

NAND LAL AND OTHERS

v.

THE STATE OF CHHATTISGARH

(Criminal Appeal No. 1421 of 2015)

MARCH 14, 2023

[B. R. GAVAI, VIKRAM NATH AND SANJAY KAROL, JJ.]

Penal Code, 1860: s. 302 – Murder – Prosecution case that previous enmity between the accused persons and the complainant – Accused no. 11 assaulted the complainant and thereafter, the complainant lodged an FIR – Said accused then alongwith the other accused armed with deadly weapons formed an unlawful assembly, and assaulted the victim-complainant's father along with the prosecution witnesses, resulting in the death of the victim – Conviction of the accused persons for the offences punishable u/s. 302 along with the other offences and sentenced to life imprisonment by the courts below – Sustainability of – Held: Delay in lodging of the FIR by the injured person not explained at all – Prosecution attempted to suppress the real genesis of the incident – There was non-explanation of the injuries sustained by the accused, which cannot be considered to be minor or superficial – Prosecution suppressed the information that accused informed the police that he was assaulted by the complainant, thus, the said accused entitled to the benefit of doubt – As regards the remaining accused persons, their names were not mentioned in the merge report which was lodged prior to the lodging of FIR, in the inquest panchnama and spot panchnama – Taking into consideration the delay in lodging the FIR, with the circumstance of their names not being mentioned in the contemporaneous documents, the possibility of the said accused being falsely implicated cannot be ruled out – Their conviction was based only on the oral testimony of the interested witness without sufficient corroboration, thus, would not be sustainable – Judgment and order passed by the High Court set aside – Evidence.

Allowing the appeals, the Court

HELD:

- 1.1 Believing the contents of the FIR that the incident has taken place at around 08.30 PM and that the injured persons had**

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reached the Bazar at around 10-11 PM where they were informed that they could not be treated unless a report was lodged, a further delay of around four to five hours in lodging the FIR has not been explained. The distance between the Bazar and the Police Station is approximately 15 Kms. It has come on record that there is an all-weather road connecting the two places. As such, at the most, it would take around 30-40 minutes to reach the Police Station from the Bazar. This delay of four hours in lodging the FIR is not at all explained. [Para 25]

- 1.2 Undisputedly, the injuries sustained by accused No. 11 cannot be considered to be minor or superficial. The witnesses are also interested witnesses, inasmuch as they are close relatives of the deceased. That there was previous enmity between the two families, on account of election of Sarpanch, has come on record. Previous enmity is a double-edged sword. On one hand, it can provide motive and on the other hand, the possibility of false implication cannot be ruled out. [Para 28]
- 1.3 Much prior to lodging of the FIR at 03.15 AM on 4th November 2006 by K, the Police had taken accused No. 11 for medical examination. The memo forwarding accused No. 11 for medical examination to Medical Officer mentions that accused No. 11 had informed the police that at around 08.30 PM, he was assaulted by PW-1. Undisputedly, the prosecution has suppressed information with regard to the said incident. The prosecution has also suppressed the FIR lodged by PW-1. It is thus clear that the prosecution has attempted to suppress the real genesis of the incident. Taking into consideration this aspect of the matter, coupled with the non-explanation of the injuries sustained by accused No. 11, accused No. 11 is entitled to benefit of doubt. [Para 29]
- 1.4 No doubt that in each and every case, delay in lodging the FIR would not be fatal to the prosecution case. It will depend upon facts and circumstances of each case. In the present case, assuming that the incident had taken place at 08.30 PM and the injured persons were at the Bazar between 10-11 PM, and taking into consideration that the distance between the Bazar to the Police Station is 15 Kms., a delay of four hours in lodging the FIR would cast a serious doubt on the genuineness of the prosecution case. It becomes more glaring

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since accused No. 11 had, in any case, informed the police about the incident prior to 11.45 PM. The suppression of the FIR lodged by him with respect to the attack on him by PW-1, so also the suppression of the FIR lodged by PW-1 against accused No. 11, adds to the doubt. [Para 30]

- 1.5 PWs 2 and 9 are injured witnesses. As such, their presence cannot be disputed. However, in case of proven previous enmity, a possibility of false implication cannot be ruled out. In the instant case, it would be seen that the entire family of accused No. 12 has been roped in. Though PW-2 has identified and named the accused in her cross-examination, she has stated that, though she recognized the relatives of the accused persons, she does not remember their names. As such, the possibility of implicating the entire family of accused no.12 cannot be ruled out. [Para 34]
- 1.6 The names of accused no.8, 9 and 10 are not mentioned in the merg report, which was lodged prior to the lodging of FIR, so also their names are not found in the inquest panchnama and spot panchnama. Taking into consideration the delay in lodging the FIR, with the circumstance of their names not being mentioned in the contemporaneous documents, the possibility of the said accused being falsely implicated cannot be ruled out. The conviction of these accused purely on the basis of oral testimony of the interested witnesses, without sufficient corroboration, would not be sustainable. [Para 35]
- 1.7 The prosecution has examined PW-3, PW-5, PW-6 and PW-8, none of whom have supported the prosecution case. According to PWs 2, 9 and 13, it was the witness PW-3 who had arranged for the tractor to take the injured persons to the Bazar. However, he has stated that though PW-2 came to his place to inform him about the incident, she had not informed him as to which of the accused had assaulted the deceased and the injured persons. Thus, the said appellants would also be entitled to benefit of doubt. [Para 36]

Lakshmi Singh and Others v. State of Bihar (1976) 4 SCC 394; *State of Rajasthan v. Madho and Another* (1991) 2 Supp SCC 396; *State of M.P. v. Mishrilal (Dead) and Others* (2003) 9 SCC 426; *Nagarathinam and Others v. State (Represented by Inspector of Police)* (2006) 9

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SCC 57 : [2006] 3 SCR 833; *Ramashish Ray v. Jagdish Singh* (2005) 10 SCC 498; *Ramesh Baburao Devaskar and Others v. State of Maharashtra* (2007) 13 SCC 501 : [2007] 11 SCR 197; *Vadivelu Thevar v. The State of Madras* [1957] SCR 981 – referred to.

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1421 of 2015.

From the Judgment and Order dated 11.11.2014 of the High Court of Chhattisgarh at Bilaspur in CRLA No. 529 of 2008.

With

Criminal Appeal Nos. 1470 of 2017 and 775-776 of 2023.

Renjith. B. Marar, Shailendra Tiwary, (A. C.), Vikas Upadhyay, Ms. Ankita Kashyap, Renjith B., Lakshmi N. Kaimal, Ms. Ashu Jain, Daveshe Kr. Sharma, Arun Poomulli, Advs. for the Appellants.

Sumeer Sodhi, Dhruv Wadhwa, Devashish Tiwari, Advs. for the Repondent.

The Judgment of the Court was delivered by

B. R. GAVAI, J.

1. Leave granted in SLP(Criminal) Nos. 6134-6135 of 2019.
2. These appeals assail the judgment and order dated 11th November 2014 passed by the Division Bench of the High Court of Chhattisgarh at Bilaspur, thereby dismissing the appeals filed by the appellants herein and confirming the judgment and order dated 24th May 2008 passed by the Second Additional Sessions Judge, Baloda Bazar, District Raipur, Chhattisgarh (hereinafter referred to as “the trial court”), convicting the appellants along with other accused for the offences punishable under Section 302 of the Indian Penal Code, 1860 (for short, “IPC”) along with other offences and sentencing them to undergo life imprisonment.
3. The prosecution story, in brief, as could be gathered from the material placed on record, is thus:

On the night of 3rd November 2006, at around 07.30 PM, Naresh Kumar, accused No. 11 had assaulted Atmaram (PW-1). After the said assault, Atmaram (PW-1) went to the Police Station, Suhela for lodging a report. Thereafter, Naresh Kumar, accused No.11 along with other accused, who were armed with deadly weapons, formed

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an unlawful assembly, entered the house of deceased Kartikram and assaulted him as well as Mangtin Bai (PW-2) and Khomlal (PW-9). As a result of the said assault, Kartikram died on the spot. Thereafter, Mangtin Bai (PW-2), Khomlal (PW-9) and Purnima Bai (PW-13), wife, son and daughter-in-law of deceased Kartikram respectively, along with neighbours Baliram Sahu (PW-3) and Jeevan Lal Sahu (PW-6) went in a tractor to Baloda Bazar to see a doctor, who refused to treat them unless a report was lodged at the police station. Thereafter, a jeep was hired and they went to the Police Station, Suhela. On the basis of the oral report (Ex. P-9), a merg report (Ex. P-10) came to be registered. Subsequently, the First Information Report (for short, "FIR") came to be registered.

4. On the basis of the said FIR, Inspector Kamal Singh (PW-14), Investigating Officer (IO) conducted the investigation. After conclusion of the investigation, a charge- sheet came to be filed against 12 accused persons before the Judicial Magistrate First Class, Baloda Bazar. Since the case was exclusively triable by the Sessions Judge, the same was committed to the Sessions Court.
5. The learned Trial Judge, vide judgment and order dated 24th May 2008, convicted all the accused persons as aforesaid. The Division Bench of the High Court, vide judgment and order dated 11th November 2014, dismissed the appeals filed by the accused persons. Challenging the same, four appeals were filed before this Court, being Criminal Appeal No. 1421 of 2015 by Nand Lal, Bhagwat and Ramdular, accused No. 8 to 10 respectively; Criminal Appeal No. 1422 of 2015 by Paltan Jangde, accused No. 12; Criminal Appeal No. 1470 of 2017 by Charandas Jangde, Chhannu Jangde and Charnu Jangde, accused Nos. 5 to 7 respectively; and appeals arising out of SLP (Criminal) Nos. 6134-6135 of 2019, which were filed by Tulsi Jangde, Suresh Jangde, Dinesh Jangde, Rupesh Jangde and Naresh Kumar, accused Nos. 1 to 4 and 11 respectively.
6. During the pendency of the appeals, Paltan Jangde, accused No.12 has died and as such, the said appeal, being Criminal Appeal No. 1422 of 2015, has abated, vide this Court's order dated 13th January 2023. Tulsi Jangde, Suresh Jangde, Dinesh Jangde, Rupesh Jangde, Channu Jangde and Charnu Jangde, appellants in appeals arising out of SLP(Criminal) Nos.6134-6135 of 2019, and Charandas Jangde,

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appellant in Criminal Appeal No. 1470 of 2017, have already been released on completion of their sentence. As such, we are concerned with the appellants in Criminal Appeal No. 1421 of 2015 and Naresh Kumar, one of the appellants in appeals arising out of SLP(Criminal) Nos.6134- 6135 of 2019.

7. We have heard Shri Vikas Upadhyay, learned counsel appearing on behalf of accused Nos. 8 to 10, Shri Renjith B. Marar, learned *amicus curiae* and Shri Sumeer Sodhi, learned counsel appearing on behalf of the respondent-State.
8. Shri Upadhyay submits that the names of accused Nos. 8 to 10, i.e., Nand Lal, Bhagwat and Ramdular, have not been mentioned in any of the contemporaneous documents like the merg panchnama, inquest panchnama and spot panchnama. He submits that, whereas the names of all other accused have been specifically mentioned in the aforesaid documents, there is no mention of the names of accused Nos. 8 to 10 in these documents. It is for the first time that the names of these three accused appear in the FIR. The learned counsel submits that though the incident had occurred at 08.30 PM on 3rd November 2006, the FIR was alleged to have been lodged at 03.10 AM on 4th November 2006, which creates a doubt that the FIR is a fabricated document and the original FIR has been suppressed by the prosecution. He further submits that the inordinate delay in registering the FIR has also not been explained by the prosecution. The learned counsel submits that all the three witnesses i.e., Mangtin Bai (PW-2), Khomlal (PW-9) and Purnima Bai (PW-13) are interested witnesses. It is further submitted that the evidence of these three witnesses is also inconsistent. The learned Counsel, therefore, submits that the conviction was purely on the basis of such interested witnesses, whose testimony is not cogent and trustworthy, and is not sustainable unless there is some corroboration of their testimony.
9. Shri Upadhyay submits that, in any case, all the three eye witnesses, i.e., Mangtin Bai (PW-2), Khomlal (PW-9) and Purnima Bai (PW-13) have made only omnibus allegations against the appellants herein and no specific overt act attributable to the present appellants is mentioned. The learned counsel further submits that the incident happened at night and it is also admitted that there was a power cut. As such, the testimonies of all the three witnesses that they had seen the incident in the moonlight

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and in the light of a lamp cannot be said to be trustworthy. It is further submitted that, since PW-9 himself had admitted that he had hidden himself in a grain-store (kothi), it is improbable that he has witnessed the incident.

10. Shri Marar submits that as a matter of fact, Naresh Kumar, accused No. 11 has received grievous injuries. It is submitted that PW-14, IO has admitted that Naresh Kumar, accused No. 11 had injuries on his head, ankle of left leg and the middle finger of his right hand. He submitted that even the Trial Court has found that accused No.11 Naresh Kumar had received grievous injuries and that he had gone to Police Station, Suhela to lodge the report. He lodged the report at the said Police Station and, thereafter, he was sent to Bhatapara Hospital for treatment. It is submitted that the prosecution has not explained the injuries received by accused No. 11 Naresh Kumar. It is submitted that, in any case, the prosecution has suppressed the information received from accused No. 11 Naresh Kumar. It is further submitted that it is improbable that accused No. 11 Naresh Kumar, after receiving such grievous injuries, could have taken part in the assault against the deceased and PWs 2, 9 and 13.
11. Shri Sodhi, on the contrary, submits that all the three eye witnesses have clearly implicated all the appellants. It is submitted that PWs 2 and 9 have specifically implicated the present appellants. It is submitted that all the three witnesses are rustic villagers. Therefore, merely because there are some discrepancies in their evidence cannot be a ground to reject their testimonies. He further submits that merely because the witnesses are interested witnesses cannot be a ground to discard their testimonies, if their evidence is found to be trustworthy, reliable and cogent. Shri Sodhi submits that, in any case, the witnesses are injured witnesses and as such, their presence at the spot cannot be disputed. It is further submitted that merely because there is some delay in lodging the FIR, it cannot be a ground to discard the prosecution case, which has been proved beyond reasonable doubt.
12. Shri Sodhi, relying on various judgments of this Court, submits that for a conviction under Section 302 of the IPC with the aid of Section 149 of the IPC, what is relevant is whether the accused was a member of unlawful assembly, and not whether he actually took active part in the crime or not. He further submits that mere non-explanation of injuries

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on the person of the accused would not be fatal to the prosecution case.

13. With the assistance of learned counsel for the parties, we have examined the material placed on record.
14. From the medical evidence, it cannot be disputed that the death of deceased Kartikram is homicidal. The injuries on PWs 2 and 9 are also not seriously disputed by the appellants.
15. From the evidence of prosecution witnesses, it can be seen that the incident has taken place in two parts. The first part is with regard to the assault on Atmaram (PW-1) by accused No. 11 Naresh Kumar, whereas the second part is with regard to the assault by the accused persons on the deceased and PWs 2, 9 and 13. Atmaram (PW-1), in his evidence, states that on 3rd November 2006, when he was at his house, accused No. 11 Naresh Kumar came to his home and started abusing him. PW-1 stated that accused No. 11 Naresh Kumar was under the influence of liquor. Accused No. 11 Naresh Kumar told PW-1 that he had gone to his house to make a complaint and he had extorted an amount of Rs.5,000/- from him after plying him with alcohol. Thereafter, accused No. 11 Naresh Kumar started assaulting PW-1 with the *lathi* in his hand. Then, PW-1 states that accused No. 11 Naresh Kumar left his place with a threat that he would return along with other members of his family. It is further stated by Atmaram (PW-1) that, thereafter, he went to lodge a report to Suhela Police Station along with his wife, son and daughter.
16. Atmaram (PW-1) further stated that when he returned from the Police Station, his son came and told him that PW- 1's father was murdered and PW-1 again went to the Police Station to lodge the report. As such, it is clear that PW-1 is not an eye witness to the second incident.
17. Mangtin Bai (PW-2) is the wife of the deceased Kartikram. She, in her evidence, stated that all the accused persons had entered her house and started abusing them. Her husband was in the TV room. All the accused persons started assaulting her husband in the said TV room. Thereafter, they came to the second room where nobody was there. Her son had hidden himself in a *dhan kothi*. The accused persons went there and started assaulting her son. Thereafter, she went to inform her neighbour, Jeevan Lal Sahu (PW-6). She, along with PWs 9 and 13,

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then went by a tractor to Baloda Bazar. They could not get treatment there since no report had been lodged with the police. They took a jeep from there and went to Suhela Police Station. From there, they were taken to Bhatapara Hospital for treatment.

18. In the cross-examination of Mangtin Bai (PW-2), on being asked as to whether she knows the relatives of the accused persons present in the court, she stated that she knows them but she cannot name them.
19. Khomlal (PW-9) is the injured son of the deceased Kartikram. His evidence is also of similar nature. He, too, testifies about the earlier incident pertaining to Atmaram (PW-1). He states that after Atmaram (PW-1) went to the Police Station at around 08.30 PM, all the accused persons came to his house. He states that all the accused persons entered the room of his father and started assaulting his father. He, therefore, went to hide himself in the *dhan kothi*. The accused persons came there and assaulted him and thus, he received severe injuries. Thereafter, they went to Baloda Bazar for treatment. However, the doctor refused to treat them. As such, they went to Suhela Police Station and lodged the report. In his cross-examination, he admits that in the merged report lodged by him, there is no mention of Nand Lal, Bhagwant and Ramdular, i.e., accused Nos. 8 to 10 respectively. Though he states that he had informed the police of all the details, it is only the police who can say why the names of the aforesaid three appellants are not there.
20. Purnima (PW-13), wife of Khomal (PW-9), also states that Atmaram (PW-1) was going to the Police Station to lodge a report at around 7:00 PM. She states that, between 8:00 PM to 8:30 PM, the accused persons, viz. Charandad Jangde, Tulsi Jangde, Charnu Jangde, Bhagwat and others, came to their house, where they first assaulted her mother-in-law, Mangtin Bai (PW-2), with a stick. Thereafter she repeats the same version as given by Mangtin Bai (PW-2) and Khomlal (PW-9).
21. In his statement recorded under Section 313 of the Criminal Procedure Code, 1973 (for short, "Cr. P.C."), accused No. 11 Naresh Kumar specifically stated that he had received grievous injuries after he was assaulted by Atmaram (PW-1) and, thereafter, he went to the Police Station with accused No. 7 Charnu Jangde, accused No. 12 Paltan

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Jangde, Ashwini and Vinod, from where he was sent to Bhatapara Hospital for treatment.

22. It will be pertinent to refer to the medical examination of accused No. 11 Naresh Kumar conducted by Dr. Anita Verma (PW-10). The injuries sustained by him are thus:
- “Lacerated wound of 6x1x0.5 cm on the left parietal region of scalp.
 - Multiple contusions on the back, left shoulder, left arm, varying in size from 5 to 20 cm in length and 2 to 4 cm in breadth.
 - Abrasion of 3x0.5 cm on left leg.
 - Swelling, tenderness and deformity on prox. Phalanx of right middle finger.
 - Abrasion of 2x0.2 cm on the forehead.
 - Abrasion of 1x0.2 cm on the left side of forehead.
 - Abrasion of 2x0.5 cm on the right ankle.
 - Fracture of left parietal bone,
 - Fracture in left shoulder.
 - Fracture of proximal phalanx of middle ring finger.
 - Fracture of shaft of fibula at junction upper 1/3rd & middle 1/3rd.”
23. PW-14, IO admits that in the merged intimation report, the names of Nand Lal, Bhagwat and Ramdular, i.e., accused Nos. 8 to 10 respectively are not mentioned. He further admits that in the spot panchnama also, their names are not mentioned. He admits in his cross-examination that in Ex. D-9, the incident with accused No.11 Naresh Kumar is mentioned to have happened at 08.30 PM on 3rd November 2006. He further admits that accused No.11 Naresh Kumar had grievous injuries on his head, ankle of left leg and the middle finger of the right hand. He further admits that Naresh Kumar was taken from Police Station to the doctor for examination at 11.45 PM.
24. It can thus be seen from the evidence of PW-14, IO that the police had information about the incident at least prior to 11.45 PM on 3rd November 2006. No doubt that mere delay in registering FIR would not be fatal to the prosecution case. The effect of delay in lodging the

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FIR would differ in the facts and circumstances of each case. In the present case, admittedly, accused No.11 Naresh Kumar had received grievous injuries which have not been explained by the prosecution. A specific defence has been taken by accused No.11 Naresh Kumar that when he was coming after consuming liquor, he was assaulted by Atmaram (PW-1). Thereafter, he went to the Police Station along with accused No. 7 Charnu Jangde, accused No.12 Paltan Jangde, Ashwini and Vinod, whereafter he was referred for medical treatment. Looking at the injuries of accused No. 11 Naresh Kumar, it appears difficult that he could have taken part in the second part of the incident. The prosecution has suppressed the first report lodged by Atmaram (PW-1) as well as by accused No.11 Naresh Kumar. If Naresh Kumar was examined at 11.45 PM, the police must have had some information about the incident at least by 11.00 PM. As such, there is a delay of at least four hours in lodging the FIR.

25. Believing the contents of the FIR that the incident has taken place at around 08.30 PM and that the injured persons had reached Baloda Bazar at around 10-11 PM where they were informed that they could not be treated unless a report was lodged, a further delay of around four to five hours in lodging the FIR has not been explained. The distance between Baloda Bazar and Suhela Police Station is approximately 15 Kms. It has come on record that there is an all-weather road connecting the two places. As such, at the most, it would take around 30-40 minutes to reach Suhela Police Station from Baloda Bazar. This delay of four hours in lodging the FIR is not at all explained.
26. We will first consider the issue with regard to non- explanation of injuries sustained by accused No. 11 Naresh Kumar. In the case of ***Lakshmi Singh and Others v. State of Bihar***¹, which case also arose out of a conviction under Section 302 read with Section 149 of the IPC, this Court had an occasion to consider the issue of non-explanation of injuries sustained by the accused. This Court, after referring to the earlier judgments on the issue, observed thus:

“12.It seems to us that in a murder case, the non-explanation of the injuries sustained by the accused at about the time of the

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occurrence or in the course of altercation is a very important circumstance from which the court can draw the following inferences:

“(1) that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version;

(2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable;

(3) that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case.”

The omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one. In the instant case, when it is held, as it must be, that the appellant Dasrath Singh received serious injuries which have not been explained by the prosecution, then it will be difficult for the court to rely on the evidence of PWs 1 to 4 and 6, more particularly, when some of these witnesses have lied by stating that they did not see any injuries on the person of the accused. Thus neither the Sessions Judge nor the High Court appears to have given due consideration to this important lacuna or infirmity appearing in the prosecution case. We must hasten to add that as held by this Court in *State of Gujarat v. Bai Fatima* [(1975) 2 SCC 7 : 1975 SCC (Cri) 384] there may be cases where the non-explanation of the injuries by the prosecution may not affect the prosecution case. This principle would obviously apply to cases where the injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and disinterested, so probable, consistent and creditworthy, that it far outweighs the effect of the omission on the part of the prosecution to explain the injuries. The present, however, is certainly not such a case, and the High Court was, therefore, in error in brushing aside this serious infirmity in the prosecution case on unconvincing premises.”

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27. A similar view with regard to non-explanation of injuries has been taken by this Court in the cases of ***State of Rajasthan v. Madho and Another***², ***State of M.P. v. Mishrilal (Dead) and Others***³ and ***Nagarathinam and Others v. State (Represented by Inspector of Police)***⁴.
28. Undisputedly, in the present case, the injuries sustained by accused No. 11 Naresh Kumar cannot be considered to be minor or superficial. The witnesses are also interested witnesses, inasmuch as they are close relatives of the deceased. That there was previous enmity between the two families, on account of election of Sarpanch, has come on record. As observed by this Court in the case of ***Ramashish Ray v. Jagdish Singh***⁵, previous enmity is a double-edged sword. On one hand, it can provide motive and on the other hand, the possibility of false implication cannot be ruled out.
29. We have already seen herein above the injuries sustained by accused No. 11 Naresh Kumar. Much prior to lodging of the FIR at 03.15 AM on 4th November 2006 by Khomlal, the Police had taken accused No. 11 Naresh Kumar for medical examination. The memo forwarding accused No. 11 Naresh Kumar for medical examination to Medical Officer mentions that accused No. 11 had informed the police that at around 08.30 PM, he was assaulted by Atmaram (PW-1). Undisputedly, the prosecution has suppressed information with regard to the said incident. The prosecution has also suppressed the FIR lodged by Atmaram (PW-1). It is thus clear that the prosecution has attempted to suppress the real genesis of the incident. Taking into consideration this aspect of the matter, coupled with the non-explanation of the injuries sustained by accused No. 11 Naresh Kumar, we are of the considered view that accused No. 11 Naresh Kumar is entitled to benefit of doubt.
30. That leaves us with the appeal of the other 3 accused, namely accused No. 8 Nandlal, accused No. 9 Bhagwat and accused No. 10 Ramdular. For considering their case we will have to take into consideration the delay in lodging the FIR. No doubt that in each and every case, delay in lodging the FIR would not be fatal to the prosecution case. It will depend upon facts and circumstances of each case. In the present

2 1991 Supp (2) SCC 396

3 (2003) 9 SCC 426

4 (2006) 9 SCC 57

5 (2005) 10 SCC 498

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case, as already discussed hereinabove, assuming that the incident had taken place at 08.30 PM and the injured persons were at Baloda Bazar between 10-11 PM, and taking into consideration that the distance between Baloda Bazar to Suhela Police Station is 15 Kms., a delay of four hours in lodging the FIR would cast a serious doubt on the genuineness of the prosecution case. It becomes more glaring since accused No. 11 Naresh Kumar had, in any case, informed the police about the incident prior to 11.45 PM. The suppression of the FIR lodged by him with respect to the attack on him by Atmaram (PW-1), so also the suppression of the FIR lodged by Atmaram (PW-1) against accused No. 11 Naresh Kumar, adds to the doubt.

31. We may gainfully refer to the following observations of this Court in the case of **Ramesh Baburao Devaskar and Others v. State of Maharashtra**⁶:

“19. In a case of this nature, enmity between two groups is accepted. In a situation of this nature, whether the first information report was ante- timed or not also requires serious consideration. First information report, in a case of this nature, provides for a valuable piece of evidence although it may not be a substantial evidence. The reason for insisting on lodging of first information report without undue delay is to obtain the earlier information in regard to the circumstances in which the crime had been committed, the name of the accused, the parts played by them, the weapons which had been used as also the names of eyewitnesses. Where the parties are at loggerheads and there had been instances which resulted in death of one or the other, lodging of a first information report is always considered to be vital.”

As held by this Court, the FIR is a valuable piece of evidence, although it may not be substantial evidence. The immediate lodging of an FIR removes suspicion with regard to over implication of number of persons, particularly when the case involved a fight between two groups. When the parties are at loggerheads, the immediate lodging of the FIR provides credence to the prosecution case.

32. Undisputedly, the present case rests on the evidence of interested witnesses. No doubt that two of them are injured witnesses. This Court,

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in the case of *Vadivelu Thevar v. The State of Madras*⁷, has observed thus:

“11.Hence, in our opinion, it is a sound and well-established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact. Generally speaking, oral testimony in this context may be classified into three categories, namely:

- (1) Wholly reliable.
- (2) Wholly unreliable.
- (3) Neither wholly reliable nor wholly unreliable.

12. In the first category of proof, the court should have no difficulty in coming to its conclusion either way — it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial.....”

- 33. It could thus be seen that in the category of “wholly reliable” witness, there is no difficulty for the prosecution to press for conviction on the basis of the testimony of such a witness. In case of “wholly unreliable” witness, again, there is no difficulty, inasmuch as no conviction could be made on the basis of oral testimony provided by a “wholly unreliable” witness. The real difficulty comes in case of the third category of evidence which is partly reliable and partly unreliable. In such cases, the court is required to be circumspect and separate the chaff from the grain, and seek further corroboration from reliable testimony, direct or circumstantial.
- 34. Undisputedly, in the present case, PWs 2 and 9 are injured witnesses. As such, their presence cannot be disputed. However, as already observed hereinabove, in case of proven previous enmity, a possibility of false implication cannot be ruled out. In the present case, it would be seen that the entire family of accused No. 12 Paltan Jangde has

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been roped in. Though PW-2 has identified and named the accused in her cross-examination, she has stated that, though she recognized the relatives of the accused persons, she does not remember their names. As such, the possibility of implicating the entire family of Paltan cannot be ruled out.

35. As already discussed hereinabove, the names of Nand Lal, Bhagwat and Ramdular are not mentioned in the merg report, which was lodged prior to the lodging of FIR, so also their names are not found in the inquest panchnama and spot panchnama. Taking into consideration the delay in lodging the FIR, with the circumstance of their names not being mentioned in the contemporaneous documents, the possibility of the said accused being falsely implicated cannot be ruled out. In our view, the conviction of these accused purely on the basis of oral testimony of the interested witnesses, without sufficient corroboration, would not be sustainable.
36. The prosecution has examined Baliram Sahu (PW-3), Inder Sahu (PW-5), Jeewan Lal (PW-6) and Budheram (PW-8), none of whom have supported the prosecution case. According to PWs 2, 9 and 13, it was the witness Baliram Sahu (PW-3) who had arranged for the tractor to take the injured persons to Baloda Bazar. However, he has stated that though Mangtin Bai (PW-2) came to his place to inform him about the incident, she had not informed him as to which of the accused had assaulted the deceased and the injured persons. In our view, therefore, the said appellants would also be entitled to benefit of doubt.
37. We are, therefore, of the considered view that the appellants Nand Lal, Bhagwat, Ramdular and Naresh Kumar are entitled to benefit of doubt.
38. In the result, we pass the following order:
 - (i) The appeals are allowed;
 - (ii) The judgment and order dated 11th November 2014 passed by the Division Bench of the High Court of Chhattisgarh at Bilaspur, and the judgment and order dated 24th May 2008 passed by the trial court are quashed and set aside; and
 - (iii) The appellants are acquitted of the charges charged with and are directed to be set at liberty forthwith, if not required in any other case.

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39. Pending application(s), if any, shall stand disposed of.
40. Before we part with the judgment, we must place on record our appreciation for the valuable assistance rendered by Shri Vikas Upadhyay, learned counsel appearing on behalf of accused Nos. 8 to 10 and Shri Sumeer Sodhi, learned counsel appearing on behalf of the respondent-State. A special mention needs to be made of the painstaking efforts taken by Shri Renjith B. Marar, learned counsel, who was appointed through the Supreme Court Legal Services Authority as an *amicus curiae* for accused No. 11.

Headnotes prepared by: Nidhi Jain
(Assisted by: Shashwat Jain, LCRA)

Result of the case: Appeals allowed.