2024 INSC 143

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(s). 684 OF 2012

SHAILESH KUMAR … APPELLANT(S)

VERSUS

STATE OF U.P. (NOW STATE OF UTTARAKHAND) … RESPONDENT(S)

J U D G M E N T

M. M. Sundresh, J.

1. The appellant convicted by the Additional Sessions Judge/Special Judge, Anti-Corruption U.P (East) Dehradun in ST 166/1992 under Section 302 of the Indian Penal Code, 1860 (hereinafter referred to as "IPC") for life imprisonment, as confirmed by the Division Bench of the High Court of Uttarakhand at Nainital in Criminal Appeal No. 888 of 2001 seeks acquittal.

2. Heard learned counsel Mr. D.P Singh appearing for the appellant and the learned counsel Mr. Saurabh Trivedi appearing for the respondent. We have perused the entire records placed before us, and taken due note of the synopsis notes submitted.

BRIEF FACTS

3. The deceased, Gajendra Singh went to a picnic along with two friends, Suresh (PW-2) and Sunil Mandal (PW-3) at about 11 a.m. on the fateful day – 21.06.1992. On their return, they were intercepted by the appellant riding on a motorcycle. The appellant by uttering the words "Today I shall pay all your dues", attacked the deceased Gajendra Singh with a knife inflicting two fatal blows on the chest and stomach respectively. The motive of the attack appears to be the failure of the appellant in completing the work for which the deceased gave a sum of Rs.500/-.

4. PW-2 and PW-3 took the deceased, who was bleeding profusely on a tempo whose driver has not been examined, to the hospital in which PW-5 was working. After admitting the deceased in the hospital, PW-2 went to the house of the deceased by travelling, which took him 15 minutes, and passed on the information of attack on deceased, to his father, PW-1. On examination, PW-5 found that the deceased was in a serious condition and, therefore, merely gave first aid and referred the deceased to a hospital in Dehradun. After reaching the hospital, PW-1 made an enquiry with the deceased who gave a dying declaration narrating the incident. PW-5 did not speak about the presence of any of the witnesses except the fact that the deceased was admitted by PW-3 and, therefore, did not refer to the said

dying declaration given to PW-1. PW-1 dictated the complaint to one Mr. Inder Singh (not examined) and went to the police station situated just opposite to the hospital. Prior to the aforesaid action on the part of PW-1, PW-5 has made an entry in the emergency medical register which was subsequently filled up by another person named Dr. B.V. Sharma (not examined). Dr. B.V. Sharma sent report immediately to the police station.

5. Before PW-1 could reach the police station, the report from the hospital had reached and, therefore, investigation was triggered. However, neither First Information Report (FIR) had been registered nor noting had been made in the general diary. In fact, the available noting on the general diary did not disclose any offence committed on 21.06.1992, as per the statement of PW-13, who produced the same before the court.

6. PW-2 and PW-3 took the deceased to the nearby hospital at Dehradun as per the version of PW-1 and PW-2, while PW-3 said it was himself and PW-1 who undertook the said exercise. As per the version of PW-8, the doctor who attended the deceased at the Dehradun hospital, the deceased was brought to the hospital by his brother Mr. Bhupender Singh (not examined).

7. PW-11 took up the investigation. He went to the place of occurrence, drew the sketch and prepared the site plan. While returning, he was informed by PW-7, another brother of the deceased that he received information that the

appellant was trying to escape to Dehradun. PW-6, who heard about the occurrence, went to the place of occurrence out of curiosity. The appellant was found and arrested at about 50-60 yards from the place of occurrence by PW-11 in the presence of PW-6, PW-7 and one Mr. Sanjeev Saini (not examined). The knife that was said to have been used for committing the offence was recovered from an open place at about 50 steps near the place of occurrence. No arrest memo has been prepared though an entry was made in the general diary. Recovery memo was signed by PW-6 and PW-7 alone.

8. The post-mortem was conducted by PW-4, Dr. Jaideep Dutta, which indicated two major injuries, in tune with the case of the prosecution. PW-9, being the police officer of a different jurisdiction, prepared the inquest report, presumably on the ground that the ultimate death happened there, as the second hospital was situated within his jurisdiction.

9. After the initial investigation by PW-11, PW-12 took over the further investigation, but did not take adequate care to check and verify the earlier statements given by the witnesses. Some of the witnesses have been examined at the earliest while the others like PW-2, PW-6 and PW-7 were examined 2 weeks thereafter. The FIR was curiously sent by post and, therefore, reached the jurisdictional magistrate days thereafter.

10. During the course of trial, the prosecution examined 13 witnesses. In the questioning made under Section 313 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "CrPC"), the appellant clearly denied all the charges levelled against him. On a request made on behalf of the appellant, the general diary was summoned and perused by the trial court. This was done as a question was raised on the story propounded by the prosecution which goes to the date and time of the occurrence. On perusal, the trial court found out that there were certain interpolations with specific reference to the dates and certain pages were missing and jumbled. While giving a finding that the noting of the date as 22.06.1992 and thereafter striking it off to 21.06.1992 as a clerical mistake, the trial court went on to put the blame on the appellant that he maneuvered to do so in connivance with somebody, though the said correction could only help the case of the prosecution.

11. While convicting the appellant, the trial court placed heavy reliance upon the evidence of PW-1 to PW-3. The discrepancies *qua* the emergency medical register and amongst the statements of PW-1, PW-2 and PW-3 were brushed aside as minor and natural or ignorable discrepancies due to the passage of time. Much reliance has been placed on the recovery of the two-wheeler, though not mentioned in the site plan. The delay in recording the statement of the witnesses were also taken lightly. The so-called dying declaration

given before PW-1 was accepted, despite a clear statement made by PW-5 that none was present during the stay of the deceased with him till he was sent to the other hospital.

12. The High Court concurred with the decision of the trial court by placing reliance upon the post-mortem report and the testimony of PW-1 to PW-3.

SUBMISSION OF THE APPELLANT

13. Learned counsel for the appellant submitted that the evidence of PW-1 ought not to have been accepted by both the courts. The report from the hospital had reached the police station much before. The person to whom PW-1 dictated the complaint has not been examined. There is no material for motive and the testimony of PW-1 is contrary to the one given by PW-3, PW-5 and PW-8. Similarly, the presence of PW-2 is extremely doubtful as his evidence was recorded weeks thereafter. He was also not found to be present by PW-3 in the second hospital, though PW-3 deposed otherwise. Therefore, evidence of PW-2 also ought to have been eschewed. His statement that it is PW-1 and himself who took the deceased to the second hospital is found to be incorrect in view of the testimony of PW-8. The courts below ought to have placed adequate reliance upon the evidence of PW-5 and PW-8, the doctors, who were admittedly working in the hospital at the relevant point of time. The fact that the FIR was not registered

immediately after the information was received clearly indicates that it was ante-dated. This contention is also strengthened by the inquest report prepared by the police officer of a different police station i.e. by PW-9.

14. Learned counsel vehemently contended that the trial court has committed grave error in not noting the fact that no time, date and adequate particulars were mentioned in the case diary. The object and rationale behind Section 172 of CrPC coupled with Sections 145, 161 and 165 of the Indian Evidence Act, 1872 (hereinafter referred to as "Evidence Act") have been clearly overlooked by both the courts. The motive has not been proved as witnesses have not spoken about it in their statements under Section 161 of CrPC. It is a case of completely botched up investigation and, therefore, the appellant deserves acquittal.

SUBMISSION OF THE RESPONDENT

15. Learned counsel for the State placed substantial reliance upon the recovery of the vehicle. It is stated that admittedly the vehicle belonged to the father of the appellant. That is the reason why an application was filed seeking its custody, which came to be allowed. Both the courts have rightly held that the discrepancies are bound to happen in view of the passage of time from the date of incident till the deposition is recorded in the Court. PW-2 and PW-3 did not have any ulterior motive or reason to implicate the appellant.

PW-3's statement has been recorded at the earliest. There is nothing wrong in the inquest report submitted by PW-9. As there is no perversity, appreciation by both the courts of the evidence available on record for coming to their conclusion does not warrant any interference.

DISCUSSION

16. Before considering the factual submissions of both sides, we shall first deal with the position of law which is relevant for deciding the appeal.

Investigation and the Role of Investigating Officer

17. An investigation of a crime is a lawful search of men and materials relevant in reconstructing and recreating the circumstances of an offence said to have been committed. With the evidence in possession, an Investigating Officer shall travel back in time and, therefore tick off the time zone to reach the exact time and date of the occurrence of the incident under investigation. The goal of investigation is to determine the truth which would help the Investigating Officer to form a correct opinion on the culpability of the named accused or suspect. Once such an opinion is formed on a fair assessment of the evidence collected in the investigation, the role of the court comes into play when the evidence i.e. oral, documentary, circumstantial, scientific, electronic, etc. is presented for and on behalf of the prosecution. In its journey towards determining the truth, a court shall

play an active role while acknowledging the respective roles meant to be played by the prosecution and the defence. During the entire play, the rules of evidence ought to be honoured, sprinkled with the element of fairness through due procedure. Adequate opportunities would have to be given to challenge every assumption. Administration of criminal justice lies in determining the guilt of the accused beyond reasonable doubt. The power of the State to prosecute an accused commences with investigation, collection of evidence and presentation before the Court for acceptance.

18. The investigating agency, the prosecutor and the defence are expected to lend ample assistance to the court in order to decipher the truth. As the investigating agency is supposed to investigate a crime, its primary duty is to find out the plausible offender through the materials collected. It may or may not be possible for the said agency to collect every material, but it has to form its opinion with the available material. There is no need for such an agency to fix someone as an accused at any cost. It is ultimately for the court to decide who the culprit is. **Arvind Kumar @ Nemichand & Ors. v. State of Rajasthan, (2021) 11 SCR 237,**

> **"Fair, Defective, Colourable Investigation**
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> **40. An Investigating Officer being a public servant is expected to conduct the investigation fairly. While doing so, he is expected to look for materials available for coming to a correct conclusion. He is concerned with the offense as against an offender. It is the offense that he investigates**. Whenever a homicide happens, an investigating officer is

expected to cover all the aspects and, in the process, shall always keep in mind as to whether the offence would come under Section 299 IPC sans Section 300 IPC. In other words, it is his primary duty to satisfy that a case would fall under culpable homicide not amounting to murder and then a murder. When there are adequate materials available, he shall not be overzealous in preparing a case for an offense punishable under Section 302 IPC. **We believe that a pliable change is required in the mind of the Investigating Officer. After all, such an officer is an officer of the court also and his duty is to find out the truth and help the court in coming to the correct conclusion. He does not know sides, either of the victim or the accused but shall only be guided by law and be an epitome of fairness in his investigation.**

41. There is a subtle difference between a defective investigation, and one brought forth by a calculated and deliberate action or inaction. A defective investigation *per se* would not enure to the benefit of the accused, unless it goes into the root of the very case of the prosecution being fundamental in nature. While dealing with a defective investigation, a court of law is expected to sift the evidence available and find out the truth on the principle that every case involves a journey towards truth. There shall not be any pedantic approach either by the prosecution or by the court as a case involves an element of law rather than morality.

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44. We would only reiterate the aforesaid principle *qua* a fair investigation through the following judgment of Kumar v. State, (2018) 7 SCC 536:

> "27. The action of investigating authority in pursuing the case in the manner in which they have done must be rebuked. The High Court on this aspect, correctly notices that the police authorities have botched up the arrest for reasons best known to them. Although we are aware of the ratio laid down in Parbhu v. King Emperor [Parbhu v. King Emperor, AIR 1944 PC 73], wherein the Court had ruled that irregularity and illegality of arrest would not affect the culpability of the offence if the same is proved by cogent evidence, yet in this case at hand, such irregularity should be shown deference as the investigating authorities are responsible for suppression of facts.
>
> 28. **The criminal justice must be above reproach. It is irrelevant whether the falsity lie in the statement of witnesses or the guilt of the accused. The investigative authority has a responsibility to investigate in a fair manner and elicit truth. At the cost of repetition, I must remind the authorities concerned to take up the investigation in a neutral manner, without**

having regard to the ultimate result. In this case at hand, we cannot close our eyes to what has happened; regardless of guilt or the asserted persuasiveness of the evidence, the aspect wherein the police has actively connived to suppress the facts, cannot be ignored or overlooked."

45. A fair investigation would become a colourable one when there involves a suppression. Suppressing the motive, injuries and other existing factors which will have the effect of modifying or altering the charge would amount to a perfunctory investigation and, therefore, become a false narrative. If the courts find that the foundation of the prosecution case is false and would not conform to the doctrine of fairness as against a conscious suppression, then the very case of the prosecution falls to the ground unless there are unimpeachable evidence to come to a conclusion for awarding a punishment on a different charge."

(emphasis supplied)

19. Common Cause and Others v. Union of India, (2015) 6 SCC 332,

"31. There is a very high degree of responsibility placed on an investigating agency to ensure that an innocent person is not subjected to a criminal trial. This responsibility is coupled with an equally high degree of ethical rectitude required of an investigating officer or an investigating agency to ensure that the investigations are carried out without any bias and are conducted in all fairness not only to the accused person but also to the victim of any crime, whether the victim is an individual or the State."

Case Diary

Section 172 of CrPC

"172. Diary of proceedings in investigation.—(1) Every police officer making an investigation under this Chapter shall day by day enter his proceedings in the investigation in a dairy, setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him, and a statement of the circumstances ascertained through his investigation.

(1-A) The statements of witnesses recorded during the course of investigation under section 161 shall be inserted in the case diary.

(1-B) The diary referred to in sub-section (1) shall be a volume and duly paginated.

(2) Any Criminal Court may send for the police diaries of a case under inquiry or trial in such Court, and may use such diaries, not as evidence in the case, but to aid it in such inquiry or trial.

(3) Neither the accused nor his agents shall be entitled to call for such diaries, nor shall he or they be entitled to see them merely because they are referred to by the Court; but, if they are used by the police officer who made them to refresh his memory, or if the Court uses them for the purpose of contradicting such police officer, the provisions of section 161 or section 145, as the case may be, of the Indian Evidence Act, 1872 (1 of 1872), shall apply."

Section 145 of the Evidence Act

"145. Cross-examination as to previous statements in writing.—A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him."

Section 161 of the Evidence Act

"161. Right of adverse party as to writing used to refresh memory.—Any writing referred to under the provisions of the two last preceding sections must be produced and shown to the adverse party if he requires it; such party may, if he pleases, cross-examine the witness thereupon."

20. A case diary is maintained by an Investigating Officer during his investigation for the purpose of entering the day-to-day proceedings of the investigation. While doing so, the Investigating Officer should mandatorily record the necessary particulars gathered in the course of investigation with

the relevant date, time and place. Under sub-section (1-A) and (1-B) of Section 172 of CrPC, the Investigating Officer has to mention, in his case diary, the statement of witnesses recorded during investigation with due pagination. Sub-section (1-A) and (1-B) were inserted by Act 5 of 2009 with effect from 31/12/2009. The object of these sub-sections is to facilitate a fair investigation since a statement made under Section 161 of CrPC is not expected to be signed as mandated by Section 162 of CrPC. To highlight the importance of adhering to the requirements of these sub-sections, we rely upon the Law Commission of India's One Hundred and Fifty Fourth Report (154th) on Code of Criminal Procedure, 1973, Chapter IX,

> "7. After giving our earnest consideration and in view of the fact that there is unanimity in respect of the need for making substantial changes in the law, we propose that there should be changes on the following lines :
> …The signature of the witness on the statement thus recorded need not be obtained. But, if the witness so examined desires a copy of such statement so recorded shall be handed over to him under acknowledgement. **To reflect the shift in emphasis, a corresponding amendment to Section 172 should also be made to the effect that the Investigating Officer maintaining the case diary should mention about the statement of the circumstances thus ascertained, and also attach to the diary for each day, copies of the statement of facts thus recorded under Section 161 CrPC. Neither the accused nor his agent shall be entitled to call for such diaries which can be put to a limited use as provided under Section 172 CrPC. Under the existing provisions of the Code, the preparation of the earliest record of the statement of witness is left in the hands of Investigating Officer and as the mode of recording as provided in section 162 does not ensure the accuracy of the record (It is well known that many good cases are spoiled by insidious incorrect entries at the instance of the accused and it is also well known that many innocent persons are sent up along with the guilty at the instance of informant's party),…"**
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> (emphasis supplied)

21. In furtherance of the above suggestion, the Law Commission of India accordingly provided a draft amendment to Section 172 of CrPC for the consideration of the Parliament,

> "… On the above mentioned lines, the relevant Sections can be amended as follows:
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> 172(1) Every police officer making an investigation under this chapter shall day by day enter his proceedings in the investigation in a diary, setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him and a statement if the circumstances ascertained through his investigation; **and also attach to the diary for each day copies of statement of facts, if any, recorded under Section 161 in respect of the person or persons whose examination was completed that day.**
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> (2) Any criminal Court may send for the police diaries of a case under inquiry or trial in such court, and may use such diaries, not as evidence in the case, but to aid it in such inquiry or trial.
>
> (3) Neither the accused nor his agents shall be entitled to call for such diaries, nor shall he or they be entitled to see them merely because they are referred (to) by this Court."
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> (emphasis supplied)

22. While it is the responsibility and duty of the Investigating Officer to make a due recording in his case diary, there is no corresponding right under sub-section (3) of Section 172 of CrPC for accused to seek production of such diaries, or to peruse them, except in a case where they are used by a police officer maintaining them to refresh his memory, or in a case where the court uses them for the purpose of contradicting the police officer. In such a case, the provision of Section 145 or Section 161, as the case may be, of the Evidence Act, shall apply.

23. Law is quite settled that an improper maintenance of a case diary by the Investigating Officer will not enure to the benefit of the accused. Prejudice has to be shown and proved by the accused despite non-compliance of Section 172 of CrPC in a given case. However, this does not take away the mandatory duty of the police officer to maintain it properly. As the court is the guardian of truth, it is the duty of the Investigating Officer to satisfy the court when it seeks to contradict him. The right of the accused is, therefore, very restrictive and limited. **Bhagwant Singh v. Commissioner of Police, (1983) 3 SCC 344,**

> **"17.** The other inference which disturbs us is that the entries in the police case diary (set forth in the annexure to the counter-affidavit on the record) do not appear to have been entered with the scrupulous completeness and efficiency which the law requires of such a document. **The haphazard maintenance of a document of that status not only does no credit to those responsible for maintaining it but defeats the very purpose for which it is required to be maintained. We think it to be of the utmost importance that the entries in a police case diary should be made with promptness, in sufficient detail, mentioning all significant facts, in careful chronological order and with complete objectivity**."
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> (emphasis supplied)

24. Baleshwar Mandal v. State of Bihar, (1997) 7 SCC 219,

> **"5. Under Section 172 CrPC read with Rule 164 of Bihar Police Manual dealing with the investigation, an Investigating Officer investigating a crime is under obligation to record all the day-to-day proceedings and information in his case diary, and also record the time at which the information was received and the place visited by him,**

besides the preparation of site plan and other documents. The Investigating Officer is also required to send bloodstained clothes and earth seized from the place of occurrence for chemical examination. Failure on the part of the Investigating Officer to comply with the provisions of Section 172 CrPC is a serious lapse on his part resulting in diminishing the value and credibility of his investigation. In this case the Investigating Officer neither entered the time of recording of the statements of the witnesses in the diary nor did he send the bloodstained clothes and earth seized from the place of occurrence for examination by a serologist. The High Court also adversely commented upon the lapses on the part of the Investigating Officer in not complying with the provisions of the Code of Criminal Procedure. **We, therefore, take it that, in fact, there was serious lapse on the part of the Investigation Officer in not observing the mandate of Section 172 CrPC while investigating the case which has given rise to this appeal. But the question that arises for consideration is, has any prejudice been caused to the accused in the trial by non-observance of rules by the Investigating Officer?** The evidence on record before the Sessions Court and the appellate court does not show that due to the lapses on the part of the Investigating Officer in not sending the bloodstained clothes and earth seized from the place of occurrence for chemical examination and further not noting down the time of recording the statement of the witnesses in the diary has resulted in any prejudice to the defence of the accused. In the present case, the place of occurrence and the identity of the deceased are not disputed. Further, the testimony of the eyewitnesses which is consistent and does not suffer from infirmity, was believed by both the courts below. **Once the eyewitnesses are believed and the courts come to the conclusion that the testimony of the eyewitnesses is trustworthy, the lapse on the part of the Investigating Officer in not observing the provisions of Section 172 CrPC unless some prejudice is shown to have been caused to the accused, will not affect the finding of guilt recorded by the Court.** Neither before the High Court nor before this Court, it was pointed out in what manner the accused were prejudiced by non-observance of the provisions of Section 172 CrPC and the rules framed in this regard. We are, therefore, of opinion that judgments of the courts below do not suffer on account of omission on the part of the Investigating Officer in not sending the earth seized from the place of occurrence for chemical examination or in not entering the time of recording of the statements of witnesses in the diary."

(emphasis supplied)

25. Manoj and Others v. State of Madhya Pradesh, (2023) 2 SCC 353,

> **"203.** The scheme of the CrPC under Chapter XII (Information to Police and Powers to Investigate) is clear — the police have the power to investigate freely and fairly; in the course of which, it is mandatory to maintain a diary where the day-to-day proceedings are to be recorded with specific mention of time of events, places visited, departure and reporting back, statements recorded, etc. While the criminal court is empowered to summon these diaries under Section 172(2) for the purpose of inquiry or trial (and not as evidence), Section 173(3) makes it clear that the accused cannot claim any *right* to peruse them, unless the police themselves, rely on it (to refresh their memory) or if the court uses it for contradicting the testimony of the police officers. [*Mukund Lal* v. *Union of India*, 1989 Supp (1) SCC 622 : 1989 SCC (Cri) 606; *Malkiat Singh* v. *State of Punjab*, (1991) 4 SCC 341 : 1991 SCC (Cri) 976]
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> **204.** In *Manu Sharma* [*Manu Sharma* v. *State (NCT of Delhi)*, (2010) 6 SCC 1 : (2010) 2 SCC (Cri) 1385] , in the context of police diaries, this Court noted that "*[t]he purpose and the object seems to be quite clear that there should be fairness in investigation, transparency and a record should be maintained to ensure a proper investigation*". **This object is rendered entirely meaningless if the police fail to maintain the police diary accurately. Failure to meticulously note down the steps taken during investigation, and the resulting lack of transparency, undermines the accused's right to fair investigation; it is up to the trial court that must take an active role in scrutinising the record extensively, rather than accept the prosecution side willingly, so as to bare such hidden or concealed actions taken during the course of investigation.** [Role of the courts in a criminal trial has been discussed in *Zahira Habibulla H. Sheikh* v. *State of Gujarat*, (2004) 4 SCC 158 : 2004 SCC (Cri) 999.]"
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> (emphasis supplied)

26. When a police officer uses case diary for refreshing his memory, an accused automatically gets a right to peruse that part of the prior statement as recorded in the police officer's diary by taking recourse to Section 145 or Section 161, as the case may be, of the Evidence Act.

27. Section 172(3) of CrPC makes a specific reference to Section 145 and Section 161 of the Evidence Act. Therefore, whenever a case is made out either under Section 145 or under Section 161 of the Evidence Act, the

benefit conferred thereunder along with the benefit of Section 172(3) of CrPC has to be extended to an accused. Thus, the accused has a right to cross-examine a police officer as to the recording made in the case diary whenever the police officer uses it to refresh his memory. Though Section 161 of the Evidence Act does not restrict itself to a case of refreshing memory by perusing a case diary alone, there is no exclusion for doing so. Similarly, in a case where the court uses a case diary for the purpose of contradicting a police officer, then an accused is entitled to peruse the said statement so recorded which is relevant, and cross-examine the police officer on that count. What is relevant in such a case is the process of using it for the purpose of contradiction and not the conclusion. To make the position clear, though Section 145 read with Section 161 of the Evidence Act deals with the right of a party including an accused, such a right is limited and restrictive when it is applied to Section 172 of CrPC. Suffice it is to state, that the said right cannot be declined when the author of a case diary uses it to refresh his memory or the court uses it for the purpose of contradiction. Therefore, we have no hesitation in holding that Section 145 and Section 161 of the Evidence Act on the one hand and Section 172(3) of CrPC on the other are to be read in consonance with each other, subject to the limited

right conferred under sub-section (3) of Section 172 of CrPC. **Balakram v. State of Uttarakhand and Others, (2017) 7 SCC 668,**

> **"9. The aforementioned provisions are to be read conjointly and homogenously. It is evident from sub-section (2) of Section 172 CrPC, that the trial court has unfettered power to call for and examine the entries in the police diaries maintained by the investigating officer. This is a very important safeguard. The legislature has reposed complete trust in the Court which is conducting the inquiry or the trial. If there is any inconsistency or contradiction arising in the evidence, the Court can use the entries made in the diaries for the purposes of contradicting the police officer as provided in sub-section (3) of Section 172 CrPC. It cannot be denied that the Court trying the case is the best guardian of interest of justice.** Under sub-section (2) the criminal court may send for diaries and may use them not as evidence, but to aid it in an inquiry or trial. **The information which the Court may get from the entries in such diaries usually will be utilised as foundation for questions to be put to the police witness and the court may, if necessary in its discretion use the entries to contradict the police officer, who made them. But the entries in the police diary are neither substantive nor corroborative evidence, and that they cannot be used against any other witness than against the police officer that too for the limited extent indicated above.**
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> **10.** Coming to the use of police diary by the accused, sub-section (3) of Section 172 clearly lays down that neither the accused nor his agents shall be entitled to call for such diaries nor he or they may be entitled to see them merely because they are referred to by the Court. **But, in case the police officer uses the entries in the diaries to refresh his memory or if the Court uses them for the purpose of contradicting such police officer, then the provisions of Sections 145 and 161, as the case may be, of the Evidence Act would apply. Section 145 of the Evidence Act provides for cross-examination of a witness as to the previous statements made by him in writing or reduced into writing and if it was intended to contradict him in writing, his attention must be called to those portions which are to be used for the purpose of contradiction. Section 161 deals with the adverse party's right as to the writing used to refresh memory. It can, therefore, be seen that, the right of the accused to cross-examine the police officer with reference to the entries in the police diary is very much limited in extent and even that limited scope arises only when the Court uses the entries to contradict the police officer or when the police officer uses it for refreshing his memory**.

11. **In other words, in case if the Court does not use such entries for the purpose of contradicting the police officer or if the police officer does not use the same for refreshing his memory, then the question of the accused getting any right to use entries even to that limited extent does not arise. The accused persons cannot force the police officer to refresh his memory during his examination in the Court by referring to the entries in the police diary**.

12. Section 145 of the Evidence Act consists of two limbs. It is provided in the first limb of Section 145 that a witness may be cross-examined as to the previous statements made by him without such writing being shown to him. But the second limb provides that, if it is intended to contradict him by the writing, his attention must before writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him. Sections 155(3) and 145 of the Evidence Act deal with the different aspects of the same matter and should, therefore, be read together.

13. Be that as it may, as mentioned supra, **right of the accused to cross-examine the police officer with reference to the entries in the police diary is very much limited in extent and even that limited scope arises only when the Court uses such entries to contradict the police officer or when the police officer uses it for refreshing his memory and that again is subject to the provisions of Sections 145 and 161 of the Evidence Act. Thus, a witness may be cross-examined as to his previous statements made by him as contemplated under Section 145 of the Evidence Act if such previous statements are brought on record, in accordance with law, before the Court and if the contingencies as contemplated under Section 172(3) CrPC are fulfilled. Section 145 of the Evidence Act does not either extend or control the provisions of Section 172 CrPC. We may hasten to add here itself that there is no scope in Section 172 CrPC to enable the Court, the prosecution or the accused to use the police diary for the purpose of contradicting any witness other than the police officer who made it."**

(emphasis supplied)

First Information Report vis-a-vis Case Diary

Section 154 of CrPC

> **"154. Information in cognizable cases**.—(1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf…"

28. The mandate of Section 154 of CrPC implies that every information disclosing commission of a cognizable offence shall be entered in a book to be kept by the officer in charge of the police station in such form as the State Government may prescribe. In **Lalita Kumari v. Government of Uttar Pradesh & Others, (2014) 2 SCC 1**, the Constitution Bench of this Court while answering the question as to whether the information disclosing commission of a cognizable offence shall first be entered into the General Diary or in a book kept by the Officer in charge of Police Station which in common parlance is referred as First Information Report has critically analyzed the interplay between Section 154 of CrPC and Section 44 of the Police Act, 1861. This Court also had occasion to analyze the legislative history of CrPC 1861, CrPC 1973 and the Police Act 1861 to answer the aforesaid question, whereby it was held that an Information disclosing commission of a cognizable offence shall first be entered in a book kept by the officer in charge of police station and not in the General Diary. Therefore, it is amply clear that a General Diary entry cannot precede the registration of FIR, except in cases where preliminary inquiry is needed. While an FIR is to be registered on an information disclosing the commission of a cognizable offence, so also a recording is thereafter required to be made in the case diary. Lalita Kumari (Supra),

"57. <u>It is contented by the learned ASG appearing for the State of Chhattisgarh that the recording of first information under Section 154 in the "book" is subsequent to the entry in the General Diary/Station Diary/Daily Diary, which is maintained in the police station. Therefore, according to the learned ASG, first information is a document at the earliest in the General Diary, then if any preliminary inquiry is needed the police officer may conduct the same and thereafter the information will be registered as FIR. This interpretation is wholly unfounded. The first information report is in fact the "information" that is received first in point of time, which is either given in writing or is reduced to writing. It is not the "substance" of it, which is to be entered in the diary prescribed by the State Government. The term "General Diary" (also called as "Station Diary" or "Daily Diary" in some States) is maintained not under Section 154 of the Code but under the provisions of Section 44 of the Police Act, 1861 in the States to which it applies, or under the respective provisions of the Police Act(s) applicable to a State or under the Police Manual of a State, as the case may be.</u>

58. Section 44 of the Police Act, 1861 is reproduced below:

> "**44.*Police officers to keep diary***.—It shall be the duty of every officer in charge of a police station to keep a General Diary in such form as shall, from time to time, be prescribed by the State Government and to record therein all complaints and charges preferred, the names of all persons arrested, the names of the complainants, the offences charged against them, the weapons or property that shall have been taken from their possession or otherwise, and the names of the witnesses who shall have been examined.
>
> The Magistrate of the district shall be at liberty to call for and inspect such diary."

59. It is pertinent to note that during the year 1861, when the aforesaid Police Act, 1861 was passed, the Code of Criminal Procedure, 1861 was also passed. Section 139 of that Code dealt with registration of FIR and this section has also referred to the word "diary", as can be seen from the language of this section, as reproduced below:

> "**139.*Complaint, etc., to be in writing***.—Every complaint or information preferred to an officer in charge of a police station, shall be reduced into writing, and the substance thereof shall be

entered in a *diary* to be kept by such officer, in such form as shall be prescribed by the local Government."

(emphasis supplied)

Thus, the Police Act, 1861 and the Code of Criminal Procedure, 1861, both of which were passed in the same year, used the same word "diary".

60. However, in the year 1872, a new Code came to be passed which was called the Code of Criminal Procedure, 1872. Section 112 of the Code dealt with the issue of registration of FIR and is reproduced below:

"**112.*Complaint to police to be in writing***.—Every complaint preferred to an officer in charge of a police station shall be reduced into writing, and shall be signed, sealed, or marked by the person making it, and the substance thereof shall be entered in a *book* to be kept by such officer in the form prescribed by the local Government."

It is, thus, clear that in the Code of Criminal Procedure, 1872, a departure was made and the word "book" was used in place of "diary". The word "book" clearly referred to the FIR book to be maintained under the Code for the registration of FIRs.

61. The question that whether the FIR is to be recorded in the FIR book or in the General Diary, is no more res integra. This issue has already been decided authoritatively by this Court.

62. In *Madhu Bala* v. *Suresh Kumar* [*Madhu Bala* v. *Suresh Kumar*, (1997) 8 SCC 476 : 1998 SCC (Cri) 111] , this Court has held that FIR must be registered in the FIR register which shall be a book consisting of 200 pages. It is true that the substance of the information is also to be mentioned in the Daily Diary (or the General Diary). But, the basic requirement is to register the FIR in the FIR book or register. Even in *Bhajan Lal* [*State of Haryana* v. *Bhajan Lal*, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] , this Court held that FIR has to be entered in a book in a form which is commonly called the first information report.

63. It is thus clear that registration of FIR is to be done in a book called FIR book or FIR register. Of course, in addition, the gist of the

FIR or the substance of the FIR may also be mentioned simultaneously in the General Diary as mandated in the respective Police Act or Rules, as the case may be, under the relevant State provisions.

64. The General Diary is a record of all important transactions/events taking place in a police station, including departure and arrival of police staff, handing over or taking over of charge, arrest of a person, details of law and order duties, visit of senior officers, etc. It is in this context that gist or substance of each FIR being registered in the police station is also mentioned in the General Diary since registration of FIR also happens to be a very important event in the police station. Since General Diary is a record that is maintained chronologically on day-to-day basis (on each day, starting with new number 1), the General Diary entry reference is also mentioned simultaneously in the FIR book, while FIR number is mentioned in the General Diary entry since both of these are prepared simultaneously.

65. It is relevant to point out that FIR book is maintained with its number given on an annual basis. This means that each FIR has a unique annual number given to it. This is on similar lines as the case numbers given in courts. **Due to this reason, it is possible to keep a strict control and track over the registration of FIRs by the supervisory police officers and by the courts, wherever necessary. Copy of each FIR is sent to the superior officers and to the Judicial Magistrate concerned.**

66. On the other hand, General Diary contains a huge number of other details of the proceedings of each day. Copy of General Diary is not sent to the Judicial Magistrate having jurisdiction over the police station, though its copy is sent to a superior police officer. **Thus, it is not possible to keep strict control of each and every FIR recorded in the General Diary by the superior police officers and/or the court in view of enormous amount of other details mentioned therein and the numbers changing every day**.

67. The signature of the complainant is obtained in the FIR book as and when the complaint is given to the police station. On the other hand, there is no such requirement of obtaining signature of the complainant in the General Diary. Moreover, at times, the complaint given may consist of large number of pages, in which case it is only the gist of the complaint which is to be recorded in the General Diary and

not the full complaint. This does not fit in with the suggestion that what is recorded in the General Diary should be considered to be the fulfilment/compliance with the requirement of Section 154 of registration of FIR. In fact, the usual practice is to record the complete complaint in the FIR book (or annex it with the FIR form) but record only about one or two paragraphs (gist of the information) in the General Diary.

xxx xxx xxx

70. If at all, there is any inconsistency in the provisions of Section 154 of the Code and Section 44 of the Police Act, 1861, with regard to the fact as to whether the FIR is to be registered in the FIR book or in the General Diary, the provisions of Section 154 of the Code will prevail and the provisions of Section 44 of the Police Act, 1861 (or similar provisions of the respective corresponding Police Act or Rules in other respective States) shall be void to the extent of the repugnancy. Thus, FIR is to be recorded in the FIR book, as mandated under Section 154 of the Code, and it is not correct to state that information will be first recorded in the General Diary and only after preliminary inquiry, if required, the information will be registered as FIR.

xxx xxx xxx

72. It is thus unequivocally clear that registration of FIR is mandatory and also that it is to be recorded in the FIR book by giving a unique annual number to each FIR to enable strict tracking of each and every registered FIR by the superior police officers as well as by the competent court to which copies of each FIR are required to be sent.

xxx xxx xxx

97. The Code contemplates two kinds of FIRs : the duly signed FIR under Section 154(1) is by the informant to the officer concerned at the police station. The second kind of FIR could be which is registered by the police itself on any information received or other than by way of an informant [Section 157(1)] and even this information has to be duly recorded and the copy should be sent to the Magistrate forthwith. **The registration of FIR**

either on the basis of the information furnished by the informant under Section 154(1) of the Code or otherwise under Section 157(1) of the Code is obligatory. The obligation to register FIR has inherent advantages:

97.1. (*a*) It is the first step to "access to justice" for a victim.

97.2. (*b*) It upholds the "rule of law" inasmuch as the ordinary person brings forth the commission of a cognizable crime in the knowledge of the State.

97.3. (*c*) It also facilitates swift investigation and sometimes even prevention of the crime. In both cases, it only effectuates the regime of law.

97.4. (*d*) It leads to less manipulation in criminal cases and lessens incidents of "antedated" FIR or deliberately delayed FIR."

(emphasis supplied)

Ram Chander v. State of Haryana, (1981) 3 SCC 191,

"3…. The court, the prosecution and the defence must work as a team whose goal is justice, a team whose captain is the judge. The Judge, 'like the conductor of a choir, must, by force of personality, induce his team to work in harmony; subdue the raucous, encourage the timid, conspire with the young, flatter and (sic the) old'."

Justice O. Chinnappa Reddy

Section 165 of the Evidence Act

"165. Judge's power to put questions or order production.—The Judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties, about any fact relevant or irrelevant; and may order the production of any document or thing; and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question:

Provided that the judgment must be based upon facts declared by this Act to be relevant, and duly proved:

Provided also that this section shall not authorize any Judge to compel any witness to answer any question, or to produce any document which such witness would be entitled to refuse to answer or produce under sections

> 121 to 131, both inclusive, if the question were asked or the document were called for by the adverse party; nor shall the Judge ask any question which it would be improper for any other person to ask under section 148 or 149; nor shall he dispense with primary evidence of any document, except in the cases hereinbefore excepted."

29. Section 165 of the Evidence Act speaks of the power of the court to put questions and order production of documents in the course of trial. This is a general and omnibus power given to the court when in search of the truth. Such a power is to be exercised against any witness before it, both in a civil as well as a criminal case. The object is to discover adequate proof of a relevant fact and, therefore, for that purpose, the Judge is authorised and empowered to ask any question of his choice. When such a power is exercised by the court, there is no corresponding right that can be extended to a party to cross-examine any witness on an answer given in reply to a question put forth by it, except with its leave. Emphasizing upon the importance of Section 165 of the Evidence Act, Sir James Stephen while presenting the report of the Select Committee, at the time of passing of the Evidence Act observed,

> "It is absolutely necessary that the judge should not only hear what is put before him by others, but that he should ascertain by his own inquiries how the facts actually stand. In order to do this, it will frequently be necessary for him to go into matters which are not themselves relevant to the matters in issue, but may lead to something that is, and it is in order to arm judges with express authority to do this that section 165, which has been so much objected to, has been framed".
>
> **"A judge or Magistrate in India frequently has to perform duties which in England would be performed by Police Officer or attorneys. He has to sift out the truth for himself as well as he can, and with little**

assistance of a professional kind. Section 165 is intended to arm the judge with the most extensive power possible for the purpose of getting at the truth. The effect of this section is that, in order to get to the bottom of the matter before the count, he will be able to look at and enquire into every fact whatever."

(emphasis supplied)

30. Ram Chander v. State of Haryana, (1981) 3 SCC 191,

"O. CHINNAPPA REDDY, J.— What is the true role of a judge trying a criminal case? Is he to assume the role of a referee in a football match or an umpire in a cricket match, occasionally answering, as Pollock and Maitland [Pollock and Maitland : The History of English Law] point out, the question 'How is that', or, is he to, in the words of Lord Denning 'drop the mantle of a judge and assume the robe of an advocate'? [*Jones* v. *National Coal Board*, (1957) 2 All ER 155 : (1957) 2 WLR 760] Is he to be a spectator or a participant at the trial? Is passivity or activity to mark his attitude? If he desires to question any of the witnesses, how far can he go? Can he put on the gloves and 'have a go' at the witness who he suspects is lying or is he to be soft and suave? These are some of the questions which we are compelled to ask ourselves in this appeal on account of the manner in which the Judge who tried the case put questions to some of the witnesses.

2. The adversary system of trial being what it is, there is an unfortunate tendency for a judge presiding over a trial to assume the role of a referee or an umpire and to allow the trial to develop into a contest between the prosecution and the defence with the inevitable distortions flowing from combative and competitive elements entering the trial procedure. If a criminal court is to be an effective instrument in dispensing justice, the presiding judge must cease to be a spectator and a mere recording machine. He must become a participant in the trial by evincing intelligent active interest by putting questions to witnesses in order to ascertain the truth. As one of us had occasion to say in the past:

> **Every criminal trial is a voyage of discovery in which truth is the quest. It is the duty of a presiding Judge to explore every avenue open to him in order to discover the truth and to advance the cause of justice. For that purpose he is expressly invested by Section 165 of the Evidence Act with the right to put questions to witnesses. Indeed the right given to a Judge is so wide that he may, ask any question he pleases, in any form, at any time, of any witness, or of the parties about any fact, relevant or irrelevant. Section 172(2) of the Code of Criminal Procedure enables the court to send for the police-diaries in a case and use them to aid it in the trial. The record of the proceedings of the Committing Magistrate may also be perused by the Sessions Judge to further aid him in the trial.** [*Sessions Judge, Nellore* v. *Intha Ramana Reddy* ILR 1972 AP 683 : 1972 Cri LJ 1485]

3. With such wide powers, the court must actively participate in the trial to elicit the truth and to protect the weak and the innocent. It must, of course, not assume the role of a prosecutor in putting questions. The functions of the counsel, particularly those of the Public Prosecutor, are not to be usurped by the judge, by descending into the arena, as it were. Any questions put by the judge must be so as not to frighten, coerce, confuse or intimidate the witnesses. The danger inherent in a judge adopting a much too stern an attitude towards witnesses has been explained by Lord Justice Birkett:

> People accustomed to the procedure of the court are likely to be overawed or frightened, or confused, or distressed when under the ordeal of prolonged questioning from the presiding judge. Moreover, when the questioning takes on a sarcastic or ironic tone as it is apt to do, or when it takes on a hostile note as is sometimes almost inevitable, the danger is not only that witnesses will be unable to present the evidence as they may wish, but the parties may begin to think, quite wrongly it may be, that the judge is not holding the scales of justice quite eventually. [Extracted by Lord Denning in supra f.n. 2]

In *Jones* v. *National Coal Board* [*Jones* v. *National Coal Board*, (1957) 2 All ER 155 : (1957) 2 WLR 760] Lord Justice Denning observed:

> The Judge's part in all this is to hearken to the evidence, only himself asking questions of witnesses when it is necessary to clear up any point that has been overlooked or left obscure; to see that the advocates behave themselves seemly and keep to the rules laid down by law; to exclude irrelevancies and discourage repetition; to make sure by wise intervention that he follows the points that the advocates are making and can assess their worth; and at the end to make up his mind where the truth lies. If he goes beyond this, he drops the mantle of the Judge and assumes the role of an advocate; and the change does not become him well.

> **We may go further than Lord Denning and say that it is the duty of a judge to discover the truth and for that purpose he may "ask any question, in any form, at any time, of any witness, or of the parties, about any fact, relevant or irrelevant" (Section 165 Evidence Act). But this he must do, without unduly trespassing upon the functions of the Public Prosecutor and the defence Counsel, without any hint of partisanship and without appearing to frighten or bully witnesses. He must take the prosecution and the defence with him. The court, the prosecution and the defence must work as a team whose goal is justice, a team whose captain is the judge. The Judge, 'like the conductor of a choir, must, by force of personality, induce his team to work in harmony; subdue the raucous, encourage the timid, conspire with the young, flatter and (*sic* the) old'."**

(emphasis supplied)

ON FACTS

31. We have given our consideration to the circumstances, motive, role of the accused and the volition of the prosecution to bring home the guilt of the appellant primarily in the form of: (a) Dying Declaration, (b) Eye witnesses, (c) Recovery and (d) Alleged arrest of the appellant nearer to the scene of the offence.

32. The presence of PW-1 before PW-5 is extremely doubtful. His presence was not spoken to at all by PW-5. The evidence of PW-1 is quite unnatural as he

has neither spoken about the motive in his statement recorded under Section 161 of CrPC, nor about the so-called dying declaration which was not even witnessed by PW-5. PW-5 has clearly stated that the deceased was in a very serious condition, blood was oozing out and, therefore, he could not give adequate treatment. The deceased was immediately referred to the second hospital. There was no necessity for PW-1 to dictate the complaint to one Mr. Inder Singh who curiously has not been examined by the prosecution. In any case, there was no need for PW-11 to wait for PW-1 to come to him for registration of FIR, which he was mandated to do so, as soon as he received the report from the hospital. The testimony of PW-1 is also contradictory to PW-3 and PW-8.

33. On the similar line, we do not wish to rely upon the evidence of PW-2 and PW-3. PW-2 admittedly was not examined by PW-11 for over 2 weeks, for which no explanation is forthcoming. This witness also states that he was not a friend of the deceased and, therefore, his presence at the place of occurrence creates a serious doubt as to how he happened to accompany the deceased to the picnic spot. PW-3, though accompanied the deceased, was not present thereafter, as deposed by PW-5 and did not admit the deceased to the second hospital as deposed by PW-8. On the contrary, the evidence of PW-3 is that it is PW-1 and himself who admitted the deceased. Furthermore, even his presence thereafter was not noticed by PW-5.

34. Though we rely upon the evidence of PW-5 to a certain extent, the emergency medical register was not completely filled up by him. Nobody knows the reason as to why he partially filled up the register and the remaining part was filled by Dr. B.V. Sharma, who was not examined by the prosecution. By placing reliance upon his testimony partly, we would only come to the conclusion that his evidence goes against the prosecution version on two counts, namely, the presence of any other witness and the condition of the deceased.

35. The prosecution has not chosen to examine the driver of the vehicle i.e the tempo in which the deceased was taken to the hospital. Even PW-5 has stated that the blood was oozing out from the body of the deceased. This is another contradiction in the statement of PW-2 and PW-3 in this regard. PW-8 in his evidence has stated that the deceased was brought by another brother of the deceased. Even this witness has not been examined for the reason known to the prosecution.

36. PW-9 is an important witness being a police officer hailing from a different jurisdiction. It is very curious to know that he was the author of the inquest report after the investigation was taken up by PW-11. Despite this being very strange, no plausible explanation was forthcoming from him. Though PW-11 was trying to say that at times due to the instructions from the higher officers, it is done so, when an offence is committed an Investigating Officer

is duty bound to take up the investigation and complete it. After taking up the investigation he thereafter cannot delegate it, except for justifiable reasons. This lends credence to the case projected by the defence that the interpolations and missing pages in the case diary clearly indicate that the FIR was ante-dated. Perhaps that is the reason why the FIR reached the jurisdictional magistrate belatedly and also the examination of the witnesses including PW-2 under section 161 of CrPC was done days after the occurrence.

37. PW-6 and PW-7 are not natural witnesses. It is totally unbelievable for PW-6 to reach the place of occurrence out of inquisitiveness. There is no need for him to be in that very place. The arrest of the accused at the instance of PW-7 is yet another instance of the prosecution trying to make out a case. It is incomprehensible that the appellant would be present at the place of the occurrence when he is attempting to flee. Similar logic goes to the recovery of the knife. If PW-11 is stated to have made an inspection and drawn the sketch, he would have very well found the knife at a nearby place. It is nobody's case that it was hidden, on the contrary, it was found in an open place.

38. From the aforesaid discussion, we have no doubt that the date, time and place of occurrence could have been different. The trial court strangely placed the onus on the appellant even with respect to the corrections made in

the case diary along with the missing pages. On perusal of the case diary, we find that at several places such corrections have been made, while some pages were even missing. A clear attempt is made to correct the dates. Such corrections actually were put against the appellant while they indeed helped the case of the prosecution. The finding of the trial court in this regard is neither logical nor reasonable. Even on the question of motive, there is absolutely no material as witnesses did not speak about the same in their statements recorded under Section 161 of CrPC. Mere recovery of a motorcycle *per se* will not prove the case of the prosecution especially when it has not been proved as to how it was recovered. The evidence of PW-13 clearly shows that no date, time and proper recording have been made in the case diary. When the trial court perused the case diary for the purpose of contradicting the statement of a police officer, it ought not to have fixed the onus on the appellant. It has failed to discharge its duty enshrined under Section 172(3) of CrPC read with Section 145 or Section 161, as the case may be, of the Evidence Act. To be noted, it was brought on a request made by the appellant and the court was using it for the purpose of contradiction.

39. On a perusal of the impugned judgment and that of the trial court in convicting the appellant, we find that the aspects discussed by us have not been looked into in a proper perspective. The appellant has certainly made out a case for acquittal. Accordingly, the conviction rendered by the High

Court, confirming that of the trial court stands set aside. The appellant is acquitted of all the charges.

40. The appeal is allowed. The appellant was granted bail vide Order of this Court dated 06.04.2015. Hence, bail bonds stand discharged.

……..J.
(M. M. SUNDRESH)

..……..J.
(S.V.N. BHATTI)

NEW DELHI;
FEBRUARY 26, 2024