 5.15 p.m. at the Police Station, Mehrauli (vide Ex. PW8/A) under Sections 307/34 of the Indian Penal Code. After having registered the case a copy of the F.I.R. was sent back to Si R.P. Rao (Public Witness 14) for the purposes of investigation.

(3) Subsequently, on the same day at 5.30 p.m. an information was received by PW8 Kishan Lal from the All India Institute of Medical Sciences with regard to the death of the deceased. PW8 Hc Kishan Lal recorded the said information at Sr. No. 12A of the daily diary vide Ex. PW8/B. On receipt of the said information the case was converted into one under Sections 302/34 from 307/34 of the Indian Penal Code.

(4) Si R.P. Rao (Public Witness 14) returned to the spot Along with PW1 Digambar Singh and PW4 Paras Ram. PW3 Kuldeep Singh produced the appellant before him. He got the place photographed through Constable Harbhajan Singh. The said photographs are Ex. PW6/1-5 and Ex. PW6/6-10. He recorded the statements of Pwi Digambar Singh, PW3 Constable Kuldeep Singh and PW6 Harbhajan Singh. He prepared a rough site plan of the place of occurrence vide Ex. PW14/D. He lifted the samples of the blood stained earth and that of control earth from the spot and converted them into separate packets and sealed them with the seal of 'RPR'. He collected the blood stained stones Exs. P12 & P13 and the blood stained brick Ex. P14 and seized them vide Ex. PW3/A. He also took into custody the monkey

cap (Ex. P5) which was found at the spot which the appellant was alleged to have been wearing at the time of the occurrence. He interrogated the appellant and arrested him. He took his personal search (vide Ex. PW3/C). The clothes of the appellant were found to be stained with blood which he took into custody (vide Ex. PW3/B). 'Kurta' of the appellant is Ex. P3 and 'Pajama' of the appellant is Ex. P4. PW2 Bhuvnesh Kumar meanwhile also arrived at the spot. His clothes were also found to be stained with blood. He seized the said clothes of PW2 Bhuvnesh Kumar (Ex. P1 and Ex. P2) vide Ex. PW2/B.

(5) Since the deceased had succumbed to the injuries alleged to have been sustained at the hands of the appellant the investigation was taken over by the SHO, Inspector Bhim Singh (Public Witness 12). He conducted the inquest proceedings (vide Ex. PW12/C). He moved an application Ex. PW12/A for the purposes of post mortem on the dead body of the deceased. The post mortem was conducted on the dead body of the deceased by Dr. R.K.Sharma (Public Witness 16). The report in connection therewith is Ex. PW16/A. He sent the stones, the brick, the clothes of the deceased and that of the appellant and PW2 Bhuvnesh Kumar to the Cfsi for Chemical analysis. The reports of the Cfsi in this regard are Ex. PW12/D, Ex. PW12/E and Ex. PW12/F.

(6) The appellant was got medically examined (vide Ex. PW13/B). He recorded the statements of PW5 Si Mange Ram and of PW7 Ramesh. The remaining three accused persons namely Bijender Singh, Dashrath @ Pappu and Ajay Pal Singh could not be arrested despite every possible efforts made by him in that direction. Consequently proceedings under Sections 82/83, Cr.P.C. were initiated against them. They were got declared as proclaimed offenders.

(7) After having completed the investigation a charge-sheet was submitted against the appellant and his above named three associates before the Magistrate concerned. The learned Magistrate found the case, after going through the record, to be exclusively triable by the Court of Sessions. He thus committed the appellant to the Court of Sessions to stand his trial under sections 302/34 of the Indian Penal Code.

(8) The learned Additional Sessions Judge framed the charges against the appellant Sections 302/34 and Section 323/34 of the Indian Penal Code.

(9) After appraisal of the evidence on record the learned lower Court found the appellant guilty under Sections 302/34 and 323/34 of the Indian Penal Code vide impugned judgment and order dated October 1,1992. The appellant was sentenced to under go imprisonment for life under Sections 302/34 of the Indian Penal Code. He was further sentenced to undergo RI for six months under Sections 323/34 of the Indian Penal Code. The sentences were made to run concurrently. It is in the above circumstances that the appellant has approached this Court.

(10) Learned Counsel for the appellant Mr. Bhuvnesh Saini has assailed the legality and the validity of the impugned judgment and order inter alias on the following grounds: that the conviction in the instant case is based on the solitary statement of PW2 Bhuvnesh Kumar. Admittedly PW2 Bhuvnesh Kumar is the son of the deceased. Thus he is a highly interested witness. It would thus be not safe to place reliance on his statement. If his statement is excluded from consideration then there is absolutely no evidence against the appellants inasmuch as Public Witness 7 Ramesh has not at all supported the case of the prosecution. The learned Counsel has then contended that the statements of the prosecution witnesses are replete with material contradictions. They contradict one another on all material points. Thus their statements should not be taken into consideration.

(11) The next limb of the argument advanced by the learned Counsel is that admittedly the blood group of the deceased was 'O', yet the blood which was found on the clothes of the appellant and that of PW2 Bhuvnesh Kumar was of 'B' group. All these factors cast serious doubts with regard to the authenticity of the case of the prosecution. The learned P.P. Mrs. Seema Gulati has urged to the contrary.

(12) PW2 Bhuvnesh Kumar has deposed to the fact that the appellant herein assaulted the deceased with stones repeatedly on his head while he and the deceased were near the hut of Baba Lakhi Nath, Ward No. 3 at about 3.15 p.m. on 6.3.90. He tried to come to the rescue of his father, but he was caught hold of by one of the accused persons namely, Ajay Pal Singh. He was also hit by him with

brickbats and stones. The remaining three other accused persons also hurled stones at the deceased. Public Witness 7 Ramesh also could not free the deceased from the clutches of the appellant and his associates.

(13) The learned Counsel for the appellant while animadverting on the above evidence has contended that it would not be safe to place reliance on the said statement inasmuch as PW2 Bhuvnesh Kumar is the son of the deceased. Hence he is a highly interested witness. Thus he has got an axe to grind in order to support the case of the prosecution. The second ground on which the learned Counsel wants us to ignore the said statement is that it is contradictory to and inconsistent with the statement of Public Witness 7 Ramesh who has not at all supported the case of the prosecution.

(14) We find ourselves unable to agree with the contention of the learned Counsel. The Courts are not concerned with the number of witnesses to prove a particular fact in as much as there is no such requirement of the law. What is required to be seen is the quality of the evidence. Thus the Courts are concerned with the quality and not the quantity of the evidence in a particular case. We would like to refer in this connection to Section 134 of the Indian Evidence Act which deals with the number of witnesses required to prove a fact. It lays down 'No particular number of witnesses shall, in any case, be required for the proof of any fact'. It thus can be safely concluded from above that a fact can be proved through the statement of a particular witness. It is not necessary to examine a number of witnesses to substantiate the said fact. If the statement of a witness is credible, cogent and inspires confidence in a given set of circumstances, the said fact shall stand proved on the basis of the said statement and no corroboration is needed to prove the same.

(15) The above view was given vent to by the Hon'ble Supreme Court as reported in : 1957 CriLJ1000 , Vadivela Tilevar v. The State of Madras. 'On a consideration of the relevant authorities and the provisions of the Evidence Act, the following propositions may be safely stated as firmly established :

(1) As a general rule, a Court can and may act on the testimony of a single witness though uncorroborated. One credible witness outweighs the testimony of a number

of other witnesses of in different character. (2) Unless corroboration is insisted upon by Statute, Courts should not insist on corroboration except in cases where the nature of the testimony of the single witness itself requires as a rule of prudence, that cor'oboralionshouldbeinsistedupon,forexampleinthecaseofachild witness, or of a witness whose evidence is that of an accomplice or of an analogous character. '3) Whether corroboration of the testimony of a single witness is or is not necessary, must depend upon facts and circumstances of each case and no general rule can be laid down in a matter like this and much depends upon the judicial discretion of the Judge before whom the case comes.

(16) In view of these considerations, We have no hesitation in holding that the contention that in a murder case, the Court should insist upon plurality of witnesses, is much too broadly stated. Section 134 of the Indian Evidence Act, has categorically laid it down that 'no particular number of witnesses shall, in any case, be required for the proof of any fact.' The Legislature determined, as long ago as 1872, presumably after due consideration of the pros and cons, that it shall not be necessary for proof or disproof of a fact, to call any particular number of witnesses.'

(17) The other contention that the statement of PW2 Bhuvnesh Kumar should be rejected simply on the ground because he happens to be the son of the deceased is also devoid of any force. There is no such law. More often than not it has been observed that offences are committed in the presence of the persons who are close relations of a victim. Had there been any such rule that the testimony of such witness should be flung to the winds simply because he or she is related to the victim and thus an interested witness, in that eventuality it will become a hard nut to crack to convict an accused person. Thus the worth of testimony of a witness is to be weighed and assessed like the evidence of any other witness with the difference that Courts while assessing the value of the statement of such a witness would be on their tiptoe and guard and would examine and scrutinise his statement more carefully. However, if the Court comes to the conclusion that the statement of the witness is natural, spontaneous and credit worthy, in that eventuality, there is no obstruction and hurdle in the way of the Court to base the conviction thereon. In this connection we would like to refer to die observations of

the Hon'ble Supreme Court recently reported in : 1996 CriLJ889 , Kartik Malhar v. State of Bihar. 'We may also observe that the ground that the witness being a close relative and consequently, being a partisan witness, should not be relied upon, has no substance. This theory was repelled by this Court as early as in Dilip Singh's case (supra) in which this Court expressed its surprise over the impression which prevailed in the minds of the members of the Bar that relatives were not independent witnesses. Speaking through Vivian Bose, J., the Court observed :

'We are unable to agree with the learned Judges of the High Court that the testimony of die two eye-witnesses requires corroboration. If the foundation for such an observation is based on the fact that the witnesses are women and that the fate of seven men hangs on their testimony, we know of no such rules. If it is grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common to many criminal cases and one which another Bench of this Court endeavoured to dispel in Ramashwar v. The State of Rajasthan, : 1952 CriLJ547 . We find, however, that it unfortunately still persists, if not in the judgment of the Courts, at any rate in the arguments of Counsel.'

(18) Admittedly, the appellant in the instant case was apprehended at the spot by Public Witness 3 Constable Kuldeep Singh who chased him and his other associates and succeeded in nabbing him only. To the same effect are the statements of PW1 Digambar Singh, PW2 Bhuvnesh Kumar and PW7 Ramesh. Furthermore, PW2 Bhuvnesh Kumar admittedly sustained injuries at the hands of the assailants. His injury sheet is Ex. Public Witness 13/C. The doctor after examining PW2 Bhuvnesh Kumar opined the injury to be simple, blunt. Thus there cannot be even the slightest doubt about the presence of PW2 Bhuvesh Kumar on the scene of occurrence.

(19) PW1 Digambar, PW3 Kuldeep Singh and PW7 Ramesh have all spoken regarding presence of the appellant at the time of occurrence. The fact that the appellant was present at the spot is further borne out from the fact that the monkey cap (Ex. P5) which he was wearing was found lying at the spot. Public Witness 7 Ramesh, though a hostile witness, yet has supported the case of the prosecution on this point.

(20) It has been urged by Mr. Saini that since PW7 Ramesh who according to the prosecution version was present at the spot, has not supported the case of the prosecution, this by itself is sufficient enough to render nugatory the entire case of the prosecution. The contention of the learned Counsel, we feel, does not hold any water.

(21) It is a well settled principle of law that the statement of a hostile witness is like that of any other witness. The mere fact that a particular witness has not chosen to support the party who brings him forward by itself is not a reason to discard the testimony of such a witness in toto. The testimony of such a witness is to be assessed for whatever value it is. It cannot be considered to have been washed off the record for the simple reason that such a witness was allowed to be cross examined by the Prosecutor for the State. We are fortified in our above view by the opinion of the Hon'ble Supreme Court as reported in : 1976 CriLJ203 , Bhagwan Singh v. The State of aryaana, 'that the fact that the witness was declared hostile did not completely efface his evidence; it remained admissible in the trial. Since his testimony was corroborated by other evidence, there was no legal bar to base his conviction upon it.'

(22) Thus we conclude from above that the statement of PW7 Ramesh can be used, like the statement of any other witness, to the extent it supports the case of the prosecution. PW7 Ramesh, as already observed above, has admitted in so many words that the appellant was very much present at the spot He remained there even after the occurrence. It has further been admitted by him in his statement that the injured persons were taken to the hospital by one constable. It has also not been disputed by him that a constable has apprehended the appellant. He further found some of the stones stained with blood. According to him, the monkey cap (Ex. P5) of the appellant was found lying at the spot. He also found the deceased in a pool of blood and PW2 Bhuvnesh Kumar in an injured condition. Thus the above statement of PW7 Ramesh lends support to die statement of PW3 Constable Kuldeep Singh who is alleged to have nabbed the appellant on the spot while he was fleeing from the place of occurrence. The above statement also corroborates the version which we find in the statement of PW1 Digambar who took the injured persons to the hospital. It also gives strength

to the statement of PW2 Bhuvnesh Kumar when he says that he was injured at the spot by the associates of the appellant.

(23) The next contention raised by the learned Counsel for the appellant is that the statements of the prosecution witnesses are replete with material contradictions which set at naught the entire case of the prosecution. The learned Counsel in support of his contention has led us through the statements of the prosecution witnesses in order to point out the said contradictions, which according to him are very material and tell heavily on the prosecution version. It is in the statement of Pwi Digambar that he took both the injured persons to the hospital. PW3 Kuldeep Singh has contradicted him on this point when he states that injured was removed to the hospital by a member of the public though on being cross-examined by the learned A.P.P. he has corrected himself by stating that PW1 Digambar took both the injured persons to the hospital. PW3 Kuldeep Singh has deposed to the fact that there were three persons who were seen fleeing from the spot and he chased them. This is contradictory to and inconsistent with the statement of PW2 Bhuvnesh Kumar. According to him there were four persons, including the appellant. However, PW3 Kuldeep Singh has admitted during the course of his crossexamination by the learned A.P.P. that the fact is that there were four persons, including the appellant. According to PW2 Bhuvnesh Kumar the occurrence took place just Outside the plot belonging to Baba Lakhi Nath. PW12 Inspector Bhim Singh, on the other hand, has stated that the incident took place very close to the wall. He has pretended his ignorance with regard to the fact as to whether the occurrence took place inside or outside the plot. According to PW14 Si R.P. Rao the incident took place inside the plot.

(24) The learned Counsel on the basis of the said contradictions and inconsistencies in the statements of the prosecution witnesses has contended that they are very material and cut at the very root of the prosecution case. Hence he wants us to disbelieve them on account of the said discrepancies.

(25) We are sorry we are unable to agree with the contention of the learned Counsel. Human memory is very short and fleeting. Everything sinks into oblivion with the passage of time. Every event as soon as it has happened starts fading in

the memory. Present impinges on the past. Days, dates and events run into one another with the result that recall becomes difficult. We feel the minor contradictions as pointed out above go a long way to show that the statements of the prosecution witnesses are natural, spontaneous and not crammed and have been made with the help of the memory. Admittedly, the occurrence in the instant case took place on March 6, 1990. The statements of the prosecution witnesses were recorded towards the close of the year 1991 i.e. in August/November 1991. Thus there is nothing strange if some minor contradictions have crept in their statements.

(26) We are fortified in our above view by the opinion given vent to in : 1976 CriLJ1158 , Boya Ganganna and another v. State of Andhra Pradesh, (para 6)'Minor contradictions are bound to appear when ignorant and illiterate women are giving evidence. Even in case of trained and educated persons, memory sometimes plays false and this would be much more so in case of ignorant and rustic women. It must also be remembered that the evidence given by a witness would very much depend upon his power of observation and it is possible that some aspects of a incident may be observed by one witness while they may not be witnessed by another though both are present at the scene of offence'

(27) We are also tempted here to reproduce a few lines from the judgment of the Hon'ble Supreme Court as reported in : AIR 1965 SC277 , Ugar Ahir and Others v. The State of Bihar, 'The maxim falsus in uno, falsus in omnibus (false in one thing, false in everything) is neither a sound rule of law nor a rule of practice. Hardly one comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggerations, embroideries or embellishments. It is, therefore, the duty of the Court to scrutinise the evidence carefully and, in terms of the felicitous metaphor, separate the grain from the chaff. But, it cannot obviously disbelieve the substratum of the prosecution case or the material parts of the evidence and reconstruct a story of its own out of the rest.....'

(28) The sheet anchor of the defense version is that the blood of the deceased was admittedly of 'O' group whereas as per the Cfsi reports Ex. PW12/D, Ex. PW12/E and Ex. PW12/F the blood which was found on the clothes of the

appellant was of 'B' group. According to the learned Counsel, if the prosecution version is taken to be correct that the appellant is the assailant in that eventuality his clothes must have been smeared with the blood of the deceased and in that eventuality the blood must have been of 'O' group. The contention of the learned Counsel is a specious one and can be brushed aside without any difficulty, in view of the statement of PW2 Bhuvnesh Kumar who has very categorically stated that there was no grappling in between the deceased and the appellant. The deceased fell on the ground on being hit by the stones. In the above circumstances we conclude that there is nothing strange if the clothes of the appellant were not stained with the blood of the deceased. Furthermore, PW2 Bhuvnesh Kumar has also stated in unequivocal terms that he was not allowed to come to the rescue of his father i.e. the deceased as he was precluded from doing so by (he other accused persons who caught hold of him. Hence it is quite natural that his clothes did not have the blood of the deceased. However, it is true that the prosecution has not given any Explanationn as to how the clothes of the appellant and that ofPW2 Bhuvnesh Kumar got smeared with the blood of 'B' group.

(29) In view of the above the question which comes to the tip of the tongue is as to whether the case of the prosecution is liable to be over thrown on the said score? Our answer to the above question is an emphatic 'no' in the circumstances of the present case. To our mind, it is a lapse on the part of the prosecution or a sheer incompetency of the Investigating Officer inasmuch as no effort was made to find out the source of the said blood. The blood of the appellant was not drawn for the purposes of the sample. Moreover, the three accused persons could not be arrested and as such the samples of their blood could not be taken.

(30) The learned Counsel has then drawn our attention to the fact that in the instant case the stones and the brick Ex. P12, Ex. Pis and Ex. Pi 4 which were being used as weapons of offence to hit the deceased were not shown to the doctor at the time he conducted the post mortem. Thus it throws serious doubts with regard to the authenticity of the case of the prosecution. The contention of the learned Counsel, we feel, is without any merit. Admittedly, the same were shown to the PW16 Dr. HK. Sharma who conducted the autopsy on the dead body of the deceased at the time of recording of his statement before the Court (vide Ex.

Public Witness 18 / A). He was of the view that the cause of death was coma as a result of head injury which was ante mortem in nature, likely to be caused by blunt force and the injury was sufficient in the ordinary course of nature to cause death. He further opined that the injuries mentioned in the post mortem report could be caused by stones i.e. Ex. P12 and Ex. P13. He further observed on being cross examination that the above injuries could be caused by hurling stones from a distance. Thus the mere fact that the said stones were not shown to the doctor at the time he conducted the post mortem would not make any difference when the same were shown to him at the time of his examination before the Court.

(31) The next limb of the argument advanced by the learned Counsel with regard to the weapon of offence is that the Serologist on examination of the said stones found only the human blood on the said stones and the brick piece. However, he could not give out the group of the said blood. The learned Counsel thus contends that how it can be inferred from the same that it was the blood of the deceased. It is true that the Serologist on examination could not give out the blood group relating to the blood which was found on Ex. P12, Ex. P13 and Ex. P14. However, we feel the appellant cannot draw any advantage out of the same in the circumstances of the present case and in view of the ocular evidence in the form of the statements of PW1 Digambar, PW2 Bhuvnesh Kumar, PW3 Kuldeep Singh and PW7 Ramesh.

(32) It was then argued for and on behalf of the appellant that no special report was sent by the Investigating Officer to the Magistrate concerned with regard to the alleged murder of the deceased. This fact has been admitted by PW12 Inspector Bhim Singh on being cross-examined. He has stated during the course of his cross examination that he did not send any special report to the Magistrate. However, he informed his seniors, though a copy of the F.I.R. was sent to the Metropolitan Magistrate on March 7, 1990 in routine. The learned Counsel in view of the above contends that it casts serious doubts regarding the genuineness of the case of the prosecution. We are unable to agree with the contention of the learned Counsel.

(33) A perusal of the record reveals that initially a case under Sections 307/34 of the Indian Penal Code was registered on the basis of the statement of PW2 Bhuvnesh Kumar since the deceased was alive (vide Ex. PW8/A). However, later on the deceased succumbed to die injuries alleged to have been sustained at the hands of the appellant then the case was converted into one under Sections 302/34 of the Indian Penal Code. Thus, it appears that it was in the above circumstances that no special report was sent to the Magistrate concerned. It is true that there is a lapse on the part of the Investigating Officer not to have sent the special report in the present case. However, we do not feel that it is so fatal as to render nugatory the entire prosecution version on account of the said mistake when there is sufficient and cogent evidence to substantiate the case of the prosecution as put forward before a Court of law. We are supported in our above view, which we are taking, by the observations of the highest Court of the land as reported in : 1976 CriLJ1757 , Swaran Singh and Others v. State of Punjab. 'Apart from this, it is well settled that mere delay in dispatch of the F.I.R. is not a circumstance which can throw out the prosecution case in its entirety. The matter was considered by this Court in Pala Singh v. State of Punjab, : 1973 CriLJ59 where this Court observed as follows:

'BUT when we find in this case that the F.I.R. was actually recorded without delay and the investigation started on the basis of that F.I.R. and there is no other infirmity brought to our notice, then, however, improper or objectionable the delayed receipt of the report by the Magistrate concerned, it cannot by itself justify the conclusion that the investigation was tainted and the prosecution insupportable.'

(34) The other argument advanced by the learned Counsel for the appellant is that there was no motive on the part of the appellant to have killed the deceased. Every offence, according to the learned Counsel, is committed with a motive. Thus the absence of motive is a very important circumstance to show and prove that the case of the prosecution is false. Since there is no motive in the present case, in any case none has been brought on the record, hence it should be inferred that the case of the prosecution is false. The contention of the learned Counsel is not correct. PW2 Bhuvnesh Kumar has very categorically stated that he Along with his

father went to call on his uncle on March 6,1990 at his residence. While they were taking tea the appellant, his brother Bijender and his son Dashrath @ Pappu and Ajay Pal Singh also reached there. They were also offered tea by PW7 Ramesh. They started talking. During the course of the talks the appellant asked the deceased as to why did he name him as the assailant in the murder of one Shakti Singh owing to which he had to leave his village and compelled to live in Delhi. It led to a flaming row in between die deceased and the appellant. There is absolutely no reason to disbelieve PW2 Bhuvnesh Kumar on this point. Thus we feel the deceased had incurred the wrath of the appellant during the course of his talks with him which subsequently led to the incident in question. Assuming argue do that there was no motive or the prosecution failed to prove any motive, even then it would not make any difference to the fate of the present appeal inasmuch as the prosecution has led ocular evidence to prove the guilt of the appellant as is abundantly clear from above.

(35) It is a well settled principle of Criminal Jurisprudence that the motive loses its significance in case the ocular evidence is available. It is said nobody can look into the breast of a criminal. It is only the criminal who can say as to what swayed him to take recourse to a particular course of action in a particular set of circumstances which led to the committal of an offence. Furthermore, ours is a codified law. The Courts have simply to see as to whether a particular offence falls within the domain of a particular section which enumerates the ingredients of the said offence. If they are satisfied with the evidence led by the prosecution that a particular offence is made out, they are under no obligation to look for the motive.

(36) Faced with the same situation the Hon'ble Supreme Court has got to say the following with regard to the role of motive in a particular crime as reported in : 1966 CriLJ960 , Rajinder Kumar and Another v. State of Punjab. 'The motive behind a crime is a relevant fact of which evidence can be given. The absence of a motive is also a circumstance which is relevant for assessing the evidence. The circumstances which have been mentioned above as proving the guilt of the accused Rajinder are however not weakened at all by this fact that the motive has not been esablished. It often happens that only the culprit himself knows what moved him to a certain course of action....'

(37) Mr. Saini has then urged that the present case is a case which squarely falls within the four corners of Section 300, Exception 4 of the Indian Penal Code i.e. culpable homicide not amounting to murder. According to the learned Counsel, admittedly as per the case of the prosecution there was an altercation in between the deceased and the appellant at the house of PW7 Ramesh. Thus the alleged murder was committed in the heat of passion upon a sudden quarrel. We find ourselves unable to agree with the learned Counsel. Exception 4 appended to Section 300 of the Indian Penal Code is in the following words :

'EXCEPTION 4.-Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offenders having taken undue advantage or acted in a cruel or unusual manner. '

(38) Admittedly, the hot words are alleged to have been exchanged in between the deceased and the appellant at near about 1.00 p.m. at the house of PW7 Ramesh. The alleged murder was committed subsequently at about 3.15 p.m. (vide the statement of PW2 Bhuvnesh Kumar). Thus it can by no stretch of imagination be said to be a case of murder on account of sudden fight in the heat of passion upon a sudden quarrel as the same is alleged to have been committed at near about 3.15 p.m. i.e. about 2 hours and 15 minutes after the exchange of the hot words. Furthermore, the deceased was hit six times with stones Ex. P12 and Ex. P13 and that too on the vital part of his body i.e. the head. (vide report of the post mortem Ex. PW16/A). The doctor on examination found that the injuries were ante mortem in nature, caused by blunt weapon and they were sufficient enough to cause death in the ordinary course of nature. Hence we are of the view that the instant case is not a case of culpable homicide not amounting to murder.

(39) In the circumstances stated above we find that the truth is on the side of the prosecution and it appears so naked that any purblind eye may find it out. The learned Additional Sessions Judge was thus right in his conclusions. We do not see any force in the present appeal. It is liable to be dismissed. Hence, it is dismissed as such.