SRI SAMBHU DAS @ BIJOY DAS & ANR. A

v.

STATE OF ASSAM

(Criminal Appeal No. 342 of 2007)

SEPTEMBER 15, 2010 B

[DR. MUKUNDAKAM SHARMA AND H.L. DATTU, JJ.]

Penal Code, 1860: s.302/34 – Murder – Conviction based on evidence of eye-witnesses – Concurrent findings of courts below – Interference with – Held: No reason to upset C *the concurrent findings of courts below – The evidence of eye-witness was corroborated by the investigating officer and the post-mortem report and was found to be trustworthy and reliable – Merely because some persons were not examined would not corrode the vitality of the prosecution version,* D *particularly, when witnesses examined withstood the cross-examination and pointed to the accused persons as perpetrators of the crime – Constitution of India, 1950 – Art.136 – Evidence.*

Constitution of India, 1950: Art.136 – Scope of – Held: E *Art.136 only confers a discretionary power on the Supreme Court to be exercised sparingly to interfere in suitable cases where grave miscarriage of justice has resulted from illegality or misapprehension or mistake in reading evidence or from* F *ignoring, excluding or illegally admitting material evidence – When there are concurrent findings of facts and/or when there is no question of law involved and the conclusion is not perverse, the Supreme Court would not re-open the findings of the High Court.*

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Code of Criminal Procedure, 1973:

s.174 – Inquest report – FIR lodged after recording inquest report – Authenticity of – Held: The proposition that

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A *FIR loses its authenticity if it is lodged after the inquest report is a general proposition and may not be true in all cases and all circumstances – On facts, entry made in the general diary on the basis of telephonic message/information and on receipt of that information, the investigating officer went to the*
B *place of incident, drew up the inquest report, made seizure of the material objects and recorded the statements of persons present – Formal FIR lodged after few hours – Lodging of FIR after recording the inquest report would not be fatal – FIR.*

s.174 – Inquest report – Object of – Held: Is to ascertain
C *whether a person has died under unnatural circumstances or died an unnatural death and, if so, what was the cause of death.*

FIR: When information regarding a cognizable offence is
D *furnished to the police, that information is regarded as the FIR and all enquiries held by the police, subsequent thereto would be treated as investigation, even though the formal registration of the FIR takes place only later.*

E **The prosecution case was that on 7.6.1997, the deceased was returning home on a rickshaw driven by PW-2. On the way, the appellants and others assaulted the deceased and thereafter forcibly took him to a house where he was assaulted by all the accused persons. The**
F **wife of the deceased was informed about the assault on her husband. She came to the place of occurrence and saw the accused persons assaulting the deceased. The police was informed by PW-8. The police came to the place of occurrence and took the injured to the hospital where he was declared dead. The appellants-accused**
G **and two others were convicted under Section 302/34 IPC. The order of trial court was upheld by the High Court.**

In the instant appeal, it was contended for the appellants that the Supreme Court can take a different
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view and also come to a different conclusion than the one arrived at by the trial court and the High Court if it *prima facie* comes to the conclusion that the findings of fact reached by the trial court and confirmed by the High Court suffer from any patent error of law or have resulted in miscarriage of justice; that the FIR was lodged after the inquest was held and, therefore, the FIR was not reliable; and that the important witness was not examined by the prosecution which was fatal to prosecution story.

Dismissing the appeal, the Court

HELD: 1. This Court, in exercise of its powers under Article 136 of the Constitution will not re-open the findings of the High Court when there are concurrent findings of facts and when there is no question of law involved and the conclusion is not perverse. Article 136 of the Constitution does not confer a right of appeal on a party. It only confers a discretionary power on the Supreme Court to be exercised sparingly to interfere in suitable cases where grave miscarriage of justice has resulted from illegality or misapprehension or mistake in reading evidence or from ignoring, excluding or illegally admitting material evidence. [Para 12] [506-E-G]

Dhananjay Shanker Shetty v. State of Maharashtra **(2002) 6 SCC 596**; *Ravinder Parkash & Anr. v. State of Haryana* **(2002) 8 SCC 426**; *Bharat v. State of Madhya Pradesh* **(2003) 3 SCC 106**; *Mousam Singha Roy & Ors. v. State of West Bengal* **(2003) 12 SCC 377**; *Ganga Kumar Srivastava v. State of Bihar* **(2005) 6 SCC 211**; *Basudev Hazra v. Matiar Rahaman Mandal* **AIR 1971 SC 722, relied on.**

Balaka Singh & Ors. v. The State of Punjab **1975(4) SCC 511**; *Ramesh Baburao Devaskar and Ors. v. State of Maharashtra*, **2007(13) SCC 501**; *Badri v. State of Rajasthan* **1995 Supp. (3) SCC 521**; *Ishvarbhai Fuljibhai Patni v. State*

A *of Gujarat* **1995 (1) SCC 178;** *Lal Singh v. State of Madhya Pradesh* **2003 (9) SCC 464;** *Hate Singh Bhagat Singh v. State of Madhya Bharat* **AIR 1953 SC 468, referred to.**

2.1. In the instant case, there was the documentary evidence in the form of G.D. entry recorded by PW-8 in the General Diary on 07.06.1997 at about 6.30 P.M. That entry was made on the basis of the telephonic message/ information supplied by PW-3. It was on receipt of this information that PW-8 went to the place of the incident, drew up the inquest report, made seizure of the material objects and recorded the statement of those present, including PW-1. Admittedly, the inquest report was prepared by PW-8 at 9.30 P.M. and the formal FIR was lodged by PW-1 at 11.30 P.M. The proposition that the FIR loses its authenticity if it is lodged after the inquest report is a general proposition and may not be true in all cases and all circumstances. This general proposition cannot be universally applied, by holding that if the FIR is lodged for whatever reason after recording the inquest report the same would be fatal to all the proceedings arising out of the Indian Penal Code. [Para 16] [508-B-F]

2.2. The Inquest Report is prepared under Section 174 Cr.P.C. The object of the inquest proceedings is to ascertain whether a person has died under unnatural circumstances or died an unnatural death and, if so, what was the cause of death. The question regarding the details as to how the deceased was assaulted or who assaulted him or under what circumstances he was assaulted, is foreign to the ambit and scope of the proceedings under Section 174 Cr.P.C. The names of the assailants and the manner of assault are not required to be mentioned in the inquest report. The purpose of preparing the inquest report is for making a note in regard to identification marks of the accused. Mention of the

name of the accused and eye-witness in the inquest report is not necessary. Due to non-mentioning of the name of the accused in the inquest report, it cannot be inferred that the FIR was not in existence at the time of inquest proceedings. Inquest report and post mortem report cannot be termed to be substantive evidence and any discrepancy occurring therein can neither be termed to be fatal nor even a suspicious circumstance which would warrant a benefit to the accused and the resultant dismissal of the prosecution case. The contents of the inquest report cannot be termed as evidence, but they can be looked into to test the veracity of the witnesses. [Para 17] [508-G-H; 509-A-D]

Podda Narayana v. State of Andhra Pradesh **AIR 1975 SC 1252;** *George v. State of Kerala* **AIR 1998 SC 1376;** *Suresh Rai v. State of Bihar* **AIR 2000 SC 2207, referred to.**

2.3. The well settled principle is that when information regarding a cognizable offence is furnished to the police, that information is regarded as the FIR and all enquiries held by the police, subsequent thereto would be treated as investigation, even though the formal registration of the FIR takes place only later. Assuming that some report was made on telephone and that was the real FIR, that by itself would not affect the appreciation of evidence made by the Sessions Judge and the conclusions of fact drawn by him. The FIR under Section 154 Cr. P.C. is not a substantive piece of evidence. Its only use is to contradict or corroborate the maker thereof. [Paras 23, 24] [511-D-F]

Maha Singh v. State (Delhi Administration) **(1976) SCC 644;** *State of U.P. v. Bhagwant Kishore* **AIR 1964 SC 221, referred to.**

3.1. The post-mortem was conducted by the doctor-PW6. The post-mortem report of the deceased stated that

A injuries were found to be ante mortem in nature. In the opinion of PW6, death was due to shock and hemorrhage resulting from the injuries sustained which were caused by blunt weapons. Unfortunately, the doctor did not state in his report whether the injuries sustained by the
B deceased were of homicidal in nature. He further opined that the injuries were fresh and caused by a blunt object. PW-8 was the investigating officer. A little comparison of the seized objects and the wounds found on the body of the deceased lead to inference that the evidence of PW-
C 8 can be believed, since it corroborated with the opinion of the doctor, PW-6. Therefore, it can be safely inferred that the deceased died because of the injuries sustained by the assault made by other persons and not by self-inflicted wounds. [Paras 25] [511-G-H; 512-A-E]

D 3.3. In the cross-examination of PW-1, nothing very striking was elicited except minor contradiction, which would not shake her credibility. In fact, she had stated that immediately after the post-mortem of the dead body, she lodged the FIR with the police and she further denied
E the suggestion that she did not tell the police that the accused persons had assaulted her husband and killed him while he was returning home on a Rickshaw. Therefore, two important aspects emerged from her evidence before the trial court. Firstly, she has seen that
F her husband was tied by means of a rope in a house and secondly, the accused persons including the appellants were assaulting her husband. The reasons for not examining the person who had informed PW1 about the incident were not explained by the prosecution.
G Therefore, that part of the evidence of PW1 has to be eschewed since no effort was made by the prosecution to explain the reason for non-examination of one of the important persons. It is noticed by this Court time and again that in a number of criminal cases, because of
H sloppy attitude shown by the prosecution, the real culprit

goes scot free. It is no doubt true that when statement of PW1 was recorded under Section 161 Cr.P.C., she had not implicated four other accused persons but certainly implicated the appellants and two other accused persons. Merely because she had made some improvement in the FIR lodged by her, her testimony cannot be totally discarded. [Para 27] [513-D-H; 514-A-E]

4. It is not necessary for the prosecution to examine every other witness cited by them in the charge-sheet. Mere non-examination of some persons does not corrode the vitality of the prosecution version, particularly, the witnesses examined have withstood the cross-examination and pointed to the accused persons as perpetrators of the crime. The trial court and the High Court came to the conclusion that the evidence of PW1 was trustworthy and reliable. The evidence of PW1 was corroborated by PW-8 and the post-mortem report issued by PW6. The trial court and the High Court were justified in believing of PW-1. PW2 was declared hostile by the prosecution. However, in his examination-in-chief, he says that he was carrying the victim in his rickshaw and he stopped the rickshaw on the request made by the deceased and at that time, the victim had a quarrel with some persons who then assaulted him with blunt objects. In his cross-examination, he denied the suggestions put to him with reference to his statement made under Section 161 Cr. P.C. before the Investigating Officer. PW3, PW4, PW5 were brought in by the prosecution as eye-witnesses to the occurrence. But all of them had turned hostile. Unfortunately, the trend in this country appears to be, as the time passes, dead are forgotten and the living with a criminal record are worshipped and adored and no witness would like to speak against them. The trial court and the High Court did not give any credence to their evidence. The High Court arrived at its findings after examination and

A **consideration of the main features of evidence. It was only thereafter, the High Court affirmed the findings of the trial court while convicting the accused persons. There is no reason to upset the finding of the trial court and the High Court. [Paras 28, 29, 30, 32 33] [515-E-H; 516-A-D;**
B **517-A-B]**

Case Law Reference:

1975(4) SCC 511	referred to	Paras 4,13,
2007(13) SCC 501	referred to	Paras 4, 13, 15
1995 Supp. (3) SCC 521	referred to	Para 4
1995 (1) SCC 178	referred to	Para 4
2003 (9) SCC 464	referred to	Para 4
AIR 1953 SC 468	referred to	Para 6
(2002) 6 SCC 596	relied on	Para 7
(2002) 8 SCC 426	relied on	Para 8
(2003) 3 SCC 106	relied on	Para 9
(2003) 12 SCC 377	relied on	Para 10
(2005) 6 SCC 211	relied on	Para 11
AIR 1971 SC 722	relied on	Para 12
AIR 1975 SC 1252	referred to	Para 17
AIR 1998 SC 1376	referred to	Para 17
AIR 2000 SC 2207	referred to	Para 17
(1976) SCC 644	referred to	Para 21
AIR 1964 SC 221	referred to	Para 22

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
H No. 342 of 2007.

From the Judgment & Order dated 26.4.2006 of the High Court of Guwahati in CRLA No. 63 of 2005.

M.N. Rao, Azim H. Laskar, A. Ramesh and Abhijit Sengupta for the Petitioners.

Avijit Roy and Navneet (for Corporate Law Group) for the Respondent.

The Judgment of the Court was delivered by

H.L. DATTU, J.1. This appeal is directed against the judgment and order passed by the Gauhati High Court in Criminal Appeal No. 63 of 2005, dated 26.04.2006, whereby and where under, the High Court has affirmed the order passed by the Sessions Judge, Hailakandi, in Sessions Case No.2 of 2002. The appellants are convicted under Section 302/34 IPC and sentenced to imprisonment for life and to pay a fine of Rs. 10,000/- each, and in default, to undergo further imprisonment for six months each.

2. The case of the prosecution is that, on 07.06.1997 at about 5.00 P.M. the deceased Fanilal Das was returning home on a rickshaw driven by Manilal Das (PW2). The deceased stopped the rickshaw near Shiva temple and after offering his prayer, he came back to the rickshaw and at that point of time, the appellants and others assaulted the deceased and, thereafter, forcibly took him to the house of Kunja Mohan where he was assaulted by all the accused persons. It is their further case, that, one Upendra Das informed the wife of the deceased about the assault on her husband by the appellants and on hearing the same, she came to the place of occurrence and saw the accused persons assaulting the deceased, and on being informed by PW-3, police came to the place of incident and took the injured to the hospital where he was declared dead. After completing the investigation, the accused persons were charge-sheeted. Initially, four accused persons were tried by the Sessions Judge, Hailkandi for commission of the

A offence under Section 302/34 IPC. During the trial, four other persons were also arrayed as accused and tried along with the appellants. All the accused persons pleaded not guilty. During the course of the trial, the prosecution examined eight witnesses. After completion of the trial, the appellants were B examined under Section 313 Cr.P.C., wherein the appellants completely denied their involvement in the alleged offence. The learned trial Judge convicted the appellants and two others for the offence under Section 302/34 IPC and sentenced as stated earlier. This order of the Sessions Court is confirmed by the C Gauhati High Court by rejecting the criminal appeals filed by the accused persons.

3. This appeal is filed only by Sambhu Das @ Bijoy Das (Accused No. 4) and Bibhu Das @ Sekhar Das (Accused No. 5).

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4. While assailing the judgment and order of the High Court, it is contended by Shri M.N. Rao, learned senior counsel, that admittedly, the Inquest Report was recorded by the Investigating Officer at 9.30 PM and the FIR was lodged by the E wife of the deceased at 11.30 PM on 07.06.1997. Therefore, it is contended that the First Information Report loses all authenticity if written after Inquest Report. In aid of his submission, reliance is placed on the observation made by this court in the case of *Balaka Singh & Ors. Vs. The State of* F *Punjab,* [1975(4) SCC 511] and *Ramesh Baburao Devaskar and Ors. Vs. State of Maharashtra,* [2007(13) SCC 501]. It is further contended that the High Court has failed to address itself to certain crucial aspects of evidence and proceeded to dispose of the appeal on general observations and more so, in a very casual and cavalier manner which is impermissible G in law. Reliance is placed on the observation made by this court in the case of *Badri vs. State of Rajasthan,* [1995 Supp. (3) SCC 521], *Ishvarbhai Fuljibhai Patni vs. State of Gujarat,* [1995 (1) SCC 178] and *Lal Singh vs. State of Madhya Pradesh,* [2003 (9) SCC 464]. It is further contended that the

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High Court has erred in not appreciating the fact that the accused has put forward a reasonable defence throughout the trial and as well as in their statement recorded under Section 313 of Criminal Procedure Code. While elaborating this contention, it is stated that prior to the occurrence, the complainant's husband and her husband's younger brother Chunnulal Das had got involved in the case regarding the murder of their brother Arun Das and for that reason they have been implicated in the present case out of that grudge. It is further submitted that in the instant case, the High Court has made departure from the rule, that when an accused person puts forward a reasonable defence which is likely to be true and in addition, when the same is supported by some prosecution witnesses, the burden of proof on the other side becomes onerous, because a reasonable and probable story likely to be true when pitted against a weak and vacillating prosecution case and by that reasonable doubt, the accused must get the benefit. It is further submitted that this court, in the case of Hate Singh Bhagat Singh vs. State of Madhya Bharat, [AIR 1953 SC 468] has held that when an accused person puts forward a reasonable defence which is likely to be true and in addition is supported by two prosecution witnesses, then the burden on the other side becomes all the heavier because a reasonable and probable story likely to be true when pitted against a weak and vacillating case is bound to raise reasonable doubts of which the accused must get the benefit. It is also contended that one important material witness, namely, Upen Das, who is said to have informed PW1 that the accused person killed her husband has not been examined by the prosecution, nor has any explanation for not examining him as a witness been given by the prosecution and, therefore, non-examination of Upen Das is fatal to the prosecution story.

5. The learned counsel for the State while justifying the impugned judgment and order, would submit that the concurrent findings on facts by the Sessions Court and the High Court need not be interfered by this Court.

A 6. The question that requires to be noticed and answered is, whether this Court in exercise of the powers under Article 136 of the Constitution of India, can upset the concurrent findings of fact recorded by the Trial Court and the Appellate Court. Shri M.N. Rao, learned senior counsel for the appellants, submits B that this court can take a different view and also come to different conclusion than the one arrived at by the Trial and the Appellate Court, if this Court prima facie comes to the conclusion that the findings of fact reached by the Trial Court and confirmed by the High Court suffers from any patent error C of law or has resulted in miscarriage of justice. In our view, the law on this issue is now well settled by several pronouncements made by this court.

7. In *Dhananjay Shanker Shetty vs. State of Maharashtra,* [(2002) 6 SCC 596], it is stated that :

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> "Ordinarily, after appraisal of evidence by the two courts below and recording concurrent verdict of conviction, this Court does not interfere with the same, but where it is found that compelling grounds exist and there E would be failure of justice, a duty is enjoined upon it to reappraise the evidence itself for doing complete justice in the case."

8. In *Ravinder Parkash & Anr. vs. State of Haryana,* [(2002) 8 SCC 426], it is observed :

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> "....It is true normally this Court would not substitute its subjective opinion of the evidence with that of concurrent findings of the two courts below. However, having considered the findings of the courts below, we have G noticed that the trial court, though by a lengthy judgment has found the appellants guilty, we have found that finding is not supported by the material on record. Therefore, we have considered the prosecution evidence independently and have disagreed with the same for reasons mentioned in this judgment. We have not done this by merely H

substituting our subjective satisfaction but we have done the same for reasons based on material on record....." (Para 14)

9. In *Bharat vs. State of Madhya Pradesh,* [(2003) 3 SCC 106], it is observed that :

"....The prosecution has to prove its case against the appellant beyond reasonable doubt. The chain of circumstances, in our opinion, is not complete so as to sustain the conviction of the appellant. There is thus no substance in the contention urged on behalf of the State that this Court may not interfere in the concurrent findings of fact of the courts below." (Para 12)

10. In *Mousam Singha Roy & Ors. vs. State of West Bengal,* [(2003) 12 SCC 377], it is stated :

"We are also aware that this Court does not disturb the concurrent findings of the courts below if the same are based on legal evidence merely because another view is possible. Thus, keeping in mind the caution expressed by *Baron Alderson* (supra) as also the need to respect the concurrent findings of the two courts below, we have assessed the evidence in this case very carefully, but in spite of the same we are unable to concur with the findings of the courts below. In our opinion, both the courts below have departed from the rule of prudence while appreciating the evidence led by the prosecution." (Para 29)

11. In *Ganga Kumar Srivastava vs. State of Bihar,* [(2005) 6 SCC 211], it is observed :

"From the aforesaid series of decisions of this Court on the exercise of power of the Supreme Court under Article 136 of the Constitution following principles emerge:

(i) The powers of this Court under Article 136 of the Constitution are very wide but in criminal appeals this

A Court does not interfere with the concurrent findings of fact save in exceptional circumstances.

(ii) It is open to this Court to interfere with the findings of fact given by the High Court, if the High Court has acted
B perversely or otherwise improperly.

(iii) It is open to this Court to invoke the power under Article 136 only in very exceptional circumstances as and when a question of law of general public importance arises or a decision shocks the conscience of the Court.
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(iv) When the evidence adduced by the prosecution fell short of the test of reliability and acceptability and as such it is highly unsafe to act upon it.

D (v) Where the appreciation of evidence and finding is vitiated by any error of law of procedure or found contrary to the principles of natural justice, errors of record and misreading of the evidence, or where the conclusions of the High Court are manifestly perverse and unsupportable from the evidence on record. (Para 10)
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12. This Court, in exercise of its powers under Article 136 of the Constitution, will not re-open the findings of the High Court when there are concurrent findings of facts and there is no question of law involved and the conclusion is not perverse.
F Article 136 of the Constitution, does not confer a right of appeal on a party. It only confers a discretionary power on the Supreme Court to be exercised sparingly to interfere in suitable cases where grave miscarriage of justice has resulted from illegality or misapprehension or mistake in reading evidence or from
G ignoring, excluding or illegally admitting material evidence. [See *Basudev Hazra v. Matiar Rahaman Mandal* – AIR 1971 SC 722].

13. Keeping in view the aforesaid settled legal principles, we now proceed to examine the main contention canvassed
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by learned senior counsel Shri M.N. Rao, appearing for the appellant. It is submitted that in the instant case, the investigating officer (PW8), has recorded/prepared the inquest report on 7.6.1997 at 9.30 PM and at the instance of PW1, the first information report was recorded by PW8 on 7.6.1997 at 11.30 PM under Sections 147, 148, 149, 341, 342, 325, 326 and 302 of IPC against four persons and, therefore, it is contended that since FIR is lodged after inquest was held, the FIR is not reliable. Alternatively, it is contended that in a case under Section 302 read with Section 32 IPC, First Information Report cannot be lodged after the inquest has been held. Reliance, as we have already stated, is on the decision of this Court in *Balkasingh's* case (supra) and in *Ramesh Babu Rao Devaskar's* case (supra).

14. In *Balaka Singh's* case, it was observed by this Court, that the names of four accused out of nine were missing in the body of the Inquest Report and this omission was not explained and, therefore, it lead to the probability that FIR must have been prepared after the preparation of Inquest Report. That was a case where there were nine accused persons and the names of five accused were mentioned in the Inquest Report. The A.S.I. had no valid explanation for the same. It was also found by the Court that FIR was registered subsequently. Therefore, the observation of this Court is to be understood in that background. We do not think that this decision lays down that under all circumstances, the First Information Report loses its authenticity, if it is filed after Inquest Report.

15. In Ramesh Babu Rao Devaskar's case, First Information Report was lodged after inquest was held and the same was based on the version of alleged eye witness. This court was of the view that there was no explanation why FIR was not lodged by eye witness and also noticed that the name of only one accused was mentioned in the FIR. However, in the Inquest Report statements of Panch witnesses recorded to the effect that some unknown assailants killed the deceased. Apart

A from the above omission, copy of the FIR was sent to the concerned Magistrate after four days, sharing of common object by other accused persons with the accused who was named in the FIR was not made out and one of the PWs turned hostile and testimony of other two PWs was not reliable. In view B of these discrepancies, this Court, on facts, held it would be hazardous to record conviction of the accused.

16. In the present case, there is the documentary evidence in the form of G.D. entry No.164 recorded by PW-8 in the General Diary on 07.06.1997 at about 6.30 P.M. That entry was C made on the telephonic message/information supplied by Asabuddin Mazumdar, PW-3. It is clearly stated therein by PW-3 that a man named Fanilal Das was lying in a serious condition on the side of verandah of Chandan Das. It was on receipt of this information that PW-8 went to the place of occurrence of D the incident, drew up the inquest report, made seizure of the material objects and recorded the statement of those present, including PW-1. Admittedly, the inquest report is prepared by PW-8 at 9.30 P.M. and the formal FIR is lodged by PW-1 at 11.30 P.M. The learned senior counsel Shri M.N. Rao, by E placing his fingers on the admission made by PW-8 in his evidence would contend, that, FIR loses its authenticity if it is lodged after the inquest report is recorded. This submission of the learned counsel is a general proposition and may not be true in all cases and all circumstances. This general proposition F cannot be universally applied, by holding that if the FIR is lodged for whatever reason after recording the inquest report the same would be fatal to all the proceedings arising out of the Indian Penal Code.

G 17. The Inquest Report is prepared under Section 174 Cr.P.C. The object of the inquest proceedings is to ascertain whether a person has died under unnatural circumstances or an unnatural death and if so, what the cause of death is? The question regarding the details as to how the deceased was assaulted or who assaulted him or under what circumstances H he was assaulted, is foreign to the ambit and scope of the

proceedings under Section 174 Cr.P.C. The names of the assailants and the manner of assault are not required to be mentioned in the inquest report. The purpose of preparing the inquest report is for making a note in regard to identification marks of the accused. The inquest report is not a substantive evidence. Mention of the name of the accused and eye witness in the inquest report is not necessary. Due to non-mentioning of the name of the accused in the inquest report, it cannot be inferred that FIR was not in existence at the time of inquest proceedings. Inquest report and post mortem report cannot be termed to be substantive evidence and any discrepancy occurring therein can neither be termed to be fatal nor even a suspicious circumstance which would warrant a benefit to the accused and the resultant dismissal of the prosecution case. The contents of the inquest report cannot be termed as evidence, but they can be looked into to test the veracity of the witnesses. When an officer incharge of Police Station receives information that a person had committed suicide or has been killed or died under suspicious circumstances, he shall inform the matter to the nearest Magistrate to hold Inquest. A criminal case is registered on the basis of information and investigation is commenced under Section 157 of Cr.P.C. and the information is recorded under Section 154 of Cr.P.C. and, thereafter, the inquest is held under Section 174 Cr.P.C. This Court, in the case of Podda Narayana Vs. State of Andhra Pradesh [AIR 1975 SC 1252], has indicated that the proceedings under Section 174 Cr. P.C. have limited scope. The object of the proceedings is merely to ascertain whether a person has died in suspicious circumstances or an unnatural death and if so, what is the apparent cause of the death. The question regarding details as to how the deceased was assaulted or who assaulted him or under what circumstances, he was assaulted is foreign to the ambit and scope proceeding under Section 174. Neither in practice nor in law was it necessary for the Police to mention these details in the Inquest Report. In George Vs. State of Kerala AIR 1998 SC 1376, it has been held that the Investigating Office is not obliged to

A investigate, at the stage of Inquest, or to ascertain as to who were the assailants. In Suresh Rai Vs. State of Bihar AIR 2000 SC 2207, it has been held that under Section 174 read with Section 178 of Cr. P.C., Inquest Report is prepared by the Investigating Officer to find out prima facie the nature of injuries
B and the possible weapon used in causing those injuries as also possible cause of death.

18. This Court has consistently held that Inquest Report cannot be treated as substantive evidence but may be utilized for contradicting the witnesses of the Inquest. Section 175 Cr.
C P.C. provides that a Police Officer proceedings under Section 174 may, by an order in writing, summon two or more persons for the purpose of the said investigation. The provisions of Sections 174 and 175 afford a complete Code in itself for the purpose of inquiries in cases of accidental or suspicious
D deaths.

19. Section 2 (a) of the Cr.P.C. defines "Investigation" as including all the proceedings under this code for the collection of evidence conducted by the police officer.

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20. Section 157 of the Code says that if, from the information received or otherwise an officer incharge of a police station has reason to suspect the commission of an offence which he is empowered to investigate, he shall forthwith send a report of the same to the Magistrate concerned and proceed
F in person to the spot to investigate the facts and circumstances of the case, if he does not send a report to the Magistrate, that does not mean that his proceedings to the spot, is not for investigation. In order to bring such proceedings within the ambit of investigation, it is not necessary that a formal
G registration of the case should have been made before proceeding to the spot. It is enough that he has some information to afford him reason even to suspect the commission of a cognizable offence. Any step taken by him pursuant to such information, towards detention etc., of the said
H offence, would be part of investigation under the Code.

21. In *Maha Singh vs. State (Delhi Administration),* [(1976) SCC 644], this court considered a case in which police officer arranged a raid after recording a complaint, but before sending it for registration of the case. It was held in that case that "the moment the Inspector had recorded a complaint with a view to take action to track the offender, whose name was not even known at that stage, and proceeded to achieve the object, visited the locality, questioned the accused, searched his person, seized the note and other documents, turns the entire process into investigation under the Code.

22. In *State of U.P. vs. Bhagwant Kishore,* [AIR 1964 SC 221], this court stated that "Though ordinarily investigation is undertaken on information received by a police officer, the receipt of information is not a condition precedent for investigation."

23. The principles now well settled is that when information regarding a cognizable offence is furnished to the police that information will be regarded as the FIR and all enquiries held by the police subsequent thereto would be treated as investigation, even though the formal registration of the FIR takes place only later.

24. Assuming that some report was made on telephone and that was the real First Information Report, this by itself would not affect the appreciation of evidence made by the learned Sessions Judge and the conclusions of fact drawn by him. The FIR under Section 154 Cr. P.C. is not a substantive piece of evidence. Its only use is to contradict or corroborate the maker thereof. Therefore, we see no merit in the submission made by learned counsel for the appellants.

25. Now we focus our attention to the merits of the appeal. The Postmortem was conducted by Dr. Ashit Som (PW6). From the Postmortem Report of the deceased Fanilal Das, it appears that injuries on their examination were found to be ante mortem in nature. In his opinion, death is due to shock and

A haemorrhage resulting from the injuries sustained which were caused by blunt weapons. Unfortunately, the doctor has not stated in his report whether the injuries sustained by the deceased were of homicidal in nature. Therefore, we have seen the report furnished by the doctor, who, as per his post mortem B report found lacerated wound over the middle of frontal region of the scalp with fracture of frontal bone corresponding to the injury, lacerated wound over right parietal of the scalp 6cmx2cmx2cm fracture of parietal bone, two incisior and two canine teeth of both jaws were dislocated. Dislocation of both C elbow and ankle joint was also there. He has further opined that the injuries were fresh and caused by a blunt object. It has come in the evidence of PW-8 that immediately after the inquest report was prepared, the body of the deceased was sent for post mortem. This would coincide with this evidence on this aspect. D Secondly, the seizure report which is marked as one of the exhibit in the evidence, he has clearly stated the material objects seized by him, such as nylon rope, bamboo stick, iron chain, dao, rod and lathi etc. A little comparison of these seized objects and the wounds found on the body of the deceased, a E safe inference can be drawn that this part of evidence of this witness can be believed, since it corroborates with the opinion of the Doctor, PW-6. Therefore, it can be safely inferred that the deceased died because of the injuries sustained by the assault made by other persons and not by self inflicted wounds.

F 26. The prosecution case solely rests on the evidence of PW1. She is the wife of the deceased. PW2, though turned hostile, has spoken to a part of the incident. PW3 is the U.D.P. Secretary of Paikan Bazar. He is alleged to have gone to Paikan Tempur Bazar to purchase sweets and having heard G from the people gathered on the side of the verandah of Chandu Das's house at the Paikan Bazar, that Fanilal Das lying in a serious condition, he informed the Police from Ballu Das's telephone. This version of PW3 appears to be correct. This information, in fact, triggered the Investigating Agency to reach

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the place of incident after making necessary entries in the Registers at the Police Station.

27. The evidence of PW1 requires a thorough scrutiny. PW1 is the wife of the deceased. According to her, one Upendra Das informed her that the accused persons including the appellants are assaulting her husband in Kunja Mohan's house and on receiving the information, it is further stated by her, that she immediately rushed to that place and found that the accused persons had tied the hands of her husband and were assaulting him. It has also come in her evidence that she saw all the accused persons dragging her husband inside their house. She has further stated around that time, the Police Party reached the spot and took her husband in a vehicle and she also accompanied her husband in the same vehicle and on arriving at the hospital, the doctors declared that her husband was dead and after inquest of the dead body, she returned home with the help of police and immediately she lodged the First Information Report (Ext.1). In her cross-examination, suffice it to say, that nothing very striking except minor contradiction has been elicited, which would not shake her credibility. In fact, she has stated that immediately after the Postmortem of the dead body, she lodged the FIR with the Police and she has further denied the suggestion that she did not tell the police that the accused persons had assaulted her husband and killed him while he was returning home from Hailkandi Town on a Rickshaw. Therefore, two important aspects emerge from her evidence before the Trial Court. Firstly, she has seen that her husband was tied by means of a rope in the house of Kunj Mohan Das and secondly, the accused persons including the appellants were assaulting her husband. The case of the prosecution and the fate of the accused entirely depend on her version and, therefore, as we said earlier, it is on her testimony that the fate of these accused persons/appellants really hinges. The reasons for not examining Upendra Das, who is supposed to have informed PW1 about the incident, is not explained by the prosecution. Therefore, we

might have to eschew this part of the evidence of PW1, since no effort is made by the prosecution to explain the reason for non-examination of one of the important persons, who is said to have informed PW1 about the assault and dragging of the deceased into the house of first accused, who is not before us. Then, the next question that would arise is, can we believe, as has been done by both the Courts below, the other part of the testimony of this witness. At this juncture, we intend to add that if the prosecution fails to explain the reason for non-examination of an important witness, who is supposed to have informed the alleged incident, should the accused persons go scot free. It is a difficult question, sometimes difficult to answer. Since, it is noticed by this Court time and again that in number of criminal cases, because of sloppy attitude shown by the prosecution, the real culprit goes scot free. It is no doubt true that when her statement was recorded under Section 161 Cr.P.C., she had not implicated four other accused persons but certainly implicated the appellants and two other accused persons. Merely because she has made some improvement in the FIR lodged by her, we cannot totally discard her testimony.

28. PW8 is the Investigating Officer. He was attached to Hailakandi Police Station. He was the one who visited the place of occurrence on being directed to do so by the office-in-charge of the Police Station. In his evidence, he has stated that Iti Mohan Das-PW3 took him to the place of occurrence and he found the injured Fanilal Das tied at the veranda of the accused persons. It has also come in his evidence that on reaching the place of occurrence, he drew up sketch map of the place of occurrence, and seized incriminating materials. He has also stated that he removed the injured to Hailakandi Civil Hospital where the Medical Officer declared him dead. It has also come in his evidence that he was the one who prepared the Inquest Report. He further narrates that PW2 informed him that the deceased was travelling in his rickshaw and at that time, Chandra Das@Smritikanta and two unknown persons dragged

him out of the rickshaw and assaulted him by means of rod, hunter etc. Though PW2 turned hostile, their part of evidence supports the case of the prosecution. In his cross examination, defence has elicited from him that Inquest Report was prepared by him at 9.30 PM and FIR was registered at 11.30 PM. Much was made at out of this admission by learned senior counsel arguing for the appellants, we have already answered this issue while considering the issue that whether FIR loses all authenticity if written after Inquest Report. The other important admission that was made by him that when he recorded the statement of PW1, she did not mention the names of Subhash, Bela Krishna and Rajan, but had mentioned the names of all the other accused persons. Her version that she went to the place of occurrence on being informed to her about the assaulting of her husband by the accused persons is corroborated in his testimony. It is also of some importance that PW-1 for the first time, in her evidence before the Court, implicated them and that is how, they were arrayed as co-accused and tried along with others. The learned Trial Judge, however, has acquitted those accused persons. In our view, rightly so. In our opinion, it is not necessary for the prosecution to examine every other witness cited by them in the charge-sheet. Mere non-examination of some persons does not corrode the vitality of the prosecution version, particularly, the witnesses examined have withstood the cross-examination and pointed to the accused persons as perpetrators of the crime. The Trial Court and the High Court have come to the conclusion that the evidence of PW1 is trustworthy and reliable. We have also carefully perused the evidence of PW1, whose evidence is corroborated by PW-8 and the Postmortem report issued by PW6, we are convinced that the Trial Court and the High Court were justified in believing the testimony the testimony of PW-1.

29. Manilal Das – PW2 is declared hostile by the prosecution. However, in his examination-in-chief, he says that he was carrying Fanilal Das in his Rickshaw and he stopped

A the Rickshaw at Tepur Bazar on the request made by the deceased and it is at that time, the deceased had a quarrel with some people and some persons assaulted him with blunt objects. In his cross-examination by the learned counsel for the prosecution, he denies the suggestions put to him with B reference to his statement made under Section 161 Cr. P.C. before the Investigating Officer.

30. Md. Asaf Ali Majumdar – PW3, Md. Masuraff Ali Barbhuiya – PW4, Harmendra Das-PW5 are brought in by the prosecution as eye-witnesses to the occurrence. But all of them C have turned hostile. Unfortunately, the trend in this country appears to be, as the time passes, dead are forgotten and the living with a criminal record are worshipped and adored and no witness would like to speak against them. The Trial Court and the High Court has not given any credence to their D evidence.

31. The testimony of Itimohan Das –PW7 has some relevance. He is a local tea shop owner. He has stated that he accompanied the Police to the house of the accused and found E the deceased tied with a rope in the verandah of Kunja Mohan. He also states that he saw some injuries on the body of the deceased person. He also confirms that the Investigating Officer seized a chain, a lathi, one dao and a rope.

32. In our view, having carefully seen the evidence of PW1, F which is corroborated by the postmortem report issued by PW6 and the evidence of PW8, it is trustworthy and reliable. The Trial Court and the High Court have accepted her evidence while holding that the accused persons in furtherance of the common intention, assaulted Fanilal Das and killed him. We do not find G any good reason to upset this finding of the Trial Court and the High Court.

33. The learned senior counsel submitted that the High Court in a most casual manner has rejected the appeals filed H by the accused. This assertion, in our opinion, is not justified.

The High Court has arrived at its findings after examination and consideration of the main features of evidence. It is only thereafter, the High Court has affirmed the findings of the trial court while convicting the accused persons. A

34. In view of the foregoing discussion, we do not see any merit in this appeal. Accordingly, it is dismissed. B

D.G. Appeal dismissed.