

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL APPEAL (DB) No.13 of 1998**

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1. Gainu Mandal son of Late Sri Asrafi Mandal, resident of village Mahiyama, P.S. Sanhoula, District Bhagalpur
2. Sri Mohan Sah, son of Bhola Sah resident of village Mahiyama, P.S. Sanhoula, District Bhagalpur
3. Sarbind Sah, son of Baishakhi Sah, resident of village Mahiyama, P.S. Sanhoula, District Bhagalpur

... .. Appellant/s

Versus

STATE OF BIHAR

... .. Respondent/s

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**Appearance :**

For the Appellant/s : Mr. Baxi S.R.P. Sinha, Sr. Advocate  
Mr. D.K. Pandey, Advocate  
For the Respondent/s : Mr. Dilip Kumar Sinha, APP

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**CORAM: HONOURABLE MR. JUSTICE NANI TAGIA**

**and**

**HONOURABLE MR. JUSTICE ANSUL**

**ORAL JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE ANSUL)**

**Date : 13-05-2026**

Heard Mr. Baxi S.R.P. Sinha learned senior counsel assisted by Mr. D.K. Pandey learned counsel for the appellants and Mr. Dilip Kumar Sinha learned Additional Public Prosecutor for the State.

2. In the instant appeal, the appellants have challenged the judgment of conviction dated 18.12.1997 and order of sentence dated 20.12.1997 passed by the learned Additional Sessions Judge-II, Bhagalpur in Sessions Trial No. 421 of 1993, arising out of Sanhoula P.S. Case No. 61 of 1992 (G.R. No. 1740 of 1992) dated 14.08.1992, whereby the appellants have been convicted under



Sections 302/34 and 120B of Indian Penal Code (for short "I.P.C."). For the offence under section 302/34 IPC, the appellants have been sentenced to undergo rigorous imprisonment for life. No separate sentence was awarded under Section 120B IPC.

3. As per the present F.I.R. , the informant Sujeet Kumar Sah (PW-9) lodged information with police stating therein that on 14.08.1992, his mother Mala Devi, was sleeping in the courtyard. His Fua, namely, Sakun Devi came to call him. When he went to the Thakurbari of Chhoku Singh, he saw at his house that his mother was lying in the middle of courtyard on the cot, in injured condition and she was bleeding from her abdomen. Upon asking, his mother showed her inability to speak and signaled him by way of showing four fingers. The informant further stated that he would gather information as to who has tried to stab his mother and kill her and would disclose the names of the culprits to the police.

4. The FIR was lodged on 14.08.1992 itself but the same was forwarded to the learned Chief Judicial Magistrate on 19.08.1992. The writer of the F.I.R. is Munnilal Sah, who has not been examined .

5. After completion of necessary formalities, police submitted charge-sheet against six persons. The charge-sheet gave



list of fourteen prospective witnesses. Charges were framed on 19.12.1994 and thereafter trial commenced.

6. During the course of trial, altogether eleven witnesses were examined in support of the prosecution case, which are as under: -

P.W.-1	Kamla Kant Jha
P.W.-2	Etwari Sah
P.W.-3	Amrendra Sah
P.W.-4	Suresh Sah
P.W.-5	Bijoy Chandra Jha
P.W.-6	Shankar Sah
P.W.-7	Gaibi Sah
P.W.-8	Sakun Devi
P.W.-9	Sujeet Kumar Sah
P.W.-10	T.N. Biswas
P.W.-11	Dr. Kailash Jha

7. Apart from the oral evidences, the documentary evidences were also exhibited on behalf of the prosecution, which are as follows: -

Exhibit- 1	Signature of Kamla Kant on the seizure-list
Exhibit- 1/1	Signature of Chedi Ram Sah on the seizure-list
Exhibit- 2	Signature of Itwari Sah on the carbon copy of Inquest Report
Exhibit- 2/1	Signature of Basudeo Sah on the carbon copy of Inquest Report
Exhibit- 3	Signature of the Informant on the written report
Exhibit-3/A	Written Report
Exhibit- 4	Seizure-list
Exhibit- 5	Inquest Report
Exhibit- 6	Formal FIR



Exhibit- 7

Post-mortem Report

**8.** PW-1 Kamlakant Jha is also the witness of seizure list. He stated that at 12:31 AM he received information that Mala Devi has been stabbed. She was sent to hospital and thereafter to Bhagalpur. He raised suspicion against Nishia Devi and her son and Gainu Mandal, Sarvind Sah and Mohan Sah.

**9.** PW-2 Etwari Sah is a witness of the seizure list.

**10.** PW-3 Amrendra Sah is also a witness to the inquest report.

**11.** PW-4 Suresh Sah is the son of the deceased. He is not an eyewitness, and he admitted that at the time of occurrence he was at his *Sasural*. He stated that his Fua Sakun Devi gave him the information that Mohan Sah, Gainu Mandal and Sarvind Sah were assailants of the deceased and some other person whose named starts from the letter "P", however she was not able to say the full name as she was injured.

**12.** PW-5 is a homeopathic doctor. He states that Sakun Devi told him that his Bhabhi has been stabbed and that the deceased had disclosed the names of Gainu Mandal, Sarvind Sah and Shiv Mohan Sah and someone whose name starts with letter "P", alleging that they have stabbed her.



**13.** PW-6 is Shankar Sah. He is the husband of the deceased who stated that he came to know from Sakun Devi that his wife disclosed the name of Sarvind Sah, Shiv Mohan and Gainu Mandal and she could not completely state the name of the fourth person. The deceased was taken to hospital however, she succumbed to the injuries, on her way to the hospital. After two days of killing he came to know at Kolkata through his nephew Munilal Saw about the occurrence. He admitted that his sons were not at his house. He repeated that he came to know about the occurrence from his sister.

**14.** P.W. 7 was declared hostile.

**15.** PW-8 is Sakun Devi. She is the star witness. She states that she asked them to call the doctor and she did not disclose the name of the persons who killed her. Hence, the star witness has declared hostile.

**16.** PW-9 is the informant. He states that he was not an eye witness.

**17.** PW-10 is the Investigating Officer. He states that Sakun Devi told him that Gainu Mandal, Shiv Mohan and Sarvind Sah were the assailants.



**18.** PW-11 is the doctor who found sharp cut wound on left side abdomen on the body of the deceased. The homicidal death of the deceased is not in dispute.

**19.** We have considered the submissions of the parties and perused the materials available on record. This Court is flabbergasted and perplexed as to how at all on the basis of materials mentioned above a trained judicial officer could record a finding of guilt. The consistent prosecution case is that the first person who reached at the place of occurrence was Sakun Devi (PW-8) and all the witnesses have clearly stated that they came to know about the said occurrence through Sakun Devi. However, Sakun Devi, herself was declared hostile. The trial court has relied upon the statement of PW-1, 4, 5 and 6 as the persons who stated the name of the accused persons. The learned Sessions judge seems to have lost site of the basic principle of Evidence Act as contained in Section 60 that oral evidence has to be direct. It would be relevant here to quote **Section 60 of the Evidence Act** which reads as follows:-

*60. Oral evidence must be direct.-Oral evidence must, in all cases whatever, be direct: that is to say-*

*If it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it;*

*If it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it;*



*If it refers to a fact which could be perceived by any sense or in any other manner, it must be the evidence of a witness who says he perceived it by that sense or in that manner;*

*If it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds:*

*Provided that the opinions of experts expressed in any treatise commonly offered for sale, and the grounds on which such opinions are held, may be proved by the production of such treatises if the author is dead or cannot be found, or has become incapable of giving evidence, or cannot be called as a witness without an amount of delay or expense which the Court regards as unreasonable.*

*Provided also that, if oral evidence refers to the existence or condition of any material thing other than a document, the Court may, if it thinks fit, require the production of such material thing for its inspection.*

**20.** The oral evidence has to be direct and not hearsay.

The statement of PW 1, 4, 5 and 6 is oral evidence without any doubt but the same is not direct. The statement thus has to be completely taken out of consideration in view of Section 60 of the Indian Evidence Act.

**21.** Moreover, there is yet another angle of the matter.

The FIR has been lodged on 14.08.1992 itself by PW-9. His version in the FIR clearly shows that he had met Sakun Devi prior to lodging of the FIR and it is thus impossible that his version has



not gone into making of the FIR. In such situation the FIR does not remain a document which could only be used to contradict or corroborate the maker of it but becomes a relevant fact under Section 11 of the Evidence Act and the entire prosecution version could be tested with reference to the FIR. Omission of the name of the assailants in the FIR which contained the version of Sakun Devi (PW8) also is a material omission and it makes it clear that Sakun Devi has not at all initially taken the name of the accused persons but the same was later added. A similar finding has been recorded by the Hon'ble Supreme Court in the case of **Ram Kumar Pandey v. State of M.P.** reported as **(1975) 3 SCC 815**, in paragraph 9 which reads as under:-

*“9. No doubt, an FIR is a previous statement which can, strictly speaking, be only used to corroborate or contradict the maker of it. But, in this case, it had been made by the father of the murdered boy to whom all the important facts of the occurrence, so far as they were known up to 9-15 p.m. on March 23, 1970, were bound to have been communicated. If his daughters had seen the appellant inflicting a blow on Harbinder Singh, the father would certainly have mentioned it in the FIR We think that omissions of such important facts, affecting the probabilities of the case, are relevant under Section 11 of the Evidence Act in judging the veracity of the prosecution case.”*



22. Yet another angle of the case is that the FIR was lodged on 14.08.1992 but the same was sent to the Court on 19.08.1992. There is absolutely no explanation at all for the same forthwith coming from Investigating Officer. No doubt no question has been asked from the Investigating Officer regarding the explanation for the delay but in the considered opinion of this Court the requirement of Section 157 CrPC as settled by Hon'ble Supreme Court is to send the FIR to the concerned court forthwith which has been interpreted as not more than twenty-four hours. In the case of *Chotkau v. State of U.P.* reported in (2023) 6 SCC 742, the Hon'ble Supreme Court has held as under: -

*“60. On the importance of promptitude, both in the registration of the FIR and in the transmission of the same to the court, reliance is placed by Shri Nagamuthu, learned Senior Counsel on the following passage in Meharaj Singh v. State of U.P. [Meharaj Singh v. State of U.P., (1994) 5 SCC 188 : 1994 SCC (Cri) 1391] : (SCC pp. 195-96, para 12)*

*“12. FIR in a criminal case and particularly in a murder case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstance in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any, used, as also the names of*



*the eyewitnesses, if any. Delay in lodging the FIR often results in embellishment, which is a creature of an after-thought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story. With a view to determine whether the FIR was lodged at the time it is alleged to have been recorded, the courts generally look for certain external checks. One of the checks is the receipt of the copy of the FIR, called a special report in a murder case, by the local Magistrate. If this report is received by the Magistrate late it can give rise to an inference that the FIR was not lodged at the time it is alleged to have been recorded, unless, of course the prosecution can offer a satisfactory explanation for the delay in dispatching or receipt of the copy of the FIR by the local Magistrate. Prosecution has led no evidence at all in this behalf. The second external check equally important is the sending of the copy of the FIR along with the dead body and its reference in the inquest report. Even though the inquest report, prepared under Section 174CrPC, is aimed at serving a statutory function, to lend credence to the prosecution case, the details of the FIR and the gist of statements recorded during inquest proceedings get reflected in the report. The absence of those details is indicative of the fact that the prosecution story was still in embryo state and had not been given any shape and that the FIR came to be recorded later on after due deliberations and consultations and was then ante timed to give it the colour of a promptly lodged FIR. In our opinion, on account of the infirmities as noticed above, the FIR has lost its value and authenticity and it appears to us that the same has*



*been ante-timed and had not been recorded till the in-quest proceedings were over at the spot by PW 8.”*

*61. While reiterating the above principles, a note of caution was also added by this Court in Bhajan Singh v. State of Haryana [Bhajan Singh v. State of Haryana, (2011) 7 SCC 421 : (2011) 3 SCC (Cri) 241] . Paras 28 to 30 of the said decision read as follows : (SCC p. 431)*

*“28. Thus, from the above it is evident that the Criminal Procedure Code provides for internal and external checks : one of them being the receipt of a copy of the FIR by the Magistrate concerned. It serves the purpose that the FIR be not ante-timed or ante-dated. The Magistrate must be immediately informed of every serious offence so that he may be in a position to act under Section 159CrPC, if so required. Section 159CrPC empowers the Magistrate to hold the investigation or preliminary enquiry of the offence either himself or through the Magistrate subordinate to him. This is designed to keep the Magistrate informed of the investigation so as to enable him to control investigation and, if necessary, to give appropriate direction.*

*29. It is not that as if every delay in sending the report to the Magistrate would necessarily lead to the inference that the FIR has not been lodged at the time stated or has been ante-timed or ante-dated or investigation is not fair and forthright. Every such delay is not fatal unless prejudice to the accused is shown. The expression “forthwith” mentioned therein does not mean that the prosecution is required to explain delay of every hour in sending the FIR to the Magistrate. In a given case, if number of dead and injured persons is very high,*



*delay in dispatching the report is natural. Of course, the same is to be sent within reasonable time in the prevalent circumstances.*

*30. However, unexplained inordinate delay in sending the copy of FIR to the Magistrate may affect the prosecution case adversely. An adverse inference may be drawn against the prosecution when there are circumstances from which an inference can be drawn that there were chances of manipulation in the FIR by falsely roping in the accused persons after due deliberations. Delay provides legitimate basis for suspicion of the FIR, as it affords sufficient time to the prosecution to introduce improvements and embellishments. Thus, a delay in dispatch of the FIR by itself is not a circumstance which can throw out the prosecution's case in its entirety, particularly when the prosecution furnishes a cogent explanation for the delay in dispatch of the report or prosecution case itself is proved by leading unimpeachable evidence.”*

*(emphasis supplied)*

*62. It is clear from the aforesaid decisions that the delay in forwarding the FIR may certainly indicate the failure of one of the external checks to determine whether the FIR was manipulated later or whether it was registered either to fix someone other than the real culprit or to allow the real culprit to escape. While every delay in forwarding the FIR may not necessarily be fatal to the case of the prosecution, courts may be duty-bound to see the effect of such delay on the investigation and even the creditworthiness of the investigation.*

*63. Section 157(1) of the Code requires the officer-in-charge of the police station to send the FIR,*



*“forthwith”*. The legal consequences of the delay on the part of the police in forwarding the FIR to the court was considered by this Court in *Brahm Swaroop v. State of U.P.* [*Brahm Swaroop v. State of U.P.*, (2011) 6 SCC 288 : (2011) 2 SCC (Cri) 923] Incidentally *Brahm Swaroop* [*Brahm Swaroop v. State of U.P.*, (2011) 6 SCC 288 : (2011) 2 SCC (Cri) 923] is also a case where there was a delay of five days in sending the report to the Magistrate (as in the present case). After taking note of several earlier decisions of this Court, this Court held in *Brahm Swaroop* [*Brahm Swaroop v. State of U.P.*, (2011) 6 SCC 288 : (2011) 2 SCC (Cri) 923] in para 21 as follows : (SCC p. 300)

*“21. In the instant case, the defence did not put any question in this regard to the Investigating Officer, Raj Guru (PW 10), thus, no explanation was required to be furnished by him on this issue. Thus, the prosecution had not been asked to explain the delay in sending the special report. More so, the submission made by Shri Tulsi that the FIR was ante-timed cannot be accepted in view of the evidence available on record which goes to show that the FIR had been lodged promptly within 20 minutes of the incident as the police station was only 1 km away from the place of occurrence and names of all the accused had been mentioned in the FIR.”*

*(emphasis supplied)*

**64.** To come to the above conclusion, reliance was placed upon a decision of a three-Judge Bench in *Balram Singh v. State of Punjab* [*Balram Singh v. State of Punjab*, (2003) 11 SCC 286 : 2004 SCC (Cri) 149] . In *Balram Singh* [*Balram Singh v. State of Punjab*, (2003) 11 SCC 286 : 2004 SCC (Cri) 149] , the three-Judge



*Bench of this Court rejected the contention with regard to the delay in transmitting the FIR to the Magistrate, on the ground that : (SCC p. 291, para 10)*

*“10. ... while considering the complaint in regard to the delay in the FIR reaching the jurisdictional Magistrate, we will have to also bear in mind the creditworthiness of the ocular evidence adduced by the prosecution and if we find that such ocular evidence is worthy of acceptance, the element of delay in registering a complaint or sending the same to the jurisdictional Magistrate by itself would not in any manner weaken the prosecution case.”*

*65. In State of Rajasthan v. Daud Khan [State of Rajasthan v. Daud Khan, (2016) 2 SCC 607 : (2016) 1 SCC (Cri) 793] , this Court referred to Brahm Swaroop [Brahm Swaroop v. State of U.P., (2011) 6 SCC 288 : (2011) 2 SCC (Cri) 923] and interpreted the word “forthwith” appearing in Section 157(1) of the Code, as follows : (Daud Khan case [State of Rajasthan v. Daud Khan, (2016) 2 SCC 607 : (2016) 1 SCC (Cri) 793] , SCC p. 619, para 26)*

*“26. ... The purpose of the “forthwith” communication of a copy of the FIR to the Magistrate is to check the possibility of its manipulation. Therefore, a delay in transmitting the special report to the Magistrate is linked to the lodging of the FIR. If there is no delay in lodging an FIR, then any delay in communicating the special report to the Magistrate would really be of little consequence, since manipulation of the FIR would then get ruled out. Nevertheless, the prosecution should explain the delay in transmitting the special report to the Magistrate. However, if no question is put to the investig-*



*ating officer concerning the delay, the prosecution is under no obligation to give an explanation. There is no universal rule that whenever there is some delay in sending the FIR to the Magistrate, the prosecution version becomes unreliable. In other words, the facts and circumstances of a case are important for a decision in this regard.”*

*66. Therefore, the learned Additional Advocate General for the State may be right, in theory, that a delay in transmission of the FIR to the court, may not, per se, be fatal, without anything more. But in the case on hand, the delay was not small. The FIR said to have been registered on 8-3-2012 was received by the Court of the Chief Judicial Magistrate on 13-3-2012. It is true that no question was put in cross-examination to the investigating officer about this delay.*

*67. But we have found that the evidence of PWs 1 to 3 is untrustworthy, particularly on the question of the origin and genesis of the first information report. Therefore the inordinate delay in the FIR reaching the jurisdictional court assumes significance. We agree that the word “forthwith” in Section 157(1) of the Code is to be understood in the context of the given facts and circumstances of each case and a straitjacket formula cannot be applied in all cases. But where ocular evidence is found to be unreliable and thus unacceptable, a long delay has to be taken note of by the court. The mandate of Section 157(1) of the Code being clear, the prosecution is expected to place on record the basic foundational facts, such as, the officer who took the first information report to the jurisdictional court, the authority which directed such a course of action and the mode by which it*



*was complied. Explaining the delay is a different aspect than placing the material in compliance of the Code.*

*68. In the present case, it is not even known as to who took the first information report from PW 6 or PW 4 and submitted before the jurisdictional court. Neither PW 4 nor PW 6 spoke about the person who took the FIR to the court. They did not say that they took it to the court. It is not a case of mere delay in sending the first information report, but one involving the contradictory evidence by the prosecution witnesses on the manner in which the first information report is written.*

*69. On the question of compliance of Section 157(1) along with logical reasoning for doing so, the following passage from the decision in Jafarudheen v. State of Kerala [Jafarudheen v. State of Kerala, (2022) 8 SCC 440 : (2022) 3 SCC (Cri) 436] may be usefully quoted as under : (SCC p. 462, paras 28-29)*

*“28. The jurisdictional Magistrate plays a pivotal role during the investigation process. It is meant to make the investigation just and fair. The investigating officer is to keep the Magistrate in the loop of his ongoing investigation. The object is to avoid a possible foul play. The Magistrate has a role to play under Section 159CrPC.*

*29. The first information report in a criminal case starts the process of investigation by letting the criminal law into motion. It is certainly a vital and valuable aspect of evidence to corroborate the oral evidence. Therefore, it is imperative that such an information is expected to reach the jurisdictional Magistrate at the earliest point of time to avoid any possible ante-dating or ante-timing leading to the insertion of materials meant to*



*convict the accused contrary to the truth and on account of such a delay may also not only get bereft of the advantage of spontaneity, there is also a danger creeping in by the introduction of a coloured version, exaggerated account or concocted story as a result of deliberation and consultation. However, a mere delay by itself cannot be a sole factor in rejecting the prosecution's case arrived at after due investigation. Ultimately, it is for the court concerned to take a call. Such a view is expected to be taken after considering the relevant materials."*

**23.** It is the considered opinion of this Court that when the statute as interpreted by Hon'ble Supreme Court prescribed a time limit then it is the duty of the prosecution to either do it within that time frame or to furnish an explanation without any question from the defence. This must be treated as part of proving the prosecution case. It is trite law that the prosecution case must stand on its own legs and it cannot take advantage of strength and weaknesses of the defence case.

**24.** In such circumstances, this Court finds absolutely no reliable material to affirm the impugned judgment.

**25.** Accordingly, the appeal is allowed and judgment of conviction dated 18.12.1997 and order of sentence dated 20.12.1997 passed by the learned Additional Sessions Judge-II, Bhagalpur in Sessions Trial No. 421 of 1993, arising out of Sanhaua P.S. Case No. 61 of 1992 (G.R. No. 1740 of 1992) dated



14.08.1992, whereby the appellants have been convicted under Sections 302/34 and 120B of Indian Penal Code are set aside. Consequently, the appellants of the present appeal are acquitted of the charges levelled against them.

**26.** If the appellants are in jail, they shall be released forthwith, if not required in any other case. Their bail bonds are discharged.

**27.** The lower court records be sent to the concerned trial court.

**(Ansul, J)**

I agree

amitkr/-

**(Nani Tagia, J)**

AFR/NAFR	NAFR
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