Ramdev and ors. Vs. State of Rajasthan

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SooperKanoon Citation : sooperkanoon.com/772070

Court : Rajasthan

Decided On : Aug-28-2002

Reported in : 2003CriLJ1680

Judge : S.K. Keshote and; K.C. Sharma, JJ.

Acts : Indian Penal Code (IPC), 1860 - Sections 300; Code of Criminal Procedure (CrPC) , 1974 - Sections 154, 157 and 161

Appeal No. : Criminal Appeal No. 445 of 1998

Appellant : Ramdev and ors.

Respondent : State of Rajasthan

Advocate for Def. : S.S. Rathore, Public Prosecutor

Advocate for Pet/Ap. : Vishal Bansal, Amicus Curiae

Disposition : Appeal dismissed

Judgement :

S.K. Keshote, J.

1. Accused-appellants, three in number, under the judgment and order dated 22-5-1998 of the Additional Sessions Judge, Bundi, in Sessions Case No. 18 of 1995, State v. Ram Dev and others have been convicted for the offence under Section

302 read with Section 34, IPC and sentenced each to undergo Life Imprisonment and a fine of Rs. five hundred, in default of payment of fine to further undergo three months' imprisonment. Having aggrieved of this judgment and order, the accused appellants are before the Court by this appeal under Section 374, Cr.P.C., 1973.

2. On the oral report by one Kedar Lal son of Mathura Lal (PW-9), First Information Report has been chalked out against the accused-appellants and five others for the commission of offences under Sections 147, 148, 149, 307 and 302, IPC and a Criminal Case No. 210/94 was registered at the Police Station, Lakheri, District Bundi on 26th of December, 1994 at 3.30 a.m.

3. After investigation in the matter police filed challan against the accused appellants for the offence punishable under Section 302 read with Section 34, IPC.

4. The learned concerned Judicial Magistrate after taking cognizance in the matter as the case was triable exclusively by Sessions Judge, committed the same to the Sessions Court, Bundi from where it was transferred to the Court of Additional Sessions Judge, Bundi for trial.

5. The learned trial Court on 12th of June, 1995 framed charges under Section 302 read with Section 34, IPC against the accused appellants. They denied the same and claimed trial.

6. The learned trial Court after recording the evidence of the prosecution, hearing the arguments of the learned Public Prosecutor, and the learned counsel for the appellants, under its judgment and order, convicted and sentenced them as aforestated.

7. Shri Vishal Bansal, learned Amicus Curiae, appearing for the accused appellants, raised the following contentions challenging the legality, propriety and correctness of the judgment and order of learned trial Court.

(1) There is unexplained delay of more than thirty hours in filing of the FIR;

(2) There is unexplained considerable delay in sending of FIR to the Magistrate;

(3) There is tampering with or manipulation in the FIR. It is submitted that Kedar Lal (PW-9) stated that in the FIR last lines were added.

(4) The investigation is wholly unfair. Carrying this contention, learned counsel for the accused appellants submitted that Kedar Lal (PW-9) stated that the Police Officer took his signatures on blank papers. The FIR has been prepared in their own away by police.

(5) The statements of witnesses under Section 161, Cr.P.C. were recorded after considerable delay.

(6) Unnatural conduct of eye-witnesses of Khana (PW-7) and Kedar Lal (PW-9) not to make an attempt to come to rescue of the deceased nor they stopped the accused taking the dead body of one of the deceased by accused to the pond renders whole of the prosecution story highly doubtful as well as their presence at the scene of incidence.

(7) The accused have dragged one of the dead body and thrown it in the pond but blood trial was not found.

(8) Statements of eve-witnesses do not find corroboration from the medical evidences.

(9) The site plan of the incident prepared is also highly doubtful document.

(10) Khana (PW-7) has stated that he sustained injuries in this incident but injury report was not produced.

(11) Though independent witnesses were available but same were not examined by the prosecution.

8. In. support of his contentions the learned counsel for the accused appellants placed reliance on the following decisions.

(1) State of Rajasthan v. Teja Singh, 2001 SCC (Cri) 439 : (2001 Cri LJ 1176)

(2) AIR 1971 SC 1554 (Chanan Singh v. State of Haryana)

(3) AIR 1999 SC 537 : (1999 Cri LJ 467), Din Dayal v. Raj Kumar.

(4) 1984 Raj Cri C 274, Jalal v. The State of Rajashthan.

(5) 1989 Supp SCC 21, Surinder Singh v. State of Punjab.

9. In contra, the learned Public Prosecutor has supported the judgment and (c)r-der of the learned trial Court.

10. We have given our thoughtful consideration to the rival contentions raised by the learned counsel for the parties, Meticulously scrutinised the evidence of the prosecution both, ocular and documentary and have gone through the judgment and order of the learned trial Court.

11. The prosecution case starts on the oral complaint submitted by Kedar Lal (PW-9). From this FIR, we find that Kedar Lal (PW-9) went to the police station with his brother Rameshwar son of Badri Lal, injured Bajrang Lal son of Mooli Lal and the dead body of Gauri Shankar son of Badri Lal.

12. As per this report this incident took place in the night at 9.30 p.m. on the main way to village near the pond. It is stated that at that time complainant was going towards the 'jangal' in response to natural call, he saw that Gauri Shankar son of Badri Lal and Bajrang Lal son Mooli Lal were coming from the field and as they reached near to pond on the main way to the village from the liquor shop on the road Rampal son of Anandi Lal Meena, who was carrying in his hand 'dharia' Ram Dev son of Gendi Lal, who was having sword in his hand, Prubhu Lal son of Panna Meena, Chhota son of Panna Meena, Ram Prasad son of Kalu Meena, Dhanraj son of Kalu Meena, Dharamraj son of Kodkya Meena and Sita Ram son of Surajmal Meena, all resident of Dehi Kheda, some one having 'lathi' and some were having 'kulhadi' having common intention to kill Gauri Shankar started inflicted blows by weapons carried by them. Ram Dev inflicted sword injury on the head, Ram Lal inflicted 'dharia' injury near the ear on the body of deceased Gauri Shankar. Bajrang Lal (deceased), who was with him when came for rescue of the deceased, accused started to beat him also. The injuries were inflicted on the mouth, hands, stomach of Gauri Shankar and on the head, ear, knees of Bajrang

Lal. It is stated in the FIR (Ex.P-8) that this incident has been witnessed by Mahaveer son of Ratan Lal Meena and Dhanna son of Kalyan Meena and others whosoever were on the road.

13. The distance of the police station from the place of incident is twenty kilometers. On the top of this FIR dispatch No. 3825/28 dated 26th December, 1994 is noted. In column No. (c) of Serial No. 3 the date and time of dispatch of FIR to the Magistrate is mentioned i.e. 27th of December, 1994 at 10.00 a.m. On FIR, we find endorsement of the Civil Judge (Jr. Div.)-cum-Judi-cial Magistrate, 1st Class, Bundi receipt thereof by him through Shankar Singh, LC No. 297 on 28th of December, 1994 at 2.00 p.m. On these facts the learned Public Prosecutor has not raised any dispute.

14. Kedar Lal (PW-9) stated that the dead body of Gauri Shankar was taken to the police station in tractor trolley. On the way to the police station he died. He lodged this FIR (Ex.P-8) on which his signatures are there at place A to B. In the cross-examination he stated that they reached to the police station at about 12.30 Hrs. in the night. From his cross-examination we find that they reached to the police station much earlier to 12.30 Hrs. He admitted that in the night at 11.30 p.m. A.S.I, on seeing Gauri Shankar told to them to take him to the hospital. We further find from his cross-examination that Bajrang Lal was admitted in the Hospital at Lakheri and was referred to Kota and his dead body came from Kota within half an hour. He admitted that he (Bajrang Lal) was referred to Kota at about 11.45p.m.

15. In the cross-examination Kedar Lal (PW-9) stated that the police has taken his signature on blank papers. In Ex.P-8 portion C to D has been added afterwards. When these lines were added he has shown his ignorance. His further statement is that when he reported the matter Bajrang Lal was not dead.

16. Shiv Raj Singh (PW-16), in the cross-examination, admitted that distance in between the place of incident and police station is twenty kilometers. It is denied that the words C to D has been added in the FIR afterwards. He admitted that the FIR (Ex.P-8) was lodged at 3.30 a.m. In his cross-examination he admitted that on the FIR below the dispatch number the date 26-12-1994 is there, but the FIR was sent on 27-12-1994. Why the FIR was dispatched from the police station on 27-12-

1994 he cannot give reason. On Ex.P-8 there is note that Shankar Singh constable has submitted this FIR before the Magistrate on 28-12-1994 at 2.00 p.m. and submitted before the Magistrate on 28-12-1994, he cannot give any reason.

17. Delay in lodging FIR cannot be used as a ritualistic formula for doubting the prosecution case and discarding it. Delay has the effect of putting the Court on its guard to search if any explanation has been offered, and if offered, whether or not it is satisfactory. Where the prosecution fails to satisfactorily explain the delay and there is possibility of embellishment in the prosecution version on account of such delay, the delay would be fatal to the prosecution case. However, if the delay is explained to the satisfaction of the Court, it cannot by itself be a ground for disbelieving and discarding the entire prosecution case. In any case where there is a delay in making the FIR the Court is to look at the causes for it and if such causes are not attributable to any effort to concoct a version, no consequence be attached to the mere delay in lodging the FIR. Delay in lodging of the FIR in every case cannot be a ground for throwing the entire prosecution case.

18. Complainant Kedar Lal (PW-9) with Rameshwar (PW-13) and deceased and injured Gauri Shankar and Bajrang Lal reached to the police station at 12.30 Hrs. or may be at 11.30 p.m. when A.S.I, has advised them to take Bajrang Lal to the Hospital. He took prompt action in the matter for lodging of the FIR. It is a case of double murder in the night at 9.30 p.m. Naturally some time would have been taken by them to lift the injured and dead body of the deceased, inform to their relations and then arranged for transportation and come to the police station which is at a distance of twenty kilometers. In the facts of this case it cannot be said that the complainant has made any inordinate delay in informing to the police. Bajrang Lal was referred to Kota where he was declared dead. Body was brought back and the report was filed and registered.

19. The prosecution case is based on the direct eye-witnesses who witnessed the incident and if those witnesses are reliable and trustworthy and conviction can be based relying on their statements, this mere delay in filing of the FIR, even if taken to be there, cannot be taken fatal to the prosecution case and that too to the extent to totally discard the same. The learned trial Court has relied upon the statements

of these two prosecution eye-witnesses to bring home accused to offence and we do not find any illegality in its this approach. We are also satisfied for the reasons to be recorded later on that these two witnesses are reliable, truthworthy and from their statements the case against the accused appellants for murdering Bajrang Lal and Gauri Shankar is proved beyond reasonable doubt.

20. So far as to the point raised for delay in sending the FIR to the concerned Magistrate, we are satisfied that it is also not fatal to the prosecution case.

21. Before proceeding further, we here first refer to the decision of the Apex Court in the cases of State of Rajasthan v. Teja Singh (2001 Cri LJ 1176) (Supra) on which reliance has been placed in support of this contention. In that case before the Apex Court the explanation putforth by the prosecution in regard to the delay in sending the FIR to Magistrate was not found tenable. There the explanation was of the Court holidays. The requirement of law is that the FIR should reach the Magistrate concerned without any undue delay. Here in this case also the learned public prosecutor sought to give this explanation of the winter holidays in the Court but that has subsequently been not pressed in view of this decision of the Apex Court. Otherwise also on 28th of December, 1994 Court holiday was also there. In that case, the Apex Court on this ground alone has not decided the matter in favour of the accused. The Court has gone into the merits of the matter and held that for non-production of the independent available witnesses the interested witnesses whose statements were recorded could not have been relied upon.

22. Section 157, Cr.P.C. is designed to keep the Magistrate informed of the investigation of such cognizable offence so as to be able to control the investigation and if necessary to give appropriate direction under Section 159. In a case where the FIR actually recorded and investigation started on the basis thereof, the delay in sending the copy of the report to the Magistrate may not itself be justified the acquittal of the accused. Extraordinary delay in sending the copy of the FIR to the Magistrate can be a circumstance to provide a legitimate basis for suspecting that the FIR was recorded on a much later day than the stated day, affording sufficient time to the prosecution to introduce improvements and embellishment by setting up a distorted version of the occurrence. The delay

contemplated under Section 157, Cr.P.C. for doubting the authenticity of the FIR is not every delay but an extraordinary and unexplained delay. In the case of Anil Rai v. State of Bihar, (2001) 7 SCC 318 : (2001 Cri LJ 3969), their Lordships of the Hon'ble Supreme Court held that in the absence of any prejudice to the accused, the omission by the police to send the report to concerned Magistrate immediately does not vitiate the trial. It is further observed that the delay in dispatch of FIR by itself is not a circumstance which can throw out the prosecution case in its entirety, particularly when it is found on facts that the prosecution had given a very cogent, and reasonable explanation for the delay in dispatch.

23. On being put to the learned counsel for the accused appellants he failed to show as to what prejudice has been caused to the accused by this delay in sending the FIR by the police to the Magistrate. He repeated that the addition of one line in the FIR and five others accused named therein it creates suspicion. So far as to these two aspects of the matter is concerned it is true that Kedar Lal (P.W. 9) has stated that one line has been added in the FIR and in all eight accused were named, but the Investigating Officer denied this adding of line in FIR. Otherwise also having gone through the FIR and the evidence of the prosecution, we are satisfied that this addition of one line therein is wholly inconsequential, insignificant and does not bear any relevance and importance on the merits of the case either way,

24. So far as to naming five other accused persons, it is true that ultimately challan has not been filed against them but only on this ground this delay in sending the FIR to the Magistrate cannot be taken to be serious to the extent where the whole of the prosecution case has to be thrown out. We cannot be oblivious of the fact that during the winter there are holidays in the Court. The Magistrate is available for the urgent work but fact is that holidays are there. The police station is situated at a distance of sixty kilometers from the place of sitting of the Magistrate. On this distance between these two places the counsel for the parties are in agreement. The FIR has been dispatched on 26th of December, 1994. In the morning of 27th of December, 1994 the same has been given to the police constable Shankar Singh for producing the same before the Magistrate, Shiv Raj Singh (P.W. 16) though stated that he is unable to explain as to why it was presented on 28th of

December, 1994 but in the facts of this case that the investigation started on lodging the FIR and there were winter holidays in the Courts, this one day delay in presenting the FIR coupled with the fact that it has already been dispatched and given to the constable for presentation thereof before the concerned Magistrate on 27th of December, 1994 more so the defence has failed to show that any prejudice has been caused to accused, this delay is not fatal to the prosecution case and that too to the extent where the prosecution story is to be disbelieved.

25. The reference fruitfully may have here to the another decision of the Apex Court in the case of Munshi Prasad v. State of Bihar (2002) 1 SCC 351 : (2001 Cri LJ 4708) wherein it is held that while it is true that Section 157 of the Code makes it obligatory on the officer in charge of the police station to send a report of the information received to a Magistrate forthwith, but that does not mean and imply to denounce and discard an otherwise positive and trustworthy evidence on record. Technicality ought not to outweigh the course of Justice if the Court is otherwise convinced and has come to a conclusion as regards the truthfulness of the prosecution case, mere delay, in absence of any prejudice to the accused, would not by itself demolish the prosecution case. The statutory obligation warrants utmost promptitude and in the event of the delay not being an unreasonable one and in the event of availability of some explanation therefore, which is otherwise acceptable as well, question of prosecution being tainted would not arise. FIR sets the investigation rolling and in the event of there being some delay somewhere and with the acceptable explanation, the delay cannot be said to vitiate the trial by reason therefore.

26. The matter here can be examined from another aspect. It may be at the most a case of negligence or omission on the part of the Investigating Officer. In the case of Ambika Prasad v. State (Delhi Admn.) (2000) 2 SCC 646 : (2000 Cri LJ 810) their Lordships of the Hon'ble Supreme Court held that in a case of defective investigation it would not be proper to acquit the accused if the case is otherwise established conclusively. A criminal trial is meant for doing Justice to the accused, the victim and the society so that law and order is maintained. A Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. One is as important

as the other. Both are public duties which the Judge has to perform. As a result of the aforesaid discussion we do not find any merit and substance in this contention of the learned counsel for the accused appellants.

27. So far as the third contention is concerned, suffice it to say that we have already discussed the same while deciding the contention of the learned counsel for the accused appellants reunexplained delay in sending the FIR to the concerned Magistrate. For the reasons recorded there we are satisfied that this is also equally meritless and baseless contention.

Recontention No. 4 :--

28. We have closely, carefully and minutely gone through the statements of Kedar Lal (PW-9). He stated in his cross-examination that in blank papers his signatures were obtained. Only on the basis of this line which has been extracted in the cross-examination by the counsel for the accused from this witness it cannot be presumed, assumed or accepted that what he stated is correct.

29. Rameshwar (P.W.-13) was the person who accompanied to Kedar Lal (P.W.-9) to the police station. He was also present at the time of judging of this FIR (Ex. P-8). On this his signatures undisputedly are there. In Ex. P-8 it is stated 'Shri Kedar Lal son of Mathura Lal, aged 26 years by caste Meena, Resident of Dehikheda, police station Lakheri with his brother, Rameshwar son of Badri Lal.....' (English translation).

30. Rameshwar (P.W. 13), in his exami-nation-in-chief, stated,

(Vernacular matter omitted....Ed.)

A lengthy cross-examination of this witness was done by the counsel for the accused but not a single question was put re taking of his or Kedar Lal's signatures on blank papers. In cross-examination he stated.

(Vernacular matter omitted....Ed.)

31. Shiv Raj Singh (P.W.-16) is the Police Officer at police station who has taken this FIR. He stated in examination-in-chief.

(Vernacular matter omitted....Ed.)

Not a single question has been put to him in the cross-examination by the counsel for the accused on this statement of Kedar Lal (P.W. 9) that his signatures were taken on blank papers.

32. From the statements of Rameshwar (P.W.-13) and Shiv Raj Singh (P.W.-16) we are satisfied that it is not a case where only on the basis of one line come in the cross examination of Kedar Lal (P.W.-9) this contention raised by the learned counsel for the appellants is to be accepted and the prosecution case is to be discarded.

Re contention No. 5

33. In the defence the accused got exhibited the statements of Khana (Ex. D-1), Kedar Lal (Ex. D-2) and Rameshwar (Ex. D-3) recorded under Section 161, Cr. P.C. by the police during the investigation of the case.

34. From Ex. D-1 we find that the statement of this witness were recorded on 30th of December, 1994. The statements of Kedar Lal and Rameshwar were recorded on 26th of December, 1994. We proceed with this acceptance that Khana (PW.-7) was available for his statement to the Investigating Officer earlier to 30-12-1994.

35. Kedar Lal (P.W.-9) and Khana (P.W. 7) are the eye-witnesses. Rameshwar (P.W.-13) is a person who went to the police station with Kedar Lal (P.W.-9) to lodge the FIR. So far as Kedar Lal (P.W.-9) and Rameshwar (P.W.-13) are concerned in recording their statements under Section 161, Cr. P.C. by the police there is no delay. So far Khana (P.W.-7) is concerned, there is delay, but he is the eye-witness to the incident, this delay in recording his statement under Section 161, Cr. P.C. is not fatal to the prosecution case.

36. Recontention No. 6 -- Natural conduct of eye-witness Khana (P.W.-7).

37. Before dealing with this contention raised by the learned counsel for the accused appellants and giving our decision, we consider it to be appropriate to here refer and discuss the decision on which reliance has been placed. In the case

of Chanan Singh v. State of Haryana (AIR 1971 SC 1954) (supra), their Lordships of the Hon'ble Supreme Court has disbelieved the statement of sole witness to the occurrence on the ground of his conduct in running away from the place of occurrence even though he was not chased or threatened by any of the assailants and his not reporting the incident even to the relatives of either of the two deceased persons.

38. In the case of Surinder Singh v. State of Punjab (1989 Supp (2) SCC 21) (supra) the statement of eye-witness to the occurrence was not believed on the ground that after seeing the occurrence not gone to inform parents and relatives of the deceased but going to his own house after some time informing some other persons.

39. In the case of Din Dayal v. Raj Kumar (1999 Cri LJ 467) (supra) their Lordship of the Hon'ble Supreme Court took this conduct of the eye-witnesses closely connected with the deceased not accompanying deceased to hospital nor informing the police about incidence, to be unnatural.

40. In the case of Jalal v. The State of Rajasthan (1984 Raj Cri C 274) (supra) the conduct of the witnesses, relatives not to take the deceased to the hospital and ran away from the place of occurrence, one went to home and another wrote detailed FIR without going to the police station, was taken unnatural.

41. All these cases cited by the learned counsel for the accused appellants in support of his this contention in the facts of this case, are of little help to the accused appellants.

42. Otherwise also in a criminal case Court should not expect a set reaction from an eye-witness on seeing an Incident like murder. If many persons have witnessed the Incident there could be many different type of reactions from each of them. It is neither an outer impact nor a structured reaction which the eye-witness can make. Unless the reaction demonstrated by an eye-witness is so improbable or so unconscionable from any human being pitted in such situation it is unfair to his reactions as unnatural. From the evidence of these two eye-witnesses we do not find any reaction so improbable or so unconscionable from a human being pitted in

such situation a double murder to deem their reactions as unnatural.

43. Kedar Lal (P.W.-9) and Rameshwar (P.W.-13) had taken the deceased to the hospital, police station and lodged the FIR. Kedar Lal (P.W.-9) stated in his cross-examination.

(Vernacular matter omitted....Ed.)

44. The learned counsel for the accused appellants pointed out in support of this contention the statement of this witness :

(Vernacular matter omitted....Ed.)

but the statement of the witness has to be read as a whole. On this one line of the statement of this witness, we cannot be oblivious of his conduct of informing about this occurrence to the relations of the deceased, taking the deceased to the hospital and the police station and lodging FIR. The learned counsel for the accused appellants has made reference to another part of the statement of this witness.

(Vernacular matter omitted....Ed.)

we fail to see how from this statement of the witness any benefit can be given to the accused appellants. It is most natural conduct of the witness to report this incident to the relation of the deceased and that has been done.

45. The contention raised by the learned counsel for the accused appellants reconduct of Khana (P.W.-7) is not of any help to him. Khana (P. W.-7) was injured in this incident. What he stated in his examination in chief is to be reproduced here.

(Vernacular matter omitted....Ed.)

In the cross-examination he stated.

(Vernacular matter omitted....Ed.)

This witness has not only intervened in the matter but also reported the occurrence to the relation of the deceased. This contention of the learned counsel for the accused appellant is also devoid of any substance and merits and cannot be accepted.

Re contention No. 7 --

46. The contention that blood trail near to the pond was not found, is hardly of any substance and material. Shiv Raj Singh (P. W. 16) stated.

(Vernacular matter omitted... .Ed.)

Reference may have to the document Ex. P-17 of taking of the blood stained soil from place B. From the document Ex. P-2 we find at places A and B the bodies of the deceased Gauri Shankar and Bajrang Lal were there and blood stained soil was seized therefrom. In the presence of this evidence -- both ocular and documentary, we do not find any merit in this contention of the learned counsel for the accused appellants.

47. Re contention No. 9 -- Site plan of the incident prepared is highly doubtful document.

48. Ex. P-2 is the site plan prepared by Shiv Raj Singh (P.W.-16). There are signatures on this document of two 'motbirs' Brij Mohan son of Madan Lal and Ramesh son of Kishan Lal. This document was prepared on 26th of December, 1994 at 8.00 A.M. Brij Mohan and Ramesh, 'motbirs' of this document, were examined as P.W.-2 and P.W.-3, respectively.

49. Shiv Raj Singh (P. 16) proved his signatures on Ex. P-2 at place A to B. He was not put any question in the cross-examination regarding time of preparation of this document. To 'motbir' Ramesh (P.W.-3) Ex. P.-2 was not put and his signatures were not got proved. That seems to be carelessness on the part of the Public Prosecutor. The argument has been raised on the basis of his statement made in his cross-examination which reads as under.

50. Shiv Raj Singh (P.W.-16), in his cross-examination, denied the suggestion put to him that in Ex. P-2 he filled in portion G to H afterwards. He further denied the suggestion that he left earlier this place blank. He also denied the suggestion that in this document the time has been filled in afterwards. On being put to him, he denied that document Ex. P-2, the site plan of the occurrence, has been prepared by him in the evening at 4.00 p.m. On being put to him he stated that orally he cannot tell at what time he started from the place of incident for police station. After seeing the case diary he made a statement that he started for police station from the place of occurrence at 8.30. On being put to him, in the cross-examination, he stated after seeing the file that he took ten minutes time to prepare the site plan. From his statement we are satisfied that what Ramesh (P.W.-3) stated is not of any help to the accused appellants. This witness though was not declared hostile but possibly would have stated this to extend favour to the accused appellants. But his this statement is not corroborated from the statement of Brij Mohan (P.W. 2), Shiv Raj Singh (P.W. 16) and the documentary evidence. Ex. P-2 was prepared at 8.00 a.m. and thereafter the Investigating Officer left the place of incidence at 8.30. This document Ex. P-2 in the facts of the case and in the presence of this evidence of the prosecution is not a doubtful document.

51. Recontentlon No. 10 -- Khana (P.W. 7) has stated that he sustained injuries in this incident but injury report was not produced.

52. We have read and reproduced relevant portion of the statement of Khana (P.W. 7). He made a categorical statement that he received injuries in this incident. His medical examination was done and naturally his injury report would have been prepared. The learned Public Prosecutor has read before us the injury report of this witness but it is a fact that same has not been exhibited. This is nothing but a carelessness or negligence on the part of the Public Prosecutor or the investigating agency that though he sustained injuries, his injuries were examined and injury report was also prepared but still it is not exhibited. Only on this ground of non-exhibition of this injury report, his statement cannot be discarded nor any benefit can be extended to the accused appellants.

53. Here we consider it to be appropriate to make the reference to the decision of the Hon'ble Supreme Court in the case of Ambika Prasad v. State (Delhi Administration) (2000 Cri LJ 810) (supra). Moreover we fail to see in the presence of the statement of Khana (P.W.-7) how any prejudice has been caused to the accused appellants for non production this injury report.

54. Here fruitfully the reference may have to the decision of the Apex Court in the case of Ajay Singh v. State of Bihar (2000) 9 SCC 730 : (AIR 2000 SC 3538).

55. Re contention No. 8 -- Statements of eye-witnesses do not find corroboration from the medical evidence.

56. Khana (P.W.-7), in his examination-in-chief, stated.

(Vernacular matter omitted....Ed.)

In cross-examination it is stated by this witness.

(Vernacular matter omitted....Ed.)

Kedar Lal (P.W. 9), in his examination-in-chief, stated.

(Vernacular matter omitted....Ed.)

In the cross-examination, he stated,

(Vernacular matter omitted....Ed.)

57. On a combined reading of the post mortem reports of deceased Ex. P-6 and Ex. P-7 and the statement of the eye-witnesses and the statements of Dr. K. C. Sharma (PW. 8) and Dr. Sunita Dua (P.W.-11) we are satisfied that there is no contradiction in between the ocular evidence of the prosecution and the documentary evidence -- the medical report. The accused appellants have been convicted under Section 302 with the add of Section 34 of the IPC so otherwise also this contention is not of any help to the accused appellants.

58. Re contention No. 12 --Though independent witnesses were available but were not examined by the prosecution.

59. Khana (P.W.-7) in his examination-in-chief stated that he had informed of this incident to Dhan Raj. He further stated in the examination-in-chief that Prabhu Lal was there on the liquor shop. In cross-examination he stated,

('Vernacular matter omitted....Ed.)

So from his statement we find that there were other witnesses, namely, Dhan Raj, Prabhu Lal, liquor shop-keeper and three ladies Badam, Prem and Prem. So far as Prabhu Lal is concerned, it is not in dispute that he was one of the accused named in the FIR but ultimately on investigation nothing has been found implicating him in this offence and challan was not filed against him.

Ram Prasad (P.W.-17), in his cross-examination, stated,

(Vernacular matter omitted....Ed.)

60. From the statement of this witness we are satisfied that it is not the case where no investigation made in regard to his name in the FIR but his statement was not recorded. In these facts due to non-production of this person in the witness box the prosecution case cannot be disbelieved. Dhan Raj is a person who came at the scene of occurrence afterwards. Similar is the case with three ladies. They have not witnessed this incident and non-production thereof in evidence is not fatal to the prosecution case. Otherwise also these persons Dhan Raj and three ladies are the relatives of the deceased and in case the same would have been produced, possibly the defence would have raised a contention that these are the interested and relative witnesses.

61. The prosecution is expected to examine only those persons who have witnessed the events and not those who have not seen it. Where the Court has discerned from the evidence or even from investigation records that some other independent person has witnessed the event connecting the incident in question then there may be justification for making adverse comments against non examination of such persons as prosecution witnesses.

62. Here in this case for two grounds; (i) those persons have not witnessed any event connecting the occurrence and (ii) they are relatives of the deceased, their

non production as witness is not fatal to the prosecution case.

63. In the case of Kunhayippu v. State of Kerala (2000) 10 SCC 307 their Lordships of the Hon'ble Supreme Court held that the eye-witness who lodged the FIR although examination of that person could have unfolded the prosecution case in detail, but entire prosecution case cannot be falsified for his non-examination moreso when two more reliable eye-witnesses were also available. If we go by this ratio of their Lordships of the Hon'ble Supreme Court as given in this case, non-examination of these witnesses out of which four were undisputedly not eye-witnesses entire prosecution case cannot be falsified more so when two reliable eye-witnesses Khana (P.W.-7) and Kedar Lal (P.W.-9) were available, produced and examined.

64. In the result, the appeal fails and the same is dismissed.